



Civil Resolution Tribunal

Date Issued: March 26, 2021

File: SC-2020-007174

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Super Save Disposal Inc. v. Lindstrom Marine Ltd.*, 2021 BCCRT 337

B E T W E E N :

SUPER SAVE DISPOSAL INC.

APPLICANT

A N D :

LINDSTROM MARINE LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This dispute is about waste disposal services. The applicant, Super Save Disposal Inc. (Super Save), provided waste disposal services to the respondent, Lindstrom Marine Ltd. (Lindstrom). Super Save says Lindstrom breached the contract when it

attempted to end the contract early. Super Save says that Lindstrom owes \$8,458.76 in liquidated damages, but abandons the excess over \$5,000, which is the Civil Resolution Tribunal's (CRT) small claims' \$5,000 jurisdictional monetary limit.

2. Lindstrom says it is not responsible for liquidated damages because it did not have a copy of the contract. Lindstrom also says that Super Save has not suffered any damages because a new business has continued using Super Save's waste disposal services at Lindstrom's former business premises.
3. Super Save is represented by an employee. Lindstrom is represented by its owner.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the CRT. The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act (CRTA)*. Section 2 of the CRTA states that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.
5. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.
6. Section 42 of the CRTA says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

7. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

ISSUE

8. The issue in this dispute is whether Lindstrom breached the parties' waste disposal services contract, and if so, to what extent if any is Super Save entitled to the claimed \$5,000 in liquidated damages.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the applicant, Super Save, must prove its claims on a balance of probabilities. I have read all the parties' submissions but refer only to the evidence and argument that I find relevant to provide context for my decision.
10. Super Save provided a March 5, 2010 contract (contract) for waste disposal services. SL signed the contract on Lindstrom's behalf. SL identified themselves as Lindstrom's owner and president. I note that Lindstrom does not deny signing the document in its submissions. Although Lindstrom says it did not receive the contract, I find that Lindstrom agreed to the contract based on SL's signature in their capacity as owner and president.
11. Lindstrom also says that it did not know that it was signing a contract. Rather, Lindstrom says it believed that the contract was only a receipt for delivery, I find that the contract was clearly recognizable as a binding agreement. The document is titled "Service Agreement" in large font, upper case, bold text. Further, the document has a bold, large font heading that says, "Terms & Conditions of Agreement." Further, since Super Save provided ongoing waste disposal services after the document was signed, I find that it is unlikely that Lindstrom believed that the document was only a receipt for bin delivery rather than a contract. I find that Lindstrom knowingly entered the contract with Super Save and it is bound by the agreement.

12. The contract had a 2-year, automatically renewable term, with 24% annual interest on late payments. It is undisputed that Super Save continuously provided waste disposal service for Lindstrom until May 2020. Based on the contract's terms, I find that the contract renewed every 2 years, with the last renewal on March 5, 2020.
13. Super Save says Lindstrom requested cancellation on May 8, 2020. Lindstrom says its business lease was not renewed and it needed to leave its business premises by June 30, 2020. Since it is not disputed, I find that Lindstrom tried to end the contract on May 8, 2020.
14. Super Save sent Lindstrom a letter on May 13, 2020 saying the contract was still in effect and that Lindstrom could either transfer the waste disposal service to a new location, assign the contract to a willing third party or buy out the remaining balance of the contract.
15. Lindstrom's lawyer sent Super Save a letter on June 18, 2020 saying that Lindstrom was ending the contract.
16. The contract says that Lindstrom can only end the contract by giving notice that it was not renewing the contract. The contract required Lindstrom to provide this notice by registered mail at least 60 days before the contract's end. Since the contract was due to expire on March 4, 2022, Lindstrom was not able to end the contract before that date. So, I find that Lindstrom did not properly cancel the contract under its terms by attempting to end the contract as of June 18, 2020.
17. Super Save sent a July 29, 2020 letter saying that it was ending the contract based on Lindstrom cancellation notice. By doing so, I find that Super Save accepted Lindstrom's repudiation of the contract. Repudiation occurs when a party shows an intention to no longer be bound by an agreement. If the repudiation is accepted, the contract ends (See *Kuo v. Kuo*, 2017 BCCA 245). I find that Lindstrom breached the contract by repudiating the contract before the contract's term's expiration, which was to end on March 4, 2022. Based on Super Save's undisputed letter, I find that the

contract ended when Super Save accepted Lindstrom's contract repudiation on July 29, 2020.

18. Super Save sent Lindstrom an invoice for liquidated damages of \$8,458.76 on July 28, 2020. Liquidated damages are a contractual pre-estimate of the damages suffered by a party in the event of a contract breach.
19. Lindstrom argues that Super Save has not suffered any losses because a new business has continued Super Save's waste disposal services at Lindstrom's former business location. Further, Lindstrom says that Super Save suggested transferring its waste disposal contract to another. However, there is no evidence before me that Lindstrom's contract was transferred to another business. Rather, I find that Super Save cancelled the contract on July 29, 2020 when Super Save accepted Lindstrom's repudiation. Further, I find it is not relevant whether Super Save has mitigated its losses by continuing its waste disposal services to a new customer because Super Save's liquidated damages claim is based on an agreed pre-estimate of contract breach damages, not the actual damages incurred.
20. I acknowledge that the liquidated damages clause is onerous. However, in *Tristar Cap & Garment Ltd. v. Super Save Disposal Inc.*, 2014 BCSC 690, the British Columbia Supreme Court held that a similar contract was enforceable under similar circumstances, and this decision is binding on me.
21. Clause 11 of the contract says Super Save can claim liquidated damages in the amount equal to the monthly charges for the balance of the term, based on the monthly invoice amount immediately before the date Super Save ended the agreement. Super Save says this monthly amount is \$366.18 which Lindstrom does not dispute. Based on the Super Save's transaction reports, I find that the last month of regular waste disposal service was April 2020. Although Super Save did not provide its April 2020 invoice, it provided its transaction report showing that Lindstrom paid Super Save \$476.77 for waste disposal service for April 2020. Based on the transaction report, I am satisfied that Lindstrom's undisputed submission that Lindstrom's monthly fee before cancellation was \$366.18 is accurate.

22. Super Save says it is entitled to liquidated damages of \$5,000. Since Super Save ended the contract 22 months before the contract's term's completion, I find Super Save is entitled to liquidated damages in the amount equal to \$366.18 per month, for 22 months of service under the contract. Since this exceeds the CRT's \$5,000 small claims' jurisdictional monetary limit and Super Save has limited its claim to \$5,000, I find that Lindstrom must pay Super Save \$5,000.
23. Although the parties' contract allowed for contractual interest, Super Save did not make an interest claim. In *Super Save Disposal Inc. v. Pretty*, 2020 BCCRT 1368, the applicant did not claim for contractual interest, though as is the case here, the parties' contract allowed for it. In *Pretty*, a CRT Vice Chair noted that the *Court Order Interest Act* (COIA) does not apply where there is an agreement about interest. So, the Vice Chair did not order any interest for the unpaid monthly waste disposal services. However, the Vice Chair found that the parties' agreement about interest did not apply to liquidated damages so the applicant was awarded pre-judgment interest under the COIA for the liquidated damages.
24. Although the decision in *Pretty* is non-binding, I agree with the Vice Chair's reasoning and find it applicable to this dispute. I find the parties' agreement about interest only applied to monthly charges, not liquidated damages. So, I find that Super Save is entitled to pre-judgment interest under the COIA on the \$5,000 of liquidated damages from the date that Super Save accepted Lindstrom's repudiation of the contract to the date of this decision. This equals \$14.82.
25. Under section 49 of the CRTA and the CRT's rules, as Super Save was successful in this dispute, I find it is entitled to reimbursement of \$175 in paid CRT fees. No dispute-related expenses were claimed.

ORDERS

26. Within 30 days of the date of this order, I order Lindstrom to pay Super Save a total of \$5,189.82, broken down as follows:

- a. \$5,000 as liquidated damages,
- b. \$14.82 in pre-judgment COIA interest, and
- c. \$175 in CRT fees.

27. Super Save is entitled to post-judgment interest, as applicable.
28. Under section 48 of the CRTA, the CRT will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the CRT's final decision. The Province of British Columbia has enacted a provision under the *COVID-19 Related Measures Act* which says that statutory decision makers, like the CRT, may waive, extend or suspend mandatory time periods. This provision is expected to be in effect until 90 days after the state of emergency declared on March 18, 2020 ends, but the Province may shorten or extend the 90-day timeline at any time. A party should contact the CRT as soon as possible if they want to ask the CRT to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.
29. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Richard McAndrew, Tribunal Member