



Civil Resolution Tribunal

Date Issued: July 6, 2021

File: SC-2020-009481

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Super Save Disposal Inc. v. Cartech Collision Ltd.*, 2021 BCCRT 742

B E T W E E N :

SUPER SAVE DISPOSAL INC.

APPLICANT

A N D :

CARTECH COLLISION LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This is a contractual dispute. The applicant, Super Save Disposal Inc. (Super Save), says it had a waste disposal service contract with the respondent, Cartech Collision Ltd. (Cartech), but that Cartech breached the agreement. Super Save claims

\$2,696.40 in liquidated damages. Cartech says it did not have an agreement with Super Save and denies that it owes any money.

2. Super Save is represented by an employee. Cartech is represented by its owner.

JURISDICTION AND PROCEDURE

3. These are the formal written reasons of the Civil Resolution Tribunal (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.
4. 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.
5. 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.
6. As part of the CRT's process, parties are advised to submit their evidence during a specified time frame. Here, neither party submitted evidence during that time frame, but Super Save submitted evidence late. As Cartech had an opportunity to view the late evidence and respond to it in its submissions, I find that there is no prejudice to Cartech or procedural fairness concerns in accepting Super Save's late evidence.

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.

ISSUES

8. The issues in this dispute are:
 - a. Whether the parties had a binding contract, and
 - b. Whether Cartech breached the contract and, if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, an applicant must prove their claims on a balance of probabilities. Both parties provided submissions but, as noted, only Super Save provided evidence. I have considered all of the information the parties provided, but refer only to what is relevant and necessary to provide context for my decision.
10. Super Save says that it made a Service Agreement (agreement) with Cartech on March 25, 2019. It submitted a copy of the agreement, which was made by entering handwritten information on a pre-printed form. The agreement was for successive 5-year terms, and only allowed for cancellation during a limited time period before the end of each term. The standard terms for bin delivery and removal charges were altered, with initials placed near the changes. The agreement also had handwritten additions in a “special instructions” section that were not initialled. Although an employee, N, was identified as Cartech’s contact, the agreement was signed by a person identified as Cartech’s owner and a Super Save employee.
11. Although the agreement’s effective date was shown as June 25, 2019, Super Save says this was later changed to June 3, 2020 as Cartech was using another waste disposal company at the time. The later effective date was timed so that the parties’ agreement would start at the end of the other service provider’s contract. I note that

the change in effective date was expressly contemplated and permitted by clause 3 of the agreement.

12. In December of 2019, Super Save sent Cartech a registered letter reminding it of the March 25, 2019 agreement and the fact that it would be taking over service and placing its bins on Cartech's property on June 3, 2020. Super Save stated that it would send the other service provider a letter of termination on Cartech's behalf. Super Save sent this letter by registered mail in January of 2020.
13. Super Save scheduled a bin delivery for June 3, 2020. However, Cartech did not allow Super Save to place the bins on its property. According to a June 4, 2020 email between Super Save employees, a Cartech representative telephoned Super Save to say that they never agreed to the bin delivery. It is not clear what communication happened after that, but Super Save formed the belief that Cartech wished to cancel the agreement.
14. On June 15, 2020, Super Save sent Cartech a letter about its request to cancel the agreement. It calculated its liquidated damages of \$2,696.40 by multiplying the billing rate of \$42.80 by the 60 months remaining in the term. It is not clear whether Cartech responded to this letter, but Super Save subsequently sent Cartech a July 28, 2020 invoice for \$2,696.40.
15. Super Save says that Cartech breached the agreement by deciding to "go ahead with a different provider". Super Save says that its correspondence shows that Cartech was aware of the agreement, the effective date, and the fact that Super Save would be taking over from the other service provider.
16. Cartech says that Super Save's employee tricked it into "filling out paperwork" that was not supposed to be submitted until Cartech confirmed the contract term with its existing service provider and "gave the go ahead". Cartech says there was no contract and Super Save's employee committed fraud to get a commission. According to Cartech, its owner is the only person with signing authority and the owner did not

sign anything. Cartech says it never received services from Super Save and will not pay what is not owed.

17. As noted, Cartech admits that it filled out “paperwork” from Super Save but did not say whether that paperwork was the agreement in evidence. I find that it is more likely than not that it was. This document specifically states that it “shall constitute a legally binding contract”. Nowhere does it state that the agreement would be conditional upon confirming the term of the other service provider’s contract or Cartech giving the “go ahead” to make an enforceable contract. The agreement says that the person signing it “has express authority to do so” and had “read and understood and agreed to” the terms and conditions in the agreement. I find that the agreement was binding once signed.
18. However, this is not the end of the matter given Cartech’s submission that the signature on the agreement was forged. As the party alleging the forgery, Cartech bears the burden of proving this allegation. Cartech said it would be willing to “compare signature and writing” to prove that its owner did not sign the agreement, but did not provide evidence such as a sample of the owner’s signature or handwriting. I draw an adverse inference from Cartech’s failure to provide evidence on this point. Further, I find that the question of whether a signature is a forgery is outside the scope of ordinary knowledge and must be answered with reference to expert evidence (see *Berger v. Guliker*, 2015 BCCA 283). In the absence of an expert opinion about whether the owner’s signature is or is not consistent with the signature on the agreement, I find that Cartech has not proven that the owner’s signature was forged.
19. I find that Super Save and Cartech entered into a binding agreement. The facts that the agreement was not witnessed and that the Super Save employee who signed the agreement is no longer with the company do not alter my conclusion or the agreement’s validity. I also find that, by refusing to allow Super Save to place and service bins on its property, Cartech breached the agreement.

20. Turning to the issue of damages, clause 11 of the agreement allows for liquidated damages of an amount equal to the monthly charges, plus taxes, that would have been paid for the balance of the term. In this case, the balance of the term is 5 years, or 60 months.
21. Paying damages for the entire term of a cancelled agreement is arguably onerous. However, the British Columbia Supreme Court has found that the income stream lost over the term of a contract is a genuine pre-estimate of damages rather than a penalty (see *Tristar Cap & Garment Ltd. v. Super Save Disposal Inc.*, 2014 BCSC 690 at paragraph 46). The court in *Tristar* found that a contract with a similar liquidated damages clause was enforceable, and this decision is binding on me. So, I find that Super Save is entitled to liquidated damages.
22. Super Save calculated its liquidated damages based on a monthly charge of \$42.80 rather than the \$40 shown on the agreement. Super Save did not explain the difference in the monthly charge other than to say that it is its “current” charge. While clause 4 of the agreement permits Super Save to adjust the monthly charges based upon its actual costs without prior notice to the customer, a handwritten term limited the increase to “3% per annum, excluding landfill”. Although Super Save specifically chose to limit its own ability to increase the monthly charge, it has not proven when it would have implemented any fee increase. I find that Super Save is not entitled to calculate its damages based on the \$42.80 monthly rate, but instead at the \$40 monthly rate set out in the agreement.
23. Multiplying \$40 by 60 months equals \$2,400, plus \$120 in taxes. Super Save is entitled to liquidated damages of \$2,520 and I order Cartech to pay Super Save this amount.
24. The *Court Order Interest Act* (COIA) applies to the CRT. However, section 2(b) of the COIA says that pre-judgment COIA interest must not be awarded if the parties have an agreement about interest. As the parties’ agreement provides for annual interest of 24%, I find there is no interest payable under the COIA. As Super Save did not claim contractual interest in this dispute, I do not order interest.

25. Under section 49 of the CRTA and CRT rules, the CRT generally will order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. I find Super Save is entitled to reimbursement of \$125 in CRT fees. It did not make a claim for dispute-related expenses.

ORDERS

26. Within 30 days of the date of this decision, I order Cartech to pay Super Save a total of \$2,645, broken down as follows:

- a. \$2,520 in liquidated damages, and
- b. \$125 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 in effect until 90 days after June 30, 2021, which is the date of the end of the state of emergency declared on March 18, 2020, 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.

Lynn Scrivener, Tribunal Member