



Civil Resolution Tribunal

Date Issued: August 12, 2021

File: SC-2021-001829

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Super-Save Enterprises Ltd. v. JBR Construction Ltd.*, 2021 BCCRT 885

BETWEEN:

SUPER-SAVE ENTERPRISES LTD.

APPLICANT

AND:

JBR CONSTRUCTION LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Roy Ho

INTRODUCTION

1. This dispute is about propane delivery services. The applicant, Super-Save Enterprises Ltd. (Super-Save) provided propane services to the respondent, JBR Construction Ltd. (JBR). Super-Save says JBR failed to make payments under the parties' contract. Super-Save claims \$2,665.18 from JBR for unpaid services.

2. In JBR's Dispute Response, it does not deny any of Super-Save's allegations. Instead, JBR states that it has no opinion about Super-Save's claims.
3. Super-Save is represented by a manager. JBR is represented by an employee.

JURISDICTION AND PROCEDURE

4. 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.
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 JBR owes Super-Save \$2,665.18 in debt for unpaid propane delivery services?

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. JBR did not provide submissions on the merits of the dispute despite CRT staff providing it an opportunity to do so.
10. The parties entered into a written agreement for Super-Save to supply JBR with propane and propane equipment. Super-Save delivered the propane equipment and periodically delivered propane to JBR until its final delivery on August 18, 2020. All this is undisputed.
11. JBR submitted 2 pieces of evidence. The first is a letter JBR received from a third party company, PDC, terminating its contract with JBR. I place no weight on this evidence because it is not relevant to this dispute.
12. The second piece of JBR's evidence is its Super-Save accounts payable record. Included with this record is a "EVIDENCE SUMMARY" box with various explanatory notes, which I infer is the extent of JBR's submissions. Of relevance, the explanatory notes say:
 - a. PDC had not paid JBR since April 25, 2020,
 - b. JBR's billing cycle cut-off is on the 25th of each month,
 - c. JBR received Super-Save's invoices after JBR's billing cycle,
 - d. JBR served PDC with all Super-Save's outstanding invoices, and

- e. JBR does not have “financial means” to compensate its vendors or suppliers because PDC had not paid JBR.
13. I infer from JBR’s explanatory notes that it suggests it is not liable to pay Super-Save because PDC had failed to pay JBR. However, I am not persuaded by this argument because the legal doctrine known as “privity of contract” applies here.
 14. Privity of contract means that a contract cannot give rights or impose obligations on anyone who is not a party to a contract. In other words, a person must first agree to a contract in order to be bound by it.
 15. Here, JBR contracted with Super-Save for propane services. PDC did not, so it is not privy to the parties’ contract. JBR’s contract was with Super-Save, and so JBR is the entity that owes Super-Save for its services. JBR’s contractual obligations to Super-Save are independent of any relationship that JBR may have had with any other third party entity, like PDC. For this reason, I find that JBR must pay Super-Save’s outstanding invoice.
 16. Super-Save says JBR owes \$2,665.18 for unpaid propane services. However, I find this amount is not proven by the evidence before me. Super-Save submitted into evidence JBR’s “Outstanding Transactions” summary, supported by invoices for each transaction. Super-Save’s summary shows it charged JBR varying service charges with each transaction, totalling \$318.86. However, none of Super-Save’s individual invoices included a service charge, and the service charge is not on the face of the parties’ contract. Clause 4 of the parties’ contract says that any “Additional Charges” will appear on the customer’s invoice. As Super-Save’s invoices do not include a service charge, I find that it is not entitled to the additional service charges.
 17. In JBR’s Super-Save accounts payable record, it shows an outstanding balance of \$2,057.03 owed to Super-Save. I find this amount is accurate save for a missing \$289.29 invoice dated April 30, 2020. As JBR’s billing cycle ended on the 25th of each month, I find this means that JBR had not paid the April 30, 2020 invoice. Thus, I find

JBR's total accounts payable to Super-Save equals \$2,346.32. So, I find JBR must pay Super-Save \$2,346.32 for unpaid services.

18. The *Court Order Interest Act* applies to the CRT. Super-Save is entitled to pre-judgment interest on the \$2,346.32 from August 18, 2020, the date of Super-Save's final invoice to JBR, to the date of this decision. This equals \$10.39.
19. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. As Super-Save was partially successful, I find it is entitled to reimbursement of half of its \$125 in CRT fees, which is \$62.50. Neither party claimed dispute-related expenses.

ORDERS

20. Within 30 days of the date of this order, I order JBR to pay Super-Save a total of \$2,419.21, broken down as follows:
 - a. \$2,346.32 in debt for unpaid propane services,
 - b. \$10.39 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$62.50 in CRT fees.
21. Super-Save is entitled to post-judgment interest, as applicable.
22. 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.

23. 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.

Roy Ho, Tribunal Member