



Civil Resolution Tribunal

Date Issued: March 3, 2022

File: SC-2021-006163

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Super Save Disposal Inc. v. J & S Sales BC Inc.*, 2022 BCCRT 234

B E T W E E N :

SUPER SAVE DISPOSAL INC.

APPLICANT

A N D :

J & S SALES BC INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about waste disposal services.
2. The applicant, Super Save Disposal Inc. (Super Save), says the respondent, J & S Sales BC Inc. (J&S), breached the parties' contract by failing to make payment as required. Super Save says J&S owes \$1,969.15 in debt for unpaid services, and

\$3,751.10 in liquidated damages. Super Save expressly abandons the amount of its claim over \$5,000, which is the small claims monetary limit of the Civil Resolution Tribunal (CRT).

3. J&S says that Super Save missed pick-ups, failed to lock their bins, and did not place the bins in their designated spot, causing property damage. J&S says it should not have to pay for services it did not receive. I infer it is J&S's position that it was entitled to cancel the parties' agreement due to deficient service. J&S did not file a counterclaim.
4. The parties are each represented by a respective employee.

JURISDICTION AND PROCEDURE

5. These are the CRT's formal written reasons. 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.
6. 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.
7. 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.

8. 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

9. The issues in this dispute are:
 - a. Did Super Save breach the parties' contract, entitling J&S to terminate it?
 - b. To what extent, if any, does J&S owe Super Save \$1,969.15 in debt for unpaid waste disposal services and \$3,751.10 in liquidated damages?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant Super Save must prove its claims on a balance of probabilities (meaning "more likely than not"). I have reviewed the parties' evidence and submissions but refer only to what I find is necessary to explain my decision.
11. On December 17, 2018, the parties entered into a written service agreement (contract) for Super Save to provide J&S with waste disposal services, effective the following day. The contract had an initial 5-year term. It was subject to automatic renewal for subsequent 5-year terms, unless J&S cancelled the agreement by written notice sent by registered mail not more than 120 days and not less than 90 days before the end of any term (cancellation window).
12. Under the contract's terms, I find its initial term expired on December 17, 2023, and the applicable cancellation window was between August 19 and September 18, 2023.
13. The evidence shows J&S emailed Super Save on February 11, 2021 about cancelling the contract. In the email, J&S alleged that Super Save had not been locking the bins after waste pick-ups, so others in the complex were using the bins without paying. J&S also said the Super Save drivers made a mess "every week" when picking up its

waste, so J&S had to clean up after them. J&S said it wanted the bins picked up and cancellation finalized.

14. J&S sent a February 16, 2021 follow up email to Super Save, and noted that the lid on its recycling bin had broken off. Super Save responded by email on February 17, to advise that it was manufacturing a bin with a locking lid for J&S, and that while the parties' agreement did not include the driver re-locking the bins after they were emptied, Super Save would do so as a courtesy going forward. Super Save also advised that it was unable to accept J&S' cancellation request under the terms of their contract, unless sent by registered mail within the cancellation window.
15. In a March 8, 2021 email, J&S confirmed receipt of bin locks from Super Save and advised its garbage was not picked up the previous week. J&S stated "sometimes our garbage is not picked up and sometimes it's our recycling", so it requested the pick-up schedule. Super Save responded that J&S' account was currently "on hold", and once J&S paid all outstanding invoices, it would remove the hold and provide a schedule.
16. Super Save filed an accounts receivable printout in evidence, which shows J&S' last payment to Super Save was made on November 16, 2020. Super Save's dispatch records show it continued weekly waste pick-ups for J&S until February 18, 2021. I find that Super Save then suspended J&S' account for lack of payment and discontinued service, as permitted under the contract. Super Save says it ultimately removed its bins from J&S' premises on April 27, 2021, after no further payments were made, which J&S does not dispute.
17. I find J&S has not shown that Super Save breached the contract by providing inconsistent service, as alleged. J&S did not provide any specific dates that it failed to receive service, other than while its account was suspended due to non-payment. While J&S mentioned in its March 8, 2021 email that its waste was sometimes not picked up, I find that statement is too vague to conclude that Super Save missed any scheduled pick-ups. Further, J&S' initial emails to Super Save in February 2021 setting out its reasons for wanting to cancel the contract did not mention inconsistent

service, which I would have expected to see had that been the case. On balance, I find J&S received the services it contracted for.

18. Further, I find the parties' contract did not require Super Save to lock the bins after waste pick-ups. Rather, the contract said the customer J&S was responsible for securing the bins after each service. The evidence shows J&S requested new locks several times, and I find the evidence shows Super Save promptly provided new and additional locks upon request. So, I do not accept that Super Save breached the parties' agreement by failing to lock or properly secure the bins. I also note that J&S provided no submissions or evidence about alleged vehicle damage from Super Save failing to place the bins in their designated spot, as mentioned in its Dispute Response, so I find that allegation unproven.
19. While J&S told Super Save in February 2021 that it wanted to cancel the contract, I find that notice was invalid because it was not sent by registered mail within the applicable cancellation window. As noted, I find Super Save was contractually entitled to discontinue waste pick-ups after February 18, 2021 because J&S had not paid anything for over 3 months. The contract also provided for continued monthly billing during the suspension period.
20. I find under the contract, J&S is liable for monthly service charges up until April 27, 2021, the date Super Save terminated the contract due to J&S' breach for non-payment. In these circumstances, clauses 9 and 11 of the contract also entitled Super Save to liquidated damages, calculated by the number of months remaining in the term multiplied by the monthly service charge set out in the invoice that immediately preceded the termination.
21. I turn first to the debt claim. As noted, Super Save claims \$1,969.15 for unpaid services from November 2020 to April 2021. It is not entirely clear on the evidence how Super Save arrived at that claimed amount.
22. I find the invoices for service from December 2020 to April 2021, totaling \$1,560.14, reflect monthly charges and administration fees and fuel surcharges permitted under

the contract. I also accept that Super Save is entitled to 2 bin removal fees of \$135 per bin under the parties' contract, for a total of \$302.08 including tax and applicable administration fees.

23. The evidence shows Super Save issued 2 invoices to credit J&S \$29.21 for the 3 days of April's service after the bins were removed on April 27, so I find that amount must be deducted from the amount owing. I also note that Super Save issued a February 18, 2021 invoice for a "service resumption fee" totaling \$56.54. However, given Super Save never resumed service, I disallow that fee.
24. In total, I allow \$1,833.01 in debt for unpaid services under the parties' contract.
25. I turn to liquidated damages, which Super Save claimed in its May 17, 2021 invoice totaling \$3,751.10. Liquidated damages are a contractual pre-estimate of the damages suffered by a party in the event of a breach of contract. I acknowledge that this 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, and this decision is binding on me.
26. I accept that there were 32 months remaining in the contract's term when Super Save terminated the agreement in April 2021. I also accept Super Save's evidence that J&S' monthly service charge was \$111.64 immediately before the termination. So, I find Super Save is entitled to the claimed \$3,751.10 in liquidated damages.
27. The combined total of the debt and liquidated damages owing is \$5,584.11. However, as noted above, Super Save has reduced its total claim to \$5,000 to fit within the CRT's small claims monetary limit. So, I find J&S must pay \$1,833.01 in debt and \$3,166.99 in liquidated damages, for a total award of \$5,000.
28. I note the CRT's monetary limit is exclusive of CRT fees and interest under the *Court Order Interest Act* (COIA), discussed below.

Interest, CRT fees, and dispute-related expenses

29. Although the parties' contract allowed for contractual interest, Super Save did not claim contractual interest. While the COIA applies to the CRT, section 2 says it does not apply where there is an agreement about interest. Therefore, I make no order for pre-judgment interest under the COIA on the \$1,833.01 award for the debt claim.
30. However, I find the parties' agreement about interest only applied to monthly charges, and not liquidated damages. So, I find Super Save is entitled to pre-judgment interest under the COIA on the \$3,166.99 liquidated damages award, from June 16, 2021 to the date of this decision. This equals \$10.16.
31. 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 successful, I find it is entitled to reimbursement of \$175 in CRT fees. It did not claim any dispute-related expenses.

ORDERS

32. Within 30 days of the date of this decision, I order J&S to pay Super Save a total of \$5,185.16, broken down as follows:
 - a. \$1,833.01 in debt,
 - b. \$3,166.99 in liquidated damages,
 - c. \$10.16 in pre-judgment interest under the *Court Order Interest Act*, and
 - d. \$175 in CRT fees.
33. Super Save is entitled to post-judgment interest, as applicable.
34. 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.

35. 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.

Kristin Gardner, Tribunal Member