



# Civil Resolution Tribunal

Date Issued: June 23, 2022

File: SC-2021-008447

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Super Save Disposal Inc. v. Litecraft Lighting (2008) Corp*, 2022 BCCRT  
732

B E T W E E N :

SUPER SAVE DISPOSAL INC.

**APPLICANT**

A N D :

LITECRAFT LIGHTING (2008) CORP.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Micah Carmody

## INTRODUCTION

1. The applicant, Super Save Disposal Inc. (Super), provided waste disposal services to the respondent, Litecraft Lighting (2008) Corp. (Litecraft).

2. Super says Litecraft repudiated the parties' contract by attempting to terminate it before the end of its term. Super claims \$4,368.55 as liquidated damages under the contract. Super is represented by an employee.
3. Litecraft denies that it owes Super anything for various reasons. Primarily, Litecraft says the economic consequences of the COVID-19 pandemic were circumstances beyond Litecraft's control that relieved it of its obligations under the contract. Litecraft also says it did not repudiate the contract. Litecraft is represented by a lawyer, Aidan Butterfield.
4. For the reasons set out below, I dismiss Super's claim.

## **JURISDICTION AND PROCEDURE**

5. 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.
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.

### ***Late evidence***

9. During submissions, the CRT notified Super about 3 late evidence items from Litecraft, 1 item the CRT re-uploaded to correct an error, and Litecraft's evidence about dispute-related expenses. Super did not object and had the chance to respond to the late evidence with its final reply arguments, so I find there is little or no prejudice to Super in admitting it. I allow the late evidence and I discuss it where relevant below.

### **ISSUES**

10. The issues in this dispute are:
  - a. Did Litecraft repudiate the contract by trying to end it outside the cancellation window?
  - b. Was Litecraft's failure to perform excused by the contract's force majeure clause?
  - c. What amount, if any, does Litecraft owe in liquidated damages?

### **EVIDENCE AND ANALYSIS**

11. As the applicant in this civil proceeding, Super must prove its claims on a balance of probabilities, meaning more likely than not. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision.
12. One of Litecraft's principals, JP, signed the first agreement with Super on Litecraft's behalf on January 21, 2010. This first agreement had an effective date of January 25 and an automatically-renewing 3-year term.

13. It is not clear why Super presented Litecraft with a second agreement in May 2014, but I find nothing turns on this. JP signed the second agreement on May 12, 2014, indicating that they had read, understood, and agreed to the terms and conditions. I find the 2014 agreement was binding on both parties.
14. The 2014 agreement said it commenced on the “effective date” and continued for 3 years. The parties disagree about the effective date, which I return to below. The 2014 agreement said it would be renewed for successive 3-year terms without further action by the parties.
15. The monthly charge for biweekly waste removal was \$86.67 plus a fuel surcharge of 11%. The rate was subject to adjustments, which Super made periodically and which Litecraft does not challenge. It is undisputed that Litecraft generally paid Super’s monthly invoices by credit card direct payment authorization when Super issued the invoices.
16. On August 17, 2020, JP emailed Super requesting to “please cancel our service... as of September 1.”
17. Super did not respond to Litecraft’s August 17 email, so JP wrote a follow-up email on September 14, 2020. When there was no response by September 15, JP says they cancelled the credit card payment authorization.
18. Super responded by registered letter dated September 15, 2020. Super notified Litecraft of its intention to treat the contract as repudiated and to terminate it and claim liquidated damages, unless Litecraft chose to continue the contract
19. On September 24, 2020, Litecraft’s lawyer wrote to Super advising of Litecraft’s position that the pandemic was a contingency beyond Litecraft’s control and resulted in its inability to perform the contract as contemplated by paragraph 12 of the 2014 agreement (the “force majeure” clause). Super disagreed and terminated the contract, claiming 36 months of liquidated damages.

20. Super's invoices indicated that Litecraft did not pay the August 31, 2020 invoice for September's services, or the September 28 invoice for bin removal. However, as Super only claims liquidated damages in this dispute, I have not addressed any other possible amounts owing.

***Did Litecraft repudiate the agreement when it cancelled the service?***

21. Litecraft says it did not breach the parties' agreement when it requested to cancel the service. As I explain below, I agree.

22. Paragraph 11 of the 2014 agreement, titled "Failure to perform", says if Litecraft "unlawfully terminates" the agreement before the expiration of its term or any renewal term, Super may accept the repudiation and terminate the agreement. In such circumstances, Litecraft agrees to immediately pay Super the monthly charges plus taxes that would ordinarily become due for the balance of the term as liquidated damages.

23. The question, then, is whether Litecraft's request to cancel the service was an "unlawful termination" that entitled Super to liquidated damages. Paragraph 14, titled "Termination", says that while Super may terminate the agreement at any time, Litecraft may only terminate the agreement as provided for in paragraph 2. So, termination other than as provided in paragraph 2 is unlawful termination.

24. Paragraph 2, titled "Term and renewals", says the agreement commences on the "Effective Date hereof" and continues for 3 years, automatically renewing for further 3-year terms. Importantly, paragraph 2 says Litecraft may terminate the agreement by providing written notice not more than 120 days and not less than 90 days before any term expires. This is commonly known as the cancellation window. Outside of this window, Litecraft could not terminate the agreement without triggering paragraph 11, the liquidated damages clause. Thus, the effective date is an important term because it impacts Litecraft's cancellation rights.

25. The 2014 agreement includes a space to provide the effective date, but it was left blank. The parties do not agree on the effective date.

26. Super says the effective date was October 1, 2014. However, there is no reference to that date anywhere in the 2014 agreement. Super does not explain why October 1, 2014 was the effective date, except to point to a schedule attached to the parties' April 4, 2020 service change agreement. That schedule said the "contract start date" was "14/10/01". Without more, I find this ambiguous reference in a document Super prepared 6 years after the 2014 contract is insufficient to establish that the parties agreed on an October 1, 2014 effective date. There is no evidence a new bin was provided on that date, and there is no sensible connection between that date and the contract.
27. Litecraft says there was no effective date and therefore the 2014 agreement never came into effect and is a nullity. As I explain below, I do not agree, but I find the effective date was ambiguous and therefore the liquidated damages clause is unenforceable.
28. In addition to the blank space for the effective date, paragraph 3 of the 2014 agreement defines 2 possible effective dates. One of those applies only where there is a pre-existing service contract with a third party, which was not the case here. The other effective date is the first day that the bin is delivered to Litecraft's location "under this Agreement."
29. It is undisputed that the bin was already at Litecraft's location when the agreement was signed in 2014. Litecraft argues that this means it was not "delivered" under the 2014 agreement. It relies on paragraph 3's statement that the 2014 agreement supersedes all previous agreements between the parties. The implication, Litecraft argues, is that there was no carry-over of any previous effective date.
30. An alternative interpretation of paragraph 3 is that given the bin was already at Litecraft's location, the bin was deemed "delivered" on the date the contract was signed. Neither party argues for that interpretation.
31. Based on the above, I find the effective date was ambiguous in the 2014 agreement. I find that Litecraft had no way of knowing the effective date, and therefore no way of

determining its cancellation window. It was therefore impossible for Litecraft to ensure its request to cancel the service fell within the permitted cancellation window, and to ensure it terminated the agreement in compliance with paragraph 2. I therefore find paragraph 11 is unenforceable to the extent that it attempts to make Litecraft liable for failing to comply with a contractual term it could not possibly comply with. I find Super is not entitled to liquidated damages under paragraph 11, and I dismiss Super's claim.

32. Given my conclusion, it is unnecessary to consider Litecraft's force majeure arguments. It is also unnecessary to consider Super's calculation of liquidated damages. However, I note that is not clear on what basis Super claimed 36 months of service fees. Accepting Super's October 1, 2014 effective date would mean the parties' agreement renewed on October 1, 2017 and would next be renewed on October 1, 2020. Paragraph 11 says if Litecraft repudiates the agreement Super will terminate the agreement "forthwith", meaning without delay. Given that Litecraft requested cancellation for September 1, 2020, and Super collected its bin by September 28, the agreement was terminated by September 28, 2020 and could not have renewed on October 1, 2020. Under paragraph 11, Super's liquidated damages were the charges that would ordinarily become due for the balance of the term. This means Super's damages appear to be limited to 1 month of service fees for September 2020, assuming Litecraft did not pay September's fees, which is not clear on the evidence. It was not open to Super to delay cancelling the agreement until after October 1, 2020 to maximize its liquidated damages.
33. 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. I see no reason in this case not to follow that general rule. Litecraft was successful but did not pay any CRT fees. I allow Litecraft's claimed \$63.53 for mailing costs, document scanning costs and a corporate search, all of which I find reasonable and supported by receipts. I dismiss Super's claim for reimbursement of CRT fees.

## **ORDERS**

34. Within 14 days of the date of this order, I order Super to pay Litecraft \$63.53 for dispute-related expenses.
35. Litecraft is entitled to post-judgment interest, as applicable.
36. I dismiss Super's claims.
37. 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.
38. 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.

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Micah Carmody, Tribunal Member