



Civil Resolution Tribunal

Date Issued: October 4, 2022

File: SC-2021-009475

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Waste Connections of Canada Inc. v. Sunny Trails Club, Inc. No. S0005804, 2022 BCCRT 1086*

BETWEEN:

WASTE CONNECTIONS OF CANADA INC.

APPLICANT

AND:

SUNNY TRAILS CLUB, INC. NO. S0005804

RESPONDENT

AND:

WASTE CONNECTIONS OF CANADA INC.

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about waste disposal services. The applicant and respondent by counterclaim is Waste Connections of Canada Inc. (Waste Connections). The respondent and applicant by counterclaim is Sunny Trails Club, Inc. No. S0005804 (Sunny Trails). Waste Connections says Sunny Trails owes it for unpaid waste disposal services (\$1,155.90), liquidated damages for failing to properly cancel the parties' contract (\$3,972.32), and a bin removal fee (\$157.50). Waste Connections abandons its claim over \$5,000 to fit within the Civil Resolution Tribunal's small claims monetary limit.
2. Sunny Trails says Waste Connections overcharged for its services and failed to provide services on several occasions. Sunny Trails denies owing Waste Connections any money. In its counterclaim, Sunny Trails claims for unpaid pickups (\$1,155.90) and overcharges (\$697.88). Waste Connections denies any service issues.
3. Waste Connections is represented by an employee. Sunny Trails is represented by Dale Sands, a lawyer.

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 parties to a dispute that will likely continue after the dispute resolution process has ended.
5. Section 39 of the CRTA says that the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Some of the evidence in this dispute amounts to a "he said, she said"

scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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.

6. Section 42 of the CRTA says that 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.

ISSUES

8. The issues in this dispute are:
 - a. Is Waste Connections entitled to \$5,000 for unpaid waste disposal services, liquidated damages, and a bin removal fee?
 - b. Is Sunny Trails entitled to \$1,853.78 for billing overcharges and failure to provide waste pickup services?

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant Waste Connections must prove its claims on a balance of probabilities (meaning "more likely than not"). Sunny Trails bears this same burden in its counterclaim. While I have read all of the parties' submitted

evidence and arguments, I have only addressed those necessary to explain my decision.

10. The parties disagree on what Customer Service Agreement (CSA) governs the parties' relationship. Waste Connections says the parties initially signed a CSA on March 5, 2020, for service starting March 1, 2020 (the March CSA). Waste Connections says that, due to COVID-19 restrictions, its staff was working from home and never entered the contract into Waste Connections' system. It says that, as a result, the parties signed a second CSA, which is also dated March 5, 2020, but with a service start date of July 1, 2020 (the July CSA). Waste Connections' employee, LH, says to her "best recollection", she sent the July CSA to Helen Gordon at Sunny Trails, who returned the July CSA signed. Helen Gordon is Sunny Trails' treasurer and now president. Waste Connections says the July CSA is the applicable contract.
11. In contrast, Sunny Trails says the March CSA is the only agreement between the parties. It says it was unaware of the July CSA until May 2022. The signatory in the "Customer" line on both contracts is Helen Gordon. Helen Gordon provided a statement in evidence and explicitly denies receiving or executing the July CSA.
12. I prefer Helen Gordon's evidence over LH's. I say this first because LH says the July CSA communication was done by regular mail. However, Waste Connections provided no evidence in support of this, such as a cover letter or any return mail that attached the signed July CSA. Second, Sunny Trails points out that the signature for Helen Gordon is different between the March CSA and the July CSA, and Helen Gordon specifically denies signing the July CSA. On balance, I find Sunny Trails did not execute the July CSA. So, I find the March CSA is the applicable contract setting out the parties' rights and responsibilities. However, I note the contracts are not significantly different.
13. The March CSA sets out the following terms:
 - a. The monthly service charge was \$366.95. Additional standard charges included \$150 each for bin delivery, removal, or relocation.

- b. The “additional comments” stated that no surcharges would apply, and Waste Connections was to credit Sunny Trails’ for one missed pickup that pre-dated the March CSA’s execution.
 - c. The contract was for a 2-year term effective March 1, 2020 and would automatically renew for consecutive 2-year terms.
 - d. Sunny Trails could terminate the contract at the end of the 2-year term by providing written notice by registered mail not less than 90 days or more than 180 days before the end of the then current term (cancellation window). So, the March CSA’s cancellation window was between September 1 and November 30, 2021.
 - e. In the event Sunny Trails terminates the contract, other than as provided by the contract, it must pay Waste Connections any outstanding invoices, plus liquidated damages in an amount equal to the sum of the monthly billings for the most recent 9 months.
 - f. Waste Connections may impose a late fee for all “past due” payments that does not exceed the maximum allowed by law. Payments are due within 30 days of the date of invoice.
14. Waste Connections says Sunny Trails failed to pay several of its 2021 invoices leaving an outstanding balance of \$1,155.90. I cannot reconcile this figure with the invoices and payments shown in the evidence. I note both parties appear to have insufficient record keeping. More on the \$1,155.90 claim below.
15. Sunny Trails counterclaims that Waste Connections missed 5 pickups (one in July 2021, two in August 2021, and two in September 2021). Sunny Trails also says Waste Connections never provided the credit for the previously missed pickup as required by the March CSA.
16. As each pickup was valued at \$192.65 (which is \$366.95 per month plus \$18.35 GST divided by 2 pickups per month), Sunny Trails says Waste Connections owes it

\$1,155.90, the exact same amount Waste Connections claims remains outstanding for its services.

17. Waste Connections did not address Sunny Trails' allegation that it missed several pickups, other than to vaguely state that it "denies any service issues". I accept that Waste Connections missed the pickups because Waste Connections does not specifically deny it, nor did it provide any evidence the pickups were completed, such as records or a statement from its driver. Also, I do not see in the invoices before me that Sunny Trails was ever credited the previously missed pickup. So, I find Sunny Trails is entitled to a \$1,155.90 set off against Waste Connections' claim.
18. Sunny Trails' undisputedly used Waste Connections' services from March 1, 2020 to September 30, 2021, a total of 19 months. Using the contract's monthly service rate plus GST with no surcharges or other charges, this totals \$7,320.70.
19. The records in evidence show that from March 1, 2020 to September 30, 2021, Waste Connections billed Sunny Trails a total of \$7,697.54, including \$249.97 in late fees and some miscellaneous charges. As noted, according to the contract, Waste Connections was entitled to bill \$7,320.70, based on completed service. Sunny Trails says Waste Connections overcharged it for late fees, often double charging it on the same invoice, which I find is shown in several invoices. Waste Connections did not explain its late fees or miscellaneous charges, or provide any breakdown about what late fees were for what months. So, on balance I find Waste Connections has not proven it is entitled to any late fees or any of the miscellaneous charges. I find Waste Connections was only entitled to bill the \$7,320.70, minus the \$1,155.90 for missed pickups, which totals \$6,164.80.
20. I find the records in evidence show that between March 1, 2020 and September 30, 2021 Sunny Trails paid Waste Connections a total of \$6,497.27. This means Sunny Trails overpaid Waste Connections by \$332.47. I find Waste Connections must reimburse Sunny Trails this amount.

21. Waste Connections also claims for liquidated damages. It says because Sunny Trails' account was in arrears, Sunny Trails was in breach of the parties' agreement and so Waste Connections removed its bins from Sunny Trails' property. As a result, Waste Connections says it is entitled to liquidated damages. I disagree. The March CSA says that a customer will be considered in breach of the agreement if it either fails to pay service fees, attempts to terminate the agreement outside the cancellation window, or otherwise fails to comply with any obligations in the contract.
22. As noted, I have found Sunny Trails overpaid Waste Connections. So, I find it did not fail to pay service fees. There is also no evidence Sunny Trails attempted to terminate the agreement outside the cancellation window, or at all. I find there is also no evidence of Sunny Trails breaching any other aspect of the contract. So, I find Waste Connections is not entitled to any liquidated damages.
23. I say the same about Waste Connections' claim for payment of its bin removal invoice. I find Waste Connections unilaterally terminated the March CSA and removed its bin. By doing so, Waste Connections is the party who breached the contract, and therefore I find Sunny Trails is not obligated to pay the bin removal invoice.
24. In summary, I dismiss Waste Connections' claims for unpaid invoices and for liquidated damages. I find Waste Connections must pay Sunny Trails \$332.47 for overcharges.
25. The *Court Order Interest Act* applies to the CRT. Sunny Trails is entitled to pre-judgment interest on the \$332.47. Calculated from September 1, 2021, the date of Sunny Trails' last payment to Waste Connections and a date I find reasonable in the circumstances, this amounts to \$2.71.
26. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. As Waste Connections was unsuccessful, I dismiss its claim for reimbursement of tribunal fees. As Sunny Trails was partially successful, I find it is entitled to reimbursement of half

the \$125 it paid for CRT fees, which is \$62.50. Neither party claimed dispute-related expenses.

ORDERS

27. Within 30 days of the date of this decision, I order Waste Connections to pay Sunny Trails a total of \$397.68, broken down as follows:

- a. \$332.47 in debt,
- b. \$2.71 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$62.50 in tribunal fees.

28. Sunny Trails is also entitled to post-judgment interest, as applicable.

29. I dismiss Waste Connections' claims.

30. 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. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Andrea Ritchie, Vice Chair