



Civil Resolution Tribunal

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File: SC-2022-002109

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Super Save Disposal Inc. v. SKR Ventures Ltd.*, 2022 BCCRT 1242

B E T W E E N :

SUPER SAVE DISPOSAL INC.

APPLICANT

A N D :

SKR VENTURES LTD.

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, SKR Ventures Ltd. (SKR), breached the parties' contracts by failing to pay on time. Super

Save says SKR owes \$1,706.76 in debt for unpaid services and \$875.49 in liquidated damages.

3. SKR says that Super Save did not provide waste disposal or recycling services as agreed, and so SKR says it terminated the contracts. SKR says it does not owe Super Save for services that were not performed.
4. The parties are each represented by an officer or employee.

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.

9. On the evidence initially before me, it was clear the parties entered into 2 contracts: one for waste disposal service and one for cardboard recycling service. However, only the waste disposal contract was in evidence, even though Super Save's claim in this dispute is for debt and liquidated damages relating to both services and SKR's allegations about Super Save's breach of contract relate to both the waste disposal and the cardboard recycling services. So, I asked the parties to provide a copy of their cardboard recycling contract and their submissions on its relevance.
10. Super Save provided the parties' cardboard recycling contract with supporting submissions, as well as 3 other new documents, including a November 16, 2021 invoice, an October 2, 2021 bin removal receipt, and a September 13, 2017 service change schedule. SKR chose not to provide any submissions or further evidence in response. I find Super Save's late documents are relevant to this dispute, and since SKR had the opportunity to review and respond to them, I find there is no prejudice to SKR in admitting them into evidence. So, bearing in mind the CRT's flexible mandate, I admit the late evidence and have considered it in my decision below.

ISSUES

11. The issues in this dispute are:
 - a. Did Super Save breach the parties' contracts such that SKR was entitled to terminate them?
 - b. To what extent, if any, does SKR owe Super Save \$1,706.76 in debt for unpaid services and \$875.49 in liquidated damages?

EVIDENCE AND ANALYSIS

12. 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 read all of the parties' evidence and submissions, but I refer only to what I find is necessary to explain my decision.

13. On February 1, 2016, the parties entered into a written service agreement for Super Save to provide SKR with waste disposal services, effective the same day (waste contract). The waste contract had an initial 1-year term. It was subject to automatic renewal for subsequent 1-year terms, unless SKR 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).
14. Super Save says the parties' waste contract automatically renewed each year, including in 2021, and so the term in force at the relevant time ended on February 1, 2022. I accept this is true, as SKR does not dispute it, and there is no evidence before me that either party terminated the contract before February 2021. Under the waste contract's terms, I find the applicable cancellation window was between October 4 and November 3, 2021.
15. On March 18, 2016, the parties entered into a written service agreement for Super Save to provide SKR with cardboard recycling services, effective the same day (cardboard contract). The cardboard contract had an initial 3-year term. It was also subject to automatic renewal for subsequent 3-year terms, unless SKR cancelled the agreement on the same conditions as the waste contract.
16. I find the parties' cardboard contract automatically renewed in 2019, and so the term in force at the relevant time ended on March 18, 2022. Under the cardboard contract's terms, I find the applicable cancellation window was between November 18 and December 18, 2021.
17. The service change schedule referenced above shows the parties agreed to change from monthly pickups to bi-weekly pickups of both waste and cardboard recycling. I find this pickup frequency remained in place at the time relevant to this dispute.

Did Super Save breach the parties' contracts?

18. I find the parties' contracts did not expressly permit SKR to cancel the contracts if Super Save provided substandard service. However, I find SKR is essentially alleging

that Super Save fundamentally breached the parties' contracts. As the party alleging a fundamental breach, I find SKR bears the burden of proving it.

19. A fundamental breach is where a party fails to fulfill a primary obligation in a contract in a way that deprives the other party of substantially the whole benefit of the contract: see *Hunter Engineering Co. v. Syncrude Canada Ltd.*, 1989 CanLII 129 (SCC) and *Bhullar v. Dhanani*, 2008 BCSC 1202. If there is a fundamental breach, the wronged party may terminate the contract immediately, and does not have to perform the contract further: see *Poole v. Tomenson Saunders Whitehead Ltd.*, 1987 CanLII 2647 (BCCA) at paragraph 23.
20. So, I find whether SKR was entitled to terminate the parties' contracts turns on whether Super Save's service was so poor that it destroyed the contracts' commercial purpose, causing a fundamental breach. The test for whether a breach is a fundamental breach is an objective test. That means that I must assess the nature of the alleged breaches from the perspective of a reasonable person in SKR's position.
21. The parties' email evidence shows that SKR emailed Super Save on May 13, 2021 to advise it intended to cancel the parties' contracts during the applicable cancellation windows due to increased costs. The parties' emails show that Super Save then offered SKR a new contract with lower pricing to keep SKR's business. SKR agreed to consider Super Save's proposal, but advised it had significant concerns about Super Save's service, including repeated double billing, failure to apply promised credits to SKR's account, and billing for services that were not provided.
22. On June 1, 2021, SKR emailed Super Save about a May 24 invoice that appeared to be a duplicate, which Super Save admitted and confirmed SKR would receive a credit. Super Save apologized that SKR "keep[s] getting billed incorrectly". From that statement, I find that SKR likely received several incorrect invoices.
23. On June 7, 2021, SKR emailed Super Save about a letter that stated Super Save was suspending SKR's service due to late payments. SKR advised it was withholding payment until 3 promised credits were applied to its account. Super Save responded

that credits can take several weeks to process, but it confirmed the promised credits would eventually be applied to SKR's account. It is undisputed that SKR then paid the outstanding March and April 2021 invoices.

24. On July 1, 2021, SKR emailed Super Save that it was charged in full for cardboard recycling in June, despite failing to receive full service. It is undisputed that Super Save missed a scheduled pickup on June 14. SKR stated it had called Super Save and was advised it would receive the next pickup free of charge. Super Save's tipping history report shows Super Save also missed a June 22 pickup, so SKR's first cardboard recycling pickup in June was on June 23, which Super Save does not dispute. SKR says this was the only cardboard pickup it received in June. The tipping history report suggests that Super Save picked up SKR's cardboard recycling again on June 28, but SKR denies this. The parties' email evidence shows that SKR also complained that the only cardboard pickup it received in July was on July 5.
25. I find Super Save's tipping history reports are generally unreliable. I say this because they are inconsistent with the parties' email evidence, which I accept, as they are contemporaneous documentation of SKR reporting Super Save's missed pickups. Also, as Super Save's invoicing was admittedly inaccurate, it calls into question the accuracy of its record keeping generally, including the tipping history records. This is particularly so given an October 26, 2021 credit memo, which stated that Super Save serviced a neighbouring business to SKR and that Super Save's drivers were likely tipping the incorrect bins sometimes and billing SKR in error. For these reasons, I accept SKR's evidence that Super Save picked up SKR's cardboard recycling only once in June and once in July.
26. Finally, the parties' emails show Super Save agreed to provide SKR with a credit for a May 11 overloaded bin invoice. However, Super Save emailed SKR on July 8 that the credit request was rejected because Super Save had already given SKR a "one-time credit" for an overloaded bin charge in February 2021. Super Save then offered to credit the May 11 invoice as a "good will gesture" if SKR signed a new contract.

27. The evidence shows that SKR emailed Super Save on August 4, 2021 to cancel the parties' contracts, effective immediately. SKR noted that Super Save had not responded to its emailed concerns or picked up recycling for the last month. I note there is no evidence that Super Save responded to SKR's emails sent on July 22, 28, and 30, 2022.
28. In *0955824 BC Ltd. dba Van Pro Disposal v. Walltek Storage Ltd.*, 2020 BCCRT 433, a CRT Vice Chair found that a failure to pick up garbage 50% of the time over a 3-month period was a fundamental breach because the heart of the contract is regular garbage pickup. Other CRT decisions have found that waste disposal companies have breached similar waste collection contracts by repeatedly missing pickups or collecting garbage irregularly and late.
29. Overall, I find the cumulative impact of Super Save's duplicate billing, failure to apply a promised credit, lack of response to SKR's inquiries, and irregular and missed pickups over several months amounted to a fundamental breach of the parties' contracts. While SKR's complaints about irregular service appear to relate only to the cardboard recycling service, I find the incorrect invoices, duplicate billing, and promised credits related to both the waste disposal and cardboard recycling service. Further, I find the parties essentially treated the 2 contracts together, and SKR reasonably lost all confidence in Super Save. So, I find SKR was entitled to terminate both the waste disposal contract and the cardboard recycling contract for Super Save's fundamental breach, which SKR did on August 4, 2021.
30. This means that I find SKR was not bound by the contractual terms that required cancellation by registered mail during the cancellation windows. Further, I find SKR is not responsible for performing the contracts after August 4, 2021, and SKR does not owe any damages to Super Save for claims arising after August 4, 2021, including its claims for liquidated damages. I dismiss those aspects of Super Save's claims.
31. Below, I address whether SKR owes Super Save for any unpaid services rendered before August 4, 2021.

Does SKR owe Super Save for unpaid service?

32. It is undisputed that SKR did not pay Super Save's invoices for the May 11, 2021 overloaded bin charge or for any services Super Save provided after May 2021.
33. As noted above, Super Save initially agreed to credit SKR for the May 11 overloaded bin invoice. Super Save essentially argues this agreement was unenforceable because it had previously advised SKR that it would not receive any further credits for overloaded bins. I do not agree. I find Super Save could have honoured its agreement to credit the invoice and reasonably should have done so, particularly given Super Save's inconsistent and inaccurate invoicing issues at the relevant time. So, I decline to order SKR to pay the May 11, 2021 invoice.
34. It is undisputed that Super Save's May 31, 2021 invoice for \$314.35 related to service it provided in June. As I have found Super Save picked up SKR's cardboard recycling only once in June, I find it appropriate to reduce the amount owing on that invoice by one-half of the cardboard recycling charge, which is \$62.14. I also find Super Save has not explained the \$13.70 "overcapacity charge" on the waste bin, and I find it unproven. So, I find SKR must pay Super Save \$238.51 for its May 31, 2021 invoice.
35. Super Save did not provide a copy of its June 30, 2021 invoice related to service it provided in July. However, Super Save provided a March 23, 2022 outstanding transactions statement, which indicates the June 30, 2021 invoice was for \$300.65. I find this is essentially identical to the May 31, 2021 invoice, less the \$13.70 overcapacity charge. Again, as I have found Super Save picked up SKR's cardboard recycling only once in July, I find it appropriate to reduce the invoice by \$62.14. Therefore, I find SKR owes Super Save \$238.51 for its June 30, 2021 invoice.
36. Super Save also did not provide its July 31, 2021 invoice, but the outstanding transactions statement shows the same total for that invoice as for the June 30 invoice. Super Save's tipping history report states it collected SKR's waste on August 3, 2021. While I have found the tipping history report is unreliable as it relates to Super Save's cardboard recycling pickups, I find the evidence generally shows Super

Save completed its waste disposal pickups regularly every 2 weeks. On balance, I find Super Save likely completed the August 3, 2021 waste disposal pickup, and so it is entitled to payment for one-half of its waste disposal charge, which is \$77.77. I find the evidence shows Super Save did not complete any cardboard recycling pickups before August 4, 2021, so SKR is not obligated to pay for any cardboard recycling service in August.

37. In summary, I find that SKR owes Super Save \$238.51 for each of its May 31 and June 30, 2021 invoices, and \$77.77 for its July 31, 2021 invoice, for a total of \$554.79.
38. Super Save claims contractual interest on its unpaid services. Under the parties' contracts, Super Save's invoices are due 30 days from the invoice date, and Super Save is entitled to 24% annual interest on overdue accounts. So, I find contractual interest is payable on the amount awarded for each invoice from 30 days after the respective invoice date, to the date of this decision. This equals \$176.39.
39. 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 find Super Save was partly successful, and so is entitled to reimbursement of \$87.50 for half of its paid CRT fees. SKR did not pay any fees and neither party claims dispute-related expenses.

ORDERS

40. Within 30 days of the date of this order, I order SKR to pay Super Save a total of \$818.68, broken down as follows:
 - a. \$554.79 in debt,
 - b. \$176.39 in contractual interest, and
 - c. \$87.50 in CRT fees.
41. Super Save is entitled to post-judgment interest, as applicable.
42. I dismiss the remainder of Super Save's claims.

43. 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.

Kristin Gardner, Tribunal Member