



Civil Resolution Tribunal

Date Issued: December 19, 2022

File: SC-2022-003351

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Super Save Disposal Inc. v. CNC Channel Sign Ltd.*, 2022 BCCRT 1349

B E T W E E N :

SUPER SAVE DISPOSAL INC.

APPLICANT

A N D :

CNC CHANNEL SIGN LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Nav Shukla

INTRODUCTION

1. The applicant, Super Save Disposal Inc. (Super Save), says the respondent, CNC Channel Sign Ltd. (CNC), breached the parties' agreement by failing to pay for waste disposal services. Super Save says CNC owes \$965.42 in debt for unpaid services and \$5,679.07 in liquidated damages. Super Save expressly limits its claim to \$5,000, the Civil Resolution Tribunal's (CRT) small claims jurisdiction's monetary limit.

2. CNC says its employee, TL, signed the agreement with Super Save but did not have the authority to do so. CNC further says Super Save did not provide the waste disposal services it claims payment for. So, CNC says it does not owe Super Save anything.
3. Super Save is represented by an authorized employee. CNC is represented by its owner, Hoon Seob Han.

JURISDICTION AND PROCEDURE

4. 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.
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.

Preliminary Issues

8. CNC provided further submissions after the deadline for doing so had passed. In these further submissions, CNC alleges Super Save made false statements in its final reply. Super Save was given an opportunity to respond to CNC's further submissions and did so, but after the deadline provided. CRT staff provided Super Save's responding submissions to CNC and no further submissions were sought from the parties. Since both parties have now had an opportunity to provide further submissions, I find neither party has been prejudiced. Given the CRT's flexible mandate, I allow the parties' further submissions and have considered them in deciding this dispute.
9. Further, in its reply submissions, Super Save argues that CNC breached the parties' agreement on June 1, 2019 when CNC renewed its waste disposal contract with Revolution Resource Recovery Inc. (RRR). In support of this allegation, Super Save relies on a term in the parties' agreement that restricts CNC from renewing any third party waste disposal service contracts.
10. In the Dispute Notice, Super Save's breach of contract claim is based on CNC's alleged failure to pay for waste disposal services. The Dispute Notice does not allege a breach due to CNC renewing the RRR contract. The purpose of the Dispute Notice is to define the issues and provide notice to the respondent of the claims against them. So, I find Super Save's allegation that CNC breached the parties' agreement by renewing the RRR contract is not properly before me, and I make no findings about it. Even if this issue was properly before me, the evidence, discussed in more detail below, shows that Super Save did not elect to treat this alleged breach as a repudiation and instead considered the parties' agreement to be in force.

ISSUES

11. The issues in this dispute are:

- a. Did TL have actual or apparent authority to enter into the agreement with Super Save on CNC's behalf?
- b. Did Super Save fail to provide the waste disposal services?
- c. If not, what amount does CNC owe Super Save for the unpaid waste disposal services and liquidated damages, if any?

EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, as the applicant, Super Save must prove its claims on a balance of probabilities (meaning "more likely than not"). I have reviewed all the parties' submitted evidence and argument but refer only to what I find relevant to provide context for my decision.

Background

13. The evidence shows as follows. On April 10, 2019, CNC's employee, TL, signed a written service agreement for Super Save to provide CNC with waste disposal services effective July 1, 2019. The agreement had a 5 year term and said it would be automatically renewed unless terminated in writing within the applicable cancellation window.
14. Despite the July 1, 2019 effective date in the agreement, the agreement said that if CNC was obligated under a pre-existing waste disposal contract with a third party, the agreement's effective date would be the first date after that third party contract expired or was terminated.
15. At the time TL signed the agreement with Super Save, CNC already had a waste disposal contract with RRR that was effective until August 29, 2021. Super Save attempted to cancel the RRR contract on CNC's behalf by sending RRR a notice of cancellation on April 16, 2019.
16. CNC says this notice of cancellation was sent outside of the RRR contract's applicable cancellation window and so did not terminate the RRR contract. It further

says that RRR then convinced CNC to renew its waste disposal contract with RRR, which the evidence shows CNC did on June 1, 2019. The renewed contract had a 60 month term expiring on June 1, 2024.

17. On the same day, CNC sent Super Save a letter saying it was going to continue using RRR for its waste disposal needs and it did not require Super Save's services at this time. CNC said that it would contact Super Save in the future if it decided not to continue with the RRR contract.
18. On July 2, 2019, Super Save delivered a waste disposal bin to CNC's address. On July 19, 2019, FL from Super Save emailed CNC that Super Save would remove its bin and place it on August 29, 2021 once the RRR contract was over. FL further said that Super Save would send a termination letter on CNC's behalf to RRR in the appropriate time frame to terminate the RRR contract. Super Save undisputedly removed its bin from CNC's premises on July 22, 2019.
19. On January 27, 2021, Super Save sent a letter by registered mail to CNC stating that it would deliver a bin to CNC on August 29, 2021 pursuant to the parties' agreement. CNC says it did not receive this letter, but I find a delivery receipt in evidence shows the letter was delivered to CNC's address. Super Save also sent a notice of cancellation letter to RRR on CNC's behalf on May 12, 2021.
20. CNC says that after RRR received this notice, RRR sent a letter on CNC's behalf on July 23, 2021 notifying Super Save that CNC had a binding agreement with RRR and did not require Super Save's services at this time. Super Save does not say whether it received this letter. However, it says that it delivered its bin to CNC's address on August 30, 2021 and later removed it on February 2, 2022 because CNC failed to pay its invoices.
21. CNC says no bin was delivered on August 30, 2021 and it received no invoices or other communications from Super Save about the bin.

Did TL have the authority to enter into the agreement on CNC's behalf?

22. CNC says TL did not have authority to enter into the agreement with Super Save. Super Save says the agreement is binding because by signing, TL acknowledged that they had express authority to do so on CNC's behalf. This term is stated in the agreement above where TL signed. In the agreement, TL listed their title as "manager".
23. There are 2 ways an employee can enter into a valid agreement on behalf of their employer. First, the employer can give the employee actual authority. Second, an employee can have apparent authority to enter into agreements on behalf of their employer (see *Kassam v. Dream Wines Corporation*, 2022 BCSC 1069 at paragraph 24). Since CNC says TL did not have actual authority, the burden is on Super Save to prove that TL had apparent authority to enter into the agreement. Super Save must prove that CNC, not TL, represented through words or actions that TL had the authority to enter into the agreement. Super Save must also prove that it reasonably believed that TL had the authority to enter into the agreement (see *R & B Plumbing & Heating Ltd. v. Gilmour*, 2018 BCSC 1295 at paragraphs 84-86).
24. While CNC disputes TL had authority to enter into the agreement, it does not deny that TL was a manager at CNC. The evidence shows TL was the only CNC employee to respond to Super Save's emails sent to CNC's email account and TL communicated with Super Save directly before and after entering into the agreement.
25. Further, although CNC says in the Dispute Response that TL did not have authority to enter into the agreement, its submissions suggest otherwise. For example, in its submissions, CNC says it wanted to have Super Save's bin to abide by the agreement "we" signed. There is also no evidence before me that CNC took any steps after TL signed the agreement to inform Super Save that TL did not have authority to enter into the agreement on CNC's behalf. On balance, I find a reasonable person would find a manager of a business had authority to enter into contracts such as the agreement here. So, based on the above, I find TL acted with apparent authority as CNC's agent and the parties' agreement is binding.

Did Super Save fail to provide the waste disposal services?

26. As mentioned above, CNC says that after Super Save removed its bin on July 22, 2019, Super Save never returned with a new bin. Specifically, CNC says that it never noticed a Super Save bin in its yard from August 30, 2021 to February 2, 2022, the time period for which Super Save claims in debt for the unpaid waste disposal services. As noted above, on July 19, 2019, Super Save informed CNC it would remove the bin that was currently there and place it again on August 29, 2021, the termination date under the original RRR contract. Despite CNC renewing the RRR contract, I find under the terms of the parties' agreement, the agreement's effective date was August 29, 2021.
27. Since CNC alleges Super Save did not deliver a bin or provide waste disposal services any time after July 2019, I find CNC essentially argues that it owes Super Save nothing because Super Save fundamentally breached the parties' agreement. As the party alleging a fundamental breach, I find CNC bears the burden of proving it.
28. 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).
29. Applied to this case, if Super Save fundamentally breached the agreement, CNC is entitled to terminate and be relieved from any further performance of the agreement. Because Super Save's monetary claims are all based on the agreement, Super Save would not receive any money if it fundamentally breached the agreement.
30. For the reasons that follow, I find CNC has proven it is more likely than not that Super Save did not deliver a bin to CNC's address on August 30, 2021. In its further

submissions, Super Save says its August 30, 2021 delivery receipt in evidence confirms that it provided the waste disposal services to CNC. I do not agree. I find the delivery receipt shows that Super Save's driver, JS, delivered a bin at the street address listed for CNC on the parties' contract. However, this delivery receipt does not list CNC's unit number as part of the address it delivered the bin to. So, I find this delivery receipt does not prove that Super Save delivered a bin to CNC on August 30, 2021.

31. CNC refers to emails between HP, a CNC employee, and RRR from September 7, 2021 in support of its allegation that Super Save never delivered a bin after July 2019. In these emails, RRR asked HP if Super Save had contacted CNC about placing their bin and HP replied that Super Save had not. I find HP's response in this email suggests that Super Save had not delivered a bin to CNC's address as of September 7, 2021.
32. CNC also refers to a note on Super Save's August 30, 2021 bin delivery receipt which says that the bin delivered had a lock. CNC says that if it had a lock, Super Save would have given it a key, which it did not do. Super Save does not address this in its submissions so, I accept that CNC did not receive a key from Super Save for the bin it allegedly delivered on August 30, 2021.
33. CNC also says that if Super Save had delivered a bin on August 30, 2021, it would have expected Super Save to follow up with it about the allegedly unpaid invoices. As noted, CNC says it never received any invoices from Super Save. CNC notes Super Save's invoices in evidence are addressed to CNC's old address which was not listed in the parties' agreement. I find it more likely than not that Super Save would have attempted to contact CNC about the unpaid invoices had it delivered a bin and provided waste disposal services from August 30, 2021 to February 2, 2022 as Super Save alleges.
34. Based on the above, I find Super Save did not provide the waste disposal services it claims for and fundamentally breached the parties' agreement. As a result, I find CNC

is entitled to terminate the agreement and is not responsible for the amounts Super Save claims in this dispute. I dismiss Super Save's claims.

35. 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. Since Super Save was unsuccessful, I dismiss its claim for reimbursement of its paid CRT fees. CNC did not pay any fees and neither party claims any dispute-related expenses.

ORDER

36. I dismiss Super Save's claims and this dispute.

Nav Shukla, Tribunal Member