



Civil Resolution Tribunal

Date Issued: February 22, 2024

Files: SC-2022-007906
and SC-CC-2023-008501

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Super Save Disposal Inc. v. Made By Humans 2 Designs Inc.*, 2024
BCCRT 171

B E T W E E N :

SUPER SAVE DISPOSAL INC.

APPLICANT

A N D :

MADE BY HUMANS 2 DESIGNS INC.

RESPONDENT

A N D :

SUPER SAVE DISPOSAL INC.

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. This dispute is about a waste disposal contract.
2. Super Save Disposal Inc. (Super Save) says Made By Humans 2 Designs Inc. (MBH) breached the parties' contract when it failed to pay for waste disposal services. Super Save claims payment for unpaid services and \$3,046.84 in liquidated damages for breaching the contract.
3. MBH says Super Save repeatedly added unauthorized extra charges to its bills. It also says Super Save stopped providing service in November 2021, at the end of their contract's 5-year term, so MBH considered the contract cancelled.
4. In its counterclaim, MBH says that shortly after the contract began, Super Save began repeatedly raising its rates. MBH says the written contract it signed did not permit price increases. MBH claims a refund of \$1,342.26 for alleged overpayments. In response, Super Save says the contract permitted price increases.
5. Each party is represented by an authorized employee.

JURISDICTION AND PROCEDURE

6. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims under section 118 of the *Civil Resolution Tribunal Act* (CRTA). CRTA section 2 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.
7. CRTA section 39 says 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, he 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 I can properly 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.

8. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary, and appropriate, whether or not the information would be admissible in court.

ISSUES

9. The issues in this dispute are:
 - a. What are the terms of the parties' contract?
 - b. Did MBH breach the contract, and if so, does MBH owe damages?
 - c. Is MBH entitled to a refund for alleged overpayments?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, Super Save as applicant, must prove its claims on a balance of probabilities. MBH must prove its counterclaim to the same standard. I have read the parties' submitted evidence and arguments, but refer only to what I find relevant to provide context for my decision.
11. The two disputes before me are a claim and a counterclaim. I have issued one decision for both. In making my decision, I considered all the evidence in each dispute.

What are the terms of the parties' contract?

12. The parties agree there was a written contract, setting out the terms of the waste disposal services and payments. However, the parties disagree about what those terms are. Specifically, Super Save says the signed contract was two pages long, and that the second page included terms permitting price increases, as well as liquidated damages if MBH breached the contract. MBH says it only signed a one-page contract, with no such terms.
13. For the following reasons, I find the parties agreed to a one-page contract.
14. Evidence provided by MBH shows that on October 17, 2016, Super Save's sales representative GE emailed MBH's director, FB. GE's email set out a price of \$37.30 plus tax per month for removal of a two-yard waste bin. The email asked FB to initial the highlighted box and sign with name and date "at the bottom left" of the attached PDF document.
15. The attached PDF document was titled, MADE BY HUMANS 2 DESIGNS INC. SERVICE AGREEMENT 2016". The attachment, which I have carefully examined, contains only one page of a pre-printed form contract, with a signature section at the bottom left. On the attachment, GE's name is written on the bottom right, on behalf of Super Save. The effective date of the agreement is handwritten, and states October 18, 2016.
16. The second attachment on the October 17, 2016 email is a payment authorization form, permitting Super Save to charge its monthly billings to MBH's bank account or credit card.
17. The evidence shows FB replied to GE's email later on October 17, 2016. FB attached a signed copy of the written service agreement, dated October 17, 2016. Again, this attachment has only one page. FB's email to GE says, "Attached is the Service Agreement. And I just faxed the Payment Authorization."
18. Super Save says this emailed copy of the service agreement does not constitute the entire agreement between the parties. Rather, Super Save relies on a different written contract, with two pages.

19. Super Save's version of the written contract is the same as that emailed between FB and GE on October 17, 2016, except that it has two pages instead of one, and appears to have been signed by FB on October 19, 2016.
20. The second page of the October 19, 2016 contract is entirely pre-printed, with no handwritten or signed portions. It sets out various contractual terms, including the following:
- Term 4: The contractor (Super Save) may, without notice or consent, add, remove, increase, or decrease the amount charged to the customer under the agreement based upon the contractor's costs.
 - Term 5: Unpaid accounts will be charged interest of 24% per year.
 - Term 11: If the customer unlawfully terminates the agreement before its expiry, the customer will pay the contractor liquidated damages, calculated as the monthly charges, plus taxes, for each month remaining in the contract's term.
21. In its initial submission, Super Save said an electronic version of the contract was emailed to MBH for review, and after that, GE took the "original agreement" to FB for "original signatures." In a later submission, Super Save directly acknowledges the October 17, 2016 email exchange containing a contract, but says it is only partially signed. Also, Super Save says that after receiving FB's email with the attached contract, GE emailed FB about an online company search, to clarify MBH's legality.
22. For these reasons, Super Save says the subsequent two-page contract, dated October 19, 2016, is the "true original agreement". I do not agree.
23. First, I find that the October 17, 2016 emailed contract was fully signed and dated by FB. GE also printed his name on the contract, before emailing it to FB. GE did not provide a cursive signature in addition to the printed name, and GE did not date his copy of the contract. However, since GE wrote his name and emailed the contract to FB for signature, and never told FB that it was incomplete until GE signed it further or other steps were taken, I find that the contract was completed at the time FB signed

it and emailed it back on October 17, 2016. I find it would be unreasonable for Super Save or its agent to fail to sign its own pre-printed contract, clearly emailed to FB for completion, and then rely on its own omission to invalidate that contract. There is nothing in the October 17, 2016, email exchange that indicates that further steps, such as more or original signatures, were necessary in order to complete the contract.

24. Based on the October 17, 2016 email exchange, I find the parties reached a completed agreement on that date. That agreement has only one page.
25. As for the subsequent email exchange about MBH's corporate name, the emails show that FB responded and clarified that the corporate name on the October 17, 2016 contract was correct. Super Save never said otherwise, and MBH's name is written identically on both versions of the contract. So, I find that any discussion about MBH's corporate name did not invalidate the October 17, 2016 contract.
26. Super Save provided an October 3, 2023 statement from GE, who says that prior to signing any service agreement for disposal services, he "invariably" confirms that he has reviewed the terms of the 2-sided contract with the customer, and provides the customer with the duplicate yellow copy with both pages of the contract. GE wrote that he confirms he provided this yellow copy to FB.
27. MBH denies receiving any yellow copy or two-page contract, and says FB never signed anything other than the emailed contract. MBH says the October 19, 2016 version of the contract is fraudulent. MBH says it would never have signed the October 19, 2016 contract, since it gave Super Save free rein to increase prices.
28. I find GE's statement unpersuasive, for three reasons. First, GE did not say when or where he allegedly provided the yellow copy of the contract to FB. Second, GE's statement does not mention the email exchange containing a signed one-page contract on October 17, 2016. Third, and most importantly, GE does not explain why it was necessary to sign second version of the contract on October 19 after FB already signed an emailed contract on October 17. This is especially true given that in his statement, GE confirms that he always reviews the terms of the two-sided agreement

with the customer, and gives them a copy of both pages at the time of signing. The October 17, 2016 email exchange establishes that this simply did not occur with MBH. Rather, the evidence shows that GE emailed FB a contract containing only one page, and in his email, GE specifically asked FB to sign it. The email chain does not say the attached contract was only for review. Super Save has not explained why GE would ask FB to sign an electronic copy if it was only meant for review, and was not intended to be binding.

29. Super Save did not provide evidence, such as emails or a further statement from GE, establishing that that FB was asked to sign a different contract on October 19, 2016. So, I find that Super Save has not proved that MBH agreed to additional or different contractual terms after FB emailed the October 17, 2016 version of the contract to GE.
30. For all these reasons, I find that the contract FB signed and emailed to GE on October 17, 2016 is the full agreement between the parties.

Does MBH owe damages for breach of contract?

31. In its dispute application, Super Save says MBH owes \$1,131.90 for 11 unpaid invoices, including bin removal charges and administrative fees. In its submissions, Super Save says it claims \$1,342.26 for unpaid invoices. Super Save did not explain the reason for this increase.
32. Super Save also says MBH owes \$3,046.84 for liquidated damages, for early termination of the agreement.
33. The one-page contract FB signed on October 17, 2016 contains no term allowing for liquidated damages. So, I dismiss Super Save's claim for liquidated damages.
34. As for amounts owed to Super Save for unpaid invoices, I find Super Save has not proved this claim. First, Super Save did not provide a clear accounting of how it arrived at the amount of \$1,131.90, or \$1,342.26. Super Save provided copies of 12 invoices from October 31, 2020 to April 30, 2022, and says these were not paid.

However, other evidence, including email correspondence between the parties, shows that MBH did make some payments during this period. So, I find the claimed \$1,131.90 or \$1,342.26 in arrears are both unproven.

35. Also, the October 17, 2016 contract, which I find is binding, says that Super Save can charge \$37.30 per month for waste pickup, including a fuel surcharge and an administration fee. Super Save could also charge \$32.00 for additional pickups. The one-page contract does not include a term permitting Super Save to raise its rates.
36. The invoices in evidence show that by October 2020, Super Save was charging \$58.71 per month for regular waste pickup, plus an additional administration fee of \$9.29. By April 2022, Super Save charged \$68.02 per month, plus \$20.84 for in administrative fees and “Covid Cost Recovery”. These amounts are not authorized under the October 17, 2016 contract.
37. Finally, in May 2022, Super Save charged MBH a \$52.50 “Bin Removal Fee”, plus an additional \$20.84 in administrative fees and a Covid cost recovery fee. Again, these amounts are not authorized under the October 17, 2016 contract.
38. For these reasons, I dismiss Super Save’s claim for payment on outstanding invoices.

Reimbursement For Overpayments

39. In its counterclaim, MBH requests a refund of \$1,342.26 for alleged overpayments. This is the same amount claimed by Super Save for outstanding invoices. As explained above, I dismissed that claim.
40. Like Super Save, MBH has not explained its calculation of the alleged overpayments. It says \$1,342.26 is the difference between the amount it paid, and the amount it actually owed based on the contract. However, I also note that the MBH is claiming the exact amount in refund that Super Save says MBH owed under its outstanding invoices. Since I have dismissed Super Save’s corresponding debt claim, I also dismiss MBH’s claim for refund of overpayments.

41. Also, I would not order reimbursement of the full amount MBH claims in any event, since some of the alleged overpayment's date back to the period February 2017 to September 2020, which is more than 2 years before either the CRT claim or counterclaim were initially filed. So, those portions of the claim would likely be barred under the *Limitation Act*.

42. I dismiss MBH's counterclaim.

43. Under CRTA section 49 and the CRT's rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. As neither party succeeded in its claims, and neither party claimed dispute-related expenses, I order no reimbursement.

ORDER

44. 22. I dismiss Super Save's claims, and MBH's counterclaim. I dismiss this dispute.

Kate Campbell, Tribunal Member