



Civil Resolution Tribunal

Date Issued: July 3, 2024

File: SC-2022-009114

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Super Save Disposal Inc. v. Royal Window Fashions Ltd.*, 2024 BCCRT
634

B E T W E E N :

SUPER SAVE DISPOSAL INC.

APPLICANT

A N D :

ROYAL WINDOW FASHIONS LTD. previously known as JIAYI
MAGNETIC WINDOW SCREEN LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Maria Montgomery

INTRODUCTION

1. This dispute is about a contract for waste disposal services. The applicant, Super Save Disposal Inc. (Super Save), says the respondent, Royal Window Fashions Ltd. (RWF), breached the parties' contract by failing to pay for waste disposal services

and attempting to cancel the service agreement. Super Save says RWF owes \$173.39 in debt for unpaid services and \$5,439.90 in damages for breach of contract. Super Save expressly limits its claim to \$5,000, the Civil Resolution Tribunal's (CRT) small claims jurisdiction's monetary limit.

2. RWF disagrees that any services are unpaid and disagrees that the parties' contract automatically renewed for a subsequent 5-year term. So, RWF says it does not owe Super Save anything.
3. Super Save is represented by an authorized employee. RWF is represented by a director.

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.
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. The parties in this dispute question each other's credibility, or truthfulness. However, disputes involving an assessment of the parties' credibility do not necessarily require an oral hearing (see *C.2K Holdings Ltd. V. The Owners, Strata Plan K577*, 2019 BCSC 1981, at paragraph 33). Here, I find that I am properly able to assess and weigh the written submissions and the documentary evidence such as emails. 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 court.
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.
8. As mentioned above, Super Save claims more than the CRT's \$5,000 monetary jurisdiction. The CRT's online dispute resolution software does not allow parties to enter claims that total more than \$5,000, so Super Save reduced its damages claim on its Dispute Notice to \$4,820.00. In the body of the Dispute Notice, Super Save said that its liquidated damages were \$5,439.90.
9. In *Klondike Contracting Corporation v. Abadian*, 2021 BCPC 145, the court found that a claimant could call evidence of damages above the BC Provincial Court's \$35,000 monetary limit even though the court could not order more than that amount. I find that the same principle applies here. I find that CRTA, which has the same language as the *Small Claims Act*, does not prevent a party from providing evidence about debt or damages above \$5,000. It only prevents the CRT from ordering payment of over \$5,000.
10. Generally, the CRT will not consider claims for more money than what the applicant put in the Dispute Notice. This is because it would be procedurally unfair to respondents to consider claims that are not in the Dispute Notice. In this dispute, I find that Super Save lowered its damages claim because the CRT's online forms forced it to do so. Because Super Save specifically cited its damages as over \$5,000, I find that RWF knew that Super Save would argue for at least this amount and I find that I can consider Super Save's damages claim for \$5,000.

ISSUES

11. The issues in this dispute are:

- a. Did RWF fail to pay for waste disposal services?
- b. Is RWF required to pay Super Save liquidated or general damages under the parties' contract?

EVIDENCE AND ANALYSIS

12. In a civil proceeding like this, Super Save must prove its claims on a balance of probabilities (meaning "more likely than not"). While I have read all the parties' submitted evidence and arguments, I have only addressed those necessary to explain my decision. I note the respondent did not provide any documentary evidence despite having the opportunity to do so.
13. It is undisputed that on May 30, 2013, the parties signed a contract where Super Save agreed to provide waste disposal services to Jiayi Magnetic Window Screen Ltd., which is RWF's former name, for a 3-year term. Clause 2 of the contract said that the contract would be renewed for another 3-year term. For reasons unexplained by the parties, they signed a new written agreement on May 1, 2016. Clause 2 of this agreement provided for a 5-year term and said it would be automatically renewed for another 5-year term "without further action by the parties". Clause 2 stated that the agreement would not renew if the contract was terminated by written notice sent by registered mail not more than 120 days and not less than 90 days prior to the end of the term.
14. RWF says that the renewal clause is invalid for the following reasons:
 - It was never explained.
 - Super Save did not send a reminder of the renewal.
 - The renewal clause was in very fine print.
 - The parties did not sign a new agreement upon renewal.

The Provincial Court mentioned the use of fine print in waste disposal contracts when it noted the onerous nature of these contracts in *Super Save v. Lee*, 2015 BCPC 157

at paragraph 8. However, both the Provincial Court and the Supreme Court have found waste disposal contracts with similar automatic renewal clauses to be enforceable: see *Lee and Tristar Cap & Garment Inc. v. Super Save Disposal Inc.*, 2014 BCSC 690.

15. Here, I find that RWF was bound by the terms of the contract for the following reasons. First, the contract said that it would be renewed “without further action by the parties”, so there was no reason for RWF to believe the contract would only be renewed if the parties signed a new one or if Super Save reminded RWF. I note that an RWF director signed the agreement and beside the signature line it reads “signatory has read, understood and agreed to the terms and conditions.” This finding is consistent with a general legal principle that a party who signs a contract is bound by it even if they did not read or understand it. Also, in RWF’s email correspondence with Super Save on July 12, 2022, RWF’s director acknowledged that the service agreement was in effect for a few more years, indicating the director understood that the service agreement signed in 2016 had been renewed.

Did RWF fail to pay for waste disposal services?

16. Super Save says that RWF refused or neglected to pay for services provided under the agreement and claims \$173.39 for unpaid services. It relies on a February 28, 2022 invoice for \$159.98. Super Save does not explain the discrepancy in amounts between this invoice and its claimed amount. RWF says it does not know where this charge came, from which I infer it argues that it paid for all services it received.
17. As noted above, Super Save bears the burden of proving its claims as the applicant in this dispute. However, Super Save has not provided evidence that the invoice was delivered. Neither has it provided details of its attempts to contact RWF for payment or RWF’s usual payment method and the circumstances that gave rise to an unpaid invoice, such as a cancelled pre-authorized payment. While Super Save has not provided a history of RWF’s payments, it appears that RWF made monthly payments for many years. I find it likely that Super Save would have contacted RWF about a

missed payment. For these reasons, I find that Super Save has not met its burden of proving that RWF failed to pay for waste disposal services, and I dismiss this claim.

Is RWF required to pay Super Save liquidated or general damages under the parties' waste disposal services contract?

18. Super Save cites \$5,439.90 in liquidated damages for breach of contract due to RWF attempting to cancel the contract in a manner that does not comply with clause 2. If its claim for liquidated damages fails, Super Save seeks general damages for the same amount. In evidence, Super Save provides an email RWF sent on July 12, 2022, where RWF explained that the business was moving to a location where they did not need bins, noted the contract did not expire until 2025, and asked for advice on how to proceed. In its submissions, Super Save argues that RWF repudiated the contract when it sent this email. I do not agree.
19. Repudiation occurs when a party indicates that they no longer intend to be bound by a contract's terms. When one party repudiates a contract, the other party can accept the repudiation or affirm the contract: see *Tang v. Zhang*, 2013 BCCA 52. Clause 11 of the parties' contract stated that, if RWF repudiated the agreement, Super Save could either affirm the agreement or accept the repudiation in which case Super Save can claim liquidated damages equal to monthly charges for the balance of the term.
20. Though RWF indicated it was moving, it did not say that it no longer intended to be bound by the service agreement or that it would not meet its obligations under the agreement. Rather, RWF asked for help to understand its options. In a later email, RWF asked to receive a copy of the agreement. On July 27 and July 28, 2022, RWF asked Super Save to refrain from removing bins from RWF premises until it could review the agreement with their lawyer. I find these actions indicated RWF's interest in complying with the service agreement's terms.
21. Super Save alleges their employee did not receive the emails sent on July 27 and July 28, 2022, and so could not tell its staff to refrain from removing the bins that

weekend. However, this does not address that RWF had not indicated that it did not intend to be bound by the contract.

22. So, I find RWF did not repudiate the contract and is not liable to Super Save for the damages claimed in this dispute. I dismiss Super Save's claims.
23. Given my finding, there is no need for me to consider if Super Save fundamentally breached the contract when it removed the bins.
24. 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 to not follow that general rule. Since Super Save was unsuccessful, I dismiss its claim for reimbursement of its paid CRT fees. RWF did not pay any fees and neither party claims any dispute-related expenses.

ORDER

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

Maria Montgomery, Tribunal Member