



Civil Resolution Tribunal

Date Issued: July 9, 2024

File: SC-2023-001066

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Super Save Disposal Inc. v. Sastra Enterprises Ltd.*, 2024 BCCRT 651

B E T W E E N :

SUPER SAVE DISPOSAL INC.

APPLICANT

A N D :

SASTRA ENTERPRISES LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Megan Stewart

INTRODUCTION

1. This dispute is about a waste disposal contract.
2. Super Save Disposal Inc. and Sastra Enterprises Ltd. entered into a written contract for waste disposal services. Super Save says Sastra breached the contract by not

paying for the services. Super Save claims \$866.03 for unpaid monthly waste disposal and other charges, and \$437.94 in liquidated damages.

3. Sastra does not dispute Super Save's claims. Instead, Sastra says Super Save's claims do not address damage it says Super Save's truck did to electrical lines on Sastra's property. Sastra does not counterclaim for the cost of the alleged electrical line damage, so I infer it seeks a set-off from any amount I award Super Save.
4. The parties are each represented by an employee.

JURISDICTION AND PROCEDURE

5. These are the Civil Resolution Tribunal's (CRT) formal written reasons. The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). CRTA section 2 states 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.
6. 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. Here, I find I am properly able to assess and weigh the documentary evidence and submissions before me. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find an oral hearing is not necessary in the interests of justice.
7. 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.
8. Where permitted by CRTA section 118, 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

9. The issues in this dispute are:

- a. Is Super Save entitled to \$866.03 for unpaid monthly waste disposal and other charges?
- b. Is Super Save entitled to \$437.94 for liquidated damages?
- c. Is Sastra entitled to a set-off?

EVIDENCE AND ANALYSIS

10. As the applicant in this civil proceeding, Super Save must prove its claims on a balance of probabilities, meaning more likely than not. I have read all the parties' submissions and evidence, but only refer to information I find necessary to explain my decision.

11. The following background is undisputed. The parties entered into a written contract for waste disposal services effective June 1, 2021, the date Super Save first delivered a bin to Sastra. The contract was for a non-renewable 2-year term. It says Sastra will pay all monthly waste disposal charges (including service fee, fuel, equipment maintenance costs, provincial carbon tax, and administrative costs, among others) plus tax, within 30 days of the invoice date.

Is Super Save entitled to \$866.03 for unpaid monthly waste disposal and other charges?

12. Super Save says Sastra failed to pay waste disposal charges for July, August, September, October, and November 2022, as well as service resumption and bin removal charges. Sastra does not deny this, so I accept it is true. However, Super Save must still prove it is entitled to the claimed amount.

13. Super Save's invoices in evidence show it charged Sastra as follows:

July 2022	monthly waste disposal charges	\$129.88
August 2022	monthly waste disposal charges	\$129.88
September 2022	monthly waste disposal charges	\$129.88
September 2022	service resumption charges	\$68.09
October 2022	monthly waste disposal charges	\$137.04
November 2022	monthly waste disposal charges	\$137.04
November 2022	bin removal charges	\$162.59
November 16-30, 2022	credit for monthly waste disposal charges	(\$55.50)

14. First, the monthly waste disposal charges. The contract says Super Save reserves the right to increase any of the monthly waste disposal charges from time to time to reflect cost increases in providing the service or equipment. I infer that is what happened with the higher October and November 2022 rates, since those invoices show an increased charge for the service fee and fuel surcharge, and Sastra does not dispute them.
15. The contract also says if Sastra pays its invoice late or fails to pay it at all, Super Save may suspend service on reasonable notice until payment is made. During the suspension, Sastra continues to be responsible for any monthly waste disposal charges. On October 27, 2022, Super Save wrote to Sastra to advise it had suspended Sastra's service for non-payment, and asked Sastra to pay the outstanding amount by November 6, 2022. There is no evidence Super Save provided Sastra with reasonable notice before suspending the service. But, since Sastra did not pay by November 6, 2022 (or at all), and did not argue it suffered any damage due to Super Save's failure to provide reasonable notice, I find this technical breach was of no consequence. So, I find Super Save is entitled to the claimed waste disposal charges for July, August, September, October, and November 2022.

16. Next, the service resumption charges. The contract says if service is reinstated after a suspension, Sastra shall pay a reasonable administrative fee for service resumption. On November 22, 2022, Super Save wrote to Sastra to advise it was terminating the contract due to Sastra's non-payment. It did not say it was resuming service. So, I find Super Save was not entitled to charge Sastra \$68.09 for service resumption charges.
17. Finally, the bin removal charges. The contract provides for a bin removal fee of \$135, and, as noted above, administration fees. It is undisputed Super Save removed its bin, so I find Super Save was entitled to charge Sastra \$162.59, including tax, for bin removal charges.
18. Super Save includes different amounts for "service charges" for each unpaid invoice, but does not explain what these are for. In the absence of any explanation or evidence Super Save was entitled to these "service charges", I dismiss its claim for those.
19. In total, I find Super Save is entitled to payment of \$770.81 for Sastra's unpaid monthly waste disposal and bin removal charges, including the \$55.50 credit for half of November 2022's service fee. I order Sastra to pay Super Save \$770.81.

Is Super Save entitled to \$437.94 for liquidated damages?

20. Liquidated damages are a contractual pre-estimate of damages suffered by a party in the event of a breach of contract. The contract says Super Save is entitled to liquidated damages where Sastra repudiates the contract and Super Save accepts the repudiation. Repudiation is a type of contract breach where a party indicates to another party it no longer intends to be bound by their contract (see *Mantar Holdings Ltd. v. 0858370 B.C. Ltd.*, 2014 BCCA 361). Where a party repudiates a contract, the innocent party may accept the repudiation, and bring the contract to an end.
21. I find by not paying its monthly waste disposal charges between July and November 2022, Sastra repudiated the parties' contract. I find Super Save accepted Sastra's repudiation in its November 22, 2022 letter, and is entitled to liquidated damages.

22. The contract says liquidated damages are calculated based on the current service fee, plus tax, for each month remaining in the contract's term, times an 80% "timing factor", since the repudiation happened after the June 1, 2021 effective date.
23. I find Sastra's repudiation date under the contract was November 22, 2022. On November 22, 2022, there were 6 months and 7 days remaining in the contract's term. This means Super Save was entitled to \$487.40 in liquidated damages ($0.80 \times [(6 \times \$97.74) + (\$97.74 / 30 \times 7)]$). However, Super Save only claimed \$437.94 in liquidated damages, using a lower service fee calculated over 7 months. So, I find its claim is limited to this amount. I order Sastra to pay Super Save \$437.94 in liquidated damages.

Is Sastra entitled to a set-off?

24. Finally, I address Sastra's request for a set-off. A set-off is a right between parties who owe each other money where their respective debts are mutually deducted, leaving the applicant to recover only the remaining balance. As the party alleging a set-off, Sastra has the burden of proving it. Here, I find it has not done so. Even if I accept Super Save's truck damaged Sastra's electrical lines based on photos Sastra provided, Sastra submitted no evidence it paid to fix the lines, and what the repair cost was. So, I find Sastra's set-off allegation unproven.

CRT FEES, EXPENSES, AND INTEREST

25. The parties' contract provides for a 24% annual interest rate on overdue accounts. However, Super Save did not claim contractual interest in the Dispute Notice issued at the start of this proceeding. The *Court Order Interest Act* (COIA) applies to the CRT, but not where the parties have an agreement about interest (see, for example, *Super Save Disposal Inc. v. Pretty*, 2020 BCCRT 1368). So, I find Super Save is not entitled to any interest on the \$770.81 award for unpaid monthly waste disposal and bin removal charges, since it did not claim contractual interest. However, I find "overdue accounts" does not apply to liquidated damages, as there is nothing in the contract about calculating the date liquidated damages are due. So, I find Super Save

is entitled to pre-judgment interest under the COIA on the \$437.94 liquidated damages award from November 22, 2022 to the date of this decision. This equals \$33.30.

26. 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. Since Super Save was largely successful, I find it is entitled to reimbursement of its paid \$150 CRT fees. Super Save did not claim any dispute-related expenses.

ORDERS

27. Within 30 days of the date of this order, I order Sastra to pay Super Save a total of \$1,392.05 broken down as follows:

- a. \$770.81 for unpaid monthly waste disposal and bin removal charges,
- b. \$437.94 for liquidated damages,
- c. \$33.30 in pre-judgment interest under the COIA, and
- d. \$150 in CRT fees.

28. Super Save is entitled to post-judgment interest, as applicable.

29. This is a validated decision and order. 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.

Megan Stewart, Tribunal Member