



# Civil Resolution Tribunal

Date Issued: September 10, 2018

File: SC-2017-003838

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Electra Motor Corporation v. Dynamic Energy Solutions Ltd,*

2018 BCCRT 508

**B E T W E E N :**

Electra Motor Corporation

**APPLICANT**

**A N D :**

Dynamic Energy Solutions Ltd

**RESPONDENT**

---

## **REASONS FOR DECISION**

---

Tribunal Member:

Kate Campbell

## **INTRODUCTION**

1. The applicant, Electra Motor Corporation (Electra), says the respondent, Dynamic Energy Solutions Ltd. (Dynamic), failed to pay outstanding invoices for engineering services, product development, and electronic equipment. Electra seeks an order that Dynamic pay \$4,273.50, plus contractual interest.
2. Dynamic says Electra failed to meet the terms of their contract as it did not complete all the work. Dynamic says it is not obligated to pay until work under another contract between the parties is completed.
3. Electra is represented by Lorne Gettel, a principal or employee. Dynamic is represented George Roddan, who is also a principal or employee.

## **JURISDICTION AND PROCEDURE**

4. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions because I find that there are no significant issues of credibility or other reasons that might require an oral hearing. Neither party requested an oral hearing.
6. The tribunal 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 tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

7. Under tribunal rule 126, in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

## **ISSUES**

8. The issue in this dispute is whether the respondent must pay the applicant \$4,273.50, plus interest, for supplied goods and services.

## **EVIDENCE AND ANALYSIS**

9. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
10. Mr. Gettel, on behalf of the applicant, says that Electra conducted work for Dynamic in May and June 2016. This work included assembling lithium ion battery packs and supplying electronic components. Mr. Gettel says that in June 2016, Electra gave Dynamic 2 invoices for this work, totalling \$4,273.50. He says Dynamic has not paid these invoices, despite repeated requests.
11. Electra provided copies of these invoices, and copies of correspondence seeking payment from Dynamic.
12. Mr. Roddan does not dispute that Electra performed the work and supplied the goods set out in the June 2016 invoices. However, he says the parties signed a contract stating that Electra would develop a prototype golf cart charge module (golf cart prototype) within 4 months. He says Electra must deliver the prototype before the invoices will be paid.
13. Mr. Gettel says the golf cart prototype is a separate and distinct project from the work billed for in the June 2016 invoices. Mr. Gettel says that work was performed in May and June 2016, and involved building battery packs for Dynamic, which Dynamic provided to its customers.

14. The parties disagree about whether the golf cart prototype project was fully completed, and the reasons for any delays. However, I find that issue is not determinative of this dispute. I agree with Electra that the golf cart prototype and the June 2016 invoices represent 2 entirely separate sets of work, performed under different contracts. This is confirmed by the December 18, 2014 “Development Agreement” for the golf cart project agreement, the development proposal and final report for the golf cart project, and the itemization of work performed in Electra’s June 2016 invoices.
15. Dynamic has not asserted that the work Electra performed in May and June 2016 was part of the golf cart project, and has not disputed Mr. Gettel’s evidence that the May/June 2016 work was a separate project to create battery packs for Dynamic customers. As explained in Mr. Roddan’s July 22, 2017 email to Mr. Gettel, Dynamic’s position is that they may enforce delivery of the golf cart prototype by withholding payment of the June 2016 invoices.
16. I do not agree, and find that Dynamic is not entitled to unilaterally withhold money for work performed in May and June 2016 as a remedy for a breach of a separate contract. Dynamic has not filed a counterclaim. Any remedy for breach of the December 2014 golf cart agreement must be pursued as a separate claim. I note that the December 18, 2014 golf cart development agreement does not include a provision for withholding payment on future work.
17. In an August 19, 2016 email to Mr. Gettel, Mr. Roddan agreed that Dynamic would pay Electra’s invoices for the battery packs the following week. Although Dynamic did not pay, I find this email correspondence confirms that Dynamic acknowledged that it was obliged to pay invoices, that that this debt was incurred before Dynamic was seeking any remedy for an alleged breach of the golf cart prototype contract.
18. For all of these reasons, I find that Dynamic must pay Electra \$4,273.50 for the June 2016 invoices.

## ***Interest***

19. Electra claims contractual interest on the \$4,273.50. Their June 2016 invoices state that 1.5% per month interest will be charged on the unpaid balance of overdue accounts. Based on this documentation, I find that Electra is entitled to 1.5% monthly (18% annual) contractual interest on the \$4,273.50 from July 15, 2016. This equals \$1,658.59.
20. The tribunal's rules provide that the successful party is generally entitled to recovery of their fees and expenses. Electra was successful, so I order that Dynamic reimburse \$175 paid in tribunal fees. Electra also claims \$45.34 for dispute-related expenses, including \$33.34 for a corporate search. I find that \$45.34 is a reasonable amount in the circumstances, so Electra is entitled to reimbursement.

## **ORDERS**

21. I order that within 30 days of this decision, Dynamic pay Electra a total of \$6,152.43, broken down as follows:
  - a. \$4,273.50 for the June 2016 invoices,
  - b. \$1,658.59 in contractual interest, and
  - c. \$220.34 for tribunal fees and dispute-related expenses.
22. Electra is also entitled to post-judgment interest under the *Court Order Interest Act*.
23. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.

24. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

---

Kate Campbell, Tribunal Member