



# Civil Resolution Tribunal

Date Issued: December 13, 2018

File: SC-2018-004193

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Super Save Enterprises Ltd. v. Diamond Pre-Cast Concrete Ltd.*, 2018  
BCCRT 850

B E T W E E N :

Super Save Enterprises Ltd.

**APPLICANT**

A N D :

Diamond Pre-Cast Concrete Ltd.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Eric Regehr

## INTRODUCTION

1. The respondent, Diamond Pre-Cast Concrete Ltd., had a written agreement with the applicant, Super Save Enterprises Ltd., to purchase propane. The applicant changed the price of the propane and the respondent stopped paying. The applicant

claims a debt of \$2,483.98. The respondent agrees that it owes the applicant for propane, but only at the lower price.

2. The applicant also claims that the respondent failed to return 2 propane cages, which cost \$1,818.70 to replace. The respondent says that it returned the cages.
3. The applicant claims contractual interest of 24% on the debts.
4. The parties are each represented by an employee.

## **JURISDICTION AND PROCEDURE**

5. 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.
6. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Credibility of 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. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note the decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. I therefore decided to hear this dispute through written submissions.
7. 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.

8. Under tribunal rule 126, in resolving this dispute the tribunal may make one or more of the following orders:
  - a. order a party to do or stop doing something;
  - b. order a party to pay money;
  - c. order any other terms or conditions the tribunal considers appropriate.

## **ISSUES**

9. The issues in this dispute are:
  - a. How much does the respondent owe the applicant for propane?
  - b. Did the respondent fail to return the cages?
  - c. Is the applicant entitled to contractual interest?

## **EVIDENCE AND ANALYSIS**

10. In a civil claim such as this, the applicant must prove its case on a balance of probabilities. While I have read all of the parties' evidence and submissions, I only refer to what is necessary to explain and give context to my decision.
11. The parties entered into a written agreement on May 14, 2014, for the applicant to supply the respondent with propane. The agreement took effect on June 15, 2014. The agreement included a term that the price of propane would be fixed for the first year. After that, the applicant had the right to unilaterally change the price of propane if there is a change in refinery, transportation or overhead costs.
12. The initial price of propane in the agreement was \$0.534 per litre. On June 26, 2014, the applicant delivered the first order of propane along with 2 propane cages.

13. The parties agreed to a 1 year renewal in June 2015 at a rate of \$0.38 per litre. The applicant agreed that the price was firm for 1 year. The applicant also stated that there would be no additional charges other than the cost of propane and applicable taxes.
14. In June 2016, the applicant confirmed that it would extend the price of \$0.38 per litre for another year. Again, the rate was fixed.
15. Despite the June 2016 agreement, the applicant sent an invoice on April 11, 2017, at a rate of \$0.899 per litre. The respondent complained and paid \$414.76 towards this invoice, which the respondent says is the correct amount.
16. The applicant sent 4 invoices between May 2, 2017 and June 6, 2017 with a price of \$0.50 per litre. The applicant also charged a rental fee for cylinders at \$1.00 per cylinder in these 4 invoices, which it had not done before. The respondent refused to pay the invoices. The respondent refused to accept further deliveries from the applicant and hired a new propane company.
17. The applicant relies solely on the written agreement that gave it the right to increase prices. The applicant says that there was a change in refinery, transportation and overhead costs.
18. The applicant made no submissions explaining the clear email evidence that the applicant had committed to keep the price firm for one year starting in June 2016. The applicant provided evidence that it acknowledged the pricing errors but does not appear to have ever corrected the errors. The applicant also provided no explanation as to why it started charging for the rental of the cylinders. The written agreement does not mention cylinder rental fees.
19. The respondent has consistently told the applicant that it would pay the invoices as soon as the applicant corrected the invoices. The respondent remains willing to pay \$0.38 per litre for the propane, plus applicable taxes, which the respondent calculates as \$1,340.43.

20. I find that the applicant breached the agreement by raising the price of propane prior to June 2017 and by charging for the rental of cylinders. I find that the applicant cannot explicitly agree to hold prices firm for 1 year only to change the price after 9 months by relying on a general term in the written agreement. The applicant is only entitled to be paid for the propane at the rate of \$0.38 per litre.
21. I find that the respondent owed the applicant \$1,756.58 for 3,720 litres of propane, broken down as follows:
  - a. \$1,413.60 for propane at \$0.38 per litre.
  - b. \$100.44 Propane Sales Tax.
  - c. \$171.86 Carbon Tax
  - d. \$70.68 GST.
22. After taking into account the respondent's \$414.76 payment, the respondent owes the applicant \$1,341.82. This amount is slightly different than the amount that the respondent calculated because it failed to reduce the amount of GST and PST to reflect the reduced invoices.
23. Turning to the cages, the applicant alleges that the respondent failed to return them. The respondent says that the applicant's driver picked them up.
24. It is undisputed that the applicant's driver attended the respondent's business and picked up all of the remaining cylinders on July 21, 2017.
25. Both parties provided a copy of the driver's receipt from the July 21, 2017 pickup. The applicant's receipt makes no mention of the propane cages. The respondent's receipt is the same, but with additional notes that the driver picked up 2 cages. The applicant says that the respondent added the notes about the cages after the fact, noting that the ink is darker. In effect, the applicant accuses the respondent of stealing the cages.

26. The applicant describes the process for how it handles delivery receipts. First, the driver fills out the equipment it removes. The driver provides the delivery receipt to the applicant's data entry department, who capture the ticket. The applicant then mails a copy of the receipt to the customer.
27. However, the applicant does not describe whether, or how, anyone other than the driver verifies the accuracy of the driver's receipt. In particular, the applicant does not address what would happen if the driver made a mistake. The applicant did not provide evidence from the driver or anyone else who could verify that no employee of the applicant altered the receipt to reflect an initial error by the driver. I find that the applicant has failed to prove that the respondent altered its copy of the receipt in an attempt to mislead the tribunal, which is a serious allegation.
28. The applicant also did not provide evidence from the driver that they did not pick up the cages or from anyone who could verify that the applicant did not receive the cages. The applicant did not provide any evidence from their data entry system. The applicant relies solely on its version of the receipt, which does not mention the cages.
29. The applicant provided internal notes of the respondent's file. There is a note on July 20, 2017 stating that the respondent had requested that the applicant pick up the cylinders and cages. I find that this evidence supports the respondent's position, as it shows that the respondent wanted the cages off its property. I consider it highly unlikely that the respondent asked the applicant to pick up the cages one day and the very next day refused to let the driver take them, and then lied about it.
30. The burden is on the applicant to prove that the respondent kept the cages and then lied about it. It is well established that when a person alleges fraud in a civil case, they must provide clear and convincing evidence to prove their case. This is because fraud is a very serious allegation that carries a stigma: *Anderson v. British Columbia (Securities Commission)*, 2004 BCCA 7. I find that this principle applies equally to allegations of theft: *Lasher v. Marasigan*, 2018 BCCRT 830.

31. I find that the applicant has failed to prove on a balance of probabilities that the respondent kept the cages. I dismiss this claim.
32. The applicant also claims contractual interest at a rate of 24% per annum. The interest rate is set out in the written agreement. The respondent submits that because it offered to pay for the propane at \$0.38 per litre, which the applicant did not accept, it would not be fair for the respondent to pay such high interest.
33. I find that because the applicant breached the contract and refused to reissue corrected invoices, it is not entitled to contractual interest. I order the respondent to pay pre-judgment interest on the invoices pursuant to the *Court Order Interest Act*.
34. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. Even though I am ordering the respondent to pay the applicant \$1,341.82 for the propane, the respondent has been offering to pay that amount since June 2017. Because the applicant was not more successful than the respondent's offer prior to the applicant bringing this dispute, I decline to order the respondent to reimburse the applicant for tribunal fees or dispute-related expenses. The respondent did not claim any dispute-related expenses.

## **ORDERS**

35. Within 14 days of the date of this order, I order the respondent to pay the applicant a total of \$1,364.41, broken down as follows:
  - a. \$1,341.82 as payment for the propane, and
  - b. \$22.59 in pre-judgment interest under the *Court Order Interest Act*.
36. The applicant is entitled to post-judgment interest, as applicable.
37. The applicant's remaining claims are dismissed.

38. 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.
39. 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.

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Eric Regehr, Tribunal Member