



Civil Resolution Tribunal

Date Issued: April 27, 2020

File: SC-2019-009312

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Super-Save Enterprises Ltd. v. River*, 2020 BCCRT 452

B E T W E E N :

SUPER-SAVE ENTERPRISES LTD.

APPLICANT

A N D :

JADE RIVER

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kathleen Mell

INTRODUCTION

1. This small claims dispute is about an agreement to supply propane and storage tanks. The applicant, Super-Save Enterprises Ltd., says that on September 9, 2015

it entered into a 5 year written agreement with the respondent, Jade River, to provide propane and tanks. It says that the respondent stopped making payments in 2017 and that it stopped supplying services and removed the tanks in April 2019. The applicant seeks \$3,431.50, which includes \$1,598.83 for outstanding invoices as well as \$1,832.57 in liquidated damages. In its submissions the applicant itemized the liquidated damages and corrected the amount to \$1,745.40. Therefore, the amount claimed is \$3,344.23. The applicant is represented by an organizational contact.

2. The respondent says that the company changed her delivery contact in 2015. She says that when the new representative showed up, he forced her to sign the agreement and she did not know its terms. She says that the contract was unconscionable, and she had to sign because she was threatened with no heat. She also says she thought she was just signing an invoice and not a contract. The respondent represents herself.

JURISDICTION AND PROCEDURE

3. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). 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.
4. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, this dispute amounts to a "it said, she said" scenario with both sides calling into question the credibility of the other. 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.

5. 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.
6. Where permitted by section 118 of the CRTA, in resolving this dispute the tribunal may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

ISSUE

7. The issue in this dispute is whether the respondent breached the terms of an enforceable agreement and, if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

8. In a civil dispute such as this, the applicant must prove its claim on a balance of probabilities. I will not refer to all of the evidence or deal with each point raised in the parties' submissions. I will refer only to the evidence and submissions that are relevant to my determination, or to the extent necessary to give context to these reasons.
9. I first note that I have considered whether the *Business Practices and Consumer Protection Act* (BPCPA) applies to this dispute. As noted below, I find that the respondent did not cancel the contract within one year as required under the BPCPA. Further, the respondent is seeking a remedy for an unconscionable agreement and the tribunal does not have jurisdiction to provide a remedy for an

unconscionable act under the BPCPA. Also, neither party argued that the BPCPA applies. Therefore, I find the BPCPA does not apply to this dispute.

10. The applicant has provided a copy of the signed agreement. The respondent does not deny that she signed it. On the first page, which contains the respondent's signature, the form stated that it is a propane and equipment agreement. It also noted that it is for a five-year term. It indicated the cost per litre of the propane. It also said in bold that the respondent acknowledges that she had read and understood the terms of the agreement.
11. The respondent says that she should not be held to the terms of the signed agreement because she did not know what she was signing, she was vulnerable and threatened with no heat. She says that the agreement was unconscionable. She also states that she thought she was just signing an invoice.
12. A contract is not enforceable if it is unconscionable. A contract is unconscionable when it results from an inequality in bargaining power and results in a substantially unfair bargain. See *Loychuk v. Cougar Mountain Adventures Ltd.*, 2012 BCCA 122.
13. It is undisputed that the respondent moved into her house in 2014 and she signed a credit application with Super Save Group of Companies to continue the ongoing supply of propane. The credit application indicated that the respondent had to pay her invoices within 30 days.
14. Early in September 2015 the respondent called the previous respondent's contact to arrange propane delivery and they gave her a new number to call. The respondent says that the applicant is a huge company and it told her that somebody else had taken over some of the customers including her and that it did not usually provide propane for personal use. The respondent arranged for the new representative to supply the propane.
15. She says that days later a man showed up late in the day and said that if she did not sign a document, she could not have any propane. She says he did not tell her it was a five-year contract. She says that he was large and intimidating. She also

states that she would not have signed it but that she was in a vulnerable state being cold and she desperately needed the propane. The respondent also says that she thought she was just signing an invoice.

16. I find that the respondent's submissions are inconsistent. On the one hand she says she was forced to sign the contract but on the other hand she says she did not even know she was signing a contract and thought she was signing an invoice. Having viewed the agreement, it is clearly not an invoice. The signed agreement does not say anything about just providing a certain amount of propane that day or the specific cost of delivery. I do not accept the respondent's argument that she thought she was signing an invoice.
17. Turning to the respondent's second argument that she was forced to sign the agreement, I first note that the respondent's own evidence does not suggest she has any illness, disability, or difficulty understanding English. The respondent's submissions indicate she is capable of understanding and expressing herself. She also inconsistently states that she can understand contracts and points to her negotiating her cell phone contracts with her provider.
18. I also note that the contract was signed on September 9, 2015. The respondent lives in the southern region of British Columbia. She has presented no evidence that the weather was unseasonably cold at that time. I do not accept that the respondent was forced to sign the contract because of inclement weather and a desperate need for heat.
19. The respondent also says that she called the respondent's local office afterward to say that she felt that she had been severely wronged and asked them to stop delivering propane to her. She states that she then used an electric heater until she got her wood stove working. She says she kept paying the respondent, but she was not receiving the propane. However, the respondent provided no supporting evidence that she told the applicant to stop delivering the propane or that she was not receiving it. I also find it does not ring true that the respondent would continue to pay for something she was not receiving.

20. Further, the applicant has provided invoices that indicate that the respondent stopped paying the invoices in January 2017 and that they continued to deliver propane until early 2018, while sending the respondent notices that she was in arrears. The invoices specifically show how much propane was delivered during this time frame. In July and August 2018, the applicant sent the respondent demand letters. There is no evidence that the respondent ever responded to these outstanding invoices saying that she had not received the propane. Based on the evidence, I find that the applicant did continue to provide the respondent propane and that she did not pay for that service.
21. Based on the evidence, I find that the evidence does not show that there was an inequality in bargaining power resulting in a substantially unfair bargain. The respondent continued to receive the propane for more than a year and the evidence does not show that she thought she was being excessively charged. I also find that the evidence does not show that there was an inequality of bargaining power. The applicant presented the agreement to the respondent setting out the terms. I do not accept that the respondent signed it under duress due to her age, marital status, or the weather as the respondent alleges. Therefore, I find the agreement was binding and that the respondent breached it when she stopped paying for the propane in January 2017 as evidenced by the invoices.

Remedy

22. Given my conclusions above, I find the applicant is entitled to a remedy for the respondent's breach of the enforceable agreement. The agreement sets out the terms about what happens in the event of breach. The calculation of liquidated damages is based on an amount equal to the average monthly volume of propane supplied from the date of termination, which here is when the applicant retrieved its propane tanks on April 11, 2019, until the end date of the agreement which is September 8, 2020. This equals \$1,745.40. The applicant is also entitled to reimbursement of the cost of propane delivered which equals \$1,598.83. Therefore, I find the applicant is entitled to \$3,344.23 in debt and liquidated damages.

23. While the parties' contract permits 24% annual contractual interest on overdue accounts, the applicant did not claim interest in this dispute. So, the applicant is entitled to pre-judgment interest on the total \$3,344.23 award, from April 11, 2019 until the date of this decision, under the *Court Order Interest Act* (COIA). This amounts to \$78.43.

TRIBUNAL FEES AND EXPENSES

24. Under section 49 of the CRTA and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. Here the applicant was successful so it is entitled to reimbursement of its \$175 tribunal fees. There was no request for dispute-related expenses.

ORDER

25. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$3,597.66, broken down as follows:

- a. \$1,598.83 in debt and \$1,745.40 in liquidated damages, equaling \$3,344.23,
- b. \$78.43 in pre-judgement interest under the COIA, and
- c. \$175.00 in tribunal fees.

26. The applicant is also entitled to post-judgement interest as applicable.

27. Under section 48 of the CRTA, 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. The Minister of Public Safety and Solicitor General has issued Ministerial Order No. M086 under the *Emergency Program Act*, which says that tribunals may waive, extend or suspend a mandatory time period.

The tribunal can only waive, suspend or extend mandatory time periods during the declaration of a state of emergency. After the state of emergency ends, the tribunal will not have this ability. A party should contact the tribunal as soon as possible if they want to ask the tribunal to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.

28. Under section 58.1 of the CRTA, 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.

Kathleen Mell, Tribunal Member