



# Civil Resolution Tribunal

Date Issued: July 31, 2020

File: SC-2019-009325

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Intact Insurance Company v. ProWork Electric Inc.*, 2020 BCCRT 863

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

INTACT INSURANCE COMPANY and Boulangerie FOI Epi Inc

**APPLICANTS**

**A N D :**

PROWORK ELECTRIC INC., HERITAGE FOOD SERVICE GROUP OF CANADA LIMITED, RUSSELL HENDRIX FOODSERVICE EQUIPMENT, and WELBILT CANADA

**RESPONDENTS**

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## **REASONS FOR DECISION**

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Tribunal Member:

Rama Sood

## **INTRODUCTION**

1. This dispute is about fire damage. The applicant, Intact Insurance Company (Intact), holds a subrogated interest in the claim made by its insured, the applicant, Boulangerie FOI Epi Inc (Boulangerie). The applicants say Boulangerie's cooker

was damaged after it caught fire due to faulty wiring. The respondent, Welbilt Canada (Welbilt), manufactured the cooker. The respondent, Russell Hendrix Foodservice Equipment (Russell), sold the cooker to Boulangerie. The respondent, Heritage Food Service Group of Canada Limited (Heritage), repaired the cooker. The respondent ProWork Electric Inc.'s (ProWork) role in this dispute was not explained. The applicants say one or more of the respondents are responsible for the fire and seek \$5,000 in compensation for property damage.

2. Welbit says the fire was caused by deficient repairs to the cooker. Heritage denies its repairs caused the fire. Neither Russell nor ProWork submitted a Dispute Response and I will discuss this issue in further detail below.
3. The applicants are both represented by MC, a representative from Intact. Welbilt is represented by KW, a claims adjuster. Heritage is represented by DJ, who I infer is an employee.

## **JURISDICTION AND PROCEDURE**

4. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). 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, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
5. The CRT 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.
6. The CRT 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 CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

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.

## **ISSUE**

8. The issue in this dispute is whether any of the respondents are responsible for the fire and if so, what remedy is available to the applicants.

## **EVIDENCE AND ANALYSIS**

9. In a civil dispute like this one, the applicants bear the burden of proof on a balance of probabilities. The parties provided evidence and submissions to support their respective positions. While I have considered all of this information, I will refer to only what is necessary to provide context to my decision.
10. The following facts are not disputed:
  - a. Boulangerie purchased a Garland induction cooker GI-MO/QU 14000-650 208 VAC 14 KW from Russell on October 2, 2015 (cooker).
  - b. The cooker required servicing before the fire. The parties did not provide the cooker's repair history or the repairer's name.
  - c. On January 18, 2018, the cooker caught fire and was damaged.
  - d. Heritage repaired the cooker on March 28, 2018. The repairs involved installing a new coil set and wire harness. Heritage charged \$6,192.42 for parts and labour. The bulk of the cost was for parts.

11. Boulangerie made an insurance claim to Intact and paid a \$1,000 deductible. On May 11, 2018, Intact reimbursed Boulangerie \$4,915.97. The applicants did not explain how the amount was calculated.

***Expert report***

12. Intact provided a report prepared by Steve Baker dated October 18, 2018 (report). In his report Mr. Baker stated he was an expert witness and was giving his expert opinion. CRT rule 8.3 provides that an expert must state their qualifications in any written expert opinion evidence, and expert opinion evidence will only be accepted from a person the CRT decides is qualified by education, training, or experience to give that opinion. Mr. Baker's report did not contain his qualifications. However, I note that neither Welbilt nor Heritage raised any objections to the report and, in fact, referred to it in support of their positions. For this reason, I will give limited weight to Mr. Baker's report in this decision.

13. In his report, Mr. Baker stated on January 18, 2018 he conducted a fire origin and cause investigation of the cooker. According to Mr. Baker:

- a. The fire originated at the power supply harness connector coils and extended along the conductor insulation and the wire loom.
- b. The factory wiring harness had been repaired at some point.
- c. Heat from an incomplete or high resistance connection ignited the connector plastic body and the conductor insulation.
- d. Radiographic images of the power supply connector showed that before the fire, the stranded conductors were not inserted completely into the jaws of the connector terminals, one of the connectors had a damaged jaw, and another jaw was mis-shaped.
- e. The method used to assemble the conductors to the connector did not result in a complete and sound termination since the conductor strands were not inserted completely.

- f. Connector jaws damaged during assembly, re-assembly, or repair could have produced high resistance heating and ignition.
  - g. Boulangerie's employee, CK, who stated that the cooker consistently had issues before the fire and was serviced.
14. Based on the report, the applicants say either the manufacturer (Welbilt), the supplier (Russell), or the repair company (Heritage Food) is at fault for the cooker catching fire. The applicants did not explain why ProWork was named as a respondent. However, I infer from the evidence that ProWork repaired the cooker before the fire. I will consider each respondent's role in turn.

### ***Welbilt***

15. Welbilt says the report confirms previous repair work was done in the areas where the fire likely originated. It says the cooker was serviced and repaired by ProWork and/or Russell before the fire occurred. It also says there is no evidence that the fire was caused by a manufacturing error. It says the last party to repair or replace components near the fire's point of origin performed deficient repairs which caused the fire.
16. As stated above, the burden is on the applicants to prove their claim on a balance of probabilities. Since Mr. Baker's report indicates the fire could have been due to either repairs or assembly, I find the applicants have failed to prove that Welbilt is responsible for the fire. I dismiss the applicants' claim against Welbilt.

### ***Heritage***

17. Heritage says that the connection referred to in the report is a factory connection and the report confirms the frayed wires would not have been visible to its technician since they were within the connector. It says its technician simply unplugged the connector from the wiring harness and then replugged the connector. It says its scope of work was not related to the frayed wires in any way.

18. Although Heritage did not point this out, its invoice shows it repaired the cooker on March 28, 2018. Neither Heritage nor the applicants stated that Heritage repaired the cooker before the fire. Clearly, repairs performed almost 2 months after the event could not have caused the fire. For this reason, I dismiss the applicants' claim against Heritage.

### ***ProWork and Russell***

19. Both ProWork and Russell are in default since they did not file Dispute Responses as required. Where a respondent is in default, liability is assumed. This means that because they refused to participate, it is generally reasonable to assume that the applicants' position is correct about the issue at hand.

20. However, as mentioned above, the burden is on the applicants to prove their claim. The applicants did not explain why ProWork was named as a respondent and provided no submissions or evidence about how ProWork could be liable. As a result, I find the applicants have not established a cause of action against ProWork. I dismiss the applicants' claim against ProWork.

21. The applicants say Russell, as the supplier, is liable under the *Sale of Goods Act* (SGA). They say the cooker was not fit for its intended purpose.

22. The SGA governs the sale of goods to consumers. I find the SGA applies here. Section 18 of the SGA implies warranties of quality and fitness for goods in certain situations. Section 18(a) says that when a buyer implies or expressly lets the seller know the goods are being purchased for a particular purpose, there is an implied condition that the goods are reasonably fit for that purpose.

23. To establish a claim under section 18(a) of the SGA, the applicant must prove the following three factors on a balance of probabilities (see: *Nikka Traders v. Gizella Pastry*, 2012 BCSC 1412, at paragraph 65):

- a. The buyer has made known to the seller the purpose for which he requires the goods,

- b. The communication of that purpose shows that the buyer relies on the seller's skill or judgment, and
- c. The goods are of a description that is in the course of the seller's business to supply.

24. I find Boulangerie met these factors when it purchased the cooker from Russell.

25. Was the cooker reasonably fit for the intended purpose? The cooker was purchased on October 2015. Although the applicants did not provide any repair records, I accept Mr. Baker's evidence that the wiring harness was repaired at some and that the fire likely originated from connector jaws damaged during assembly, re-assembly, or repair. Since the cooker was repaired before the fire, I find it was not reasonably fit under section 18(a) of the SGA and Russell breached the implied warranty.

26. Section 56(2) of the SGA states that the measure of damages for breach of warranty is the estimated loss directly and naturally resulting, in the ordinary course of events, from the breach of warranty.

27. The direct costs to Boulangerie resulting from the breach are the cost of repairs done before the fire. However, Boulangerie did not provide evidence of such repair costs. I find these costs would have been comparable to some of the post-fire repair costs since they were done in similar areas of the cooker. In the circumstances, I exercise my discretion to award the applicants \$3,000 for the cost of repairs performed before the fire. I dismiss the applicants' remaining claims against the other respondents.

## **INTEREST, CRT FEES, AND EXPENSES**

28. The *Court Order Interest Act* applies to the CRT. The applicants are entitled to pre-judgment interest on the damages from March 29, 2018, the date of Heritage's invoice, to the date of this decision. This equals \$120.02.

29. 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 not to follow that general rule. Since the applicants were only partially successful, I find the applicants are entitled to reimbursement of \$87.50 in CRT fees. The applicants did not claim dispute-related expenses.

## ORDERS

30. Within 14 days of the date of this order, I order the respondent, Russell Hendrix FoodService Equipment, to pay the applicants, Boulangerie FOI Epi Inc and Intact Insurance Company a total of \$3,207.52 broken down as follows:

- a. \$3,000 as damages,
- b. \$120.02 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$87.50 in CRT fees.

31. The applicants are entitled to post-judgment interest, as applicable.

32. I dismiss the applicants' remaining claims.

33. Under section 48 of the CRTA, the CRT 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 CRT's final decision.

34. The Minister of Public Safety and Solicitor General has issued a Ministerial Order under the *Emergency Program Act*, which says that tribunals may waive, extend or suspend a mandatory time period. The CRT can only waive, suspend or extend mandatory time periods during the declaration of a state of emergency. After the state of emergency ends, the CRT will not have this ability. A party should contact the CRT as soon as possible if they want to ask the CRT to consider waiving,



suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.

35. 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. A CRT 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 CRT order has the same force and effect as an order of the Provincial Court of British Columbia.
36. A party in default (here, Russell and ProWork) has no right to make a Notice of Objection, as set out in section 56.1(2.1) of the CRTA.

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Rama Sood, Tribunal Member