



Civil Resolution Tribunal

Date Issued: August 22, 2022

File: SC-2022-001005

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Sharma v. Super-Save Enterprises Ltd.*, 2022 BCCRT 941

BETWEEN:

AVNITA SHARMA

APPLICANT

AND:

SUPER-SAVE ENTERPRISES LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about the timing of a propane delivery. The applicant, Avnita Sharma, contracted with the respondent, Super-Save Enterprises Ltd. (SSE), to fill 2 propane tanks at her home, occasionally or on request. Ms. Sharma says that in December 2021, SSE failed to provide a requested propane delivery because of alleged problems accessing the tanks. Ms. Sharma says there were no access problems, and

SSE did not deliver propane until January 2021. Ms. Sharma says that SSE's delivery delay caused her to run out of propane, so she needed to purchase heating equipment and more electricity to keep her water pipes from freezing, among other expenses. Ms. Sharma claims \$854.34 for SSE's delayed propane delivery and the items she allegedly purchased because of that delay.

2. SSE says that the parties' delivery contract required Ms. Sharma to provide access to her propane tanks, and that there was insufficient access during its December 2021 delivery attempt. SSE says it owes nothing for the delay.
3. Ms. Sharma is self-represented in this dispute. An employee represents SSE.

JURISDICTION AND PROCEDURE

4. These are the formal 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). Section 2 of the CRTA states that 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 the dispute's parties that will likely continue after the CRT process has ended.
5. Section 39 of the CRTA 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 that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.
6. Section 42 of the CRTA says 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 SSE failed to deliver propane as required under the parties' contract, and if not, whether it owes \$854.34 in damages.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, as the applicant Ms. Sharma must prove her claims on a balance of probabilities, meaning "more likely than not." I have read the parties' submissions and evidence, but refer only to the evidence and arguments I find relevant to provide context for my decision.
10. The parties undisputedly signed a contract on November 25, 2019 for propane delivery services. I find the copy of the signed contract page in evidence is poorly scanned and illegible in several places. However, I find a legible copy of the same contract, before it was signed, is also in evidence. I accept that both copies accurately represent the parties' agreement for propane delivery services, which the parties do not dispute.
11. I find the following sections of the contract are particularly relevant to this dispute:
 - a. The Service Requirements section said that 2 80 gallon tanks would be rented on a "year" frequency, and filled on a frequency of "degree day." There is no explanation of "degree day" before me, but I infer that this means deliveries were likely determined based on the weather or past usage.
 - b. Section 1 said that SSE had the exclusive right to provide propane and delivery services and associated equipment to Ms. Sharma's address during the contract's term and any renewal term.

- c. Section 5 said that Ms. Sharma must call upon SSE to fill her propane tanks at least once per year, failing which SSE could choose to fill them in its sole discretion. I find this section implies that Ms. Sharma could request a propane delivery from SSE at any time. However, I find nothing in the written contract said that SSE must deliver requested propane within a specific time period.
 - d. Section 7(d) said that Ms. Sharma agreed to maintain her property so that SSE had liberal and easy access to the propane tanks at all times, which included snow removal.
 - e. Section 12(d) said that SSE was not liable for any special, indirect, or consequential damages for breach of contract or otherwise. I find this includes damages or losses beyond the value or cost of the propane ordered from SSE.
12. Under the *BC Business Practices and Consumer Protection Act* (BPCPA), I find that the parties' contract was likely a direct sales contract, and possibly also a future performance contract. The BPCPA says consumers may cancel such a contract within a specified time period if it lacks certain required information, and that they may not be bound by the contract if they do not receive a copy of it. The parties did not discuss the BPCPA in their submissions. However, Ms. Sharma does not seek to avoid or cancel the contract, and does not say she failed to receive a copy of it. Further, I find the contract contains the information required under BPCPA sections 19, 20, and 23. So, I find nothing turns on the BPCPA in this dispute.
13. Ms. Sharma undisputedly ordered a propane delivery from SSE on December 10, 2021. SSE says it scheduled a delivery for the next day, which was unsuccessful due to "blocked access" and no "clear/safe access" to the tanks. An SSE delivery record for the December 10, 2021 order reads "no access" in the comments field, but it is unclear who wrote that comment or whether they directly observed access difficulties. I find there is no other evidence before me showing whether there was insufficient access to Ms. Sharma's propane tanks on December 11, 2021. However, as explained below, I find nothing turns on this.

14. Ms. Sharma says there were no obstacles to filling her propane tanks on December 11, 2021, and she did not witness a propane delivery attempt or receive a call from the driver on that date. Ms. Sharma admits that she did not follow up about the failed delivery until she called SSE on December 27, 2021 and re-requested a propane delivery. I find this was the first time Ms. Sharma learned about the allegedly blocked propane tank access, and that she told SSE there was no access problem.
15. SSE says it received Ms. Sharma's second propane delivery request on December 29, 2021, but due to seasonal office closures and vacations was unable to schedule the delivery until January 6, 2022. SSE undisputedly delivered propane to Ms. Sharma on January 6, 2022 without access problems. Ms. Sharma does not dispute that SSE correctly invoiced her \$854.34 for that delivery.
16. As noted, Ms. Sharma claims \$854.34 for the late delivery, which is the amount of the January 6, 2022 invoice. She claims that amount for "delayed services as well as items needing to be purchased due to delay of services." Ms. Sharma submitted several receipts for assorted items which totalled \$1,212.67, plus an estimate for plumbing repairs and a single electricity bill. Ms. Sharma does not clearly explain why she claims only an amount matching the invoiced amount for the delivered propane.
17. As noted, the parties' contract did not specify how long SSE could take to deliver propane in response to Ms. Sharma's requests. In the circumstances, and given that the contract made SSE the exclusive supplier of propane to Ms. Sharma's tanks, I find it was an implied term of the contract that SSE would deliver propane within a reasonable timeframe. I find that Ms. Sharma alleges she incurred the claimed expenses and losses because SSE broke the contract by not delivering propane within a reasonable timeframe, bearing in mind the winter season.
18. I find the evidence does not show what a reasonable delivery timeframe was in the circumstances, or that SSE failed to deliver within that timeframe, for the following reasons.

19. Ms. Sharma argues that contrary to SSE's statements, there was adequate access to her propane tanks at all times. Even if SSE was mistaken about the alleged access problems, I find Ms. Sharma's damage claims are based on SSE being responsible for her running out of propane because of delivery delays.
20. However, I find the evidence before me does not confirm how much propane was in Ms. Sharma's tanks on December 10, 2021 when she called SSE for a delivery. Although SSE delivery request documents in evidence record alleged propane levels, I find those levels are unreliable hearsay evidence and I give them little weight. Ms. Sharma says she ran out of propane, but she does not say exactly when. I find the submitted evidence does not show when the propane tanks emptied, and whether that was before or after Ms. Sharma called SSE on December 10, 2021. I also find there is no evidence of how fast Ms. Sharma was consuming propane on December 10, 2021, and therefore how many days remained before her propane ran out, if any. I find the evidence does not show that Ms. Sharma requested a delivery by a particular date, or that she informed SSE that she expected to run out of propane on a specific date. Further, there is no evidence before me showing how long SSE usually took to deliver propane after a request by Ms. Sharma. Ms. Sharma does not say what a reasonable delivery time would be in the circumstances of this dispute, or when she expected the propane to be delivered. I also find the evidence does not show that SSE failed to provide propane on the agreed "degree day" basis.
21. In addition, I note that Ms. Sharma did not follow up about the lack of propane delivery until at least December 27, 2021, which was 17 days after her initial request. I find this suggests that a delivery window of up to 16 days was reasonable. I note that SSE delivered the propane on January 6, 2022, which is only 10 days after Ms. Sharma first followed up and told SSE there was adequate access to her propane tanks. In the circumstances and based on the available evidence, I find that a 10 day delivery time after the second request was reasonable, given that it was less than 16 days and that seasonal office closures also occurred during that time.

22. For the above reasons, I find the submitted evidence does not show that SSE was responsible for Ms. Sharma running out of propane. I also find the evidence fails to show that SSE did not deliver propane within a reasonable timeframe under the contract. In addition, I find that Ms. Sharma did not follow up with SSE in a timely fashion about its lack of propane delivery, and expressed no concerns until 17 days after her initial delivery request.
23. Further, as noted above, the parties agreed under section 12(d) of their contract that SSE was not liable for any special, indirect, or consequential damages. I find the damages claimed by Ms. Sharma are all special, indirect, or consequential damages from propane delivery delays, and are excluded by section 12(d).
24. For the above reasons, in the circumstances of this dispute, I find SSE did not breach the parties' contract by failing the deliver requested propane within a reasonable timeframe. I dismiss Ms. Sharma's claim for \$854.34 in damages.

CRT Fees and Expenses

25. Under section 49 of the CRTA, and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Here, I see no reason not to follow that general rule. Ms. Sharma was unsuccessful in this dispute, but SSE paid no CRT fees. Neither party claimed CRT dispute-related expenses. So, I order no reimbursements.

ORDER

26. I dismiss Ms. Sharma's claims, and this dispute.

Chad McCarthy, Tribunal Member