

# SUPREME COURT OF YUKON

Citation: *365334 Alberta Limited v. Pishon Gold Resources Inc.*, 2019 YKSC 29

Date: 20190614  
S.C. No. 17-A0171  
Registry: Whitehorse

## BETWEEN

365334 ALBERTA LIMITED operating as A1 CATS

**PLAINTIFF**

## AND

PISHON GOLD RESOURCES INC. and AIMIN LIAO

**DEFENDANTS**

Before Madam Justice S.M. Duncan

Appearances:  
Mark E. Wallace and  
Allyssa Tone  
Aimin Liao

Counsel for the plaintiff  
Student-at-Law for the plaintiff  
Self-representing the defendants

## REASONS FOR JUDGMENT

### INTRODUCTION

[1] This is a contract dispute about payment for the defendants' use of the plaintiff's two Caterpillar D400 rock trucks, serial numbers: 8TF00847 and 8TF00286, ("the trucks") during the mining season of 2017. The original agreement was for the defendants to purchase the trucks and pay for them by the end of 2017. However, on October 31, 2017, after the end of the mining season, the defendant Amin Liao, told the plaintiff that he no longer wanted to buy the trucks as they were not in a good state of

repair. The plaintiff retrieved the trucks from the defendant's mine site in the spring of 2018. The defendants have made no payments to the plaintiff. The plaintiff now claims damages equal to the cost of rental of the trucks from August 3 to October 31, 2017.

The plaintiff also claims for parts belonging to his company that he says he gave to the defendants to use that were never returned or paid for.

[2] The defendant Amin Liao says he has not breached the agreement. He says the agreement is pending because he is still willing to buy the trucks, as long as they are repaired properly. He justifies not paying for the use of the trucks during the summer because the repairs were not done properly. He opposes paying rent because a rental agreement was never discussed and he does not agree with the proposed rental cost.

[3] The defendants counterclaim against the plaintiff for four things:

- 1) labour costs incurred to fix the trucks;
- 2) parts costs, in particular the drive shaft which was removed from another rock truck belonging to them;
- 3) damages for loss of production at the mine when use the plaintiff's trucks could not be used; and
- 4) damages for compensation for the plaintiff's reliance in this action on a previous contract between the parties in 2014 for a rent to own a similar rock truck.

[4] There is no written agreement or contract in this case other than email exchanges and the invoices.

[5] At trial there were only two witnesses; the owner and President of 365334 Alberta Limited operating as A1 Cats ("A1 Cats"), Mr. Ross Edenoste, for the plaintiff,

and the owner of Pishon Gold Resources Inc., Mr. Aimin Liao for the defendants. Mr. Liao chose to represent himself and his company in this trial.

## **FACTS**

[6] The plaintiff, A1 Cats, is an Alberta company that rents and sells heavy duty equipment. The business is located in Grand Prairie. Mr. Edenoste has a mine site in the Yukon, located approximately 20 kilometres from the defendant's mine site. This is where the trucks were stored.

[7] The defendant, Pishon Gold Resources Inc. ("PGRI") owns numerous placer mining claims near Mount Nansen in the Yukon. Mr. Aimin Liao is the owner of PGRI. Mr. Liao and PGRI entered into an agreement with Okanagan Contractor Services Ltd., ("Okanagan") for them to operate the mine. The President of Okanagan was Mr. William McKay. There is no evidence from him in this case as he passed away in April 2018.

[8] Mr. Liao was present at the mine site for the 2017 season. His role was to obtain permissions and permits to complete the work. Additionally, he was to oversee and assist where needed in the operation of the mine.

[9] Mr. Edenoste described the trucks as large trucks used in construction to haul ore, dirt, or other material. In the placer mining context, they are used to haul gravel from the pit dug to retrieve gold, to the processing plant.

[10] The trucks were both 1995 D400 Caterpillar rock trucks. According to Mr. Edenoste, a D400 Caterpillar rock truck was valued at \$350,000 as a new truck in 1995. The same rock truck if it were new today is valued at \$750,000. In 2014, the 1995 truck was valued at \$110,000. Each truck had been operated for approximately 14,000 hours

and had been minimally refurbished (meaning maintenance and repairs) before July 2017. The trucks had been used for 2,200 hours after being refurbished.

[11] In late June or early July, 2017, William McKay of Okanagan contacted Mr. Edenoste of A1 Cats from the PGRI mine site to express an interest in purchasing the trucks. Mr. Edenoste agreed to the sale. The evidence is not clear as to when the trucks were picked up from Mr. Edenoste's mine site. It happened either on June 25 or July 6, 2017.

[12] Between July 3 and 5, 2017, emails between Mr. McKay and Mr. Edenoste confirmed that both Okanagan and PGRI wanted to purchase the trucks. Mr. Edenoste's office responded with an invoice (number 54220, dated July 4, 2017) addressed to Okanagan and PGRI for the trucks described by serial number at the cost of \$150,000 for both, and a spare rim at the cost of \$1,000. The invoice also included the following particulars: the trucks are to be paid for by the end of 2017 in gold or cash; payments in gold were to be delivered to Technic Canada Inc. and deposited into the 'A1 Cats' Pool Account; the trucks are sold as is; where is; and the trucks are owned by A1 Cats until paid for in full. The total amount with GST was \$158,550, with interest of 2% per month. The copy of the invoice in evidence was not signed or dated by Okanagan or PGRI.

[13] An employee of Okanagan who is a part time mechanic inspected the trucks when they arrived at the PGRI mine site. He noted many deficiencies which he set out in a list dated July 7, 2017. William McKay called Mr. Edenoste on or about July 14, 2017, to advise that the trucks could not be used as the deficiencies were too extensive. Mr. Edenoste told Mr. McKay by phone and by email dated July 15, 2017, not to use the

trucks and to return them to his mine site as soon as possible as they were no longer for sale.

[14] On or about July 20, 2017, Mr. Liao called Mr. Edenoste to discuss proceeding with the sale as long as the trucks could be repaired. Mr. Edenoste agreed to pay for all the necessary repair work to be done by a mechanic and welder and for the costs of any required parts. Mr. Edenoste requested a mechanic, Jay Molnar, and welders from Mobile Maintenance Services (“Mobile Maintenance”), to travel from Whitehorse to the PGRI mine site to work on the trucks. They had done work for A1 Cats before. Mr. Edenoste told the company representatives that he would be paying the invoices, but they should take all instructions and directions about the truck repairs and any required parts from PGRI. Mr. Edenoste took no part in the repairs.

[15] From July 29 to August 3, 2017, Jay Molnar, the mechanic, was at the PGRI mine site working on the trucks. Mobile Maintenance welders were also there around that time although the exact dates are not clear. Quantum Machine Works Ltd. (“Quantum”) did some repair work of parts in Whitehorse and new parts were ordered from Finning (Canada) a division of Finning International Inc. (“Finning”) through their Whitehorse office.

[16] Jay Molnar reported to Mr. Edenoste on August 3, 2017, that they completed the repair work with a couple of exceptions. The outstanding items were the arrival of some ordered parts from Finning (seal kit, bearings) and the repair of a shock by Quantum in Whitehorse.

[17] Mr. Edenoste received invoices from Jay Molnar, Quantum, Mobile Maintenance, and Finning, all of which he paid. The invoices summarize the work done.

[18] Mr. Edenoste emailed Mr. Liao on August 3, 2017, had a telephone conversation with him after the initial email, and then they exchanged further emails. The result was that on August 3, 2017, Mr. Liao requested an invoice for the purchase of the trucks as he and Mr. Edenoste had discussed. Mr. Edenoste told Mr. Liao the repair work had been completed with the exception of the ordered parts, according to Jay Molnar. Mr. Liao's only concern expressed by email at that time was to ensure the replacement of the missing drive shaft that had been removed from another rock truck he owned. Mr. Edenoste agreed to replace the drive shaft with a spare one located at his mine site. He sent a second invoice for the purchase of the trucks to PGRI and/or Aimin Liao. This invoice (again numbered 54220 but now dated August 3, 2017), set out the serial numbers of the trucks; the price of \$150,000 for both trucks; to be paid by the end of 2017; sold as is; where is; no warranty as at August 3, 2017; the trucks are owned by A1 Cats until paid for in full. The total amount with GST was \$157,500, with 2% interest per month.

[19] The parties disagree over whether there were additional conditions discussed by phone. Mr. Liao argued at trial that this purchase agreement was conditional upon the trucks being in a state of good repair. Mr. Edenoste denies there were any additional conditions and in any event Mr. Liao accepted the state of repair of the trucks as of August 3, 2017.

[20] On August 16, 2017, Mr. Liao and Mr. Edenoste had another email exchange in which Mr. Liao asked whether Mr. Edenoste could bring the replacement drive shaft to his mine site. Mr. Edenoste replied that it was at his camp and someone could pick it up

or wait for him to deliver it when he came to his site in two weeks. Mr. Edenoste heard nothing more about the drive shaft and assumed it had been picked up.

[21] From August 16 to October 31, 2017, Mr. Edenoste and Mr. Liao had no communication. On October 31, 2017, Mr. Liao emailed Mr. Edenoste to advise that PGRI could not complete the purchase of the trucks, because A1 Cats had not disclosed the true condition of the trucks before the 'test drive' and the repairs on the trucks were not done as discussed.

[22] Mr. Edenoste said at trial he had no idea the condition of the trucks was problematic, as the last he had heard from Mr. Liao on that issue was in early August, when he confirmed he wanted to proceed with the purchase and expressed no concern about their condition.

[23] Mr. Edenoste attempted to have someone from A1 Cats pick up the trucks from PGRI's mine site on November 8, 2017. However, too much snow made this impossible. Between May 26 - 29, 2018, the trucks were retrieved and returned to Mr. Edenoste's mine site. One of them was being used at PGRI's mine site when A1 Cats went to retrieve them.

## **ISSUES**

[24] The issues are:

- a) Was there a breach of contract?
- b) If the contract was breached what are the damages?
- c) Is there money owing to the plaintiff for parts?

- d) Is the defendant entitled to damages for costs of labour, parts, loss of production and the introduction by A1 Cats of the 2014 rental agreement in this proceeding (counterclaim of PGRI)?

## **ANALYSIS**

### **a) Breach of contract**

[25] The parties disagree about whether the agreement was a purchase and sale agreement that was still being negotiated or a purchase and sale agreement that was breached by the defendant by his use of the trucks from August to October without payment.

[26] Mr. Liao maintains the discussion in July 2017 resulted in the original purchase and sale agreement that was never cancelled. He says there is no final agreement for purchase and sale yet; the parties are still in negotiation about the terms. He says he remains interested in the purchase of the trucks and he would like to continue the negotiations. He claims he owes nothing for summer of 2017 because the trucks were not in working condition.

[27] Mr. Edenoste says the purchase and sale agreement of August 3, 2017, was breached by PGRI. He says the July purchase and sale agreement was cancelled on or about July 15, 2017, when he told Mr. McKay not to use the trucks, given his complaints about their condition, to return them, as they were no longer for sale. The new purchase and sale agreement of August 3, 2017, was entered into after the repairs had been completed based on the information from Jay Molnar. The terms were set out in the invoice of that date. Mr. Liao implicitly accepted the condition of the trucks in the email exchanges of August 3 and 4, 2017, when he confirmed he wished to proceed with the



purchase without referring to their condition. He also stated at trial that he was aware of the condition of the trucks on August 3, 2017. He did not raise any concerns about their condition at that time, or at any time until October 31, 2017. Only then did he write that PGRI would not complete the purchase of the trucks because of their poor state of repair and requested they be removed from his property within 10 days. Mr. Edenoste had no knowledge during that time of any problems with the condition of the trucks.

[28] Although Mr. Liao said at trial he discussed with Mr. Edenoste that the purchase was conditional upon the trucks being in good repair, there is no evidence of this in the email exchanges in August. In fact, the email exchanges indicate the opposite. Mr. Liao wanted to proceed with the purchase and requested the invoice. The invoice dated August 3, 2017, said “trucks are sold as is; where is” and “no warranty as at August 3, 2017.” There was no communication between Mr. Liao and Mr. Edenoste about the condition of the trucks after August 3, 2017, until October 31, 2017. By that time, the mining season was over, and Mr. Edenoste was unable to do anything to fix the trucks, if in fact they required fixing. It is unfair for Mr. Liao to complain about the condition of the trucks after he has had the use of them for the mining season.

[29] I do not agree that the purchase and sale agreement remains incomplete and is still being negotiated. Mr. Liao was very clear in his email of October 31, 2017, that he had no interest in purchasing the trucks and requested they be removed, which they were. Mr. Liao and PGRI’s failure to pay anything for their use of the trucks is a breach of the agreement of August 3, 2017.

**(b) Damages for breach of contract**

[30] What remains to be determined is the value of the use of the trucks from August to October 2017. This depends on the nature of the agreement, the condition of the trucks and their value.

**i) nature of agreement**

[31] A1 Cats is no longer claiming the purchase price of the trucks because they are in A1 Cats' possession. Instead, A1 Cats claims for the rental cost of the trucks for the time period between August 3, 2017, and October 31, 2017, when PGRI had use of them and after the date the repair work had been substantially completed.

[32] I agree with Mr. Liao that no formal rental agreement was discussed or entered into between A1 Cats and PGRI. However, because the parties were operating on the basis of the purchase and sale agreement until Mr. Liao's October 31, 2017 email, in effect what occurred was a rental of the trucks by PGRI from A1 Cats from August 3 to October 31, 2017.

**ii) Condition of trucks**

[33] Mr. Liao stated in his October 31, 2017 email that the repairs of the trucks had never been completed as promised by A1 Cats in July 2017. As a result they were not functioning satisfactorily or at all, at least until the end of August 2017. He said in that email he would list all the issues and expenses incurred by PGRI in fixing the trucks. Mr. Edenoste never received any such list and none was provided at trial. Mr. Liao did provide at trial a list of deficiencies dated July 7, prepared by the employee who inspected the trucks shortly after they arrived at the PGRI mine site, but that was before the repairs were done.

[34] Mr. Liao also provided at trial a photograph of the trucks while they were being repaired in July 2017, with wheels removed. There are no photographs of the trucks after the repairs were completed.

[35] Mr. Liao expressed particular concern about the Y bar which he said was cracked inside and should have been replaced.

[36] The invoices from Jay Molnar provide detail of the work he did as follows:

- i. locate parts at A1 Cats and travel to PGRI;
- ii. install front RHS Shock;
- iii. clean and prep final drive assembly for one of the trucks (#8TF00286);
- iv. install transfer case yoke bearing assembly (#8TF00286);
- v. assemble and install final drive with new brake shoes;
- vi. remove rear shock for mobile welder on the other truck (#8TF00847);
- vii. install wheel and diagnose grinding at rear (#8TF00286);
- viii. remove drive shaft (rear axle) from the truck purchased by PGRI in 2014 (#8TF01160);
- ix. install both drive shafts on truck (#8TF00286);
- x. fill final drive with oil and torque wheel;
- xi. order bearings for rear shock;
- xii. order parts for rear shock for truck (#8TF00847); and
- xiii. send shock to Quantum Machine for repair.

[37] The total of the invoices from Jay Molnar, including travel, was \$2,100.

[38] The Mobile Maintenance invoice did not provide the same detail but they travelled to the PGRI mine site as well and billed a total of \$3,039.54. This included welding the Y bar, according to Mr. Edenoste.

[39] Quantum did not provide detail either but they charged for welding on parts for a total of \$2,467.50.

[40] There were six invoices for parts from Finning. The customer contact for all of them is Jay, although there are two different phone numbers for him. The parts were all to be shipped to A1 Cats/Ross Edenoste or A1 Cats/Glacier Drilling, attention Jay.

[41] The dates of the orders on those invoices range from August 3 to August 14. The parts included:

- 2 ring-retainers (\$18.29);
- a seal kit (\$435.49);
- 2 bearings and 2 rings (\$427.13);
- a seal, a seal o ring, a seal kit and a bolt (\$200.07);
- a nut and a washer (\$9.18); and
- a retainer (\$111.20).

[42] Mr. Edenoste noted he had referred to the seal kit orders (invoices 944791166 and 944780394) in the August 3, 2017 email as one of the outstanding items. Jay Molnar had also noted in his detailed invoices that he had ordered bearings (invoice 944779762).

[43] Mr. Edenoste testified the other parts invoices might not have been for parts for the trucks in this trial.

[44] Mr. Liao argued that the dates on the invoices for parts ordered from Finning proved there were a number of outstanding repair issues after August 3, 2017. On review of the invoices, the ones that do not refer to a seal kit or bearings are for relatively small amounts of money (\$18.29, \$9.18 and \$111.20). I note that invoice number 944796354 (retainer for \$111.20) was evidence in an earlier decision of a dispute between the same parties over tractor repairs (2018 YKSC 39). As a result Mr. Edenoste may be correct and at least this invoice was mistakenly included in this trial. I note that Jay Molnar advised Mr. Edenoste of the two outstanding parts (the shock that Quantum repaired and the seal kit, which he understood could be installed without difficulty by the employees at the PGRI mine site) and this was communicated to Mr. Liao on August 3, 2017. Mr. Liao raised no concerns about those outstanding parts, or any other parts, at any time, until trial. Given that the only parts invoices that appear to be unaccounted for amount to less than \$30, I find the parts invoices do not show that the trucks were in bad repair during August.

[45] I also find on review of the invoices that significant repairs were completed in July and August 2017, and paid for by A1 Cats. I do not have evidence from Mr. Liao about ongoing condition of the trucks after August 3, 2017, other than his oral testimony which was general and unsubstantiated.

[46] I find that PGRI did have the use of the trucks from August 3 to October 31, 2017, that their condition did not preclude their use, and that monies as a result are owed to A1 Cats.

***iii) Value of rental***

[47] Mr. Edenoste claims \$18,000 per month in rental costs. He says this is the rental rate for trucks of that age. He says this rate has not changed for the last three or four years and he rented one of the trucks to someone else for that amount in 2016.

[48] Mr. Liao objects to this amount because he says rental of the trucks was never discussed and there was no opportunity to negotiate the amount. He further says that the charge is premised on A1 Cats' ability to rent the trucks to someone else but there was no evidence of this. In fact, Mr. Liao says that they were not in working condition so no one would have wanted to rent them.

[49] Damages for breach of contract are usually calculated as expectation damages - which means putting the plaintiff in the position he would have been in had the contract been completed. For example, if a purchase agreement is breached, expectation damages are the loss of profits from the sale.

[50] In this case, expectation damages are appropriate. The purchase and sale agreement became a rental agreement on October 31, 2017, when Mr. Liao indicated he was no longer interested in the purchase. A1 Cats was without the trucks from August to October 2017, and is entitled to reimbursement from PGRI, who used the trucks for that time. This would put A1 Cats in the position they would have been had a rental contract been completed.

[51] Mr. Liao argues that there was no evidence that A1 Cats could have rented the trucks to someone else during that time and so they are not entitled to any damages for loss of profits. This is in effect an argument that A1 Cats must prove loss of opportunity in order to be awarded damages. However, expectation damages do not require proof

of other contracts that could have been performed but for the performance of the contract at issue. All that is required to be proved is a breach of contract and a resulting loss. The damages here are to put the plaintiff in the position they would have been in had the contract (in this case the rental) been performed.

[52] A1 Cats is entitled to damages equivalent to a reasonable rental cost for the two trucks between August and October 2017.

[53] Mr. Liao disagrees with the \$18,000 monthly rental charge but has not provided any evidence about what he thinks the trucks were worth to rent.

[54] Given Mr. Edenoste's evidence that \$18,000 was the going rate and he had charged that in 2016, and in 2014 in the previous agreement he had with PGRI, I conclude that \$18,000 is reasonable.

[55] Mr. Edenoste calculated one month as 28 days. For any days over 28, he calculates a daily charge of \$642.85 based on \$18,000 per month divided by 28. His invoice needs to be adjusted to remove three days since the calculation is based on 28 days for the period from August 3-28, 2017, which was in fact only 25 days. The amount of \$1,928.55 must be subtracted.

[56] Although the mining season in 2017 ended before October 31, 2017, as Mr. Liao left the mine site on October 16 and Okanagan left the mine site on October 21, 2017, PGRI had the use of the trucks until October 31, 2017 when the purchase agreement was terminated. As a result the damages are calculated between August 3 and October 31, 2017.

**(c) Money Owing to Plaintiff for Parts**

[57] Mr. McKay first asked in June or July 2017, about purchasing the trucks. He also asked about the purchase of a tire and rim for the other rock truck that was owned by PGRI as a result of a rental purchase agreement between PGRI and A1 Cats dated August 2014. The 2014 truck had a flat tire. Mr. Edenoste stated he told Mr. McKay he could have a rim for \$1,000 and a used tire that had 80% tread remaining for \$8,000. If he did not want to buy them, he could borrow and return them. The rim was listed on the A1 Cats invoice for July, 2017, but not on the August 2017 invoice. Mr. Edenoste requested the return of the rim and tire in the email exchanges of August. Mr. Liao responded first that he would ask William McKay about it and he later wrote that if they wanted to buy the rim PGRI would pay the price for the rim, and send the tire back to the camp. This did not happen and there were no further emails from Mr. Liao.

[58] Other spare parts that were taken from A1 Cats and not returned or paid for were:

- i) compressor;
- ii) steel line for shocks;
- iii) seal kits for cylinders;
- iv) parts book and service manual for the trucks worth approximately \$800;
- v) u-joint section of the drive shaft; and
- vi) box of cast iron welding rods.

[59] Mr. Liao's defence was that he had no knowledge about any of these parts. All arrangements were made by Okanagan and William McKay. He denies any responsibility of PGRI for these parts.



[60] This is not a viable defence in the circumstances. From an external perspective, there was no distinction between PGRI and Okanagan. Mr. Edenoste dealt with both William McKay and Mr. Liao about equipment for the PGRI mine site. Additionally, both William McKay and Mr. Liao held themselves out as having the authority to make decisions, representations, and orders for the PGRI mine site. Further, Okanagan was not named as a party to this action.

[61] In any event, Mr. Liao never followed up with Mr. Edenoste as promised about the tire and rim that William McKay obtained from A1 Cats. Mr. Liao provided no evidence at trial about any of the other parts claimed by A1 Cats.

[62] Without any contradicting evidence from Mr. Liao regarding the parts, I find that A1 Cats did loan these spare parts to PGRI and/or Okanagan and they were neither returned nor paid for. Mr. Edenoste through his evidence has shown on a balance of probabilities that parts were given to PGRI and not returned or paid for. A1 Cats is entitled to be reimbursed for the spare parts as claimed.

**(d) Counterclaim of PGRI**

[63] My finding above that there is insufficient evidence to conclude that the trucks were not in operable condition after August 3, 2017 means that I do not have to decide Mr. Liao's counterclaims for the costs of labour and loss of production. However, in the event that I am wrong in my finding about the condition of the trucks, and in order to provide Mr. Liao with my response to his counterclaim allegations and arguments, the following sets out my reasons for rejecting each of PGRI's counterclaims.

***i) labour costs***

[64] I do not accept PGRI's claim that two employees were 'borrowed' from Okanagan to work on the trucks at \$330 per day. The agreement dated May 29, 2017, between Okanagan and PGRI provided that Okanagan was responsible for ensuring the operation of the mine, including maintenance and repair of all equipment used at the mine. The staff positions listed in the agreement include two truck operators who are responsible for operating, maintaining and servicing the trucks, a welder/mechanic/millwright, and two labour positions whose responsibility includes assisting the mechanic and welder, among other things. The agreement between Okanagan and PGRI includes payment arrangements for these services. Even if PGRI did prove that repairs were needed and performed after August 3, 2017, they are not entitled to claim labour costs from A1 Cats, as this is already included in their agreement with Okanagan.

[65] In addition, if Mr. Edenoste had been advised of the additional problems, he may have arranged for any needed repairs to be done, using his own contractors, as he did in July. Mr. Liao's failure to tell Mr. Edenoste of the need for more repairs deprived him of this opportunity which could have resulted in lower costs and greater efficiencies and effectiveness.

***ii) loss of production***

[66] Mr. Liao's claim for loss of production as a result of the poor condition of the trucks is based on the amount of gold that he says was mined in 2017, compared to the amount that has been mined in previous years. In 2017, 650 ounces of gold were mined, working out to approximately 15 - 20 ounces per day. He calculates the loss of

production in the 2017 season to be \$120,000 based on his estimate of production from other years.

[67] Mr. Liao provided no evidence of production in his usual or average mining year. He also provided no evidence of any other factors that may have affected production. Placer mining is a complex activity with many variables, starting with the presence of minerals in the claims. In the absence of more evidence about the variables affecting PGRI's placer mining claims, I cannot find that any loss of production is attributable to the trucks.

***iii) Parts costs***

[68] This part of the counterclaim does not depend on my finding about the condition of the trucks.

[69] The only part Mr. Liao specified in support of his claim of \$18,000 for costs of parts was the drive shaft taken from the rock truck he purchased in 2014 to install in one of the trucks. Jay Molnar's invoice substantiates that this was done.

[70] However, Mr. Edenoste testified, supported by email exchanges, that he offered to Mr. Liao to replace the drive shaft with one from his mine site. He said Mr. Liao could send someone to pick it up, or he could bring it when he arrived at his mine site. Mr. Edenoste testified that he believed it was picked up from his mine site on August 17, 2017. He heard nothing more about this from Mr. Liao until this litigation commenced. There was no evidence from Mr. Liao about what he did in response to Mr. Edenoste's offer, other than his evidence at trial that he did not have anyone he could send over to Mr. Edenoste's mine site so it was never picked up. There was no evidence from him about whether he tried to contact Mr. Edenoste when he arrived at his mine site.

[71] I find that A1 Cats is not responsible for the cost of the drive shaft replacement because Mr. Edenoste offered a replacement to Mr. Liao. If Mr. Liao chose not to accept the offer, he cannot now claim damages as a result of his failure to do so.

***iv) use of 2014 agreement***

[72] This is also part of the counterclaim that is independent of any finding on the condition of the trucks after August 3, 2017.

[73] Mr. Liao claims damages arising from A1 Cats' introduction in this case of the rental purchase agreement between the parties of 2014. He says it caused him confusion, stress and suffering to see the agreement, which he says arose from a completely different fact situation than this case and is not applicable here. Here there was no discussion about renting, only purchasing. In 2014 the deal was clearly completed.

[74] A1 Cats explained two reasons for the introduction of the 2014 agreement: first, to show that the rental rate for a similar rock truck at that time was \$18,000 per month, in order to substantiate the monthly rate claimed here; and second, to show that the parties had a previous positive business relationship in a similar though not identical business deal.

[75] I find that Mr. Liao is not entitled to compensation for suffering as a result of A1 Cats' introduction of the 2014 agreement. I accept that this was a different agreement in different circumstances, but I agree there is some relevance to its introduction for the reasons provided by A1 Cats. While Mr. Liao may have been surprised at its introduction in this trial, its presence is relevant, and does not give rise to damages for pain and suffering.

## CONCLUSION

[76] In summary, I find that A1 Cats is entitled to judgment for the following:

- i. rental costs in the amount of \$114, 428.66 plus applicable GST;
- ii. parts costs in the amount of \$20,900.00 plus applicable GST; and
- iii. pre and post judgment interest in accordance with the *Judicature Act*,  
R.S.Y. 2002, c. 128.

[77] The counterclaim of PGRI and Aimin Liao is dismissed.

[78] Costs may be spoken to if necessary.

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DUNCAN J.