

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Eagle Valley Excavating Inc. v. Kamea Contracting Ltd.*,
2025 BCSC 707

Date: 20250423
Docket: S193521
Registry: Vancouver

Between:

Eagle Valley Excavating Inc.

Plaintiff

And

Kamea Contracting Ltd.

Defendant

Before: The Honourable Justice K. Loo

Reasons for Judgment

Counsel for the plaintiff:

V. Aldridge

Counsel for the defendant:

J. Woods

Place and Date of Hearing:

Vancouver, B.C.
March 12, 2025

Place and Date of Judgment:

Vancouver, B.C.
April 23, 2025

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Introduction

[1] For the construction of a wastewater treatment plant in the District of North Vancouver, the general contractor, Acciona Design Build Joint Venture, engaged the defendant, Kamea Contracting Ltd., to complete certain work on the project site. In late 2017, Kamea retained the plaintiff, Eagle Valley Excavating Inc., to haul away and dispose of waste soil from the site.

[2] Eagle Valley’s work was composed of two parts: transporting the waste soil and disposing of it. The disposal of the waste soil required Eagle Valley to pay a “tipping fee” at a fill site. The cost of disposal depended on whether the soil was “residential grade” (“RL”) or “industrial grade” (“RL+”), as those terms are defined in the *Contaminated Sites Regulation*, B.C. Reg. 375/96. It is less expensive to dispose of RL grade soil than it is to dispose of RL+ grade soil.

[3] There was a meeting between the parties on January 12, 2018. This meeting is the focus of this action and will be discussed in more detail below.

[4] At the meeting, Kamea alleges that the parties agreed that future increases to the tipping fees charged by Eagle Valley would be conditional on Eagle Valley fulfilling certain obligations. Eagle Valley denies any such agreement or, alternatively, denies the terms of the agreement as alleged by Kamea.

[5] Each party seeks judgment against the other under R. 9-7 of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009. Eagle Valley claims that Kamea owes it \$201,747.00 for unpaid invoices. Kamea claims that it does not owe this amount and counterclaims for \$26,593.35 on the basis that Eagle Valley was not entitled to charge the higher rates after January 19, 2018, and that, as a result, it overpaid.

Issues

[6] This Court must determine the following issues:

1. Did the parties enter into an oral agreement on January 12, 2018?
2. If yes:

- a) What were the terms of the agreement?
- b) Did the parties fulfil their obligations under the agreement?

Suitability

[7] Under R. 9-7(15), the Court may grant judgment on a summary trial unless it is unable, on the whole of the evidence, to find the facts necessary to decide the issues of fact or law, or if it is of the opinion that it would be unjust to decide the issues on the application. If the Court determines that judgment is appropriate, it must then determine whether the applicant has established entitlement to the relief sought.

[8] In *C.K.M. v. H.R.M.*, 2021 BCSC 1297 at para. 14, this Court cited the well-known decision in *Inspiration Management Ltd. v. McDermid St. Lawrence Ltd.* (1989), 36 B.C.L.R. (2d) 202 at 214, 1989 CanLII 229 (C.A.), where the Court of Appeal set out the factors a judge may consider when determining whether it would be unjust to grant judgment in a summary trial. These factors include:

- a) the amount of money involved;
- b) the complexity of the matter;
- c) the urgency of the case;
- d) the prejudice likely to arise by reason of delay in taking the case to trial;
- e) the cost of taking the case forward to a conventional trial in relation to the amount involved; and
- f) the course of the proceedings.

[9] In this case, although there are some issues of credibility to be resolved, I conclude that I can find the facts necessary to decide the issues of fact and law and that it is just to decide the issues on this application. The primary credibility issues are whether the parties reached an agreement at the January 12, 2018 meeting, and

what terms, if any, the parties agreed upon. I have been able to find the necessary facts in relation to those issues based on the parties' subsequent conduct, the examination for discovery evidence of Mr. Dyck, the pleadings, and the parties' correspondence.

[10] I observe that the amount of money involved in this case is relatively modest and the issues are not particularly complex. The cost of a full trial would be disproportionate to the amounts at issue, and the delay that would result from setting the matter down for a full trial would be prejudicial to the parties.

[11] Neither party opposes determination by summary trial: indeed, the parties urge the Court to summarily determine this dispute which arises from events that occurred more than six years ago.

Discussion

Was there an oral agreement made on January 12, 2018?

Factual context

[12] The facts leading up to January 12, 2018 are not in serious dispute. The parties do not contest that there was an initial oral agreement between them for the trucking and disposal of waste soil from the project site. Further, it is common ground that there were issues about the soil's grade from the outset, as the soil had previously been rejected by a fill site because it was potentially contaminated.

[13] Ultimately, Della Terra-Soil Management Solutions Ltd., which was owned by the Schxwá:y band in Chilliwack, agreed to take the soil. Between January 3 and January 12, 2018, Eagle Valley removed 131 loads of soil from the project site and disposed of those loads at the Della Terra fill site for an agreed-upon price of \$825 per load. That price was comprised of \$648 in trucking fees and \$167 in tipping fees. Eagle Valley paid the fill site \$150 per load in tipping fees and earned a markup of \$17 per load on those fees. It is common ground that the initial 131 loads of soil were handled and disposed of as RL grade.

[14] Richard Champagne, the director of Kamea, deposes that in the second week of January 2018, Eagle Valley advised him that Della Terra was insisting that the soil from the project site should be disposed of as RL+ grade, despite it having disposed of the first 131 loads as RL grade soil.

[15] Peter Dyck, the president of Eagle Valley, neither denies nor confirms Mr. Champagne's evidence regarding the reason for the meeting. In any event, a meeting occurred on January 12, 2018. Mr. Champagne attended on behalf of Kamea, Mr. Dyck on behalf of Eagle Valley, and Phil Frustagli as a representative of Della Terra. Amir Sadeghi, an environmental consultant working with Della Terra, also attended the meeting.

[16] Mr. Champagne deposes that, at the meeting, he advised Mr. Dyck that Kamea would agree to an increase in the price charged by Eagle Valley only on certain conditions:

I made it very clear to Mr. Dyck that ... any surcharge ... would have to be backed up by proof that the Soil was actually contaminated, and that the Soil was actually disposed of in an industrial cell. In particular, I insisted that Kamea be afforded a site visit to the Della Terra facility, sufficient documentation to substantiate that all of the Soil went into an industrial, or "RL+", cell, and test results demonstrating that the Soil was actually contaminated.

In short, if Kamea was going to be charged as if the Soil was disposed of as industrial grade, I wanted to be very sure that Kamea was getting what it paid for.

Mr. Dyck seemed to appreciate my concerns, and Eagle Valley explicitly agreed to the Additional Obligations during the January 12th meeting.

[17] Similarly, Rodrigo Camelo, a senior project manager for Acciona deposes:

I recall that Mr. Champagne explicitly told Mr. Dyck that any agreement to increase tipping fees based on the environmental quality of the Soil was going to have to be contingent on Eagle Valley securing a visit of the Della Terra facility for Kamea to ensure that the Soil was being disposed of in an "RL+" cell, as well as sufficient chain of custody documentation to substantiate same. Mr. Champagne also insisted on eventually receiving test results that demonstrated the Soil was contaminated so that disposal in an "RL+" cell was justifiable.

[18] On the other hand, Mr. Dyck denies that the parties made the agreement alleged. He deposes:

At no point was there any discussion or agreement between me and Richard of Kamea that the [new rates] were to apply only to soil deposited into an RL+ cell at the Dump Site.

[19] Mr. Champagne deposes that the January 12 meeting was adjourned pending the results of a further environmental analysis of the soil. He also deposes that he “sent an email to most of the meeting participants that afternoon to recap what was discussed.” That January 12 email states:

First thing Monday morning we will receive all of the approvals to proceed at the going rate based on the test samples executed by Acciona this week. As discussed we should have the results by Monday.

In the event that the samples come in at a different rate we will at our discretion opt to

1. Negotiate with your firm.
2. Tender the process.

As well we will require a site visit with our client to confirm as to where the material is being disposed of.

[20] While they were waiting for the further test results, the parties agreed to a temporary increase in fees to \$1,400 per load, consisting of \$700 in tipping fees and \$700 in trucking fees. Mr. Dyck deposes that these increased fees were charged “due to the unknown quality of the soil.” Mr. Champagne deposes that they were to be charged “until more was known about the soil.”

[21] On January 16, 2018, the parties received further testing results that showed that the soil was uncontaminated and could be disposed of as RL grade. However, those testing results did not satisfy Della Terra. Mr. Champagne deposes: “To my dismay I was then informed by Eagle Valley that Della Terra was still insisting that the material had to be treated as industrial, or RL+ grade.”

[22] Mr. Champagne deposes further:

Trying to make the best of a bad situation, then, I made sure to remind Eagle Valley of the [obligations] that had been discussed at the January 12th Meeting. I made it very clear that Eagle Valley knew that Kamea was only

going to pay the tipping fee surcharge if it could be shown that the Soil was actually disposed of as “RL+” material.

[23] On January 17, 2018, a letter was sent to the parties by the Schxwá:y band, stating:

This is to confirm that the material from [the project site] have been approved and are acceptable for disposal as RL+ at Schxwá:y fill-site located at Wolfe Road, Chilliwack. The approval is based on CARO Analytical Services reports dated November 03, 2017 and January 15, 2018. It’s our understanding that regular sampling (1 sample/250m3) will be provided to our environmental consultant in order to confirm the import material meets the site’s standards.

[24] Following discussions between the parties, Mr. Dyck sent an email to Mr. Champagne on January 17, 2018, in which he advised that “as of Friday Jan 19/18 the new rate of \$1,050 plus taxes per truck and transfer will apply.” The \$1,050 fee was comprised of tipping fees of \$400 per load and \$650 in trucking fees.

[25] Mr. Dyck’s evidence is that the price Eagle Valley charged Kamea rose because of an increase in the price Della Terra charged Eagle Valley. Why Della Terra’s price rose is not clear from the evidence, but it appears that the increase was at least partly related to soil grade—particularly the fact that Della Terra was to treat the soil as RL+, as per its January 17 letter.

[26] Beginning on January 19, 2018, Eagle Valley began to charge Kamea the new rate of \$1,050. From time to time after February 24, 2018, Eagle Valley reduced the tipping fees charged for “dry” soil from \$400 per load to \$230 per load but maintained the \$400 per load fees for “wet” soil. In my view, these periodic reductions are not relevant to the issues in this case.

[27] For the next few months, Eagle Valley issued invoices at the new rates and Kamea paid them. Kamea claims that its payments were conditional upon Eagle Valley fulfilling the terms of the agreement alleged.

[28] On May 3, 2018, Mr. Champagne wrote to Mr. Dyck requesting “confirmation that the [soil] shipped from [the project site] is in an RL plus designated area.”

[29] On May 7, 2018, Mr. Sadeghi, the environmental consultant, provided a letter stating:

It's my understanding that some of the material received at Skway facility in Chilliwack was characterized as RL+. This is to confirm that all of the material that was received as RL+ was disposed at the RL+ designated area.

[30] Mr. Champagne deposes that he was “furious” upon receiving this letter. He viewed it as inadequate because “it did not include sign-off from either Della Terra or the Schxwá:y; any location information for the disposal of the Soil, nor did the letter even claim that all of the Soil had been disposed of as ‘RL+’.”

[31] Sometime between May 7 and 10, 2018, Kamea severed its business arrangement with Eagle Valley, and Eagle Valley stopped disposing of soil from the project site.

[32] On July 3, 2018, Mr. Sadeghi provided a revised letter which stated:

This is to confirm that all the material that was received from North Shore Waste Water Treatment Plan located at 1311 West 1st in North Vancouver was disposed at the RL+ designated area.

[33] Kamea refused to pay outstanding invoices issued by Eagle Valley and this action ensued.

Analysis

[34] As discussed, Mr. Champagne and Mr. Camelo assert that, on January 12, 2018, Eagle Valley and Kamea agreed to several terms upon which Kamea’s payment of higher tipping fees were conditional. Mr. Dyck denies that the new, post-January 19 rates were conditional upon disposal of the soil in an RL+ cell. He deposes that any agreements made that day were overtaken by subsequent events—in particular, the parties’ agreement to the new rates on January 17, following the receipt of the test results stating that the soil was not contaminated.

[35] Having reviewed the documentary record and the evidence of Mr. Dyck, Mr. Champagne, and Mr. Camelo, it is my view that the answer lies somewhere between the positions of the two parties.

[36] I reject the proposition that Eagle Valley assumed no obligations for the benefit of Kamea on January 12. This proposition is belied by the subsequent correspondence between the parties and by Mr. Dyck's admissions at his examination for discovery.

[37] In particular, long after January 19, 2018, Mr. Dyck readily obtained and delivered the letters provided by Mr. Sadeghi. There is no evidence that Mr. Dyck asked why he was being asked for the letters or that he refused to obtain them.

[38] Indeed, Mr. Dyck admits that he knew that, as a condition of payment, Eagle Valley was required to provide confirmation to Kamea regarding the disposal of the soil. At his examination for discovery, he testified:

Q. Sir, you were aware that Eagle Valley may not have been paid for the soil disposal if Kamea was not satisfied with where it had been disposed of, correct?

A. The e-mail, yes. The e-mail says that the way it's written there.

[39] And later:

Q. Did you ever make it a requirement of Della Terra that they provide you with confirmation of where the soil was being disposed of in order for you to be liable to pay them?

A. In conversation I had told them many times we needed to provide – prove where the material was going in what type of cell.

Q. And you'll agree that you told Della Terra that many times because you knew Kamea was going to be asking for that proof, right?

A. Verbally told them that many times.

[40] And further:

Q. ... you would agree with me that the reason why you were telling Della Terra that they needed to prove where the soil was going because you knew that Kamea was going to ask you for that proof.

- A. Because Kamea kept asking for it on a constant basis, so I was asking for it.

[41] Based on the evidence described above, I find that if Kamea was going to be required to pay a higher rate to Eagle Valley, Mr. Champagne wanted to be sure that the soil was in fact going to be deposited into an RL+ cell. I am satisfied that there were discussions at the January 12 meeting during which Mr. Dyck agreed that he would provide proof that the soil was disposed of in this manner. I find that this agreement was a condition of Kamea's obligation to pay any higher prices in the future, and that the agreement's application was not limited to the prices charged while the test results were pending.

[42] However, this is not the end of the analysis. The Court must next consider whether Kamea's more detailed assertions regarding the alleged January 12 agreement have been made out on the evidence.

What were the terms of the agreement?

[43] As discussed, Kamea claims that on January 12, the parties agreed that Eagle Valley would (a) arrange a site visit for Kamea, (b) provide chain of custody documentation to Kamea, and (c) provide soil tests to Kamea demonstrating that the soil was contaminated, and that all of these obligations were conditions of Kamea's agreement to pay the higher rates after January 19.

[44] In my view, Kamea has failed to establish these more detailed claims, which are supported only by the affidavit evidence of Mr. Champagne and Mr. Camelo.

[45] Counsel for Kamea submitted that Mr. Camelo was an independent witness with "no skin in the game" and therefore ought to be believed. In my view, this consideration does not weigh heavily in the analysis. Kamea and Acciona, for whom Mr. Camelo worked, have an ongoing business relationship, while Acciona and Eagle Valley had no relationship at all. While Mr. Camelo was independent from the parties in a strict sense, in that he did not work for either party, he had reason to favour the interests of Acciona over those of Eagle Valley.

[46] More importantly, in my view, there is no contemporaneous documentary evidence that either party expected Eagle Valley to provide chain of custody documentation or test results to Kamea as a condition of it paying the higher prices after January 19, 2018.

[47] The January 12 email from Mr. Champagne recapping the discussions at the meeting does not refer to chain of custody documentation at all, or to test results beyond those that both parties expected to receive four days later.

[48] I note that there is reference to weekly testing in later letters and emails from the Schxwá:y. However, it is apparent from the correspondence that this testing was for the benefit of the Schxwá:y “to confirm [that] the import material meets the site’s standards.” It was not to confirm that the soil was contaminated for the benefit of Kamea.

[49] In my view, any agreement between the parties regarding a further testing requirement on January 12 would have been made redundant by the January 16 test results. One might ask: what more would there have been for the parties to learn? It was evident from Schxwá:y’s letter dated January 17, 2018, that Della Terra had approved the soil for disposal into an RL+ site even though the test results, released the day before, had concluded that the soil was not contaminated.

[50] Mr. Champagne’s January 12 email does state that “we will require a site visit with our client to confirm as to where the material is being disposed of.” He also wrote to Mr. Dyck on April 17, 2018, asking him to “please coordinate the site visit next week.” However, although this correspondence demonstrates that Kamea sought a site visit, there is no evidence other than the affidavits of Mr. Champagne and Mr. Camelo that Eagle Valley agreed to one as a condition of payment.

[51] Earlier in these reasons, I concluded that Eagle Valley and Kamea had entered into an agreement. This conclusion is based on Mr. Dyck’s admissions at his examination for discovery and his subsequent conduct: namely, he sought to provide

proof of disposal into an RL+ cell when asked. There is no such corroborative evidence in respect of the alleged site visit requirement.

[52] It is notable that none of the more detailed terms of the alleged agreement are pleaded in Kamea’s Response to Civil Claim. The Response states at para. 11:

[11] On or about January 18 [sic], 2019, Eagle Valley and Kamea agreed that if and only if the soil from the Treatment Plan had to be deposited and was actually deposited into an RL+ cell, Kamea would pay to Eagle Valley an increased disposal costs of \$230 per dry load and \$400 per wet load, otherwise the disposal costs would revert to the contractually agreed upon price of \$167 per load.

[emphasis added]

[53] In his affidavit, Mr. Champagne deposes that after the test results were received on January 16 and Della Terra advised that it would be disposing the soil as RL+ grade no matter what, he “made it very clear [to Mr. Dyck] that Kamea was only going to pay the tipping fee surcharge if it could be shown that the Soil was actually disposed of as “RL+” material” [emphasis added].

[54] Moreover, in a letter from Mr. Champagne to Mr. Dyck on May 7, 2018, immediately after receiving the first letter from Mr. Sadeghi, Mr. Champagne stated: “we need confirmation in writing that ‘ALL’ of the [soil] shipped to the Skway site is in RL plus cell.” There is no mention in his email of a site visit, chain of custody documentation, or test results.

[55] In my view, it is apparent from the evidence that the critical question for Mr. Champagne was whether Della Terra was disposing of the soil in an RL+ cell and therefore charging RL+ rates to Eagle Valley. He wanted to be assured that Kamea was not paying a higher rate while Eagle Valley was paying a lower rate and receiving a windfall. As stated in his affidavit, he “wanted to be very sure that Kamea was getting what it paid for.”

[56] In summary, I find that the only agreement that is established on the evidence is that Eagle Valley would provide proof that the soil was disposed of in an RL+ cell,

and that Kamea's obligation to pay the higher rates after January 19, 2018 was conditional upon Eagle Valley's fulfillment of that obligation.

Did the parties fulfil their obligations under the agreement?

[57] As discussed above, Mr. Sadeghi wrote a letter on July 3, 2018, that was later delivered to Kamea. The letter stated:

This is to confirm that all the material that was received from North Shore Waste Water Treatment Plant located at 1311 West 1st in North Vancouver was disposed at the RL+ designated area.

[58] On its face, this letter fulfilled the terms of the oral agreement described above: it was proof that the soil from the project site was deposited into an RL+ site at Della Terra.

[59] Kamea submits that this letter was not sufficient to fulfill the terms of the agreement for several reasons. Some of those reasons—for example, that a chain of custody report and test results were required—have been dealt with above.

[60] Kamea submits that the letter is deficient because it was not authored or signed by Della Terra. In an email dated May 7, 2018, Kamea demanded that a letter be authored and signed by various parties. Despite this, I find that there was no agreement between the parties that the proof had to be provided in any particular way or by any particular person.

[61] Mr. Sadeghi was the president of an environmental consulting firm. He was known to the parties, having attended the January 12 meeting. Mr. Camelo deposes that he understood Mr. Sadeghi to be working with Della Terra. I also note that Mr. Frustagli of Della Terra emailed a copy of the July 3 email to Mr. Dyck. Mr. Dyck then forwarded it to Mr. Champagne. The parties, particularly Kamea, could reasonably have inferred from this chain of correspondence that the letter was approved by Della Terra. In my view, it was reasonable for Mr. Sadeghi to have sent and signed the letter. The argument that his letter had to be signed by other persons is one of form over substance.

[62] Kamea also attacks the validity of the July 3 letter by comparing it to Mr. Sadeghi's earlier May 7 letter which stated that only "some" of the soil from the treatment plant was deposited into an RL+ site. Kamea argues that because of the unexplained discrepancies between the May 7 letter and the July 3 letter, the latter ought not to be accepted as valid proof under the agreement between the parties.

[63] I agree that the prior delivery of the May 7 letter and its inconsistent language raise unanswered questions about the July 3 letter. However, the inconsistency does not mean that the terms of the agreement went unfulfilled.

[64] In my view, Eagle Valley's obligation under the agreement was to provide Kamea with proof that the soil was disposed of in an RL+ cell. By the July 3 letter, it did so. Once that proof was provided, the condition was fulfilled and Kamea was required to pay the outstanding invoices, subject only to Kamea being able to persuade this Court on a balance of probabilities that the letter was false.

[65] I cannot find that the July 3 letter was false simply because it was inconsistent with the May 7 letter. There could be innocent explanations for the inconsistencies. Neither party obtained evidence from Mr. Sadeghi or from anyone at Della Terra to confirm or deny that the soil was actually disposed of as RL+ soil.

[66] Mr. Dyck, on the other hand, deposes that he attended at the fill site and saw that soil from the project site was dumped into what he was told was an RL+ area. I also note that the January 17 letter from the Schxwá:y confirmed in advance that the material from the project site was approved and was acceptable for disposal as RL+ grade soil. Although it is not necessary to make any finding in this regard in order to dispose of this case, the scant evidence available to the Court on this issue supports an inference that the July 3 letter was true.

[67] For all of these reasons, I find that the July 3 letter fulfilled the terms of the agreement between the parties and that Kamea is required to pay the outstanding invoices at the rates charged after January 19.

[68] I should note that Kamea also argued that it would lose money if it did not accept the new rates and that it was under pressure to accept the rates charged by Eagle Valley after January 19. However, it did not plead or argue duress. Further, the subjective motives of one of the parties are not relevant to the Court when construing contracts. As the Court of Appeal stated in *Berthin v. Berthin*, 2016 BCCA 104:

[46] The test, of course, is not what the parties subjectively intended but "whether parties have indicated to the outside world, in the form of the objective reasonable bystander, their intention to contract and the terms of such contract": see G.H.L. Fridman, *The Law of Contract in Canada* (6th ed, 2011) at 15.

Conclusion and costs

[69] There is no dispute about the mathematical aspects of this claim. Kamea is liable to Eagle Valley in the amount claimed, being \$201,747, plus contractual interest accrued from July 3, 2018 at the rate of 24% per annum.

[70] Kamea's counterclaim is dismissed.

[71] Unless there were settlement offers relevant to costs of which I am not aware, costs of the action shall be payable by Kamea to Eagle Valley at Scale B. If there were any such settlement offers, either party may arrange through the registry to make brief written submissions as to costs.

"The Honourable Justice Loo"