



Civil Resolution Tribunal

Date Issued: April 27, 2022

File: SC-2021-007442

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Apex Lands & Orchards Ltd. v. Place-Crete Systems L.P.*,
2022 BCCRT 486

B E T W E E N :

APEX LANDS & ORCHARDS LTD.

APPLICANT

A N D :

PLACE-CRETE SYSTEMS L.P.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about the delivery of fine sand for making concrete for 3 buildings. The applicant, Apex Lands & Orchards Ltd. (Apex), delivered the sand to the respondent, Place-Crete Systems L.P. (Place-Crete). Apex says Place-Crete owes \$4,677.12 under an unpaid invoice.

2. Place-Crete disagrees. It says Apex charged for providing and delivering 384 cubic yards of sand for each of buildings 2 and 3, but only delivered 308 and 306 cubic yards of sand for those buildings, respectively.
3. Apex's owner, C. Mark Turton, represents it. A manager represents Place-Crete.
4. For the reasons that follow, I find Apex has proven its claims and make the orders set out below.

JURISDICTION AND PROCEDURE

5. 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). 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.
6. 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. Some of the evidence in this dispute amounts to a "they said, they said" scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue

7. 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.
8. 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

9. The issue in this dispute is whether and how much Place-Crete owes Apex for providing and delivering fine sand.

BACKGROUND, EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant Apex must prove its claims on a balance of probabilities. This means more likely than not. I have read all the parties' submissions but refer only to the evidence and arguments that I find relevant to provide context for my decision.
11. I begin with the undisputed background. Place-Crete hired Apex to provide fine sand. The parties did not have a written contract. However, it is undisputed that Place-Crete agreed to pay \$29 per cubic yard of sand plus an hourly rate of \$110 for delivery, plus PST and GST. Place-Crete used the sand to make concrete for 3 identical buildings.
12. Apex's operator was in charge of loading all the fine sand and delivering it to Place-Crete's worksite. An employee, JT, coordinated the deliveries for Place-Crete. Neither Apex's operator nor JT provided evidence in this dispute.
13. Place-Crete's representative signed a delivery slip showing Apex delivered 312 cubic yards of sand to Place-Crete's worksite, from November 23 to 26, 2020. As shown in a November 30, 2020 invoice, Apex charged Place-Crete \$17,156.16. The parties agree the invoice details and amount are correct and it has been paid.

14. It is undisputed that Place-Crete initially ordered the same amount of sand for each of buildings 2 and 3. However, during construction Place-Crete's crews realized they did not have enough sand. So, they ordered more bags to complete the work.
15. Consistent with the above, Place-Crete's representative signed a delivery slip showing Apex delivered 384 cubic yards of sand from December 16 to 17, 2020. Apex charged Place-Crete \$20,726.72 in a November 30, 2020 invoice. As noted above, Place-Crete says Apex only delivered 308 cubic yards of sand and so allegedly overcharged for 76 cubic yards of sand.
16. Place-Crete's representative also signed delivery slips dated February 8, 9, 18, 19, and 20, 2021, for delivery of 384 cubic yards of sand in total. Apex charged Place-Crete \$21,219.52 in a February 28, 2021 invoice. As noted above, Place-Crete says Apex only delivered 306 cubic yards of sand and so allegedly overcharged for 78 cubic yards of sand.
17. On April 14, 2020, Place-Crete requested additional information from Apex as it was concerned that Apex had not delivered the invoiced amount of sand. The parties agree that Place-Crete paid the invoiced amounts save for Apex's claimed amount.

Does Place-Crete owe Apex anything for providing and delivering fine sand?

18. On balance, I find that Apex has proven it delivered the amount of sand it says it did. This is because Place-Crete signed the delivery slips and I find they are the best evidence of whether Apex delivered the correct amount. There is no indication the parties agreed that Apex was required to do more to verify the amount delivered. I discuss this further below.
19. Place-Crete says it is standard industry practice for delivery trucks to 1) drive over a scale to weigh their load, and 2) for the recipient of shipments to sign a waybill for each individual truck delivery. Here, Place-Crete signed waybills that confirmed deliveries from multiple trucks. However, Apex denies this and as Place-Crete

provided no evidence about standard industry practices, I find it unproven that Apex had to do more to prove the amount of sand delivered.

20. Place-Crete argues that it is physically impossible for Apex to have delivered the amount of sand it says it did. Place-Crete says the total disparity of 154 cubic yards of sand is so large it would fill a house. It also says it is illogical that buildings 2 and 3 required more sand than building 1, as each building was identical. Place-Crete says the most likely explanation is that the loader at the depot, or the trucks dumping the sand, likely had a large quantity of frozen sand inside of them. Place-Crete says the frozen sand stayed at the bottom of each bucket or box when the sand was loaded or dumped. Place-Crete says this meant that Apex unwittingly sent a smaller volume of sand than intended.
21. Ultimately, I find that Place-Crete's allegations are unproven. It did not provide any evidence from its crew members or JT to establish that the buildings necessarily used the same amount of fine sand, or that Apex likely delivered insufficient quantities of sand. There are no accounts of anyone seeing frozen sand in the buckets or boxes. I also find that evaluating Place-Crete's claim that sand was frozen inside the loaders or trucks is beyond ordinary knowledge and would require expert evidence from someone in the profession. See *Bergen v. Guliker*, 2015 BCCA 283. Place-Crete has not provided such evidence in this dispute.
22. The parties each alleged that the others' respective employees may have absconded with some of the sand. Given the volume of alleged discrepancy and the lack of supporting evidence, I find these allegations speculative.
23. Place-Crete has not identified any other errors in the invoice. So, I order it to pay Apex \$4,677.12 in debt. Apex also claims for contractual interest. Its invoices say, "Due 30 days – 2% on overdue accounts". As noted above, the parties proceeded without a written contract, so I find it unproven that Place-Crete agreed to pay any contractual late interest in advance. I also the invoice unclear in any event about the rate of interest, as it does not specify a timeframe.

24. In the absence of an agreement about interest, I find it appropriate to award Apex pre-judgment interest under the *Court Order Interest Act* on the \$4,677.12 debt from March 30, 2021, the due date printed on the February 28, 2021 invoice, to the date of this decision. This equals \$22.66.
25. 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. I find the applicant is entitled to reimbursement of \$175 in CRT fees.

ORDERS

26. Within 14 days of the date of this order, I order Place-Crete to pay Apex a total of \$4,874.78, broken down as follows:
 - a. \$4,677.12 in debt,
 - b. \$22.66 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$175 in CRT fees.
27. Apex is entitled to post-judgment interest, as applicable.
28. 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.

29. 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.

David Jiang, Tribunal Member