



No. 17248  
Prince George Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN: )  
ADINA TIMBER LTD. )  
PLAINTIFF )  
AND: )  
STUART LAKE LUMBER COMPANY LTD. )  
DEFENDANT )

REASONS FOR JUDGEMENT

OF

THE HONOURABLE  
MR. JUSTICE CURTIS

Counsel for the plaintiff:

D. Byl

Counsel for the defendant:

R. J. Stewart

Place and date of trial:

Prince George, B.C.  
November 19, 20, 21,  
and 22, 1991

Adina Timber Ltd. claims damages from Stuart Lake Lumber Company Ltd. for breach of contract. Adina is a logging contractor which provided logging services to Stuart Lake Lumber, a saw mill operator, between 1983 and 1988. Adina claims that it's contract to provide these services was wrongfully terminated without notice, and additionally that it purchased expensive logging equipment, in particular a \$440,000 feller buncher relying upon a representation by Stuart Lake Lumber that it's employment was secure. Stuart Lake Lumber defends the claim on the basis that it contracted for Adina's services only by particular season and cut block, and did not at any time agree or represent that Adina's employment was

secure.

Adina Timber is a B.C. company owned by David Zielke and his wife who reside in Vanderhoof. Adina owns logging equipment such as D7 and D9 cats, skidders and a feller buncher. It is in the business of contracting to provide "stump to truck" logging services, that is to fell, skid, buck and load timber onto trucks. In the process of doing so Adina also builds the necessary roads and landings to service the cut block it is working on. Adina employs its own crew and equipment and subcontracts portions of the work on occasion.

Stuart Lake Lumber Ltd. is a saw milling company engaged in the business of manufacturing dimension lumber. It is the holder of a timber licence in the Fort St. James area where it has carried on the business of a relatively small, independent saw mill since the mid 1950's.

In 1982 Adina Timber was the principal logging contractor for Bond Brothers Sawmills near Vanderhoof. In that year the company, intending to expand its business was looking for more work. Mr. Zielke happened to meet Mr. Gene Larsen, Woods Manager for Stuart Lake Logging while Adina was logging property owned by Mr. Larsen.

In June 1983 Mr. Zielke met with Mr. Larsen and Mr. Drury of Stuart Lake Lumber's forestry department in the Stuart Lake Lumber

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3 office at Fort St. James. They asked Mr. Zielke to submit a  
4 written bid to log timber from a proposed road right of way.  
5 Adina's bid was accepted and the work was completed in August or  
6 September, 1983.  
7

8 Stuart Lake Lumber had an allowable annual cut of  
9 approximately 200,000 cubic meters. Prior to the dealings with  
10 Adina the logging services for Stuart Lake had been done by a  
11 number of other contractors the two major ones being Bob Ublies  
12 Logging and Lynx Creek. Lynx Creek advised Stuart Lake that it  
13 wished to discontinue logging and Mr. Zielke asked if his company  
14 could do some logging work for Stuart Lake. Mr. Zielke does not  
15 recall the particulars of the agreement reached with Stuart Lake  
16 under which Adina logged in the winter season of 1983-1984. All  
17 agreements between Stuart Lake and Adina were oral except the first  
18 work which was done on a written bid.  
19

20 In the Fort St. James area logging is conducted during two  
21 seasons, the winter which begins about December following freeze up  
22 and ends about March with break up, and the summer which begins  
23 about July and ends about the beginning of October.  
24

25 Under the terms of its licence Stuart Lake Lumber is granted  
26 cutting permits by the Ministry of Forests which permit it to  
27 harvest timber from specific cut blocks, the location of which is  
28 set out in the permits. Stuart Lake Lumber prepares and submits  
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a 5 year plan to the Ministry for approval and it is under these plans that the Ministry from time to time issues the cutting permits.

Adina proceeded to log for Stuart Lake in the winter of 83/84 and thereafter for each season until the summer of 1987 following which Stuart Lake Lumber did not request its services. Adina did some logging for Stuart Lake in January 1988, however this was completion work on a particular cut block on which it had been working the previous season.

There were other contractors logging for Stuart Lake between 1983 and 1986 with Ublies remaining the principal contractor.

I have calculated the division of logging work during the relevant time period to have been as follows:

	<u>Ublies</u>	<u>Adina</u>	<u>Karvel</u>	<u>Others</u>
1983	56%	13%	0%	31%
1984	50%	40%	0%	10%
1985	42%	51%	0%	7%
1986	44%	41%	13%	2%
1987	47%	37%	11%	5%
1988	53%	3%	36%	8%
1989	55%	0%	33%	12%
1990	92%	0%	8%	0%

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3 According to Mr. Zielke's recollection the usual procedure was  
4 that before the beginning of a season's work he would meet with  
5 representatives of Stuart Lake. They would propose logging on a  
6 certain cut block at a price they had determined. The mill would  
7 give him a map of the proposed area. He would walk over the block  
8 and decide whether the price was acceptable. In Mr. Zielke's words  
9 he "always made it a point of checking the block before we made a  
10 commitment". As it turned out the price was always acceptable,  
11 although Mr. Zielke agreed it was his understanding he could refuse  
12 the work if it wasn't. The work remained the same "stump to truck  
13 logging".  
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15 There was no discussion of how long the relationship would  
16 continue; no discussion of termination at all.  
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18 Mr. Zielke said it was quite common to start a cutting block  
19 in one season and finish it in another. Payment was by the tonne  
20 for timber processed. Because the logging contractor might build  
21 roads and landings to remove timber from a cut block but not get  
22 all the timber off in one season there would frequently be what is  
23 referred to in the industry as "unamortized development work" -  
24 meaning the logger hadn't got the value of the development work  
25 until all the timber for which it had been done was removed. Thus  
26 it was common that the contractor went back to the same block the  
27 following season to finish the work.  
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3 In the spring of 1987 Mr. Zielke met Mr. Wayne Drury at a  
4 landing on a cutting block and had a conversation upon which it is  
5 alleged Adina relied in purchasing a \$440,000 feller buncher.  
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7 The meeting was entirely by chance. Mr. Zielke was on the  
8 block and happened to meet Mr. Drury who was doing an inspection  
9 for Stuart Lake Lumber. Mr. Drury was at the time employed in the  
10 forestry department of Stuart Lake Lumber where he worked very  
11 closely with Mr. Larsen, the Woods Manager. During the meeting Mr.  
12 Zielke helped Mr. Drury load his truck with firewood.  
13

14 According to Mr. Zielke he asked if Stuart Lake Lumber was  
15 happy with Adina's work to which Mr. Drury replied "yes". He said  
16 Mr. Drury told him Adina's position with Stuart Lake Lumber was  
17 secure so long as the work was properly done. Mr. Zielke said he  
18 told Mr. Drury he was considering buying a feller buncher and Mr.  
19 Drury told him to go ahead and make the investment. When cross  
20 examined on this point Mr. Zielke said he asked Mr. Drury what he  
21 thought and Drury indicated it was a good idea. He could not  
22 recall the exact reply but felt he could buy the buncher as a  
23 result of what was said.  
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25 Mr. Zielke did not discuss the matter again with anyone from  
26 Stuart Lake and completed the purchase of the machine June 2, 1987.  
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28 Mr. Drury who left the employment of Stuart Lake in June, 1987  
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3 to take a job as Woods Manager for a saw mill in Salmon Arm  
4 recalled talking to Mr. Zielke on a cut block in February 1987. He  
5 said "Dave and I were sitting in my pick up. He was inquiring as  
6 to what I thought it looked like for work in the future. I  
7 couldn't offer him any guarantees. What I tried to do was offer  
8 him an opinion on what I knew at the time. I provided an opinion  
9 I didn't see much of a problem in working for Stuart Lake Lumber.  
10 . . . Never talked about time frame, volume, size of operation or  
11 whether it would be every season. . . . He brought up issue he was  
12 considering buying a feller buncher. He was trying to collect as  
13 much information as possible to help him make his decision."  
14

15 Mr. Drury denied telling Mr. Zielke his company could work for  
16 Stuart Lake as long as it was doing a good job. He said Stuart  
17 Lake Lumber had a very short planning horizon; at the end of one  
18 season it often didn't know how much or where it would log in the  
19 next. Mr. Drury said he was not in a position to guarantee logging  
20 contractors work and never did.  
21

22 In June, 1987 Mr. Zielke suffered a severe knee fracture as a  
23 result of which he had one of Adina's employees, Larry Knudsen  
24 supervise Adina's summer logging in 1987 for Stuart Lake. Mr.  
25 Danny Boyd was Adina's logging supervisor for the Bond Brothers  
26 work at that time.  
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28 In October, 1987 Mr. Zielke went to Fort St. James and spoke  
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3 to Mr. Larsen in the Stuart Lake office to inquire if there was any  
4 work for Adina in the coming winter season. At that point in time  
5 the Canadian softwood industry was in the throes of dealing with a  
6 significant lumber tariff imposed by the United States on Canadian  
7 imports in January, 1987. Mr. Larsen told Mr. Zielke there was no  
8 logging work for Adina that winter because of the increased  
9 stumpage cost. (The government having dramatically increased  
10 stumpage by up to 10 times in return for the United States dropping  
11 its tariff). Mr. Zielke made several similar inquiries for work in  
12 the following months by telephone with similar results. In  
13 January, 1988 Adina did some further work. Mr. Zielke said "I  
14 think we arranged we'd load out timber left decked at the end of  
15 the season - fall 87". This was work to complete removal of timber  
16 from a cutting block Adina had worked on the previous season.  
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18 Mr. Zielke said in the winter of 87/88 he was waiting, hoping  
19 Stuart Lake would start logging again and he didn't look for  
20 alternate work for his company, however, Bond Brothers came up with  
21 a fairly large contract in December and Adina was able to use most  
22 of its machinery there.  
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24 Mr. Zielke met with Mr. Larsen again on April 20th. He asked  
25 if there was any plans for work for Adina and was told there was  
26 not. The last meeting between Zielke and Larsen occurred August  
27 17, 1988. Mr. Larsen told him there was still no work, although  
28 there was a possibility of some.  
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3 Stuart Lake Lumber never gave any notice of termination, nor  
4 did it advise Adina the work was unsatisfactory, it simply did not  
5 offer further work. Adina commenced this action July 11, 1989.  
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7 Did Adina Timber have a contract with Stuart Lake Lumber which  
8 required reasonable notice to terminate?  
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10 No such term was ever agreed upon. The subject was never  
11 discussed between the parties. Furthermore when Mr. Zielke  
12 inquired about work in the fall of 1983 for his company he asked if  
13 there was work for the winter season, not if Adina could log for  
14 Stuart Lake Lumber indefinitely. I accept Mr. Drury's evidence  
15 that Stuart Lake Lumber had a short planning horizon and that it  
16 would not guarantee work to a logging contractor. Adina Timber  
17 never sought nor contracted for a term of reasonable notice and on  
18 the evidence, had it attempted to do so such a term would have been  
19 refused.  
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21 Should the law, in the circumstances of this case imply a term  
22 that Adina was entitled to work for Stuart Lake until terminated on  
23 reasonable notice? There is certainly no evidence that it is  
24 customary for saw mills to hire logging contractors on such terms.  
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26 Adina logged for Stuart Lake for 4 winter seasons and 4 summer  
27 seasons but it was never the exclusive contractor. During that  
28 time the percentage of the mill's total logging done by Adina  
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3 varied from 13% to 51%. Ublies remained the principal contractor,  
4 and there were others as well. Prior to each season Mr. Zielke  
5 would obtain a map of the proposed cut block and walk over the site  
6 to determine whether the price offered was acceptable. He said he  
7 would check the block before making a commitment. There was no  
8 mechanism for setting the price if it was unacceptable, it just so  
9 happened that it always was.

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11 The conduct of the parties is consistent with each season or  
12 cut block being a new agreement between them. Each time the mill  
13 would offer particular work at a particular price and each time Mr.  
14 Zielke would check the area and decide whether or not to accept it.  
15 The fact that work on a cut block might carry over from season to  
16 season is not inconsistent with this, the logging contractors  
17 frequently completed work on a block started but not finished in an  
18 earlier season. This is what was agreed to when Adina completed  
19 some work in January, 1988.

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21 The fact that Stuart Lake Lumber did not send a notice of  
22 termination is consistent with its position that the only contracts  
23 it had with Adina were those specifically agreed to by season and  
24 cut block.

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26 Mr. Larsen told Mr. Zielke there was no work because of the  
27 increased stumpage costs. The fact is that Karvel and Ublies  
28 continued to log while work was not offered to Adina. Why this  
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3 occurred is not clear, obviously Stuart Lake Lumber decided not to  
4 offer Adina work, however, unless Adina had negotiated for and  
5 agreed upon mutual obligations giving it job security, or the law  
6 now implies such a term, Stuart Lake was entitled to do what it  
7 did.

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9 The law ought to be cautious in reading into contracts terms  
10 which were not negotiated. Parties should be entitled to rely upon  
11 what they did not contract for as much as what they did.

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13 In support of the contention that this court ought to imply a  
14 term of reasonable notice the following authorities have been  
15 cited.

16  
17 Hillas & Co. Ltd. v. Arcos Ltd., [1932] All E. R. 494 (H.L.).

18 Halsbury's Laws of England, (3d) Vol. 8, Para 267, pp 156, 157  
19 "Contracts".

20 Winter Garden Theatre (London) Limited v. Millenium  
Productions Limited, [1948] A.C. 173.

21 Robinson v. Galt Chemical Products Ltd., [1933] O.W.N. 502  
22 (Ont. C.A.).

23 Gill Brothers v. Mission Sawmills Limited (1944) 3 W.W.R. 311  
24 (B.C.S.C.), [1945] 2 W.W.R. 337 (B.C.C.A.), [1945] S.C.R. 766  
(S.C.C.).

25 Toronto Type Foundry v. Miehle - Goss Dexter Inc. (1968), 5  
26 D.L.R. (3d) 578 (Ont. H.C.).

27 Paper Sales Corporation Ltd. v. Miller Bros. Co. (1962) Ltd.  
(1975) 55 D.L.R. (3d) 492 (Ont. C.A.).

28 Hillis Oil & Sales Ltd. v. Wynn's Canada ltd. (1986), 25  
29 D.L.R. (4th) 649 (S.C.C.).  
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Bernard-Norman Specialties Co. Ltd. v. S.C. Time Inc. (1989),  
31 C.P.R. (3d) 158 (Ont. H.C.J.).

In each of the cases cited the facts are significantly different from the present one.

The Winter Garden Theatre case concerned an option to renew a licence to use a theatre for a set price per week. The agreement from the outset clearly contemplated an indefinite term of rental, and in deciding that the rental could not be terminated by the landlord without reasonable notice (the licence required one months notice by the licence holders to terminate) the court placed reliance upon the law relating to the rental of land.

In the Hillas case the court was attempting to interpret and give meaning to a negotiated and agreed upon term of a contract. It held that when the contractual intention of the parties is clear but the contract is silent on some detail the court may supply the detail. That is not the case here, the parties had not discussed nor directed their minds to the question of notice being required to terminate, and in any event were dealing with multiple contracts.

The Gill Brothers case concerned a contract by the mill to sell and the Gill Brothers to buy all the mill's output of fuel wood, and by the Gill Brothers to keep the mill's wood bunker clear which was necessary for the mill to keep running. The agreement

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3 clearly contemplated continuous mutual obligations for an  
4 indefinite period of time from its very outset. Adina did not  
5 contract to do all of Stuart Lake Lumber's logging or any  
6 particular portion of it, and Mr. Zielke did not consider himself  
7 committed to log any site until he had inspected it and agreed to  
8 do so.

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10 The Paper Sales case, and that of Hillis Oil, Toronto Type  
11 Foundry and Bernard-Norman specialities were all found to involve  
12 permanent, or indefinite, exclusive agency or distributorship  
13 agreements, much different than the contractual arrangements in the  
14 case at bar.

15  
16 It is not claimed that the conversation with Mr. Drury in the  
17 spring or winter of 1987 amounted to a modification of the contract  
18 between the parties, nor could it in the circumstances amount to  
19 that. Mr. Zielke did not state that he was seeking agreement by  
20 the mill to employ him for a particular time period, nor were the  
21 terms that should be agreed upon, were that the case, such as  
22 volume or proportion of the work, availability of work or method of  
23 setting price discussed let alone agreed upon. Furthermore Mr.  
24 Zielke did not contract on behalf of Adina to any obligations on  
25 its part in consideration of such an agreement by the mill. The  
26 conversation is sued upon as a misrepresentation; not a contractual  
27 term.  
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3 Adina Timber's claim to be entitled to reasonable notice upon  
4 termination of its relationship with Stuart Lake Lumber fails upon  
5 the facts of this case, and the law as it relates to those facts.  
6 There was not one contract but a series of contracts in which  
7 Stuart Lake Lumber offered work at particular sites and Adina  
8 accepted it. The continuation of this relationship over 4 years  
9 does not in law give Adina Timber additional contractual rights it  
10 did not bargain for.  
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12 In my opinion Adina's claim for damages for misrepresentation  
13 must also fail. As Stuart Lake Lumber was not contractually bound  
14 to employ Adina Timber beyond the contracts already agreed to, even  
15 if it did misrepresent the reason for not offering Adina work, such  
16 a misrepresentation is not actionable.  
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18 I find further that Adina Timber Ltd. is not entitled to  
19 damages on the basis of Mr. Zielke's conversation with Mr. Drury in  
20 the late winter or early spring of 1987. Mr. Zielke quite frankly  
21 stated he could not recall exactly what was said at the time. He  
22 said the result was he felt he could go ahead and purchase the  
23 feller buncher. I accept Mr. Drury's evidence that what he told  
24 Mr. Zielke was not that Adina could work for Stuart Lake  
25 indefinitely, but that in his opinion Adina's logging work for  
26 Stuart Lake Lumber was acceptable, and he did not see a problem in  
27 Adina continuing to work for Stuart Lake. In fact after that  
28 conversation Adina did work the next season for Stuart Lake.  
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3 This was a chance meeting. It did not have the aura of  
4 contractual or legally binding discussions and it would not be fair  
5 to give that discussion such effect now. Mr. Zielke could have  
6 attempted to negotiate job security if he wished. He did not  
7 consult Stuart Lake further before buying the feller buncher.  
8 There was no discussion of terms which one would expect to be dealt  
9 with if job security was being guaranteed such as availability of  
10 work, volume, price etc.

11  
12 What Mr. Drury represented to Mr. Zielke was not that Adina  
13 was guaranteed work for the indefinite future, but that at the time  
14 of the conversation matters were going well between the companies  
15 and he did not foresee problems. If Mr. Zielke chose to rely on  
16 such a discussion to purchase the buncher it is his company which  
17 must bear the risk as the circumstances of the contracts with  
18 Stuart Lake and the nature of the discussion do not in my opinion  
19 warrant shifting any loss incurred to Stuart Lake Lumber.

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21 The Plaintiff's claim for damages for breach of contract and  
22 misrepresentation is dismissed.

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24 I understand the parties do agree that Adina Timber is  
25 entitled to payment for some "unamortized development cost". If  
26 this issue cannot be resolved it may be spoken to.  
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Subject to any submission counsel may have the Defendant shall  
recover the costs of this action on scale 3.

Dickie Cutler

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