

IN THE SUPREME COURT OF BRITISH COLUMBIA

MAR 27 1987

BETWEEN:

JACK WOOSKEY HOLDINGS
LIMITED

Plaintiff

AND:

TANIZUL TIMBER LTD.

Defendant

REASONS FOR JUDGMENT

OF

THE HONOURABLE

JUDGE V. R. CURTIS

Dick Byl, Esq.

counsel for the plaintiff

William D. MacLeod, Esq.

counsel for the defendant

Date and place of trial:

January 26, 27, 28,
29 and 30, 1987
Prince George, B.C.

The plaintiff claims for a loss of profits arising from the termination of a logging contract dated December 23, 1983. The contract provided that the plaintiff would fall, skid, buck and load approximately 21,000 cubic metres of wood from the defendant's timber sale no. 17847 at Portage, near Fort St. James, B.C. between the 15th of December 1983 and the 15th of April, 1984.

Schedule C of the Logging Service Agreement stated:

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3 Notwithstanding the provisions of the
4 general conditions, the contractor
5 agrees to perform the services ...
6 at the following projected rate of
7 production:

8 400M³ PER DAY

9 The date for completion of phases of
10 the operation are as follows:

11 8,000 by January 31, 1984
12 16,000 by February 29, 1984
13 21,000 by March 16, 1984

14 Paragraph 4.1 of the general condition
15 attached to the Logging Service Agreement
16 provides:

17 4.1 If the contractor shall:

- 18 (a) Abandon the work or any part
19 thereof.
- 20 (b) In any way fail to perform or
21 observe the covenants or agreements
22 on the part of the contractor
23 to be performed and observed in
24 this Agreement ...
- 25 (c) Fail to satisfy the company in
26 all respects as to the performance
27 of the work.

28 The company shall have the right if
29 it so elects by giving written notice
30 to the contractor to cancel and terminate
all rights of the contractor under
this Agreement and the contractor shall
have no claim against the company by
reason of any such cancellation or
termination except for work done by
the contractor up to the date of such
cancellation or termination ...

The contract was signed December 23, 1983 and
work started December 25th. Under the terms of the agreement

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the defendant was to put in the roads and landings and supply trucks to haul the logs. The defendant subcontracted the road and landing work to Hiram Enterprises Ltd., a company owned by Norman Dagenais and the trucking to a business known as Bill Tuck Trucking. Production of logs fell well below the projected 400m³ per day. On the 13th of January 1984 the defendant delivered a letter to the plaintiff terminating its contract, following which the plaintiff moved off the job.

The termination letter reads as follows:

January 12, 1984

Jack Wookey Holdings Ltd.
P.O. Box 669
Fort St. James, B.C.
V0J 1P0

Attn: Mr. John Wookey

RE: PORTAGE TIMBER SALE 17847

Dear Sir:

This letter will serve as written notice to you to cancel and terminate all rights of Jack Wookey Holdings Ltd. under the Logging Services Agreement with Tanizul Timber Ltd. at Timber Sale 17847.

The work done by Jack Wookey Holdings Ltd. up to the above date has failed to satisfy the Company in all respects as to the performance of work. The contractor has not fulfilled the following contract conditions:

1. Production rate of 400m³ per day.
2. Dedicating his personal efforts

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3 to the supervision of this contract
4 on a first priority basis,
5 subsequently causing production
6 of log deliveries to be less than
7 the rates specified.

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3. Complying with all the terms and conditions of the said Cutting Permit and the regulations and requirements of the Forest Service.
 4. Maintenance of the main haul road from the Stuart Lake Lumber Operations Road through Block 1 and Block 2 and to the Portage Village.

The work completed to the above date will be paid for when the volume has been weighed, scaled and processed at the Tanizul Timber office. The payment will be based on work done to the landing less the loading cost for loads on the landing this day. Load delivered to the mill to date will be paid in full. Payment will be made three days after the final load slips have been processed at the Tanizul office.

Should you have any questions, please contact the undersigned.

Sincerely,

Paul Klotz
Operation Manager

No evidence was led at trial to prove the facts alleged in paragraph number 3 in the notice of termination. I find further that the grounds alleged in paragraph 4 of the letter are not proven. There was evidence that the plaintiff never had its plow truck on the site, and that on one occasion the defendant instructed someone to plow the road, however the evidence does not establish

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3 that the road was neglected or in poor condition.
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6 The vast majority of the evidence at trial has
7 been directed to the question of the cause of the lack
8 of production. I am satisfied that it was the defendant's
9 concern with lack of production that resulted in the
10 plaintiff's termination.
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12 I have concluded from the evidence that the lack
13 of production was caused partly by the plaintiff and partly
14 by the defendant's subcontractors.
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16 The plaintiff did not have a loader on site as
17 soon as it intended to. The lack of a loader resulted
18 in the wood on the landings being pushed up by the skidders
19 or Mr. Dagenais' cat rather than being sorted and decked
20 by the loader in an orderly manner. Furthermore the
21 plaintiff must bear in part the responsibility for the
22 delay caused by its first loader operator quitting without
23 notice. I am also convinced by the evidence that the
24 plaintiff did not organize the work as well as it could
25 have with the result that landings became jammed with wood
26 and subcontractors ran out of fuel. The combined effect
27 of these failings on the plaintiff's part was a reduced
28 production of logs.
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30 On the other hand both the defendant's trucking

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3 contractor and development contractor contributed
4 substantially to the lack of production. The load slips
5 show that there was never enough trucks to haul 400m³ per
6 day. Thomas Pierre the defendant's woods foreman conceded
7 that there was a shortage of trucks, and his difficulties
8 in getting trucks is confirmed by entries in his diary.
9 The shortage of trucks played a major role in limiting
10 the amount of wood shipped and probably contributed to
11 the crowding of the landings and the problems the plaintiff
12 had keeping his loadermen and skidder operators on the
13 job.

14
15 Another factor which, combined with the others
16 prevented the job from producing the projected 400m³ per
17 day was the problems Mr. Dagenais had with his cat, which
18 interfered with the efficient development of the roads
19 and landings. Mr. Dagenais stated that he expected to
20 work 10 hours per day. His time records however show that
21 of the 16 days he worked while the plaintiff was on the
22 job only 3 of those were 10 hour days; in particular in
23 the last week his hours per day were as follows: January
24 9, 0 hours; January 10, 0 hours; January 11, 4 hours; January
25 12, 0 hours; January 13, 5 hours - for a total of 9 out
26 of 50 possible hours.

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28 According to the evidence of Ian Eastman his
29 company was able to move an average of 11 loads averaging
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3 37m³ per day. Timber Bay did manage however to move up
4 to 20 loads in one day. I find that, had the defendant's
5 subcontractors been able to do the development work at
6 an efficient rate and supplied the appropriate number of
7 trucks the plaintiff would probably have been able to meet
8 the production quota by the end of January. That being
9 so I find that the defendant was not entitled to terminate
10 the plaintiff on the 13th of January 1984 and is liable
11 to the plaintiff for breach of the contract.

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13 The subsequent contractor Timber Bay Contracting
14 logged a further 14,471 cubic metres from the site. The
15 plaintiff has claimed that its price was \$31.50 per cunit
16 with expenses of \$23.00 per cunit as a result of which
17 the plaintiff's claim is for a loss of \$8.00 per cunit.
18 I find the plaintiff's estimate of expenses to be optimistic
19 and incomplete and prefer to base the calculation of its
20 loss on the evidence of the owner of Timber Bay who testified
21 that his company made a profit of \$5.00 per cunit. After
22 losing the contract the plaintiff logged 250 cunits of
23 timber from Mr. Wookey's farm for which he received
24 approximately \$12,000. As the timber was Mr. Wookey's,
25 and I do not have the details of the logging expenses the
26 only logical basis for calculating the value of this
27 alternative work to the plaintiff available to me is to
28 assume it made a similar profit of \$5.00 per cunit.

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30 The plaintiff's claim includes the balance owing

to it for the wood which was felled and decked but not loaded when the plaintiff was sent off the job. As the termination was wrongful the defendant has no claim for its costs in loading the plaintiff's wood, however the plaintiff has not incurred the cost of loading the wood, which according to its evidence was \$5.00 per cunit.

I calculate the plaintiff's claim as follows:

Damages for:

Loss of profits

14,471m³ = 5,113 cunits

x \$5/cunit = \$25,565.00

Balance owing on contract \$ 3,604.19

Less profit on logging

Wookey wood < \$ 1,250.00 >

Net amount of claim \$27,919.19

In summary the plaintiff shall recover \$27,919.19 plus court order interest at the rate allowed on default judgments from time to time, from the 13th of January 1984. The counterclaim is dismissed. The plaintiff shall recover the costs of the action.

Prince George, B.C.
February 13, 1987

V.R. Curtis

V.R. Curtis
L.J.S.C.