BRUCE THOMPSON,	:	IN THE COURT OF COMMON PLEAS OF
	:	LYCOMING COUNTY, PENNSYLVANIA
Plaintiff	:	
	:	
vs.	:	NO. 99-01,102
	:	
MARK HUFFSMITH,	:	
	:	
Defendant	:	NON-JURY TRIAL ADJUDICATION

DATE: JUNE 30, 2000

ADJUDICATION and ORDER

Plaintiff instituted this action asserting Defendant breached an oral contract relating to harvesting timber and clearing of land through a Complaint filed July 15, 1999. Defendant entered a timely appearance and filed an answer and counterclaim. The Complaint asserted that under the oral contract between Plaintiff and Defendant, Defendant was to remove trees and timber from various sections of Plaintiff's land and to be compensated for his work by acquiring ownership of the cut trees and timber. As part of this work, Plaintiff also asserted Defendant was to remove stumps so Plaintiff could use that field for the eventual planting of Christmas trees. Plaintiff claimed Defendant did not remove the stumps as agreed and the removal of the stumps was a condition precedent to Defendant harvesting a substantial amount of timber, valued in excess of $20,000 from Plaintiff's property. Plaintiff further alleged that the harvesting of the timber was a wrongful trespass and removal and that he is entitled under provisions 42 Pa.C.S. §8311(a)(2)(i) to treble damages. Plaintiff has also claimed damages for destruction of small hemlock trees and the Defendant's damaging of Plaintiff's roads.

Defendant's answer and counterclaim asserted that under the oral contract between the parties, Defendant agreed only to "windrow" tree stumps in one section of

Plaintiff's land and rough grade between the rows, and that he never agreed to remove tree stumps in any other section. Defendant further claimed that any deterioration of Plaintiff's roads was more than adequately compensated by the approximately thirty tons of stone Defendant provided Plaintiff, as well as other services he supplied. Defendant further averred that all trees harvested were with Plaintiff's consent and that Plaintiff was "more than compensated" for the fair value of the trees.

In his New Matter, Defendant claimed it was Plaintiff who breached an implied contractual duty of good faith and fair dealing by making repeated telephone calls to Defendant while in a drunken state wherein he would use loud, profane and obnoxious language and express conflicting terms of contract. Defendant claimed that by his conduct, Plaintiff terminated the contract and made performance impossible.

In Defendant's Counterclaims, Defendant averred that, as a result of Plaintiff's breach, Defendant could not complete performance of the contract and suffered lost profits. Defendant further claimed that, as he was not responsible for stump removal in an area subsequently cleared for Plaintiff by a subcontractor, the amount of the subcontractor's bill which he erroneously paid should be reimbursed to him. Defendant also claimed Plaintiff was indebted to him for Plaintiff's use of his dozer and resulting damage to it. Finally, Defendant made a claim for intentional infliction of emotional distress due to Plaintiff's phone calls to his household.

The issues raised by these pleadings were litigated in a non-jury trial held June 5-7, 2000. During the trial the parties maintained their contentions as set forth in the pleadings, except that Defendant withdrew his claims for damages relating to emotional distress and the

use of and damage to Defendant's bulldozer. Based upon the testimony the Court finds credible and the exhibits submitted, and after consideration of the proposed findings of fact and conclusions of law submitted by each party, the Court enters the following Findings of Fact, Conclusions of Law and Order.

Findings of Fact

1. Bruce Thompson (hereinafter "Plaintiff"), resides at Box 340, Nursery Lane, Trout Run, Lycoming County, Pennsylvania 17771.

2. Mark Huffsmith (hereinafter "Defendant"), resides at HC 31, Box 298A, Williamsport, Pennsylvania.

3. Plaintiff owns several tracts of farmland and timberland in Lycoming County including those at his Trout Run residence which are involved in this litigation.

4. Four designated areas of land owned by Plaintiff were identified in the undisputed testimony at trial as Sections 1, 2, 3 and 4, as outlined in an ASCS map entered into evidence at trial without objection. Testimony offered by Plaintiff supported that the four Sections contain approximately the following acreage:

(a) Section 1 – 13.1 acres;

(b) Section 2 – 6.0 acres;

(c) Section 3 – 2.1 acres;

(d) Section 4 – 11.6 acres.

Hereinafter all four Sections may be collectively referred to as the "Premises."

5. Section 2 is adjacent to an adjoining parcel that is the residence of a neighbor.

6. Commencing on approximately August 17, 1997, Plaintiff and Defendant entered into a series of oral contracts with regard to cutting and harvesting of trees, brush, wood products and timber and leveling of fields on the Premises. Together, these oral contracts are sometimes referred to as the "contract."

7. A dispute exists between the Plaintiff and the Defendant with regard to the precise terms of the contract. The Court finds that the testimony of Plaintiff and Defendant, taken together, support a finding the contract included at least the following terms:

(a) Defendant agreed to cut and remove trees and brush in designated areas in Sections 1, 2 and 3;

(b) Defendant further agreed to remove all tree stumps and debris in Section 1;

(c) Defendant agreed to deposit all tree stumps and debris in a specific area of steep terrain in Section 1;

(d) Defendant agreed to rough grade the land in Sections 1 in preparation for Plaintiff to eventually plant that Section as a Christmas tree field;

(e) Defendant agreed to restore any and all affected roadways to their original condition;

(f) Defendant agreed that his compensation for the foregoing work – cutting timber and leveling land – would be to keep as his own the harvested timber and other wood products from the designated areas of Sections 1, 2 and 3;

(g) Plaintiff agreed that, if the value of the wood products and timber Defendant cleared from his work under the contract in Sections 1, 2 and 3 was not sufficient to fairly compensate Defendant for the value of his services to Plaintiff, the Defendant would be permitted to harvest timber in Section 4 sufficient fairly and adequately compensate Defendant for his work.

8. Plaintiff flagged the perimeter of those areas in Sections 1, 2 and 3 that the parties agreed would be harvested.

9. Defendant breached the oral contract of the parties in at least the following:

(a) Defendant did not remove all tree stumps and debris from Section 1;

(b) Defendant did not deposit all tree stumps or debris from Section 1 onto the steep terrain in Section 1;

(c) Defendant did not fully restore damaged roadways on Plaintiff's land.

10. As a consequence of the Defendant's breach of the oral contract of the parties, the Plaintiff was required to arrange for substitute performance as follows:

(a) Plaintiff hired James Steele to excavate stumps, to complete rough grading, and to repair roadway damage to the Premises caused by Defendant's breach, in the total amount of $12,132.

(b) Plaintiff personally, along with his employees, removed stumps and debris from the Premises, at a cost to Plaintiff of $3,680.

(c) Plaintiff hired Ed Deljanovan to provide stone to repair driveway damage caused by Defendant for the sum of $1,182.54____.

11. Defendant's harvesting of timber in Section 4 was done with the consent of the Plaintiff.

Conclusions of Law

1. Defendant breached the oral contract of the parties in at least the following:

(a) Defendant did not remove all tree stumps and debris from Section 1;

(b) Defendant did not deposit all tree stumps or debris from Section 1 onto the steep terrain in Section 1;

(c) Defendant did not restore damaged roadways on Plaintiff's land.

2. In the oral contract of the parties, Plaintiff's agreement that he would permit Defendant to harvest some timber from Section 4 was not subject to the conditions precedent that Defendant complete the removal of timber, debris and stumps from Section 1, and the rough grading of Section 1.

3. Plaintiff waived any condition precedent for removal of timber from Section 4 that may have possibly existed when he consented to permit Defendant to commence such removal prior to Defendant completing the removal of timber and debris and stumps from Section 1, and the rough grading of Section 1.

4. As a consequence of the fact that Defendant did not complete the work as agreed, his removal of timber from Section 4 as compensation was wrongful and deliberate, in breach of the oral agreement of the parties.

5. The trees wrongfully removed from Section 4 had a fair market value of $24,505.52.

6. Defendant's removal of timber from Section 4 was done with the consent of Plaintiff. Therefore, subsections at 42 Pa.C.S.A. §8311(a)(2)(i) and (ii) do not apply.

7. As a consequence of the Defendant's breach of the oral contract of the parties, the Plaintiff suffered additional money damages for the cost to complete the contract as follows:

(a) Plaintiff hired James Steele to excavate stumps, to complete rough grading, and to repair roadway damage to the premises caused by Defendant's breach, in the total amount of $12,132.00;

(b) Plaintiff personally, along with his employees, removed stumps and debris from the Premises, at a cost to Plaintiff of $3,680.00;

(c) Plaintiff hired Ed Deljanovan to provide stone to repair driveway damage caused by Defendant for the sum of $1,182.54.

Discussion

It is clear, particularly from Plaintiffs' Exhibits 16 and 17, that Defendant Huffsmith did not leave the cleared land in Section 1 as a rough graded field, or otherwise in a condition that either party had agreed upon. The parties agreed on all the work and payment, except as to whether the stumps were to be windrowed or taken off the field, in Section 1. It is

persuasive to the Court that to rough grade the field of Section 1, which the parties clearly agreed to, would not be consistent with windrowing the stumps, as contended by Huffsmith. Plaintiff promptly and appropriately reacted by getting upset with the Defendant when it first appeared the Defendant was going to windrow the stumps. The reaction seems legitimate and adds to Plaintiff's credibility.

The Court also concludes Plaintiff did not object to Defendant's work nor become upset about the wind-rowing until all of the trees, or the bulk of the trees that were of commercial value, had been removed out of the heavily wooded area, section 4. It was after that point that the real dispute between the parties arose.

Plaintiff is entitled to out-of-pocket damages for taking the stumps off the field as well as repair of the roads. This was work Defendant had agreed to perform.

Plaintiff's argument that he is entitled to statutory double or treble damages for wrongful removal of trees does not apply. The Defendant removed the commercial timber from Section 4 at a time when the parties were still operating under the contract and at a time prior to the contract being breached. Maybe Defendant's intention all along was to breach the contract and if so, then such intent would make removal of the trees from Section 4 wrong, criminal and subject the Defendant to the penalties of double or treble damages. However, on the evidence presented the Court cannot find the intent to convert has been demonstrated.

A condition precedent "may be defined as a condition which must occur before a duty to perform under a contract arises." ***Acme Markets, Inc. v. Federal Armored Express, Inc.***, 648 A.2d 1218, 1220 (Pa.Super. 1994). Parties to a contract need not utilize any particular words to create the condition precedent. Any act or event designated in the contract

will not be construed as a condition precedent unless such was clearly the parties' intention. ***Ibid.***, *See, also,* ***West Development Group, Ltd. V. Horigin Financial***, 592 A2d 72 (Pa.Super. 1991) (generally, an event mentioned in a contract will not be construed as a condition precedent unless expressly made such a condition).

The Court finds there was a condition precedent in the contract. The condition is that if the commercial value of the trees in Section 1 was not sufficient to reimburse Defendant for the work of clearing and rough grading Section 1, Plaintiff would permit Defendant to take trees out of section 4.

Plaintiff apparently was satisfied that this condition was met and permitted Defendant to remove trees from Section 1. This decision was reasonable and consistent with Plaintiff's view of the financial aspects of the contract. Plaintiff provided a great deal of testimony as to the large quantity of work to be done in section 1 under the contract. Plaintiff submitted testimony that the fair per acre value for work could be as high as $5,000 to $6,000 per acre, or a total of $6,5000 to $78,000. In addition to the work completed by Defendant Plaintiff also submitted testimony that the fair value of the work done by Mr. Steele and his own employees to complete the contract work of rough grading the field in Section 1 was approximately $15,000. Even accepting Plaintiff's contention that the timber value of the trees removed from Sections 1 and 2 was $50,105 it would appear that under the contract Defendant was entitled to additional consideration through removal of trees in Section 4. Plaintiff contends the value of trees involved from that Section was $24,505. The total value of trees Plaintiff contends Defendant harvested would be $74,600. The Defendant's testimony would fix the same timber value at about $35,000. Given the very speculative nature of the manner in

which both parties valued the timber and wood products removed by Defendant and both parties failing to provide testimony available to both of them as to the values the Court has found the trees removed by the Defendant from the premises complied with the contract expectations of the parties. The contract requirement, which was not fulfilled, was Defendant's failure to remove all the stumps and rough grade Section 1 and to repair Plaintiff's roads when all the work was done.

The Court specifically rejects Plaintiff's claim that there was a condition precedent that Defendant would complete the work in Section 1 prior to removing any trees from Section 4. Further, even had there been such a condition precedent, the Court finds it was clearly waived by the conduct of Plaintiff in not objecting when Defendant began removing timber from Section 4 before the work in Section 1 was, in fact, completed.

O R D E R

AND NOW, this 30th day of June 2000, verdict is entered for Plaintiff in the amount of $16,994.54, plus costs.

BY THE COURT,

William S. Kieser, Judge

cc: Court Administrator
William Carlucci, Esquire
Joseph R. Musto, Esquire
Judges
Nancy M. Snyder, Esquire
Gary L. Weber, Esquire (Lycoming Reporter)

h:\Aopinions\Thompson v. Huffsmith Opn