

STATE OF VERMONT
WASHINGTON COUNTY, SS.

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KENNETH HEPBURN

v.

DAVID MILLARD

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Washington Superior Court
Docket No. 528-9-06-Wncv
SUPERIOR COURT
WASHINGTON COUNTY

SMALL CLAIMS COURT APPEAL
Decision

This case came before the Court on appeal from the Findings and Order of the Small Claims Court dated August 4, 2006 in Docket #344-6-06. The Court has reviewed the record; listened to the tape recording of the hearing on August 4, 2006; reviewed Appellant Kenneth Hepburn's Basis of Appeal filed September 5, 2006, Statement of Legal Questions filed October 10, 2006, and Memorandum of Law filed October 25, 2006; and reviewed Appellee David Millard's Memorandum of Law filed November 6, 2006.

It is not the function of the Superior Court to substitute its own judgment for that of the Small Claims Court Judge. Rather, the role of the Superior Court is to determine whether or not the evidence presented at the hearing supports the facts that the Judge decided were the credible facts, and whether or not the Judge correctly applied the proper law and procedure.

Mr. Hepburn owned land in Northfield, and entered into a written logging contract dated March 26, 2006 with David Millard, whereby Millard would log his land and pay stated prices. The first term states: "Total volume of estimated saw timber to be removed 20,000 MBF +." Other terms were included. Mr. Hepburn filed this case based on the claim that Mr. Millard did not complete the job, as he only did 16,115 board feet. At the trial, Mr. Hepburn's claims were expanded to include damages for the following additional alleged breaches of the contract:

- Mr. Millard failed to cut trees from a certain portion of the property that he was supposed to clear
- Mr. Millard's logging practices caused water runoff that brought involvement of the State and ANR enforcement of required standards in a manner than required Mr. Hepburn to incur additional costs
- Mr. Millard failed to seed a portion of the property after he finished, as he was required to do, and Mr. Hepburn incurred costs finishing the work
- Mr. Millard also agreed to perform certain "tree-work" services that he later did not do.

At the conclusion of the hearing, the Judge stated in open court his findings and the basis of his conclusion that Mr. Hepburn had not met his burden of proof to show that the shortfall in timber income and additional costs he claimed were caused by breaches of the contract on the

part of Mr. Millard. Judgment was entered for Mr. Millard.

Mr. Hepburn appealed. He claims that the Judge erred in not finding that the parties had a contract, in concluding that Mr. Hepburn had failed to prove his case in several specified ways, and in limiting the time available for Mr. Hepburn to present his case.

The Judge found that the parties did have a written contract for logging. The case required the Judge to interpret the meaning of the first term of that contract, which is stated above. Mr. Hepburn urged the court to find that the contract was for a minimum of 20,000 board feet, based on the "+" in "20,000+". The Judge concluded, based on the words "estimated saw timber" and the small size of the parcel, that there was no guaranteed minimum, and that the 20,000 BF was an estimate only. Therefore, he ruled that Mr. Millard had not breached the contract by logging only 16,115 board feet. He noted also that to the extent that there was less logging, Mr. Hepburn still had the value of the standing timber. Mr. Hepburn claimed that the remaining available timber is too small to attract loggers to the site because of the cost of moving equipment, and that he would have to pay tree service fees to get the remaining trees removed. Any claim of damages based on this issue is moot, because the Judge ruled that there was no breach of contract as to the quantity of board feet removed, based on his conclusion that the contract called for an estimated quantity only, and not a minimum guaranteed quantity.

This conclusion of law is not an error. The contract was ambiguous, in that it could be read either way. Therefore, the Judge was required to listen to the evidence of surrounding circumstances in order to resolve the ambiguity. His conclusion is supported by the language of the contract (the word "estimate"), the evidence of the small size of the parcel, and the testimony of Mr. Millard that the written agreement (entitled "Stumpage Prices") established prices rather than a minimum guaranteed volume. Therefore, this Court cannot conclude that the Judge's interpretation of the contract was an error of law.

The Judge also found that Mr. Millard did not cut trees in a certain area. This was an area that Mr. Hepburn wanted cut to further his subsequent development plans for the land. However, the Judge found that Mr. Millard's failure to cut in this area was not a breach of the contract for two reasons: first, the written contract did not require specified areas to be cut, and any outside agreements not in the writing were not enforceable, and second, Mr. Wilcox of ANR would not permit cutting to take place in that area. Mr. Millard's performance as to logging in this area was not required in the first place, and furthermore was made impossible by government regulation. The Judge did not make any mistake of law in reaching the conclusion that Mr. Millard's failure to cut in this area was not a breach of contract.

The Judge also found that Mr. Millard did not complete the seeding of the landing as he was required to do. However, he found that the reason was that hostility had developed between the parties. When Mr. Hepburn went ahead and did the work himself rather than let Mr. Millard complete the job, which Mr. Millard was willing to do, Mr. Hepburn prevented Mr. Millard from completing his obligation. Thus, the Judge concluded that Mr. Hepburn had not proved a basis

for his claim for reimbursement for money paid to others for subsequent work on the landing. There was evidence to support this finding, so there is not a basis for this court to find error.

The Judge also concluded that Mr. Hepburn had not met his burden to prove that other claimed breaches resulted in damages or costs to Mr. Hepburn. Specifically, while water run-off prompted regulation by ANR, there was evidence that rains were unusually heavy during that period. The Judge's ruling that Mr. Hepburn failed to prove that the run-off would not have occurred without the logging is consistent with the evidence. Furthermore, while Mr. Hepburn claims he incurred expenses as a result of failure to comply with State-mandated AMP practices, the Judge's ruling—that there is not enough proof that the cause of any expenditures Mr. Hepburn made were as a result of a breach of the contract by Mr. Millard—is consistent with the evidence. The law is that a plaintiff cannot recover expenses without showing a breach of contract by defendant, and the Judge's ruling that there was no breach of contract on these issues is supported by evidence presented at trial.

In summary, the Judge's interpretation of the contract was not an erroneous ruling of law. The Judge's findings of fact are supported by the evidence. The Judge's ruling, that Mr. Hepburn's evidence did not meet the required burden of proof on damages for breach of contract, is correct.


Mr. Hepburn also appeals on the ground that the Judge did not provide enough time for presentation of his evidence. The tape of the hearing shows that during the 1 ½ hour hearing, the Judge heard all Mr. Hepburn's evidence, then heard Mr. Millard's evidence, and then returned to obtain more evidence from Mr. Hepburn on rebuttal. He asked extensive questions to understand the evidence. At least twice on rebuttal, he asked Mr. Hepburn if he had "anything further," and Mr. Hepburn did. The Judge listened to the evidence and admitted additional exhibits from Mr. Hepburn. The tape of the hearing does not support Mr. Hepburn's claim that the Judge limited the time so that he did not get a full and fair opportunity to present his case.

For the foregoing reasons, Appellant Hepburn has not shown grounds for reversal of the Judgment of the Small Claims Court.

Order

The Judgment of August 4, 2006 is *affirmed*.

Date at Montpelier, Vermont this 8th day of February, 2007.


Hon. Mary Miles Teachout
Presiding Judge