

IN THE SUPREME COURT OF BELIZE, A.D. 2012

CLAIM NO. 625 of 2009

**JOHN TERRY
SAMUEL M. COOK
t/a SPECIALTY WOODS INC.**

**1st CLAIMANT
2nd CLAIMANT
3rd CLAIMANT**

AND

**LEA'S FURNITURE CO. LTD.
BELIZE FOREST DEVELOPMENT LTD.
MADERA DEVELOPMENT GROUP LTD.
CAMBRANES SUPPLIES & SERVICES**

**1st DEFENDANT
2nd DEFENDANT
3rd DEFENDANT
4th DEFENDANT**

Hearings

2011

3rd October

27th October

2012

17th January

14th February

16th March

29th March

14th June

Mr. Lionel Welch for the Claimants.

Mr. Michel H. Chebat SC for the defendants.

LEGALL J.

JUDGMENT

1. The first claimant is the executive manager of the third claimant, a company incorporated in the United States of America, and carries on the business of buying and selling lumber. The second claimant is in the said business carried on through the third defendant, but who was not called to testify or give evidence in this matter. The defendants are companies incorporated in Belize under the Companies Act Chapter 250 with registered offices at San Ignacio, Cayo District Belize. Luis Cambranes Sr., and Luis Cambranes Jr., are directors and majority shareholders of the defendants, except the second defendant company in which the majority shareholder is Fred Hood who is not a party to these proceedings, and in which company, the only other shareholder is Luis Cambranes Jr.
2. Both of the Cambranes were originally defendants in this matter, but on 24th September, 2009 the claim against the Cambranes was struck out by the Registrar. Reasons for the striking out were not brought to the attention of the court. All the remaining defendants are in the business of buying, selling, trading, manufacturing of merchandize of every kind and nature, according to their memoranda of association, which would include timber and mahogany logs. There is a non-governmental organization called Programme For Belize (PFB) with registered offices in Belize City, which manages about 260,000 acres of forest in the Rio Bravo Conservation and Management Area (Rio Bravo) in the north western part of Belize and which executive director is Edilberto Romero.

3. By a written agreement dated 4th December, 2007, but commenced from 25th November, 2007 for a period of about three years, until 30th December, 2010, PFB agreed, through its executive director, to sell to the first defendant approximately sixty-four percent of the total timber extracted as trees and logs from Rio Bravo; and to deliver as trees to the said defendant's place of business at San Ignacio Belize. According to the agreement, mahogany and Mexican cedar trees had to have a diameter breast height of fifty centimeters or greater, and for all other hardwood trees a height of forty-five centimeters or greater. Both species had to have a sound trunk length of three centimeters or greater. The agreement which was signed by the executive director of PFB, and Luis Cambranes of the first defendant, contained provisions for the payments by the first defendant to PFB for the trees or timber and logs, and also stated that the logs and timber passed to the first defendant on payment.
4. Around August 2007, the defendants requested from the claimants financing to be used by PFB to expand its operations in Rio Bravo to increase the harvest of the volume of timber mainly mahogany; and to purchase logging equipment; and also financing for the first defendant to build facilities such as a sawmill relevant to the supply of required timber. The claimants provided the cash and equipment for the above purposes; and the defendants, according to the claimants, agreed that they would sell the timber extracted by PFB to the claimants for a period of three years beginning from 2008 to 2010. The alleged agreement was oral and not in writing. According to the claimants and agreed by the defendants, the price agreed for the timber was US

\$3.60 or BZ \$7.20 a board foot, and the defendants agreed, again according to the claimants, to provide to the claimants 200,000 board feet for each of three years – 2008, 2009 and 2010 making an agreed total of 600,000 board feet at 3.60 US or \$7.20 per foot. A board foot is 12 inches long by 12 inches thick. The alleged oral agreement was that the first defendant would purchase the timber from PFB, while the fourth defendant would process the timber after which the claimants would purchase the processed timber logs at a price of \$3.60 US or \$7.20 BZ per board foot.

5. In accordance with the oral agreement, the claimants said that they supplied equipment to the defendants as follows:

“(a) 1-518 Caterpillar Skidder	- \$64,000.00
(b) 1-Phelps Sawdust Blower 20HP	- \$300.00
(c) 1-Fairfield Swing Saw 14” blade	- \$200.00
(d) 1-D6-Caterpillar bulldozer	- \$70,000.00
(e) 1-50’ Roller Bed homemade	- \$300.00
(f) 1-Kucas Mill Portable Sawmill 22”	- \$3,000.00
(g) 1-Onan 60kw Gen. set	- \$4,000.00
(h) 1-Mattison 404 Ripsaw	- \$1,600.00
(i) 1-Bus Machine Works 36” Planer	- \$1,200.00
(j) 1-Monark Delta Boat w/motor	- \$1,600.00
(k) 1-930 Loader	- \$50,000.00
(l) 1-1985 Mack Truck	- \$28,000.00
(m) 1-Drop Deck trailer	- \$12,000.00
	<u>BZ\$236,200.00</u>

The equipment above were used for transporting and processing of the timber. The claimants state that they were not defective, but used

equipment. The claimants further state that in accordance with the oral agreement they transferred to the first defendant BZ\$1,020,000, and submitted money transfer receipts apparently to prove that this amount was sent; but adding the amounts on each such receipt, does not reach the amount allegedly sent by the claimants.

6. The claimants say that the defendants failed to supply in each of the three years, the 200,000 board feet of mahogany agreed; but instead supplied in 2008, 80,948 board feet of mahogany in shipments to them at Mobile, Alabama, USA. The claimants say that the agreed amounts of logs were not supplied nor exported to them for 2009, so they enquired as to the reason for the non export of the logs; and according to the claimants, the problem was that PFB would not supply the timber to the defendants because the first defendant had not settled a debt to PFB for the year 2008. The parties therefore held a meeting to resolve the problem, and to pay off the debt to PFB, who would then re-supply the timber to the defendant for processing and sale to the claimants. In order to resolve the problem, the defendants proposed that the claimants advance more money; but this proposal was rejected. At the time of the proposal in early 2009, there were in the defendants possession some timber; and the claimants therefore counter proposed that the claimants process this timber, export them to the claimants, return all equipment and then make an estimate of the amount owing to the claimants. This did not find favour with the defendants. Attempts to resolve the problem broke down and the claimants on 13th July, 2009, brought a statement of case against the defendants for the following reliefs:

- “(a) The sum of six hundred and sixty eight thousand five hundred and ninety two dollars and ninety four cents Belize Currency (BZ\$668,592.94);
- (b) Interests at 6% from the date of breach until judgment or sooner payment as set out under paragraph 19 above;
- (c) Costs; and
- (d) Any other relief the court may deem fit.”

7. On 14th July, 2009 the claimants applied for an injunction against the defendants which was granted by Arana J on 3rd August, 2009. The injunction restrained the defendants, servants or agents from disposing of the equipment mentioned above; from interfering in anyway with the mahogany logs of timber in the possession of the defendants at the time; until the determination of the claim or further order.
8. Prior to the filing of the claim, the first defendant had written on 17th June, 2009 a letter to the claimants, making a proposal to settle a debt to the claimants. The letter began as follows:

“Dear Sirs,
We acknowledge that we owe Specialty Hardwoods the sum of \$326,000 US which is comprised of \$150,000 loan to PFD \$112,000 worth of used equipment and an advance of \$64,000.””

9. The letter then proceeded to make proposals to settle the above debt. The letter is not signed, but the name of the second defendant is

printed at the bottom of the letter. In his further witness statement Luis Cambranes Jr., at paragraph 32 swore that “Specialty refused to accept our realistic proposal which was proposed to them in our letter dated 17th June, 2009.” He then exhibited a copy of the said letter, part of which is quoted above. Even though the letter is not signed, he swore that he knew of the letter and it was read by him and that it was “our realistic proposal in our letter dated 17th June, 2009.” This is, in my view, accepting that the proposal above in the letter was the defendants. The letter states that “we acknowledge” owing the sum of money to the claimant specially Hardwoods. I interpret “we” there, to mean the defendants. In his evidence in court he admitted that he was a director of the defendant companies and as a director, he managed the day to day business and management of the defendant companies. Yet Mr. Cambranes has sworn that he does not acknowledge that the defendants owe the sum in the letter to the claimant, although the letter of 17th June, 2009, is to that effect.

10. In further defence to the claim, the defendants say that there was no contract between the defendants and the claimants to supply mahogany to the claimants in the amount claimed. There was, according to the defendants, a partnership involving the claimants, PFB and the first and fourth defendants. The terms of the partnership, according to the defendants, are that the first defendant would purchase mahogany logs from PFB in accordance with a contract with PFB; and the fourth defendant would process the logs and the claimants would purchase the logs, from the fourth defendant. PFB, according to the defendants, did not supply the agreed logs for 2009.

The defendants further state that it is the claimants who failed and refused to continue to purchase mahogany from the second defendant as was agreed in the partnership in order to deliberately undermine the business relationship the defendants had with PFB. The defendants further state that even if there was an agreement between the claimants and defendants in this matter, that agreement is unlawful or void as being contrary to the objects of the defendants as stated in their memoranda of Association, because the defendants are not authorized, according to their memoranda, “to engage in the business of milling and processing mahogany and be in the business of selling of mahogany to the claimants or anyone,” to use the words of the defence. The defendants request therefore that the claim be dismissed and they be granted judgment on the counterclaim in which the defendants claim damages against the claimants for breach of contract, special damages, interest, and costs.

11. The claimants deny that there was any such partnership and claimed they had no agreement or direct dealing with PFB. I accept this evidence of the claimants for the following reasons. The defendants at paragraph 2 of the counterclaim states that the claimants breached the oral agreement for the partnership existing between the claimants and the first and fourth defendants. There is no mention there of PFB. Further, the counterclaim is against the claimants, not for breach of the partnership, but for breach of contract in this case between the claimants and the defendants. In addition, in his oral evidence in court, Luis Cambranes swore that the defendants’ business was to supply the claimants with timber – sell timber to them: not that PFB

and the defendants were to, under a partnership, sell timber to the claimants. He went on to testify that the claimants lent the defendants money before the timber was supplied to them and that the claimants sold the equipment to the defendants' companies. For the above reasons I do not accept that there was a partnership as claimed by the defendants; and I do not find evidence proving the deliberate undermining allegations above. In relation to the defence that the defendants acted contrary to their objects as contained in the memoranda of association, the memoranda, given at Item 11 to 17 in the list of documents disclosed are widely and generally worded which would include milling, processing, and selling of mahogany.

12. There is no doubt in my mind on the evidence that there was an oral contract between the claimants and the defendants whereby the defendants agreed to supply 200,000 board feet of mahogany to the claimants for each of the three years. At the time of making the oral contract, the claimants knew that the timber under the contract had to come from PFB and the claimants also knew that for the defendants to complete the contract with them, the defendants were relying on PFB as the source of the timber. As a matter of fact, the claimants had supplied the first defendant with \$150,000 US as a loan which was paid to PFB by the defendants, for the extraction of timber. The loan was to the defendants who paid it to PFB for the purposes above. The claimants admitted that the success of the contract depended on the mahogany being harvested by PFB. The contract the defendants had with PFB was from November 2007 to 30th December, 2010, but the contract was cancelled by PFB in May, 2009 due to indebtedness by

the defendants to PFB. Therefore it was the defendants indebtedness to PFB that caused PFB not to supply the timber for processing. It was the defendants fault or breach of their agreement with PFB that resulted in PFB not supplying the timber; and I do not think that the claimants should be prevented from enforcing their rights under their contract with the defendants, because the defendants failed due to their fault in their obligations to PFB.

13. The contract between the claimants and the defendants came to an end in June, 2009 on the ground, according to the claimants of non-performance of the contract by the defendants in that they failed under the contract to deliver the timber for the year 2008, or to return the monies paid to the defendants or return the equipment. Luis Cambranes testified that the equipment was at San Ignacio but he did not know the location.
14. There is evidence that the defendants made six shipments of mahogany wood to the claimants in Mobile Alabama. The first shipment in May 2008 was 13,082.92 board feet; on May 26, 2008, 13,650.1 board feet; on July 11th, 13,009.85 board feet; on July 14th 2008, 11,765 board feet; on September 3rd, 2008, 14,528.17; and on September 4th, 2008, 14,911.92. The claimants state that they paid \$1,020,000 BZ to the defendants. From the evidence above the total amounts of about 80,948 board feet were delivered to the claimants. At a price of 7.20 BZ per board feet the total is \$BZ\$582,894.14. The claimants state that about 51,000 feet of timber belonging to them and in the possession of the defendants were sold by the defendants to

another buyer, Intercontinental Hardwoods, North Carolina at an estimate price of US\$183,600 and the equipment is still in Belize, at San Ignacio, according to the defendant.

15. According to the claimants they are claiming \$668,592.94 made up as follows:

Description	Debit	Credit	Balance
Wire Transfers from September 28 th , 2007 to April 29 th , 2008. See: SW-3 of Statement of Case.	\$1,020,000.00	-	\$1,020,000.00
Used Equipment. See: Paragraph 9 of Statement of Case	\$236,000.00	-	\$1,256,000.00
Additional Boat Freight for missing CITES Permit	\$13,512.08	-	\$1,269,512.08
Living expenses for Samuel Cook	-	\$18,290.00	\$1,251,22.08
Mahogany Lumber received during May 5 th , 2008: See: SW 4 of Statement of Case	-	\$582,894.14	\$668,327.94
Balance owed to the Claimants in	-	-	\$668,327.94 BZD

In relation to the amount for used equipment, apart from the price given in the statement of case there is no evidence of receipts or bills

showing the value of the items. As regards the amount of \$13,512.00 there is a similar lack of evidence. In relation to the \$1,020,000, bank transfers were submitted but they do not reach to this amount. I am not satisfied that the claimants have proven the total mentioned in the table above or in the statement of case above. But there is the letter of 17th June, 2009 mentioned above in which the defendants admit owing the amount in the letter.

16. I hold that the defendants breached the oral agreement to supply timber to the claimants for the years under the contract. I accept that the claimants under their oral contract sent \$150,000 BZ to the defendants who used it to pay PFB to harvest timber. I accept that the letter of 7th June, 2009 was written by Luis Cambranes representing the defendants. The letter acknowledges that the defendants owe the claimants US \$326,000 and states what the debt is for. I accept this evidence, and therefore award this amount to the claimants by the defendants.
17. The court has not received written closing submissions from the claimants in this matter, though they were ordered. Costs are in the discretion of the court and the court is entitled to take into consideration the conduct of the parties. There is therefore no order as to costs.

I make the following orders:

- (1) The defendants shall pay to the claimants the sum of US\$326,000

or BZ\$662,000 as an amount owing to the claimants by the defendants.

- (2) The counterclaim is dismissed.
- (3) The defendants shall pay to the claimants interest on the above amount at the rate of 6% per annum commencing from 14th June, 2012 until the amount is fully paid.
- (4) There is no order as to costs.

Oswell Legall
JUDGE OF THE SUPREME COURT
14th June, 2012

