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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

STIMSON LUMBER COMPANY,)	
)	Case No.
Plaintiff,)	
)	VERIFIED COMPLAINT
vs.)	
)	Prayer Amount: At least \$80,000,000
THE COEUR D’ALENE TRIBE,)	
)	Demand for Jury Trial
Defendant)	

Plaintiff Stimson Lumber Company (“Stimson”) alleges as follows:

INTRODUCTION

1.

This is an action for specific performance (or damages), declaratory relief, and injunctive relief. Stimson and The Coeur d’Alene Tribe (the “Tribe”) are parties to a Lease and Option Agreement (“the Agreement”) dated May 31, 2000. Under the terms of the Agreement, Stimson

leased and operated a sawmill located in Benewah County, Idaho (“the Mill”). In addition, Stimson was granted an option to purchase the Mill from the Tribe. Stimson exercised its purchase option, but the Tribe refused to sell the Mill and threatened to terminate Stimson’s lease.

PARTIES

2.

Stimson is an Oregon corporation with its principal place of business in Oregon. Stimson is a forest products company.

3.

The Tribe is a federally recognized Indian tribe possessed with the full legal power of a sovereign domestic government.

JURISDICTION AND VENUE

4.

This Court has original jurisdiction pursuant to 28 U.S.C. § 1332 because there is complete diversity of citizenship between the parties and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

5.

By contract, the parties agreed to personal jurisdiction in Idaho.

6.

Venue is proper in this District and Division under 28 U.S.C. § 1391 because the Mill, and the land upon which it resides, is located in Benewah County, Idaho.

7.

Under Section 19 of the Agreement, the Tribe expressly granted a limited waiver of sovereign immunity for any suit in action, declaratory judgment or injunction as to any obligation arising out of the Agreement, and consented to jurisdiction in this Court.

FACTUAL ALLEGATIONS

(The Agreement)

8.

On May 31, 2000, the Tribe entered into the Agreement with TOBD, Inc. A copy of the Agreement, as amended, is attached as Exhibit 1. The purpose of the agreement was to permit TOBD, Inc. to lease certain land and assets and to construct and operate a sawmill. The estimated cost of TOBD, Inc.'s investment in mill improvements was \$4.0 to \$5.0 million.

9.

TOBD, Inc. made the required investment and built, opened and began operating the Mill. Subsequently, Plummer Forest Products, Inc. ("PFP") acquired all of TOBD, Inc.'s rights under the Agreement as the successor tenant.

10.

In 2006, Stimson entered into a business transaction with PFP under which, among other things, Stimson acquired PFP's rights in the Agreement as successor tenant. The Tribe signed a Lease Modification Agreement and Form of Estoppel, memorializing its consent to the assignment of the Agreement to Stimson. From then and until now, Stimson has operated the Mill and timely paid rents to the Tribe. In addition, Stimson has paid all costs required to improve and maintain the Mill.

11.

The initial term of the Agreement was one (1) year, which expired on June 1, 2001.¹

12.

Upon expiration of the initial term, the Agreement automatically extended for a four (4) year renewal period, followed by a series of three (3) successive five (5) year renewal periods. Consequently, the full term of the Agreement, including renewal periods, was twenty (20) years.

¹ Agreement, Section 3.1.

13.

Stimson satisfied all of its obligations under the Agreement during the full term, which ended on June 1, 2020.

14.

Beginning on June 1, 2020, Stimson became a holdover tenant on a month-to-month tenancy. Stimson continued to occupy and operate the Mill, and make rent payments. Pursuant to Section 21 of the Agreement, the month-to-month tenancy is construed as an extension of the Agreement.

15.

The Agreement remains in effect and Stimson continues to pay rents to the Tribe.

(Stimson's Purchase Option)

16.

Under Section 14.1 of the Agreement, Stimson was granted “the sole, exclusive and irrevocable right and option (“the Purchase Option”) to purchase Leased Assets (including the Premises and Equipment)” that constitute the Mill.

17.

The purchase price is \$900,000, which is offset by the total sum of rents paid to the Tribe during the term of the Agreement. The total rents the Tribe has received under the Agreement meets or exceeds \$900,000, so Stimson has effectively already paid for the Mill. Further, under Section 14.1(c), the Agreement expressly provides that Stimson “shall be required to pay no other or additional fee or consideration” to exercise its Purchase Option.

18.

Also under Section 14.1(c), Stimson's purchase option “**shall not terminate or expire** in the event of any non-payment of rent by [Stimson], but **shall terminate only upon** (1) the

exercise of all Options granted hereunder by the [Tribe] in accordance of the terms hereof or (2) **any termination of this Agreement.**” (Emphasis added.)

(Stimson Exercised the Purchase Option)

19.

In the spring of 2020, before the expiration of the final renewal period, and before it became a holdover tenant, Stimson tried, for several months, to engage the Tribe in conversations about formally extending the Agreement or exercising the Purchase Option. At the time, Stimson was unaware of the reason the Tribe was unresponsive.

20.

On May 27, 2020, Stimson sent the Tribe written “notice of exercise of the [Purchase Option] for immediate effect.”

21.

Upon receipt of Stimson’s notice, under Section 14.1(e) of the Agreement, the Tribe was obliged to complete the sale of the Mill to Stimson within sixty (60) days. The Tribe refused to sell the Mill.

22.

On May 28, 2020, by letter, the Tribe notified Stimson that it could not timely attend to the exercise of the Purchase Option. The Tribe explained that, due to the COVID-19 pandemic, Tribal Council had issued a “Stay at Home Order for the Reservation and shut down its government operations to all non-essential employees.” Further, the Tribe explained that it had been forced to take “drastic measures to protect the community, including a delay of its annual Tribal Council election from May 2, 2020, until June 6, 2020.” As a result, until a new Tribal Council was elected and sworn in, the Tribe could not respond to Stimson’s notice to exercise the Purchase Option.

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23.

In its May 28, 2020 letter, the Tribe acknowledges that Stimson would become a holdover tenant. The Tribe directed Stimson to continue paying rents.

(Recent Negotiations)

24.

On July 1, 2020, by letter, the Tribe told Stimson that it would not sell the Mill. Instead, the Tribe offered to negotiate an extension of the Agreement. The Tribe directed Stimson to continue making timely rental payments.

25.

The Tribe explained that it would not sell the Mill to Stimson, even though Stimson had already paid for it, because Stimson failed to provide timely notice of its intent to exercise the Purchase Option. The Tribe argued that Stimson's "right to exercise the option under the [Agreement] expired ..."

26.

The Tribe is mistaken. Under Section 14.1(c) of the Agreement, the Purchase Option remains in effect until (1) it is exercised or (2) the entire Agreement is terminated.

27.

At the time that Stimson exercised the Purchase Option, and at the time that the Tribe refused to sell the Mill, the Agreement was in effect. It remains in effect today. Consequently, under Section 14.1(c) of the Agreement, the Purchase Option remains in effect, and the Tribe is obligated to sell the Mill.

28.

After the Tribe refused to sell the Mill, the Tribe began negotiations for a written extension of the Agreement that were inherently unfair to Stimson. Under the proposed new terms (1) the Tribe (and not Stimson) would own the Mill going forward and (2) Stimson would

be required to sell to the Tribe approximately 41,000 acres of timberland. Stimson has no interest in selling its timberlands.

29.

To pressure Stimson to acquiesce to an unfair deal, the Tribe has threatened to terminate the Agreement and lease the Mill to another operator.

(Demand to Vacate)

30.

On February 22, 2022, the Tribe accused Stimson of trespassing at the Mill since May 31, 2020, and demanded Stimson to vacate the facility before March 31, 2022. The Tribe threatened legal action if Stimson refused.

FIRST CLAIM FOR RELIEF

(Breach of Contract – Specific Performance)

31.

Stimson realleges and incorporates the allegations of paragraphs 1 - 30 above.

32.

The Agreement constitutes a valid and binding agreement between the parties.

33.

The Tribe has materially breached the Agreement by refusing to sell the Mill to Stimson.

34.

The terms of the Agreement are sufficiently clear and definite to allow specific performance.

35.

Stimson has performed all obligations required of it under the terms of the Agreement.

36.

Stimson is ready, willing and able to close the purchase and sale of the Mill.

37.

Stimson has no other plain, speedy or adequate remedy at law.

38.

The Mill property consists of unique real estate, justifying the remedy of specific performance.

39.

Stimson, therefore, is entitled to specific performance requiring the Tribe to sell it the Mill on the terms set forth in the Agreement.

40.

Pursuant to Section 23 of the Agreement, Stimson is entitled to its reasonable attorney fees and costs incurred in this action.

SECOND CLAIM FOR RELIEF

(Breach of Contract – Damages)

41.

Stimson realleges and incorporates the allegations in paragraphs 1- 40 above.

42.

In the alternative to the remedy of specific performance set forth in Stimson's First Claim for Relief, Stimson is entitled to an award of the damages that it has suffered as consequence the Tribe's breaches of contract, in an amount to be proved at trial, but not less than \$80,000,000 (the replacement value of the improved Mill), together with prejudgment interest at the statutory rate.

43.

Pursuant to Section 23 of the Agreement, Stimson is entitled to its reasonable attorney fees and costs incurred in this action.

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THIRD CLAIM FOR RELIEF

(Declaratory Judgment and Injunctive Relief)

44.

Stimson realleges and incorporates the allegations of paragraphs 1 - 43 above.

45.

An actual controversy exists between Stimson and the Tribe regarding the Tribe's obligation to sell the Mill to Stimson according to the terms set forth in the Agreement. Stimson maintains that the Agreement created an enforceable obligation requiring the Tribe to sell the Mill, and the Tribe contends that it has no obligation to sell the Mill.

46.

Stimson is entitled to a declaration that it is entitled to purchase the Mill.

47.

Had the Tribe sold the Mill to Stimson when required to do so, Stimson would have maintained possession of the Mill and continued its business operations.

48.

The Tribe has threatened to terminate the Agreement and hire another company to take over possession and operation of the Mill. This action would cause immediate, irreparable injury. Stimson would lose its business, its employees would lose their jobs, and the real property and improvements that Stimson has paid for would be forfeited.

49.

Stimson has no other plain, speedy or adequate remedy at law.

50.

Stimson is entitled to injunctive relief, in the form of a temporary restraining order, preliminary injunction with full force and effect pending final judgment, and ultimately, a permanent injunction enjoining the Tribe from terminating the Agreement or dispossessing

Stimson of its right to operate the Mill during the pendency of this action or until such time as the Mill is sold to Stimson.

FOURTH CLAIM FOR RELIEF

(Unjust Enrichment)

51.

Stimson realleges and incorporates the allegations of paragraphs 1 - 50 above.

52.

The Tribe has been unjustly enriched at Stimson's expense by requesting investments and improvements to the Mill and real property, relying on Stimson's maintenance of the Mill and real property, and knowingly accepting the investments, maintenance, and improvements to the Mill and real property.

53.

The Tribe received the benefit of the improvements, substantial work performed by Stimson to install, manage, and develop such improvements, and maintenance of the Mill and real property.

54.

If the Tribe is permitted to retain full interest and value of the assets and services provided by Stimson without payment, it will have been unjustly enriched at the expense of Stimson.

55.

It would be inequitable for the Tribe to retain such benefits without repayment for the assets and services.

56.

As a proximate result of the Tribe's misappropriation of capital improvements and unjust enrichment, Stimson has suffered and continues to suffer financial loss and damages.

FIFTH CLAIM FOR RELIEF

(Conversion)

57.

Stimson realleges and incorporates the allegations of paragraphs 1 - 56 above.

58.

Stimson owns and has the right to possess and control certain assets and equipment located at the Mill. A catalog of this property is attached as Exhibit 2.

59.

The Tribe has demanded Stimson vacate the Mill on or before March 31, 2022.

60.

On information and belief, the Tribe intends to take dominion and control over Stimson's property and use it to continue Mill operations without Stimson.

61.

The Tribe has not offered to pay Stimson for its property.

62.

It would be inequitable for the Tribe to retain Stimson's property without repayment for the assets.

63.

As a proximate result of the Tribe's misappropriation of Stimson's property, Stimson has suffered and continues to suffer financial loss and damages.

JURY TRIAL DEMAND

64.

Stimson demands a jury trial on all claims and issues to the extent allowed by law.

ATTORNEYS FEES

65.

Stimson is entitled to an award of attorneys' fees and costs pursuant to the Agreement, Idaho Code § 12-120, and Rule 54, Idaho Rules of Civil Procedure. In the event judgment is taken by default, Stimson shall be entitled to a reasonable award of attorneys' fees pursuant to Rule 54(e)(4), Idaho Rules of Civil Procedure.

PRAYER

WHEREFORE, Plaintiff Stimson Lumber Company prays for relief as follows:

1. For equitable relief in the form of a temporary restraining order, a preliminary injunction, and a permanent injunction enjoining the Tribe from terminating the Agreement or dispossessing Stimson of its right to operate the Mill during the pendency of this action or until such time as the Mill is sold to Stimson;
2. Specific performance of the Tribe's contractual obligation to sell the Mill to Stimson under the terms set forth in the Agreement;
3. For an award of damages in an amount to be proven at trial;
4. For an award of reasonable attorneys' fees and costs under the Agreement, Idaho Code § 12-120 and Rule 54, all other applicable statutes, common law, contract, and pursuant to the Court's equitable powers;
5. For the right to amend this Complaint to supplement facts and/or causes of action upon discovery of additional information;

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6. For an award of pre-judgment and post-judgment interest at the statutory rate; and
7. For such other and further relief as the Court deems just and equitable.

DATED this 25th day of February, 2022.

LUKINS & ANNIS, P.S.

By: /s/ Michael J. Hines
MICHAEL J. HINES, ISB #6876
JONATHAN D. HALLIN, ISB #7253

Attorneys for Plaintiff Stimson Lumber Company

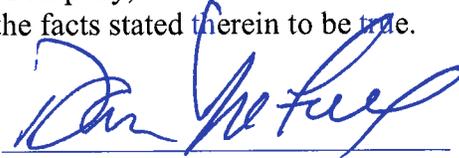
VERIFICATION OF PLAINTIFF

STATE OF OREGON)

:SS.

County of Multnomah)

I, Dan McFall, being first duly sworn on oath, state and depose that I am the Chief Operating Officer of Plaintiff, Stimson Lumber Company, that I have read the foregoing document, know the contents thereof, and I believe the facts stated therein to be true.

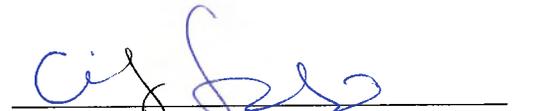
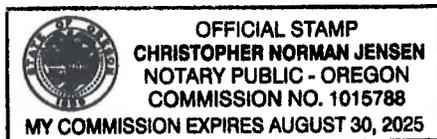


STATE OF OREGON)

:SS.

County of Multnomah)

I, the undersigned notary public does hereby certify that on this 25th day of February, 2021, personally appeared before me Dan McFall, who, being by me first duly sworn, declared that he is the Chief Operating Officer of Plaintiff, Stimson Lumber Company, that he signed the foregoing documents, and that the statements therein contained are true to the best of his knowledge.



Notary Public for Oregon
Residing at Milwaukie, Oregon
Commission Expires 8/30/2025