

IN THE HIGH COURT OF SOLOMON ISLANDS
Civil Jurisdiction

CC NO. 337 of 2015

BETWEEN: Pacific Crest Enterprises Ltd **Claimant**

AND: Hybrid Resources Enterprises Ltd **Defendant**

Date of Hearing: 1st July 2022

Date of Judgment: 25th November 2022

For the Claimant: Mr Marahare D

For the First Defendant: Fakarii C

JUDGMENT

Kouhota PJ

Introduction

The Claimant on 21st July 2015 filed a category (A) claim against the Defendant seeking damages for breach of contract and damages for loss of opportunity to carry out logging operation within Tungu Customary Land in North Choiseul, Choiseul Province.

The Claimant is a company incorporated in Solomon Islands under the Company Act 2009. On 3rd June 2011, the Claimant and the Defendant entered into a Finance agreement in which the Claimant will provide finance to enable the Defendant to facilitate timber rights, negotiate and sign standard logging agreement and other related cost in order to facilitate logging within the concession Tungu Customary Land. The essential terms of the contract are contained in clause 2 which are;

- (a) Shall ensure that timber rights process is fully completed and that timber rights are granted to Hybrid Resources Ltd.
- (b) Shall not without the express approval of the company, enter into any agreement or negotiates with any other person or body for carry out any logging operations with the concession area.
- (c) Shall ensure that the licence do not without the express approval of the company, enter into any logging operation within the concession area.

- (d) Shall within the concession area to the exclusion of all others.
- (e) Shall not without the express approval of the company, seek or accept financial assistance from any other person or body for any purpose connected with any, or any proposed logs within the concession areas.
- (f) Upon request by the company shall refund to the company pursuant to this agreement.

I understand the company referred in the agreement is the Claimant.

Based on the agreement the Claimant expended upon request of the Defendant payments totalling \$229,214.90 on different dates from 2011 to late 2012. The Defendant in breach of the agreement entered into another agreement with another company which then carry out logging operation within Tungu Customary land intended under the agreement for the Claimant to enter and carry out logging operations.

Since 2014 the Claimant began seeking refunds of the amount it expended pursuant to the agreement but the Defendant refused or neglect to refund the Claimant's money but told the Claimant to wait for a concession area in Gela to come out.

The Claimant therefore initiated this proceeding and seek damages for breach of contract and loss of business in logging operations. The Claimant in support of its claims relied on the evidence of Petri Sute as per his sworn statement filed 14/01/2020 and his oral evidence given in court on 1st July 2022. Mr Petri Sute works as a land coordinator for the Claimant. His work include dealing with land owners and timber rights and concession areas. While the Defendant objected to evidence of Mr Petri Sute and disputed the amount and damages for loss of business. I had considered the objection but prefer to accept Mr Petri Sute's evidence. Mr Petri is an employee of the Claimant his job involved dealing with issues covered in the contract and therefore had personal knowledge about the contract and the payments made by the Claimant to the Defendant under the contract. In fact he stated in his evidence that some of the payments were raised by the Finance Officer were on his instruction or advice. His evidence therefore is not hearsay.

The Defendant mere denied the claim and disputed the evidence of Mr Petri. A mere denial without any evidence is not good enough it essentially when the Defendant had not adduced any evidence to cast doubt on the evidence of the Claimant. On the evidence before the Court I am satisfied on the balance of probabilities that the Defendant has breach the terms of its contract with the Claimant. I give judgment for the Claimant. I will hear parties later as to the quantum of damages. Cost for the Claimant to be taxed if not agreed.

