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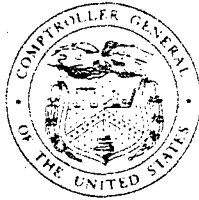

DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-198515 DATE: June 23, 1981

MATTER OF: Plum Creek Lumber Company

DIGEST:

1. Timber sale contract will not be reformed on basis of mutual mistake where no showing is made that written contract did not represent full agreement of parties.

2. Written contract Addendum executed under timber sale contract will not be reformed or rescinded where parties improperly interpreted terms of sale contract when agreeing to Addendum since mistake of law in interpreting terms of contract, in the absence of Government misrepresentation, does not provide basis for relief.

Plum Creek Lumber Company requests reformation of a timber sale contract entitled the Ball Branch Sale, contract No. 01775-4 or reformation or rescission of a modification to that contract dated October 22, 1974, to permit the cancellation of Plum Creek's obligation to cut and remove pulp wood.

On September 30, 1974, Plum Creek was awarded the Ball Branch Sale, to cut and remove timber in Spotted Bear Ranger District, Flathead National Forest, Montana. Plum Creek also held timber sale contracts in the Lower Sullivan and Taylor Elam areas in the same forest. By letter of October 11, 1974, Plum Creek requested authority to cut and remove pulp logs under clause B3.41 of each of the three contracts, including Ball Branch. Section A2 of the contracts sets out the type of timber

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the contractor is required to cut and remove. Pulp logs were not included in A2. Section B3.41 entitled "Material Not in A2," permitted the contractor to cut and remove species or products not listed in A2 upon written approval of the Forest Service Officer, while section C2.11, which apparently was included only in the Ball Branch contract, provided, "In addition, there is within the Sale Area an unestimated volume of pulpable material which shall be included timber upon written agreement." By agreement dated October 22, 1974, Plum Creek received pulp clearance approval for two of the contracts pursuant to B3.41 but Ball Branch approval was granted under C2.11. The Pulp Addendum, including the reference to clause C2.11, to the Ball Branch Sale was signed by Plum Creek's president thus adding the pulp to clause A2 of the contract.

By letter of May 11, 1976, Plum Creek, citing a deteriorating pulp market, requested that the agreement be canceled. A June 8 response from the District Ranger denied the request, stating that once an agreement is signed under C2.11 the material specified therein becomes "included timber" and cannot be further modified or changed. Plum Creek protested this decision in a March 1, 1977 letter to the Forest Supervisor, claiming it had, with agency approval, experimented with a skyline skidding method of pulp removal and that neither party to the Addendum knew if the method would work nor realized that C2.11 prevented further modification. The Forest Supervisor then sought advice from the Regional Forester and, in a March 9, 1977 memorandum, stated that:

> " * * * As the Ball Branch contract provided for optional inclusion of pulp under C2.11, a letter of authorization was issued under this provision, rather than B3.41 as requested. This change in authorizing provisions was not discussed with the purchaser. At the time neither the purchaser nor the Forest [Service] were aware that an agreement could not be made to cancel the authorization if market conditions made removal uneconomical. Both parties assumed that agreements under C2.11 could be canceled as can be done under B3.41."

The Regional Forester replied that, regardless of Plum Creek's request to cut and remove pulp under B3.41, acceptance was made under C2.11 and that section was controlling. The Forester stated that Plum Creek's lack of awareness of the effects of C2.11 was not a valid reason to waive the agreement and that damages would be assessed if the Ball Branch contract expired uncompleted. This memorandum was followed by the Forest Supervisor's April 19, 1977 denial of Plum Creek's request which was later affirmed by the Supervisor. On November 8, 1977, the Regional Forester affirmed the prior decisions of the Forest Supervisor, stating that "There may have been some 'mutual misunderstanding' on the part of both parties in respect to the meaning, force, and effect of C2.11, but [it] does not provide a basis for waiving or rescinding a contractual performance requirement once the product removal option is elected." Plum Creek appealed to the Board of Contract Appeals, requesting in part that the Pulp Agreement be declared void and rescinded on the ground of mutual mistake. By decision of July 16, 1979, the Board denied jurisdiction over that issue.

Plum Creek first requests that we reform the Ball Branch sale contract by deleting clause C2.11 because in the company's view it was included as the result of a mutual mistake. Since the essence of mutual mistake is that the contract as reduced to writing does not reflect the actual agreement of the parties, R.B.S., Inc., B-194941, August 27, 1979, 79-2 CPD 156, and as Plum Creek has not shown that the inclusion of the clause in the original sale contract was not intended by either party there is no basis for reforming the original sale contract.

The second portion of Plum Creek's request concerns the reformation or rescission of the October 22 modification to the sale contract. This portion of the request is based on the premise that neither the Forest Service nor the contractor intended the October 22 modification to the sale contract authorizing removal of pulp wood to be governed by clause C2.11 of the sale contract as that clause has been later interpreted by the Forest Service. Plum Creek argues that the record clearly shows both the Forest Service representatives and contractor personnel intended, at the time the Addendum was agreed to, that the pulp sale could be canceled and it was the assumption of both parties that clause C2.11 permitted cancellation, as did clause B3.41. Plum Creek concludes that as clause C2.11

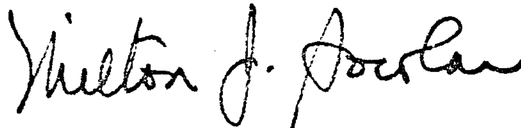
does not permit cancellation and the parties intended that the pulp removal agreement be subject to cancellation the inclusion of clause C2.11 in the Addendum was the result of a mutual mistake and the amended agreement should be reformed by removal of clause C2.11 or rescinded.

We do not agree that the terms of the Addendum resulted from a mutual mistake. As indicated before, the essence of a mutual mistake is that the instrument as reduced to writing does not reflect the actual agreement of the parties. R.B.S., Inc., supra. Here, it is clear that the October 22 Addendum represented the actual agreement. In fact, under the terms of the Ball Branch sale contract the only manner in which pulp removal could be authorized was pursuant to clause C2.11, which was the only term of the Ball Branch sale contract which specifically pertained to pulp removal. Clause B3.41, included in all three contracts, merely pertained in general to material not in A.2 and clearly would not encompass pulp where pulp was the subject of a specific contract provision. Since the terms of the sale contract, including clause C2.11, required that agreements for the removal of pulp could not be canceled by the contractor and the October 22 Addendum merely reflected those terms the mistake was not in reducing the agreement to writing but in interpreting the legal effect of the underlying sale contract's terms. This mistake occurred in the agreement between the parties and was a mistake of law, for which, in the absence of Government misrepresentation, equitable relief is not available from our Office. Dunbar & Sullivan Dredging Co., B-188584, December 23, 1977, 77-2 CPD 497; see also Aetna Construction Co. v. United States, 46 Ct. Cl. 113, 128-131 (1911).

While we have allowed relief in cases where Government representatives have made innocent misrepresentations of the law, Rust Engineering Company, B-180071, February 25, 1974, 74-1 CPD 101, there is no indication that such a misrepresentation was made or relied on in this instance. In this regard, although the Forest Service acknowledges that its representatives "understood" that pulp removal was subject to cancellation there is no indication that any Forest Service personnel specifically stated that the Ball Branch pulp removal

agreement could be canceled or in any way discussed the effect of clause C2.11. In any event, we do not believe that the general rule, which usually concerns the misinterpretation of a law or regulation which impacts on the agreement, applies to the interpretation of valid contract terms agreed to by both parties.

The request for relief is denied.



Acting Comptroller General
of the United States