

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF LEELANAU

RUSSELL RIKER,

Plaintiff/Counter-Defendant,

v

File No. 92-3091-CK
HON. PHILIP E. RODGERS, JR.

GERALD F. YEAGER and GWENDOLYN K.
YEAGER, and

Defendants/Counter-Plaintiffs.

ROBERT C. BREMER and MARY
L. BREMER, jointly and severally,

Defendants.

Richard A. Anderson (P37796)
Attorney for Plaintiff/Counter-Defendant

James R. Williams (P22351)
Attorney for Defendants and Counter-Plaintiffs

DECISION AND ORDER

The trial of this action began on September 28, 1993 and was continued to January 28, 1994. It concluded on January 31, 1994 and the Court heard closing arguments on February 9, 1994. Thereafter, Plaintiff/Counter-Defendant became subject to the jurisdiction of the Federal Bankruptcy Court. The Court took the matter under advisement to review the parties' proposed findings of fact and conclusions of law, its notes regarding the testimony and the many exhibits received into evidence. The Court will now present its findings of fact and conclusions of law. MCR 2.517.

This case has its inception in an ongoing business relationship between Russell Riker ("Riker") and Gerald F. Yeager ("Yeager"). Riker is a timber harvester who does business under the name of Peninsula Wood Products. Yeager buys and sells land. Both deal substantially in cash, keep poor business records and have utilized this lack of meaningful documents to put the most

favorable and self-serving slant on the presentation of evidence to the Court.

The parties first met in 1980 when Riker placed his sawmill on Yeager's land. Subsequently, on July 27, 1987, Riker offered to purchase this land and Riker and Yeagers entered into an unrecorded land contract for the following described property:

Real estate located in the Township of Bingham, County of Leelanau, and State of Michigan, described as follows: Commencing at the Northeast corner of Section 24, Town 29 North, Range 12 West, thence North 89°55'24" West on Section line 660.14 feet for Point of Beginning; thence North 89°55'24" West, 1329.86 feet; thence South 0°22'16" West, 868.6 feet; thence North 87°37'30" East, 670.79 feet; thence South 0°22'16" West, 320.0 feet; thence South 84°13'20" East, 1325.8 feet; thence North 0°22'16" East on Section line 627.9 feet; thence North 89°57'33" West, 659.9 feet; thence North 0°21'16" East, 667.03 feet to Point of Beginning. Being part of the North half of the Northeast quarter, Section 24, Town 29 North, Range 12 West, Bingham Township, Leelanau County, Michigan, and containing 40.26 acres.

Subject to right of way for County Road along the Northerly side thereof.

Also subject to easements, restrictions and reservations of record.

Both parties acknowledged that the land contract was a valid legal document which obligated the Yeagers to convey the described land to Riker upon satisfaction of the terms of the contract. The parties acknowledge that the purchase price was \$40,000.00, of which \$5,000.00 was paid at the time the contract was executed. It is the remaining balance of \$35,000.00 which formed the source of this dispute.¹

Whether the parties' business practices and lack of records

¹Payments were to be monthly in the amount of \$375.00 and subject to an 11% interest rate.

evidence commercial Darwinism and the inevitable financial failure of both parties, parallel and clumsy efforts at tax evasion, or some combination of the foregoing is not for the Court to speculate. The relationship between these two parties was one generally characterized by Riker's financial distress and Yeager's efforts to satisfy it, in whole or in part, sometimes with checks that cleared the bank and sometimes with checks that did not. In the interim, the parties attempted to consummate timber transactions with each other and Yeager purchased some materials from Riker.

Riker acknowledged his financial problems including an IRS seizure of his mill in 1986, difficulty making payroll and a litany of lawsuits and settlement agreements which he had not satisfied. Riker also admitted that he has made no payments toward his land contract obligation since September 13, 1991. Riker claims this is because he had satisfied the obligation in full. Yeager disputes this claim and prays for a judgment of foreclosure on the land contract and an additional monetary damage award.

Simple mathematics allows the Court to determine that Riker's payment obligation from January 27, 1987 through September 13, 1991 would have amounted to \$18,375.00, i.e., 49 months at \$375.00 per month. The only evidence of land contract payments which the Court can clearly identify as such through September 13, 1991 total \$15,760.00. Riker was in default on the land contract. Riker's payment obligation through the date of Yeager's counterclaim, October 16, 1992, totals \$23,250.00, or 62 months at \$375.00 per month.

Additionally, Riker has failed to pay real estate taxes on this property for the years 1987 through 1990, inclusive. These taxes total \$1,789.00. Although Riker acknowledges his failure and excuses it by denying receipt of a tax invoice, the land contract clearly placed this obligation upon him and he had a duty to make the payments whether or not he feels a bill was properly sent to him. Since the land contract was not recorded, Riker obviously did not expect such a bill from the taxing authority. There is no

evidence that Riker asked Yeager for a tax bill, offered to make payments towards the taxes, or any sense, met this obligation during the years in question.

Since the failure to pay taxes and land contract payments consistent with the terms of the contract establish a breach of the agreement and a default by Riker, the principal balance was properly accelerated, interest continues to accrue and Yeager is entitled to a judgment of foreclosure.

In determining the balance owed by Riker to Yeager, the Court has reviewed the parties' proposed findings with respect to the evidence presented during the trial. We begin this analysis with the acknowledgement by Riker that, at a minimum, he is indebted to Yeager in the amount of \$4,300.00. Both parties submitted visual aids to the Court in an effort to substantiate their claims. The visual aids recount various payments or transactions between the two and each party stipulated that the visual aid of the other constituted admissions by the other.

During the course of the trial, items 3 through 11 of the Riker visual aid which totalled \$5,450.00 were amended to reflect that \$5,000.00 of those funds should be applied as the original \$5,000.00 down payment on the land contract.

A review of the Riker visual aid and the accounting proposed therein with regard to the evidence introduced at the trial convinces the Court that a significant number of credits must be deleted. The total of these improper credits equal \$38,002.00. The specific itemization of these line items and amounts and the reasons why they must be offset are succinctly and fully described by Yeager's counsel in his proposed findings of fact at pp 3-8. The Court adopts that discussion and incorporates it herein by reference.

In addition, Yeager claims that Riker is indebted to him for additional monies. These sums are described at pp 9-10 of Yeager's proposed findings. Of these additional claims, the Court will allow \$9,060.00. Simply stated, the Court has allowed the \$2,200.00 tax obligation, the \$400.00 loaned in cash by Yeager to

Riker, \$2,800.00 in monies Yeager paid Riker for Riker's payroll, \$2,700.00 of Schafer expenses paid by Yeager and \$960.00 of cash paid by Yeager for Riker's payroll. The Court has disallowed all of the other cash claims made by Yeager which are not supported by the testimony of an additional witness, an exhibit or an admission. Additionally, a review of the Riker deposition of May 24, 1993 at pp 51-52 does not indicate an admission by Riker that \$2,900.00 was advanced on his behalf.

Accordingly, it is this Court's determination that the following is an accurate accounting of the business relationship between these parties:

ORIGINAL LAND CONTRACT:

\$40,000.00, plus \$23,251.00 total accrued interest from Yeager's amortization schedule, less \$20,760.00 (Riker's down payment of \$5,000 plus payments of \$15,760.00).
Due on land contract - \$42,491.00.

CREDITS DUE YEAGER:

\$38,002.00 - Improper credits from Riker visual aid.
\$ 9,060.00 - Additional charges due Yeager.
\$63,251.00 - Land contract original contract price. (\$40,000 plus accrued interest [\$23,251.00 before Riker credits])
Total credits due to Yeager - \$110,313.00.

CREDITS DUE RIKER:

\$51,774.00 - Net credits claimed by Riker on his visual aid.
\$ 2,000.00 - Amount Yeager credits Riker for snow plowing materials and other miscellaneous claims by Riker.
Total credits due to Riker - \$53,774.00.

TOTAL NET CREDIT DUE TO YEAGER - \$56,539.00

It is this Court's conclusion, then, that Riker is in default on the land contract and has a total obligation to Yeager in the

amount of \$56,539.00, together with that interest which has accrued while this action was pending. This total indebtedness is allocated in the amount of \$42,491.00 to the land contract and \$14,048.00 to other expenses and advances. Having properly accelerated the balance of the land contract, the Yeagers are entitled to a judgment of foreclosure.

Additionally, the Court does not find that Yeager and Bremer slandered Riker's title to the subject property. In fact, the transaction was effectively the conveyance to Bremer of a security interest in the subject property for a loan to Yeager. The Court was not persuaded that Yeager acted in bad faith when he granted this security interest or for the purpose for slandering Riker's title to the subject property. Additionally, the Court finds that at no time did Yeager's indebtedness to Bremer, which was secured by the subject property, exceed the land contract balance owed by Riker to Yeager in accordance with the land contract. Finally, neither Yeager nor Bremer knowingly or willfully misrepresented known material facts to Riker.

The Court must conclude that Riker has been in default for a substantial period of time and that Yeagers have duly performed all of the conditions and terms of the land contract to be performed on their part.

Therefore, the Court concludes that Yeagers and Bremer have not slandered Riker's title to the property nor practiced any fraud upon him. There was no testimony presented to the Court that persuaded it that any emotional distress was inflicted on Riker, intentionally or otherwise.

Riker having defaulted on the terms of the land contract and having set forth no valid defense to his failure to pay, the Court is satisfied that title to the subject property is vested in the Yeagers subject to Riker's land contract interest. Riker is additionally obligated to Yeager in the amount of \$14,048.00. Interest continues to accrue on the land contract balance at 11% and on the additional loan obligation at the relevant statutory rates. Taxable costs are also awarded to Yeagers. A judgment

consistent with this opinion shall be presented by the Yeagers within 14 days from the date of this decision and order in a form consistent with practice before this Court.

IT IS SO ORDERED.



HONORABLE PHILIP E. RODGERS, JR.
Circuit Court Judge

Dated: _____

11/15/95