

In the United States Court of Federal Claims

No. 800-87 C

Consolidated under No. 33-85C

Filed: July 12, 1999

*
MANKE LUMBER CO., et al. *
(MT. ADAMS VENEER CO., INC.), *
Plaintiff, *
*
v. *
*
UNITED STATES, *
*
Defendant. *

ERRATA

With respect to the Opinion in the above-captioned case filed on June 30, 1999, that language which is stricken in the following excerpts shall be removed from the text:

On page 2,

Underlying plaintiff's complaint is the government's claim for money damages which appears as a counterclaim. Plaintiff filed its suit here hoping to be completely relieved of liability for those damages. ~~In district court plaintiff sought relief which would have reduced, but not eliminated, its liability for damages.~~ The operative facts in the two suits have some commonality in that both suits arise from the circumstances surrounding plaintiff's status as a purchaser of the Lynx and Siler 6 Forest Service Timber Sales. The court need not make a determination as to whether the operative facts in the two cases are the same, however, because the relief sought is different. In district court plaintiff sought to ~~partially~~ buy-out its contracts pursuant to the Buy-Out Act; ~~it would have remained liable for the remainder.~~ Here plaintiff claims it was entitled to a contract term adjustment, a remedy that would have left plaintiff fully liable under its contracts but would have extended the time for performance. As more fully explained below, because plaintiff sought different relief in these separate tribunals, plaintiff's claim here is not one "for or

in respect to which" the plaintiff also had a suit pending in district court. Thus, plaintiff did not violate the jurisdictional bar of § 1500. Accordingly, defendant's Motion to Dismiss is denied.

On page 3,

Plaintiff denied breaching the contract. According to plaintiff, the Forest Service improperly denied both its application to buy-out the contract and its application for an extension. ~~The extension would have averted the alleged breach. The buy-out would have reduced the damages from breach by allowing plaintiff to reduce the volume of timber it was contractually bound to cut, remove, and pay for.~~

On page 6,

If plaintiff had prevailed in district court it would have paid the statutorily established buy-out charge for up to 55% of the qualifying timber. *See* 16 U.S.C. § 618. Plaintiff would have been relieved of any further obligation on the bought-out portion of the contracts. ~~For example, if plaintiff had already cut, removed, and paid for 45% of the qualifying timber, it could buy-out the remaining 55% thereby satisfying its remaining contractual obligations. Upon that portion of the contract which is not bought out and has not been performed, however, plaintiff is still liable for damages. As of September 24, 1985, plaintiff had only cut, removed, and paid for 1,200 MBF of the 19,500 MBF covered by the Siler 6 timber sale. On that date plaintiff applied to buy-out the Lynx and Siler 6 timber sale contracts pursuant to~~

On page 7,

~~the FCTPMA. Even if plaintiff's buy-out application had been accepted, the buy-out would have addressed only part of plaintiff's outstanding obligation. Plaintiff would still have been contractually bound to perform on the rest of the contract. Failing that, plaintiff would have been liable for damages.~~

ERIC G. BRUGGINK

JUDGE