

IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF BELIZE, A.D. 2023

CLAIM No. CV246 of 2023

BETWEEN:

**D.E.C. & SONS CONSTRUCTION
& HEAVY EQUIPMENT LTD.**

Claimant

and

ALDON TASHER

Defendant

Appearances:

Ms. Vanessa Retreage for the Claimant
Mr. Rene Montero for the Defendant

2024: March 19;
June 13;
July 30.

JUDGMENT

Trial – Debt – Heavy Equipment Rental – Breach of Agreement – Terms of Oral Agreement – Illegality – Unlicensed Logging – Forests Act – Notice to Prove – CPR 28.18.

- [1] **ALEXANDER, J.:** I grant the claimant judgment on their claim. I am satisfied that on the evidence presented, the debt of BZ\$29,635 is proved as being owed by the defendant (“Mr. Tasher”) to the claimant (“D.E.C. & Sons”).
- [2] The debt in issue in the present proceedings arises from a contractual relationship between the parties whereby Mr. Tasher had engaged D.E.C. & Sons in 2021 to provide various goods and services, specifically the use of certain heavy equipment.

The existence of the agreement is not in issue before me, as Mr. Tasher in his defence does not deny it. The terms of the agreement are in dispute.

[3] Mr. Tasher also denies liability to pay the sum of BZ\$29,635 (“the outstanding debt”) by pleading that the full terms of the agreement, as he understood them, were satisfied. Further, Mr. Tasher argued that the agreement was illegal, void and unenforceable. Hiding behind this defence, Mr. Tasher came to court to show that it is D.E.C. & Sons who was at fault and should not recover the outstanding debt. D.E.C. & Sons was engaged in illegal logging so Mr. Tasher should be allowed to avoid liability for the outstanding debt in the matter.

[4] I find that Mr. Tasher did request and use the services and equipment of D.E.C. & Sons, incurring the outstanding debt as claimed in this matter. I find also that logging as payment for use of the heavy equipment was not part of the agreement between the parties. There was also no sufficient evidence to show that D.E.C. & Sons cut logs without a permit or at all, and/or in breach of the Forests Act Chapter 213 R.E. 2020. Having entered the agreement with D.E.C. & Sons for use of their heavy equipment on a time-used basis, Mr. Tasher is not allowed to escape his liability to satisfy the debt for that use and service.

[5] Mr. Tasher is liable to pay the outstanding debt plus interest and costs.

The Claim

[6] This is a claim to recover an outstanding debt pursuant to an agreement for use of heavy equipment over the period of August 2021 to October 2021. It was a verbal agreement entered into by the parties, and its terms are in dispute.

[7] D.E.C. & Sons claims that their goods and services were provided on specified terms. The rental of different pieces of equipment was done on a time-used basis, and at fixed hourly rates. The statement of claim filed on 2nd May 2023 sets out in a table form the rental rates for the various pieces of equipment as follows:

EQUIPMENT USED	HOURS USED	HOURLY RATE	TOTAL DUE
D6R Bulldozer	50	\$180.00	\$9,000.00
D3 Bulldozer	14	\$130.17	\$1,822.50
Excavator	87	\$200.00	\$17,400.00
Dump Trucks	31	\$122.98	\$3,812.50
Grader	4	\$150.00	\$600.00
			\$32,635

[8] It was pleaded that Mr. Tasher paid a down payment of BZ\$3,000 towards the total contractual debt of BZ\$32,635, leaving outstanding the sum of BZ\$29,635. After the work was completed, he refused to pay the balance and has reneged on fulfilling the terms of the oral agreement.

[9] D.E.C. & Sons made several requests for payment of the outstanding sum. On each occasion, Mr. Tasher admitted the debt and apologized for the failure to make the payments. Despite these repeated demands, Mr. Tasher has refused or failed to pay the outstanding sum and has now denied he is responsible for satisfying the outstanding sum.

The Defence

[10] Mr. Tasher filed his defence on 9th June 2023. Mr. Tasher disputes the claim on the following grounds:

1. The equipment was inoperable for a lengthy period between August 2021 to October 2021.
2. He had to procure another heavy-duty operator to complete the works. As a result, D.E.C. & Sons did not perform the work as set out in paragraph 3 of their statement of claim.
3. Further, D.E.C. & Sons was paid for the actual work done.

[11] In the alternative, the defence pleaded that D.E.C. & Sons cut logs without a permit, rendering any agreement between the parties illegal, void and unenforceable.

[12] Mr. Tasher made several admissions in his defence that spoke to the existence of the agreement between the parties. Mr. Tasher admits in his defence that a payment of BZ\$3,000 was made to D.E.C. & Sons for works done. He admitted that D.E.C. & Sons did not perform all the works as claimed and this caused him to secure the services of another heavy-duty operator to complete the unfinished works. Another admission in the defence was that D.E.C. & Sons did demand repayment of the outstanding debt, but this was done by way of one letter from their counsel and Mr. Tasher responded via his own counsel. In all material respects, D.E.C. & Sons was put to strict proof.

Reply to Defence

[13] In reply, D.E.C. & Sons denied that the heavy equipment was inoperable for any period during the contractual period. It was stated that charges for rentals are billed as they are incurred so if any equipment was inoperable, Mr. Tasher would not have been billed for its usage.

[14] In reply to the alternative plea in the defence about illegal logging activities on Mr. Tasher's property or on their behalf, D.E.C. & Sons strongly denied that this occurred or that it formed part of the agreement between the parties. D.E.C. & Sons stated that the agreement was confined to the rental of heavy equipment and for that purpose, Mr. Tasher had sole control and authority over the equipment and their operators.

Issues

[15] I identify the central issue for the court's determination as whether Mr. Tasher is indebted to D.E.C. & Sons? In the process, I will discuss the question of illegality as it is a defence raised so its applicability and appropriateness will be addressed. Other questions will be addressed in disposing of the primary issue in this claim.

Discussion

[16] The debt that forms the subject matter of these proceedings is relatively small but involved heavily contested litigation to recover. Counsel for the parties took opposing stances on the facts and evidence so the court, guided by the law, was circumspect in combing through the evidence to dispose fairly of the matter.

[17] Ms. Retreage, counsel for D.E.C. & Sons, argues that the evidence supported their case that Mr. Tasher is indebted in the amount claimed, and that illegality, as raised by the Mr. Tasher, is inapplicable on the facts. On the opposing side, Mr. Montero advances that Mr. Tasher has paid for the work done, owes no outstanding sum and that D.E.C. & Sons cut logs without a permit and, therefore, any agreement between the parties was illegal, void and unenforceable. In his evidence and via the submissions of his counsel, Mr. Tasher also raised the issue of not having any contractual relationship with D.E.C. & Sons but only with its head, Mr. Castillo. The defence, however, was silent on this and it is raised first in the evidence at trial.

[18] At the trial, each party called the evidence of two witnesses:

For D.E.C. & Sons:

1. Mr. Curtis Castillo, and
2. Mr. Elvis Young.

For Mr. Tasher:

1. Mr. Aldon Tasher, and
2. Mr. Carlos Torres.

Issue: Whether Mr. Tasher is Indebted to D.E.C. & Sons?

[19] The primary issue of outstanding indebtedness gives rise to an examination of several pertinent and related facts and the evidence before any conclusion can be made on that question. The first is the agreement itself.

The Agreement

1. Parties to the Agreement

[20] It is an oral agreement that is in issue in these proceedings. Its existence is not in dispute. The terms, however, are uncertain, given that the agreement was not settled in written form.

[21] Ms. Retreage advances that in these circumstances, the court is not called upon to interpret or ascertain the meaning of a written agreement but must glean the intention of the parties by objective means. She submitted that the terms of the verbal agreement are a question of fact to be objectively ascertained from the conduct of parties and their oral exchanges.¹ Essentially, the court's function is to ascertain from the evidence before it the terms agreed to by the parties. The law is as advanced by Ms. Retreage, and Mr. Montero did not disagree.

[22] Deciphering the intentions of parties to the agreement through an impartial assessment of their conduct and exchanges posed some challenges, as parties have asserted and maintained differing accounts. The first question that I addressed was, who are the parties to the agreement?

[23] Mr. Tasher claims that the parties to the agreement were Mr. Castillo and himself and that it was for the construction of a road. Mr. Castillo's evidence was that the agreement was between D.E.C. & Sons and Mr. Tasher to rent equipment on a time-

¹ Carmichael et al v National Power Plc [1999] 1 WLR 2042.

used basis, which remained under the control of Mr. Tasher during the hours of use. It was never for the construction of a road.

[24] In the submissions, Mr. Montero stated that Mr. Tasher had a verbal agreement with Mr. Castillo, and not with D.E.C. & Sons, whose existence he was unaware of until the claim was served on him. This claim as to different contractual parties was made first in the witness statement of Mr. Tasher who stated at his paragraph 4 and 5 that:

[4] I along with "other farmers **sought the assistance of Curtis Castillo** to construct a road to our farms located in the Old Mullins Road Area of Pomona Valley, Stann Creek District. **This road that was to be constructed was not on any of our, the farmers' land**, it was a road to get to our farm land. As such, at all times, **the road was a public and not a private road.**

[5] We sought the assistance of **Curtis who was my childhood friend.** [My Emphasis].

[25] I view this evidence as the first attempt to change the colour of the pleaded defence.

[26] Mr. Tasher's defence did not indicate that the agreement was with any other entity or individual than D.E.C. & Sons. In fact, at paragraph 6 of his defence, he admitted to paying D.E.C. & Sons the sum of BZ\$3,000. Further, there was no plea in the defence that the entity that brought the suit was unknown to Mr. Tasher nor was there any attempt at that point to plea an alternative version to the claim advanced by D.E.C. & Sons. Indeed, the name of Mr. Castillo was never even mentioned in the defence. It also did not form part of the title of the proceedings so how could Mr. Tasher be unaware that he was sued by an unknown entity and why was this not part of his answer to the claim?

[27] When pressed during cross-examination about a personal contract between Mr. Tasher and himself, Mr. Castillo's evidence remained unshaken that he did not personally own any heavy equipment and that his discussions with Mr. Tasher were done under the stewardship of D.E.C. & Sons.

- [28] Having examined the evidence, I find it incredible that Mr. Tasher who was the “childhood friend” of Mr. Castillo would be unaware of the existence of D.E.C. & Sons and/or that Mr. Castillo was their director. This late attempt to impugn the party to the oral agreement as not being D.E.C. & Sons but Mr. Castillo was a weak bid to influence how the terms of the agreement are interpreted by the court. It is not accepted.
- [29] I noted also that Mr. Tasher, who in his defence never mentioned that the oral agreement was with other farmers and D.E.C. & Sons, suddenly introduced in his evidence these unnamed farmers as being parties to the oral agreement in these proceedings. He had two running versions of the story at any given point in time in this matter, as he gave his evidence.
- [30] In his witness statement at paragraph 12 Mr. Tasher stated categorically that “**My agreement with Curtis** was to pay him \$3,000.00 and nothing more.” [My Emphasis]. There was no mention here, in discussing payment, that the agreement to pay the \$3,000 was with the unnamed farmers and Mr. Castillo. This was also not mentioned in the defence. From his evidence and during cross-examination, Mr. Tasher advanced as part of his case that the farmers (including Mr. Tasher) were the ones who had the agreement with Mr. Castillo. He gave this evidence whilst simultaneously trying to build a case of illegality. This is evident in his paragraph 13 of his witness statement.
- [31] At paragraph 13, Mr. Tasher stated, “... he (Castillo) told me that he got about \$30,000.00 for those logs. I asked him if he could give the farmers a portion of the funds and he said he could not do so because **we, the farmers and him, had an agreement. I remained silent because he was right.**” [My Emphasis]. I inferred from this evidence that Mr. Tasher, as one of the farmers, wanted to get a benefit from the alleged “illegal” agreement and when he did not, he was prepared to cry illegality.
- [32] Also, it is only in his evidence that he introduced the claim that the agreement was for the construction of the farm road for the public use of all farmers including himself. It

did not help his case when he testified, adding another piece to his case, like a layered cake, that Mr. Castillo was also, as part of the oral agreement, to take the logs that were cut down during the construction of the road “as repayment for his services”.

[33] I find Mr. Tasher’s evidence to be unconvincing and concerning. I could not trust or place any confidence in the evidence of Mr. Tasher because of its constantly shifting nature.

[34] I also find Mr. Tasher’s evidence to be self-serving, contradictory and unreliable, particularly given the defence. On the totality of the evidence before me, Mr. Tasher presented as short of memory and as adding or trimming evidence to build his case that he was not responsible for the outstanding debt. I did not accept as truthful his evidence that the parties to the oral agreement were unnamed farmers and himself and/or that he was unaware of the entity, D.E.C. & Sons.

[35] I find that the oral agreement for the time-use of heavy equipment was between D.E.C. & Sons and Mr. Tasher.

2. Consideration and Outstanding Debt

[36] To be addressed next is the contractual sum and how it was to be derived, as understood by the parties. Two competing stories are presented and to ascertain the intentions of the parties, the court looked at their communication and conduct.

[37] The evidence called by D.E.C. & Sons through its witness, Mr. Castillo, is that the heavy equipment was rented on a time-use basis and was always under the control of Mr. Tasher. The agreement was not for the construction of a road as alleged by Mr. Tasher. D.E.C. & Sons had fixed hourly rates for different equipment rental, so it depended on the equipment that was being rented at any given time. He provides the table of these rates, already laid out at paragraph 7 above. Mr. Castillo’s evidence was that:

In the month of August, 2021, the Defendant approached me and requested to rent some heavy equipment from DEC. I, on behalf of DEC agreed to rent the equipment to the Defendant on a time-used basis; and among other things the following was agreed:

1. The Defendant would pay an hourly fee for the use of each piece of equipment; and
2. DEC would provide operators for each piece of equipment but such operators would work on the instructions of and be under the control of the Defendant during the rental hours.

[38] D.E.C. & Sons' case is that from the outset, they logged the hours the equipment was being used since this was necessary to determine the charges incurred by Mr. Tasher. Mr. Castillo gave evidence of the internal accounting processes which recorded the time used by each piece of equipment that was rented. The total contractual sum incurred by Mr. Tasher for use of the equipment was BZ\$32,635 of which BZ\$3,000 was paid, leaving outstanding the sum of BZ\$29,635. This was the debt that gave rise to the present claim.

[39] I considered that if the contractual sum was to be determined on usage, a firm rental figure/total could not have been provided upfront. It is in this context that I viewed the evidence of Mr. Tasher that, based on the agreement, the payment for use of the equipment was BZ\$3,000. According to Mr. Tasher, he paid D.E.C. & Sons the sum of \$3,000 for actual works done in the construction of a public road to be used by other farmers including himself. This was the sum he had agreed to pay and nothing more, so he had discharged his liability when he made the payment.

[40] In justification for the payment of \$3,000, Mr. Tasher explained that it was an informal arrangement for rental of the equipment that he had made with his "childhood friend", which involved some side dealings with the sale of felled logs to be used as "repayment" also for the services provided.

[41] Mr. Tasher stated at paragraphs 6, 12, 19 & 21 of his witness statement that:

[6] At all times, it was agreed that Curtis Castillo was to take the logs that were cut down during the construction of the road as repayment for his services. I

did not have a license to cut logs. At all times, I informed Curtis that for him to cut logs legally he would need to get his license from the Forestry Department.

...

[12] **My agreement with Curtis was to pay him \$3000.00 and nothing more.**

...

[19] Curtis then claimed that we owed him money. I told Curtis that we had been friends from childhood and that I would do what I could to assist him. However, at all times, we had agreed that he was to take the logs for his services. **I nor the other farmers had money to pay him. As such, it was never agreed that we would pay him.** It was always agreed that **Curtis would take the logs and he would get his money from the sale of the logs.**

...

[21] Furthermore, I am just one farmer that **requested his assistance.** Yet, I am the only one that he filed a claim against. [My Emphasis].

[42] The contradictory nature of this evidence is self-evident, and I need not say more. However, I feel compelled to point out that he admitted there was an agreement between the parties; the agreement was for monetary compensation; but the agreement was always for logs to be taken and sold to get the money for rental; and finally, the agreement was really “assistance” to allegedly moneyless farmers. Mr. Tasher seemed unable to get his story clear and kept jumping to conflicting claims about the agreement. His evidence was unreliable and unconvincing. I find him to be a stranger to the truth.

[43] Did the parties by their agreement intend that the payment for use of the heavy equipment to cut the road would be monies obtained from the sale of the logs that were cut down? D.E.C. & Sons has denied this interpretation of the contract and maintained that their equipment was subject to a rental policy involving hourly rental rates. Ms. Retreage submitted that the sum of BZ\$3,000 was paid as a down payment for the works to be done. She submitted further that both the oral exchanges and the conduct of the parties show clearly that the contract was for the rental of heavy equipment on a time-use basis to be paid through monetary compensation. The consideration for the use of the equipment was not payment with cut logs. I agree with Ms. Retreage. I only wish to add further that Mr. Tasher, by his self-contradictory statements in his evidence, admitted that monetary compensation was part of the

agreement, and that the payment was made by him. I find that on a balance of probabilities, the sum of BZ\$3,000 was paid as a down payment by Mr. Tasher.

[44] I did thoroughly consider the submissions of Mr. Montero. He argues that D.E.C. & Sons has not proved that Mr. Tasher is indebted to them or that there was ever any agreement between them and Mr. Tasher or that they even have a cause of action against Mr. Tasher. Mr. Montero then asserts that the agreement is as Mr. Tasher understands it and there is no outstanding debt between the parties. In fact, the agreement might be tainted with illegality. The question of illegality is discussed below at paragraphs 52 to 61. As regards the arguments made by Mr. Montero, I disagree and say that these assertions are against the weight of the evidence before me.

[45] I find that there was an oral agreement between the parties and a clear cause of action that entitled D.E.C. & Sons to file suit to recover the outstanding debt.

[46] Regarding the parties' intention for the payment for rental of the heavy equipment, the evidence supports the case of D.E.C. & Sons. As pointed out above, Mr. Tasher's evidence was contradictory, constantly shifting, and unreliable. The many inconsistencies were glaring. On the one hand, he claims that the extent of the contractual payment was BZ\$3,000 and nothing more but, interestingly, during cross-examination, he stated that the BZ\$3,000 was his portion of the payment to Mr. Castillo and that it was the "other farmers" who had agreed to pay Mr. Castillo through "logs". This is yet another contradiction and massaging of the evidence by Mr. Tasher. His evidence here is rejected.

[47] I do not believe nor does the evidence support the claim that the use of the equipment was for the payment of "\$3,000.00 and nothing more." In my view, the payment of BZ\$3,000 was on a balance of probabilities a down payment from Mr. Tasher in August 2021, for use of the heavy equipment. If the agreement was not for monetary compensation but for payment by felled logs, why then would Mr. Tasher have made the cash payment of BZ\$3,000? In my view, this cash down payment alone sufficed to discredit Mr. Tasher's claim that the payment for the use of the heavy equipment

was by part cash and part to be made by way of collection and sale of felled logs. I also find unbelievable and far from the truth his evidence, during cross-examination, that it was the other farmers who had agreed to pay Mr. Castillo through cut logs.

[48] In my bid to glean the intentions of parties, I also considered the evidence of Mr. Castillo who stated that on 30th September 2021, Mr. Tasher requested a breakdown of his charges as at that date. The request was allegedly made via WhatsApp messages. Mr. Castillo stated that he provided the information to Mr. Tasher who then asked if the outstanding sum of BZ\$29,635 included a discount. When told that the discount was already included in the outstanding balance, Mr. Tasher did not express any disagreement to the notified debt.

[49] It was the evidence of Mr. Castillo that in further communication with Mr. Tasher in 2021 and throughout 2022, there was never any query of the outstanding debt but acknowledgement of it and commitments from Mr. Tasher that he was working on making the payments. After several demands for payments and promises to pay, Mr. Tasher finally on 29th November 2022 admitted that he was not able to pay the outstanding debt. During cross-examination, Mr. Tasher at first denied then admitted that he had communicated with Mr. Castillo through WhatsApp messaging.

[50] The net effect of these messages showed an acknowledgement of the debt and promises to pay. By these messages, Mr. Tasher did not deny but acknowledged the debt, requested a breakdown of his payments, promised to pay and represented that he had made a payment towards the outstanding debt. Mr. Tasher also stated that he would pay off the outstanding debt from monies he was expected to receive from a lawsuit. Mr. Tasher did not in these conversations suggest that D.E.C. & Sons was to receive their payment from logging or the sale of logs.

[51] I accepted this evidence as representing the intentions of the parties to have entered the oral agreement for monetary compensation for rental of the equipment.

3. Illegality

[52] Mr. Tasher raised illegality as a defence, arguing that it renders void and unenforceable any agreement between the parties.

[53] Mr. Tasher's allegation of illegality rests on his claim that D.E.C. & Sons had agreed to obtain their payment for the rental of their equipment through the collection and sale of logs. The logs were illegally obtained because Mr. Castillo did not have a licence to log. He relies on section 19 of the Forests Act as the law which the contract offends. He also relies on section 4 of the Forest Rules, which I set out below.

[54] The Forest Rules at section 4 provides that:

In any forest reserve or in national land or in any private land to which the provisions of the Act have been applied, no person shall except by virtue of and subject to the conditions of any licence granted in that behalf-

- (a) cut, girdle, burn or injure any tree;
- (b) collect, prepare, use or remove any forest produce.

[55] Mr. Tasher's evidence was that Mr. Castillo took twenty logs in mid-September which he sold for \$30,000 but has refused to acknowledge those logs or to share the proceeds of the sale with the farmers. He provided no concrete evidence of the illegal logging by Mr. Castillo. In fact, Mr. Tasher's evidence was that his son was engaged in illegal logging whilst using Mr. Tasher's equipment. As a result, his son and other people were arrested by police for these activities. By this time, Mr. Tasher had engaged the services of Pletts to assist with constructing the road since D.E.C. & Sons had removed their equipment and ceased operating. This is stated at paragraphs 17 to 20 of Mr. Tasher's witness statement:

17. ... on the 13th of November 2021 I had asked my son to move logs from the area where the road clearing was presently located and to place it (sic) at the entrance of the road. This was necessary to clear the path for the road construction as had been requested by Pletts. Further, **I had instructed my son to move the logs with my towhead.**

18. During this process, police arrived and arrested my son and other people. Thereafter, on the 15th of November 2021, **the Forestry Department charged my son and others for illegal logging...**

19. Curtis then claimed that we owed him money. I told Curtis that we had been friends from childhood and that I would do what I could to assist him. However, at all times, we had agreed that he was to take the logs for his services. **I nor the other farmers had money to pay him. As such, it was never agreed that we would pay him.** It was always agreed that **Curtis would take the logs and he would get his money from the sale of the logs.**

20. Further, as shown in the Forest Department statement, the value of the logs confiscated was \$38,258.40. These logs were to be collected by Curtis, as per our agreement. As such, it was placed by the entrance of the road for him to do so. [My Emphasis].

[56] Mr. Tasher also proffered as evidence of illegality waybill 01834, which refers to “Hall log” and “Haul ... log”. He asked the court to accept this as clear references to the use of the equipment for illegal logging. Of note is that Mr. Tasher filed a notice to prove the waybills, including this one (discussed below). During oral submissions, Mr. Montero argued strenuously that these waybills were not proved. On the one hand, Mr. Tasher challenges the authenticity of this waybill and on the other, he relies on it to support his case.

[57] In response to the issue of illegal logging, Ms. Retreage argues that this issue did not arise until November 2021, long after D.E.C. & Sons had ceased renting its equipment to Mr. Tasher. Ms. Retreage pointed out that there was no evidence of the equipment being used for illegal logging. In fact, during cross-examination, Mr. Tasher conceded that he had never seen Mr. Castillo collect any logs and D.E.C. & Sons had never acknowledged receiving payment for use of its equipment through the collection of any logs. His cross-examination on these questions is shown below:

Q. ... Did you see him collect any logs?

A. With my eyes no, I haven't.

Q. So Mr. Castillo never accepted logs as payment as far as you are aware?

A. Not to my knowledge.

- [58] I have considered Mr. Tasher's claim that D.E.C. & Sons was involved in illegal logging and his evidence in this regard. I also considered the submission that Mr. Tasher's son and others were charged with illegal logging because of Mr. Castillo who had failed to secure a licence for logging.
- [59] For the defence of illegality to attach, I must be satisfied that the terms of the contract are as identified by Mr. Tasher. My finding above at paragraph 51 is that the agreement was for monetary payments, and not to take logs in exchange for building a road. Mr. Tasher's evidence on his version of the agreement is deemed incredible and the evidence of D.E.C. & Sons preferred that the agreement was for the rental of equipment on a time-used basis.
- [60] Regarding section 19 of the Forests Act on which Mr. Tasher grounds his illegality defence, this speaks to persons who "receive or is found in possession of forest produce." This section is unrelated to the oral agreement in these proceedings, which I already found to be for rental of equipment. Moreover, the evidence of Mr. Tasher himself is that it was his son, while operating Mr. Tasher's equipment, who was "found in possession of forest produce". The bid to impose his son's unlawful activities onto D.E.C. & Sons is entirely inappropriate and incapable of establishing the illegality defence. Further, this incident occurred after the agreement between the parties had ceased. Mr. Tasher has not provided the necessary evidence to ground the defence of illegality in accordance with the law as exists in Belize at this time.²
- [61] I find Mr. Tasher's claim of illegality unsatisfactory and against the weight of evidence before me. Illegality, as raised by Mr. Tasher, is inapplicable on the facts and law and is rejected.

d. Notice to Prove

- [62] D.E.C. & Sons provided waybills to establish a record of the hours during which the heavy equipment was used. These waybills were issued by D.E.C. & Sons and signed

² Tek Multi-Service Ltd v The Attorney General et al for a discussion of the law.

by Mr. Tasher. Mr. Tasher filed a notice to prove the waybills on 16th November 2023. Then on 17th November 2023, Mr. Tasher filed a notice to prove the WhatsApp messages.

[63] The notices to prove were filed pursuant to Rule 28 of the Civil Procedure Rules 2005 (“CPR”), challenging the authenticity of these documents. CPR 28.18 states:

- (1) A party shall be deemed to admit the authenticity of any document disclosed to him under this Part unless that party serves notice that the document must be proved at trial.
- (2) A notice to prove a document must be served not less than 42 days before the trial.

[64] Mr. Montero sought to impugn the procedure used by D.E.C. & Sons for proving the waybills/accounts by filing a notice to prove. I find instructive a comment in the case of **Redstone Mortgages Ltd v B Legal Ltd**³ on the requisite evidence that is to be provided to satisfy such a notice. I reproduce it in full below:

Requiring a party to “prove” a document means that **the party relying upon the document must lead apparently credible evidence of sufficient weight that the document is what it purports to be.** The question then is whether (in the light of that evidence and in the absence of any evidence to the contrary effect being adduced by the party challenging the document) the party bearing the burden of proof in the action has established its case on the balance of probabilities. Redstone cannot (by a refusal to admit the authenticity of a document) transfer the overall burden of proof onto B Legal, any more than it could do so simply by refusing to admit a fact. [My Emphasis].

[65] The court in **Redstone** was careful to emphasize that the process of challenge must be fair. It stated it thus:

The question is therefore whether any evidence as to the provenance of the document has been produced, and if it has then whether (although not countered by any evidence to the contrary) **such evidence is on its face so unsatisfactory as to be incapable of belief.** It is vital that the process of challenge is fair. [My Emphasis].

³ [2014] EWHC 3390 (Ch).

[66] Mr. Castillo gave evidence of the general procedure for the accounting of hours of use of the equipment and provided waybills as evidence. He has the managerial oversight for the accounts of D.E.C. & Sons and was the one who received the waybills. He stated at paragraphs 6 & 7 of his witness statement thus:

6. In order to ensure that DEC keeps a proper record of the time used by each piece of equipment, operators are usually provided with a waybill which specifies the specific equipment and the time used by each piece of equipment ...
7. At times, as a result of timing or inability to find the client on the site of the works, the operators would not be able to obtain a signature of the client on the waybill or to prepare a waybill. In these instances, the operators either provide the unsigned waybills or provide me with a breakdown of the hours worked upon their return to DEC's compound in Dangriga Town. I would personally collect the signed or unsigned waybills; [and] the account of the hours worked from each operator at the end of the day.

[67] According to Mr. Castillo, the number of hours logged by each operator was:

EQUIPMENT USED	HOURS USED
D6R Bulldozer	50
D3 Bulldozer	13.5
Excavator	87
Dump Trucks	30.5
Grader	4

[68] During cross-examination, there was no challenge to the hours logged but counsel for Mr. Tasher sought to establish that the witness could not say definitively that Mr. Tasher had signed the waybills. Mr. Elvis Young, an operator of the Grader and a witness for D.E.C. & Sons, confirmed that he operated the Grader for 4 hours on 18th September 2021. This evidence was not challenged during cross-examination.

[69] Interestingly, Mr. Montero submitted that D.E.C. & Sons had wholly failed to prove the authenticity of the waybills and WhatsApp messages. As such, the WhatsApp messages in the witness statement of Mr. Castillo ought to be discarded or given little to no weight. He failed to address the fact that during cross-examination, Mr. Tasher did admit that he communicated with Mr. Castillo via WhatsApp messaging. In any

event, the WhatsApp messages were not in the form of a document entered into evidence that was required to be proved under CPR 28.

- [70] On the waybills, Mr. Montero stated that there was a failure to provide a statement of account. Ms Retreage countered that this was provided via WhatsApp messages and Mr. Tasher did make payments after receiving the accounts. Mr. Montero also pointed to the absence of a record for fuel used by the equipment and the absence of pay slips for the operators of the equipment. Of note is that D.E.C. & Sons identified its method for determining the payments for rental which was by way of hours used and not fuel or remuneration of operators. Mr. Montero also pointed to a failure to bring all the operators to give evidence or to insert operators' names on the waybills. Mr. Montero also submitted that some of the waybills did not have signatures and that Mr. Tasher's evidence was that he did not sign any waybills since he was not around for the entirety of the clearing of the land. Mr. Montero pointed out that Mr. Castillo could not confirm that the signatures on the waybills were that of Mr. Tasher.
- [71] In my view the waybills are company records used to determine the time used by the equipment. Most of these waybills were signed by Mr. Tasher and, in any event, are not invalidated by a lack of signature. The evidence of Mr. Tasher is that he often was away from the clearing site so could not sign the waybills.
- [72] Further, Mr. Montero submitted that there was no receipt for the fuel used, though its amount was quantifiable. He also decried the lack of evidence as to who created the waybills and identified nine of them as not being connected to the witness statement of either party. Mr. Montero pointed specifically to invoices 01836, 01837 and 01839 as pre-existing the contractual dates. He submitted that these waybills relate to dates in February and March 2021, so pre-dated and contradicted the evidence of D.E.C. & Sons as to when their equipment was used by Mr. Tasher. A check of these three waybills show that they are dated 30th August 2021, 2nd September 2021 and 3rd September 2021 respectively. As such, they are related to the period of the agreement in these proceedings. The dates as suggested by Mr. Montero are erroneous.

[73] On the totality of the evidence, I find that the equipment was used, and the waybills evidenced such usage and charges to be made. The waybills being company records, the notice to prove was satisfied through the evidence provided of the company's accounting processes. I did not find that the evidence was so unsatisfactory as to be incapable of belief. On its face, that evidence is believable and of sufficient weight to lead me to conclude that the waybills are what they purport to be. In fact, during his cross-examination, Mr. Tasher conceded that the equipment was used but omitted to specify for how many hours.

[74] In my judgment, D.E.C. & Sons has established its case on a balance of probabilities. I will award the sum of BZ\$29,635 as the outstanding debt in the matter.

Costs

[75] The general rule is that the losing party ought to pay the costs of the other side. Mr. Tasher is to pay the cost of D.E.C. & Sons.

Disposition

[76] It is hereby ordered as follows:

1. Judgment on liability is granted to the claimant.
2. The defendant is to pay the sum of BZ\$29,635 to the claimant with interest of 6% from 1st October 2021 to the date of judgment and thereafter statutory interest of 6% until the debt is paid in full.
3. The defendant is to pay the claimant's costs on the prescribed basis.

Martha Alexander
High Court Judge