

IN THE SUPREME COURT OF THE STATE OF DELAWARE

U.S. TIMBERLANDS KLAMATH FALLS, §	
L.L.C. n/k/a INLAND FIBER GROUP, §	
L.L.C.; U.S. TIMBERLANDS FINANCE §	
CORP. n/k/a FIBER FINANCE CORP.; §	No. 36, 2005
U.S. TIMBERLANDS YAKIMA, L.L.C. §	
n/k/a AMERICAN FOREST RESOURCES, §	Court Below: Court of Chancery
L.L.C.; U.S. TIMBERLANDS HOLDINGS §	of the State of Delaware, in and
GROUP, L.L.C. n/k/a CASCADES §	for New Castle County
RESOURCE HOLDINGS GROUP, L.L.C.; §	
U.S. TIMBERLANDS SERVICES §	C. A. No. 112
COMPANY, L.L.C. n/k/a/ TIMBER §	
RESOURCES SERVICES, L.L.C.; JOHN §	
M. RUDEY; and GEORGE R. HORNIG, §	
	§
Defendants Below, §	
Appellants, §	
	§
v. §	
	§
U.S. BANK NATIONAL ASSOCIATION §	
in its capacity as Indenture Trustee and not §	
in its individual capacity, §	
	§
Plaintiff Below, §	
Appellee. §	

Submitted: June 3, 2005

Decided: June 6, 2005

Before **STEELE**, Chief Justice, **HOLLAND** and **JACOBS**, Justices.

ORDER

This 6th day of June 2005, the Court having considered the briefs and oral arguments of the parties, it appears to the Court that:

1. On December 22, 2004, the Court of Chancery issued an Opinion,¹ implemented by Order electronically filed on January 11, 2005, granting the Plaintiff Below-Appellee's motion for partial summary judgment, and denying the motion of the Defendants Below-Appellees to dismiss, except for the contractual claims asserted against the individual defendants in Counts I and VI of the Second Amended Complaint. Those latter claims were dismissed.

2. The Defendants Below-Appellants appealed from the Order of the Court of Chancery granting the Plaintiff Below-Appellee's motion for summary judgment.

3. The Appellants have raised certain issues in this Court and in the Court of Chancery that were not clearly addressed in the Court of Chancery's Opinion. More specifically, those issues were whether: (a) amending the Operating Agreement of U.S. Timberlands Yakima, L.L.C. ("Yakima") on September 14, 2001 to eliminate the preferred voting rights of U.S. Timberlands Klamath Falls, L.L.C. ("Klamath"), had the effect of eliminating Yakima's status as a "subsidiary" under the Indenture; and (b) if so, whether as a matter of contract the refinancing transaction in which the Bank of Montreal released its lien, "cured" the violation of the Indenture found to have occurred under Section 4.10 of the Indenture; and (c) whether Yakima's pledge of its timberland assets to MBIA on

¹ *U.S. Bank Nat. Ass'n v. U.S. Timberlands Klamath*, 864 A.2d 930 (Del. Ch. 2004).

the September 14, 2001 date constituted a separate violation of Section 4.10 or other provision of the Indenture. The Appellee's Brief did not adequately address the Appellants' arguments on these issues. For these reasons, we are unable to determine whether or not the Court of Chancery correctly rejected the Appellee's argument that if there was any violation of Section 4.10, that violation had been cured.

4. In these circumstances, we would ordinarily remand the case to the Court of Chancery with instructions to clarify the basis for its ruling. In this case, however, the circumstances call for a different disposition. The Court of Chancery has scheduled a trial on all claims as to which summary judgment was not granted. Moreover, certain issues that are the subject of this appeal, and certain issues that are the subject of the trial, are factually intertwined, for example, issues relating to events of default, Yakima's "subsidiary" status, and the adequacy of the consideration received by Klamath for the timberlands transferred to Yakima. In these circumstances, the Court has concluded that, as a matter of practicality and judicial economy, the more prudent disposition of this appeal is to remand the entire case to the Court of Chancery for a trial on all issues, including issues previously decided on the motion for partial summary judgment.

NOW, THEREFORE, IT IS ORDERED, that the Order of the Court of Chancery is vacated and that the case is remanded to that Court for a

trial that will include the issues determined by the Court in its Order issued on January 11, 2005.

BY THE COURT:

/s/ Jack B. Jacobs
Justice