

EXHIBIT 28

The Honorable John C. Coughenour

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PRIME START, LTD., a British Virgin Islands corporation,

Plaintiff,

v.

MAHER FOREST PRODUCTS, LTD., a Washington corporation; and PACIFIC LUMBER INSPECTION BUREAU, a Washington corporation,

Defendants.

NO. C05-1195 JCC

ANSWER AND COUNTERCLAIM OF DEFENDANT MAHER FOREST PRODUCTS, LTD., AND

JURY DEMAND

Defendant Maher Forest Products, Ltd. ("Maher"), by and through its attorneys of record, WILLIAMS, KASTNER & GIBBS PLLC, and in response to plaintiff's complaint, alleges as follows:

ANSWER

1. In response to paragraph 1, on information and belief, admit.
2. In response to paragraph 2, admit.
3. In response to paragraph 3, admit.
4. In response to paragraph 4, admit that the amount in controversy is within the Court's jurisdictional limit.
5. In response to paragraph 5, admit.

ANSWER AND COUNTERCLAIM OF DEFENDANT MAHER FOREST PRODUCTS, LTD., AND JURY DEMAND - 1
C05-1195 JCC

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Seattle, Washington 98111-3926
(206) 628-6600

1 6. In response to paragraph 6, admit venue is proper.

2 7. In response to paragraph 7, based on information and belief, admit.

3 8. In response to paragraph 8, admit plaintiff entered into a contract with Maher and
4 that the terms of the contract include (a)-(d), otherwise deny.

5 9. In response to paragraph 9, admit that the contract documents speak for
6 themselves, otherwise deny.

7 10. In response to paragraph 10, admit that PLIB issued a Certificate of Inspection
8 concerning the grade of the lumber product per paragraph 409 of the Export R List Grading and
9 Dressing Rules and in accordance with pro forma invoice 34187, otherwise deny.

10 11. In response to paragraph 11, admit that the document speaks for itself, otherwise
11 deny.

12 12. In response to paragraph 12, admit pro forma invoice 34187 was amended and that
13 the amended document speaks for itself, otherwise deny.

14 13. In response to paragraph 13, admit that the parties met and discussed various
15 issues prior to December 14, 2004, otherwise, deny.

16 14. In response to paragraph 14, deny.

17 15. In response to paragraph 15, admit plaintiff retained PLIB to inspect one shipment,
18 otherwise deny.

19 16. In response to paragraph 16, admit.

20 17. In response to paragraph 17, admit.

21 18. In response to paragraph 18, admit PLIB issued a report to plaintiff and a
22 certificate respecting products sold by Maher to plaintiff, and that Maher received \$310,933.00
23 from plaintiff in consideration for the sale of lumber products, otherwise deny.

24 19. In response to paragraph 19, admit that after the first shipment of Maher product
25 was received by plaintiff, that plaintiff purported to instruct Maher to suspend future shipments

ANSWER AND COUNTERCLAIM OF DEFENDANT MAHER
FOREST PRODUCTS, LTD., AND JURY DEMAND - 2
C05-1195 JCC

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1 and purported to instruct PLIB not to issue any further certificates, deny that plaintiff had
2 authority to issue such instructions, otherwise deny and deny for lack of knowledge.

3 20. In response to paragraph 20, admit and affirmatively allege that Maher had no duty
4 to inspect lumber goods which had already been inspected and approved on multiple occasions.

5 21. In response to paragraph 21, admit Maher finished and shipped the balance of the
6 lumber products specified in its contract with plaintiff and that Maher received an additional
7 \$554,409.48 from plaintiff in consideration for the sale of additional lumber products, otherwise
8 deny.

9 22. In response to paragraph 22, deny and deny for lack of knowledge.

10 23. In response to paragraph 23, deny and deny for lack of knowledge.

11 24. In response to paragraph 24, deny and deny for lack of knowledge.

12 25. In response to paragraph 25, deny.

13 26. In response to paragraph 26, deny.

14 27. In response to paragraph 27, deny.

15 28. In response to paragraph 28, deny.

16 29. In response to paragraph 29, deny.

17 30. In response to paragraph 30, deny.

18 31. In response to paragraph 31, deny.

19 32. In response to paragraph 32, deny.

20 33. In response to paragraph 33, deny.

21 34. In response to paragraph 34, deny.

22 35. In response to paragraph 35, deny.

23 36. In response to paragraph 36, deny.

24 37. In response to paragraph 37, deny.

25 38. In response to paragraph 38, deny.

ANSWER AND COUNTERCLAIM OF DEFENDANT MAHER
FOREST PRODUCTS, LTD., AND JURY DEMAND - 3
C05-1195 JCC

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AFFIRMATIVE DEFENSES

FURTHER, AND BY WAY OF AFFIRMATIVE DEFENSE, Maher alleges:

39. The Complaint fails to state a claim against defendant Maher upon which relief can be granted.

40. Plaintiff's claims are barred by operation of the doctrine of laches.

41. Plaintiff is estopped from asserting claims against Defendant Maher.

42. Plaintiff may have failed to mitigate its damages, if any, and may have failed to protect itself from avoidable consequences.

43. Plaintiff's failure to demand a reinspection of the product, pursuant to section 500 of the Export R List Grading & Dressing Rules, bars its claim.

COUNTERCLAIMS

44. Maher advanced costs which plaintiff agreed to repay, including without limitation:

(a) costs to rent a limousine in British Columbia, Canada, for the transportation needs of plaintiff's agents in the amount of \$225.60,

(b) costs for ocean freight in the amount of \$893.00,

entitling Maher to an award in the amount of plaintiff's unjust enrichment.

45. Plaintiff short paid invoice number 74098 in the amount of \$1,532.97, entitling Maher to an award of damages in that amount.

REQUESTED RELIEF

Having answered plaintiff's complaint and asserted its affirmative defenses and its counterclaim, Maher prays for the following relief:

A. Judgment dismissing plaintiff's claims against Maher with prejudice;

B. An award of attorney's fees and costs in favor of Maher as allowed by law;

1 C. An award in favor of Maher and against plaintiff for damages plus an amount
2 equal to plaintiff's unjust enrichment;

3 D. Such other and further relief as the Court may deem just and equitable.

4 **JURY DEMAND**

5 Maher demands trial by jury pursuant to Federal Rules of Civil Procedure 5(d) 38 and
6 81(c) and Local Civil Rule 38(b).

7 RESPECTFULLY SUBMITTED this 15th day of July 2005.

8 /s/

9 Mark S. Davidson, WSBA #06430
10 Attorneys for Defendants Maher Forest
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ANSWER AND COUNTERCLAIM OF DEFENDANT MAHER
FOREST PRODUCTS, LTD., AND JURY DEMAND - 5
C05-1195 JCC

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CERTIFICATE OF SERVICE

I hereby certify that on July 15th, 2005, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, and that I caused the document to be hand-delivered via ABC Legal Messengers to the following:

Attorney for Plaintiff

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/s/

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ANSWER AND COUNTERCLAIM OF DEFENDANT MAHER
FOREST PRODUCTS, LTD., AND JURY DEMAND - 6
C05-1195 JCC

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