

IN THE IOWA DISTRICT COURT FOR LUCAS COUNTY

STATE OF IOWA, ex rel,
**IOWA DEPARTMENT OF NATURAL
RESOURCES and IOWA NATURAL
RESOURCE COMMISSION,**

Plaintiffs,

vs.

**MORAVIA HARDWOODS, LLC,
TERRANCE SPURGIN, and PAUL
SPURGIN,**

Defendants.

Case No. EQCV032779

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
RULING AND ORDER**

BE IT REMEMBERED this matter is before the Court for a ruling following trial on Plaintiffs' petition. The Iowa Attorney General's Office represents Plaintiffs, the State of Iowa, ex rel, Iowa Department of Natural Resources (DNR) and Iowa Natural Resource Commission, referred to collectively as "the State." Plaintiffs' counsel of record is Assistant Attorney General Eric M. Dirth. Attorney John A. Pabst represents Defendants Moravia Hardwoods, LLC, Terrance Spurgin, and Paul Spurgin, collectively called "Moravia Hardwoods" for ease of reference. At the end of the evidence, the Court allowed the parties' time to submit written closing arguments. Both parties provided the Court with written closing arguments, citing authority in support of their respective positions.

The Court finds this matter is fully submitted. The Court, having heard the evidence, having examined the exhibits, and after researching the law, enters Findings of Fact, Conclusions of Law, and its Ruling and Order.

I. FINDINGS OF FACT

Plaintiffs in this legal action seek damages for the unlawful removal of trees from State land by Defendants and forfeiture of Defendant Moravia Hardwoods, L.L.C.'s timber buyer's bond. Defendants resist. The Court summarizes below the facts relevant to its decision.

A. Background Information.

The evidence establishes Plaintiffs are tasked by statute with the maintenance and preservation of state forests. Part of Stephens State Forest, known as the Chariton Unit, lies within Lucas County, Iowa.

Defendant Moravia Hardwoods, LLC is in the lumber business. Moravia Hardwoods specializes in the furniture log business. Defendant Terrance Spurgin, called Terry, was the

managing member of the limited liability company at all times relevant to this action. Paul Spurgin (Paul), one of Terry's children, did the "legwork" on the contract at issue here.¹ Terry, however, signed the contract on behalf of the company.

B. The BDK Contract.

In July 2013, Paul negotiated with BDK Land Company, LLC (BDK) to buy all marketable timber on 80 acres of land owned by BDK in Lucas County. BDK consists of three members who purchased the 80 acres of land as a farm and for hunting. The members are not residents of Lucas County. BDK rents thirty acres of tillable land to a local farmer. The company also rents the land to hunters, because most of the land is timber. In 2013, BDK decided to thin the trees in the forest to improve the habitat. For that purpose, the company let bids for logging the property. Moravia Hardwoods was the successful bidder and agreed to pay BDK \$40,000, with all harvested timber to be removed by July 24, 2014.

Besides Moravia Hardwoods having the highest bid, the members of BDK were impressed with Paul Spurgin. Paul and his nephew, Cole Spurgin, as well as an additional employee, spent two days at BDK's property before submitting a bid. Paul walked the boundaries with the owners that were present and showed them the trees Moravia Hardwoods would take and what they would leave. Moravia Hardwoods was interested in the mature white oak trees and, according to at least one BDK member, Paul marked the trees as he walked the land with them. Once BDK awarded the bid to Moravia Hardwoods, BDK's members and Terry Spurgin met at the lumber mill to sign the contract.

BDK's land abuts the Chariton Unit of Stephens State Forest. Because this is all timberland, there are no visible boundary lines between the two properties. Stephens State Forest erects signs at various places identifying the area as a state forest and public hunting area but these signs are not always upright. Whether it is weather, animals, four-wheelers, who are not supposed to be in the forest, or others, the signs often take a beating. DNR employees re-erect the signs when they see the signs are out of place or on the forest floor.

The evidence establishes that in the spring of 2014, Moravia Hardwoods was harvesting the timber on BDK's land and, in the process, cut trees in Stephens State Forest. Defendants do not dispute this, although Defendants disagree with Plaintiffs' number. Moravia Hardwoods contracted with professional loggers to harvest the trees. One logger, Levi A. Schlabach, testified he only

¹ Paul did not participate in the trial, but his deposition testimony was offered into evidence as Exhibit 25.

removed marked trees and the trees were marked before his arrival. When Schlabach realized they were cutting down trees on state land, he told Paul Sturgin. Although initially Paul said the loggers were still on BDK land, after some discussion, Paul told the loggers to relocate. By that time, however, Schlabach testified they had “unintentionally” cut 50-70 trees in Stephens State Forest.

Defendants did not bring this mistake to the attention of the DNR. However, the DNR shortly discovered the cut trees when Thomas Walkup, a DNR technician, saw stumps while doing routine maintenance. Walkup quickly identified the culprit, because the Moravia Hardwoods’ truck was still at the landing site where the logs were taken for loading. Walkup photographed the truck with logs on it, enabling the DNR to investigate the matter.

C. The Lawsuit.

Plaintiffs later brought this lawsuit seeking the value of the trees removed from state land, treble damages, forfeiture of Moravia Hardwoods’ timber buyer’s bond, special damages, and court costs. Defendants acknowledge some trees were removed from Stephens State Forest, but deny that it was intentional. Defendants resist imposition of treble damages, revocation of Moravia Hardwoods’ timber buying bond, and the other claims of Plaintiffs.

Consulting forester, Robert Petrzelka, testified at the trial that he inspected the site of the removed trees in March 2015. He valued the removed trees at \$25,718.50 and stated the value has increased 30-35% since then. Petrzelka is well qualified in this area. He has thirty years of experience in the forestry industry and now handles sales of timber for private landowners. He testified valuing timber is the same whether the owner is the State of Iowa or a private individual.

The Court recites additional facts in its legal analysis as pertinent to the issues.

II. CONCLUSIONS OF LAW

The parties largely agree on the law, but disagree on whether and to what extent the law applies to these facts.

A. Treble Damages.

It has long been the law in this State, that the owner of trees is entitled to treble damages if another willfully damages or destroys the owner’s trees. Iowa Code section 658.4 on treble damages, states:

“For willfully injuring any timber, tree, or shrub on the land of another, or in the street or highway in front of another's cultivated ground, yard, or city lot, or on the public grounds of any city, or any land held by the state for any purpose whatever, the perpetrator shall pay treble damages at the suit of any person entitled to protect or enjoy the property.”

The trick under this statute is determining what is willful.

“Willful” is a malleable term, difficult to define. The Iowa Supreme Court in 1894 defined “willful” to mean an act “done wantonly, and without any reasonable excuse.” *Werner v. Flies*, 91 Iowa 146, 59 N.W. 18, 19 (1894). In discussing the term, a later Court commented, “we are dealing with a word of elastic use in ordinary conversation, and of legal meaning not always too well defined.” *Clark v. Sherriff*, 247 Iowa 509, 515, 74 N.W.2d 569, 573 (1956). Cases that are more recent seem to define the term as somewhere between accidental and malicious. See *Cozad v. Strack*, 254 Iowa 734, 741, 119 N.W.2d 266, 271 (1963); *Hurley v. Youde*, 503 N.W.2d 626, 627 (Iowa Ct. App. 1993). “Willful” is most frequently defined as an intentional act done deliberately without regard to the rights of others. See *Drew v. Lionberger*, 508 N.W.2d 83, 85 (Iowa Ct. App. 1993); *Hurley*, 503 N.W.2d at 627. Not surprisingly, what conduct is “willful” is often disputed.

1. Willfulness of the Tree Removal. Here, the Court concludes Plaintiffs failed to prove the removal of the trees was willful. The evidence before this Court does not establish Defendants acted wantonly or without reasonable excuse. Schlabach, one of the loggers, testified removal of the trees from Stephens State Forest was “unintentional.” He also testified Paul Spurgin told the loggers to relocate after being convinced the loggers were no longer on BDK’s land. Members of BDK walked the property boundaries with Paul and one member remembered Paul marking trees as they walked. That member, apparently, did not see any trees marked that caused him concern. BDK also marked the corners of their land with silver paint on trees, so others could easily see the corners. The wrongfully removed trees, however, were not in the corners, but between the corners, which is a considerable distance considering BDK owns eighty acres. Although Paul’s deposition testimony conflicted with the testimony of some other witnesses, not one first-hand witness testified Moravia Hardwoods or Paul Spurgin intended to take trees from Stephens State Forest or adopted a cavalier attitude toward identifying trees for the harvest.

Plaintiffs might have a better argument if there were a clear line of demarcation between the two properties, but there is not. Because this is timberland, any fences that once existed are now in an unidentifiable state of disrepair or consist of a single strand of wire between trees for short distances. Plaintiffs offered into evidence photographs of four signs intended to identify the area as a state forest. Of these four, only one was upright with a legible sign. The others laid on the forest floor or the sign was missing from the post. The evidence does not establish anyone associated with Moravia Hardwoods was responsible for the downed signs, although Plaintiffs argue to the contrary. The photographs, however, demonstrate why property lines are hard to identify in a forest. It is

difficult, if not impossible, looking at the photographs where there is no visible sign, to tell where the timber on BDK's land ends and the timber of Stephens State Forest begins. Given these facts, it is easy understand how the loggers removed trees from state land without knowing it.

Here, the evidence is too speculative to support treble damages. While Moravia Hardwoods may now well regret not contacting the DNR before the timber harvest, it was under no legal obligation to do so. Further, Plaintiffs' suggestion that Defendants should have arranged for a survey is both unrealistic and impractical. The Plaintiffs' survey, prepared in anticipation of this litigation, cost \$6,000. It is improbable that any timber buyer is going to spend that much money to identify property boundaries. Moreover, the idea that Paul Sturgin or someone associated with Moravia Hardwoods knocked down the State's signs is informed speculation, at best. The fact that witnesses saw a sign, meaning one, before the timber harvest, but signs were knocked down after the timber harvest does not necessarily implicate anyone. Signs in Stephens State Forest lay on the forest floor for any number of reasons, including weather, animals, four-wheel riders, would-be vandals wanting a sign for his or her room, et cetera. Stephens State Forest is not a pristine environment.

The Court concludes Plaintiffs failed to prove a basis for imposing treble damages. The facts suggest everyone, including Moravia Hardwoods, tried to identify the property lines, but were wrong. See *Jones v. Donahoo*, Morris 493, 493 (1846); *Werner v. Flies*, 91 Iowa 146, 59 N.W. at 19. The evidence does not show, as the State submits, that Paul Spurgins, without regard for the State's ownership rights in its trees, crossed the property line to mark an extra hundred plus trees. If Plaintiffs' theory is correct, Plaintiffs failed to prove it. The Court denies treble damages.

2. Actual Damages. Having concluded treble damages will not lie, the Court must determine the actual damages, if any, for which Moravia Hardwoods is responsible. The Court rejects Defendants claim that it cannot be held liable because the loggers were independent contractors and the loggers, not Moravia Hardwoods, removed the trees. While it is true Defendants contracted with professional loggers to remove the trees, all witnesses with direct knowledge, except for Paul Spurgin, testified the trees to be removed were marked. Whether it was Paul Spurgin or someone else on behalf of Moravia Hardwoods, the Court finds the trees to be harvested were marked and the loggers did not mark them. Any unintended mistakes that occurred in the marking of the trees are directly attributable to Defendants

The Court agrees with Plaintiff's expert that the commercial market value of the trees is the best method of determining value under these facts. See *Grell v. Lumsden*, 206 Iowa 166, 220 N.W.

123, 126 (1928). The case law supports three alternative methods for determining damages to trees, depending on the circumstances. *Id.* Here, the Court concludes the State is entitled to the commercial market value of the trees at the time of taking. *Drew v. Lionberger*, 508 N.W.2d 83, 85 (Iowa Ct. App. 1993).

The Court adopts Plaintiffs expert's opinion that the trees removed had a value of \$25,718.50 "as a whole." The State's expert is well qualified in his field and providing timber valuation opinions is his profession. His approach valuing the timber "as a whole" also avoids the number of tree stumps and type of species debate to which these parties have fallen prey. Such a debate can never be resolved with certainty, because of the number of variables that can affect the result. Thus, the Court finds Plaintiffs expert's approach both reasonable and qualitatively accurate. While the State's expert did not examine the site until approximately a year after the fact, his opinion is the best evidence before the Court regarding the value of the trees removed from Stephens State Forest. Therefore, the Court adopts Plaintiffs expert's opinion regarding actual damages and enters judgment against Moravia Hardwoods for \$25,718.50.

B. Special Damages

Plaintiff's petition and amended petition seek special damages. "Special damages are such as do not ordinarily or generally result from a given cause. They are extraordinary in character in the sense that they follow as the natural result of the intervention of some condition or circumstance out of the ordinary, and therefore not generally to be expected. Where damages so resulting are sought to be recovered, they should be specially pleaded." *Kircher v. Inc. Town of Larchwood*, 120 Iowa 578, 95 N.W. 184, 186 (1903). Loosely paraphrased, special damages are a direct result of the alleged wrongful conduct and are out-of-pocket expenses not ordinarily expected under the circumstances.

Here, Plaintiffs seek special damages for the timber appraisal that cost \$1,900.00, a survey and recording costs that total 6,000.00, and post-harvest forestry activities at a cost of \$8,937.50. Defendants resist the imposition of any special damages. The Court awards no special damages.

The Court concludes the cost of the timber appraisal was not an expense necessitated by the removal of the trees. While the appraisal enabled Plaintiffs to prove damages at trial, it was not compelled by Defendants wrongful conduct. Therefore, the Court denies this item as special damages.

Similarly, the Court denies Plaintiffs' request for survey and recording costs. *See Lackman v. Muff*, No. 14-1150, 2015 WL 1848602, at *5-7 (Iowa Ct. App. Apr. 22, 2015). Although *Lackman* is

an unpublished opinion of the Court of Appeals, the appellate court's decision cites to other jurisdictions that also held the cost of a survey is not recoverable as damages. *Id.* Therefore, this Court denies Plaintiff's claim for survey and recording costs.

The Court also denies the \$8,937.50 sought by Plaintiffs for post-harvest forestry activities. The Court agrees with Plaintiffs that the costs for restoration of the forest caused by the removal of the trees is a compensable item of damage. However, Plaintiffs failed to prove the post-harvest forestry activities contract caused the DNR to expend \$8,937.50 because of Defendants' actions.

Jessica Flatt, the area forester overseeing management of Stephens State Forest, testified that the DNR schedules forestry activities, such as thinning out the forest, removing scrub trees, and cutting older trees when necessary, as part of its forestry management plan. The point of this testimony was that Defendants had removed trees inconsistent with the management plan. She opined that it would take a long time, years, to restore the loss to the forest.

Theoretically, then, a contract to restore the area damaged by the removal of the trees by Defendants would be a compensable item of damage, but that does not appear to be the case with the post-harvest forestry activities contract. The contract, executed in 2015, requires the contractor to perform two tasks. The first is to kill all undesirable and cull trees in a 25-acre area. The contract requires the contractor to girdle, which naturally kills the tree, or cut with a chainsaw all walnut and oak trees less than eight inches in diameter. The second task requires the contractor to plant 150 trees per acre in the same 25-acre area.

The Court concludes the post-harvest forestry activities contract is unrelated to the removal of the trees by Defendants. While the contract is to be performed in Stephens State Forest and does involve the planting of seedlings, the contract appears to be part of an overall management plan. First, the contract involves the removal of trees. No testimony during the trial supports a conclusion the removal of trees by Defendants required the removal of yet more trees. Second, the seedlings to be planted, totaling 3,750 over 25 acres, far exceeds the area and the number of trees Plaintiff claims Defendants took unlawfully. Even if arguably the cost of planting seedlings is a compensable damage item, the contract price is a lump sum, so it is impossible to segregate that expense from the \$8,937.50 total. The Court denies Plaintiff's request for reimbursement of this expense.

C. Personal Liability.

Plaintiffs argue the Court should enter judgment against Terrance and Paul Spurgin, individually, but the Court declines to do so. Terrance is the operating member or manager of the

LLC and simply signed the contract Paul Spurgin negotiated on behalf of the company. Paul worked for Moravia Hardwoods and, thus, he acted in the course of his employment. The liability for damages lays with the company, not with its members or employees. *See* Iowa Code § 489.304. The Court finds no basis for imposing personal liability against either Terrance or Paul Spurgin.

D. Bond Forfeiture.

Plaintiffs also seek to forfeit Moravia Hardwoods' timber buyer's bond for alleged violations of Iowa Code section 456A.36. Plaintiffs, in connection with the forfeiture, also ask the Court to prohibit Defendants from engaging in timber buying for one year. Defendants resist both requests.

Section 456A.36 requires timber buyers, such as Moravia Hardwoods in this situation, to post a bond with the DNR. Iowa Code § 456A.36 (2)(a)(1) (2019). The purpose of the bond is:

“To secure an honest cutting and accounting for timber purchased by the timber buyer, secure payment to the timber growers, and insure the timber growers against all fraudulent acts of the timber buyer in the purchase and cutting of the timber of this state.”

Iowa Code § 456A.36 (2)(a)(4) (2019). The bond may be in the form of a surety or a bank certificate of deposit assigned to the director of the DNR. Iowa Code § 456A.36 (2) (a) (1). The amount of the bond is a calculation based on the amount the timber buyer paid to timber growers the prior year plus a percentage of any delinquent amounts owed and a percentage of the market value of the trees. *See* Iowa Code § 456A.36 (2)(a)(2) (2019). The minimum bond amount is \$3,000.00 and the maximum bond amount is \$15,000.00.

A violation of section 456A.36 or noncompliance with a DNR rule is grounds for filing an action to forfeit the bond. Iowa Code § 456A.36 (2)(b)(2019). Section 456A.36 (3) lists seven ways to violate the statute, which the Court lists later as relevant here. If the bond is forfeited, the timber buyer is prohibited from engaging in timber buying for one year. Iowa Code § 456A.36 (2)(d)(2019). Forfeiture of the timber buyer's bond is in addition to other legal remedies. *Id.* The attorney general's office is required to institute such an action upon request of the DNR.

1. *Alleged Violations of Section 456A.36.* Plaintiffs assert Defendants violated Iowa Code section 456A.36 in the following ways:

- Moravia Hardwoods cut or caused to be cut timber in Stephens State Forest without purchasing the timber;
- Moravia Hardwoods transported timber owned by the State of Iowa without written proof of ownership or the written consent of the State; and

- Moravia Hardwoods, through Terry Spurgin, its principal manager, willfully made a false statement in connection with the bond.

Defendants raise a defense to each of the allegations.

The Court finds it unnecessary to address each of the allegations, because Terry Spurgin cannot dispute that he made a false statement in his 2014 bond renewal application. As indicated earlier, the timber buyer's bond is a calculation based, in part, on the amount paid to timber growers for the preceding year. Iowa Code § 456A.36 (2)(a)(2). Admittedly, Moravia Hardwoods paid the BDK members \$40,000 in 2013. However, in the company's bond renewal application for 2014, the application states the total amount paid in 2013 under the DNR's bond calculation formula is only \$32,450. This is clearly a false statement.

2. Defenses. Defendants argue the false statement was not willful, but the Court disagrees. Terry Spurgin signed the renewal application on December 18, 2013 for 2014.² At that time, Terry Spurgin wrote all company checks and oversaw Moravia Hardwoods' finances. Earlier in 2013, Terry signed the BDK contract on behalf of the company. In short, Terry Spurgin controlled the business of Moravia Hardwoods. He had access to all the necessary records to complete the renewal application accurately and, presumably, had first-hand knowledge of all the relevant facts. Yet, Terry gave the DNR incorrect information.

The Court will not repeat here the entire discussion above regarding willfulness. However, the facts presented convince this Court that Terry Spurgin acted willfully. Either he intentionally and knowingly gave inaccurate information in the company's bond renewal application or he completed the application without any regard for the requirements of the law. He certainly did not check company records to determine the correct amount, or, perhaps, he did and chose to give an inaccurate figure. Either way, Terry Spurgin's actions were willful.

Defendants also claim the statute of limitations has run on the bond forfeiture issue and, therefore, Plaintiffs are barred from pursuing this remedy. Defendants do not cite the Court to any legal authority for this proposition, but argue that a false statement is like an action for fraud, which has a five-year statute of limitations. Terry signed the 2014 bond renewal application on December 18, 2013. However, Plaintiffs did not raise the issue until June 2019. Defendants assert, based on a five-year statute of limitations, Plaintiffs should have amended their claim by December 18, 2018. Plaintiffs respond this situation is akin to the discovery rule in fraud cases, *i.e.*, the statute of

² Defendants assert Terry signed the application on 12/13/2013. The application is dated 12/13/2013, but the date by Terry's signature is 12/18/2013.

limitations begins to run from the date of the discovery of the fraud or when the fraud should have been discovered, which in this instance was in 2019.

Assuming, without concluding, there is a statute of limitations on violations of section 456A.36(3)(c), the Court concurs with Plaintiffs. The purpose of the bond is to protect timber growers and assure compliance with the law by timber buyers. It does not make sense to this Court that the State is barred from pursuing a remedy provided by statute, because no one knew Terry Spurgeon made a false statement until after five years later. While Defendants raise an interesting issue, without some legal support for Defendants' position, the Court rejects the statute of limitations defense.

3. Conclusion on the Bond Issue. Because Terry Spurgin willfully made a false statement in Moravia Hardwoods' bond renewal application, the Court orders the company's timber buyer's bond forfeited. The Court must also order that Moravia Hardwoods be prohibited from engaging in timber buying for one year from the date of forfeiture. Iowa Code § 456A.36(2)(d)(2019).

III. ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that judgment be entered against Defendant Moravia Hardwoods, LLC for \$25,718.50 in favor of Plaintiffs, the State of Iowa, ex rel, Iowa Department of Natural Resources and Iowa Natural Resource Commission. The judgment shall draw interest at the legal rate of 3.53% per annum until paid in full.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants Terrance Spurgin and Paul Spurgin are dismissed from this action.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the timber buyer's bond posted by Moravia Hardwoods, LLC is forfeited. Moravia Hardwoods, LLC is prohibited from engaging in timber buying for one year from the date of forfeiture.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the court costs are taxed to Defendant Moravia Hardwoods, LLC.



State of Iowa Courts

Type: OTHER ORDER

Case Number EQCV032779
Case Title STATE OF IOWA, EX REL. IDNR AND NRC V. MORAVIA HAR

So Ordered

A handwritten signature in cursive script that reads "Martha L. Mertz". The signature is written over a horizontal line.

Martha L. Mertz, District Court Judge,
Fifth Judicial District of Iowa