ORS 87.222(1)
ORS 87.142(13)

Bald Knob Land & Timber Co v. Bonebrake Contracting, Inc.
Civ No. 92-499-Jo Adv No 90-3553-S Bk No 390-35379-S11

Judge Jones aff'g DDS 5/28/92

The district court affirmed the bankruptcy court's ruling that defendant Bonebrake had a valid logger's lien under ORS 87.222(1) for services it provided at the debtor's request. Although title to the timber would not pass from the United States to the debtor until the timber was paid for and removed from the contract area, the debtor had an ownership interest in the timber which was sufficient to support the lien.

(Disclaimer: this opinion was not received by the bankruptcy court until May 10, 1994, which is the reason for the 2 year delay in circulating the opinion and summary.)

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DISTRICT OF OREGON
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U.S. BANKRUPTCY COURT
DISTRICT OF OREGON
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MAY 28 1992

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

BALD KNOB LAND & TIMBER CO., an Oregon corporation, Plaintiff,	Civil No. 92-499-JO Bkcy No. 390-35379-S11 Adv. No. 90-3552
v.	OPINION AND ORDER
BONEBRAKE CONTRACTING, INC., Defendant.	

Kirk Johansen
Richard Ross
SCHWABE, WILLIAMSON & WYATT
1211 S.W. Fifth Avenue
1600-1800 Pacwest Center
Portland, OR 97204-3795

Attorneys for Plaintiff

John W. Weil
Merrill C. McCarthy
RANSOM, BLACKMAN & WEIL
1001 S.W. Fifth Avenue
Security Pacific Plaza, #1400
Portland, OR 97204

Attorneys for Defendant

JONES, Judge:

Bald Knob Land & Timber Co. ("Bald Knob") appeals from the bankruptcy judge's judgment that Bonebrake Contracting, Inc. ("Bonebrake") held a valid logger's lien under O.R.S. 87.222(1)

Certified to be a true and correct copy of the original filed in my office.
Dated 5-9-94
Donald M. Cinnamond, Clerk
By Deputy

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on logs that had been felled and bucked, but that had not yet been removed from the Helter Skelter and Mehl's 4 x 4 timber sale sites. Bald Knob submits that the bankruptcy judge additionally erred by finding that Bald Knob possessed an ownership interest in the logs.

The court has jurisdiction under 28 U.S.C. § 158. This court shall not set aside the findings of fact of the bankruptcy judge unless clearly erroneous, Bankruptcy Rule 8013, and shall review the questions of law de novo. In re Daniels-Head & Assocs., 819 F.2d 914, 919 (9th Cir. 1987).

Bald Knob contracted with the Bureau of Land Management ("BLM") for the stumpage rights to two timber sales, Helter Skelter and Mehl's 4 x 4. Section 7 of the BLM contract provides that "[t]itle to timber sold under this contract shall remain in Government and shall not pass to Purchaser until such timber has been paid for and removed from the contract area."

Bonebrake contracted with Bald Knob to perform logging operations. Bald Knob was unable to make timely payments to Bonebrake for services rendered. Bonebrake filed logger's lien notices in Lane County against the logs felled and bucked, but not yet removed.

Soon thereafter, Bald Knob filed for bankruptcy protection. Bald Knob filed its adversary proceeding against Bonebrake, seeking to have the court declare Bonebrake's liens invalid.

O.R.S. 87.222 provides that

> (1) A person who performs labor on or assists in obtaining, handling, manufacturing or transporting

> timbers or wood products has a lien upon those timbers and those wood products for the reasonable or agreed value for this labor or services, when the labor is performed or services provided at the request of the owner of the timbers or wood products or an agent of the owner.

Bald Knob erroneously submits that generally, statutory chattel liens asserted against chattels belonging to a third party are invalid, citing McDonald v. McFadden, 63 Or. App. 726, 665 P.2d 1255, rev. denied, 295 Or. 773 (1983). McDonald rather merely stands for the proposition that when a lien notice fails to properly describe the property against which the lien is asserted, the lien is invalid. There is no such allegation in the present case.

Bald Knob's next argument is that although the liens are asserted against logs purchased from the United States Forest Service, the title remained with the Forest Service. Because the logs remain personal property of the United States, the logs cannot be the subject of a lien without the United States' consent. Moss v. West Tacoma Newsprint Co., 1 Wash. App. 361, 462 P.2d 256 (1969). Bald Knob correctly submits there is no consent from the United States, but as discussed below, this is not a case where consent is necessary.

In Moss, the Washington court found that "ownership," a necessary prerequisite to establishing a right under the Washington lien, remained with the Forest Service because the contract between the logging company and the government provided that title remained with the Forest Service until the logs were paid for, cut, and scaled. The court found that the logs had not

yet been scaled. Accordingly, the subcontractor could not assert a lien against the logs because the logger's lien statute required that the work be done at the insistence of the "owner," the person in whom title was vested, the United States.

Thus, one of the issues this court must confront is whether Bald Knob is an "owner." O.R.S. 87.142(13) defines the term "owner" more broadly than the Moss court. The definition includes persons who are in possession under a purchase agreement although title of the chattel remains with the vendor. O.R.S. 87.142(13)(b). O.R.S. 87.142(13)(b) clearly applies to Bald Knob.[1] Bald Knob is an "owner." Indeed, in its reply, Bald Knob admits that it is an "owner" for purposes of authorizing Bonebrake to perform services.

Bald Knob replies that the "owner" definition is irrelevant to the determination of the breadth of the logger's lien; the definition of "owner" is only relevant as to who may authorize the performance of labor or services in the production of wood products. Bald Knob asserts that Moss is directly on point and is fatal to Bonebrake's lien. The court disagrees.

The requirements of O.R.S. 87.222 have been met; Bonebrake performed labor on timbers and the labor was performed at the request of Bald Knob, an "owner" under O.R.S. 87.142(13).

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[1] According to Bald Knob, the broad definition of "owner" undermines federal supremacy over state lien laws. See United States v. Ansonia Brass & Copper Co., 218 U.S. 452 (1910). This argument is simply without merit. This is not a situation where Bonebrake is seeking to gain priority over the United States.

Bonebrake has a lien upon those timbers to the extent Bald Knob has an interest in those timbers.

The BLM apparently does not take issue with Bonebrake's liens. The fact that the BLM is also an "owner" is neither Bald Knob's concern nor argument to raise. See Danning v. Mintz, 367 F.2d 304 (9th Cir. 1966), cert. denied, 386 U.S. 990 (1967) (involving assignment of federal income tax return, prohibited by federal statute, between private parties; because government's liability was ended, the assignment did not run afoul of the statute).

The parties hotly discuss Fort Vancouver Plywood Co. v. United States, 747 F.2d 547 (9th Cir. 1984). Fort Vancouver did not involve a logger's lien. Fort Vancouver sued the United States for fire damage to timber. Fort Vancouver, prior to the fire, entered into a contract with the government for the sale of the timber. The contract provided that "all right, title, and interest" remains with the Forest Service until timber cut, removed, scaled, and paid for. The contract further provided that "title" remained with the Forest Service if timber cut, scaled, and paid for, implying some property interest transfer prior to removal. The Ninth Circuit held "[i]f the timber was cut, scaled, and paid for," then "although title did not pass, some property interest in the timber did pass to Fort Vancouver." Fort Vancouver, 747 F.2d at 553.

Bald Knob correctly asserts that no such ambiguity in the contract exists in the present situation. However, Fort

erroneous findings of fact, the decision of the bankruptcy court is AFFIRMED. This appeal is DISMISSED.

DATED this 28 day of May, 1992.

ROBERT E. JONES
United States District Judge