

Albert N. Kennedy, OSB #821429
Direct Dial: 503.802.2013
Fax: 503.972.3713
Email: al.kennedy@tonkon.com
TONKON TORP LLP
1600 Pioneer Tower
888 SW Fifth Avenue
Portland, OR 97204

Josh Newton, OSB #983087
Telephone: 541.382.3011
Fax: 541.383.3073
Email: jnkarnopp.com
KARNOPP PETERSEN LLP
360 SW Bond Street, Suite 400
Bend, OR 97702

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
(Portland Division)

**The Confederated Tribes of the Warm Springs
Reservation of Oregon,**

Plaintiff,

v.

Vanport International, Inc.,

Defendant.

Civil No. 3:17-cv-01649

COMPLAINT

Plaintiff hereby alleges:

PARTIES

1. Plaintiff the Confederated Tribes of the Warm Springs Reservation of Oregon ("Plaintiff" or "Tribe") is a federally recognized Indian Tribe and is successor to the Indian signatories on the Treaty with the Tribes of Middle Oregon of June 25, 1855. 12 Stat. 963.

2. Defendant Vanport International, Inc. ("Vanport" or "Defendant") is an Oregon corporation. Vanport's principal place of business is in Boring, Oregon.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1362.

4. The Portland Division of this Court is the proper venue for this action pursuant to 28 U.S.C § 1391(b) and LR 3-2(a).

STATEMENT OF FACTS

5. In 1967, the Tribe formed Warm Springs Forest Products Industries ("WSFPI") for the purpose of operating a sawmill located on the Warm Springs Reservation (the "Sawmill"). WSFPI is a duly and properly chartered enterprise wholly-owned by the Tribe.

6. From July 1, 2008 through December 31, 2013, Vanport and WSFPI were parties to certain agreements relating to the operation of the Sawmill, including an Agreement dated as of July 1, 2008, an Operations Agreement dated as of June 30, 2009, and amendments thereto (together, the "Operations Agreement"). Pursuant to the Operations Agreement, Vanport was the mill manager of the Sawmill and had the option to purchase all of the timber grown on tribal trust lands within the Warm Springs Reservations ("Tribal Timber").

7. Title to Tribal Timber is held in trust by the United States of America for the benefit of the Tribe. From July 1, 2008 through December 31, 2013, and at all times thereafter, Tribal Timber was sold to the Sawmill pursuant to standard Bureau of Indian Affairs ("BIA") timber contracts. Each of the timber contracts states, at Section B.2.1 of Part B, that

"title to the timber covered by the contract shall not pass to the Purchaser until it has been scaled, paid for, and removed from the contract area."

8. Effective January 1, 2014, WSFPI and Vanport entered into an Operations Restructure Agreement. Pursuant to the Operations Restructure Agreement, WSFPI and Vanport agreed:

- (a) To terminate the Operations Agreement;
- (b) To enter into an agreement for Vanport to provide exclusive export sales and marketing services to WSFPI commencing on January 1, 2014;
- (c) For Vanport to sell to WSFPI the Sawmill equipment at the Sawmill for \$1,307,218; and
- (d) For Vanport to provide a \$4,000,000 revolving operating lien of credit to WSFPI.

9. WSFPI and Vanport also entered into a Sales and Marketing Services Agreement effective January 1, 2014, which provided:

- (a) Vanport will provide WSFPI with services, including exclusive sales and marketing services and brand promotion for export markets;
- (b) Vanport will purchase and market all export lumber products manufactured by WSFPI on an exclusive basis;
- (c) Vanport will provide on-site sales, marketing, and quality control assistance at the Sawmill relating to milling, grading, packaging, and shipping quality in order to maximize selling values for export markets;
- (d) WSFPI will not solicit or accept orders or offers to fill orders from other customers or marketing/sales entities for export lumber; and
- (e) Vanport will provide other management services at cost.

10. In early 2015, Vanport took over all domestic lumber sales in addition to export lumber sales.

11. Pursuant to the foregoing agreements, from January 1, 2014 until early 2016, Vanport acted as exclusive sales agent, lender, and business consultant to WSFPI. Vanport took delivery of all or substantially all lumber produced at the Sawmill. Vanport had representatives on site at the Sawmill on a nearly daily basis. Based on information and belief, Vanport knew the terms of the timber sale contracts pursuant to which Tribal Timber was sold to the Sawmill. Vanport had intimate knowledge and understanding of the business and operations of the Sawmill.

12. From early 2014 until August 2015, WSFPI did not pay for the Tribal Timber delivered to it. Consequently, title to the Tribal Timber did not transfer to WSFPI. Legal title remained with the United States of America, as trustee for the Tribe, and the beneficial interest in the Tribal Timber remained with the Tribe.

13. Because WSFPI did not pay for the Tribal Timber, the Tribal Timber did not become an asset owned by WSFPI and was not inventory subject to the security interest of Vanport. Vanport could not and did not acquire title to the lumber manufactured from the Tribal Timber. To the extent that state commercial law would yield a different outcome, it is preempted by federal law affording protection to tribal trust property.

14. During the period from early 2014 until July 2015, Vanport received payments on the revolving line of credit, which payments were generated from the proceeds of the sale of logs and lumber that were not owned by WSFPI. Further, Vanport received and retained proceeds and profits from the sale of lumber to which it did not have title and WSFPI did not have title. All of the foregoing were to the significant and material detriment of the Tribe.

15. At all times, title to the Tribal Timber, and proceeds and products of the Tribal Timber, remained with the United States, as trustee for the Tribe, and the Tribe is entitled to the proceeds.

16. The unpaid value of the Tribal Timber delivered to the Sawmill and subsequently processed and delivered to Vanport is \$2,416,731.

CLAIM FOR RELIEF

17. The Tribe realleges and incorporates paragraphs 1 through 16.

18. The Tribe has an ongoing beneficial interest in Tribal Timber that was delivered to WSFPI but for which WSFPI did not pay the Tribe.

19. Vanport exercised dominion or control of the Tribal Timber in which the Tribe retained a beneficial interest by, *inter alia*:

(a) Directing WSFPI to substantially alter the Tribal Timber by manufacturing it into lumber;

(b) Taking delivery of the lumber manufactured from the Tribal Timber and reselling the lumber to third-party purchasers; and

(c) Interfering with the Tribe's interest in, rights to, and control of the Tribal Timber before the Tribe had received payment from WSFPI for the Tribal Timber.

20. The unpaid value of the Tribal Timber delivered to WSFPI and acquired by Vanport is \$2,416,731.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs prays for judgment against defendant as follows:

1. For judgment in the sum of \$2,416,731, plus interest from the date of delivery to WSFPI until paid in full;

2. Plaintiff's costs and disbursed incurred herein; and

3. For any other relief the Court may deem just and equitable.

DATED this 18th day of October, 2017.

TONKON TORP LLP

By s/ Albert N. Kennedy

Albert N. Kennedy, OSB No. 821429
Direct Dial: 503.802.2013
Direct Fax: 503.972.3713
Email: al.kennedy@tonkon.com
1600 Pioneer Tower
888 SW Fifth Avenue
Portland, OR 97204-2099
Attorneys for Plaintiff The Confederated
Tribes of the Warm Springs Reservation of
Oregon

KARNOPP PETERSEN, LLP

By s/ Josh Newton

Josh Newton, OSB No. 983087
Attorneys for Plaintiff The Confederated
Tribes of the Warm Springs Reservation of
Oregon

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