

**IN THE COURT OF APPEAL
OF THE REPUBLIC OF VANUATU**
(Appellate Jurisdiction)

Civil Appeal
Case No. 16/1561 CoA/CIVA

BETWEEN: EDENHOPE LIMITED

Appellant

AND: VENEER LOGGING LIMITED

Respondent

Before:

Hon. Chief Justice Vincent Lunabek

Hon. Justice Bruce Robertson

Hon. Justice John Mansfield

Hon. Justice Oliver Saksak

Hon. Justice Daniel Fatiaki

Hon. Justice Dudley Aru

Hon. Justice David Chetwynd

Counsel:

John Malcolm for the Appellant

Robert Sugden for the Respondent

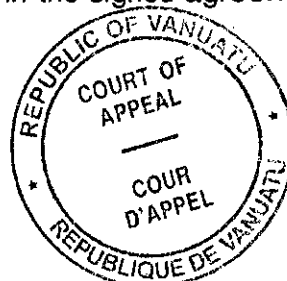
Date of Hearing: 19 July 2016

Date of Judgment: 22 July 2016

ORDER SUBSEQUENT TO MEDIATION AGREEMENT

UPON this matter having been referred to mediation

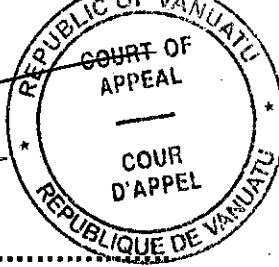
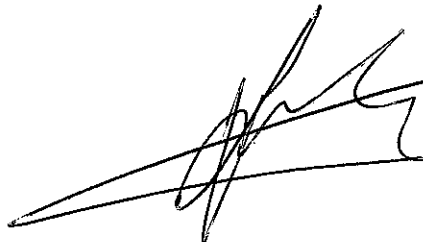
AND UPON the parties having agreed to the terms set out in the signed agreement annexed hereto



IT IS ORDERED THAT:

1. The Agreement reached at mediation by the parties is hereby adopted as an order of the Court;
2. All further proceedings in this matter are stayed except for the purpose of carrying into effect the terms of the said Agreement.
3. For that purpose the parties have permission to apply to the Court.

BY THE COURT



Vincent LUNABEK

Chief Justice

IN THE SUPREME COURT OF THE REPUBLIC OF VANUATU
COURT-CONNECTED MEDIATION
MEDIATION AGREEMENT

IN THE MATTER OF MEDIATION BETWEEN EDENHOPE LIMITED AND VENEER LOGGING LIMITED during the mediation session held on the 19th July, 2016 with the parties, together with their lawyers Robert Sugden and John Malcolm respectively it was agreed as follows:

1. That there is to be full and final settlement of all matters currently under litigation including:
 - (a) Civil Case 20 of 2009 and its Appeal;
 - (b) Civil Case 20 of 2011 and its Appeal; and
 - (c) All matters relating to the subject matter of the litigation inclusive of costs.

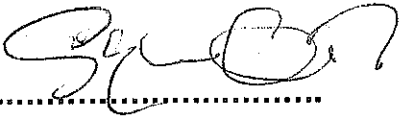
2. That there shall be orders as follows:
 - 1.) Payment to Edenhope Limited in the amount of VT5 million by Veneer Logging Limited.

 - 2.) Money order for the payment sum at a monthly rate of VT250, 000 payable on the 30th day of each month commencing 30th August, 2016. Edenhope to nominate a bank account to Veneers Solicitor.

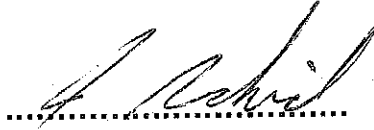
 - 3.) Interest on all unpaid amounts at 5% per annum.

3. In the event the payment of the monthly tranche is in default in excess of seven (7) days;
 - (i) The total unpaid balance shall become immediately due and payable at 5% per annum;
 - (ii) Edenhope Limited entitled to issue enforcement proceedings or proceedings under the Companies Act;
 - (iii) Service of any notices or demands are to be delivered to Veneers solicitors at their chambers or by email.
4. Veneers Limited shall be entitled to uplift the one (1) metre length timber pieces stipulated in the audit report of Melcoffee Sawmills certified by Neil Croucher dated 13th July, 2011 as annexed, being a total of 1874 pieces to a total 10.92 cubic metres.
5. In the event of a shortfall the judgment sum is to be reduced by a sum amounting to VT50, 000 per cubic meter of such shortfall.
6. Veneers Limited to uplift the timber pieces within three (3) months of the date of this order, such date to be resolved as acceptable to the parties. The parties are not to act unreasonably. Storage charges will apply after the three (3) month allowable time at Vt30,000 per month until collection and in the event the collection occurs in the course of a month pro rata for the days of the month.
7. The parties agree to supervision of the uplift of the timber pieces, and in the event that they are unable to agree to a supervisor jointly paid by each, each party to appoint and pay their own representative for such supervision.

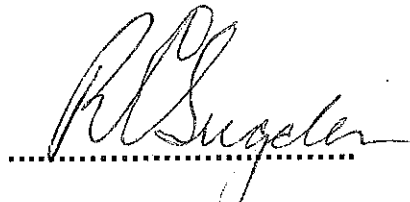
8. Veneers Limited becomes the sole owner of the completed joinery held in the container being the doors, windows and louvres.
9. All claims for storage and quantum meruit are hereby discontinued.
10. In the event of dispute in respect to resolution of this agreement either party may refer the matter to the Master or other mediator as may be appointed.



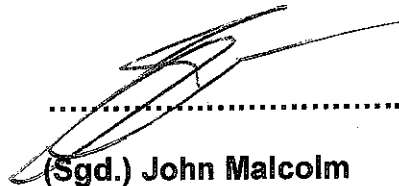
.....
(Sgd.) Stephen Quintos
as Director for the Appellant



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(Sgd.) John Schick as
Director for the Respondent

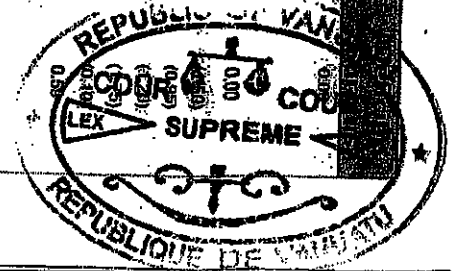


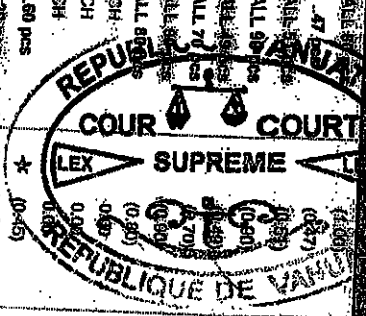
.....
(Sgd.) Robert Sugden



.....
(Sgd.) John Malcolm

PKT 23	PKT 30	PKT 0326	PKT 4	PKT 3	PKT 2	PKT 29	PKT 50	PKT 19	PKT 23	PKT 24	PKT 27	PKT 28	PKT 25	PKT 24	PKT 23	PKT 22	PKT 19	PKT 18	PKT 17	PKT 16	PKT 15	PKT 14	PKT 13	PKT 12	PKT 11	PKT 10	PKT 9	PKT 8	PKT 7	PKT 6	PKT 5	PKT 4	PKT 3	PKT 2	PKT 1	PKT 0											
4x2	100	50	5.5	4.9	1.35	4.4	1.21	SHORT 20%	0.00	(0.14)	00.1	4x2	100	50	5.5	4.9	1.35	4.4	1.21	SHORT 20%	0.00	(0.14)	00.1	4x2	100	50	5.5	4.9	1.35	4.4	1.21	SHORT 20%	0.00	(0.14)	00.1	4x2	100	50	5.5	4.9	1.35	4.4	1.21	SHORT 20%	0.00	(0.14)	00.1
4x2	100	50	5.5	4.9	1.35	4.4	1.21	SHORT 20%	0.00	(0.14)	00.1	4x2	100	50	5.5	4.9	1.35	4.4	1.21	SHORT 20%	0.00	(0.14)	00.1	4x2	100	50	5.5	4.9	1.35	4.4	1.21	SHORT 20%	0.00	(0.14)	00.1	4x2	100	50	5.5	4.9	1.35	4.4	1.21	SHORT 20%	0.00	(0.14)	00.1
4x2	100	50	5.5	4.9	1.35	4.4	1.21	SHORT 20%	0.00	(0.14)	00.1	4x2	100	50	5.5	4.9	1.35	4.4	1.21	SHORT 20%	0.00	(0.14)	00.1	4x2	100	50	5.5	4.9	1.35	4.4	1.21	SHORT 20%	0.00	(0.14)	00.1	4x2	100	50	5.5	4.9	1.35	4.4	1.21	SHORT 20%	0.00	(0.14)	00.1






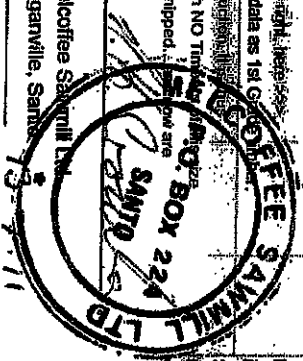
Case No.	Plaintiff	Defendant	Amount	Interest	Costs	Settlement	Notes	Outcome											
Yd 2- pht 15	4x2	100	50	2	25	0.28	23	0.23	(0.03)	2	4x2	100	50	2	70	0.08	0.00	MISSING - ALL 80 pcs	(0.03)
Yd 2- pht 14	4x2	100	50	1	70	0.35	65	0.33	(0.05)	234	4x2	100	50	2	54	0.91	0.90	MISSING - ALL 80 pcs	(0.07)
Yd 2- pht 13	4x2	100	50	1	70	0.35	65	0.33	(0.05)	42	4x2	100	50	2	49	0.46	0.70	MISSING - ALL 80 pcs	(0.09)
Yd 2- pht 12	4x2	100	50	1	70	0.35	65	0.33	(0.05)	449	4x2	100	50	2	70	0.70	0.80	MISSING - ALL 80 pcs	(0.09)
Yd 2- pht 11	4x2	100	50	1	70	0.35	65	0.33	(0.05)	235	4x2	100	50	2	80	0.80	0.80	MISSING - ALL 80 pcs	(0.09)
Yd 2- pht 10	4x2	100	50	1	70	0.35	65	0.33	(0.05)	44	4x2	100	50	2	79	0.79	0.53	MISSING - ALL 80 pcs	(0.09)
Yd 2- pht 9	4x2	100	50	1	70	0.35	65	0.33	(0.05)	930	4x2	100	50	2	70	0.70	0.53	MISSING - ALL 80 pcs	(0.09)
Yd 2- pht 8	4x2	100	50	1	70	0.35	65	0.33	(0.05)	0.102	4x2	100	50	2	70	0.70	0.53	MISSING - ALL 80 pcs	(0.09)
Yd 2- pht 7	4x2	100	50	1	70	0.35	65	0.33	(0.05)	168	4x2	100	50	2	90	0.90	0.53	MISSING - ALL 80 pcs	(0.09)
Yd 2- pht 6	4x2	100	50	1	70	0.35	65	0.33	(0.05)	0.105	4x2	100	50	2	90	0.90	0.53	MISSING - ALL 80 pcs	(0.09)
Yd 2- pht 5	4x2	100	50	1	70	0.35	65	0.33	(0.05)	97	4x2	100	50	2	90	0.90	0.53	MISSING - ALL 80 pcs	(0.09)
Yd 2- pht 4	4x2	100	50	1	70	0.35	65	0.33	(0.05)	738	4x2	100	50	2	90	0.90	0.53	MISSING - ALL 80 pcs	(0.09)
Yd 2- pht 3	4x2	100	50	1	70	0.35	65	0.33	(0.05)	871	4x2	100	50	2	90	0.90	0.53	MISSING - ALL 80 pcs	(0.09)
Yd 2- pht 2	4x2	100	50	1	70	0.35	65	0.33	(0.05)	591	4x2	100	50	2	90	0.90	0.53	MISSING - ALL 80 pcs	(0.09)
Yd 2- pht 1	4x2	100	50	1	70	0.35	65	0.33	(0.05)	702	4x2	100	50	2	90	0.90	0.53	MISSING - ALL 80 pcs	(0.09)
Yd 3- pht 016	4x2	100	50	1	70	0.35	65	0.33	(0.05)								MISSING - ALL 80 pcs	(0.09)	
Yd 3- pht 015	4x2	100	50	1	70	0.35	65	0.33	(0.05)								MISSING - ALL 80 pcs	(0.09)	
Yd 3- pht 014	4x2	100	50	1	70	0.35	65	0.33	(0.05)								MISSING - ALL 80 pcs	(0.09)	
Yd 3- pht 013	4x2	100	50	1	70	0.35	65	0.33	(0.05)								MISSING - ALL 80 pcs	(0.09)	
Yd 3- pht 012	4x2	100	50	1	70	0.35	65	0.33	(0.05)								MISSING - ALL 80 pcs	(0.09)	
Yd 3- pht 011	4x2	100	50	1	70	0.35	65	0.33	(0.05)								MISSING - ALL 80 pcs	(0.09)	
Yd 3- pht 010	4x2	100	50	1	70	0.35	65	0.33	(0.05)								MISSING - ALL 80 pcs	(0.09)	
Yd 3- pht 009	4x2	100	50	1	70	0.35	65	0.33	(0.05)								MISSING - ALL 80 pcs	(0.09)	
Yd 3- pht 008	4x2	100	50	1	70	0.35	65	0.33	(0.05)								MISSING - ALL 80 pcs	(0.09)	
Yd 3- pht 007	4x2	100	50	1	70	0.35	65	0.33	(0.05)								MISSING - ALL 80 pcs	(0.09)	
Yd 3- pht 006	4x2	100	50	1	70	0.35	65	0.33	(0.05)								MISSING - ALL 80 pcs	(0.09)	
Yd 3- pht 005	4x2	100	50	1	70	0.35	65	0.33	(0.05)								MISSING - ALL 80 pcs	(0.09)	
Yd 3- pht 004	4x2	100	50	1	70	0.35	65	0.33	(0.05)								MISSING - ALL 80 pcs	(0.09)	
Yd 3- pht 003	4x2	100	50	1	70	0.35	65	0.33	(0.05)								MISSING - ALL 80 pcs	(0.09)	
Yd 3- pht 002	4x2	100	50	1	70	0.35	65	0.33	(0.05)								MISSING - ALL 80 pcs	(0.09)	
Yd 3- pht 001	4x2	100	50	1	70	0.35	65	0.33	(0.05)								MISSING - ALL 80 pcs	(0.09)	
Yd 3- pht 000	4x2	100	50	1	70	0.35	65	0.33	(0.05)								MISSING - ALL 80 pcs	(0.09)	

Lot #	Spec	QTY	Grade	Length	Width	Thickness	Volume (m ³)	Remarks	
13-000020	3x2	75	50	1	0.21	0.21	0.24	ON SCHED B	
13-000022	3x2	75	50	1	0.21	0.21	0.24	NOT PART OF SCHED "B"	
12-pit 52 #14	2x2	50	50	6	1.40	2.10	140	MATCH	
12-pit 51 #15	2x2	50	50	6	1.40	2.10	140	MATCH	
12-pit 55 #19	2x2	50	50	3	0.90	0.90	90	NOT PART OF SCHED "B" BUT	
Total Timber Alleged by Veneer In Sched "B"							71.73	vs. amt	54.51
Total Variance In Sched "B"							17.22		
Total Timber Invoiced & Shipped							92.03		
Total Timber Alleged by Veneer In Sched "B"							71.73		
Total Variance In Sched "B"							20.30		

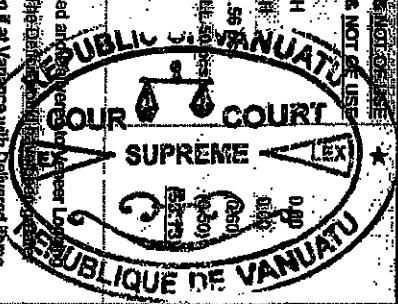
Schedule "B" inventory is on left side of page 400. Santos, Paving, lists in the right. They have also been scheduled by size of timber (from Largest to smallest) and then positioned to determine correlations, as they appear. A significant amount of differences are easily discernable in the "Inventory" column. The Net Balance of the Summary Analysis on the right, lists the total amount of timber (usually determined) 2nd Grade pieces amounted to less than 1%, hence were accepted in the data as 1st Grade. **HOWEVER, Melcoffee's discount timber is of 1st Grade. Hence, the significant quantity has been substituted for the useful sizes Timbers shipped.** were shipped to Ederhope. Thus the significant quantity has been substituted for the useful sizes Timbers shipped. Missing to the extent of over 60%.

Certified by: 
 For: Melcoffee Sawmill Ltd
 Luganville, Santo
 Date: 15-7-11

Certified by: _____
 For: Sim-A Construction & Joinery
 Luganville, Santo
 Date: _____



Scales manne Peire
Vincent Manne Peire



1. There is a NET DEFICIT of 63.13 m³ in the 91.23 m³ of Timber invoiced and shipped by Veneer leaving only a Balance of 27.73 m³ and reflected by Ederhope on 5 July 2011. The significant quantity of timber had not accepted some anomalies as nonetheless usable, even if at Vanuatu with delivered items. 2. The Alleged Variance of timber shipped to Ederhope is 20.30 m³. The significant quantity of timber shipped to Ederhope and tendered to Ederhope. The reconciliations amount to a net variance of ... 4.12%.