



Memorandum

To : Mr. Earle Gutman

Date : June 12, 1987

From : Ken McManigal

Subject : Agreement to Clear and Prepare Site -

This is in response to your April 28, 1987, memorandum, whereto you attached an April 27, 1987, letter from Mr. (The G Group, Inc.), the entire agreement between The G Group, Inc. and B Excavating Company, Inc., and prior correspondence, and you asked which entity was the timber owner for timber yield tax purposes.

According to the correspondence, The G Group entered into an agreement with B to clear and prepare a site for building, such clearing and preparation entailed some harvesting of timber by Burdick, the timber harvested was to become Burdick's property, and Burdick was to sell the timber.

Section 5-1.21 on page C-8 of the agreement states, among other things:

"Trees located inside marked clearing limits that are to be saved will be clearly designated in the field by the owner (G Group) by marking with surveyor's tape.

"Only trees located within the staked clearing limits and not marked to be saved shall be removed by the contractor (B)."

Section 10-2.01 on page C-16 of the agreement states, among other things:

"Attention is directed to Sections...5-1.21....

"The areas to be cleared will be staked by the owner....

"All timber cut shall become the property of the contractor and shall be removed from the site. It is expected that the value of the timber will be accounted for in the amount bid for clearing and grubbing."

Mr.

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Pursuant to these provisions, as part of the clearing and preparation, The G... Group sold specific standing timber on the site to B' ... and B' ... acquired the right to cut, fell, and remove all such timber from the site. Thus, consistent with California Commercial Code section 2107(2), we would regard the agreement as a present sale before severance, with Burdick becoming the timber owner for timber yield tax purposes.

We are returning the letter and agreement herewith.


JKM/rz

Attachments

cc: Mr. Gordon P. Adelman
Mr. Robert Gustafson
Mr. Paul Crebbin
Legal

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