



that Plaintiffs “did not own the trees/logs/lumber at the time of the alleged fraud and conversion.” (Defendants’ Brief in Support filed May 15, 2026, page 1).

Plaintiffs filed a supplement brief with exhibits in opposition to Defendants’ Motion, which is a total of 253 pages in length. Since the Court believes that the Motion must be resolved on the basis of the record evidence the Court will review that evidence.

**PROCEDURAL HISTORY:**

Plaintiffs J.R. Mall, Inc., and White Oak Forestry filed a Complaint on September 20, 2023, asserting various claims against Hemlock Ridge Estates 1, LP, and Big Iron Logging and Wagner Lumber Company. The claims appear to arise out of a Timber Sales Agreement between Mall and Hemlock Ridge Estates 1, LP. After multiple preliminary objections, the Court entered its twenty-three (23) page Opinion and Order filed September 3, 2024. Simply stated, the Court directed the Plaintiffs to file an Amended Complaint, which was filed on September 23, 2024.

The Amended Complaint alleges at Paragraph 13 that Plaintiffs estimated the amount of lumber to be harvested from the Hemlock Ridge Estates 1, LP, property and delivered to the sawmill to be 332,565 board feet. The Amended Complaint further alleges at Paragraph 26 that only 118,611 board feet were harvested, leaving a deficiency of 213,954 board feet (Paragraph 27). Plaintiffs claim that the deficiency was the result of the acts of the Defendants. Another round of preliminary objections followed. By Opinion and Order filed February 26, 2025, the Court entered its forty-seven (47) page Opinion and Order. Simply stated, the Court struck Plaintiffs’ fraud claims and claim for punitive damages and overruled the remaining objections. Defendant Big Iron Logging filed its Answer with New Matter on May 6, 2025. Defendant Hemlock Ridge Estates 1, LP, filed its Answer with New Matter on May 16, 2025. The matter was discontinued as to Defendant Wagner Lumber on September 24, 2025.

**QUESTION PRESENTED:**

WHETHER HEMLOCK RIDGE ESTATES 1 LP AND GRAND WATER RUSH, LLC, TRADING AS BIG IRON LOGGING ARE ENTITLED TO SUMMARY JUDGMENT IN THEIR FAVOR, EITHER ON THE BASIS THAT PLAINTIFFS LACK STANDING TO PURSUE THEIR CLAIMS, OR THAT THEY HAVE SUFFERED NO DAMAGE.

**ANSWER TO QUESTION PRESENTED:**

WHILE IT IS UNCERTAIN WHETHER PLAINTIFFS’ CLAIMS WILL REACH THE JURY, THE COURT WILL DENY THE MOTION, BASED UPON THE APPEARANCE OF MATERIAL ISSUES OF FACT.

## THE TEST TO BE APPLIED TO A MOTION SEEKING SUMMARY JUDGMENT:

In Pennsylvania, a party may move for summary judgment “whenever there is no genuine issue of any material fact as to a necessary element of the cause of action...” Pa.R.C.P. No. 1035.2(1). In response, the adverse party may not rest on denials but must respond to the motion. Pa.R.C.P. No. 1035.3(a). The non-moving party can avoid an adverse ruling by identifying “one or more issues of fact arising from evidence in the record...” Pa.R.C.P. No. 1035.3(a)(1).

In considering a motion for summary judgment, it is not the Court’s function to decide issues of fact. Rather, is it our function to decide whether an issue of fact exists. *Fine v. Checcio*, 582 Pa. 253, 273, 870 A.2d 850, 862 (2005).

Summary judgment is appropriate only when the record clearly shows that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. The reviewing court must view the record in the light most favorable to the nonmoving party and resolve all doubts as to the existence of a genuine issue of material fact against the moving party. Only when the facts are so clear that reasonable minds could not differ can a trial court properly enter summary judgment.

*Hovis v. Sunoco, Inc.*, 2013 Pa.Super. 54, 64 A.3d 1078, 1081, quoting *Cassel-Hess v. Hoffer*, 44 A.3d 84-85 (Pa.Super. 2012).

Our Pennsylvania Supreme Court has counseled that “doubtful cases should go to trial, especially those involving intricate relations demanding an inquiry into the facts of the controversy.” *Gaul v. City of Philadelphia*, 384 Pa. 494, 510, 121 A.2d 103, 112 (1956), citing *Helpenstein v. Line Mountain Coal Company*, 284 Pa. 78, 81, 130 A. 301, 302 (1925).

In the matter of *Accu-Weather, Inc. v. Prospect Commc'ns, Inc.*, 435 Pa. Super. 93, 644 A.2d 1251 (Pa. Super. Ct. 1994), the Court described the proper test for a grant of summary judgment as follows:

First, the pleadings, depositions, answers to interrogatories, admissions on file, together with any affidavits, must demonstrate that there exists no genuine issue of fact. Pa.R.C.P. 1035(b). Second, the moving party must be entitled to judgment as a matter of law. *Id.* The moving party has the burden of proving that no genuine issue of material fact exists. *Overly v. Kass*, 382 Pa.Super. 108, 111, 554 A.2d 970, 972 (1989). However, the non-moving party may not rest upon averments contained in its pleadings; the non-moving party must demonstrate that there is a genuine issue for trial. The court must examine the record in the light most favorable to the non-moving party and resolve all doubts against the moving party. *Stidham v. Millvale Sportsmen's Club*, 421 Pa.Super. 548, 558, 618 A.2d 945, 950 (1992), *appeal denied*, 536 Pa. 630, 637 A.2d 290

(1993) (citing *Kerns v. Methodist Hosp.*, 393 Pa.Super. 533, 536–37, 574 A.2d 1068, 1069 (1990)). Finally, an entry of summary judgment is granted only in cases where the right is clear and free of doubt. *Ducko v. Chrysler Motors Corporation*, 433 Pa.Super. 47, 48, 639 A.2d 1204, 1205 (1993) (citing *Musser v. Vilsmeier Auction Co., Inc.*, 522 Pa. 367, 370, 562 A.2d 279, 280 (1989)). We reverse an entry of summary judgment when the trial court commits an error of law or abuses its discretion. *Kelly by Kelly v. Ickes*, 427 Pa.Super. 542, 547, 629 A.2d 1002, 1004 (1993) (citing *Carns v. Yingling*, 406 Pa.Super. 279, 594 A.2d 337 (1991)).

*Accu-Weather, Inc. v. Prospect Commc'ns, Inc.*, 435 Pa. Super. 93, 98-99, 644 A.2d 1251, 1254 (Pa. Super. 1994).

### **DEFENDANTS' MOTION FOR SUMMARY JUDGMENT:**

It appears that Defendants seek partial summary judgment, dismissing Counts III and IV and IX and X and XIV and XV of Plaintiff's Amended Complaint. Count XV is grounded in Section 8311 of Title 42, which provides that:

**(a) General rule.**--In lieu of all other damages or civil remedies provided by law, a person who cuts or removes the timber of another person without the consent of that person shall be liable to that person in a civil action for an amount of damages equal to:

(1) the usual and customary costs of establishing the value of the timber cut or removed and of complying with the erosion and sedimentation control regulations contained in 25 Pa. Code Ch. 102 (relating to erosion control);

(1.1) the cost of any surveys obtained in connection with the civil action; and

(2) one of the following:

(i) three times the market value of the timber cut or removed if the act is determined to have been deliberate;

(ii) two times the market value of the timber cut or removed if the act is determined to have been negligent; or

(iii) the market value of the timber cut or removed if the defendant is determined to have had a reasonable basis for believing that the land on which the act was committed was his or that of the person in whose service or by whose direction the act was done.

**(b) Restitution.**--Any damages awarded under this section shall be reduced by any restitution which is made under 18 Pa.C.S. § 1107 (relating to restitution for theft of timber).

**(c) Definitions.**--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Timber." Standing trees, logs or parts of trees that are commonly merchandized as wood products.

"Market value." The value of the standing timber at local market prices for the species and quality of timber cut or removed at the time it was cut or removed.

## **THE DEPOSITION TESTIMONY:**

Defendants took the deposition of Stephen Hoffman on December 19, 2025. He testified that Abram Hoffman is his son (Notes of Testimony, hereinafter N.T. 9). He set up J.R. Mall, Incorporated, for the purpose of buying timber to sell to White Oak Sawmill (N.T. 11).

At some point in time, Marvin Weaver, on behalf of Hemlock Ridge Estates, 1, LP, contacted him and requested that he perform a clear cut of 100 acres (N.T.17). Hoffman advised Weaver that Hoffman would buy the saw timber, but Weaver would need to contract with another party for the clear cut (N.T. 17). Hoffman entered into a contract with Weaver for the saw timber for \$65,000.00 on August 16, 2021 (N.T. 17-27). Hoffman agreed to pay Weaver an extra \$10,000.00 for trees between 12 and 18 inches at the small end (N.T. 31). He paid Weaver a total of \$75,000.00 (N.T. 35). In June of 2022, the timber was harvested by Barner Logging (N.T. 40). Hoffman sold the logs to Big Mountain Logging (N.T. 41). Big Mountain paid him \$154,704 (N.T. 48). Barner could not harvest the trees as quickly as Weaver requested, so Hoffman hired logger A.M. Logging (N.T. 52-55). When Hoffman next visited the Hemlock Ridge Estates, 1, LP site, he noticed that A.M. Logging was not able to harvest an area of 10 acres (N.T. 57). Hoffman paid Big Iron Lumber to harvest the 10 acres (N.T. 59). Hoffman claims that John Grand, acting for Big Iron Lumber, converted some logs that John Grand agreed to deliver to Big Mountain (N.T. 60-61). Hoffman claimed to have documents which establish that Big Iron Lumber took logs to Wagner Lumber that should have been delivered to Big Mountain (N.T. 62-63). Hoffman paid A.M. Logging \$25,000 for their harvesting services (N.T. 68). At a meeting at the home of Marvin Weaver, Weaver told him that Weaver intended to “hand this over to John Grand” (N.T. 71-72). Weaver claimed to Hoffman that Hoffman “cut one area he was not supposed to cut” (N.T. 73). Hoffman claims that A.M. Logging cut that area (N.T. 73).

Hoffman testified that some logs from the Hemlock Ridge Estates, 1, LP site that should have been delivered to Big Mountain Lumber were delivered to Wagner Lumber (N.T. 75).

Hoffman identified a document as “the footages that the sawmill is missing,” and “That Big Mountain claims you owe them.” (N.T. 102). Hoffman testified that Big Mountain paid him 45.30 cents per foot and that he estimated 332,565 board feet of lumber (N.T. 103).

Defendants took the deposition of Abram Hoffman on December 19, 2025. He believes that he is the sole owner of what he refers to as White Oak Forestry (N.T.11). The Court takes

judicial notice of the fact that the Pennsylvania Department of State Business Search database reflects that White Oak Forestry is a fictitious name, registered on July 17, 2012, to Abram J. Hoffman. Abram Hoffman testified that he is familiar with J.R. Mall, Incorporated, but has no ownership interest (N.T. 13). He contacted several companies to inquire about their availability to perform a clear cut on the Hemlock Ridge property, but they were all too busy (N.T. 13-14). It was suggested to him that he contact Big Iron Logging (N.T. 14). Ben Barner was performing a clear cut on the Hemlock Ridge property, and he was hauling the logs (N.T. 16-17). He took the saw logs that came off the Hemlock Ridge property to Big Mountain Lumber (N.T. 17). After Big Iron Logging was on site for nearly one month, he was told by Big Mountain Lumber that they were not getting many loads of logs. He contacted his father and suggested that Big Iron Logging was “stealing logs” (N.T. 29-20). The following day he went to the site and marked the logs that he found in a large pile (30-32). He was certain at that time that logs had been stolen (N.T. 34). He believes that Ben Barner will testify that Ben Barner saw logs marked by Abram Hoffman for delivery to Big Mountain Lumber put through a chipper (N.T. 37).

He believes that A.M. Logging suggested that he contact Big Iron Logging (N.T. 41). He spoke to either John Grand or his son (N.T. 41). Their agreement was that Big Iron Logging would deliver saw logs over 12 inches in diameter to Big Mountain Lumber, and Big Iron Logging would be compensated by keeping all logs under 12 inches (N.T. 42-45).

His father told him that his father attended a meeting with Marvin Weaver and John Grand, at which they advised him that J.R. Mall, Inc., was being removed from the Hemlock Ridge Estates, 1, LP, job and that Big Mountain Lumber would complete the job. He told his father “as long as the logs that Big Mountain paid for from that sale showed up at their sawmill, it didn’t matter to us” (N.T. 50-51).

Defendants took the deposition of Benjamin Barner on December 19, 2025. He was hired by Big Mountain Lumber to cut trees on the Hemlock Ridge Estates, 1, LP, job (N.T. 8). He was cutting marked trees on the job, until Marvin Weaver approached him and told him to cut every tree. He did so thereafter, but it slowed him down on the work (N.T. 15-19). He was asked if he could cut the trees faster and said that he could not. He suggested the use of a feller/buncher machine. (N.T. 20). The feller/buncher was brought in by A.M. Logging (N.T. 21). One day after A.M. Logging began work, he ceased work (N.T. 22). He saw logs marked to go to the sawmill being placed in the chipper, “sixteen inches and bigger” (N.T. 25).

Plaintiff took the deposition of Marvin Weaver on January 15, 2026. He testified that he is one of the owners of Hemlock Ridge Estates, 1, LP. (N.T. 8-11). He took Stephen Hoffman to the Hemlock Ridge Estates, 1, LP, property and showed him what timber areas Weaver wanted him to cut, and what areas were not to be cut (N.T. 19-21). At some point, Hoffman cut an area what Weaver believed should not have been cut (N.T. 26-27). He called a meeting due to concerns about the logging operation. At the meeting, John Grand accused Hoffman of stealing logs (N.T. 29-31). Weaver had a conversation with Steve Fisher of Big Mountain Logging in which Weaver told Fisher to get his \$150,000 back from Hoffman, because there was not \$150,000 worth of timber on the Hemlock Ridge Estates, 1, LP property (N.T. 37-38). He thought that the area which was the subject of the agreement was approximately 100 acres, but someone told him that it was actually “more like 80” (N.T. 49).

Plaintiff took the deposition of Philip Weaver on January 15, 2026. He is the 25% owner of Hemlock Ridge Estates, 1, LP. (N.T. 7). He is aware of an agreement between his father and Steve Hoffman to timber one additional area of the Hemlock Ridge Estates, 1, LP property for a payment of \$10,000.00 (N.T. 19-20). He described a “confrontation at the cabin” described to him by his father, involving Marvin Weaver and John Grand and Steve Hoffman (N.T. 23-24). He testified to a time in approximately January, 2023, when he attempted to contact Steve Hoffman. He spoke to John Grand about logging an area which should have been logged by J.R. Mall, Inc. (N.T. 33-36).

Plaintiff took the deposition of John Grand on January 15, 2026. He operates Big Iron Logging. The Court takes judicial notice of the fact that Big Iron Logging is a registered fictitious name of Grand Water Rush, LLC. He testified that he entered into an agreement with Abram Hoffman in August of 2022. When he went to the Hemlock Ridge Estates, 1, LP property it was “a mess” (N.T. 10). He testified that he did not haul any logs to Big Mountain Lumber because he “wasn’t hired to haul logs” (N.T. 11). He described his chipping process, and testified that his payment for his work at the Hemlock Ridge Estates, 1, LP property was the chips for all lumber 12 inches and below. He testified that he has no equipment to haul longs (N.T. 11-14). He identified a contract between his company and Hemlock Ridge Estates, 1, LP property in which the split on proceeds from logging was 40% to his company and 60% to Hemlock Ridge Estates, 1, LP. (N.T. 17). The logs under that agreement went to Wagner Lumber (N.T. 18). He described a conversation between him and Steve Hoffman and Marvin Weaver in which he stated to Steve Hoffman “Steve, you’re stealing trees” N.T. 19-20). He

testified that Steve Hoffman stated to them in a cabin “You two are ganging up on me” and “I’m done” and that Steve Hoffman left (N.T. 20). He described a conversation between Doug Wagner and Philip Weaver regarding cutting a 5 to 10 acre stand of timber (N.T. 29-30).

**DISCUSSION:**

WHILE IT IS UNCERTAIN WHETHER PLAINTIFFS’ CLAIMS WILL REACH THE JURY, THE COURT WILL DENY THE MOTION, BASED UPON THE APPEARANCE OF MATERIAL ISSUES OF FACT.

The Court has exhaustively reviewed the deposition testimony described above. The parties have dramatically different views on the events which led to this litigation. Witness credibility may be a significant factor in its outcome. Defendants accurately observe that Stephen Hoffman testified that Big Mountain Lumber paid him four payments of \$37, 676, which is the entire sum he agreed to accept for the lumber from the Hemlock Ridge Estates, 1, LP, property (N.T. 48). In their preliminary objections, Defendants asserted that his receipt of full payment deprived J.R. Mall, Inc., of standing. In the current motion, Defendants contend that his receipt of those funds entitle Defendants to partial summary judgment. The Court is sympathetic to Defendants’ assertion that the receipt of full payment draws into question whether J.R. Mall, Inc., can claim to be the owner of the timber for purposes of 42 P.S. 8311, and also gives rise to the question whether Plaintiffs can claim to have suffered any damage.

The Court is equally mindful that Stephen Hoffman identified Exhibit S as a statement of the “footage that the sawmill is missing” and that the sawmill apparently claims that Hoffman receives a statement with accrued interest “every month” which was “now up to -oh wow- \$165,00 or something” (N.T. 102). Hoffman admitted that he calculated 332,565 board feet from the Hemlock Ridge Estates, 1, LP property, and that the sawmill agreed to pay him 45.30 cents per board foot (N.T. 103). At Paragraph 27 of their Amended Complaint, Plaintiffs allege that the board footage deficit was 213,954 board feet. Assuming the accuracy of that allegation, Plaintiffs have failed to deliver \$96,921.16 worth of logs to the sawmill, exclusive of interest. If the sawmill claims that J.R. Mall, Inc., is required to refund that (or some higher) sum to the sawmill, Plaintiffs can realistically claim damage in the form of that liability. If not, perhaps not.

It appears to be undisputed that J.R. Mall, Inc., paid Hemlock Ridge Estates, 1, LP, the total sum of \$75,000.00, as alleged at Paragraphs 18 and 19 of the Amended Complaint. The questions presented with regard to Plaintiffs’ claim under 42 P.S. 8311 include at least the following: (1) does payment by J.R. Mall, Inc., to Hemlock Ridge Estates, 1, LP, the total sum of

\$75,000.00, make J.R. Mall, Inc., the owner of the logs for purposes of 42 P.S. 8311? If so, (2) does, payment by the sawmill of four payments of \$37, 676 to J.R. Mall, Inc., make the sawmill the owner, for purposes of that Section? If so, (3) does a claim by the sawmill for refund of a large portion of its payment to J.R. Mall Inc., effect that result? In the view of the Court, these are all questions for the finder of fact.

After review of the deposition testimony, the Court finds that the conclusion reached by our Supreme Court in another matter, over one hundred (100) years ago, is equally true here:

Doubtful cases should go to trial, especially those involving intricate relations demanding an inquiry into the facts of the controversy. *Griffith v. Sitgreaves*, 81 Pa. 378; *Philadelphia v. Edmonds*, 59 Pa.Super. Ct, 318, *County Savings Bank of Scranton v. Gillette*, 273 Pa. 262, 116 A. 891, *Mancia v. Marquette Nat. Fire Co.*, 280 Pa. 174, 124 A. 333; *Moy v. Colonial Finance Corporation*, 279 Pa. 123, 123 A. 926. This assuredly is one of those cases.

*Helpenstein v. Line Mountain Coal Company*, 284 Pa. 78, 81, 130 A. 301, 302 (Pa. 1925).

### ORDER

And now, this 18<sup>th</sup> day of June, 2026, for the reasons more fully set forth above, Defendants' Motion for Partial Summary Judgment, filed January 23, 2026, is denied.

BY THE COURT,

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William P. Carlucci Judge

Court Administrator

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