



January 24, 2024

CASE NUMBER 2915

**PLAINTIFF: DOOLEY TRUCK SERVICE
NOKOMIS, IL**

**DEFENDANT: LITCHFIELD FARMERS GRAIN & LIVESTOCK
LITCHFIELD, IL**

STATEMENT OF THE CASE

At dispute in this case between the plaintiff, Dooley Truck Service (Dooley), and the defendant, Litchfield Farmers Grain & Livestock (Litchfield), are two grain purchase contracts for delivery September 1 – November 30 (“SON”), 2020. The parties dispute the existence and validity of these contracts.

Litchfield claims it was contacted by Dooley on September 4, 2020, and a contract was consequently created for 2,500 bushels of soybeans for SON delivery at the price of \$9.56 per bushel (contract 7118). Litchfield states it created, signed and mailed a contract confirmation to Dooley for contract 7118 on or about September 4. Litchfield claims Dooley neither objected to nor confirmed contract 7118.

Litchfield alleges it was also contacted by Dooley on September 11, and a contract was consequently created for 2,500 bushels of soybeans for SON delivery at the price of \$9.91 per bushel (contract 7173). Litchfield states it created, signed and mailed a contract confirmation to Dooley for contract 7173 on or about September 11. Litchfield claims Dooley neither objected to nor confirmed contract 7173.

Dooley states that it did not receive confirmations for the alleged September 4 and 11 contracts from Litchfield, even after multiple requests by Dooley and Dooley’s counsel, until after this NGFA arbitration case was filed. Dooley denies that it contacted Litchfield on September 4 or September 11 to create contracts 7118 or 7173, or that communications occurred leading to the creation of those contracts.

Separate from the alleged September 4 and 11 contracts for SON delivery of soybeans in dispute between the parties in this case, the parties had agreed upon two other contracts for the sale of soybeans (contracts 7088 and 7174) each for delivery between January 1 and January 31, 2021. The creation dates of these agreed upon January 2021 delivery contracts were August 28, 2020 (7088) and September 11, 2020 (7174). Dooley signed and returned contract confirmations from Litchfield for these two contracts (7088 and 7174) on or about September 14 and 25. The parties do not dispute the existence and validity of contracts 7088 and 7174. According to Dooley, it delivered grain in fulfillment of contracts 7088 and 7174.

No deliveries of soybeans from Dooley to Litchfield occurred during the SON delivery period. Between January 18 and January 20, 2021, Dooley delivered a total of 7,776.67 bushels of soybeans to Litchfield. Litchfield applied the inbound grain from Dooley to its contracts of record with the oldest delivery due dates first, which were the alleged contracts numbered 7118 and 7173. Dooley argues it fulfilled all of its obligations for the delivery of soybeans under the January 2021 shipment period contracts it received confirmations for and signed on September 14 and 25 (contracts 7088 and 7174), and it is owed the funds for delivery under those contracts, which were withheld by Litchfield in its claim for damages related to the alleged September 4 and 11 contracts (7118 and 7173), being disputed in this case.

THE DECISION

The arbitrators reached the following conclusions in this case:

NGFA Grain Trade Rule 3(A) [Confirmation of Contracts] was not followed in this case, nor were other standard trade practices pertaining to contract confirmations and due diligence. As is the standard of the trade for commercial grain companies when purchasing grain from producer customers, the grain buyer has the responsibility to prepare and deliver a timely contract confirmation to the seller. As is also the standard of the trade, if the initial contract confirmation is not acknowledged by the seller in a timely fashion, the buyer then continues to perform due diligence and undertake additional measures to obtain a returned confirmation from the seller. Typically, this may include the buyer sending a second (or even a third) copy of the original confirmation, plus phone calls and other efforts to obtain acknowledgement of the confirmation. No evidence of any such actions by Litchfield were provided in this case.

Litchfield supports its position with copies of a telephone log. The arbitrators realize the notes provided are a helpful tool for Litchfield's internal activities and as a reference for the employee taking them at the moment. However, the notes are not clear or complete enough to sufficiently represent a meeting of the minds upon which contracts were created – as opposed to possible offers for the potential sale of grain by Dooley to Litchfield – or even as indications of pricing interests from Dooley to request Litchfield upon which to contact Dooley for a potential sale if a price objective were achieved.

NGFA Grain Trade Rule 28 [Failure to Perform] (A) [Seller's Non-Performance] requires the buyer to exercise due diligence in determining if the seller has defaulted prior to taking any actions. No evidence is provided in this case to demonstrate the exercise of due diligence by Litchfield prior to, at or shortly after the end of the SON delivery periods under the alleged contracts. Rather, Litchfield specifically noted its unilateral decision to disregard the SON delivery period of the alleged contracts and take no action until Dooley arrived later with deliveries under future contracts and to address the issues then.

With respect to Litchfield's claim that two contracts resulted from the discussion between the parties on September 11 – alleged contract 7173 and contract 7174, which Dooley signed on September 25 – there is no indication the two contracts were mailed together to Dooley. If it were shown that they were mailed together, there would have been at least some indication that Dooley received the contract confirmation for 7173 because Dooley signed and returned the confirmation for the other contract.

No evidence was presented that prior to, on, or after November 30, 2020, Litchfield performed any contract risk management or further due diligence with respect to the alleged contracts numbered 7118 and 7173. In regard to NGFA Grain Trade Rule 28, Litchfield neglected to complete any due diligence relative to Dooley's alleged default on these alleged contracts prior to, on, or about the first business day following delinquent delivery.

Litchfield did not provide evidence of timely communication regarding the default on the alleged contracts numbered 7118 and 7173. Nearly two months had transpired between the due date for the alleged contracts and Litchfield’s first attempted communications regarding delinquent deliveries. NGFA Grain Trade Rule 28 requires the exercise of due diligence on behalf of the buyer in the event of seller’s lacking notice of default. There was no evidence provided to demonstrate Litchfield executed any means of effort to address the alleged contracts’ performance prior to, upon or after the delivery due date of said contracts, which are standard practices of the trade for contract maintenance.

The arbitrators take specific note of Litchfield’s compelling lack of contract and contract confirmation due diligence, risk management and attempts to timely communicate with Dooley throughout the process as outlined by both NGFA Grain Trade Rules 3 and 28 regarding the alleged contracts numbered 7118 and 7173. Accordingly, the arbitrators do not believe a meeting of the minds was reached between the parties concerning each of the alleged contracts numbered 7118 and 7173, which means the contracts never truly existed.

THE AWARD

The arbitrators rule in favor of Dooley regarding the contracts alleged by Litchfield and disputed in this case (contracts 7118 and 7173). Since in its claim for damages related to contracts 7118 and 7173, Litchfield withheld payment for soybeans delivered by Dooley under two contracts in dispute (7088 and 7174), the arbitrators awarded Dooley in the amount of \$20,202.61 (based upon the below calculations) as payment for the soybeans delivered under the two uncontested contracts. No interest or attorney’s fees are awarded.

Contract:	Contract Price:	Bushels:	Value:
7088	\$ 9.58	5,000	\$ 47,900.00
7174	\$ 10.06	2,500	\$ 25,150.00
Spot	\$ 13.70	276.76	\$ 3,791.61
	Total:	7,776.76	\$ 76,841.61
	Less Previously Paid:		\$ 56,639.00
		Net:	\$ 20,202.61

Decided: August 4, 2023

SUBMITTED WITH THE UNANIMOUS CONSENT OF THE ARBITRATORS, WHOSE NAMES APPEAR BELOW:

Andrew Riffe, *Chair*
 President
 Stratford Grain Co.
 Stratford, TX

Trent Schairer
 Vice President of Transportation
 Bartlett Grain Company LP
 Kansas City, MO

Jason Selking
 GM- Eastern Ohio Valley
 Region
 CGB Enterprises Inc.
 Jeffersonville, IN