



November 18, 2022

CASE NUMBER 2938

**PLAINTIFF: PARRISH AND HEIMBECKER, LTD.
WINNIPEG, MANITOBA, CANADA**

**DEFENDANT: BOREK HOLDINGS LTD
DAWSON CREEK, BRITISH COLUMBIA, CANADA**

STATEMENT OF THE CASE

The Plaintiff and the Defendant entered into one contract, dated November 23, 2020, for #2 Canadian Yellow Peas totaling 200 metric tons (MT) for September 2021 delivery at CAD 275.58/MT. The contract was issued by the Plaintiff and confirmed via email by the Defendant.

Hot and dry weather was prevalent throughout Western Canada for the spring 2021 growing season and adversely affected the quantity of Yellow Peas produced in the region. In early July 2021, the Defendant visited the Plaintiff's location to discuss the status of the crop. It was acknowledged by the Plaintiff that the defendant had concerns about production, but after further questions about seeded acres and yield estimates, the Plaintiff chose not to wash the contracts.

The Defendant began pea harvest on or before August 10, 2021, and the Defendant requested the opportunity to deliver against his September delivery contract early, which the Plaintiff permitted. The Defendant delivered one load of peas on August 6, 2021, and two loads on August 10, 2021.

On August 12, 2021, the Defendant stated he was done harvesting peas and would not be able to fulfill the remaining 86 MT contract balance. The Defendant submits that he does not dispute the undelivered 86 MT.

The dispute in this case involves the valuation of the peas. Pursuant to NGFA Grain Trade Rules 28(B), the Plaintiff cancelled the defaulted portion of the contract at fair market value by buying in the defaulted portion of the contract. The Plaintiff presented replacement/cancellation value of CAD 12.50 per bushel on August 13, 2021. The Defendant disputed the value and stated he would only pay CAD 10.50 per bushel as it was the price when he initially approached the Plaintiff in early July to express yields concerns. Over the next several days no progress was made in resolving the dispute. On August 17, 2021, the Defendant called the Plaintiff and stated that he would not pay anything over \$10.50 and that he absolutely did not agree with the valuation of the cancellation.

At this time the Plaintiff issued cancellation at a price of \$12.50 plus fees and invoiced the Defendant (Invoice #10064426) in the amount of CAD 15,957.92 (representing losses under the contract) + CAD 868.50 (admin. fee) = CAD 16,826.52.

THE DECISION

Pursuant to NGFA Grain Trade Rule 4, both parties must agree to any alternations to a contract, and the arbitrators concluded that the Plaintiff was within its right to hold the Defendant accountable for the remaining 86 metric tons of peas under the terms of the contract even though there was discussion in July regarding the crop.

The arbitrators determined that the Plaintiff followed NGFA Grain Trade Rule 28 appropriately when buying in 86 metric tons of peas against the Defendant’s defaulted contract. The arbitrators also concluded that pursuant to clause 7 of the contract, the Defendant shall be responsible for a \$10/MT cancellation fee for any grain bought in or cancelled due to the Defendant’s inability to deliver grain against the contract. The arbitrators further decided that the Plaintiff should be awarded interest at the rate of 3.25% pursuant to NGFA Arbitration Rule 6(F) to begin the date the case was filed and continue until the date of this decision.

THE AWARD

Therefore, the arbitrators award the Plaintiff, Parrish and Heimbecker LTD, in the amount of CAD 17,338.28, including interest based on the following calculations:

Contract	Open Quantity	Contract Price	Cancellation Price	Difference /MT	Cancellation Fee/ MT	Total Cancellation Cost/MT	Due before Interest	Interest / day (3.25 annualized)	Days since 11/1/21 (date case was filed)	Total Due including interest as of 10/10/2022 (date of decision)
300574	86.6	275.58	459.85	184.27	10.00	194.27	\$ 16,823.78	\$ 1.50	343	\$ 17,338.28
										\$ 17,338.28

Decided: October 10, 2022

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

Ed Ide, Chair
 Trade Executive & Logistics Manager
 Zen-Noh Grain Corporation
 Covington, LA

Taylor Warwick
 Merchandiser
 Highline Grain Growers Inc.
 Davenport, WA

Paxton Wood
 Grain Merchandiser
 Centerra Cooperative
 Ashland, OH