



November 18, 2022

CASE NUMBER 2940

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

**DEFENDANT: RICK RUDY FARMS
BONANZA, ALBERTA, CANADA**

STATEMENT OF THE CASE

The Plaintiff and Defendant entered into three contracts for #2 Canadian Yellow Peas totaling 816 metric tons (MT) for August and September 2021 delivery: Contract 302649, dated December 3, 2020, for 272 MT of #2 Canadian Yellow Peas at CAD 275.58/MT for September 2021 delivery; Contract 303289, dated December 7, 2020, for 272 MT of #2 Canadian Yellow Peas at CAD 281.09/MT for September 2021 delivery; and Contract 315720, dated February 4, 2021, for 272 MT of #2 Canadian Yellow Peas at CAD 349.07/MT for August 2021 delivery. All three contracts were issued by the Plaintiff; and, subsequently, two were expressly confirmed by email, and one was confirmed due to the lack of a prompt rejection. Hot and dry weather was prevalent throughout Western Canada during the spring 2021 growing season and adversely affected the quantity of Yellow Peas produced in the region.

No communication was had between the two parties from the time the last contract was issued until mid-June 2021. In mid-June, the Plaintiff contacted the Defendant to discuss the status of his crop and the Defendant expressed he would be holding off doing anymore contracts.

On July 12, 2021, the Defendant contacted the Plaintiff to express concerns that he would be short of his contract obligations and wanted to discuss washing the contracts. After the Plaintiff asked further questions about seeded acres and yield estimates that the Defendant contracted for, the Plaintiff decided there should be enough production for the Defendant to cover its contract obligation to the Plaintiff. The Plaintiff chose not to wash the contracts.

The Defendant began pea harvest on or before August 12, 2021, and stated there would not be enough production to cover all the contracts. It was anticipated by the Plaintiff after an alleged conversation with the Defendant, that the Defendant would have enough production to cover Contract 315720, but not enough to fill the two September delivery contracts. An offer to cancel the two September contracts was made by the Plaintiff and declined by the Defendant. At the end of the month of August, the Plaintiff was in communication with the Defendant and was under the impression that the Defendant was trying to secure peas from another producer to fulfill the contracts. The arbitrators noted the Defendant had peas that he had planned to clean for seed to plant.

On September 1, 2021, the Plaintiff sent letters to the Defendant asking for delivery on the two September contracts by the following week. No deliveries were made although the two parties were communicating. On September 9, 2021, the Defendant declared there was only enough production to

fill the August contract. The two September contracts (302649 and 303289) were determined to be in default and bought in at a replacement value of CAD 551.16/MT. Invoices were created for \$74,957.76 + \$2,720 (Cancellation Fee) = \$77,677.76 and \$73,459.04 + \$2,720 (Cancellation Fee) = \$76,179.04.

The Defendant contacted the Plaintiff on September 17, 2021, and stated he was not going to pay the replacement value for the defaulted August contract. The Defendant wanted to use the July price when he first raised concerns about production. The Plaintiff was still under the impression the Defendant was searching for peas to deliver against the balance of the August contract.

On October 20, 2021, the Plaintiff contacted the Defendant about the remaining balance to deliver against the August contract. The Defendant stated he had no intent to deliver any more peas to the Plaintiff. The Plaintiff determined the balance to be in default, and that amount was bought in at a replacement value of CAD 569.53/MT. The Plaintiff created an invoice for \$27,861.29 + \$1,263.78 (Cancellation Fee) = \$29,125.07.

THE DECISION

The arbitrators find for the Plaintiff in this case, having concluded that the Plaintiff was within its contractual rights to elect not to speculate on overall pea production and cancel the contracts with the Defendant before harvest had begun. Pursuant to NGFA Grain Trade Rule 4, both parties must agree to any alterations of the contracts. It was also noted by the arbitrators that the Defendant had peas that were going to be used for seed that could have been delivered to the Plaintiff. The arbitrators could also see where the Plaintiff gave options to the Defendant to get the contracts filled by alternate methods. The Defendant's inability to deliver more bushels against the contracts, put all outstanding contract balances into default.

Though the order in which the contracts were cancelled may have seemed confusing, the arbitrators concluded that the Plaintiff used due diligence in providing the Defendant time to deliver the August bushels according to contract. The arbitrators determined that the process used by the Plaintiff in securing the buy in value is consistent with ordinary trade practice and provided a fair and accurate price for the valuation.

The arbitrators also determined that Clause 7 of the contracts clearly states that 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 contracts

The arbitrators also decided that the Plaintiff should be awarded interest at the rate of 3.25% pursuant to NGFA Arbitration Rule 6(F).

THE AWARD

Therefore, the arbitrators award the Plaintiff, Parrish and Heimbecker LTD, in the amount of CAD 188,569.34, 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)
302649	272	275.58	551.16	275.58	10.00	285.58	\$ 77,677.76	\$ 6.92	343	\$ 80,051.32
303289	272	281.09	551.16	270.07	10.00	280.07	\$ 76,179.04	\$ 6.78	343	\$ 78,504.58
315720	126.378	349.07	569.53	220.46	10.00	230.46	\$ 29,125.07	\$ 2.59	343	\$ 30,013.44
										\$ 188,569.34

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