



National Grain and Feed Association Arbitration Decision

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March 20, 2015

CASE NUMBER 2700

PLAINTIFF: GUINN TRADING, BUSH PRAIRIE, WA

DEFENDANT: HOLLIFIELD RANCHES, INC., HANSEN, ID

STATEMENT OF THE CASE

In June 2010, Guinn Trading (Guinn) and Hollifield Ranches, Inc. (Hollifield) entered into two contracts for the sale and delivery of millrun feed. Contract number 84439, dated June 7, 2010, provided for Guinn to deliver 13 loads from July through September 2010. Contract number 84501, dated June 25, 2010, provided for Guinn to deliver another 26 loads from October through December 2010.

On June 4, 2013, Hollifield filed a lawsuit in Idaho state court against Guinn claiming \$42,900 in damages. Hollifield alleged in its lawsuit that Guinn had failed to perform under contracts 84439 and 84501, and that as a result, Hollifield was required to buy-in replacement feed at a higher cost. Because both contracts provided for NGFA Arbitration to resolve any disputes, the court referred the case to NGFA on September 16, 2013. Guinn then filed a complaint under the NGFA Arbitration Rules seeking the dismissal of Hollifield's claims.

In the arbitration proceedings that followed, Guinn argued that Hollifield defaulted on contract 84439 when it failed to make payments for loads that had been delivered. Guinn stated that delivery under this contract commenced shortly after the contract was executed. Only 8 of the 13 loads under contract 84439 were ultimately delivered. According to Guinn, it stopped further deliveries under this contract in September 2010 because – in violation of the contract terms – Hollifield had failed to pay for loads delivered in August 2010.

Hollifield filed under Chapter 11 of the U.S. Bankruptcy Code on September 9, 2010 – before performance under contract 84501 was due. Counsel for Guinn and Hollifield then exchanged correspondence (apparently through February 2011). Before it would make deliveries under the contract, Guinn sought proof that the contract had been assumed or approved in the bankruptcy proceedings. Guinn also sought assurances that it would be paid for future performance under the contract. Hollifield asserted at the time that its intention was to have contract 84501 assumed in the bankruptcy proceedings. According to Guinn, Hollifield failed to ever provide proof that the contract was assumed in the bankruptcy proceedings. Nor did Hollifield provide assurances on future performance under the contract. Guinn argued that Hollifield was consequently in breach of the contract and the time frame for delivery under contract 84501 had long passed. Guinn also referred to Hollifield's failure to pay for previous deliveries under contract 84439.

The parties disputed the application of paragraph 15 in both contract 84439 and 84501, which stated as follows:

Buyer waives all claims unless made in writing and delivered to Seller within 10 days after receiving the goods. Any action by Buyer for a breach of this contract must be commenced within one year after the cause of action has accrued. (Emphasis added)

THE DECISION

The arbitrators concluded that pursuant to the NGFA Trade Rules, Guinn acted rightfully and properly when it suspended performance under contract 84439 after Hollifield failed to make payments for the delivered loads.

In reaching their decision, the arbitrators closely considered the provision in the contracts requiring that an action for breach of contract “must be commenced within one year after the cause of action has accrued.” It is plausible that Hollifield’s cause of action in this case accrued as early as in September 2010. Hollifield’s cause of action had certainly accrued by the time of the latest delivery periods under the contracts (October through December 2010). The arbitrators determined that there was nothing provided in the parties’ arguments or evidence indicating that a later date applied for the accrual of Hollifield’s cause of action. The parties’ submissions indicated that after the exchange between counsel in February 2011, Hollifield took no action against Guinn related to the contracts in dispute until the lawsuit filed in June 2013.

The parties disputed whether Hollifield’s claims nonetheless “survived” or were “preserved” under the bankruptcy plan based upon the “pass through” or “ride through” legal doctrines. Based upon the parties’ submissions, the arbitrators concluded that Hollifield failed to establish that anything in the bankruptcy plan warranted setting aside the specifically designated deadline in the contracts.

Consequently, the arbitrators determined that because Hollifield failed to commence its action within the one year deadline pursuant to the contractual commitment between the parties, Guinn had no liability to Hollifield.

THE AWARD

The arbitrators awarded no damages or interest to either party in this case.

Decided: February 10, 2015

Submitted with the unanimous consent of the arbitrators, whose names appear below:

Michelle Mapes, *Chair*
Executive Vice President
General Counsel & Corporate
Secretary
Green Plains Renewable Energy Inc.
Omaha, NE

Steve LaChey
Grain Division Manager
Larsen Cooperative Company
New London, WI

Lee Paarlberg
Manager of Corn Purchasing
Ingredion, Inc.
Indianapolis, IN