



May 16, 2019

CASE NUMBER 2795

**PLAINTIFF: AGRIBUSINESS UNITED DMCC
DUBAI, UAE**

**DEFENDANT: TATE & LYLE INGREDIENTS AMERICAS, LLC
DECATUR, IL, USA**

STATEMENT OF THE CASE

In this dispute, the claimant, Agribusiness United DMCC (Agribusiness), claimed that the respondent, Tate & Lyle Ingredients Americas, LLC (Tate & Lyle), wrongfully terminated a contract for three barges of corn gluten feed pellets (CGFP), and Agribusiness resultingly was owed \$376,186 in damages for dead freight, costs of buying-in for the contract cancellation and consequential damages.

Sequence of events leading to the dispute:

- May 4 and 6, 2016 – In accordance with the contract terms, Tate & Lyle applied three barges of CGFP and invoiced Agribusiness with all required documents.
- May 16 – Agribusiness inquires whether Tate & Lyle would identify Posco Daewoo America Corp. (Daewoo) as the buyer on this contract. Tate & Lyle replies that it is not possible to do so on this contract, but a new account may be set up under that name for future contracts. Tate & Lyle also inquires whether it will be paid for the invoices dated May 6.
- May 16 thru May 20 – Agribusiness attempts to have Daewoo pay for the barges.
- May 17 – Agribusiness requests that Tate & Lyle resend all the pages of the contract (front and back), and Tate & Lyle does so.
- May 20 – Tate & Lyle sends an email to Daewoo inquiring when it will be receiving payment as it is *“already past the standard grace period to receive payment”*. Daewoo also informed Tate & Lyle by email that *“Agribusiness is responsible for the payment.”* Tate & Lyle then forwarded the email to Agribusiness requesting that Agribusiness *“call me immediately”*.
- May 23 – Agribusiness replies by email, *“you will receive an email later today or tomorrow in regards to what we are doing. I apologize about the delay....”*
- May 26 – Tate & Lyle officially notifies Agribusiness by email that *“due to non payment and for violation of contract terms, we will be cancelling our sales contract 40041158 with Agribusiness United...”*
- May 26 – Agribusiness requests by email to be given until Monday. Tate & Lyle responds by email that *“unfortunately, we are not in position to allow this to go on any longer”*. Agribusiness responds, *“I do understand your frustration and we are indeed late”*. Tate & Lyle restates that the contract has been cancelled.

The transaction in dispute is Tate & Lyle contract no. 40041158 / Agribusiness contract no. AUD31-986, dated April 12, 2016. The original contracts from both parties provide for agreement on the following terms:

- 3 barges / 4800 short tons of corn gluten feed pellets at \$103-per ton
- May 1-15, 2016 delivery
- Terms of payment: “*Cash Against Documents*”
- NGFA Trade Rules to apply

Under “*GENERAL TERMS AND CONDITIONS*” on the back of Agribusiness’s contract, it states:

Payment terms applicable to this contract: Payment will be made at 100% of the value of the invoice to be paid by cash against documents, payment to be made in US dollars by wire transfer 48 to 72 hours after presentation of documents

The terms and conditions on Tate & Lyle’s contract state:

If Buyer fails to pay for any delivered portion of the quantity above specified, Seller may at its option and without notice (1) refuse to make further deliveries; or (2) cancel or resell at any time or from time to time for buyer’s account the undelivered portion or portions of this contract, and in either case Buyer shall be liable for any resulting loss.

Neither party signed or disputed the other party’s corresponding contract.

On May 17, 2016, Agribusiness requested that Tate & Lyle resend its contract. Tate & Lyle complied with this request; however, the resent contract contained different “*GENERAL TERMS AND CONDITIONS OF SALE,*” which stated:

Buyer shall pay Seller within thirty (30) days from invoice date. If price remains unpaid in whole or in part after agreed payment date or Buyer is otherwise in breach of Contract, Seller shall be entitled without any further notice to suspend or cancel Contract and/or charge interest on any unpaid amount at LIBOR +2% per annum calculated daily payable from the due date until payment is received in full. Title to Product as such and/or in processed form shall remain with Seller until Buyer has paid Price in full.

Agribusiness claims that Tate & Lyle wrongfully terminated the contract early. Agribusiness’s assertion is based upon two factors: First, Tate & Lyle’s invoices include statements that the invoices are due by June 3 and 5 (30 days after the date of the invoices). Second, when Tate & Lyle responded to Agribusiness’s request and resent the contract on May 17, the back of the contract included payment terms stating, “*Buyer shall pay seller within 30 days...*”. Agribusiness claims that these two conditions allowed it until June 6 to make payment. Therefore, according to Agribusiness, it was still within contract payment terms when Tate & Lyle breached the contract by wrongfully and prematurely terminating the contract.

Tate & Lyle asserts that Agribusiness breached the contract because it failed to make payment in the required timely manner, and Tate & Lyle was firmly within its rights to cancel the contract. Tate & Lyle also states that the terms on the back of the contract of the version resent on May 17 were different because of a clerical error as those terms are standard in other agreement forms.

THE DECISION

The arbitrators determined the terms of this contract were clearly stated, and both parties agreed to these contract terms. Both parties agreed to the payment terms as “*Cash against Documents*” on both the front and back of the original agreements. Only after Tate & Lyle cancelled the contract, did Agribusiness attempt to claim it was within payment terms as reflected on the invoices and the back page of the copy of the contract resent in error.

The arbitrators noted that the parties had traded multiple contracts over several years under the same terms as provided in the original agreements. Additionally, the arbitrators stated that terms on an invoice do not supersede contract terms. For any terms on a contract to be changed, both parties must agree in writing to change those terms. The arbitrators also noted that it is industry standard for terms stated on the back of a contract to be superseded by terms agreed to on the face of a contract.

Therefore, the arbitrators unanimously decided in favor of Tate & Lyle and denied Agribusiness’s request for damages.

THE AWARD

No damages are awarded in this case.

Decided: April 18, 2019

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

Tom Bright, *Chair*
Director of Grain Merchandising
Agtegra Cooperative
Aberdeen, SD

Kevin Peach
General Manager
Farmers Elevator Company of Honeyford
Honeyford, ND

Tom Russell
Area Manager
Bunge North America Inc.
Jonesville, LA