



June 10, 2021

CASE NUMBER 2864

**PLAINTIFF: WESTERN MILLING, LLC
GOSHEN, CA**

**DEFENDANT: LEONARDO BROTHERS, AKA LEONARDO BROS DAIRIES,
AKA LEONARDO BROS DAIRY
LATON, CA**

STATEMENT OF THE CASE

This case by Western Milling, LLC (“Western Milling”) against Leonard Brothers, aka Leonardo Bros Dairies aka Leonardo Bros Dairy (“Leonardo Bros”) concerns Western Milling’s sale contract confirmation (number 590363) dated May 22, 2015, for 1,000 tons of whole cottonseed to be shipped during the period of October 2015 through September 2016. Based upon how deliveries occurred under the contract, it appears the arrangement between the parties was for deliveries to occur regularly throughout the time period of the contract. According to Western Milling, the whole cottonseed sold under this contract was to be included in a feed premix being sold to Leonardo Bros.

Western Milling is claiming damages associated with its cancellation of the contract on January 31, 2019 – over two years after the contract period had passed. Leonardo Bros disputes there was any kind of agreement between the parties. Leonardo Bros also argues even if confirmation 590363 were valid and applicable, then Western Milling’s claims should be time-barred. Leonardo Bros filed a cross claim seeking to recover legal costs associated with defending against this arbitration claim as well as a lien filed against it by Western Milling.

On or about May 22, 2015, the parties had an in-person meeting and discussion about the price of the premix and whole cottonseed. On May 22, 2015, Western Milling claims it sent a confirmation to Leonardo Bros for the whole cottonseed to be shipped as part of the premix over the contract time period. Leonard Bros agrees there was a discussion but disputes the parties agreed to a contract.

Although the contract provided for shipments to commence in October 2015, shipments did not commence until three months later. Small consistent shipments commenced under the contract on January 11, 2016, and continued through August 13, 2016. No further shipments occurred under the contract after that date. The contract balance remained and continued according to Western Milling. The arbitrators noted that no evidence was presented of due diligence by Western Milling with respect to its claims of nonconformance by Leonardo Bros or differences in the expectations between the parties related to the contract.

The arbitrators noted that conversations between the parties were held at some point regarding the open balance, although neither party provided specific dates or documentation of any such communications, except a document dated June 25, 2019 (six months after the contract closed out). Western Milling presented a contract application summary as evidence indicating the cottonseed was applied against that specific contract with an invoice number provided. The arbitrators expect that all payments were made in full against these invoices as there was no claim by Western Milling of nonpayment. The arbitrators also decided that any discussions regarding the open balance occurred only late in 2018, based on the washout value indicated by Western Milling.

On January 31, 2019, Western Milling closed out the contract at market value and sent an invoice to Leonardo Bros for the value of its claim. Leonardo Bros refused to pay stating there was never any contract, and regardless any claim should be time barred.

Based upon Leonardo Bros' refusal to pay the invoice, Western Milling registered a lien with Dairy Farmers of America (DFA) on May 8, 2019. These funds were frozen until early October 2019, after Leonardo Bros engaged legal counsel to represent it in addressing the lien. Numerous emails and letters were presented in this case showing communication between the parties on this issue. In an email, dated October 14, 2019, DFA's counsel stated:

Western Milling's claim is for damages arising from the alleged breach of the disputed contract. As a result, Western Milling's claim is not "for the reasonable or agreed charges for the feed or materials provided...", as the statute requires. Western Milling's remedy may be for breach of contract but does not fall within the California dairy supply lien that covers only non-payment for feed supplied.

Leonardo Bros' counter claim is for legal costs during this time to have the lien released as well as to defend against this arbitration case.

In December 2019, Western Milling initiated this arbitration case after it pursued other avenues of resolution of this dispute including the lien with DFA. Western Milling's confirmation contract states as follows:

1. NGFA® TRADE RULES AND ARBITRATION TO APPLY: Except as otherwise provided herein, the Contract shall be subject to the Trade Rules of the National Grain and Feed Association (NGFA), which are incorporated herein. The parties agree that the sole remedy for resolution of any and all disagreements or disputes arising under or related to the Contract (including, but not limited to, any statutory or tort claims arising from the relationship between the parties) shall be through arbitration proceeds before the NGFA pursuant to the NGFA® Arbitration Rules. The decision and award determined through such arbitration shall be final and binding upon the parties. Judgment upon the arbitration award may be entered and enforced in any court having jurisdiction thereof. The parties agree that any arbitration conducted hereunder shall be governed by the Federal Arbitration Act, 9 United States Code SS I-16 as now existing or hereinafter amended. The contract shall otherwise be governed by, and consigned in accordance with, the laws of the State of California.

THE DECISION

Based upon the evidence provided and facts asserted, the arbitrators conclude there was some kind of agreement between the parties related to whole cottonseed during the meeting in May 2015, and the confirmation should be relied upon in the decision for this case. No evidence of any contract amendment was presented in this case.

There is complete absence of any documentable activity or communication from August 2016 until the contract was cancelled in January 2019, demonstrating that Western Milling did not exercise due diligence as required under NGFA Grain Trade Rule 28(B) for a period of over two years, well past the expiration of this contract.

Western Milling breached its own contractual terms by filing the lien on May 8, 2019 with DFA, which was of questionable merit, to resolve this dispute outside of NGFA Trade Rules and Arbitration. Resolution of the situation with the lien did not occur until five months later and after Leonardo Bros found it necessary to hire legal counsel to document that the lien did not comply with the DFA rules. After numerous communications and exchanges, the funds were released.

The arbitrators deny Western Milling's claim in its entirety because it failed to exercise due diligence in promptly addressing the remaining tonnage on the contract at or even close to the dates applicable under the contract.

The arbitrators also conclude that if Western Milling's claim were to be otherwise valid, the date from which its claim arises would be the first day following the last date for shipment under the contract – October 1, 2016. Western Milling did not commence an NGFA arbitration action within 12 months from this date of claim in compliance with NGFA Arbitration Rule 1(E), and the arbitrators agree with Leonardo Bros that even if Western Milling's claim were otherwise valid, it would be time barred.

The arbitrators noted that Leonardo Bros' claims for legal costs in its counterclaim may have had some merit, but Leonardo Bros provided insufficient evidence upon which the arbitrators could fully calculate an award. Leonardo Bros further made no sufficient presentation as to why hiring an attorney, at any cost, was necessary to resolve the DFA matter. Thus, the arbitrators declined to award damages for Leonardo Bros' counterclaim.

THE AWARD

No damages are awarded in this case.

Decided: April 23, 2021

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

Bart Moseman, *Chairman*
General Manager
Farmer's Coop Elevator
Hemingford, NE

John Lampert
Vice President
Parrish & Heimbecker
Winnipeg, Manitoba, Canada

Rick Romer
Director Risk Management – Global Corn
North America Grain Marketing
CHS Inc.
Inver Grove Heights, MN