Arbitration Decision
National Grain and Feed Association

December 3, 1998

Arbitration Case Number 1775

Plaintiff: Cannon Valley Cooperative, Northfield, Minn.

Defendant: Gibbs Family Farms, Inc., Dodge Center, Minn.

Statement of the Case

This arbitration case was initiated by the filing of a complaint by Cannon Valley Cooperative (Cannon Valley) alleging that Gibbs Family Farms Inc. (Gibbs) failed to deliver 19,083 bushels of soybeans and 135,000 bushels of corn pursuant to the terms of 10 contracts[1] between these parties, referred to as hedge-to-arrive contracts (HTAs).

Cannon Valley sought recovery of $330,457.16, plus accrued interest, arising out of the alleged breach of contract claims, as well as reimbursement of attorney fees incurred in enforcing the terms of the contracts[2]. Gibbs asserted various defenses and counterclaims, which are discussed below.

Cannon Valley alleged that the express terms of the contracts, which had been amended from time-to-time, clearly required delivery of a specified quantity of grain during a specified time period and at a specified price. According to Cannon Valley, when the price of the grain on the cash market was higher than the price provided under the HTA contracts, Gibbs chose to sell the grain on the cash market rather than deliver the grain to Cannon Valley as required by the contracts. Cannon Valley claimed that as a result of Gibbs' breach of its obligations to deliver grain, Cannon Valley was compelled to obtain grain from other sources to cover obligations made in reliance on the contracts with Gibbs. Further, Cannon Valley claimed additional damages in the form of attorney fees and costs arising out of Cannon Valley's attempts to enforce the contracts.

In contrast, Gibbs denied that its failure to deliver the grain was a breach of the terms of the contracts. Gibbs alleged that it was entitled to delay delivery and continue to roll the delivery date(s) of the grain under the contracts. Indeed, Gibbs asserted that it was entitled to continuously roll the delivery date forward, so long as the cash market price exceeded the contract price of the grain. Although such terms did not appear in the written documents, Gibbs claimed its right to delay delivery of the grain arose from an oral representation made by Cannon Valley.

Gibbs further alleged that upon entering into the contracts, it informed Cannon Valley that its representatives did not fully understand the intricacies of futures trading on the commodities market and, in particular, had little or no knowledge about the mechanics, advantages or risks of HTA contracts. Gibbs alleged it relied on the expertise and advice of Cannon Valley in entering into the HTAs.

Prior to the time the contracts were bought-in by Cannon Valley (with the exception of one contract where Gibbs partially performed by delivering a portion of the grain required under the contract), the delivery dates were rolled forward, often more than once. Gibbs claimed that its consent to roll the contracts forward was based upon its reasonable reliance on Cannon Valley's expertise. Gibbs asserted that it was unaware of the risk that were apparent in the amended

[1] Contract numbers 49133, 49206, 49244, 49022, 49123, 49168, 49243, 49033, 49132 and 49167.

[2] Cannon Valley Cooperative filed its original request for arbitration with the NGFA by letter dated July 29, 1996. However, Gibbs refused to arbitrate the dispute. Cannon Valley then filed suit in a Minnesota state court to compel Gibbs to arbitrate the dispute. The court ordered NGFA arbitration after a hearing on the issue. Cannon Valley requested an award of attorney fees to reimburse it for the expenses of compelling this arbitration.

contracts. Further, Gibbs claimed that Cannon Valley was advised by its investment adviser that the spread in the inverse grain market could become much worse. Gibbs alleged that Cannon Valley had a duty to disclose this information to Gibbs, and negligently or intentionally failed to do so. According to Gibbs, its losses were the direct result of Cannon Valley's willful neglect of its duty of disclosure to Gibbs.

Gibbs also asserted counterclaims against Cannon Valley, alleging that Cannon Valley breached the contracts by failing to meet its obligation to advise Gibbs of the risks inherent in entering into and rolling the contracts forward, as well as for failure to advise Gibbs of the market analysis learned from Cannon Valley's investment adviser. Gibbs further claimed that such omissions amounted to misrepresentation and/or negligence. As a result, Gibbs, requested that the arbitrators declare the contracts unenforceable and deny Cannon Valley any relief. In addition, Gibbs requested that the arbitrators award Gibbs relief in the amount of its attorneys' fees and costs, plus interest. Moreover, Gibbs asserted a claim of $30,792.23 for grain it said was not paid for upon delivery to Cannon Valley. Alternatively, Gibbs argued that even if the contracts were enforceable, it should be awarded damages against Cannon Valley in the amount of $77,500.

The Decision

The arbitrators thoroughly reviewed all of the evidence presented by the parties. It is important to note that Gibbs did not claim that the contracts failed to contain an obligation to deliver grain. Instead, Gibbs asserted that it relied upon an oral representation made by Cannon Valley that Gibbs could delay delivery of the grain until the pricing of the grain was suitable to Gibbs. In addition, after experiencing losses with these contracts, Gibbs asserted that the arbitrators should find the written terms of the contracts unenforceable because of the alleged breach by Cannon Valley of an asserted duty to advise Gibbs of the risks inherent in the contracts.

Numbered item 9 of each of the contracts provided that "[t]his Contract shall be governed by the laws of the State of Minnesota." Cannon Valley, as part of its argument, submitted a recent federal court decision[3] addressing Minnesota's so-called "economic loss doctrine" applicable to commercial transactions in Minnesota. The rule of law known as the economic loss doctrine provides that, "in commercial transactions between merchants, economic losses that arise out of commercial transactions, except those involving personal injury or damage to other property, are not recoverable under tort theories like negligence and willful misrepresentation."

The evidence clearly showed that Gibbs was a merchant in the business of both growing and marketing grain products. Indeed, the evidence disclosed that Gibbs and its representatives were involved in every part of the transactions at issue in this case. The arbitrators were not persuaded by Gibbs' arguments that its counterparty to a contract for the purchase and sale of goods incurred a special obligation to disclose the financial risks inherent in the contract. Absent some special duty, it was Gibbs' responsibility to monitor the fluctuations in prices on both the cash and agricultural futures markets that might affect the pricing formulas set forth in the contracts.

The arbitrators also found that Gibbs was responsible for making its own decisions as to the production and marketing of its grain and the contractual obligations it had voluntarily undertaken. Consequently, the arbitrators found that Minnesota's economic loss doctrine applied in this matter. Gibbs' request for relief arising out of the alleged claims of negligence and misrepresentation were denied.

The arbitrators found that Gibbs did have a duty to deliver the grain pursuant to the terms of the contracts. Gibbs, with the exception of partial performance by delivery of approximately 5,197 bushels of soybeans, failed to make such a delivery. The evidence showed that Cannon Valley suffered damages[4] totaling $320,792.33 on the contracts at issue. The arbitrators found that Gibbs was entitled to a credit of $30,792.23 for grain delivered.

Cannon Valley also requested that it be awarded all of its attorney fees and costs expended as a result of Gibbs' breach of the contracts and Gibbs' refusal to abide by the arbitration agreement set forth in the contract. Each of the contracts contained the following provisions:

"Seller agrees to pay all Buyer's costs resulting from Seller's breach, including, but not limited to, reasonable attorneys' fees and court costs."

"The parties to this contract agree that the sole remedy for resolution of any and all disagreements or disputes arising under or relating to this contract (including disputes as to whether a contract has been validly formed) shall be through arbitration proceedings. If the Buyer is a member of the National Grain and Feed Association (NGFA), such arbitration proceedings shall be conducted under NGFA arbitration rules."

[3] In re Grain Land Coop Cases, Civil File No. 3-96-1209 (D. Minn., Third Division, Oct. 1, 1997)(Amended Memorandum and Order of Judge Paul A. Magnuson).

[4] The damages included amounts for actual buy-outs of the contracts, plus service fees set forth in the contracts.

The contracts imposed a clear obligation on both parties to utilize NGFA arbitration instead of the courts to resolve disputes. The evidence showed that Cannon Valley complied with the contractual provisions by attempting to arbitrate this dispute before seeking and obtaining a court order compelling arbitration in this case.

However, Gibbs asserted that the attorney fees and costs sought by Cannon Valley included amounts spent by the plaintiff to "pierce the corporate veil" of the defendant corporation and hold Raymond and David Gibbs personally liable for the corporation's obligations. The issue of whether the individuals had personal liability apparently was still pending in state court. Thus, Gibbs argued that at least some of the attorney fees and costs sought by Gibbs should not be awarded as part of this arbitration case.

The arbitrators agreed that Cannon Valley should not, as part of this proceeding, be awarded attorney fees and costs expended in pursuit of an attempt to pierce Gibbs' corporate veil and reach the assets of its shareholders as a source of recovery for damages[5]. However, the arbitrators concluded that Cannon Valley was entitled to recover the attorney fees it expended to recover its contract damages, excluding any amount expended to pierce Gibbs' corporate veil. The arbitrators concluded that the evidence demonstrated that Cannon Valley expended $42,981.25 in total fees, which included $1,612.50 spent in an attempt to pierce Gibbs' corporate veil. As a result, the sum of $41,368.75 was attributable to the actions taken against Gibbs as the party to the contracts.

Cannon Valley also sought an award of interest[6] at the rate of 18 percent per annum on all damages it claimed. The arbitrators reviewed the parties' contracts and, based upon the evidence presented, could not find a provision justifying the award of interest at the rates sought by Cannon Valley. But the arbitrators concluded that Cannon Valley should be entitled to interest at the statutory rate applicable to breach of contract cases in Minnesota from July 29, 1996, the date of filing of the original claim for arbitration, until all damages were paid in full.

The Award

Therefore, it was ordered as follows:

Cannon Valley Cooperative was awarded a judgment of compensatory damages for breach of contract against Gibbs Family Farms Inc. in the net amount[7] of $289,635.35. Interest on this amount shall accrue at the statutory rate applicable to breach of contract claims in Minnesota from July 29, 1996 until such amounts are paid in full.

Cannon Valley Cooperative was awarded a judgment of attorney fees and costs against Gibbs Family Farms, Inc. in the amount of $41,368.75. Interest on this amount shall accrue at the statutory rate applicable to breach of contract claims in Minnesota from March 5, 1997[8] until such amounts are paid in full.

The counterclaim asserted by Gibbs Family Farms Inc. against Cannon Valley Cooperative was denied.

Submitted with the unanimous agreement and consent of the arbitrators, whose names are listed below:

Tom Jeffries, *Chairman*
Manager
St. John Grain Growers Inc.
St. John, Wash.

Donna Lance, Esq.
Koch Agriculture
Wichita, Kan.

Danny Pinske
General Manager
Mayport Farmers Co-op
Portland, N.D.

---

[5] The arbitrators concluded that the issue of attorney fees and costs related to the attempt to pierce the corporate veil of the defendant corporation was a matter better left to the state court, since the individuals were not named as defendants in this arbitration case.

[6] Cannon Valley Cooperative claimed interest due and owing of $56,181.32 as of June 30, 1997, plus interest through the resolution of this matter.

[7] Gross claim of $320,427.58, less credit of $30,792.23 for grain delivered equals net award of $289,635.35.

[8] This was the date the arbitration case was reinitiated by Cannon Valley Cooperative after it sought and obtained a court order against Gibbs.