



December 9, 2024

CASE NUMBER 3012

**PLAINTIFF: PARRISH & HEIMBECKER LTD.
RYCROFT, ALBERTA, CANADA**

**DEFENDANT: DAVID MITCHEL GOSHAWK FARMS
EAGLESHAM, ALBERTA, CANADA**

STATEMENT OF THE CASE

On March 9, 2021, Parrish & Heimbecker LTD (P&H) entered into a contract to purchase 2,178 metric tonnes (MT) of barley from David Mitchel Goshawk Farms (Goshawk) for delivery to P&H's facility in Rycroft, Alberta in January 2022 at \$266.22 per MT. Complete delivery of this grain was not made, which led to this dispute over the settlement of the contract.

In September of 2021, the parties communicated about the possibility of a shortage in production threatening the ability of Goshawk to fulfill the contract. The parties agreed to allow for early delivery on the contract, and Goshawk proceeded to deliver 1,249.99 MT during the month of September 2021. It is in dispute whether at this point Goshawk informed P&H of Goshawk's inability to perform on the balance of the contract (928.01 MT). There is not any definitive evidence that the seller informed the buyer of non-performance that was confirmed by written communication.

The conversation between the parties resumed with discussion about the contract in December 2021, and it was determined that no further deliveries would be made and that the contract would be cancelled at market price. On December 15, 2021, P&H cancelled the contract at \$9 per bushel (\$413.37 per MT) plus a \$10 per MT administration fee. The determination of the market price is the central issue in the case for arbitration. In its calculation of the cancellation price of \$9 per bushel, P&H applied the \$413.37 per MT price from a contract dated December 14, 2021, for barley from a different seller for delivery to P&H's facility at Viking, Alberta. Goshawk argues the cancellation price should be \$8 per bushel.

THE DECISION:

The facts of the case support that Goshawk did not fully perform on the contract, and P&H exercised its rights pursuant to NGFA Rule 28(A) to cancel the contract. Neither party in the case is disputing the contract was defaulted upon.

The primary debate is around what valuation to use for the contract cancellation. P&H cancelled the contract on December 15, 2021. Goshawk argues that other timelines apply as to when P&H was aware delivery in full performance of the contract would not be completed and should have cancelled the contract. However, upon close review of the facts and circumstances in this case, the arbitrators

determine that cancellation of the contract on December 15 was proper, leaving only the question of what cancellation pricing to apply in this dispute.

In its assessment of cancellation pricing, P&H relied upon a market in the other contract with a different seller that was over 600 kilometers away from the delivery point in this case to establish its pricing. The arbitrators have considered P&H's arguments in support of this approach, but they conclude this was not reasonable for establishing a fair market value under the facts and circumstances of this case. The arbitrators determine that the only firm and most conclusive pricing provided in this case for the market of barley delivered to Rycroft was P&H's own bid price posted for delivery at the Rycroft facility on the day of the cancellation of \$7.88 per bushel (\$361.93 per MT).

THE AWARD

Thus, the arbitrators award \$98,099.94 to Parrish & Heimbecker LTD from David Mitchel Goshawk farms. The sum of this award represents the shortage amount on the contract (928.01 MT) multiplied by the price differential between the original contract (\$266.22/MT) and the market at the time plus administrative costs (\$361.93/MT + \$10/MT). $[928.01 * \$1,05.71 = \$98,099.94]$ No interest or legal fees are awarded.

Decided: July 24, 2024

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

Brian Liedl, *Chair*
Director of Merchandising
United Grain Corporation
Vancouver, WA

Brett Harrison
Grain & Truck Dept. Manager
Morrow County Grain Growers
Lexington, OR

Abbey Miedema
Grain Marketing Specialist
Agtegra Cooperative
Wolsey, SD