20160303
FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT
December 13, 2016
STATE OF NORTH DAKOTA

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Public Service Commission, Petitioner, Appellee and Cross-Appellant, v. Grand Forks Bean Company, Inc., Respondent and Appellee, and Auto-Owners Insurance Company, Respondent, Appellee and Cross-Appellant, and Bremer Bank, National Association, Interested Party and Appellant, and Curt Amundson and Beth Nelson, as assignee of the estate of Brad Nelson, Interested Party, Appellee and Cross-Appellant, and Brent Baldwin, Duane Altendorf, Ronald Adams, Nicholas Adams, Chuck Nelson, and WJS Nelson, Inerested Parties and Appellees.	**SUPREME COURT NO. 20160303** Civil No. 18-2015-CV-00240

ON APPEAL FROM ORDER MODIFYING TRUSTEE'S REPORT AND RECOMMENDATION, DATED MAY 3, 2016, ORDER CORRECTING CLERICAL MISTAKE/OVERSIGHT, DATED MAY 5, 2016, ORDER RESOLVING POST-HEARING ISSUES, DATED JULY 5, 2016, ORDER FOR JUDGMENT, DATED JULY 22, 2016, AND JUDGMENT, DATED JULY 22, 2016

THE DISTRICT COURT OF GRAND FORKS COUNTY, NORTH DAKOTA,
NORTHEAST CENTRAL JUDICIAL DISTRICT
THE HONORABLE JON J. JENSEN, PRESIDING

APPELLEE'S BRIEF

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[¶1]STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. [¶2] The District Court erred in determining Curt Amundson was a credit sale seller rather than a receipt holder.

[¶3]STATEMENT OF THE CASE

[¶4] Claimant/Appellee, Curt Amundson ("Mr. Amundson"), challenges the District Court's determination that he was a credit sale seller rather than a receipt holder.

[¶5] Mr. Amundson argues there is no evidence to show the price later marketing agreement between Grand Forks Bean Company, Inc. ("GFB") and Mr. Amundson actually controlled the transaction in question. Additionally, Mr. Amundson argues that even if the price later marketing agreement was operative as to the crop that forms the basis of Mr. Amundson's claim, that agreement did not meet the statutory requirements to form a valid credit sale contract.

[¶6]STATEMENT OF THE FACTS

[¶7] GFB became a licensed bean warehouse in October, 2005. See Ex. 1. Mr. Amundson instructed GFB to sell his crop immediately upon completion of delivery. Id. at 215, lns. 2-11. Mr. Amundson believed immediate sale was in his best interests as he anticipated that with the excellent 2013 bean crop, bean prices would go down (as they did). Id. at 214; id. at 242-43, lns. 25-5. Mr. Amundson never agreed those crops would be marketed under a Price Later Marketing Agreement he had signed with GFB. Tr., pp. 213-14, Ins. 20-11; see also id. at 229, Ins. 1-4 and Ex. 24a.

[¶8]LAW AND ARGUMENT

[¶9] I. The District Court erred in finding Mr. Amundson to be a credit sale seller rather than a receipt holder.

[¶10] The crux of the instant case is the disparate treatment credit sale contracts and noncredit sale contracts receive when a licensed grain warehouse becomes involved. Contracts deemed noncredit sale contracts—which include receipt holders—are paid out of the PSC insolvency trust fund. See N.D.C.C. § 60-04-01, et. seq. Conversely, growers

who enter into credit sale contracts fall outside insolvency proceedings, and are not entitled to payment from the PSC trust fund assets. See N.D.C.C. § 60-04-01(6) (defining receipt holder and excluding credit sale transactions). The District Court improperly found Mr. Amundson to have entered into a credit sale contract—and therefore concluded Mr. Amundson was not entitled to share in the PSC trust fund assets. The District Court's conclusion was incorrect, and must be reversed.

[¶11] A. The District Court erred in determining the price later marketing agreement actually controlled the sales arrangement between Curt Amundson and GFB.

[¶12] The first issue before the Court is what, if any, contract controlled the sales arrangement between Mr. Amundson and GFB. Here, the District Court erred in finding a price-later marketing agreement was in effect as to the crops Mr. Amundson delivered to GFB.

[¶13] The existence of a contract is a question of fact for the trier of fact. Stout v. Fisher Indus., Inc., 1999 ND 218, ¶ 11, 603 N.W.2d 52; Jones v. Pringle & Hergstad, P.C., 546 N.W.2d 837, 842 (N.D. 1996). The trier of fact determines whether a contract is intended to be a complete, final, and binding agreement. Jones, 546 N.W.2d at 842. The Court reviews these questions under the "clearly erroneous" standard. Id. A finding of fact is clearly erroneous if it is induced by an erroneous view of the law, if no evidence exists to support it, or if, on the entire record, we are left with a definite and firm conviction a mistake has been made. Bleth v. Bleth, 2000 ND 52, ¶ 8, 607 N.W.2d 577. The District Court's determination the price-later marketing agreement controlled the transaction in question was clearly erroneous.

[¶14] At trial, Mr. Amundson testified he signed a price-later marketing agreement with GFB only as a potential marketing tool. Tr., pp. 213-14, lns. 20-11. Mr. Amundson did

not agree the crop he was delivering would be marketed under the agreement. Id.; see also id. at 229, lns. 1-4. Rather, he instructed GFB to sell his crop immediately upon completion of deliver. Id. at 215, lns. 2-11. Mr. Amundson believed immediate sale was in his best interests as he anticipated that with the excellent 2013 bean crop, bean prices would go down (as they did). Id. at 214; id. at 242-43, lns. 25-5. Thus, he did not want to wait to price his beans later, but wanted them sold outside the confines of the price-later marketing agreement.

[¶15] Mr. Amundson was cross-examined regarding notations on a copy of Mr. Amundson's price-later marketing agreement that was found in GFB's files. Id. at 239-41, lns. 11-20. The notations were dated January and February of 2014, and concerned storage charges and the quantity of beans for which Mr. Amundson had been paid. Id.; see also id. at 242, lns. 1-18. The notations appear only on the copy of the agreement retained by GFB, and were placed on the contract after it was executed by Mr. Amundson and without his consent. Id. There was no evidence as to who made the notations and/or the purpose of the same. Id. Because a contract may only be modified with the mutual consent of the parties thereto, the unilateral changes by GFB have no legal significance. See N.D.C.C. § 9-09-06; Cargill, Inc. v. Kavanaugh, 228 N.W.2d 133 (N.D. 1975).

[¶16] Accordingly, Mr. Amundson's testimony clearly established the price-later marketing agreement did not control his transaction with GFB. Had GFB believed Mr. Amundson was a party to a price-later marketing agreement, GFB would have kept records as to the price he established for his beans. The lack of any evidence on pricing belies the existence of an operative price-later marketing agreement between Mr. Amundson and GFB. The only evidence before the District Court —the testimony of Mr.

Amundson—clearly established the price-later marketing agreement was irrelevant to the transaction at issue. The District Court committed clear error in finding that Mr. Amundson sold his beans pursuant to a price-later marketing agreement. Indeed, the District Court failed to identify any evidence supporting this finding.

[¶17] B. The District Court misapplied the statutory requirements of a credit sale contract.

[¶18] Assuming, arguendo, the Court finds the price-later marketing agreement signed by Mr. Amundson controlled the transaction between Mr. Amundson and GFB, the District Court nevertheless erred in determining that price-later marketing agreement rendered Mr. Amundson a credit sale seller.

[¶19] At issue is a straight-forward matter of statutory interpretation. "Generally, statutory interpretation is a question of law and fully reviewable on appeal." Public Serv. Comm'n v. Minn. Grain, Inc., 2008 ND 184, ¶ 9, 756 N.W.2d 763 (citation, alteration, and internal quotation omitted). Upon *de novo* review, the District Court misinterpreted the relevant statutes, incorrectly finding Mr. Amundson to be a credit sale contract seller.

[¶20] Chapters 60-02 and 60-04 contain nearly identical definitions of a credit sale contract:

> "Credit-sale contract" means a written contract for the sale of grain pursuant to which the sale price is to be paid or may be paid more than thirty days after delivery or release of the grain for sale and which contains the notice provided in subsection 7 of section 60-02-19.1. If a part of the sale price of a contract for the sale of grain is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale, only such part of the contract is a credit-sale contract.

N.D.C.C. § 60-02-01(2), compare with N.D.C.C. § 60-04-01(2) (identical except replacing "When" for "If" to begin second sentence). Chapter 60-02 further defines a noncredit sale contract as "a contract for the sale of grain other than a credit-sale

contract." N.D.C.C. § 60-02-01(4). Conversely, Chapter 60-04 does not define a noncredit sale contract; instead, Chapter 60-04 directs payments to receipt holders, see N.D.C.C. § 60-04-09, and exempts credit sale contracts from its definition of receipt holders. Cf. N.D.C.C. § 60-04-01(6).

[¶21] In addition to above outlined definitions, of importance to this Court is an additional section of Chapter 60-02 outlining the requirements for credit sale contracts. Specifically, Section 60-02-19.1 outlines a number of requirements relevant to credit sale contracts:

> A warehouseman shall not purchase grain by a credit-sale contract except as provided in this section. All credit-sale contracts must be in writing and must be consecutively numbered at the time of printing the contract. The warehouseman shall maintain an accurate record of all credit-sale contract numbers, including the disposition of each numbered form, whether by execution, destruction, or otherwise. Each credit-sale contract must contain or provide for all of the following:
>
> 1. The seller's name and address.
>
> 2. The conditions of delivery.
>
> 3. The amount and kind of grain delivered.
>
> 4. The price per unit or basis of value.
>
> 5. The date payment is to be made.
>
> 6. The duration of the credit-sale contract.
>
> 7. Notice in a clear and prominent manner that the sale is not protected by the bond coverage provided for in section 60-02-09. However, if the warehouseman has obtained bond coverage in addition to that required by section 60-02-09 and such coverage extends to the benefit of credit-sale contracts, the warehouseman may state the same in the credit-sale contract along with the extent of such coverage.
>
> The contract must be signed by both parties and executed in duplicate. One copy shall be retained by the warehouseman and one copy shall be delivered to the seller. Upon revocation, termination, or cancellation of a warehouseman's license, the payment date for all credit-sale contracts

> shall, at the seller's option, be advanced to a date not later than thirty days after the effective date of the revocation, termination, or cancellation, and the purchase price for all unpriced grain shall be determined as of the effective date of revocation, termination, or cancellation in accordance with all other provisions of the contract. When a public warehouse is transferred under this chapter, credit-sale contracts may be assigned to another licensed public warehouseman or facility-based grain buyer.

N.D.C.C. § 60-02-19.1. The District Court found Section 60-02-19.1 to be of no consequence in determining whether the price-later marketing agreement signed by Mr. Amundson was a valid credit sale contract. This conclusion was incorrect, and must be reversed.

[¶22] When interpreting statutes "[w]ords in a statute are given their plain, ordinary, and commonly understood meaning, unless defined by statute or unless a contrary intention plainly appears." Minn. Grain, Inc., 2008 ND 184, ¶ 9 (citation and internal quotation omitted). The plain language of Section 60-02-19.1 is clear—all credit sale contracts must meet the numerous statutory requirements in order to give rise to a valid credit sale contract. N.D.C.C. § 60-02-19.1 ("[a] warehouseman shall not purchase grain by a credit-sale contract except as provided in this section."). Under the plain language of the statute, a credit sale contract does not exist if all elements of Section 60-02-19.1 are not met.

[¶23] The District Court rejected this interpretation by fixating on the fact that Section 60-04-01(2) only specifically references the bond notice requirement of Section 60-02-19.1(7), and not Section 60-02-19.1 generally. The District Court concluded specific reference rendered the remaining requirements of Section 60-02-19.1 superfluous. This interpretation perverts the requirement of statutory interpretation that "[s]tatutes are construed as a whole and are harmonized to give meaning to related provisions. This Court harmonizes statutes when possible to avoid conflict between them." Minn. Grain,

Inc., 2008 ND 184, ¶ 9 (citation and internal quotation omitted). As this Court has already concluded Chapters 60-02 and 60-04 are related and should be interpreted together, cf. id. at ¶ 17, the requirements of Sections 60-02-19.1 should be harmonized with the definition of Section 60-04-01(2), if possible.

[¶24] The District Court's incorrect interpretation does not harmonize Sections 60-02-19.1 and 60-04-01(2), but instead contradicts the above-outlined plain language reading of Section 60-02-19.1 that all requirements are necessary to form a binding credit sale contract. Indeed, Section 60-02-01 reads a credit sale contract must contain "the notice provided in subsection 7 of section 60-02-19.1." N.D.C.C. § 60-02-01(2). It is entirely harmonious to find a credit sale contract must not only contain the notice requirement of Section 60-02-19.1, but also all other applicable credit sale contract requirements. Indeed, the District Court's interpretation is only proper if Section 60-02-19.1 were amended to require a credit sale contract contain "the notice provided in subsection 7 of section 60-02-19.1[, but none of the other statutory requirements]." Such a reading is not harmonizing, but is contradictory to the plain reading of the requirements of Section 60-02-19.1. Because the two Sections are most easily harmonized by requiring all credit sale contracts to meet all statutory requirements of Section 60-02-19.1, statutory interpretation dictates this harmonious interpretation is proper.

[¶25] This interpretation is only bolstered by the legislative history of the relevant provisions. "[I]nterpretation of a statute must be consistent with legislative intent and done in a manner to further the policy goals and objectives of the statutes." Minn. Grain, 2008 ND 184, ¶ 10 (citation, alterations, and internal quotation omitted). As clearly established by testimony to the North Dakota House Agriculture Committee, the

requirements of Section 60-02-19.1 are not optional, all requirements are necessary to create a binding credit sale contract. See Hr'g on HB 1197 before the H. Ag. Comm., 1/23/03, 58th Assembly (N.D. 2003) (statements of Rep. Belter and Jon Mielke) at pp. 5-6.

[¶26] The statutes are clear: the legislature said what it meant, and meant what it said—to form a valid credit sale contract, all requirements of Section 60-02-19.1 must be met. The District Court misinterpreted the application of Section 60-02-19.1 to the case at bar. This mistake must be reversed.

[¶27]CONCLUSION

[¶28] The District Court's determination Mr. Amundson was not a receipt holder must be reversed. The District Court committed clear error in finding the price-later marketing agreement controlled the transaction between Mr. Amundson and GFB. The District Court also erred in concluding that price-later marketing agreement could be deemed a binding credit sale agreement under North Dakota law.

Respectfully submitted this 13th day of December, 2016.

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IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Public Service Commission, Petitioner, vs. Grand Forks Bean Company, Inc., Auto-Owners Insurance Company, Respondents. PSC Case No. GE-15-36	**SUPREME COURT NO. 20160303** Civil No. 18-2015-CV-00240

AFFIDAVIT OF SERVICE BY E-MAIL

APPEAL FROM ORDER MODIFYING TRUSTEE'S REPORT AND RECOMMENDATION, DATED MAY 3, 2016, ORDER CORRECTING CLERICAL MISTAKE/OVERSIGHT, DATED MAY 5, 2016, ORDER RESOLVING POST-HEARING ISSUES, DATED JULY 5, 2016, ORDER FOR JUDGMENT, DATED JULY 22, 2016, AND JUDGMENT, DATED JULY 22, 2016

THE DISTRICT COURT OF GRAND FORKS COUNTY, NORTH DAKOTA,
NORTHEAST CENTRAL JUDICIAL DISTRICT
THE HONORABLE JON J. JENSEN, PRESIDING

STATE OF MINNESOTA)
) ss:
COUNTY OF CLAY)

Stephanie Joy, being first duly sworn on oath, deposes and states that she is a secretary in the office of the Vogel Law Firm, 215 30th Street North, P. O. Box 1077, Moorhead, MN 56561-1077 and that on the **13th day of December, 2016**, she served:

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My Commission Expires JAN. 31 2020

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THE DISTRICT COURT OF GRAND FORKS COUNTY, NORTH DAKOTA, NORTHEAST CENTRAL JUDICIAL DISTRICT
THE HONORABLE JON J. JENSEN, PRESIDING

AFFIDAVIT OF SERVICE BY E-MAIL

STATE OF MINNESOTA)
) ss:
COUNTY OF CLAY)

Stephanie Joy, being first duly sworn on oath, deposes and states that she is a secretary in the office of the Vogel Law Firm, 215 30th Street North, P. O. Box 1077, Moorhead, MN 56561-1077 and that on the **22nd day of December, 2016**, she served:

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Subscribed and sworn to before me this 22nd day of December, 2016.

Notary Public, Clay County, MN

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My Commission Expires JAN. 31, 2020
2672506.1