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STATE OF NORTH DAKOTA

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

Public Service Commission,

Petitioner, Appellee and Cross-Appellant,

-vs-

Grand Forks Bean Company, Inc.,

Respondent

and

Auto-Owners Insurance Company,

Respondent and Appellant,

and

Bremer Bank, National Association,

Interested Party and Appellant,

and

Curt Amundson,

Interested Party and Appellant

and

Brent Baldwin, Baldwin Farms, Inc., Duane Altendorf, WJS Nelson, Nicholas Adams, and Ronald Adams,

Interested Parties and Appellees

SUPREME COURT NO. 20160303

GRAND FORKS COUNTY DISTRICT COURT NO. 18-2015-CV-00240

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

BRIEF OF APPELLEES

BRENT BALDWIN, BALDWIN FARMS, INC. AND DUANE ALTENDORF

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STATEMENT OF ISSUES PRESENTED

[¶1] Whether the trial court properly denied Bremer Bank's motion to intervene when it fully participated in this matter and by intervening it sought to expand this proceeding.

[¶2] Whether the trial court correctly found Baldwin/Baldwin Farms and Amundson were receiptholders and entitled to priority payment from the trust fund.

[¶3] Whether the trial court correctly found Amundson had a credit-sale contract and excluded from a trust fund payment.

[¶4] Whether the trial court correctly found October 15, 2013 as date of insolvency because by this date proper demand for payment was made on Grand Forks Bean and it refused or neglected to do so.

[¶5] Whether the trial court properly assigned a payment of $45.00 per cwt. from the trust fund to Duane Altendorf.

[¶6] Whether the trial court correctly denied a service fee offset under the Price Later Marketing Agreements when neither Baldwin/Baldwin Farms nor Altendorf entered into these agreements.

STANDARD OF REVIEW

I. Intervention

[¶7] This Court fully reviews whether a party may intervene as of right under N.D.R.Civ.P. 24(a), but factual findings on this issue are under the clearly erroneous standard of review. White v. T.P. Motel, L.L.C., 2015 ND 118, ¶23, 863 N.W.2d 915. Further, a "decision on permissive intervention will not be reversed on appeal absent a clear abuse of discretion." Id.

II. Insolvency Proceeding

[¶8] "Statutory interpretation is a question of law which on appeal is fully reviewable." Prchal v. Prchal, 2011 ND 62, ¶15, 795 N.W.2d 693; see also Garaas v. Cass Cty. Joint Water Res. Dist., 2016 ND 148, ¶7, 883 N.W.2d 436.

[¶9] This Court presumes the trial court considers the evidence presented and that its findings of fact are correct, and in turn the "complaining party bears the burden of demonstrating a finding is clearly erroneous." Keller v. Bolding, 2004 ND 80, ¶14 & 17, 678 N.W.2d 578. This requires an appellant show factual findings were "induced by an erroneous view of the law, if no evidence exists to support it, or if the reviewing court, on the entire evidence, is left with a definite and firm conviction a mistake has been made." Rice v. Neether, 2016 ND 247, ¶9, --- N.W.2d ---.

STATEMENT OF CASE

[¶10] Appellees Brent Baldwin ("Baldwin"), Baldwin Farms, Inc. ("Baldwin Farms")[1] and Duane Altendorf ("Altendorf"), incorporate by reference, the Public Service Commission" (the "PSC") statement of the case, excluding, however, the last sentence where the PSC requests "the Judgment be reversed insofar as it modified the PSC's report." PSC Brief, ¶2. Baldwin/Baldwin Farms and Altendorf request the Judgment be affirmed in total.

[1] Brent Baldwin and Baldwin Farms, Inc. are separate claimants, but for convenience will be referred to collectively as "Baldwin/Baldwin Farms."

STATEMENT OF FACTS

I. Baldwin/Baldwin Farms

[¶11] Baldwin/Baldwin Farms entered into written Dry Bean Contracts with Grand Forks Bean Company, Inc. ("GFB") where GFB agreed to purchase pinto beans grown by Baldwin/Baldwin Farms in 2013. JA-354-355; TT 324:14-328:20, 337:20-23.[2] The Dry Bean Contracts called for Baldwin/Baldwin Farms to deliver and GFB to purchase, 6,000 cwt[3] of beans, with 3,000 cwt purchased for $45.00/cwt and the balance[4] at $1.00 over the prevailing market rate. Id. Further, there was no condition for GFB to pay Baldwin/Baldwin Farms, i.e. payment only if there was a market for the beans. TT 325:24-326:3. The Dry Bean Contracts were never modified or renegotiated. TT 328:2-7. Baldwin/Baldwin Farms fully performed under the Dry Bean Contracts by Baldwin delivering 2,220.36 cwt of beans and Baldwin Farms delivering 4,005.71 cwt. JA-358-359, JA-363-365; TT 328:8-329:14.

[¶12] Approximately two weeks after the last delivery (the beginning or mid-October, 2013), Baldwin/Baldwin Farms made proper demands to GFB for payment, but GFB refused or neglected to do so. TT: 332:7-333:12. Eventually, GFB partially paid Baldwin Farms with a payment of $45.00/cwt for 3,000 cwt – a price consistent with the Dry Bean Contract. JA-354-355, JA-366, TT 332:24-333:7. Despite demands, Baldwin has not been paid for 2,220.36 cwt, and Baldwin Farms has not been paid for 1,005.71 cwt. JA-360 and JA-368.

[¶13] The evidence further established:

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[2] Reference to "TT" shall refer to the trial transcript of the March 14-15, 2016 hearing and reference to "JA" shall refer to the joint appendix submitted by Bremer Bank.

[3] The weight of measure for pinto beans is hundredweight (referred to as "cwt").

[4] The cwt ultimately delivered exceeded 6,000 because it is impossible to be precise when filling trucks with beans.

(a) Only Brent Baldwin negotiates and enters into contracts for sale of crops for himself and Baldwin Farms. TT 321:22-323:3

(b) Baldwin nor Baldwin Farms had not done any business with GFB before, and except for the delivery of beans in September, 2013 by their truck driver, had not been to GFB's facility. TT 323:17-324:13.

(c) Baldwin/Baldwin Farms never discussed, negotiated, agreed to, or signed a Price Later Marketing Agreement ("PLMA") with GFB. JA-293, JA-356, JA-361, TT 321:22-323:3, 329:15-333:6; 353:11-18.

(d) Baldwin/Baldwin Farms never authorized or directed anyone to negotiate, agree to, or sign any PLMA. JA-356, JA-361; TT 321:22-323:3, 330:10-331:5.

(e) Baldwin/Baldwin Farms never agreed to, were never told, nor did either notify GFB their beans were subject to or put under any PLMA. TT 326:4-7, 329:24-330:1, TT 331:21-332:6

(f) A PLMA document came back with Baldwin/Baldwin Farms' truck driver intermingled with scale tickets. JA-361; TT 329:15-331:5. This PMLA was signed and initialed by the driver without any authority or direction to do so. Id.

(g) Neither Baldwin nor Baldwin Farms had ever seen the PLMA, found at JA-356, until the PSC sent the document to Baldwin in late 2014. TT 331:6-20. This PLMA received from the PSC differed from the document intermingled with the scale tickets (JA-361) because it now included a handwritten number "1108" and Baldwin's name on it. Compare JA-356 with JA-361. The PSC testified that the PLMA, found at JA-361 had never been seen during its February, 2014 records review of GFB. TT 106:21-108:13.

II. Altendorf

[¶14] Altendorf entered into an agreement with GFB where GFB was to purchase pinto beans grown by Altendorf in 2013. TT 191:15-193:14. The agreement called for Altendorf to deliver 4,000 cwt[5] of beans to be purchased at $45.00/cwt. Id. There was no condition for GFB's payment to Altendorf, i.e. payment only if there was a market for the beans. TT 209:21-201:1. This agreement was never modified or renegotiated. TT

[5] See footnote 4, supra, regarding differences in quantity.

192:23-25. Altendorf fully performed by delivering 4,408.22 cwt of beans. JA-371-378, TT 193:11-194:8.

[¶15] Approximately two weeks after delivery (the beginning or mid-October, 2013), Altendorf made proper demands to GFB for payment, but GFB refused or neglected to do so. TT 196:8-197:11. Eventually, GFB partially paid Altendorf by making a payment of $45.00/cwt for 2,000 cwt – a price consistent the agreement with GFB. JA-379; TT 197:13-198:5. Despite demands, Altendorf has not been paid for 2,408.22 cwt. JA-379.

[¶16] The evidence further established:

(a) Altendorf never entered into an agreement or had any business dealings with GFB before, and except for delivering the grain, neither Altendorf nor any employee had been to GFB. TT 190:24-191:14.

(b) Only Altendorf negotiates all contracts for the sale of his crops – no other person is authorized or directed to do so. TT 189:25-190:13.

(c) Altendorf never agreed to, was never told, and did not notify GFB his beans were subject to or put under a PLMA. TT 192:16-19, 196:4-7.

(d) With reference to the PLMA, (JA-369), Altendorf had never seen the document until he received it from the PSC in late 2014. TT 194:9-196:7. Altendorf never negotiated, agreed to, or signed this PLMA. Id. Altendorf never authorized or directed anyone to negotiate, agree to, or sign this PLMA. Id. Altendorf never directed or told anyone that the beans he delivered to GFB were to be put or placed under, or subject to, any PLMA. Id.

III. Curt Amundson

[¶17] Curt Amundson ("Amundson") testified his beans were not under the PLMA. TT 213:20-215:1. Yet, Amundson admitted he executed the PLMA at or before the time he delivered beans to GFB.[6] Id.; JA-117, JA-230, JA-380. In both Amundson's original and amended claims, he attached scale tickets for his beans and referred, without qualification, to his signed PLMA as being the "contract between [himself] and [GFB]." JA-116-130 and JA-228-243. Amundson admitted he had no other written agreement with GFB. TT 224:12-16.

IV. Bremer Bank

[¶18] Bremer Bank ("Bremer") entered into a lending transaction with GFB. JA-29-75. The relevant portion of this lending transaction is GFB granted Bremer a security interest in inventory. Id. GFB defaulted on the loan. Id. Bremer seeks recovery on this defaulted loan from the trust fund. Id.

[6] Three scale tickets show deliveries the day before the PLMA was signed. JA-118 (September 4, 2013); JA-380 (dated September 5, 2013).

LAW AND ARGUMENT

I. Introduction.

[¶19] This is an insolvency proceeding commenced by the PSC against GFB under N.D.C.C. Chapter 60-04. JA-14-28. An insolvency proceeding is "designed to provide a prompt method for receipt holders to recover their claims," and the trust fund, that is created to do so, "exists for the benefit of all unpaid sellers of grain." N. Dakota Pub. Serv. Comm'n v. Woods Farmers Co-op. Elevator Co., 488 N.W.2d 860, 864 (N.D. 1992). An insolvency proceeding is intended to benefit parties like Baldwin/Baldwin Farms and Altendorf:

> In Valley Farmers, supra, 365 N.W.2d at 544, we quoted as follows from State v. Hoover Grain Co., 63 N.D. 344, 352, 248 N.W. 275, 278 (1933):
>
> > "'It is clearly the intent of the Legislature, however, that this law shall be comprehensive enough to settle the legitimate demands of owners of grain delivered to an insolvent elevator company, against those who have liability because of such grain—an insurance company in case grain is destroyed, a surety on a bond in case grain is not paid for, and those liable for the conversion of the grain. The law was intended for the benefit of the claimants, and must be construed with sufficient liberality to effectuate its purpose without doing injury to those who are liable.' " [Emphasis added.]
>
> The overriding purpose of requiring warehouseman's bonds is to protect all persons who sell or deliver grain to a warehouseman. Valley Farmers, supra, 365 N.W.2d at 546; Larkin v. Wheat Growers Warehouse Co., 64 N.D. 491, 253 N.W. 757 (1934).

N. Dakota Pub. Serv. Comm'n v. Cent. States Grain, Inc., 371 N.W.2d 767, 779 (N.D. 1985); Pub. Serv. Comm'n v. Minnesota Grain, Inc., 2008 ND 184, ¶10, 756 N.W.2d 763. When one considers this overarching purpose and the evidence in this case, the trial court's conclusions were correct and warrant the Judgment being affirmed, in total.

II. The trial court properly denied Bremer Bank's motion to intervene.

[¶20] Baldwin/Baldwin Farms and Altendorf incorporate by reference the PSC's arguments on Bremer's intervention. PSC Brief, ¶¶47-49. These parties supply the following additional argument showing Bremer's motion was properly denied.

[¶21] This Court, in N. Dakota Pub. Serv. Comm'n v. Valley Farmers Bean Ass'n, 365 N.W.2d 528 (N.D. 1985), was presented with a similar argument to one that is now being lodged by Bremer – that Bremer was unable to protect its interests. Bremer Brief, ¶¶16-22; J-App-29-75. In Valley Farmers Bean, creditors argued the PSC's opposition to their claim denied them a remedy. N. Dakota Pub. Serv. Comm'n v. Valley Farmers Bean Ass'n, 365 N.W.2d 528, 536 (N.D. 1985). This Court rejected such argument:

> The Banks filed their claim with the PSC pursuant to the provisions of § 60–04–04, N.D.C.C. The PSC, in its report to the district court, recommended that the Banks' claim be denied. The district court provided the Banks and the other claimants the opportunity to object to the trustee's report. The Banks objected, and following two hearings on the matter, the district court concluded that the Banks had no valid interest in the trust fund. Thus, the Banks were provided a forum and an opportunity to present and defend their claim.

Id. Here, Bremer filed a claim, objected to the PSC's report, engaged in discovery – including taking nine depositions – and, at the March 14-15, 2016 hearing, called its witness to testify, cross-examined others, and introduced documentary evidence – all for the purpose of protecting its interests. See Court Docs. 223-237, JA-29-75, JA-390-491. Bremer was "given a forum and opportunity to present and defend [its] claim," as a full and active participant. Valley Farmers Bean Ass'n, 365 N.W.2d at 536. This alone negates Bremer's arguments.

[¶22] Moreover, Bremer was seeking to intervene in this insolvency proceeding, which, in summary, consists of (a) the creation of a trust fund, (b) PSC marshalling these trust fund assets, (c) parties with an interest in the trust fund making a claim, and (d) PSC seeking court approval to distribute the trust fund. See N.D.C.C. Chapter 60-04. Bremer was required to "take the main suit as [it] found it" and in turn cannot "unring the bell" to change the issues framed by this statutorily created insolvency proceeding. Hartley Pen Co. v. Lindy Pen Co., 16 F.R.D. 141, 153 (S.D. Cal. 1954); see also Illinois Bell Tel. Co. v. F.C.C., 911 F.2d 776, 786 (D.C. Cir. 1990) (intervenor joins only on a matter brought before the court by another party); but see Fine Furniture (Shanghai) Ltd. v. United States, 2016 WL 7468059, at pp. 3-4 (Ct. Int'l Trade Dec. 28, 2016) (intervention permitted where intervenor's claim did not alter proceedings).

[¶23] Here, Bremer originally sought intervention to bring a debt collection cross-claim against GFB and a declaratory judgment counter-claim solely against the PSC. Bremer Brief, ¶17. For sure, the debt collection action would have expanded the issues of this insolvency proceeding because such action concerned matters only between only Bremer and GFB. Although Bremer withdrew this claim, it reveals Bremer intended to expand the insolvency proceeding. With respect to the declaratory judgment action – one Bremer states would be solely against the PSC – this too was improper. Since Bremer's declaratory action was going to be solely against the PSC, the growers granted the superior lien interests under N.D.C.C. § 60-02-25.1 would not have been included. Thus, the declaratory judgment action would have provided incomplete relief because it would have done nothing to alter these growers' superior lien interests. Further, as explained,

Bremer fully advanced its arguments in this case, rendering this declaratory action unnecessary.

[¶24] In sum, denial of Bremer's motion to intervene was proper because Bremer was afforded a full and complete opportunity to assert its interests.

III. The trial court correctly found Baldwin/Baldwin Farms and Altendorf were receiptholders and entitled to priority payment.

A. Introduction.

[¶25] A priority lien in grain within a warehouse exists for "outstanding receiptholders storing, selling, or depositing grain in the warehouse [and is] preferred to any lien or security interest in favor of any creditor of the warehouseman regardless of the time when the creditor's lien or security interest attached to the grain." N.D.C.C. § 60-02-25.1. Accordingly, a receiptholder has a lien interest in GFB's grain and trust fund over Bremer's security interest. Id.

[¶26] The term "receipts" means:

> grain warehouse receipts, scale tickets, checks, or other memoranda given by a public warehouseman for, or as evidence of, the receipt, storage, or sale of grain except when such memoranda was received as a result of a credit-sale contract.

N.D.C.C § 60-04-01(6). A credit-sale contract is excluded from the term "receipts." A "credit-sale contract" is defined as:

> 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 the delivery or release of the grain for sale and which contains the notice provided in subsection 7 of section 60-02-19.1. When 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. § 60-04-01(2). By specifically referencing N.D.C.C. § 60-02-19.1(7), a credit-sale contract must contain a "notice in a clear and prominent manner that the sale is not

protected by the bond coverage provided for in section 60-02-09." There is no disagreement that without such notice, no credit-sale contract exists. See Bremer Brief, ¶26; PSC Brief, ¶19.

[¶27] The only party disputing Baldwin/Baldwin Farms and Altendorf being receiptholders entitled to priority payment from the trust fund is Bremer.[7] Bremer Brief, ¶¶24-41. Bremer does not challenge the trial court's interpretation of a credit-sale contract under N.D.C.C. § 60-04-01(2). JA-492-534, ¶¶5-20. Yet, Bremer still argues the trial court made an error of law by finding Baldwin/Baldwin Farms and Altendorf did not have credit-sale contracts and in turn had priority receiptholder status. Bremer Brief, ¶¶24-41. A review of the trial court's order reveals that it reached these conclusions based upon the evidence presented – put another way, these conclusions were factual findings. JA-492-534, ¶¶27-36. Bremer's argument of a legal error is an improper attempt to circumvent the burden it faced – overcoming the presumption the trial court's factual findings are correct by meeting the clearly erroneous standard. Keller, 2004 ND 80, ¶14 & 17. Bremer failed to meet this heavy burden.

B. Evidence shows Baldwin/Baldwin Farms did not have credit-sale contract.

[¶28] The trial court reviewed the evidence and correctly found the Dry Bean Contracts were valid and enforceable contracts. JA-492-534, ¶¶27-30. This is wholly supported by Baldwin's unrefuted testimony. See ¶¶11-13. Bremer does not dispute these conclusions.

[7] Auto-Owners made no argument disputing Baldwin/Baldwin Farms and Altendorf are receiptholders, having priority status to the trust fund. Auto-Owner's Brief. Accordingly, Auto-Owners is precluded from challenging such status. Smestad v. Harris, 2011 ND 91, ¶ 5, 796 N.W.2d 662 (failure to adequately brief arguments on appeal precludes relief on such issues).

[¶29] The trial court went further, however, because it also considered whether the asserted PLMA, that Bremer relies upon, constituted a modification of the Dry Bean Contracts under N.D.C.C. § 41-02-16. JA-492-534, ¶30-31. The trial court correctly found the evidence demonstrated the PLMA was not a modification to the Dry Bean Contracts. Id. Again, findings wholly consistent with and supported by the evidence. See ¶¶11-13.

[¶30] Accordingly, the trial court correctly found the Dry Bean Contracts were not credit-sale contracts because they did not contain the notice required by N.D.C.C. §§ 60-04-01(2) and 60-02-19.1(7). JA-492-534, ¶¶30-32.

[¶31] Bremer's only argument to challenge these factual findings is to contend Baldwin/Baldwin Farms ratified the PLMA. Bremer Brief, ¶¶31-32. Bremer's analysis is flawed. In making this argument, Bremer relies exclusively upon Matter of Mehus' Estate, 278 N.W.2d 625 (N.D. 1979), which stated:

> Also, when an agent is authorized to do an act but exceeds his authority and the rights of third persons are involved, the principal has a duty to repudiate the act as soon as he is fully informed of what has been done in his name or else he may be deemed to have ratified it by implication.

Matter of Mehus' Estate, 278 N.W.2d 625, 630 (N.D. 1979). Under Bremer's theory, the "acts" of a truck driver – which is to haul and drop off pinto beans and return to the field – are transformed into negotiating and signing binding contracts. Bremer ignores the undisputed evidence that no employee has ever been authorized or directed to sign or negotiate a contract for Baldwin/Baldwin Farms. TT 321:22-323:3, 330:10-331:5. Furthermore, there exists no evidence to support a finding that GFB could conclude the truck driver had any authority to negotiate and sign contracts for Baldwin/Baldwin Farms. See Lagerquist v. Stergo, 2008 ND 138, ¶14, 752 N.W.2d 168. Rather, the

evidence leads to just the opposite conclusion because GFB had never had any prior dealings with Baldwin/Baldwin Farms, and the PLMA within the GFB records had been altered after the fact. TT 106:21-108:13, 323:17-324:13; Compare JA-356 with JA-361; See Alerus Fin., N.A. v. W. State Bank, 2008 ND 104, ¶40, 750 N.W.2d 412 (to bind principal for agent's acts, one must act with good faith and without ordinary negligence, and make inquiry when having notice of facts that actions were outside scope of authority); Weinreis v. Hill, 2006 ND 170, ¶¶ 9-14, 719 N.W.2d 354.

[¶32] Even if one can get past this frailty, there is no evidence showing Baldwin/Baldwin Farms were fully informed of the truck driver's actions in signing a PLMA or that they would have reason to know of the contents of the PLMA. Rather, the evidence was that this document was within a stack of scale tickets and no evidence exists that any communication was made to Baldwin/Baldwin Farms regarding the execution of a PLMA. TT 329:15-331:5. Moreover, the alteration of the PLMA shows Baldwin/Baldwin Farms could not have been fully informed. Compare JA-356 with JA-361. Finally, Baldwin/Baldwin Farms' actions of demanding payment shortly after final delivery conflicts with and repudiates the PLMA that called for pricing months later. TT 332:7-18; See e.g., Hodny v. Hoyt, 243 N.W.2d 350 (N.D. 1976) (repudiation of trust status through acts that will put beneficiary on notice of adverse position in the matter). Even under Bremer's strained interpretation, the evidence does not support ratification.

[¶33] The undisputed evidence supports the trial court's finding that Baldwin/Baldwin Farms did not have credit-sale contracts.

C. Evidence shows Altendorf did not have credit-sale contract.

[¶34] Bremer all but ignores the trial court's factual findings that Altendorf did not enter into a PLMA – findings that are wholly supported by the evidence. See ¶¶14-16.

To summarize, Altendorf never agreed to, signed, or directed anyone to sign and did not even see the PLMA until it was provided to him months later on the eve of these proceedings. Id. From this undisputed evidence, the trial court correctly found Altendorf had never entered into the PLMA. JA-492-534, ¶¶33-36. Nowhere does Bremer challenge these factual findings. Moreover, there is no evidence showing the agreement between Altendorf and GFB included the required statutory notice, and in turn the trial court correctly found Altendorf did not have a credit-sale contract. §§ 60-04-01(2) and 60-02-19.1(7). JA-492-534, ¶33-36.

D. Postings in GFB do not convert agreements into credit-sale contracts.

[¶35] Bremer contends postings within the GFB facility satisfy the requirements of N.D.C.C. § 60-04-01(2) and 60-02-19.1(7). Bremer Brief, ¶36-37. They do not. Baldwin/Baldwin Farms and Altendorf had never been to the GFB facility before and there is no evidence Baldwin/Baldwin Farms or Altendorf were even aware such postings existed. It simply flies in the face of basic contract law for a one contracting party to post a notice – somewhere within its facility – unbeknownst to the other contracting party, and then have such posting become a contract term. See N.D.C.C. § 9-03-01 (consent must be mutual), N.D.C.C. § 9-03-16 ("consent is not mutual unless all parties agree on same thing in the same sense"). Moreover, there is no evidence in the record to support a course of performance, course of dealings, or usage of trade to somehow salvage Bremer's argument that such postings were made a part of these agreements. See N.D.C.C. §41-01-17. To the contrary, the evidence shows there had been no prior dealings between Baldwin/Baldwin Farms or Altendorf and GFB. See ¶¶ 13(b) and 16(a). Furthermore, the only evidence in the record regarding a trade practice was that payments are made to the grower upon demand and without delay, which is consistent

with the contractual expectations of Baldwin/Baldwin Farms and Altendorf. TT 196:25-197:11; TT 333:17-19.

E. Baldwin/Baldwin Farms and Altendorf are receiptholders.

[¶36] Bremer argues the trial court incorrectly found Baldwin/Baldwin Farms and Altendorf were receiptholders because they failed to convert scale tickets. Bremer Brief, ¶¶ 34-40. Bremer's argument relies on N.D.C.C. § 60-02-11 which provides scale tickets are to be "converted into cash, noncredit-sale contracts, credit-sale contracts, or warehouse receipts, within forty-five days after the grain is delivered to the warehouse." N.D.C.C. § 60-02-11(1) (2013). This argument lacks merit.

[¶37] The definition of "receipts" includes "scale tickets" and thus, the only conclusion one can reach is Baldwin/Baldwin Farms' and Altendorf's scale tickets are receipts. JA-358-359, JA-363-365, JA-371-378; N.D.C.C. §60-04-01(6), See also N.D.C.C. §60-02-01(7). Logic likewise dictates Baldwin/Baldwin Farms and Altendorf, having possession of and holding these scale tickets - or receipts - are "receiptholders." See Merriam-Webster Dictionary, https://www.merriam-webster.com/ dictionary/ possession (possession means "the act of having or taking into control"). The trial court correctly found Baldwin/Baldwin Farms and Altendorf were receiptholders and entitled to priority payment from the trust fund. JA-492-534, ¶¶52-54; N.D.C.C. §60-02-25.1.

[¶38] Further, the evidence established Baldwin/Baldwin Farms and Altendorf satisfied the requirements of N.D.C.C. §60-02-11 (2013). Baldwin/Baldwin Farms and Altendorf demanded payment approximately two weeks after delivery, which is within the statutory forty-five days, because their agreements were for the sale and purchase of the beans delivered. N.D.C.C. §60-02-11(1) (2013). However, GFB refused or neglected to make such required payment. Bremer cannot use GFB's refusal or neglect to comply with its

obligation to pay as the means to strip Baldwin/Baldwin Farms and Altendorf of their lien priority. Such a position conflicts with the very purpose and intent of these insolvency proceedings of being for the benefit of parties like Baldwin/Baldwin Farms and Altendorf. Cent. States Grain, Inc., 371 N.W.2d at 779. Even assuming, arguendo, there was a failure to convert scale tickets, this does not alter the noncredit-sale status of Baldwin/Baldwin Farms and Altendorf because the "failure to convert scale tickets into either cash or storage tickets as required by § 60-02-11, N.D.C.C., does not result in a loss to the producer, but constitutes a violation by the warehouseman." Id. at 778.

[¶39] Finally, Bremer relies upon legislative history surrounding a change to N.D.C.C. § 60-02-11 that occurred in 2015 to contend Baldwin/Baldwin Farms and Altendorf are not receiptholders. This argument fails. First, this action was commenced before this amendment was even adopted, and there is nothing to suggest the changes applied retroactively. N.D.C.C. § 1-02-10. More importantly, Bremer's recitation of the legislative history is so wholly incomplete that it borders on misleading. By reading Bremer's brief, one would believe what Bremer cited was a direct dialogue between Senator Wanzek and Senator Oban. Bremer Brief, ¶ 40. It was not. See http://www.legis.nd.gov/files/ resource/ 64-2015/library/sb2291.pdf. In fact, the legislative history exceeds 100 pages, and contains a variety of statements that do not readily lend themselves to an interpretation regarding the prior version of N.D.C.C. § 60-02-11 that Bremer contends exists – an argument that can only be made by cherry-picking few select statements. Id.

F. Summary.

[¶40] Baldwin/Baldwin Farms and Altendorf are receiptholders and entitled to priority payment from the trust fund. N.D.C.C. § 60-02-25.1.

IV. The trial court correctly found Amundson had a credit-sale contract.

[¶41] The trial court found Amundson entered into a credit-sale contract. JA-492-534, ¶37-38. The trial court reached this conclusion by first making factual findings that Amundson's transaction was under the PLMA because his PLMA was dated on September 5, 2013, Amundson had signed this document, and the "PLMA was specifically referenced in [Amundson's] claim and attached to his claim in this case." JA-508, ¶37. Thus, having considered the evidence presented, the trial court necessarily found such documentary evidence had more weight than Amundson's conflicting testimony. Yet, Amundson's primary argument necessitates this Court reweigh the evidence and reexamine the factual findings. Amundson Brief, ¶¶12-16. This Court does not reweigh the evidence or reexamine factual findings when conflicting evidence exists, but instead, gives the trial court due regard on such matters, and choosing between two permissible views of the evidence is not clearly erroneous. Buri v. Ramsey, 2005 ND 65, ¶10, 693 N.W.2d 619.

[¶42] Amundson's alternative argument is to contend the trial court misapplied the requirements of a credit-sale contract. Amundson Brief, ¶¶18-26; JA-492-534, ¶¶5-20. Amundson argues all provisions of N.D.C.C. § 60-02-19.1 must be met for the contract to be a credit-sale contract. Id. The PSC appears to agree with Amundson on this interpretation question. PSC Brief, ¶¶17-25. However, the PSC takes a more passive approach by stating its original report, that included Amundson as being paid from the trust fund, took into consideration a trial court decision in another matter and legislative history, to merely "recommend" all seven subsections of N.D.C.C. § 60-02-19.1 must be met to be a credit-sale contract. PSC Brief, ¶¶ 20-23. The trial court's analysis of the

interpretation of the requirements for a credit-sale contract was detailed and thorough and its rationale is legally and factually supportable and is consistent with this Court's teachings on statutory interpretation. JA-492-534, ¶¶5-20; Minnesota Grain, Inc., 2008 ND 184, ¶9-10; Sandberg v. Am. Family Ins. Co., 2006 ND 198, ¶9, 722 N.W.2d 359; Rojas v. Workforce Safety and Ins., 2006 ND 221, ¶13, 723 N.W.2d 403.

[¶43] Even assuming there is error in the trial court's interpretation, Amundson still has a credit-sale contract so as to exclude him from the trust fund because Amundson's PLMA substantially complied with N.D.C.C. § 60-02-19.1. Here, Amundson's PLMA includes all of the provisions of N.D.C.C. § 60-02-19.1(1)-(7), except Amundson's address and the "amount" of beans. See JA-117, JA-230, JA-380 (PLMA contains: (1) name, (2) conditions of delivery at ¶1, (3) kind of grain at ¶1, (4) price per unit or basis of value at ¶2, (5) date of payment at ¶2, (6) duration of contract of July 1, 2014 pricing date at ¶2 and at introductory paragraph regarding marketing during winter months, (7) notice immediately below signature line, and (8) PLMA was signed by both parties). With respect to the missing address, Amundson and GFB were familiar with each other and Amundson's address was known, as evidenced by an invoice for seed purchase in 2014 that contained Amundson's address. TT 215:22-216:5, 218:24-219:14; Court Doc. 311. Furthermore, the quantity of beans subject to Amundson's PLMA was known by the parties and easily determined by simply adding Amundson's scale tickets. JA-118-130, JA-231-243; JA-380, TT 239:11-240:8. Thus, both of the missing items were known and agreed upon. See TT 215:22-216:11 (Amundson testimony on contracts and specific quantity of beans unpaid). Amundson's PLMA substantially complied with the provisions of N.D.C.C. § 60-02-19.1(1)-(7) so as to render it a credit-sale contract. See

e.g. Stockman Bank of Montana v. AGSCO, Inc., 2007 ND 26, ¶ 23, 728 N.W.2d 142 (supplier's lien obtained or enforced by substantial compliance with statute). Finally, finding Amundson had a credit-sale contract leads to a substantial payment for him under the credit-sale indemnity fund, a result that is consistent with the purpose of these proceedings. N.D.C.C. Chapter § 60-10; Cent. States Grain, Inc., 371 N.W.2d at779.

V. Date of insolvency was correctly found to be October 15, 2013.

A. Date of insolvency.

[¶44] The trial court correctly concluded the date of insolvency must be determined by N.D.C.C. § 60-04-02, which is the only statute in N.D.C.C. Chapters 60-02 or 60-04 that actually defines when a warehouse is insolvent. As specified in N.D.C.C. § 60-04-02, a "licensee is insolvent when the licensee refuses, neglects, or is unable upon proper demand to make payment for grain purchased or marketed by the licensee or to make redelivery or payment for grain stored." N.D.C.C. § 60-04-02. Using this definition, the trial court determined a grain warehouseman, like GFB, can be found insolvent under two scenarios:

> (1) A licensee is insolvent when the licensee refuses, neglects, or is unable upon proper demand to make payment for grain purchased or marketed by the licensee.
>
> or
>
> (2) A licensee is insolvent when the licensee refuses, neglects, or is unable upon proper demand to make redelivery or payment for grain stored.

JA-492-534, ¶57.

[¶45] Following this analysis, the trial court applied the evidence to correctly determine the insolvency date of October 15, 2013.[8] JA-492-534, ¶55-74. The trial court held "a

[8] A different date in October, 2013 does not change the result because the market cwt price for pinto beans for October, 2013 was $38.00. TT 108:21-109:3; see also Court Doc. 327.

reasonable interpretation of the statutory structure is that there can be only one insolvency date measured from the first insolvency event relevant to the current proceedings." Id. at ¶55. The trial court's analysis evinces a proper statutory interpretation and application of the evidence. Minnesota Grain, Inc., 2008 ND 184, ¶9-10; Sandberg, 2006 ND 198, ¶9; Rojas, 2006 ND 221, ¶13.

[¶46] Bremer, Auto-Owners, and the PSC appealed trial court's October 15, 2013 insolvency date, and each contend it was not until late 2014. See Auto-Owners' Brief, ¶¶37-84; Bremer Bank Brief, ¶¶44-51; PSC Brief, ¶¶30-38. Although these parties take slightly different approaches, each seemingly overlook the reason for determining the insolvency date, which is to establish a measuring date to then determine the price unpaid growers are to receive. N.D.C.C. §60-04-09(4)-(5). Here, the bean price in October, 2013 was $38.00/cwt., which was well below what Baldwin/Baldwin Farms and Altendorf had negotiated with GFB. Yet, by advocating a delay in the insolvency date, Bremer, Auto-Owners and the PSC improperly seek an even further reduction in the benefit of bargain for these unpaid growers, which directly conflicts with the purposes of these proceedings and is unsustainable. Cent. States Grain, Inc., 371 N.W.2d at 779.

B. Bremer's insolvency arguments not supported by law or evidence.

[¶47] The crux of Bremer's argument is the insolvency of a warehouseman is only triggered when contact is made by a grower to the PSC regarding non-payment. Bremer Brief, ¶44-51. However, not just any contact will do, but instead Bremer maintains N.D.C.C. § 60-04-02 requires growers, like Baldwin/Baldwin Farms and Altendorf, to undertake "formal action." Bremer Brief, ¶46. Bremer states "formal action" only occurs when "written claims [are] submitted to the PSC," and must be in the form of "physical evidence." Bremer Brief, ¶46. Since, as Bremer contends, this "formal action"

did not occur until December 19, 2014, the insolvency date is delayed to this late date. Bremer Brief, ¶¶44-51.

[¶48] Bremer's position is not supported by the terms of N.D.C.C. § 60-04-02. Nothing in N.D.C.C. §60-04-02 includes a requirement the PSC be contacted to trigger insolvency. Rather, N.D.C.C. § 60-04-02, in clear and unambiguous terms, sets out and defines when insolvency occurs – upon demand for payment to a warehouseman and its refusal or neglect to do so. Further, nowhere in this statute do words "formal action" or "physical evidence" appear. Yet, according to Bremer these are a must before insolvency occurs. Accepting Bremer's argument requires the following rewrite of N.D.C.C. § 60-04-02:

> ***(a)*** A licensee is insolvent when the licensee refuses, neglects, or is unable upon proper demand to make payment for grain purchased or marketed by the licensee or to make redelivery or payment for grain stored***; and***
>
> ***(b) The grower has, by formal action, notified the North Dakota Public Service Commission of the refusal, neglect or inability of the licensee to make payment for grain purchased or marketed, or in the case of grain stored to make redelivery or payment.***
>
> ***(c) The term "formal action" means to submit, in writing, a claim to the North Dakota Public Service Commission.***

However, Courts are not empowered to legislate or rewrite statutes. Olson v. Workforce Safety & Ins., 2008 ND 59, ¶ 23, 747 N.W.2d 71 ("[t]he function of the courts is to interpret the law, not to legislate, 'regardless of how much we might desire to do so or how worthy an argument'").

[¶49] Bremer also argues demand for redelivery was necessary to trigger GFB's insolvency. Bremer Brief, ¶44-51. This interpretation ignores the structure of this statute. The first clause of N.D.C.C. §60-04-02 provides insolvency occurs when the

warehouseman "refuses, neglects, or is unable upon proper demand to make payment for grain purchased or marketed." N.D.C.C. §60-04-02. The second clause of this statute, separated from the first by the disjunctive "or," goes on to provide insolvency occurs when the warehouseman "refuses, neglects or is unable upon proper demand . . . to make redelivery or payment for grain stored." Id. Thus, the statute differentiates when insolvency occurs based on whether grain is marketed/purchased or stored – the former requiring demand for payment and the latter requiring demand for redelivery. Christl v. Swanson, 2000 ND 74, ¶ 12, 609 N.W.2d 70. The undisputed evidence was Baldwin/Baldwin Farms and Altendorf were not storing beans, but rather the beans were marketed/purchased by GFB. JA-354-355, TT 210:2-12, TT 324:14-328:20; 337:20-23. Baldwin/Baldwin Farms and Altendorf's demands for payment made upon GFB in October, 2013 and GFB's failure or neglect to do so triggered GFB's insolvency. N.D.C.C. §60-04-02.

[¶50] Bremer also argues partial payment to Altendorf delays GFB's insolvency. Bremer Brief, ¶48. No exception exists in N.D.C.C. §60-04-02 for a warehouseman to partially pay what was demanded and is obligated to pay so as to disregard, as a non-event, the warehouseman's prior and continuing refusal to make full payment. If that were the case, then any payment – regardless of amount – would suffice to delay insolvency. Such an interpretation only further exacerbates the risk of non-payment to a grower, a result that runs afoul of the intent of the insolvency procedures. Central States Grain, Inc., 371 N.W.2d at 779. Even more remarkable, is Bremer contends there is no evidence Altendorf made proper demand for payment. Bremer Brief, ¶49. Nothing could

be further from the truth as Altendorf testified, clearly, that he demanded payment of GFB. TT 196:8-197:11.

[¶51] Bremer finally argues some beans were delivered after the October, 2013 insolvency date. Bremer Brief, ¶51. Yet, Baldwin/Baldwin Farms and Altendorf delivered before October, 2013. JA-358-359, JA-363-365, JA-372-378. Further, Bremer declares at $38.00/cwt exceeds the benefit of their bargain and will "enrich" Baldwin/Baldwin Farms and Altendorf. Bremer Brief, ¶51. This assertion is likewise erroneous because the benefit of the bargain under their agreements required GFB to pay them more than $38.00/cwt. JA-354-355, TT 191:15-193:14.

C. Auto-Owners improperly manufactures interpretation of insolvency that conflicts with purpose of insolvency proceeding.

[¶52] The sole issue in Auto-Owners' appeal is its self-manufactured construction of when a warehouseman, like GFB, is insolvent that is based upon N.D.C.C. § 60-02-41.[9] In doing so, Auto-Owners ignores, in total, N.D.C.C. § 60-04-02 which specifically defines when a warehouseman is insolvent. The frailty of Auto-Owners' argument is revealed when one considers it seeks to have this specific statute completely read out of the North Dakota Century Code, when it is the only statute within N.D.C.C. Chapters 60-02 and 60-04 defining when a warehouseman is insolvent. Auto-Owners' argument conflicts with the basic principal of statutory construction "that no part of the statute is rendered inoperative or superfluous." Sandberg, 2006 ND 198, ¶9.

[¶53] Auto-Owners does not mention N.D.C.C. § 60-04-02 was amended in 2003, which is unsurprising given the legislative changes refute its interpretation. Prior to

[9] The PSC, in passing, states its insolvency argument is consistent with N.D.C.C. §61-02-41. PSC Brief, ¶37.

2003, N.D.C.C. §60-04-02 included language similar to what is now found in N.D.C.C. § 60-02-41 (similar language bolded and italicized):

> ***Whenever any warehouseman, by reason of the destruction of the person's warehouse or for any other cause***, shall refuse, neglect, or be unable, upon proper demand, ***to redeem any receipt issued by the warehouseman, through redelivery or cash payment,*** such warehouseman shall be deemed to be insolvent within the meaning of this chapter.

N.D.C.C. §60-02-04 (2001); 2003 S.L. Chapter 548, §10 (H.B. 1197). The 2003 legislation removed such language from N.D.C.C. §60-04-02, which language continues to exist within N.D.C.C. §60-02-41 (additions underlined and deletions stricken through):

> ~~Whenever any warehouseman, by reason of the destruction of the person's warehouse or for any other cause, shall refuse, neglect, or be~~ A licensee is insolvent when the licensee refuses, neglects, or is unable~~,~~ upon proper demand~~,~~ to ~~redeem any receipt issued by the warehouseman, through redelivery or cash payment, such warehouseman shall be deemed to be insolvent within the meaning of this chapter~~ make payment for grain purchased or marketed by the licensee or to make redelivery or payment for grain stored.

2003 S.L. Chapter 548, §10 (H.B. 1197). Notably, N.D.C.C. § 60-02-41 has not been modified since 1985. 1985 S.L. Chapter 661, § 13. It makes little sense for the North Dakota legislature to remove language in N.D.C.C. §60-04-02, which is now only in N.D.C.C. 60-02-41, yet still intend to have such deleted language used to determine insolvency. Even assuming, arguendo, N.D.C.C. §60-04-02 and 60-02-41 are irreconcilable, which they are not, statutory construction still mandates the later enacted version of N.D.C.C. §60-04-02 prevails over the prior enacted N.D.C.C. §60-02-41. City of Fargo, Cass Cty. v. State, 260 N.W.2d 333, 338 (N.D. 1977).

[¶54] Auto-Owners argues the principal of statutory construction, that a specific statute controls over a general statute –a correct statement of statutory interpretation – supports

its argument. See Auto-Owners' Brief, ¶67; People to Save the Sheyenne River, Inc. v. N. Dakota Dep't of Health, 2005 ND 104, ¶ 18, 697 N.W.2d 319. This principal actually conflicts with Auto-Owners' position. Since N.D.C.C. § 60-04-02 is the only statute in N.D.C.C. Chapter 60-02 or 60-04 to specifically define when a warehouseman is insolvent, it simply cannot be reasonably argued N.D.C.C. §60-04-02 is relegated to being a "general" statute for purposes of this principal of statutory interpretation. In fact, N.D.C.C. §60-02-41, refers to "insolvency" but provides no definition – thus leading one back to N.D.C.C. §60-04-02 for such definition.

[¶55] Furthermore, Auto-Owners' interpretation conflicts with the underlying purpose of the insolvency proceedings of being for the benefit of unpaid sellers of grain. Cent. States Grain, Inc., 371 N.W.2d at 779. Under Auto-Owners' theory and use of N.D.C.C. § 60-02-41, insolvency is delayed because GFB, who had already refused and neglected to make payment despite proper demands for the same, had not yet closed its doors. Auto-Owners' Brief, ¶¶20-23.[10] Thus, Auto-Owners proffers an interpretation where a warehouseman's insolvency does not occur until it has thrown the proverbial keys to its creditors – a time when there would be little, if anything, left for unpaid growers. This shows Auto-Owners' interpretation leads to harmful results for unpaid growers.

[¶56] Similarly, Auto-Owners' rhetorical questions on who determines insolvency so as to raise the specter that N.D.C.C. §60-04-02 does not have the perceived clarity that would exist by applying N.D.C.C. §60-02-41 is a red herring. It is clear who answers these factual disputes – the court – as it did here. Even under 60-02-41, factual disputes will arise and if such statute is applicable in a particular matter the court will decide such factual disputes.

[10] Bremer makes a similar argument. Bremer Brief, ¶50

[¶57] Finally, Auto-Owners' rhetoric directed at the trial court does nothing to bolster its argument. For example, Auto-Owners states the trial court's order was "confusing, uncertain, contradictory, irrational, and unjust," and it "simply took the easiest and convenient (to it) way out . . . to avoid the more difficult and time consuming job of having to determine separate insolvency dates and separate interest and offset calculations." Auto-Owners' Brief, ¶¶49 & 57. These statements cannot be squared with the effort made by the trial court in this case, evidenced by its forty-three page order where it went through in painstaking detail the law and each party's arguments and claims. JA-492-534.

D. PSC's insolvency date conflicts with the evidence.

[¶58] The PSC alleges that the trial court misapplied the law and made erroneous findings of fact in concluding October 15, 2013 was the insolvency date. PSC Brief, ¶ 30. In noting N.D.C.C. § 60-04-02 provides two situations in which a licensee may be determined insolvent, the PSC contends the second clause, requiring demand for redelivery of grain stored, is applicable because GFB did not purchase or market the beans, and conversion had not taken place under N.D.C.C. § 60-02-11(1) (2013). PSC Brief, ¶ 31. It is recognized that when grain is stored, insolvency arises when there has been demand for and refusal "to make redelivery or payment for grain stored." See N.D.C.C. § 60-04-02. However, when grain is not stored, insolvency does not require demand for redelivery but only proper demand for payment. Id. Although the PSC recognizes this distinction, it asserts, inexplicably and contrary to the evidence, that Baldwin/Baldwin Farms and Altendorf were storing grain, necessitating a demand for redelivery, because in the view of PSC, they had no right to require payment. PSC Brief, ¶ 34. The evidence shows Baldwin/Baldwin Farms and Altendorf had noncredit-sale

contracts, and their agreements were for purchase and were entitled to payment upon demand to GFB and without delay. GFB refused or neglected to make payment, triggering the insolvency in by mid-October, 2013. PSC's argument fails because of its disregard of these undisputed facts. Rice, 2016 ND 247, ¶9.

[¶59] The PSC's argument that conversion under N.D.C.C. § 60-02-11(1) delays insolvency is equally unavailing because, again, it is not supported by the facts showing these parties' agreements were for purchase. PSC Brief, ¶31. GFB's refusal to make payment cannot be turned around against a grower to argue that conversion did not occur. Cent. States Grain, Inc., 371 N.W.2d at 778.

VI. Trial court properly determined Altendorf was entitled to $45.00/cwt.

[¶60] Pursuant to N.D.C.C. § 60-04-09(4) and the evidence presented, the trial court determined Altendorf possessed a cash claim. JA-492-534, ¶76. Under, N.D.C.C. §60-04-09(4), Altendorf was entitled to the amount of such cash claim at $45.00/cwt. N.D.C.C. §60-04-09(4). The trial court correctly noted, this determination is consistent with the Cent. States Grain, Inc. case. JA-492-534, ¶77. Based upon N.D.C.C. § 60-04-09(4) and Central States Grain, Inc., the trial court correctly found Altendorf was entitled to $45.00/cwt because he delivered the beans to GFB for immediate purchase, they were accepted by GFB, and GFB made a partial payment at $45.00/cwt. JA-492-534, ¶81. The trial court found "Altendorf's testimony [was] credible and not so inconsistent with the market price to be unreasonable." Id.

[¶61] Only the PSC and Bremer object to the trial court's valuation of Altendorf's claim. PSC Brief, ¶¶ 39-41; Bremer Brief, ¶¶ 52-53. However, the position of the PSC and Bremer ignores the credible testimony offered by Altendorf that GFB purchased his beans and there was no contingency to payment. TT 209:21-210:12. Altendorf

recognizes his amended claim references $38 per cwt, being the market price on the date of insolvency. JA-265-66. However, the evidence and testimony presented at trial, and relied upon by the trial court, leads to the correct conclusion that he is entitled to $45.00/cwt.

VII. Trial Court correctly rejected service fee.

[¶62] Bremer is the only party that appealed the trial court's decision denying a service fee offset. Bremer, ¶¶ 54-55. To make this argument, Bremer points to signs within GFB's facility, the PLMA, and testimony of another grower, Ron Adams. Bremer Brief, ¶55; JA-385. The evidence does not support Bremer's position. Indeed, the evidence shows GFB did not assess this service fee. For example, Baldwin Farms received a payment on 3,000 cwt at $45.00 per cwt for a total gross payment of $135,000. JA-366. If, as Bremer argues, this service fee existed, then there would have been a deduction of $1,350.00 (3,000 cwt x $0.15 x 3 months from date of delivery to date of payment). There was no such amount deducted. Id. The only fee that was deducted from the payment to Baldwin Farms was the $0.10 edible bean promotion assessment – or $300.00. JD-366; see also N.D.C.C. § 4.1-06-12. Indeed, basic contract law does not support this argument because no agreement for service existed. N.D.C.C. §§ 9-03-01 and 09-03-16.

CONCLUSION

[¶63] For the foregoing reasons, Baldwin/Baldwin Farms and Altendorf request this court affirm the Judgment in total

Dated: January 24, 2017.

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CERTIFICATE OF COMPLIANCE

[¶64] The undersigned, as attorney for Appellees and Interested Parties Brent Baldwin, Baldwin Farms, Inc., and Duane Altendorf in the above matter, and as the author of the above brief, hereby certifies, in compliance with Rule 32(a)(8) of the North Dakota Rules of Appellate Procedure, the above brief was prepared with proportional type face and the number of words in the above brief, excluding words in the table of contents, table of authorities, and certificate of compliance, total 7,933 words.

Dated: January 24, 2017.

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IN THE SUPREME COURT

STATE OF NORTH DAKOTA

Public Service Commission, Petitioner, -vs- Grand Forks Bean Company, Inc., and Auto-Owners Insurance Company Respondents.	Supreme Court No. 20160303 Grand Forks County District Court Civil No. 18-2015-CV-00240
PSC Case No. GE-15-36	

AFFIDAVIT OF SERVICE BY ELECTRONIC 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 NORTH DAKOTA)
: SS.
COUNTY OF GRAND FORKS)

Jen O'Hara, being first duly sworn, deposes and says: that she is of legal age, a citizen of the United States, and is not a party to, nor has she an interest in the above entitled action; that on January 24th, 2017, she electronically served a true and correct copy of the following document filed in the above-entitled matter:

BRIEF OF APPELLEES BRENT BALDWIN, BALDWIN FARMS, INC. AND DUANE ALTENDORF

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To the best of your affiant's knowledge, information, and belief, such address as given above was the actual email address of the party intended to be so served. That the above document was duly served in accordance with the provisions of the North Dakota Rules of Civil Procedure and the North Dakota Rules of Appellate Procedure.

Dated this 24th of January, 2017.

Jen O'Hara

Subscribed and sworn to before me in Grand Forks County, North Dakota, on January 24th, 2017.

MICHELLE MAHLEN
Notary Public
State of North Dakota
My Commission Expires Sept. 16, 2022

Notary Public, North Dakota