

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY

T.G. ADAMS & SONS, INC.,)
)
Appellant, Plaintiff Below,)
)
v.) C.A. No.: 2005-06-009
)
WILLIAM F. MELVIN, SR. and)
MARY LEE MELVIN,)
)
Appellees, Defendants Below.)

Submitted: May 11, 2006
Decided: May 30, 2006

David C. Hutt, Esquire
Wilson, Halbrook & Bayard, P.A.
107 W. Market Street
Georgetown, Delaware 19947
Attorney for Plaintiff

William F. Melvin, Sr.
Mary Lee Melvin
27511 Shore Way
Federalsburg, Maryland 21632
Pro Se

FINAL DECISION AND ORDER AFTER TRIAL

This is a *de novo* appeal from the Justice of the Peace Court arising out a commercial buyer-seller relationship. Plaintiffs below-appellant, T.G. Adams & Sons, Inc., a Delaware Corporation, operating in Bridgeville (hereinafter “T.G. Adams”) bring this action seeking to recover for breach of contract. T.G. Adams claim defendants below-appellees, William F. Melvin, Sr. (hereinafter “Mr. Melvin”) and Mary Lee Melvin (hereinafter “Mrs. Melvin”); (collectively, hereinafter the “Melvins”) failed to perform on a cash/futures contract. T.G. Adams is a commercial buyer and seller of cash commodities which includes barley, wheat, corn, and soybeans. The Melvins own and operate a farm in Federalsburg, Maryland, and over the years have regularly sold commodities upon harvest to T.G. Adams. T.G. Adams seeks \$5,175.00 in damages on

the basis the Melvins failed to deliver 2,500 bushels of soybeans upon harvest after the 2003 harvest season. The Melvins allege there was no contract and deny liability.

FACTS

Thurman Adams, Jr., (hereinafter “Adams”), President of T.G. Adams, testified the business has been in operation since 1949 and typically, local farmers enter into contracts with T.G. Adams to sell their commodities upon harvest for a price agreed upon at a earlier date. The commodity’s price fluctuates based on a confluence of factors in the commodities market. T.G. Adams establishes its price by referencing prices as determined by the Chicago Board of Trade. If the farmer is satisfied with the quoted price, T.G. Adams will guarantee to pay that amount to the farmer despite what the market price for that commodity at the time of delivery. This type of contract is referred to as “a cash” or “a futures” contract.

Adams further testified that at the beginning of the harvest season, farmers will contract with T.G. Adams to sell their soybeans because this is when the quote for soybeans is at its highest price, thus allowing the farmer to “lock-in” at such price. Over 90% of T.G. Adams’ contracts are oral, and as such are not signed by either T.G. Adams or the farmer/seller. Instead, Adams testified it is the customary practice of T.G. Adams to simply enter in its log the name of the farmer, the date the agreement was made, the number of bushels, and the type of cash commodity.

Christopher Adams (hereinafter C. Adams”), Secretary, Vice-President and General Operating Officer of T.G. Adams, testified that on September 26, 2003, he received a call from Mr. Melvin inquiring about the price of soybeans. He quoted Mr. Melvin the per bushel price of \$6.32. He testified that Mr. Melvin stated, “to put him

down for 2,500 bushels,” and hung up the telephone. C. Adams testified he accepted the offer and recorded it into a form T.G. Adams regularly used to keep track of its incoming deliveries and quoted prices. A copy of the form was introduced as plaintiff’s Exhibit No. 1. C. Adams testified entering the following information in the pre-printed spaces provided in the form: “[DATE]: 9/26/03; PURCHASED FROM: Mary Lee Melvin; QUANTITY; 2,500; COMMODITY: Beans; DELIVERED TO: Bridgeville; BUYER [signed by Mr. Adams].” Although the bottom of this form provides a space for the seller’s signature, none appears, and it is undisputed that the Melvins were never provided a copy of this form.

Mr. Melvin initially testified never entering into previous similar cash contracts with T.G. Adams, however, Plaintiff’s Exhibit No. 2, which is a copy of T.G. Adams’ ledger, indicates transactions between the parties for various commodities from 1999 to October 2003.

Mr. Melvin also testified that after C. Adams quoted him \$6.32 per bushel for the soybeans, he offered only to sell 500 bushels upon harvest to T.G. Adams. However, immediately after making this offer, Mrs. Melvin entered the room while he was speaking on the telephone, and asked him what he was doing? Mr. Melvin stated, “I’m about to sell 500 bushels of soybeans to Chris for \$6.32 per bushel.” Upon hearing this, he testified, Mrs. Melvin instructed him to withdraw his offer. Mrs. Melvin testified she instinctually believed the price for soybeans would soon increase. Mr. Melvin testified he “told Chris to forget it” and hung up the telephone. Therefore, he believed his comment to C. Adams indicated the deal was off. Mr. Melvin also testified that he could not have contracted for 2,500 bushels because his farm was incapable of growing 2,500

bushels of soybeans. Mr. Melvin further testified, and the appellant concedes, during the period in question, he hauled corn to T.G. Adams “at least fourteen times” and C. Adams never approached him regarding the September 26, 2003 telephone conversation.

Plaintiff’s final witness, Randy Fardleman (hereinafter “Fardleman”) of Purdue Farms Inc. of Salisbury, Maryland, testified the Melvins hauled over 4,600 bushels of soybeans to Purdue between October 21, 2003 and December 3, 2003. Plaintiff’s Exhibit No. 4 titled “Ticket – Detail – Inbound Tickets” and represents, according to Mr. Fardleman, soybean deliveries made by the Melvins to Purdue during the time in question. Mrs. Melvin during cross-examination asked Fardleman if any of the loads were “split?” Fardleman testified that the entries reflect that all deliveries entirely belonged to the Melvins, and if any loads were split this would have appeared on the entries in the column designated “Split.”

Just before the Christmas holiday in 2003 the Melvins testified they received a letter from T.G. Adams demanding delivery of 2,500 bushels of soybeans. The Melvins deny that was a contract and did not deliver any soybeans. T.G. Adams seeks \$5,175.00 in damages alleging breach of contract, and calculates this based on the difference between the contract price of \$6.32 and the average replacement cost which it calculates as \$8.39. Plaintiff’s Exhibit No. 3, admitted without objection, is a letter dated August 13, 2004 from Purdue Farms Inc. and lists Purdue Farm Inc.’s posted cash prices between October 1, 2003 and May 31, 2004.

ANALYSIS

For Adams to recover on its claim, the Court must find the formation of a contract and a breach thereof. Under the provisions of 6 *Del. C.* § 2-204, contract for the sale of

goods may be made in any manner sufficient to show agreement, including the conduct by both parties. It is not fatal to the existence of the contract where one or more of the terms are left open so long as such terms may be determined by some reasonable factor.

The provisions of 6 Del. C. § 1-303 titled, “Course of performance, course of dealing, and usage of trade,” in subsection (d) provides,

“(d) A course of performance or course of dealing between the parties or usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware is relevant in ascertaining the meaning of the parties' agreement, may give particular meaning to specific terms of the agreement, and may supplement or qualify the terms of the agreement. A usage of trade applicable in the place in which part of the performance under the agreement is to occur may be so utilized as to that part of the performance.”

6 Del. C. § 1-303 subsections (e) and (f) further provide,

“(e) Except as otherwise provided in subsection (f), the express terms of an agreement and any applicable course of performance, course of dealing, or usage of trade must be construed whenever reasonable as consistent with each other. If such a construction is unreasonable:

- (1) Express terms prevail over course of performance, course of dealing, and usage of trade;
- (2) Course of performance prevails over course of dealing and usage of trade; and
- (3) Course of dealing prevails over usage of trade.

(f) Subject to § 2-209, a course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.”

Pursuant to 6 Del. C. § 1-303 and considering that no written express terms are available to the Court, the parties course of performance as evidenced in Plaintiff's Exhibit No. 2 clearly show the parties' past dealings, and at trial it was undisputed that previous similar oral contracts have existed between the parties. It is also undisputed that

the Melvins delivered over 4,600 bushels of soybeans to Purdue Farms Inc. between October and December 2003. Thus, Mr. Melvin's testimony regarding the inability of his farm to harvest 2,500 bushels bears little merit in this analysis. T.G. Adams has thus shown, by a preponderance of the evidence, that the Melvins *possessed* the capability to harvest and deliver over 4,600 bushels of soybeans, and has provided proof in the form of documents and testimony to show a contract existed between the parties for 2,500 bushels of soybeans at \$6.32 per bushel.

Under Delaware law, the elements of a breach of contract claim are: (1) a contractual obligation; (2) a breach of that obligation; and (3) resulting damages. *H-M Wexford, LLC v. Encorp, Inc.*, 832 A.2d 129, 144 (Del.Ch.2003). Furthermore, 6 Del. C. § 1-304 imposes an obligation of good faith between parties to a commercial transaction and succinctly provides. "Every contract or duty within the Uniform Commercial Code imposes an obligation of good faith in its performance and enforcement." By failing to deliver the 2,500 bushels of soybeans as contracted, I find the Melvin's failed to perform on the contract, which constitutes a breach.

The measure of damages pursuant to 6 Del. C. § 2-713 is the difference between the contract price of \$6.32 per bushel and the market price when T.G. Adams learned of the breach or was entitled to performance. The testimony in the record indicates the soybean season is from October into December. Therefore, the defendants were required to perform on the contract no later than December 31st. The contract price on December 31 was \$7.65 per bushel based upon plaintiff's Exhibit No. 3. The difference is \$1.33 per bushel. The total amount T.G. Adams is therefore entitled equals \$3,325.00.

CONCLUSION AND ORDER

Based on the above stated reasons, judgment is entered for T.G. Adams and against appellees Mr. William Melvin and Mrs. Mary Lee Melvin jointly in the amount of \$3,325.00, cost, pre-judgment interest at 6% from December 31, 2003 and post-judgment interest at the legal rate until paid.

SO ORDERED this 30th day of May, 2006

Alex J. Smalls
Chief Judge

Adams-OP May 06