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HIGHLIGHTS

* A Justice of the Saskatchewan Court of Queen's Bench has dismissed an action to enforce a contract for the future delivery of lentils on the grounds that the grain dealer seeking to enforce the contract was not licensed under the Canada Grain Act. The primary issue in the case was whether the grain dealer was exempt from registration under s. 83(2) of the Canada Grain Act on the grounds that the grain was not described by grade, and that payment for the grain was not to be made when the contract was signed or the grain was delivered. The case considers previous jurisprudence regarding the intent of licensing requirements under the Act. (Chaplin Grain Corporation v Antelope Creek Enterprises Ltd., *CALN/2018-029*, *[2018] S.J. No. 435*, Saskatchewan Court of Queen's Bench)

NEW CASE LAW

Chaplin Grain Corporation v Antelope CreekEnterprises Ltd.;

Saskatchewan Court of Queen's Bench,

R. Leurer J.,

November 9, 2018.

CALN/2018-029
[2018] S.J. No. 435 | *2018 SKQB 304*

Canada Grain Act — Licensing Requirement for Dealers — Enforceability of Contracts.

Chaplin Grain Corporation ("Chaplin") sued Antelope Creek Enterprises Ltd. ("Antelope Creek") for breach of a contract dated October 2, 2015 pursuant to which Antelope Creek agreed to sell, and Chaplin agreed to purchase, 475 metric tonnes of eston lentils.

The contract provided that shipment would be made in November of 2015 and that the lentils would be paid for within 14 days thereafter. Between October 2, 2015, when the contract was

signed, and November, 2015 the price of lentils rose dramatically.

Antelope Creek refused to deliver the lentils when requested by Chaplin on the basis that it had been promised delivery would occur in early November, and that it would be paid by November 10, 2015.

Later Antelope Creek also later took the position that the refusal was justified to deliver on the basis that Chaplin was not licensed as a grain dealer pursuant to the Canada Grain Act, *RSC 1985, c G-10*.

The key terms of the contract provided as follows:

> "COMMODITY: ESTON LENTILS QUALITY: NUMBER 2 OR BETTER QUANTITY: APPX 475 METRIC TONS (APPX 17,500BU) PRICE: CAD 760.59 PER METRIC TON (3450 CENTS) DELIVERY TERMS: DELIVERED CHAPLIN PAYMENT TERMS: 15 BUSINESS DAYS SHIPMENT PERIOD: NOVEMBER 2015"

Relying on this contract Chaplin sold 460 tonnes of lentils to a third party.

Chaplin admitted that it was not licensed under the Canada Grain Act in 2015 and also admitted that if the contract did not fall within the scope of one of the exceptions to the licensing requirement under the Act, the contract would be unenforceable.

Sections 44 and 83 of the Canada Grain Act provide in part, as follows:

> 44 No person shall.
>
> (b) carry on business as a grain dealer unless
>
> (i) that person is the holder of a grain dealer's licence,
>
> (ii) the business of that person as a grain dealer has been exempted from the licensing requirements of this Act pursaunt to section 117, or
>
> ***
>
> 83(1) No person in the Western Division shall, for reward, by way of a profit, commission or otherwise,
>
> (a) act on behalf of any other person in buying, selling or arranging for the weighing, inspection or grading of western grain, or
>
> (b) make any contract for the purchase of western grain,
>
> unless that person is a licensee or is employed by a licensee and acts only on behalf of his employer.
>
> (2) Subject to this Act, a transaction referred to in subsection (1) may be entered into by a person who is not a licensee where the transaction is
>
> (a) a contract for the purchase of grain without reference to any grade name on terms whereby the consideration payable under the contract for the purchase of the grain is to be paid in full at the time of the making of the contract or the delivery of the grain;.

The issues before the Court were as follows:

> 1. Is the contract contrary to s. 83 of the Canada Grain Act?

2. Did the contract require Chaplin to take delivery of the lentils in early November and to pay for the lentils prior to November 10, 2015?

3. Did Antelope Creek rely on a representation by Chaplin that it was a licensed dealer?

Decision: Leurer, JA (ex officio) dismissed Chaplin's claim as well as a Counterclaim which had been filed by Antelope Creek [at para. 77].

Leurer, JA considered the following issues:

(a) Is the contract contrary to s. 83 of the Canada Grain Act?

Leurer, JA noted that Chaplin took the position that the exemption in s. 83(2)(a) of the Canada Grain Act applied, that this provision sets out two preconditions to the operation of the exception to the licensing requirement:

- The contract must be for the purchase of grain "without reference to any grade name", and

- The "consideration payable under the contract for the purchase of the grain is to be paid in full at the time of the making of the contract or the delivery of the grain".

and that failure to meet either of these preconditions meant that Chaplin should have been licensed [at para. 29].

After discussing the issue of whether the contract referred to a "grade name" at some length [from para. 30 to 39], Leurer, JA concluded that it was not necessary to determine this issue [at para. 42] because the contract does not provide for the payment of the purchase price at the time of delivery [at para. 42 to 53].

Leurer, JA referred to the necessity of bonding for licensed dealers and the decisions of the Saskatchewan Court of Appeal in Montana Mustard Seed Co. Inc. v Continental Grain Co. (Canada) Ltd., *[1974] S.J. No. 359*, *[1974] 4 WWR 695* at 699-670 and Humboldt Flour Mills Co. Ltd. v Nordick (1978), *[1978] S.J. No. 348*, *71 Sask R 205* (QB), stating at para. 52 and 53:

[52] I harken back to the purpose for the requirement of licencing and the exceptions to it. Where, as I find here, the purchaser of grain is not required to make payment until a date well after delivery is effected, the purpose for the bonding remains, namely the protection of the unpaid producer who has relinquished the grain to the buyer. Although the courts in both Montana Mustard and Humboldt Flour Mills were able to conclude that, pursuant to the contract in those cases, the "delivery" of the grain occurred only after the grading of the grain took place, the breach of the CGA in those cases was avoided only because the payment obligation arose immediately after this "delivery" occurring. Here, I am not able to interpret the contract between Chaplin Grain and Antelope Creek as imposing the same obligation on the part of Chaplin Grain to make payment as soon as this had been accomplished.

[53] As a result, my conclusion is that, in this case, the contract is not one where the "consideration payable under the contract for the purchase of grain is to be paid in full at the time of.the delivery of the grain". The exception set out in ss. 83(2)(a) is therefore inapplicable. Chaplin Grain was in breach of s. 83(1) of the CGA. In view of Chaplin Grain's concession referenced in para. 27 of this judgment, I am left with no alternative but to conclude that the contract is unenforceable.

(b) Did the contract require Chaplin to take delivery of the lentils in early November and to pay for the lentils prior to November 10, 2015?

Leurer, JA considered this issue in the event he was wrong with respect to the question of whether or not Chaplin had to be licensed [at para. 54].

Leurer, JA rejected Antelope Creek's argument in this regard [at para. 65 to 67] and concluded that if the contract had not been unenforceable by reason of the fact that Chaplin was not licensed, Antelope Creek would have been found in breach of contract [at para. 68] and that damages would have been at $118,958.00 [at para. 71]. Leurer, JA would also have been prepared to consider the appropriateness of punitive damages against Antelope Creek [at para. 73].

(c) Did Antelope Creek rely on a representation by Chaplin that it was a licensed grain dealer?

Leurer, JA observed that Antelope Creek had asserted by way of Counterclaim that it relied to its detriment on a representation that Chaplin was a licensed grain dealer and that is sustained damages in this regard. Leurer, JA found that the evidence was to the contrary, and that Chaplin had only indicated that it was in the process of being registered. The Counterclaim was therefore dismissed as being "without merit" [at para. 75].

CREDITS

This NetLetter is prepared by Brian P. Kaliel, Q.C. of Miller Thomson LLP, Edmonton, Alberta.