



December 9, 2024

## CASE NUMBER 2899

**PLAINTIFF: GAVILON GRAIN LLC  
OMAHA, NE**

**DEFENDANT: STEPHEN TOWE  
SCOTTSVILLE, KY**

### STATEMENT OF THE CASE

This case involves two contracts between Gavilon Grain LLC and Stephen Towe for the sale and delivery of soybeans to a Gavilon facility in Owensboro, KY. On September 16, 2020, Gavilon and Towe entered into a contract for 15,000 bushels of soybeans for delivery to Gavilon's Owensboro facility between October 1 and November 30, 2020, at a price of \$10.00 per bushel. On October 9, 2020, Gavilon and Towe entered into a second contract for an additional 5,000 bushels of soybeans for delivery to Owensboro by November 30, 2020, at a price of \$10.83 per bushel.

In its first argument submitted in this case, Gavilon states that after no grain was delivered against the contracts, it contacted Towe during the first week of December 2020. At this time, Towe requested and received additional time for delivery due to the slow pace of harvest. According to Gavilon, after still no grain was delivered, it resumed attempting to communicate by telephone with Towe, who was not responsive. Gavilon and Towe ultimately communicated by text on January 5, 2021, at which time Gavilon stated it would be cancelling the contracts.

With its argument, Gavilon produced the text exchange of January 5, 2021, between the parties:

Gavilon: Stephen it's Trevor with Gavilon. We have 15k beans for Oct/Nov and have not seen any loads. What's the status of getting these delivered?

Stephen Towe: Not going to be. My son hauled them off while I was on vacation last part of December. Can I roll them to fall 21'?

Gavilon: No they are out of the market by \$3-4. I'm going to have to cancel them and invoice you the difference.

Gavilon then cancelled the contracts at what it determined to be fair market value based on the close of the market on the next business day (January 6) at \$14.0225 per bushel.

In the response and argument submitted by Towe in this case, he states the contracts were wrongfully and mistakenly assigned to him. Towe also states that Gavilon is wrongfully holding some of his daughter-in-law's grain. Towe does not provide any specifics, information or documentation to support or explain those statements.

In its rebuttal argument, Gavilon stately attempts to address any confusion resulting from Towe’s assertions by submitting there are two persons named Stephen Towe – father and son – who may now be switching roles to interject confusion and avoid liability in this case. To show that the Stephen Towe who is a party to the contract is also rightly in this case, in its arguments, Gavilon refers to the procedural history of this case, which includes numerous communications from NGFA about the case to Stephen Towe at the Scottsville address on the soybeans contracts; Towe’s subsequent execution of the arbitration services contract with NGFA; issuance of a default judgment for Towe’s failure to pay the arbitration fee; vacating of the default judgment upon Towe’s request; and Towe’s subsequent full engagement in these arbitration proceedings.

Towe did not take the opportunity to respond further by filing a surrebuttal argument.

**THE DECISION:**

Presented in this case were two contracts for the sale and delivery of grain by Stephen Towe to Gavilon. Gavilon exercised its rights pursuant to NGFA Grain Trade Rule 28(A), when Towe informed Gavilon that he was defaulting on the contract. Gavilon then took the proper steps to cancel the contract based upon the close of the market the following day pursuant to the NGFA rules.

The parties then engaged in these arbitration proceedings, including to the extent of the issuance and vacating of a default judgment and the execution of an arbitration services contract. Stephen Towe – the party to the contract and the party in this arbitration case – has been fully engaged in and is aware of these proceedings.

Towe produced no evidence that the contracts were invalid or had been improperly assigned. Nor did Towe produce evidence contradicting that he failed to perform upon the contracts or Gavilon’s assessment of the calculation damages. Based upon the facts and evidence provided, including the signed contract, text messages between the parties and other documentation, the arbitrators find unanimously in favor of Gavilon.

**THE AWARD**

Therefore, the arbitrators award \$76,300 to Gavilon Grain LLC from Stephen Towe. 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