



December 9, 2024

CASE NUMBER 3099

**PLAINTIFF: VITERRA USA GRAIN, LLC (F/K/A GAVILON, GRAIN, LLC)
ETTER, TX**

**DEFENDANTS: BLEU & LACIE SCHNIDERJAN FARMS; AND BLUE
SCHNIDERJAN AND LACIE SCHNIDERJAN D/B/A BLUE &
LACIE SCHNIDERJAN FARMS
AMARILLA, TX**

STATEMENT OF THE CASE

The plaintiff, Viterra USA Grain, LLC (“Viterra”), and the defendant, Blue & Lacie Schniderjan Farms (“Schniderjan Farms”), entered into a contract (Contract No.0003230) on October 8, 2021, for 75,000 bushels of #2 yellow corn at the price of \$5.88 per bushel to be delivered to Viterra’s elevator in Etter, Texas between October 1 and November 30, 2022. The contract was issued by Viterra and signed electronically by both Schniderjan Farms and Viterra on October 8, 2021.

The contract executed by both parties stated, “Rules to apply: NGFA” and as follows:

CONTROVERSIES: controversies and/or other disagreements between Buyer and Seller arising under this Contract shall be settled by arbitration which shall be in accordance with the rules of the National Grain and Feed Association (NGFA). At the time notice of arbitration is served by either Buyer or Seller upon the other, (I) if either is a member of NGFA, the NGFA Arbitration Committee Shall serve as the arbitrator; (ii) [sic] if neither is a member of NGFA, the American Arbitration Association shall serve as the arbitrator.

Therefore, the NGFA Trade Rules apply.

The sequence of events leading up to this dispute were as follows:

- On October 8, 2021, Viterra and SF Farms entered into a contract for Schniderjan Farms to deliver 75,000 bushels of #2 yellow corn to Viterra’s Etter, Texas elevator for the price of \$5.88 per bushel. Delivery was scheduled between October 1 and November 30, 2022.
- On July 15, 2022, Schniderjan Farms emailed Viterra’s merchandiser, raising concerns whether it would be able to deliver the corn because of hot and dry weather. The parties discussed options for canceling or rolling the contract.
- On July 18, 2022, Viterra and Schniderjan Farms had a phone discussion about what to do in the event of non-delivery of the contracted corn.

- On September 16, 2022, Schniderjan Farms inquired about rolling the contract to the following year, delivering milo against the contract or canceling the contract altogether. Viterra responded answering the questions about those options.
- On October 17, 2022, Schniderjan Farms emailed Viterra “it is impossible to deliver corn to you under the contract”.
- On October 18, 2022, Viterra confirmed by email the need to terminate the contract and inquired about the previously discussed proposal to instead deliver milo against the contract.
- On October 24, 2022, Schniderjan Farms and Viterra exchanged emails about delivering milo. Schniderjan Farms stated it believed the milo and corn could be exchanged dollar-for-dollar, and Viterra stated the exchange would have to be applied with a basis spread. Viterra stated “no I cannot terminate your existing contract, we will need to continue to watch out for a washout price that is acceptable to you”.
- On October 26, 2022, Schniderjan Farms emailed Viterra asking to speak with Viterra on October 28, 2022.
- On or about October 28, 2022, Schniderjan Farms and Viterra had a phone conversation during which Viterra stated it was under the impression that Schniderjan Farms would deliver milo against the contract.
- After this phone call a custom harvester contacted Viterra for delivery hours to deliver milo for Schniderjan Farms. In the days following, Viterra contacted the custom harvester about delivery of any milo by Schniderjan Farms. The custom harvester stated that Schniderjan Farms directed the milo to be delivered elsewhere.
- On November 10, 2022, Viterra emailed Schniderjan Farms on current pricing and delivery deadline.
- On December 1, 2022, Viterra emailed Schniderjan Farms stating its intention to liquidate the contract and asking for permission from Schniderjan Farms to do so. Following the email, both parties had a phone conversation. Viterra informed Schniderjan Farms the contract was in default, and Schniderjan Farms denied any financial responsibility for non-delivery. After the call, Viterra canceled the contract.
- On December 2, 2022, Viterra valued the grain at \$8.45 per bushel.

Viterra argues that proper and clear notice pursuant to NGFA Grain Trade Rule 28 was not made by Schniderjan Farms regarding its intentions during any of the communications with Viterra (both written and verbal). Viterra understood the contract went into default after the contract expired. Viterra states pursuant to NGFA Grain Trade Rule 28, it canceled the contract on December 2, 2022, with a fair market value of \$8.45 per bushel.

Schniderjan Farms argues Viterra does not have a claim for damages because:

- A) Schniderjan Farms notified Viterra on July 15, 2022, that it was impossible for Schniderjan Farms to perform under the contract, and as a result, there are no obligations to the buyer on the contract.

- B) Viterra “terminated” the contract in an email dated October 18, 2022.
- C) Viterra and Schniderjan Farms created a course of performance expectation that a breached contract would be forgiven. Schniderjan Farms further argues the contract is silent on the parties’ obligations upon the termination of a contract.
- D) Schniderjan Farms made a valid notification pursuant to the NGFA Grain Trade Rules on July 15, 2022.
- E) Schniderjan Farms argues that if it is liable for damages that Texas state law and the NGFA Grain Trade Rules affirm that when a contract provides a fixed price per bushel, the only obligation on the seller’s behalf upon the default is to pay the difference between the contract price and the market price at the time when the buyer learned of the default.

THE DECISION:

The arbitrators reached the following unanimous conclusions:

The contract in dispute is subject to the NGFA Grain Trade Rules. Therefore, the concept of “seller’s impossibility to perform under contract” does not apply. Schniderjan Farms had the possibility or option to purchase grain from the open market to perform on the contract.

Schniderjan Farms failed to give proper and clear notice of its non-performance of the contract as required under the NGFA Grain Trade Rules.

In each instance to which Schniderjan Farms refers in its claim that it gave proper notification that it would not be performing under the contract, the parties followed up with email exchanges between them demonstrating that they were continuing to discuss options and alternatives for delivery under the contract and waiting to buyout or cancel the contract.

These instances include:

- A) Schniderjan Farms states “we will wait and see what happens” in an email dated July 15, 2022.
- B) Schniderjan Farms emailed Viterra on September 16, 2022, with questions about the last date to roll to the next crop year and about delivering milo against the contract.
- C) In the email exchange on October 24, 2022, Schniderjan Farms states it has milo to deliver against the contract as suggested by Viterra.
- D) Schniderjan Farms communicated to a custom harvester to inquire about delivery hours to Viterra, but it was determined that Schniderjan Farms instructed the custom harvester to deliver the milo elsewhere after the contact between Viterra and the custom harvester.

The arbitrators also concur that Texas state law and the NGFA Grain Trade Rules both calculate damages based upon the closing market price (less contract price) on the day following the default. Schniderjan Farms’ argument for calculating damages does not account for basis. Industry practice is that cash grain prices are calculated with accounting for both futures and basis.

THE AWARD

The arbitrators ruled in favor of Viterra in the amount of \$192,750. The award is based on the following calculations:

Contract Price	Cancellation Price	Difference	Defaulted Quantity	Total
\$5.88	\$8.45	\$2.57	75,000	\$192,750

With respect to interest, NGFA Arbitration Rule 6(F) states as follows:

The Arbitration Committee and/or the Arbitration Appeals Committee may include an amount of interest in an award. If interest is awarded, unless otherwise provided by agreement between the parties, the applicable rate of interest shall be the Prime Rate as published in the **Wall Street Journal** on the date the case was filed. (Emphasis in original.)

The prime rate was 7.50 percent, as published in the Wall Street Journal, when this case was filed on December 21, 2022. The arbitrators determined that interest shall accrue on the award at the rate of 7.50 percent, pursuant to NGFA Arbitration Rule 6(F) from the date of this decision until the award is paid in full.

Decided: July 18, 2024

SUBMITTED WITH THE UNANIMOUS CONSENT OF THE ARBITRATORS, WHOSE NAMES APPEAR BELOW:

Andrew Fullerton, *Chair*
Director of Projects Commercial
Bartlett Grain Company
Kansas City, MO

Douglas Balvin
General Manager
Canby Farmers Grain Co.
Canby, MN

James Lee Hardy III
General Manager
CHS Northern Grain
St. Hilare, MN