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STATE OF NORTH DAKOTA | **IN DISTRICT COURT**

COUNTY OF GRAND FORKS | **NORTHEAST CENTRAL JUDICIAL DISTRICT**

Public Service Commission,

Petitioner,

-vs-

Grand Forks Bean Company, Inc.,

and

Auto-Owners Insurance Company

Respondents.

PSC Case No. GE-15-36

Civil No. 18-2015-CV-00240

POST HEARING BRIEF OF BRENT BALDWIN, BALDWIN FARMS, INC., AND DUANE ALTENDORF

INTRODUCTION

[¶1] Brent Baldwin (hereinafter "Baldwin"), Baldwin Farms, Inc. (hereinafter "Baldwin Farms"), and Duane Altendorf (hereinafter "Altendorf"), by and through their attorney Daniel L. Gaustad, file this post-hearing brief to summarize the facts and law presented to the Court during the hearing conducted March 14-15, 2016, that established the claim of Baldwin, in the sum of $84,373.68, together with interest accruing from and after October 15, 2013; the claim of Baldwin Farms, in the sum of $38,216.98, together with interest accruing from and after October 15, 2013; and the claim of Altendorf, in the sum of $91,512.36, together with interest accruing from and after October 15, 2013. In addition, the evidence established the above noted claims are noncredit-sale contracts, have priority to and must be paid immediately out of the monies held in trust by the Petitioner and the proceeds of the bond provided by Auto-Owners Insurance Company ("Auto-Owners") to Grand Forks Bean Company, Inc. (hereinafter "GF Bean").

SUMMARY OF UNDISPUTED FACTS

[¶2] The testimony and evidence presented to the Court clearly established the following undisputed facts:

I. Brent Baldwin and Baldwin Farms, Inc.

[¶3] The Dry Bean Contracts between Baldwin, Baldwin Farms, and GF Bean resulted from a telephone conversation between Baldwin and Todd McGurk, the representative of GF Bean, before the delivery of any pinto beans to GF Bean by Baldwin or Baldwin Farms. These contracts related to pinto beans grown by Baldwin and Baldwin Farms in 2013. The agreement reached was for Baldwin and Baldwin Farms to deliver, and GF Bean to purchase, 6,000 cwt[1] of pinto beans, with 3,000 cwt purchased by GF Bean for $45.00/cwt and the balance, which was slightly higher[2] than 3,000 cwt, would be purchased by GF Bean at $1.00 over the prevailing market rate. This agreement was then memorialized. Ex. 21A. The testimony and evidence further established:

- There existed no agreement for the payment of storage to GF Bean for beans delivered by Baldwin and Baldwin Farms. No such agreement existed because the agreement was for the sale of the beans delivered, not for storage.
- There was no agreement regarding payment of any service fees to GF Bean.
- There exists no agreement, notification, or any statement by Baldwin or Baldwin Farms that the beans they delivered to GF Bean would be subject to or put under any Price Later Marketing Agreement.
- The agreement reached between Baldwin, Baldwin Farms, and GF Bean, and memorialized by the Dry Bean Contracts, was never modified or re-negotiated.
- There was no condition of payment by GF Bean—i.e. if there was a market for the beans delivered.

[1] The weight of measure for pinto beans is hundredweight (referred to as "cwt").
[2] The cwt that was ultimately delivered exceeded a total of 6,000 because it is impossible to be precise when filling trucks with beans.

- This is the first time that Baldwin and Baldwin Farms ever entered into an agreement or had any business dealings with GF Bean.

[¶4] The undisputed testimony also established that Baldwin negotiates and signs contracts on behalf of himself, individually, and for Baldwin Farms. Neither Baldwin nor Baldwin Farms have ever authorized or directed anyone to sign contracts or negotiate the sale of crops, including pinto beans, on his behalf, or on behalf of Baldwin Farms. Specifically, the drivers, who deliver the pinto beans, have never been authorized, directed, or given any authority to negotiate or sign contracts on behalf of Baldwin or Baldwin Farms.

[¶5] In accordance with the terms of the Dry Bean Contracts, Baldwin delivered pinto beans to GF Bean on September 16, 17, and 23, 2013. Ex. 21C-E. Baldwin delivered a total of 2,220.36 cwt of pinto beans. Id. Baldwin Farms delivered pinto beans to GF Bean on September 12, 13, and 17, 2013. Ex. 22B-C, F. Baldwin Farms delivered a total of 4,005.71 cwt of pinto beans. Id. Baldwin and Baldwin Farms segregated the beans that were delivered based upon the field the beans came from as was shown by the scale tickets Ex. 21D and Ex. 22C.

[¶6] Approximately 2 weeks after last delivery (by the beginning or mid-October, 2013), Baldwin and Baldwin Farms demanded payment for the pinto beans they had delivered to GF Bean in September, 2013. Demand for payment was made because the Dry Bean Contracts were for the sale, not storage, of the beans delivered. Baldwin and Baldwin Farms made repeated demand for payment and GF Beans refused to make payment.

[¶7] Eventually, GF Bean paid Baldwin Farms $45.00/cwt for 3,000 cwt of the beans delivered – a price wholly consistent with the terms of the Dry Bean Contract. Ex. 21A and Ex. 22B, D, and F.

[¶8] With reference to the Price Later Marketing Agreement, Baldwin and Baldwin Farms had a copy of it in their files, Ex. 21B and Ex. 22A, however, the undisputed testimony revealed

Baldwin and Baldwin Farms never negotiated, agreed to, or signed this Price Later Marketing Agreement with GF Bean because Baldwin and Baldwin Farms already had an agreement – as memorialized by the Dry Bean Contracts. Baldwin and Baldwin Farms never authorized or directed anyone to negotiate, agree to, or sign any Price Later Marketing Agreement with GF Bean. Baldwin and Baldwin Farms never directed or told anyone that the pinto beans delivered to GF Bean were to be placed under, or subject to, a Price Later Marketing Agreement. Significantly, Baldwin and Baldwin Farms had never seen the Price Later Marketing Agreement, marked as Ex. 22E in this case, until the Petitioner sent the document to Baldwin in late 2014 just before these proceedings were commenced. Indeed, this Price Later Marketing Agreement received from the Petitioner, Ex. 22E, was manipulated because, unlike the document in Baldwin/Baldwin Farms' file, this particular document now included a handwritten number "1108" and Baldwin's name on the document. Compare Ex. 22A with Ex. 22E (differences consist of the inclusion of a contract number and "Brent Baldwin" on the Price Later Marketing Agreement). Again, the undisputed evidence is that neither Baldwin nor Baldwin Farms ever negotiated, agreed upon, signed, or authorized or directed anyone to sign this later discovered Price Later Marketing Agreement.

[¶9] Based upon the testimony and evidence received, Baldwin is demanding payment for 2,220.36 cwt of pinto beans delivered to GF Bean for which payment has not been received. Ex. 21E. Baldwin Farms is entitled to payment for 1,005.71 cwt of pinto beans delivered to GF Bean for which payment has not been received. Ex. 22F. The market price of pinto beans at the time of demand for payment, October, 2013, which is the date of GF Beans' insolvency, was $38.00/cwt. Ex. 29.

II. Duane Altendorf

[¶10] The agreement for the delivery by Altendorf and purchase by GF Bean of pinto beans grown by Altendorf in 2013 resulted from a telephone conversation with Todd McGurk before the delivery of any pinto beans to GF Bean. The agreement reached was for Altendorf to deliver 4,000 cwt of which 2,000 cwt would be sold for $45.00/cwt and the balance, which was slightly higher[3] than 2,000 cwt, also being purchased at $45.00/cwt. The testimony and evidence further established:

- There existed no agreement for the payment of storage to GF Bean for beans delivered by Altendorf. No such agreement existed because the agreement was for the sale of the beans delivered, not for storage.
- There was no agreement regarding payment of any service fees to GF Bean.
- There was no agreement, notification, or any statement by Altendorf that the beans delivered to GF Bean would be subject to or put under any Price Later Marketing Agreement.
- The agreement reached between Altendorf and GF Bean was never modified or re-negotiated.
- There was no condition of payment by GF Bean—i.e. if there was a market for the beans delivered.
- This is the first time that Altendorf ever entered into an agreement or had any business dealings with GF Bean.

[¶11] The undisputed testimony established that only Altendorf negotiates and sign contracts for his crops. Altendorf has never authorized or directed anyone to sign contracts or negotiate the sale of his crops, including pinto beans, on his behalf. Specifically, the drivers, who deliver the pinto beans, have never been authorized, directed, or given any authority to negotiate or sign contracts on behalf of Altendorf.

[3] See footnote 2, supra.

[¶12] Pursuant to his agreement with GF Bean, Altendorf delivered pinto beans on September 23-24, 2013. Ex. 23B-D. Altendorf delivered a total of 4,408.22 cwt of pinto beans to GF Bean. Id.

[¶13] Approximately 2 weeks after delivery (by the beginning or mid-October, 2013), Altendorf demanded payment for the pinto beans delivered to GF Bean in September, 2013. Demand for payment was made because the agreement with GF Bean was for the sale, not storage, of the beans delivered. Altendorf made repeated demands for payment and GF Bean refused to make payment.

[¶14] Eventually, GF Bean paid Altendorf $45.00/cwt for 2,000 cwt of the beans delivered – a price wholly consistent with the terms of the agreement he had with GF Bean. Ex. 23B, D.

[¶15] With reference to the Price Later Marketing Agreement marked as Exhibit 23A in this case, the undisputed testimony revealed that Altendorf never saw the agreement until it was received from the Petitioner in late 2014, just before these proceedings were commenced. Altendorf never negotiated, agreed to, or signed this Price Later Marketing Agreement. Altendorf never authorized or directed anyone to negotiate, agree to, or sign this Price Later Marketing Agreement. Altendorf never directed or told anyone that the pinto beans he delivered to GF Bean were to be put or placed under, or subject to, any Price Later Marketing Agreement.

[¶16] Based upon the testimony and evidence received, Altendorf is entitled to payment for 2,408.22 cwt of pinto beans delivered to GF Bean for which payment has not been received. Ex. 23B, D. The market price of pinto beans at the time of demand for payment, October, 2013, which is the date of GF Beans' insolvency, was $38.00/cwt. Ex. 29.

LAW AND ARGUMENT

I. The Agreements of Brent Baldwin, Baldwin Farms, Inc., and Duane Altendorf with Grand Forks Bean Company, Inc. Are Noncredit-Sale Contracts and Entitled to Priority Pursuant to N.D.C.C. § 60-02-25.1.

[¶17] According to N.D.C.C. § 60-02-01, 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. If 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. § 60-02-01(2). The required notice must state, "in a clear and prominent manner that the sale is not protected by the bond coverage provided for in section 60-02-09." N.D.C.C. § 60-02-19.1(7). A "noncredit-sale contract" is defined as "a contract for the sale of grain other than a credit-sale contract." N.D.C.C. § 60-02-01(4). A credit-sale contract must be in writing, consecutively numbered and must contain the following information:

1. The seller's name and address.
2. The conditions of delivery.
3. The amount and kind of grain delivered.
4. The price per unit or basis of value.
5. The date payment is to be made.
6. The duration of the credit-sale contract.
7. Notice in a clear and prominent manner that the sale is not protected by the bond coverage provided for in section 60-02-09. However, if the warehouseman has obtained bond coverage in addition to that required by section 60-02-09 and such coverage extends to the benefit of credit-sale contracts, the warehouseman may state the same in the credit-sale contract along with the extent of such coverage.

N.D.C.C. § 60-02-19.1. "In order to be a credit-sale contract, the foregoing conditions must be strictly followed." Court Doc. 155, ¶ 38.

[¶18] As explained herein, the agreements that exist with Baldwin, Baldwin Farms, and Altendorf are noncredit-sale contracts. First, and foremost, the Price Later Marketing Agreements that have been introduced in this case are not credit-sale contracts between Baldwin, Baldwin Farms, Altendorf, and GF Bean because the agreements were never signed or agreed to by Baldwin, Baldwin Farms, and/or Altendorf. Ex. 21B, 22A, 23A. It is axiomatic that no contract can exist when no agreement has been reached. N.D.C.C. § 9-01-02. This alone defeats any argument these purported Price Later Marketing Agreements were credit-sale contracts because Baldwin, Baldwin Farms, and Altendorf did not agree to or enter into such agreements.

[¶19] Moreover, N.D.C.C. § 60-02-19.1 requires credit-sale contracts to be "signed by both parties and executed in duplicate."

> From the language of NDCC § 60-02-19.1, the absence of a signature . . . precludes it from otherwise constituting a credit-sale contract. The statutory language requires that a credit-sale contract be manifested by not only written form but by the signature of both parties. To conclude otherwise requires the Court to disregard what the legislature set out as the requirements to create an enforceable credit-sale contract. So, any claim manifested by a document not signed by both parties ***can never constitute a credit-sale contract*** regardless of the language in the unsigned document.

Finding of Fact, Conclusion of Law, and Order, Public Service Comm'n v. Grabanski Grain, LLC, and Platter River Ins. Co., Northeast Judicial District Case No. 50-2011-cv-00029, ¶ 19. These alleged Price Later Marketing Agreements were not signed, negotiated, or ever agreed to by Baldwin, Baldwin Farms, and/or Altendorf. Furthermore, the Price Later Marketing Agreements do not indicate a date on which payment is to be made or the duration of the agreement as required. See N.D.C.C. § 60-02-19.1(5). These agreements also do not provide a price per unit or a basis of value. See N.D.C.C. § 60-02-19.1(4). Accordingly, these documents do not render the claims by Baldwin, Baldwin Farms, or Altendorf as being credit-sale contracts.

[¶20] Even if one was to ignore the Price Later Marketing Agreements were never agreed upon and all of the other statutory deficiencies, the very terms of the Price Later Marketing Agreements preclude their application as to Baldwin, Baldwin Farms, and Altendorf. These documents specifically provide that signing the agreement did not automatically put the delivered beans under the Price Later Marketing Agreement because it was necessary for Baldwin, Baldwin Farms, and Altendorf to notify GF Bean at the time of the delivery whether it was the intent to subject the pinto beans to the Price Later Marketing Agreement. The undisputed evidence in this case is that no such notice was ever provided to GF Bean. This is unsurprising when one considers that neither Baldwin, Baldwin Farms, nor Altendorf agreed to this document in the first instance.

[¶21] Similarly, the Dry Bean Contracts are not credit-sale contracts because they fail to include the required notice, in a clear and prominent manner, required for credit-sale contracts that the sale agreement was not protected by the bond coverage provided pursuant to N.D.C.C. § 60-02-09. See N.D.C.C. § 60-02-19.1(6)-(7).

[¶22] Accordingly, the claims of Baldwin, Baldwin Farms, and Altendorf are noncredit-sale contract claims and are entitled to receive priority pursuant to N.D.C.C. § 60-02-25.1, including priority over any claim by Bremer Bank, in and to the proceeds held by the Petitioner and to funds provided by the bond of Auto-Owners.

II. The Proper Date of Insolvency is October 15, 2013.

[¶23] Pursuant to N.D.C.C. § 60-04-02, a licensee, here GF Bean, 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." In the Report and Recommendation, the Petitioner "recommends the date of insolvency be established as December 19, 2014" because "[p]rior to that date, there is no documentation that would allow

the PSC to provide a basis for any other 'date of insolvency.'" Court Doc. 155, ¶ 7. However, N.D.C.C. § 60-04-02 does not require documentation to the Petitioner or any other party to trigger insolvency.

[¶24] The undisputed evidence established that Baldwin, Baldwin Farms, and Altendorf delivered pinto beans to GF Bean to be sold, not stored. Baldwin, Baldwin Farms, and Altendorf testified that within approximately 2 weeks after delivery (by the beginning to mid-October, 2013), they demanded payment for the beans they respectively delivered to GF Bean in September, 2013. Demand for payment was made because the Dry Bean Contract was for the sale, not storage, of the beans delivered. After payment was not received, Baldwin, Baldwin Farms, and Altendorf, each, repeatedly demanded payment but GF Bean refused.

[¶25] Accordingly, GF Bean was insolvent, as defined by N.D.C.C. § 60-04-02, by October 15, 2013, because upon proper demand of Baldwin, Baldwin Farms, and Altendorf, GF Bean refused, neglected, or was unable to make payment for pinto beans delivered in September 2013.

III. The Proper Price for Dry Edible Beans Subject to the Claims of Brent Baldwin, Baldwin Farms, Inc., and Duane Altendorf is $38.00/cwt.

[¶26] The proper price per cwt of the pinto beans subject to the claims of Baldwin, Baldwin Farms, and Altendorf must be "based upon the market price prevailing on the date of the insolvency, with interest at the weighted average prime rate charged by the Bank of North Dakota since the date of the insolvency." N.D.C.C. § 60-04-09. As testified by Baldwin, Baldwin Farms, and Altendorf, the appropriate date of insolvency is October 15, 2013, the date GF Bean refused, neglected, or was unable to make payment for the dry edible beans delivered

by Baldwin, Baldwin Farms, and Altendorf.[4] The market price prevailing on the date of insolvency, October 15, 2013, is $38.00/cwt. Ex. 29

IV. Brent Baldwin, Baldwin Farms, Inc., and Duane Altendorf Should Not Be Charged For Storage.

[¶27] The Petitioner's Report and Recommendation recommends the assessment of storage charges against the claims of Baldwin, Baldwin Farms, and Altendorf at the rate of $.15 per cwt per month from May 1, 2014 through December 18, 2014. Court Doc. 155, ¶ 81. There is no basis for such a position. The evidence established that Baldwin, Baldwin Farms, and Altendorf delivered pinto beans for the prompt sale and payment of beans delivered. There exists no evidence, document or otherwise, to suggest that Baldwin, Baldwin Farms, or Altendorf entered into an agreement with GF Bean for the storage of the beans delivered. Rather, the undisputed evidence established that several months prior to May 1, 2014, Baldwin, Baldwin Farms, and Altendorf repeatedly requested sale and payment for their beans. To conclude GF Bean's repeated rejection of those demands and repeated refusal of payment warrants the imposition of storage charges for the period May 1, 2014 through December 18, 2014 is contrary to the dictates of law and equity. Such a conclusion would improperly reward GF Bean for its refusal to properly pay Baldwin, Baldwin Farms, and Altendorf which is a violation of GF Bean's duties as a licensee.

[¶28] Accordingly, Baldwin, Baldwin Farms, and Altendorf must not be assessed a storage charge for the dry edible beans subject to the pending claims.

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[4] The attorney for Auto-Owners made several inquiries regarding the alleged differences in original claim and amended claim. This inquiry failed to recognize the discovery in this case eventually revealed the date of insolvency was October 15, 2013 – which was then stated in the amended claim. Further, the position of Baldwin, Baldwin Farms and Altendorf in the original claim and amended claim is wholly consistent – the original claim asserting an insolvency date on or before December 19, 2014 and the amended claim asserting insolvency by October 15, 2013.

V. Any Estoppel Argument Made by Bremer Bank, National Association, Has No Basis in Law or Fact.

[¶29] In Bremer's Objection to Report and Recommendation of Trustee, Bremer argues the Petitioner must be estopped from taking the position that the Price Later Marketing Agreements are not credit-sale contracts. See Court Doc. 227, ¶¶ 32-38. Although estoppel may, in limited instances, be available against the government in North Dakota, Bremer fails to recognize that equitable estoppel must be mutual and reciprocal. Blocker Drilling Canda, Ltd. V. Conrad, 354 N.W.2d 912, 920 (N.D. 1984); see Brunsdale v. Bagge, 224 N.W.2d 384, 388 (N.D. 1974). Here, Bremer was a stranger to the very issue it points to in the argument for estoppel – the Petitioner's review of GF Bean. Brunsdale v. Bagge, 224 N.W.2d 384, 388 (N.D. 1974).

[¶30] According to the North Dakota Supreme Court,

> It is the general rule that in order to be effective an equitable estoppel must be mutual and reciprocal. Unless both parties to a transaction are bound by an estoppel, neither is bound. Mutuality being requisite, an estoppel operates neither in favor of, nor against, strangers—that is, persons who are neither parties nor privies to the transaction out of which the estoppel arose.

Brunsdale v. Bagge, 224 N.W.2d 384, 388 (N.D. 1974) (quoting 28 Am. Jur. 2d Estoppel and Waiver § 115, p. 774 (1966)); see also Deutsche Bank Nat. Trust Co. v. Stockdick Land Co., 367 S.W.3d 308, 336, fn. 13 (Tex. App. 2012) (the Bank cannot argue estoppel regarding the attempt to redeem the property because it was a stranger to the tax sale); Am. Family Mut. Ins. Co. v. Ginther, 803 N.E.2d 224, 234 (Ind. Ct. App. 2004) (estoppel only exists between parties or those in legal privity); In re Estate of Anderson, 559 S.E.2d 222, 225 (N.C. 2002) ("According to the principle of mutuality, an estoppel operates neither in favor of, nor against, strangers-that is persons who are neither parties nor privies to the transaction out of which the estoppel arose"). Bremer even recognizes the weakness in its argument because, to make the estoppel argument, it had to allege "Grand Forks Bean, and ***derivatively*** Bremer Bank" are entitled to estoppel. Court

Doc. 227, ¶ 38 (emphasis added). The law is clear, the estoppel argument, if any even existed, belonged to GF Bean. Yet, GF Bean did not object or even appear at the hearing, and in turn has waived such argument. See N.D.C.C. § 60-04-09. Thus, with such waiver by GF Bean, any "derivative" estoppel likewise no longer exists with Bremer.

[¶31] Assuming, for argument purposes only, that Bremer is not a stranger to the transaction and can somehow utilize estoppel, Bremer cannot satisfy the estoppel requirements. To establish a claim for equitable estoppel, Bremer must show:

> (1) the [Petitioner] falsely represented or concealed material facts, or calculated to convey the impression that the facts are otherwise than those which the [Petitioner] attempted to assert; (2) the [Petitioner] intended, or at least expected, that such conduct would be acted upon by, or would influence, [Bremer]; and (3) the [Petitioner] had knowledge of the real facts.

J.P. v. Stark Cty. Soc. Servs. Bd., 2007 ND 140, ¶ 20, 737 N.W.2d 627. Bremer must also show:

> (1) [Bremer] lacked knowledge and the means of knowledge of the truth as to the facts in question; (2) [Bremer] relied, in good faith, upon the conduct or statements of the [Petitioner]; and (3) [Bremer] acted or failed to act on the basis of [its] reliance, so as to change [its] position or status, to [Bremer's] injury, detriment, or prejudice.

J.P. v. Stark Cty. Soc. Servs. Bd., 2007 ND 140, ¶ 20, 737 N.W.2d 627.

[¶32] Bremer cannot even satisfy the first element of an estoppel argument because the Petitioner did not falsely represent or conceal a material fact. J.P. v. Stark Cty. Soc. Servs. Bd., 2007 ND 140, ¶ 20, 737 N.W.2d 627. Rather, the testimony of Timothy Erdman was that he made a mistake when inspecting the GF Bean facility. The evidence further established the mistake was made because GF Bean, with no notice to or permission from the Petitioner, changed the form of the Price Later Marketing Agreement. Furthermore, Bremer did not lack "the means of knowledge of the truth as to the facts in question" because the evidence

established the facts in question regarding credit-sale verse noncredit-sale contracts appeared on the Petitioner's website or within publicly available power point presentations.

[¶33] Importantly, Bremer never "relied, in good faith, upon the conduct or statements" of the Petitioner because the testimony established Bremer never relied upon **any** conduct or statements made by the Petitioner. None of GF Bean's contracts, that Bremer alleged to be credit-sale contracts, were even located within its loan file for GF Bean, or referenced by anyone at Bremer prior to entering into the lending transaction with GF Bean. Ex. 216. Bremer failed to produce a single letter, email, or document that evidenced a communication between the Petitioner and Bremer because Bremer admitted that no such communication occurred. Id. In fact, the information received from GF Bean, by Bremer, failed to make any noticeable distinction between beans subject to credit or noncredit sale contracts. This includes borrower base certificates and financial statements. The testimony of Bremer's representative was clear – that Bremer assumed all risk as to whether the beans were subject to credit or noncredit sale contracts.

VI. Brent Baldwin, Baldwin Farms, Inc., and Duane Altendorf are Receipt Holders.

[¶34] In Bremer's Objection to Report and Recommendation of Trustee, Bremer argues the claimants, including Baldwin, Baldwin Farms, and Altendorf, failed to convert their scale tickets to warehouse receipts or sale contracts, and are, therefore, not receipt holders or entitled to a receipt holder's lien pursuant to N.D.C.C. § 60-02-25.1. Bremer's argument relies on N.D.C.C. § 60-02-11 which requires all scale tickets 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)(b). Bremer's argument fails for a number of reasons.

[¶35] First, the definition of "Receipts" includes "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. § 60-02-01(7). By the clear statutory definition, scale tickets are receipts. Logic dictates that Baldwin, Baldwin Farms, and Altendorf are receipt holders entitled to a receipt holder's lien and priority.

[¶36] Second, the evidence established that Baldwin, Baldwin Farms, and Altendorf satisfied the requirements of N.D.C.C. § 60-02-11 by converting the scale tickets to noncredit-sale contracts. Baldwin, Baldwin Farms, and Altendorf demanded payment for the pinto beans delivered approximately 2 weeks after delivery, which is within the statutory 45 days, because the agreement with GF Bean was for the sale, not storage, of the pinto beans delivered. However, GF Bean refused to make payment. Bremer cannot use GF Bean's refusal to make payment as a method to strip Baldwin, Baldwin Farms, and Altendorf of their lien priority.

[¶37] Finally, even if this Court determines there was a failure to convert scale tickets, this does not alter the noncredit-sale status of Baldwin, Baldwin Farms, and Altendorf. 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." N. Dakota Pub. Serv. Comm'n v. Cent. States Grain, Inc., 371 N.W.2d 767, 778 (N.D. 1985).

[¶38] Accordingly, Baldwin, Baldwin Farms, and Altendorf are receipt holders and are entitled to a receipt holder's lien and priority.

CONCLUSION

[¶39] **WHEREFORE**, Brent Baldwin, Baldwin Farms, Inc., and Duane Altendorf request that Court find as follows:

1. The agreements of Brent Baldwin, Baldwin Farms, Inc., and Duane Altendorf with Grand Forks Bean Company, Inc. were noncredit-sale contracts;

2. The date of insolvency was October 15, 2013, the date that Grand Forks Bean Company, Inc. refused the payment demands of Brent Baldwin, Baldwin Farms, Inc., and Duane Altendorf;

3. The market price at the time of insolvency, October 15, 2013, was $38.00/cwt;

4. Brent Baldwin is entitled to payment in the amount of $84,373.68 for the 2,220.36 cwt of pinto beans delivered to Grand Forks Bean Company, Inc. for which payment has not been received;

5. Baldwin Farms, Inc. is entitled to payment in the amount of $38,216.98 for the 1,005.71 cwt of pinto beans delivered to Grand Forks Bean Company, Inc. for which payment has not been received;

6. Duane Altendorf is entitled to payment in the amount of $91,512.36 for the 2,408.22 cwt of pinto beans delivered to Grand Forks Bean Company, Inc. for which payment has not been received;

7. Brent Baldwin, Baldwin Farms, Inc., and Duane Altendorf are entitled to interest on the above stated amounts from October 15, 2013, the date on insolvency;

8. The claims of Baldwin, Baldwin Farms, and Altendorf have first priority over any claim by Bremer Bank or other non-farmer claimant; and

9. The claims of Baldwin, Baldwin Farms, and Altendorf are to be paid from the funds held by the Petitioner and the bond of Auto-Owners Insurance Company.

Dated this 29th day of March, 2016.

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