

Hamre, John G.

From: Jeffcoat-Sacco, Illona
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To: Hamre, John G.
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Illona A. Jeffcoat-Sacco
ND PSC
701-328-2407 (fax 2410)
ijs@nd.gov

From: Toni Nicolson [mailto:tnicolson@morleylawfirm.com]
Sent: Thursday, February 16, 2017 4:45 PM
To: supclerkofcourt@ndcourts.gov; Mike Morley; Mitch Armstrong (MArmstrong@smithbakke.com); bschmidt@smithbakke.com; Jeffcoat-Sacco, Illona
Cc: dan@grandforkslaw.com; 'tracykennedy@northdakotalaw.net'; John Schroeder (JSchroeder@northdakotalaw.net); Jon R. Brakke (jbrakke@vogellaw.com); jfamoose@gra.midco.net; Russ Melland (rmelland@camrudlaw.com); sknudsvig@pringlend.com
Subject: PSC v. GF Bean, et. al. // Supreme Court No.: 20160303

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Ms. Miller:

Attached is the Reply Brief of Respondent, Appellee & Cross-Appellant Auto-Owners Insurance Company. If you have any questions, please feel free to contact Mike or me. Thank you.

Toni Nicolson
Legal Secretary to Michael J. Morley
MORLEY LAW FIRM, LTD.
4000 Garden View Drive, Suite 100
PO Box 14519
Grand Forks ND 58208-4519
(701) 772-7266
(701) 772-7269 Fax

www.morleylawfirm.com ,. ' ,.*' ..) ,.*' ..)



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SC APPEAL - Reply Brief

Auto-Owners Insurance Company
Michael Morley, Morley Law Firm, Ltd.

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IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Public Service Commission,)
Petitioner, Appellee)
and Cross-Appellant,)
v.)
Grand Forks Bean Company, Inc.,)
Respondent and Appellee,)
and)
Auto-Owners Insurance Company,)
Respondent, Appellee)
and Cross-Appellant,)
and)
Bremer Bank, National Association,)
Interested Party and Appellant,)
and)
Curt Amundson and Beth Nelson, as)
assignee of the estate of Brad Nelson,)
Interested Party, Appellee,)
and Cross-Appellant)
and)
Brent Baldwin, Duane Altendorf,)
Ronald Adams, Nicholas Adams,)
Chuck Nelson, and WJS Nelson,)
Interested Parties and Appellees)

Supreme Court No.: 20160303

Appeal from Order Modifying Trustee's Report & Recommendation Dated May 3, 2016, From Order Correcting Clerical Mistake/Oversight Dated May 5, 2016, From Order for Judgment Dated July 22, 2016, From Judgment Dated and Entered July 22, 2016, and From Order Denying Post-Judgment Relief-Motion Filed August 24, 2016, by Auto-Owners Insurance Company, Dated September 15, 2016.

**The District Court of Grand Forks County, North Dakota
Northeast Central Judicial District
The Honorable Jon J. Jensen, District Judge, Presiding**

**REPLY BRIEF OF RESPONDENT, APPELLEE AND
CROSS-APPELLANT AUTO-OWNERS INSURANCE COMPANY**

Michael J. Morley, #03596
MORLEY LAW FIRM, LTD.
4000 Garden View Drive, Ste. 100
P.O. Box 14519
Grand Forks, ND 58208-4519
701-772-7266
mmorley@morleylawfirm.com
Counsel for Auto-Owners Insurance Co.

TABLE OF CONTENTS

Reply Argument 1
Conclusion 13

TABLE OF AUTHORITIES

STATUTES

N.D.C.C. § 1-02-07 3, 9
N.D.C.C. § 1-02-38 10
N.D.C.C. § 60-02-41 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11
N.D.C.C. § 60-04-02 2, 3, 9, 11, 12

REPLY ARGUMENT

1. Auto-Owners respectfully submits that the determination of the insolvency date of Grand Forks Bean in this case is governed by N.D.C.C. § 60-02-41 which provides in pertinent part for the date to be used for establishing insolvency of the public warehouseman and further, the market price to use to pay creditor growers of the insolvent public warehouseman. N.D.C.C. § 60-02-41.

2. Adams attempts to argue on appeal that one can easily distinguish N.D.C.C. § 60-02-41 and N.D.C.C. § 60-04-02 by focusing on the “voluntary” nature of the business cessation as described in N.D.C.C. § 60-02-41; in short, arguing that because N.D.C.C. § 60-02-41 includes reference to a “public warehouseman who voluntarily ceases business” that N.D.C.C. § 60-02-41 does not apply because the insolvency of GF Bean in this case was not voluntary. Adams’ Brief at ¶ 32 (emphasis included). Adams then further argues that the determination of insolvency is a question of fact, and that the relevant statute only allows for GF Bean to have one date of insolvency for all claimants. Id. at ¶¶ 33-37.

3. Adams’ arguments on the question of insolvency and whether N.D.C.C. § 60-04-02 is the proper statute to apply based on the facts and circumstances in this case are completely misguided. First, N.D.C.C. § 1-02-07 provides that a “particular [statute] controls [a] general [statute].” Adams fails to recognize this precept of statutory interpretation and, instead, focuses on one half of N.D.C.C. § 60-02-41 in order to attempt to dismiss it entirely from application in this case. Second, Adams’ interpretation of N.D.C.C. § 60-02-41 asks this

Court for an improperly narrow reading of the statute, and further requests this Court to ignore (1) other parts of N.D.C.C. § 60-02-41 which plainly shows the statute is not limited to only voluntary insolvencies and (2) the squaring of the specific, comprehensive law at N.D.C.C. § 60-02-41 with the more general, and therefore in applicable statute at N.D.C.C. § 60-04-02. On balance, Adams' appellate arguments lack merit, are not grounded in proper or reasoned authority, and misstate the full language of Section 60-02-41 in an attempt to diminish the force of Auto-Owners' position.

4. As noted above, Adams cites to one half of Section 60-02-41 in an attempt to limit its application to only "voluntary insolvencies." Adams' Brief at

¶ 32. As the Court is no doubt aware, the full statute provides as follows:

When a public warehouseman ceases business through the destruction of a warehouse by fire or other cause, or through insolvency, such warehouseman shall redeem all outstanding unconverted scale tickets or warehouse receipts at the price prevailing on the date the warehouse was destroyed or closed because of insolvency. The holder of such receipts, upon due notice, must accept this price and surrender the receipts. **Any public warehouseman who voluntarily ceases business or fails to renew an existing warehouse license or whose warehouse license is revoked shall notify the commission and all outstanding receiptholders of such closing and redeem all outstanding unconverted scale tickets or warehouse receipts at the price prevailing on the date the warehouse closed or at the option of the owner of the receipt redeliver the kind, grade, and quantity of grain called for by the unconverted scale ticket or warehouse receipt.** On commingled grain the value of over and under deliveries in quantity, grade, and protein shall be settled in cash and priced on the market on the day of closing.

N.D.C.C. § 60-02-41 (emphasis added).

5. The first highlighted portion of the statute above clearly states that when a warehouseman “ceases business through destruction of a warehouse by fire or other cause, or through insolvency,” that the date of destruction (by fire) or closing “because of insolvency” is the operative date for the payment of outstanding unconverted (unpaid) warehouse receipts or claims. *Id.* Adams disregards the entire first half of the statute in their brief in order to attempt to argue that N.D.C.C. § 60-02-41 *only* applies if the insolvency closing was voluntary. Adams’ Brief at ¶ 32. However, a plain and obvious reading of the statute is clear: N.D.C.C. § 60-02-41 includes, on its face, both involuntary and voluntary closures of a public warehouse due to a number of causes. This is obvious from the opening language of the statute referring to a public warehouseman ceasing business “through the destruction of a warehouse by fire or other cause . . .”. While arson or an intentional act, of course, could be a cause of a warehouse fire, by the plain and obvious reading of the statute, the destruction of a warehouse by fire could also be due to an involuntary cause or reason, which is more usually the case. Therefore, clearly, the opening language in N.D.C.C. § 60-02-41 contemplates and, in fact, covers the involuntary destruction of a warehouse by fire or other cause and therefore, clearly, the statute applies to and covers both causes or reasons for a public warehouse ceasing to do business, namely, involuntary and voluntary reasons.

6. As Adams notes, there is an additional component of N.D.C.C. § 60-02-41 which applies to a public warehouseman who voluntarily ceases business or

fails to renew an existing warehouse license or whose warehouse license is revoked. However, that part of the statute does not state insolvency as a reason the public warehouseman voluntarily ceases business. The “voluntary” portion of N.D.C.C. § 60-02-41 only generally refers to a public warehouseman ceasing business or failing to renew an existing warehouse license or the revocation of the license and does not mention insolvency. On the other hand, the opening language of the statute does specifically address the ceasing of business through insolvency. By including insolvency as a reason for the warehouseman ceasing business, with the destruction of the warehouse by fire or other cause, the statute clearly provides, in that portion, that it applies to the involuntary cessation of business by the public warehouse by either fire, other cause, or, as applicable in this action, because of insolvency.

7. Therefore, from a plain reading of N.D.C.C. § 60-02-41, the statute, and the claimant/growers’ remedies provided therein, clearly applies to involuntary cessation of a public warehouse business by virtue of insolvency, as well as other causes.

8. Moreover, and as is also clear from a plain reading of Section 60-02-41, the remedies for redemption of outstanding unconverted (unpaid) scale tickets or warehouse receipts is different depending upon whether the cessation of the public warehouse business is involuntary or voluntary. If the closure is involuntary (which is present in this case), the unpaid grower/claimants must accept the price prevailing on the date that the warehouse was destroyed or closed

because of insolvency as respects their outstanding unconverted tickets or warehouse receipts. On the other hand, as the statute later provides, if the warehouse voluntarily ceases business, the grower/claimant has another and different option for payment or relief (that is not available in the case of closure through insolvency), namely redelivery of the kind, grade and quantity of grain called for by the growers' unconverted scale tickets or warehouse receipts. This is further clear evidence and proof that N.D.C.C. § 60-02-41 applies to both involuntary insolvencies (the situation in the present case) and a general, voluntary cessation of business, which is not involved in this action.

9. As Auto-Owners argued in its opening brief, N.D.C.C. § 1-02-07 provides that whenever a general provision in a statute is in conflict with a special provision in the same or in another statute, the two must be construed, if possible, so that effect may be given to both provisions, but if the conflict between the two provisions is irreconcilable, the special provision must prevail and must be construed as an exception to the general provision. In this case, N.D.C.C. § 60-02-41 is a special provision regarding insolvency of a public warehouse, and therefore, prevails over the very general provision of N.D.C.C. § 60-04-02. Moreover, within Section 60-02-41, itself, there are general and special provisions that conflict. Those were just discussed above. N.D.C.C. § 1-02-07 resolves these conflicts, and in this case, the special provision part of § 60-02-41 regarding the involuntary cessation of business of the public warehouseman through insolvency and the remedy of the grower/claimants resulting from that, prevails and applies

over the voluntary cessation of the warehouse business not necessarily due to insolvency, as well as over § 60-04-02.

10. Another very important rule of statutory interpretation comes into play in this case, namely subdivision 2 of N.D.C.C. § 1-02-38. That statute provides that in enacting a statute, it is presumed that the entire statute is intended to be effective. *Id.* Adams' argument would require this Court to (1) disregard the first half of N.D.C.C. § 60-02-41 which outlines several types of involuntary closure along with a remedy for such closure; (2) apply N.D.C.C. § 60-02-41 only if voluntary insolvencies occur; and (3) ignore well-settled principles of statutory interpretation to arrive at Adams' preferred conclusion that price should be tethered to the insolvency date that suits them. This is certainly not a reasonable or clear interpretation of the statute and, in fact, would directly violate the above stated rule of statutory interpretation in this case that the entire statute (N.D.C.C. § 60-02-41) is intended to be effective. Therefore, neither Adams nor the other parties are allowed to "cherry pick" the part of N.D.C.C. § 60-02-41 which favors them, without applying the balance of the statute, which does not. Again, this Court is required to apply and give effect to the entire statute, § 60-02-41. Doing so supports the position of Auto-Owners and the PSC in this action, and requires this Court to reverse the District Court's modification of the PSC's (Trustee's) Report and Recommendation.

11. Much like Adams, Baldwin also attacks Auto-Owners interpretation of N.D.C.C. § 60-02-41 and N.D.C.C. § 60-04-02, arguing (1) that Auto-Owners

has “self-manufactured construction of when warehouseman, like GF Bean, is insolvent that is based upon N.D.C.C. § 60-02-41.”; (2) that the two subject insolvency statutes are not in conflict; (3) and additionally that N.D.C.C. § 60-02-41 does not apply because of the possibility that unpaid growers will not be compensated (which is not the case in the present action). Baldwin’s Brief at ¶¶ 52-57. As already set forth above in response to Adams’ meritless opposition of Auto-Owners’ position, Auto-Owners’ position has been made abundantly clear: by the specific language codified in the statute, N.D.C.C. § 60-02-41 controls over the more general portion of law at N.D.C.C. § 60-04-02. Auto-Owners has argued this position at length already.

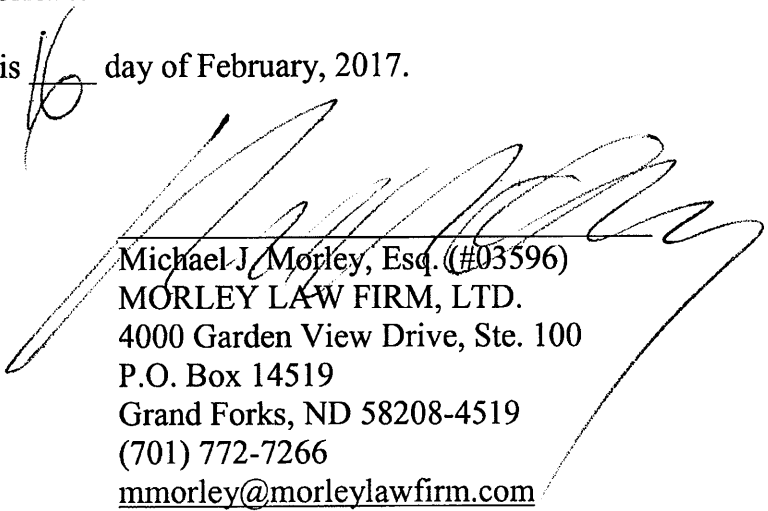
12. The District Court’s decision and Order is confusing and unjust, since many of the growers are actually over-compensated for amounts in excess of the claims to which they are entitled. The District Court’s Order determining an insolvency date of October 15, 2013, and a \$38.00 per c.w.t. market rate of pinto beans, for determination of the compensation due the appropriate growers, was improper. In addition to the problems with utilizing the aforementioned date and market rate, application of N.D.C.C. § 60-04-02 in this action, provides no certainty, predictability or specificity regarding proceedings of this nature. The District Court’s Order is not a reasonable interpretation and application of the statutory structure, as clearly outlined by the North Dakota Legislature, and effectively disregards the law in favor of over-compensating the appropriate

claimants in this action for which there are sufficient funds deposited originally in the GF Bean Trust to compensate them, exclusive of the surety bond.

CONCLUSION

13. Based upon the above argument and authorities, as well as those set forth in Auto-Owners' initial Brief to this Court, Auto-Owners respectfully requests that this Court reverse and remand the District Court's Order and Judgment modifying the Trustee's (PSC's) Report and Recommendation, save as respects the barred Curt Amundson claim, and grant Auto-Owners the additional relief it requested in its opening brief to this Court.

Respectfully submitted this 16 day of February, 2017.



Michael J. Morley, Esq. (#03596)
MORLEY LAW FIRM, LTD.
4000 Garden View Drive, Ste. 100
P.O. Box 14519
Grand Forks, ND 58208-4519
(701) 772-7266
mmorley@morleylawfirm.com
Counsel for Auto-Owners
Insurance Company

Public Service Commission v. Grand Forks Bean Company, Inc., et. al.

Case No: 20160303

Affidavit of Service by E-Mail

STATE OF NORTH DAKOTA)
) ss
COUNTY OF GRAND FORKS)

The undersigned, being first duly sworn, deposes and states that a copy of:

**REPLY BRIEF OF RESPONDENT, APPELLEE AND
CROSS-APPELLANT AUTO-OWNERS INSURANCE COMPANY**

was served on February 16, 2017, by sending true and correct copy of the same via e-mail to the following:

Mitchell D. Armstrong, Esq.

John D. Schroeder, Esq.

Brian D. Schmidt, Esq.

Jon R. Brakke, Esq.

Illona A. Jeffcoat-Sacco, Esq.

Joel F. Arnason, Esq.

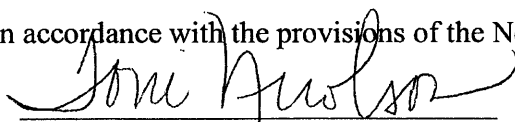
Daniel L. Gaustad, Esq.

Russ J. Melland, Esq.

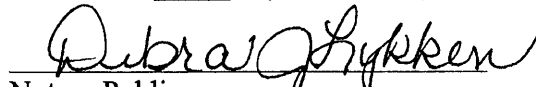
Tracy A. Kennedy, Esq.

Scott M. Knudsvig, Esq.

That the above document was duly served in accordance with the provisions of the North Dakota Rules of Civil Procedure.


Affiant

SUBSCRIBED AND SWORN to before me this 16 day of February, 2017.


Notary Public
My Commission Expires:

(S E A L)

