

NEBRASKA SUPREME COURT

Meyer Natural Foods LLC and Crum & Forster Specialty Insurance
Company v. Greater Omaha Packing Co., Inc.

302 Neb. 509 (2019) · No. No. S-18-108 · Decided March 15, 2019

SUMMARY

The Nebraska Supreme Court affirmed summary judgment for Greater Omaha Packing Co. in a dispute arising from allegedly E. coli-contaminated beef processed for Meyer Natural Foods. The court held that the processing agreement required property insurance but did not require coverage for E. coli contamination, and that the agreement was predominantly for services rather than the sale of goods under the Uniform Commercial Code. The court further concluded that Meyer failed to comply with the contractual procedure for rejecting contaminated products and could not recover avoidable damages.

CASE DETAILS

COURT	Nebraska Supreme Court
WRITING FOR THE COURT	Heavican, C.J.; Miller-Lerman, J.; Cassel, J.; Stacy, J.; Funke, J.; Papik, J.; Freudenberg, J.
JURISDICTION	Nebraska
DECIDED	March 15, 2019
DOCKET	No. S-18-108
DISPOSITION	affirmed
PROCEDURAL POSTURE	Meyer and Crum & Forster appealed the Douglas County District Court's grant of summary judgment for Greater Omaha Packing Co. in an action involving alleged breach of contract, warranty, indemnity, insurance, and guarantee obligations.
STANDARD OF REVIEW	Summary judgment is reviewed de novo. The appellate court determines independently the meaning of the contract, views the evidence in the light most favorable to the party against whom judgment was entered, and gives that party the benefit of all reasonable inferences.
PRECEDENTIAL VALUE	published opinion

PARTIES

Meyer Natural Foods LLC, Crum & Forster Specialty Insurance Company v. Greater Omaha Packing Co., Inc.

TOPICS

contract interpretation

insurance coverage

uniform commercial code

damages

commercial litigation

PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether Greater Omaha maintained property insurance as required by the amended processing agreement and whether the agreement required insurance coverage for E. coli contamination.
2. Whether the processing agreement was principally a contract for the sale of goods subject to article 2 of the Uniform Commercial Code.
3. Whether Meyer properly rejected the contaminated beef under section 10 of the agreement and whether its failure to return or hold the product barred recovery of damages.
4. Whether Greater Omaha breached its express warranty that the processed meat would not be adulterated under applicable law.
5. Whether evidence of sanitation violations created a genuine issue of material fact concerning Greater Omaha's negligence and contractual indemnity liability.

HOLDINGS

1. The amended agreement required Greater Omaha to maintain property insurance on Meyer's property in its possession in the specified amount, but did not require coverage for E. coli contamination or prohibit exclusions for such contamination.
2. The agreement was principally for processing services and only incidentally involved goods; therefore, article 2 of the Uniform Commercial Code did not apply.
3. Meyer could not recover damages because it failed to comply with the agreement's requirement to return or hold rejected products at Greater Omaha's expense and thereby failed to avoid damages that could have been avoided.
4. Greater Omaha breached the express warranty that the processed meat would not be adulterated or misbranded under applicable law, because the E. coli-contaminated products were adulterated under Nebraska law; however, Meyer was not entitled to recover damages because it failed to mitigate and failed to use the contractual return remedy.
5. Summary judgment was proper on Meyer's negligence and indemnity claim because Meyer presented no evidence of negligence on the day its cattle were fabricated.

KEY QUOTATIONS

“The test for inclusion in or exclusion from the sales provisions of Neb. U.C.C. art. 2 (Reissue 2001) is not whether the contracts are mixed but, granting that they are mixed, whether their predominant factor, their thrust, their purpose, reasonably stated, is the rendition of service, with goods incidentally involved, or whether they are transactions of sale, with labor incidentally involved.” (519)

“Under the terms of the agreement, Meyer had the responsibility of returning to GOP any rejected product. In this case, Meyer acted unilaterally in disposing of the contaminated beef and therefore failed to adhere to the terms specified to properly reject products under the agreement.” (520)

“Having found that GOP breached the express warranty contained in section 15(a)(iv)(A) of the contract, we return to the fact that Meyer prevented GOP from mitigating the amount of damages by refusing to allow GOP to “rework” the E. coli contaminated meat.” (524)

FACTUAL BACKGROUND

Meyer and Greater Omaha Packing entered into a processing agreement under which Greater Omaha slaughtered Meyer's cattle, processed the beef, and fabricated it into beef products. In April 2011, Greater Omaha processed cattle delivered by Meyer, and testing disclosed that 37 of 211 samples were presumptively positive for E. coli O157:H7. Meyer recalled the trucks and sent some product to cookers, some to landfills, and left other product unreturned rather than returning or holding it for Greater Omaha under the agreement. Meyer sued for alleged contract, warranty, indemnity, insurance, and guarantee breaches.

PROCEDURAL HISTORY

The district court denied Meyer's motion for partial summary judgment and granted Greater Omaha Packing's renewed amended motion for summary judgment. The Nebraska Supreme Court held that the district court's reasoning was partly erroneous regarding application of the Uniform Commercial Code, but affirmed because the ultimate result was correct.

DISPOSITION

affirmed

CASES CITED

- Continental Cas. Co. v. Calinger, 265 Neb. 557, 657 N.W.2d 925 (2003)
- Edwards v. Hy-Vee, 294 Neb. 237, 883 N.W.2d 40 (2016)
- Zornes v. Zornes, 292 Neb. 271, 872 N.W.2d 571 (2015)
- McKinnis Roofing v. Hicks, 282 Neb. 34, 803 N.W.2d 414 (2011)
- Gary's Implement v. Bridgeport Tractor Parts, 270 Neb. 286, 702 N.W.2d 355 (2005)
- Kluver v. Deaver, 271 Neb. 595, 714 N.W.2d 1 (2006)
- Sack Bros. v. Tri-Valley Co-op, 260 Neb. 312, 616 N.W.2d 786 (2000)
- Wurst v. Blue River Bank, 235 Neb. 197, 454 N.W.2d 665 (1990)
- Berens & Tate v. Iron Mt. Info. Mgmt., 275 Neb. 425, 747 N.W.2d 383 (2008)

- Mennonite Deaconess Home & Hosp. v. Gates Eng'g Co., 219 Neb. 303, 307-08, 363 N.W.2d 155, 160 (1985)
- Texas Food Industry Ass'n v. Espy, 870 F. Supp. 143, 145 (W.D. Tex. 1994)
- United States v. Lopez, 514 U.S. 549, 553, 115 S. Ct. 1624, 131 L. Ed. 2d 626 (1995)
- Wickard v. Filburn, 317 U.S. 111, 63 S. Ct. 82, 87 L. Ed. 122 (1942)
- Am. Home Assur. v. Greater Omaha Packing, 819 F.3d 417, 420 (8th Cir. 2016)

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