

SUPREME COURT OF NORTH DAKOTA

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

2017 ND 201 (N.D. 2017) · No. 20160303 · Decided August 9, 2017

SUMMARY

The North Dakota Supreme Court affirmed a judgment in a grain warehouse insolvency proceeding involving Grand Forks Bean Company. The court held that the district court erred by denying Bremer Bank’s motion to intervene but that the error was harmless because Bremer was allowed to fully participate and protect its interests. The court also upheld the classification of eight growers as noncredit-sale receiptholders, Amundson as a credit-sale contractor, and the determination of the insolvency date and applicable bean price.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Jerod E. Tufte, Justice; Daniel J. Crothers, Justice; William A. Neumann, Senior Judge; William A. Herauf, District Judge; Daniel S. El-Dweek, District Judge
JURISDICTION	North Dakota
DECIDED	August 9, 2017
DOCKET	20160303
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal and cross-appeals from a district court judgment in a grain warehouse insolvency proceeding.
STANDARD OF REVIEW	Statutory interpretation is reviewed de novo as a question of law. Findings of fact are reviewed under the clearly erroneous standard under N.D.R.Civ.P. 52(a). Whether intervention as of right is permitted is reviewed as a question of law, with underlying factual findings reviewed for clear error. Permissive intervention is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	published North Dakota Supreme Court opinion
PARTIES	Bremer Bank, National Association, Public Service Commission, Auto-Owners Insurance Company, Curt Amundson v. Public Service Commission, Grand Forks Bean Company, Inc., Auto-Owners Insurance Company, Curt Amundson, Brent Baldwin, Baldwin Farms,

Inc., Duane Altendorf, Ronald Adams, Nicholas Adams, Chuck Nelson, WJS Nelson

TOPICS

intervention statutory interpretation appellate procedure uniform commercial code commercial litigation

PRACTICE AREAS

administrative law appellate procedure commercial litigation contracts uniform commercial code

QUESTIONS PRESENTED

1. Whether Bremer Bank was entitled to intervene as of right or permissively under N.D.R.Civ.P. 24.
2. Whether the district court correctly interpreted the statutory definition of a credit-sale contract and correctly classified the growers as credit-sale contractors or noncredit-sale receiptholders.
3. Whether the district court correctly determined October 15, 2013, as Grand Forks Bean's insolvency date.
4. Whether the district court correctly determined different per-hundredweight payment amounts for certain growers.
5. Whether Bremer was entitled to a service-fee offset against distributions to noncredit-sale receiptholders.
6. Whether the district court properly declined to decide Amundson's claim under the credit-sale indemnity fund.
7. Whether the PSC was entitled to payment of its insolvency-administration costs and expenses from the trust fund before distribution to Bremer.

HOLDINGS

1. A secured creditor whose interest in warehouse inventory is intertwined with noncredit-sale receiptholders' claims may be entitled to intervene in a grain-warehouse insolvency proceeding, but the district court's denial of Bremer's motion was harmless because Bremer was allowed to participate fully and protect its interests.
2. For purposes of an insolvency proceeding under N.D.C.C. ch. 60-04, a credit-sale contract is a written contract for the sale of grain that incorporates the notice requirement in N.D.C.C. § 60-02-19.1(7); the statutory definition does not incorporate all of § 60-02-19.1.
3. The district court correctly classified eight growers as noncredit-sale receiptholders entitled to participate in the insolvency trust fund and Amundson as a credit-sale contractor not entitled to participate.
4. N.D.C.C. § 60-04-02 governs when a warehouseman is considered insolvent, and the district court properly determined that Grand Forks Bean became insolvent on October 15, 2013, based on Altendorf's proper demand for payment and the warehouseman's failure to pay.

5. The district court did not clearly err in awarding different per-hundredweight amounts to the Estate of Brad Nelson, WJS Nelson, and Altendorf based on their cash claims.
6. Bremer was not entitled to offset alleged service fees against distributions to noncredit-sale receiptholders because no contractual agreement established such an offset.
7. The PSC is entitled to payment of costs and expenses incurred in administering the insolvency trust fund from the trust-fund proceeds.

KEY QUOTATIONS

“Nevertheless, a secured creditor’s interest in a warehouseman’s grain may be intertwined with a noncredit-sale receiptholder’s claim to the same grain in an insolvency proceeding under N.D.C.C. ch. 60-04, in which case intervention by a secured creditor is appropriate either as a matter of right or as a matter of discretion to efficiently consider all conflicting interests.” (¶ 19)

“We conclude the district court correctly interpreted the plain language of the relevant statutory provisions and concluded a credit-sale contract for purposes of an insolvency proceeding is defined in N.D.C.C. § 60-04-01(2) to be a written contract for the sale of grain incorporating only the notice provision of N.D.C.C. § 60-02-19.1(7).” (¶ 29)

“Under the plain language of N.D.C.C. § 60-04-02, a licensee is insolvent when the licensee refuses, neglects, or is unable upon proper demand either: (1) to make payment for grain purchased or marketed by the licensee; or (2) to make redelivery or payment for grain stored.” (¶ 38)

FACTUAL BACKGROUND

The Public Service Commission licensed Grand Forks Bean Company as a public grain warehouse, and Auto-Owners issued a surety bond while Bremer Bank held a security interest in Grand Forks Bean's inventory. After growers complained that Grand Forks Bean had failed to pay or provide marketing services for delivered beans, the PSC initiated an insolvency proceeding and sold the beans, placing the proceeds in a trust fund. Bremer and nine growers filed claims, and the district court determined that eight growers were noncredit-sale receiptholders entitled to trust-fund distributions, while Curt Amundson had a credit-sale contract and was not entitled to participate. The court also determined October 15, 2013, as the insolvency date and awarded the PSC its administrative costs and expenses.

PROCEDURAL HISTORY

The district court appointed the Public Service Commission as trustee for proceeds from the sale of Grand Forks Bean's stored beans, denied Bremer Bank's motion to intervene without prejudice while allowing it to participate as a claimant, classified the growers as either noncredit-sale receiptholders or a credit-sale contractor, determined October 15, 2013, as the insolvency date, awarded distributions and the PSC's costs and expenses, and denied Auto-Owners' post-hearing motion. Bremer, the PSC, Auto-Owners, and Curt Amundson appealed or cross-appealed. The North Dakota Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Pub. Serv. Comm'n v. Minnesota Grain, Inc., 2008 ND 184, ¶¶ 9-11, 756 N.W.2d 763
- Pub. Serv. Comm'n v. Wimbledon Grain Co., 2003 ND 104, ¶¶ 20-21, 663 N.W.2d 186
- N.D. Pub. Serv. Comm'n v. Central States Grain, Inc., 371 N.W.2d 767, 777, 779, 781 (N.D. 1985)
- State ex rel. Pub. Serv. Comm'n v. R. F. Gunkelman & Sons, Inc., 219 N.W.2d 853, 858-59 (N.D. 1974)
- Matter of Estate of Johnson, 2017 ND 162, ¶ 9
- Knudson v. Kylo, 2012 ND 155, ¶ 9, 819 N.W.2d 511
- White v. T.P. Motel, L.L.C., 2015 ND 118, ¶¶ 19-23, 863 N.W.2d 915
- Skogen v. Hemen Twp. Bd. of Twp. Supervisors, 2010 ND 92, ¶ 7, 782 N.W.2d 638
- Eichhorn v. Waldo Twp. Bd. of Supervisors, 2006 ND 214, ¶ 13, 723 N.W.2d 112
- Braatlien v. Burns, 74 N.D. 29, 32, 19 N.W.2d 827, 828 (1945)
- Chiglo v. City of Preston, 104 F.3d 185, 187 (8th Cir. 1997)
- Kansas Pub. Emp. Ret. Sys. v. Reimer & Koger Assoc., Inc., 60 F.3d 1304, 1307 (8th Cir. 1995)
- Fisher v. Fisher, 546 N.W.2d 354, 355-56 (N.D. 1996)
- City of Bismarck v. Mariner Constr., Inc., 2006 ND 108, ¶ 8, 714 N.W.2d 484
- N.D. Pub. Serv. Comm'n v. Valley Farmers Bean Ass'n, 365 N.W.2d 528, 537-40, 548-49 (N.D. 1985)
- State ex rel. Stenehjem v. FreeEats.com, Inc., 2006 ND 84, ¶ 14, 712 N.W.2d 828
- N.D. Pub. Serv. Comm'n v. Jamestown Farmers Elevator, Inc., 422 N.W.2d 405, 407 (N.D. 1988)