

THE IMPORTANCE OF CLARITY IN PRODUCTION CONTRACTS: A REVIEW OF *PS INTERNATIONAL CANADA CORP. (C.O.B. SEABOARD SPECIALTY GRAINS AND FOODS) V. PALIMAR FARMS INC.*

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The recent decision of the Saskatchewan Court of Appeal in *PS International Canada Corp. (c.o.b. Seaboard Specialty Grains and Foods) v. Palimar Farms Inc.* serves as a reminder to both grain dealers and farmers of the risks of entering generic, simplified, standard-form agriculture production contracts and the importance of well-drafted, fully-considered contracts.

In *PS International Canada Corp. (c.o.b. Seaboard Specialty Grains and Foods) v. Palimar Farms Inc.* the Saskatchewan Court of Appeal considered a lentil production contract which included general statement of grade: “Grade: #2 CANADA – Subject to Sample Acceptance” (the “**Grade Term**”) and specifically, among other issues:

1. whether the Grade Term was a condition precedent;
2. whether the grain dealer could waive non-compliance with the Grade Term;
3. whether the doctrine of frustration applied in the circumstances.

Briefly, the facts are as follows. PS International Canada Corp. carrying on business as Seaboard Specialty Grains and Foods (“**Seaboard**”), and each of Palimar Farms Inc. (“**Palimar**”) and Marc Agra Inc. (“**Marc Agra**”) entered into a lentil production contract in early February 2014. As things turned out, the 2014 growing season in the local area was extremely wet having negative impact on both the quality and quantity of lentil production. At the same time, the price of lentils rose sharply in 2014 and continued to rise in early 2015.

Due to the negative growing conditions, the parties undertook separate sampling and testing of the lentils. The grade results varied among Tough No. 2 Canada, Extra No. 3 Canada and Tough Extra No. 3 Canada. As a result, Palimar and Marc Agra treated their contracts with Seaboard as terminated and sold their lentils to a different company at a higher price. Seaboard sued for damages.

The Saskatchewan Court of Appeal, citing the seminal Supreme Court of Canada decision, *Turney v Zhilka*, confirmed the Chambers judge’s decision that the Grade Term was a true condition precedent to the contract, such that the obligations of Palimar and Marc Agra to deliver lentils were wholly conditional on No. 2 Canada lentils coming into existence.

Seaboard argued, specifically relying on the words “subject to sample acceptance”, that it was entitled to waive the Grade Term. The Saskatchewan Court of Appeal, again relying on *Turney v Zhilka*, confirmed a true condition precedent is not open to unilateral waiver.

Considering arguments raised by Seaboard that the Tough No. 2 Canada lentils could be improved to No. 2 Canada lentils, the Appellate judge was asked to consider the Chambers judge’s decision on the application of the doctrine of frustration and that such improvement would have required measures amounting to a drastic changes in the contract.

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The Appellate judge confirmed that contract did not place any obligation on either Palimar or Marc Agra to do more than produce and sell lentils, nor could the contract be interpreted to require delivery of any quality of lentils in view of the fact that the contract is wholly silent about the price or prices payable for such other product. Additionally, the Saskatchewan Court of Appeal confirmed the long and time-tested line of authority applying the doctrine of frustration to situations where crop failures have been caused by weather and other natural events.

Accordingly, Seaboard's claim failed.

KEY TAKE-AWAYS:

- A clear statement of the parties' intention of terms relating to grade and quality is necessary, particularly whether the supply and delivery obligations are intended to remain regardless.
- The production contract should clearly allocate price risk as desired by the parties. The driver behind the issues in Palimar was the change in lentil market prices.
- Price clauses need to operate in conjunction with the quality requirements.
- The contract should set out with certainty the obligations of the farmer inherent in delivering the quality of grade contracted for.
- Weather and other production risk should be clearly allocated between the parties in the contract.



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