

QUEEN'S BENCH FOR SASKATCHEWAN

2009 SKQB 162

Date: 2009 05 05
Docket: Q.B.G. No. 135 of 2009
Judicial Centre: Battleford

BETWEEN:

WEST PLAINS COMPANY

APPLICANT

- and -

NORTHWEST ORGANIC COMMUNITY MILLS
CO-OPERATIVE LTD.

RESPONDENT

Counsel:

Vanessa Monar Enweani
No one contra

for the applicant

FIAT
May 5, 2009

POPESCU J.

[1] The applicant, West Plains Company (“the applicant”), applies pursuant to Article III of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (“the New York Convention”) as adopted by *The Enforcement of Foreign Arbitral Awards Act, 1996*, S.S. 1996, c. E-9.12, and Article 35 of the UNCITRAL Model Law on International Commercial Arbitration (“the Model Law”) as adopted by *The International Commercial Arbitration Act*, S.S. 1988-89, c. I-10.2 for an order recognizing the arbitral award (“the Arbitration Award”) of the National Grain and Feed Association (“NGFA”) of the United States, made on February 25, 2009, against the respondent, Northwest Organic Community Mills Co-operative Ltd. (“Northwest Organic”) in favour of the applicant as a judgment of this court and permitting enforcement of the same.

[2] The applicant and the respondent entered into a purchase contract on June 26, 2007 wherein the applicant agreed to purchase from the respondent 85,700 bushels of rye. The respondent was to ship two railcars of rye per month for 12 months commencing September 2007 and ending August 2008.

[3] The contract entered into contained an arbitration clause wherein the parties agreed that the remedy for any resolution of disagreements or disputes arising from the contract would be resolved through arbitration proceedings before the NGFA under the NGFA arbitration rules. The contract also provided that the decision and award determined through arbitration would be final and binding upon the applicant and the respondent. It further provided that any arbitration award could be entered and enforced as a judgment in any court having jurisdiction to do so.

[4] The applicant alleges that the respondent failed to deliver the rye as agreed. The dispute was referred to arbitration. The applicant alleges that the respondent did not participate in the arbitration proceeding and on October 23, 2008, the NGFA awarded default judgment against the respondent in favour of the applicant. The default judgment was amended, due to a calculation error, and the NGFA subsequently issued a default judgment against the respondent on February 25, 2009. The amount of the judgment was \$814,150 (U.S.). The applicant has filed evidence that the current exchange rate in U.S. dollars is \$1.2281. Therefore the Canadian dollar equivalent is \$999,857.62 (Cdn).

[5] The Legislature of Saskatchewan, by the enactment of *The Enforcement of Foreign Arbitral Awards Act, 1996*, has adopted the New York Convention and by the enactment of *The International Commercial Arbitration Act*, has adopted the Model Law. The gist of both of these pieces of legislation is to require that arbitration awards made in accordance with arbitration rules mutually agreed to between the parties are universally recognized and enforceable by the courts of participating jurisdictions. The important

commercial public policy objectives of both *The Enforcement of Foreign Arbitration Awards Act, 1996* and *The International Commercial Arbitration Act* was recognized by the Saskatchewan Court of Appeal in *BWV Investments Ltd. v. Saskferco Products Inc.*, [1995] 2 W.W.R. 1.

[6] The applicant must establish that it has met the statutory requirements for obtaining a recognition of a foreign arbitration award.

[7] The arbitration proceeding giving rise to the Arbitration Award was an international commercial arbitration that arose out of a legal, contractual relationship which was commercial in nature as contemplated by Article I of the New York Convention.

[8] There is no question that the contract between the applicant and the respondent constitutes an agreement in writing within the meaning of the New York Convention and it is further clear that the parties undertook to submit disputes to arbitration by the NGFA. The applicant has, as required, filed a certified copy of the Arbitration Award and a certified copy of the contract.

[9] Accordingly, I find that all of the procedural requirements for the enforcement of the Arbitration Award have been satisfied.

[10] There are circumstances, as outlined in Article V of the New York Convention, where the court can refuse to enforce an arbitration award. However, the applicable section requires that the party resisting enforcement of the award prove the applicability of one of the exceptions to enforcement. In this case, the respondent has not participated in the application. I find that there are no grounds for refusing recognition or enforcement of the Arbitration Award and that the Arbitration Award should be

recognized and the applicant is entitled to enforce it.

[11] Accordingly, there will be an order as follows:

1. The Arbitration Award granted February 25, 2009, by the National Grain and Feed Association of the United States, whereby West Plains Company was awarded \$814,150 (U.S.) against Northwest Organic Community Mills Co-operative Ltd. shall be and hereby is recognized as a binding and enforceable award in the Province of Saskatchewan;
2. West Plains Company shall be, and hereby is, granted leave to enter judgment against Northwest Organic Community Mills Co-operative Ltd., in the amount of \$999,857.62 (Cdn), representing the Canadian dollar equivalent of the sum of \$814,150 (U.S.) represented in the Arbitration Award;
3. West Plains Company is hereby awarded interest on the amount set forth in para. 2 hereof pursuant to *The Pre-judgment Interest Act*, S.S. 1984-85-86, c. P-22.2, from February 26, 2009 to the date of this order; and
4. West Plains Company shall have its taxable costs of this application.

J.
M.D. POPESCU