

# QUEEN'S BENCH FOR SASKATCHEWAN

Citation: **2017 SKQB 322**

Date: **2017 10 26**  
Docket: QBG 1070 of 2017  
Judicial Centre: Saskatoon

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BETWEEN:

PARRISH & HEIMBECKER LTD.

PLAINTIFF

- and -

DALE BUKURAK

DEFENDANT

**Appearing:**

Collin K. Hirschfeld, Q.C. and Toni Leidahl  
Mr. Bukurak

for the plaintiff  
self-represented

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JUDGMENT  
OCTOBER 26, 2017

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DAWSON J.

[1] Parrish & Heimbecker Ltd. [applicant] applies for an order pursuant to Article III of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards as adopted by *The Enforcement of Foreign Arbitral Awards Act, 1996*, SS 1996, c E-9.12, and Article 35 of the UNCITRAL Model Law on International Commercial Arbitration as adopted by *The International Commercial Arbitration Act*, SS 1988-89, c I-10.2 recognizing an arbitral award made against Dale Bukurak [respondent] by the National Grain and Feed Association [NGFA] as a judgment of the Court of Queen's Bench for Saskatchewan.

## **BACKGROUND**

[2] The applicant and the respondent entered into a purchase contract [the contract] on June 24, 2014 under which the respondent agreed to deliver 40 tonnes of 1-CWAD graded grain between September 1, 2014 and September 30, 2014. The price agreed upon between the parties was \$242.51 per tonne.

[3] That contract also contained the following arbitration clause in para. 12:

This Contract shall be governed by the laws of the Province or State in which it was written and the laws of Canada and U.S. as may be applicable therein, except where an issue may be decided under the National Grain and Feed Association Grain Trade Rules. Any claim pertaining to this Contract shall be settled by arbitration under the National Grain and Feed Association Arbitration Rules as are in effect at the date of this agreement. The parties agree to submit to arbitration. Judgment upon any arbitration award may be entered in any court of tribunal of competent jurisdiction. Copies of the National Grain and Feed Association Trade Rules and National Grain and Feed Association Arbitration Rules are available upon request and also via the National Grain and Feed Association's website at <http://www.ngfa.org>.

[4] The respondent failed to deliver the grain as required by the contract.

[5] The applicant submitted an arbitration complaint to the NGFA on January 6, 2016. On January 28, 2016, the NGFA prepared an Arbitration Services Contract and distributed it to the applicant and the respondent. The respondent and the NGFA exchanged some correspondence, but the respondent never returned a signed Arbitration Services Contract.

[6] The respondent did not participate in the arbitration hearing and on April 25, 2017, the NGFA entered a default judgment against the respondent for \$11,402.32 (USD). The NGFA default judgment calculated the Canadian exchange rate as of April 25, 2017 as 0.71. According to this calculation, the judgment is valued at \$16,059.60 (CAD).

[7] Saskatchewan, by the enactment of *The Enforcement of Foreign Arbitral Awards Act, 1996*, SS 1996, c E-9.12, has adopted the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (10 June, 1985, 330 UNTS 3 (entered into force 7 June, 1959) [*New York Convention*]) in paras. 4 and 5:

4. The convention [the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards] applies in Saskatchewan in accordance with Article XII of the convention.

5. This Act applies only to the recognition and enforcement of awards respecting differences in legal relationships, whether contractual or not, that are considered as commercial pursuant to the law of Saskatchewan.

[8] *The International Commercial Arbitration Act*, SS 1998-89, c I-10.2 adopted the *UNCITRAL Model Law on International Commercial Arbitration*, *UNCITRAL*, UN Doc A/40/17 [*Model Law*] in s. 3:

3(1) Subject to this Act, the International Law [the Model law on International Commercial Arbitration, adopted by the United Nations Commission on International Trade Law on June 21, 1985, as set out in the Schedule to this Act] applies in Saskatchewan.

(2) The International Law applies to international commercial arbitration agreements and awards, whether made before or after the coming into force of this Act.

[9] The *New York Convention* and *Model Law* have been directly incorporated into Saskatchewan law and apply so long as the arbitral award in question derives from a commercial relationship. This has been confirmed by Saskatchewan jurisprudence, notably the decision of *West Plains Co. v Northwest Organic Community Mills Co-operative Ltd.*, 2009 SKQB 162 [*West Plains*] and by the Saskatchewan Court of Appeal in *BWV Investments Ltd. v Saskferco Products Inc.*, [1995] 2 WWR 1 (Sask CA). Saskatchewan law provides for the recognition of arbitral awards if either the *New York Convention* and *Model Law* direct local recognition.

## **ANALYSIS**

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

[11] A number of criteria must be present to satisfy the requirements of the *New York Convention*. First, the arbitral award must derive from a commercial relationship. Second, the arbitral award must have originated in the territory of a state other than the state where the recognition and enforcement of such awards are sought and it must have arisen out of differences between persons. Third, the parties in question must have agreed in writing to submit to the arbitration in question. Fourth, the arbitration agreement must be in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration. Fifth, the party seeking local enforcement of the arbitral award must file with the court an original or certified copy of the arbitral award and a certified copy of the agreement to submit to arbitration. Finally, the court

asked to enforce the award must be satisfied it should not refuse to do so on the basis of the circumstances outlined in Article V of the *New York Convention*.

[12] The arbitration proceeding giving rise to this arbitration award was an international commercial arbitration that arose out of a legal, contractual relationship which was commercial in nature as contemplated by Article 1 of the *New York Convention*. There is no question that the NGFA arbitral award was derived from a commercial relationship and originated out of a legal, contractual relationship which was between the two parties.

[13] The NGFA is headquartered in Arlington, Virginia. The international status of the NGFA satisfies the *New York Convention* requirement that the arbitral award originate in a state other than the state where the recognition is sought.

[14] The applicant has filed with the court a certified copy of the signed contract which contains the NGFA arbitration clause, as well as a certified copy of the NGFA default judgment against the respondent. The contract undoubtedly demonstrates that the applicant and respondent were in a defined legal relationship. It also clearly constitutes an agreement in writing to undertake to submit to NGFA arbitration to resolve any differences in respect to the contract. The filing of a certified copy of the contract and NGFA judgment satisfies the procedural requirements mandated by Article IV of the *New York Convention*. The statutory requirements have been met.

[15] As stated, the terms of the *New York Convention* dictate that the court should issue an order recognizing the NGFA arbitral award, unless the

circumstances outlined in Article V are present. The majority of the exceptions to enforcement outlined in Article V are clearly inapplicable to the case at bar. Only one exception potentially applies: a court may refuse to recognize the award if the party against whom the judgment was entered was “unable to present his case” at the arbitration hearing. Here the evidence is that the respondent did not properly respond to the NGFA’s correspondence and therefore a default judgment was entered against him. If there was evidence that would identify a reasonable and comprehensive excuse for the respondent’s failure to respond, this exception could potentially be triggered. However, as stated in *West Plains*, Article V requires the party resisting enforcement of the award to prove the applicability of one of the exceptions to enforcement. While the respondent appeared in chambers in opposition to this application, he presented no evidence on this point. The respondent was asked whether he would like an opportunity to provide evidence, but he declined to do so.

[16] Accordingly, I find that all the requirements for the enforcement of the NGFA arbitral award have been satisfied. As such it is unnecessary for me to consider whether this Court should recognize the NGFA arbitration award according to the *Model Law*.

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

1. The arbitration award granted April 25, 2017 by the National Grain and Feed Association of the United States whereby Parrish & Heimbecker Ltd. was awarded \$11,402.32 (USD) against Dale Bukurak is recognized as a

binding and enforceable award in the Province of Saskatchewan;

2. Parrish & Heimbecker Ltd. shall be, and hereby is, granted leave to enter judgment against Dale Bukurak in the amount of \$16,059.60 (CAD) representing the Canadian dollar equivalent of the sum of \$11,402.32 (USD) represented in the arbitration award;
3. Parrish & Heimbecker Ltd. is awarded interest on the amount set forth in para. 2 hereof pursuant to *The Pre-judgment Interest Act*, SS 1984-85-86, c P-22.2 from April 25, 2017 to the date of this order; and
4. Parrish & Heimbecker Ltd. shall have its taxable costs of this application.

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J.  
C. L. DAWSON