

IN THE DISTRICT COURT OF BROWN COUNTY, NEBRASKA

**AG SERVICES OF AMERICA, INC., an
Iowa corporation, and AG ACCEPTANCE
CORPORATION, a Delaware corporation,**

Plaintiffs,

vs.

**NEBRASKA PRIDE POTATO CO., INC., a
Nebraska corporation, LELAND
LISSOLO, and JANET LISSOLO,**

Defendants.

Case No. 6867

JUDGMENT

DATE OF TRIAL: October 23-24, 2000.

DATE OF RENDITION: October 24, 2000.

DATE OF ENTRY: Date of filing by court clerk (§ 25-1301(3)).

APPEARANCES:

For plaintiffs:

Kimberli D. Dawson and Tim W. Thompson, with Michael Foelske, corporate representative.

For defendants:

NPPC:

Mark Kozisek, initially without corporate representative, but subsequently with Denton Weichman, corporate representative.

Lissolo:

Michael V. Smith with defendant Leland Lissolo and without defendant Janet Lissolo.

SUBJECT:

Trial on the merits to the court without a jury.

PROCEEDINGS:

At the trial, these proceedings occurred:

October 23, 2000:

There were no preliminary matters. Opening statements were waived by counsel for plaintiffs except as to responses to the court's questions regarding the plaintiffs' trial brief, and presented by the respective counsel for defendants. Evidence was presented on the plaintiffs' case-in-chief. Michael Foelske was sworn and testified. A brief recess was taken. Steve Herron was sworn and testified. During direct examination, recess was taken for lunch.

Following the lunch recess, the examination of Steve Herron was concluded. A brief recess following. After the recess, Mike Hempel and Leland Lissolo were sworn and testified. After a further recess, the plaintiffs rested.

The defendant NPPC moved for a directed verdict on plaintiffs' second cause of action, and further moved for a directed verdict on plaintiffs' first cause of action. Arguments of counsel were heard. The motions to dismiss were denied. The defendants Lissolo moved for a directed verdict on plaintiffs' third cause of action. Arguments of counsel were heard. The motion to dismiss was denied.

The trial was recessed until 9:00 a.m. on Tuesday, October 24, 2000.

October 24, 2000:

The trial resumed with the same counsel and parties or party representatives present. Evidence was presented for the defendants. Randy Bauscher and Denton Weichman were sworn and testified. During re-cross examination of Denton Weichman, a brief recess was taken. Following the recess, the examination was concluded, and Leland Lissolo, having been previously sworn, was recalled and testified further. The defendant NPPC rested. A brief recess was taken.

Following the recess, the defendants Lissolo moved to amend their answer to conform to the proof to delete specified portions of the last sentence of paragraph 11, to which the plaintiffs objected. Arguments of counsel were heard. The motion was denied. The defendants Lissolo further moved to amend their answer to conform to the proof by substituting "\$6,625.74" for the last word of paragraph 11, to which the plaintiffs objected. The motion was denied. The defendants Lissolo rested. The plaintiffs rested on rebuttal, without any rebuttal evidence. A recess was taken for lunch.

Following the lunch recess, closing arguments were presented by counsel for plaintiffs and counsel for the respective defendants. The matter was deemed as submitted, and taken under advisement for decision at a later time.

FINDINGS:

The court finds and concludes that:

1. The court finds generally for the defendant, Nebraska Pride Potato Co., Inc., and against the plaintiffs, Ag Services of America, Inc. and Ag Acceptance Corporation, on the plaintiffs' second cause of action. Judgment should be entered dismissing the plaintiffs' second cause of action with prejudice.

2. The court finds generally for the plaintiffs, Ag Services of America, Inc. and Ag Acceptance Corporation, and against the defendant, Nebraska Pride Potato Co., Inc., on the plaintiffs' first cause of action, and determines the amount of damages in the amount of \$16,551.60. Judgment should be entered in favor the plaintiffs and against said defendant for such amount, and costs taxed in the amount of \$585.98.

3. The court finds generally for the plaintiffs, Ag Services of America, Inc. and Ag Acceptance Corporation, and against the defendants, Leland Lissolo and Janet Lissolo, on the plaintiffs' third cause of action, and determines the amount of damages in the amount of \$13,251.49. Judgment should be entered in favor the plaintiffs and against said defendants, jointly and severally, for such amount, and costs taxed in the amount of \$644.03.

JUDGMENT: IT IS THEREFORE ORDERED AND ADJUDGED that:

1. JUDGMENT is hereby entered in favor of the defendant, Nebraska Pride Potato Co., Inc., and against the plaintiffs, Ag Services of America, Inc. and Ag Acceptance Corporation, dismissing the second cause of action of the plaintiffs' petition with prejudice at plaintiff's cost.

2. JUDGMENT is hereby entered in favor of the plaintiffs, Ag Services of America, Inc. and Ag Acceptance Corporation, and against the defendant, Nebraska Pride Potato Co., Inc., on the first cause of action of the plaintiffs' petition in the amount of \$16,551.60 and costs taxed in the amount of \$585.98. The judgment shall bear interest at the rate of 7.241% per annum from the date of entry until paid.

3. JUDGMENT is hereby entered in favor of the plaintiffs, Ag Services of America, Inc. and Ag Acceptance Corporation, and against the defendants, Leland Lissolo and Janet Lissolo, jointly and severally, on the third cause of action of the plaintiffs' petition in the amount of \$13,251.49 and costs taxed in the amount of \$644.03. The judgment shall bear interest at the rate of 7.241% per annum from the date of entry until paid.

Signed in chambers at Ainsworth, Nebraska, on October 24, 2000.
DEEMED ENTERED upon filing by court clerk.

If checked, the Court Clerk shall:

- Mail a copy of this order to all counsel of record and to any pro se parties.
Done on _____, 20__ by ____.
- Enter judgment on the judgment record.
Done on _____, 20__ by ____.
- Mail postcard/notice required by § 25-1301.01 within 3 days.
Done on _____, 20__ by ____.
- If not already done, immediately transcribe trial docket entry dictated in open court regarding trial proceedings.
Done on _____, 20__ by ____.
- Note the decision on the trial docket as: [date of filing] Signed
“Judgment” entered.
Done on _____, 20__ by ____.

Mailed to:

BY THE COURT:

William B. Cassel
District Judge