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CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

PATTEN FARMS, LTD.,	*	4-97-CV-90599
Plaintiff,	*	
v.	*	ORDER GRANTING MOTION FOR SUMMARY JUDGMENT
FARMERS COOPERATIVE COMPANY,	*	
Defendant.	*	

This matter is before the Court on Defendant's Motion for Partial Summary Judgment. Plaintiff Patten Farms, Ltd. ("Patten") has alleged violations of federal and state law relating to 32 "Hedge-to-Arrive" ("HTA") grain contracts between the parties. Defendant Farmers Cooperative Company ("Farmers Coop") seeks summary judgment on the three federal claims and in addition, requests the remaining state law claims be dismissed. Patten resists. A hearing was held on May 3, 2000. Patten submitted a supplemental memorandum in support of its resistance on May 16, 2000. The matter is fully submitted.

I. Facts[1]

Patten is a farming operation with an annual production of approximately 150,000 bushels of corn. Farmers Coop operates a grain elevator. Lyle Patten ("Mr. Patten") and his wife own Patten. Mr. Patten first heard about HTA contracts from a friend and called Farmers Coop to find out if it offered such contracts. Mr. Patten had previously sold his produce on a

[1]The factual record before the Court consists of deposition testimony of Lyle Patten, the HTA contracts, and the affidavit of Roger Koppen, general manager of Farmers Coop. General background about HTA contracts and the corn market inversion of the mid-1990s has been clearly set forth in *Top of Iowa Cooperative v. Sime Farms, Inc.*, 608 N.W.2d 454 (Iowa 2000) and *Grain Land Coop. v. Kar Kim Farms, Inc.*, 199 F.3d 983 (8th Cir. 1999), and will not be repeated here.

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cash delivery or forward contract basis. Mr. Patten was particularly interested in HTA contracts because they reduced his risk by allowing him to contract for multi-year production and to "roll," that is, to defer the stated delivery date, for a charge of one cent per bushel per roll.

In 1995 and 1996, the parties entered into 32 separate HTA grain contracts under which Patten agreed to deliver to Farmers Coop 350,000 bushels of corn and 5,000 bushels of beans.[2] The key terms of the contracts, such as quantity, price, and time of delivery, were not standardized; those terms were set by the parties. The contracts state that the grain "is to be delivered to" Farmers Coop "on or before" a particular date and they provide for "over-delivery" and delivery of damaged or inferior grain. While Patten rolled a number of its contracts into contracts for later delivery and Mr. Patten acknowledged that indefinite rolling was a positive aspect of the contracts for him, Mr. Patten planned to deliver under the contracts. Farmers Coop expected Patten to eventually deliver under the contracts. The contracts themselves allowed for cancellation only upon proof of inability to deliver.

The contracts further state that Farmers Coop is responsible for any commissions and margin requirements of the transaction. There was discussion as to whether Farmers Coop would change this policy, but no changes were made to Patten's contracts and no separate demands for assurance of performance were made of Patten by Farmers Coop. Patten has not delivered any corn to Farmers Coop under these contracts.

II. Summary Judgment Standard

The plain language of Federal Rule of Civil Procedure 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails

[2]Mr. Patten intended to have 350,000 bushels, approximately three years' worth of production, under contract with Farmers Coop.

to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). The precise standard for granting summary judgment is well-established and oft-repeated: summary judgment is properly granted when the record, viewed in the light most favorable to the nonmoving party and giving that party the benefit of all reasonable inferences, shows that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 56(c); *Harlston v. McDonnell Douglas Corp.*, 37 F.3d 379, 382 (8th Cir. 1994). Courts do not weigh the evidence nor make credibility determinations, rather they only determine whether there are any disputed issues and, if so, whether those issues are both genuine and material. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986); *Wilson v. Myers*, 823 F.2d 253, 256 (8th Cir. 1987) ("Summary judgment is not designed to weed out dubious claims, but to eliminate those claims with no basis in material fact.") (citing *Weightwatchers of Quebec, Ltd. v. Weightwatchers Int'l, Inc.*, 398 F. Supp. 1047, 1055 (E.D.N.Y. 1975)).

III. Analysis

The three federal claims Farmers Coop seeks to have dismissed are based on Patten's allegation that the HTA contracts are unenforceable because they constitute off-exchange futures contracts governed by the Commodities Exchange Act ("CEA"). In *Grain Land Coop v. Kar Kim Farms, Inc.*, 199 F.3d 983, 990-91 (8th Cir. 1999), the Eighth Circuit Court of Appeals explained the difference between a futures contract subject to the CEA and an unregulated cash-forward contract: "it is the contemplation of physical delivery of the subject commodity that is the hallmark of an unregulated cash-forward contract." The Court set out an "individualized, multi-factor approach" to be followed in making this determination, requiring examination of the

parties' intentions, contract terms, and course of dealing between the parties, as well as inquiries as to whether the parties are in the business of obtaining or producing the subject commodity, whether they are capable of delivering or receiving the commodity in the quantities stated in the contract, whether the agreement explicitly requires actual delivery or allows indefinite rolling, whether payment takes place only on delivery, and whether the contract terms are individualized or standardized. *See id.* at 991.

Under the *Grain Land* analysis courts must inquire as to the relationship and contracts between the particular parties to the lawsuit. *See Grain Land*, 199 F.3d at 992 fn.7, 993. In a companion case, *Haren v. Conrad Cooperative*, 198 F.3d 683 (8th Cir. 1999), the Court noted that while some of the plaintiff farmers "may have lacked a subjective intent to deliver corn, they are unequivocally required to do so by the HTAs. As we observed in *Grain Land*, while an obligation to deliver is not necessary to place a contract within the cash-forward exception, it is sufficient." *Id.* at 684 (citing *Grain Land*, 199 F.3d at 992).

Based on the *Grain Land* factors, it is clear to this Court that the parties here contemplated physical delivery of the subject commodities.[3] First, the language of the contracts contemplate delivery.[4] They specify a delivery date and location. The parties even discussed the fact that delivery could be made to a location other than the one specified if it would be more convenient for Mr. Patten. The key contractual terms were not standardized. The contracts discuss the adjusted price for delivery of more corn than was contracted for, or for the delivery

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[3]The Court notes the thorough and well-reasoned opinion of Judge Ronald H. Schechtman of the Iowa District Court in *Farmers Cooperative Co. v. Lambert*, No. LACV305569, slip op. (Iowa Dist. Ct. Jan. 26, 1999). This pre-*Grain Land* case uses an individualized, multi-factor approach as later advocated by the Eighth Circuit Court of Appeals. The facts of the instant case are distinguishable from the facts of the case before Judge Schechtman.

[4]The contracts examined by the *Haren* Court are identical, aside from the key terms, to those at issue here, and were found to be unregulated cash-forward contracts.

of inferior corn. Finally, the contracts allowed for cancellation only upon proof of inability to deliver.

The parties also contemplated physical delivery of the corn. Both parties are in the business of producing and obtaining corn. In his deposition Mr. Patten testified that he planned to deliver under the contracts. Farmers Coop has represented that it expected Patten to eventually deliver under the contracts. The record reflects that the parties recognized that rolling and multi-year production contracts were a means of crop management, not a means of avoiding delivery. The fact that the contracts allow for rolling does not take them out of the unregulated futures contract exception. *See Grain Land*, 199 F.3d at 992 ("His ability to roll the contracts merely allowed him to delay his delivery obligation rather than avoid it altogether.").

The contracts further state that Farmers Coop is responsible for any commissions and margin requirements of the transaction. There was discussion as to whether Farmers Coop would change this policy, but no changes were made to Patten's contracts and no separate demands for assurance of performance were made of Patten by Farmers Coop. *See id.* ("[The farmer] was not required to guarantee performance by maintaining margin."). The penny per bushel per roll surcharge is not a payment of margin or demand for assurance of performance as addressed in *Larson v. Farmers Cooperative Elevator of Buffalo Center*, No. 99-2954, 2000 WL 566994 (8th Cir. May 11, 2000) (addressing effect of demand for assurances, not surcharge). *See Grain Land*, 199 F.3d at 987 (two cents per bushel per roll). In *Grain Land* the surcharge was not characterized as a demand to pay for margin calls and those HTA contracts were held to

fall within the cash-forward exception to the CEA.[5]

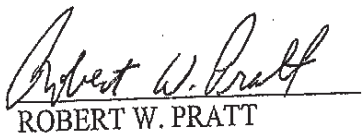
III. Conclusion

There is no genuine issue of material fact and, in light of the foregoing, the Court finds as a matter of law that the HTA contracts between Patten and Farmers Coop are contracts for the sale of a cash commodity for deferred delivery, and are therefore not subject to the CEA pursuant to 7 U.S.C. § 1(a)(11).

Defendant's Motion (# 33) is GRANTED. Counts I, II, and III of the Second Amended Complaint are dismissed. Therefore, pursuant to 28 U.S.C. § 1367(c)(3), the Court declines to exercise supplemental jurisdiction to hear the remaining state law claims. The case is hereby DISMISSED.

IT IS SO ORDERED.

Dated this 1st day of June, 2000.



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[5]Neither is the fact that damages requested in this civil action are equal to the margin call paid by Farmers Coop as a result of the non-delivery of grain evidence that the HTA contracts between the parties were an "off-exchange" action.