

APPELLATE COURT CASE NUMBER A08-0279

STATE OF MINNESOTA
IN COURT OF APPEALS

Gerald Wayne Lindgren,

Appellant,

vs.

Glacial Plains Cooperative,

Respondent.

APPELLANT'S BRIEF AND APPENDIX

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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STATEMENT OF THE CASE

This case was brought before the Swift County District Court, Eighth Judicial District, The Honorable Judge David L. Mennis presiding.

The substance of the case is whether or not there was a breach of contract. Glacial Plains Cooperative claims the formal written contracts were nothing more than “confirmatory documents” for which signatures were not required pursuant to the “merchant” doctrine.

Gerald Wayne Lindgren claims that he is not a merchant and, even if he was, the formal written contracts in dispute require signatures to be valid and enforceable.

A Motion For Summary Judgment was made by Glacial Plains and granted by the Court and awarded damages.

It is from this Summary Judgment Order, that Mr. Lindgren is taking this appeal.

STATEMENT OF FACTS

This case arose from a telephone conversation between Keith Bebler (employee and representative of Glacial Plains Cooperative, Plaintiff/Respondent, hereinafter GPC) and Gerald Lindgren (Defendant/Appellant, hereinafter Lindgren) on 20 April 2006. On the same day, GPC mailed four contracts to Lindgren for signature and return. **(Appendix pp. 24-27)** Two of these contracts, one for Future Delivery of Corn and one Hedge To Arrive Contract for corn, are the subject of this litigation. These contracts were not signed or returned. **(Appendix pp. 24-27)**

Subsequent to 20 April 2006, Lindgren, because of drought conditions, became

concerned about his ability to produce and deliver upon his perceived obligations. Lindgren contacted Keith Bebler at GPC in June 2006 and again in July 2006, relating to the weather and the contracts.

Memorandum In Opposition of Plaintiff's Motion For Summary Judgment, (**Record, No. 16**)¹ Exhibit 5, Deposition of Keith Bebler, p. 15, L.6 - p. 16, L. 20:

“Q. ... Number three of this part of the questioning, did you have a conversation with Gerald W. Lindgren at any time in June of 2006 either in person or by telephone or both?

A. I believe I did in June, yes.

Q. Was that in person?

A. I believe it was in person.

Q. Was it also a telephone conversation?

A. It may have been by phone as well, yes.

Q. Okay. Do you happen to know the date that that meeting took place?

A. No, I do not.

Q. Okay. A follow-up question is, was the conversation related to the weather conditions and/or drought conditions?

A. We may have discussed the weather, yes.

Q. Was the conversation also related to alleged contracts with Gerald W. Lindgren

¹Record No. - Swift County Register of Actions, Case No. 76-CV-07-23

concerning Gerald W. Lindgren's ability to deliver on alleged corn contracts?

A. Yes.

Q. In our telephone conversation in June of 2006, did you make an offer which would allow me, Gerald W. Lindgren, the opportunity to buy out of the alleged corn contracts?

A. I don't recall if it was June or July. But at one point, yes.

Q. Okay. We're going to have some little things in here to help rattle the old – get the cobwebs out. So you're saying, yes, you did have a telephone conversation with me about – about these alleged corn contracts?

A. Yes.

Q. And irregardless when this offer was made, do you recall what the – what the amount of money per bushel was that you offered?

A. No.

Q. Okay. At that time, did you communicate to Gerald W. Lindgren about him not returning contract number 18346 with his signature in the proper place?

A. I don't recall.”

Bebler in his Deposition (**Record, No. 16**, Exhibit 5, *supra*), continues, p. 16, L. 25 - p. 17, L 20:

“Q. Moving along, relating to the hedge-to-arrive contract, this contract right here, relating to the hedge-to-arrive contract, does it say at the bottom of the

contract, "Sign original and return to buyer"?

A. Yes, it does.

Q. Is the signature of Gerald W. Lindgren as a seller required on the original contract for the purpose of validating the contract for your records?

A. For validation, yes.

Q. Did you send me, Gerald W. Lindgren, correspondence to authenticate these alleged oral agreements such as a follow-up letter confirming our April 20, 2006, telephone conversation regarding alleged corn contracts?

A. We sent out the documents for signature, yes.

Q. But no other correspondence?

A. At some point, we sent documents for signature later on but I think --

Q. Probably in October?

A. When it became apparent you were not delivering at that time, correct."

The facts in this case do not indicate that prior to contemplation of litigation by GPC the terms "confirm", "confirming", "confirmation", "confirming memorandum", "confirmatory documents", or "confirmatory contracts" were ever used by either party relating to this litigation. **(Appendix page 28)**

This terminology, *supra*, was attached to the contracts in question in "contemplation of litigation" for the purpose of conforming the nomenclature of the documents to fit within the scope and requirements of the statute. See M.S. 336.2-201 (1)(2).

Prior to the contemplation of litigation, there is no evidence in the record that GPC considered the contracts to be anything other than what they purport to be: a formal, written contract in want of signature to become valid and enforceable. See letter dated, November 27, 2006, from GPC to Gerald Lindgren (**Appendix page 28**)

Within this letter references are made to “contract(s)” no less than 10 times; also included: “To date, you have not returned either contract with your signature. We request that you do so immediately.”

In a subsequent letter from Fluegel, Helseth, McLaughlin, Anderson & Brutlag, Chartered, attorney’s office representing GPC, dated December 8, 2006, to Gerald Lindgren and signed by Warren C. Anderson (**Appendix pp. 29-31**) relating to possible litigation, the “contracts” began to change from what they facially represent themselves to be, i.e. contract(s), into what they do not represent themselves to be; namely, “confirming memorandum [sic]” and “confirming memorada [sic]”. It appears that from this point forward within the GPC’s moving papers, the formal written contracts in want of signature are referenced as “confirming documents”, “confirming contracts”, “confirming memoranda” or other terminology apparently intended to redefine the contracts from what they are to something they are not.

The Honorable Judge Mennis in his Summary Judgment Order (**Appendix page 11**) stated: “Thereafter, on April 20, 2006 four confirmatory contracts, all signed by Keith Bebler, were mailed to the defendant. [Aff. Of Bebler at 1]” (Emphasis added) To be noted

here is that the Bebler Affidavit was signed and dated 19th of October 2007, (See Memorandum in Support of Plaintiff's Motion for Summary Judgment, (**Record No. 12, Exhibit C**)) long after this litigation had commenced. There is not a scintilla of evidence in the record or otherwise that indicates that these contracts were to be regarded as anything other than formal, written contracts in want of signature, prior to the commencement of this litigation.

The Honorable Judge in his Memorandum of Law relating to "Confirmatory Document" (**Appendix page 17**) cites Minn. Stat. § 336.2-207:

"Minn. Stat. § 336.2-207 describes when additional terms become part of a contract."

"A definite and seasonable expression of acceptance or a written confirmation which is sent within a reasonable time operates as an acceptance even though it states terms additional to or different from those offered or agreed upon, unless acceptance is expressly made conditional on assent to the additional or different terms."

"Minn. Stat. § 336.2-207(1). Here, Plaintiff mailed out the written contracts on April 20, 2006, the same day Plaintiff and the defendant orally agreed to the terms of the contract."

"The additional terms are to be construed as proposals for addition to the contract. Between merchants such terms become part of the contract unless:

- (a) The offer expressly limits acceptance to the terms of the offer;
- (b) They materially alter it; or
- (c) Notification of objection to them has already been given or is given within a reasonable time after notice of them is received.”

“Minn. Stat. § 336.207(2). Here, additional terms were added to the contract from what was orally discussed between Plaintiff and the defendant. However, those terms became part of the contract because the offer did not expressly limit acceptance to the terms of the offer, the terms did not materially alter the contract, and the defendant did not object to the terms within a reasonable time.” (The intended citation is to §336.2-207(2))

The statute, *supra*, speaks of a “written confirmation”, not a formal “written contract” such as we have here.

The Honorable Judge says the “Plaintiff mailed out the written contracts”. In this assertion, the Honorable Judge is correct and the facts show that it is these “written contracts” into which GPC intended to enter with Lindgren. **(Appendix - page 18)**

The Honorable Judge continues after making the unfounded conclusion that the contract(s) are not contracts in want of signature, but rather a manifestation of some sort of undefined “confirmatory” instrument. Then, proceeding from this premise, the Honorable Judge addresses what he describes as “additional terms” as becoming part of the contract.

These alleged additions are not additions to the contract; they are, in fact, an intrinsic

part of the contract without which there would be no basis (grounds) for instituting this action by GPC. These alleged additions do materially alter the contracts in that they prescribe all the conditions for execution and include the additional requirement of paying all enforcement costs, including reasonable attorney's fees.

The Honorable Judge asserts Lindgren did not object to the terms within a reasonable time. The judge here failed to recognize that the alleged contracts did not include any notice that this objection period was available to Lindgren. The judge also failed to recognize that GPC repudiated the application of an "objection period" relating to these alleged contracts: "Our industry does not have an 'ten (10) day objection period.'" (See Memorandum in Opposition of Plaintiff's Motion For Summary Judgment, - **(Record No. 16)** Exhibit 2, Answer 11e) Also, "Plaintiff makes no claim that the contract allows for a ten-day objection period." (**Record No. 16**) Exhibit 2, *supra*, Answer 13d)

There are no facts in this case which could be construed as placing Lindgren on notice that any transactions between GPC and Lindgren were being regulated or conducted pursuant to his (Lindgren's) status as a "merchant". The contracts do not indicate they are "confirmations" between merchants under any circumstances.

The Honorable Judge continues: "Therefore, because the defendant did not timely object to the terms of the contract, all of the provisions of the contract have force and effect and may be used against the defendant, regardless of the fact that defendant did not sign the contracts."; thus again relying on a provision of the Minn. UCC, which GPC has rejected as

being applicable to themselves, *supra*.

The Honorable Judge appears to have relied substantively upon his conclusion that Lindgren is a “merchant” pursuant to Minn. Stat. § 336.2-104 (**Appendix Page 17**)

There does not appear to be anything within the record of this case which would indicate either party was knowingly conducting themselves pursuant to their alleged status as merchants.

Notwithstanding Lindgren’s long history of being a farmer, producer and seller of grain (corn), there is no evidence which would indicate he knew he was a “merchant” or had reason to believe he was a “merchant”.

The Honorable Judge failed to separate this alleged transaction from the application of the primary governing Minn. UCC statute, Minn. Stat. § 336.2-201(1), which in relevant part states:

“Except as otherwise provided in this section a contract for the sale of goods for the price of \$500 or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by the party’s authorized agent or broker.”

This section requires a “contract” for more than \$500 be signed by the party against whom enforcement is sought. The alleged controverted contracts in the instant case are not signed and, therefore, not enforceable.

There, however, seems to be an exception to this rule, which is if the transaction is “between merchants” Minn. Stat. §336.2-201(2) states:

“Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subsection (1) against such party unless written notice of objection to its contents is given within ten days after it is received.”

As discussed, *supra*, GPC purposefully denied this section as being applicable as governing these transactions.

ARGUMENT

Points and Authorities

It is asserted here that the Court in its granting Summary Judgment and awarding damages to the Plaintiff (GPC) erred relating to the following:

1. The Court failed to remove the alleged contracts from the application of Minn. Stat. § 336.2-201(1) which states in relevant parts:

“(1) Except as otherwise provided in this section a contract for the sale of goods for the price of \$500 or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by the party’s authorized agent or broker. A writing

is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this paragraph beyond the quantity of goods shown in such writing.”

There is nothing in the record of this case that GPC, at the time, believed these two contracts in want of signature were anything other than contracts needing signatures in order to be valid and enforceable. GPC, by rejecting the application of the “10 day objection period”, an indispensable attribute of “merchant” status, effectively removes the contention that Lindgren is, in fact, a merchant.

**BETWEEN MERCHANTS, i.e. merchant status, (Minn. Stat. § 336.2-201(2))
The court erroneously declared Lindgren, a farmer, as being a “merchant”, and cited no authority for doing so.**

However, this being said, there appears to be ample authority in support for his decision. In a Colorado Court of Appeals case, *Colorado-Kansas Grain Co. v. Reifschneider*, 817 P.2d 637 (Colo. App. 1991), somewhat similar to this case the court ruled that the farmer was a merchant. The court based this determination on:

“[31] Here, the record reflects that defendant had dealt in corn or other agricultural commodities for at least twenty years. Moreover, defendant had served as president of a corporation involved in the purchase and sale of hay under futures contracts. And, defendant also had sold his own hay crops to third parties under futures contracts.”

The court continued:

“[33] Here, defendant’s twenty years of experience in selling corn establishes that he is a ‘person who deals in goods of the kind.’ Moreover, defendant’s extensive experience in selling corn, when coupled with his familiarity with futures contracts, supports the trial court’s determination that he ‘by his occupation [held] himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction.’”*Colorado-Kansas Grain, supra*, 817 P.2d 637 (Colo. App. 1991), at page 640

The court continues:

“[35] Thus, we conclude that under the circumstances of this case, the trial court did not err in concluding that defendant was a merchant.”*Colorado-Kansas Grain, supra*, 817 P.2d 637 (Colo. App. 1991), at page 641

There is no evidence within the instant case that could be construed as indicating Lindgren had any particular expertise beyond what was necessary and ancillary to growing his crops.

To be noted here is that the evidence within the instant case seems to support the fact that neither GPC nor Lindgren were cognizant of the rules attendant to their transactions as they relate to “merchant” status.

The Colorado Court, *supra*, recognized that a number of courts throughout the country have ruled on the question of “merchant” status relating to farmers and have come to different conclusions:

“[24] The courts among those states which have dealt with this issue are almost evenly split on whether a farmer can be a merchant. Each of those states has statutory law identical to § 4-2-201(2).” *Colorado-Kansas Grain, supra*, 817 P.2d 637 (Colo. App. 1991), at page 639. In Minnesota – Minn. Stat. § 336.2-201 (2).

The court, *supra*, continues:

“[25] In Indiana, Michigan, Missouri, Nebraska, Ohio, Illinois, and Texas the courts have determined that farmers may be merchants. *See Sebasty v. Perschke* 404 N.E.2d 1200 (Ind.App. 1980); *Barron v. Edwards*, 45 Mich. App.210, 206 N.W. 2d 508 (1973); *Rush Johnson Farms, Inc. v. Mo. Farmers Ass’n*, 555 S.W.2d 61 (Mo.App. 1977); *Agrex, Inc. v. Schrant*, 221 Neb. 604, 379 N.W.2d 751 (1986); *Ohio Grain Co. v. Swisshelm*, 40 Ohio App. 203, 69 Ohio Op. 2d 192, 318 N.E.2d 428 (1973); *Sierens v. Clausen*, 60 Ill.2d 585, 328 N.E.2d 559 (1975); *Chisolm v. Cleveland*, 741 S.W.2d 619 (Tex.App. 1987).”

“[26] The courts of Alabama, Arkansas, Iowa, Kansas, South Dakota, and Utah have held that farmers were not contemplated by the drafters of the UCC as includable as merchants. *See Loeb & Co. v. Schreiner*, 294 Ala. 722, 321 So.2d 199 (1975); *Cook Grains, Inc. v. Fallis*, 239 Ark. 962, 395 S.W.2d 555 (1965); *Sand Seed Service, Inc. v. Poeckes*, 249 N.W.2d 663 (Iowa 1977);

Decatur Cooperative Ass'n v. Urban, 219 Kan.171, 547 P.2d 323 (1976); *Terminal Grain Corp. v. Freeman*, 270 N.W.2d 806 (S.D. 1978); *Lish v. Compton*, 547 P.2d 223 (Utah 1976).”

“[27] In considering the question at issue, we note that the cases which hold that farmers may be merchants reflect on the fact that today’s farmer is involved in far more than simply planting and harvesting crops. Indeed, many farmers possess an extensive knowledge and sophistication regarding the purchase and sale of crops on the various agricultural markets. Often, they are more aptly described as agri-businessmen. *See Sebasty v. Perschke, supra.*” *Colorado-Kansas Grain, supra* 817 P.2d 637 (Colo. App. 1991), at page 639 and 640.

In *Sebasty v. Perschke*, 404 N.E.2d 1200 (Ind. App. 1980), the bar for determining merchant status for a farmer is set at the lower end of the scale as determined by the multiple court rulings relating to this issue, i.e. merchant status.

“Trial was had to the court which found that the parties had entered into the oral contract described above on September 28, 1972. The court also found that written confirmation of this contract was mailed to Sebasty the same day and that the confirmation was received by Sebasty. The court concluded that both Sebasty and Perschke were merchants and that this oral contract was

enforceable under IC 26-1-2-201 (2).”²

“Sebasty also argues that the court’s finding that he was a ‘merchant’ is contrary to law. We disagree.” *Sebasty v. Perschke, supra*, 404 N.E.2d 1200 (Ind. App. 1980), at page 1201.

“Sebasty has been a farmer all his life and owns 1,300 acres of land in Indiana. He farms approximately 1,000 acres. He grows three crops on this land, corn, soybeans and wheat, and sells these crops as his means of livelihood. He is familiar with the customs and practices involved in selling grain. He is aware that the price of grain rises and falls daily. He had entered into other oral agreements with Perschke for future sales followed by written confirmation on four occasions prior to the wheat transaction.” *Sebasty v. Perschke, supra*, 404 N.E.2d 1200 (Ind. App. 1980), at page 1202.

While the instant case follows a similar fact pattern, it is distinguished by the following facts:

GPC, in the instant case purposefully denied the application of the “10 day objection period”, *supra*, a substantive requirement of Minn. Stat. § 336.2-201(2) – Merchant Exception.

GPC, by admission, is not attempting to enforce an “oral” contract but instead a formal written contract in want of signature to be valid and enforceable pursuant to Minn.

² IC 26-1-2-201 (2) is the same as Minn. Stat. § 336.2-201 (2).

Stat. § 336.2-201(1), *supra*. (Appendix page 33)

In cases holding that a farmer is not a merchant, the South Dakota Supreme Court had this to say:

“Also, the term ‘between merchants’ is defined to mean ‘in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants.’ SCDL 57-2-9.” (Minnesota - Minn. Stat. § 336.2-104(3))

“The official comment to § 2-104 of the Uniform Commercial Code definition of ‘Merchant’ and ‘Between Merchants’ states in part:

1. This Article assumes that transactions between professionals in a given field require special and clear rules which may not apply to a casual or inexperienced seller or buyer.
2. The term ‘merchant’ as defined here roots in the ‘law merchant’ concept of a professional in business. The professional status under the definition may be based upon specialized knowledge as to the goods, specialized knowledge as to business practices, or specialized knowledge as to both and which kind of specialized knowledge may be sufficient to establish the merchant status is indicated by the nature of the provisions.” *Terminal Grain Corp. v. Freeman*, 270 N.W.2d 806 (1978), Supreme Court of South Dakota at page 811

This court, as others, also recognized the divisions of the courts relating to this issue.

The Court continued:

“In arriving at its conclusion that the defendant farmer/seller was not a ‘merchant’ within the meaning of the Uniform Commercial Code, the Kansas Court in the *Decatur Cooperative Ass’n v. Urban* case, *supra*, said:

‘[T]he appellee neither ‘deals’ in wheat, as that term is used in 2-104 nor does he by his occupation hold himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction. The concept of professionalism is heavy in determining who is a merchant under the statute. The writers of the official UCC comment virtually equate professionals with merchants – the casual or inexperienced buyer or seller is not to be held to the standard set for the professional in business. The defined term ‘between merchants’, used in the exception proviso to the statute of frauds, contemplates the knowledge and skill of professionals on each side of the transaction. The transaction in question here was the sale of wheat. Appellee as a farmer undoubtedly had special knowledge or skill in raising wheat but we do not think this factor, coupled with annual sales of a wheat crop and purchases of seed wheat, qualified him as a merchant

in that field. The parties' stipulation states appellee has sold only the products he raised. There is no indication any of these sales were other than cash sales to local grain elevators, where conceivably an expertise reaching professional status could be said to be involved. 547 P.2d at 328-329.'

'We agree with the reasoning of the Kansas Court and with the other courts which hold the average farmer, like Freeman, with no particular knowledge or experience in selling, buying, or dealing in future commodity transactions, and who sells only the crops he raises to local elevators for cash or who places his grain in storage under one of the federal loan programs, is not a 'merchant' within the purview of the exception provision to the Uniform Commercial Code statute of frauds. Through training and knowledge, skills, and expertise in the production of grain crops but this does not make him a 'professional,' equal in the marketplace with a grain buying and selling company, whose officers, agents, and employees are constantly conversant with the daily fluctuations in the commodity market, the many factors affecting the market, and with its intricate practices and procedures. Accordingly, the trial court did not err in refusing

to instruct the jury on this issue.” *Terminal Grain Corp. v.*

Freeman, supra, 270 N.W.2d 806 (1978), at page 812.

The South Dakota Supreme Court concluded:

“As Freeman is not a ‘merchant’ within the contemplation of SDCL 57-3-2, the defense of the general statute of frauds would bar any recovery of damages by Terminal Grain under Count II of its complaint.” *Terminal Grain Corp. v. Freeman, supra* 270 N.W.2d 806 (1978), at page 813.

“All the Justices concur.” *Terminal Grain Corp. v. Freeman, supra*, 270 N.W.2d 806 (1978), at page 813.

DEFINITION: By definition Lindgren is beyond the reach of the “merchant exception”.

The Texas Supreme Court ruled that a farmer is a merchant in a majority decision in which four justices dissented. Within the dissent the court stated:

“A ‘merchant’ is defined in Webster’s New International Dictionary (Second Edition) as ‘any one making a business of buying and selling commodities; a trafficker; a trader; . . . one who traffics on a large scale, esp(ecially) with foreign countries. One who carries on a retail business; a storekeeper or shopkeeper.’”

“From the facts recited by the majority, it is unreasonable to conclude that Nelson, a farmer, was a ‘merchant’. The majority opinion violates the clear,

ordinary meaning of that word as well as the definition contained in Section 2.104(a).” *Nelson v. Union Equity Co-Op. Exchange*, 548 S.W.2d 352 (Tex. 1977) at pages 358 and 359.

Also, Webster’s Third New International Dictionary: “Merchant 1a: a buyer and seller of commodities for profit: TRADER”. And, Webster’s Encyclopedic Unabridged Dictionary of the English Language: “Merchant ... 1. A person who buys and sells commodities for profit; dealer; trader.”

There is no evidence advanced within the instant case which would indicate that Lindgren falls within the scope of these definitions.

The preceding comments relating to “merchant status” begs the questions: How does an ordinary farmer who sells his produce determine, or know, without notice, that his transactions are being conducted pursuant to his status as a “merchant”? Even if the farmer was given notice that the transactions were being conducted pursuant to his status as a “merchant”, how would the farmer know that his “merchant status” was properly asserted?

FORMATION OF CONTRACT: The Court erred in asserting the alleged contracts were confirmatory memoranda. Notwithstanding merchant status, the alleged contracts in dispute facially require signatures to be valid and enforceable.

This Court in *Cargill Inc. v. Jorgenson*, stated:

“Cargill argues that because Jorgenson Farms did not respond to the written confirmation of the contract that Cargill signed and mailed in July 2003, it acquiesced to the formation of the contract. But the confirmation indicates, on

its face, that it must be signed and returned to Cargill and provides a signature line. It also states: ‘Please sign and date the original and attached copy of this contract. The original must be returned to Buyer at the above-referenced address, and the copy should be retained for Seller’s records.’ Jorgenson did not sign or return the contract; thus, under the express terms of the document, no contract was formed.” *Cargill Inc. v. Jorgenson Farms*, 719 N.W.2d 226 (Minn.App. 2006) at page 232

There is no evidence indicating the contracts in the instant case were sent to Lindgren for any other purpose than for signature and return.

This Court in *Cargill, supra*, continued:

“The crux of Cargill’s argument is that Jorgenson’s silence is sufficient evidence of the formation of a contract to avoid summary judgment. But ‘[o]rdinarily, mere silence does not amount to an acceptance.’ *Gryc v. Lewis*, **410 N.W.2d 888, 892** (Minn.App. 1987). Only ‘when the relationship between the parties is such that an offeror is justified in expecting a reply or the offeree is under a duty to respond, silence will be deemed an acceptance.’ *Id.* Here, both parties denied the existence of an oral agreement, and Cargill has offered no evidence that, given its course of dealing with Jorgenson Farms, silence on the part of Jorgenson Farms was tantamount to acquiescence to the contract.” *Cargill Inc. v. Jorgenson Farms, supra*, 719 N.W.2d 226

(Minn.App. 2006) , at page 232.

Acquiescence and failure to object is not applicable here because GPC denied any recognition of an objection period, *supra*.

CONCLUSION

The controverted alleged contracts here are not affirmations of previously entered into “oral” contracts; they are, in fact, contracts in want of signature to be valid and enforceable pursuant to Minn. Stat. 336.2-201(1).

The formal written contracts were the contracts they “intended to enter”.

(Appendix - pp. 33-36)

GPC denied the application of the “10 day objection period”, a substantive tenet and requirement of “merchant” status. GPC is barred from relying on “merchant status” by their own admission.

The District Court erred in concluding:

1. There were no disputes as to genuine issues of material fact;
2. Defendant (Lindgren) is a “merchant” as defined by the Uniform Commercial Code;
3. Four contracts existed between Plaintiff (GPC) and Defendant (Lindgren). Defendant (Lindgren) breached contracts number 18346 and Hedge-to-Arrive. Defendant (Lindgren) fully performed on contracts 18347 and 18348.

For the reasons set forth herein, in conjunction with the record, the District Court's
Summary Judgment Order should be reversed.

Respectfully submitted,

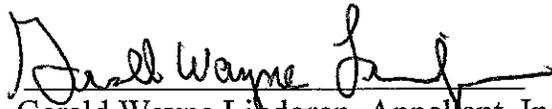
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CERTIFICATION OF BRIEF LENGTH

I here by certify that this brief conforms to the requirements of Minn.R.Civ.App.P 132.01, subdivisions 1 and 3, for a brief produced with a proportional font. The length of this brief is 4,855 words. This brief was prepared using WordPerfect Office, Version X3.

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AFFIDAVIT OF SERVICE BY MAIL DELIVERY

STATE OF MINNESOTA

APPEALS COURT NO. A08-0279

Gerald Wayne Lindgren vs. Glacial Plains
Cooperative

COUNTY OF SWIFT

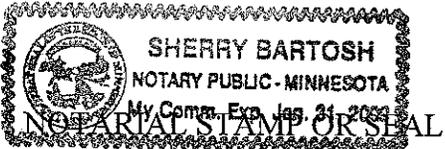
Trial Court No. 76-CV-07-263

Anita L. Lindgren, being duly sworn, says that on the 20th day of
March, 2008, he/she served:

APPELLANT'S BRIEF AND APPENDIX

in the above entitled case upon the following named individual by mailing to them two (2) copies
thereof, enclosed in an envelope, postage prepaid, and by depositing same with the United States
Mail in the county of Swift, State of Minnesota.

Amy J. Doll, Attorney at Law
Fluegel, Helseth, McLaughlin, Anderson & Brutlag, Chartered
215 Atlantic Plaza
P O Box 527
Morris, MN 56267



Anita L. Lindgren
(SIGNATURE)

Sherry Bartosh
SIGNATURE OF NOTARY PUBLIC

(OR OTHER TITLE RANK)

Subscribed and sworn to before me
This 20th day of March,
20 08.