

State Of Minnesota
In Court Of Appeals

No. A08-0279

Glacial Plains Cooperative,

Respondent,

vs.

Gerald Wayne Lindgren,

Appellant,

RESPONDENT'S BRIEF

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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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LEGAL ISSUES

In Appellant's Statement of the Case, the following errors and issues are presented on appeal: (1) "the conclusion that Appellant is a 'merchant'"; (2) "the a formal written contract is a 'confirmatory contract' or document"; (3) "that the alleged 'confirmatory' documents did not 'materially' alter the alleged agreement"; (4) "can the Appellant (a farmer) be held to 'merchant' status without disclosure or notice thereof"; (5) "can the Appellant be held liable for the ex parte unnoticed policies and undisclosed actions of the Plaintiff"; (6) "others if deemed appropriate." In his legal brief, Appellant appears to argue three issues: (1) the court erred in failing to remove the alleged contracts from the application of Minn. Stat. §336.2-201; (2) the court erred in declaring Appellant a merchant; and (3) the court erred in concluding the contracts sent to Appellant were confirmatory memoranda. Finally, Appellant's "conclusion" indicates the court erred in concluding: (1) there were no disputes as to genuine issues of material fact; (2) Appellant is a merchant; and (3) four contracts existed between the parties. In an attempt to clarify the issues on appeal, Respondent will discuss the following issues, which appear to incorporate all matters raised by Appellant:

- (1) Did the trial court err in concluding the parties had entered into two enforceable contracts?
- (2) Did the trial court err in determining Appellant Lindgren was a "merchant" as defined by the Uniform Commercial Code?

STATEMENT OF FACTS

Appellant Lindgren did not dispute the following facts, contained within the record:

Appellant Lindgren grew up on a dairy and crop farm of approximately 260 acres [A-94-95¹]. He attended the University of Minnesota in St. Paul for agricultural schooling for a few years in the early 1960's [A-93]. In approximately 1967, he began crop farming in Cambridge, Minnesota, with his brother [A-94]. He resumed his agricultural schooling in approximately the winter of 1968 and continued either part-time or full-time for the next few years [A-94-95]. In addition to agricultural courses, he took some general business courses [A-95-96].

Lindgren's entire career consisted of farming [A-97]. He made all the marketing decisions for his farm [Id.; A-184]. Although he had four sons who helped him with farming (ages 16, 18, 21, and 23), they did not make any of the farming decisions for him [A-186-187]. His wife did not make any farming decisions for him [A-157; A-184]. He has never had assistance in making farming decisions, but relied instead upon his own experience [A-97].

Lindgren initially rented and owned cropland, where he grew corn, soybeans and wheat [A-100-101]. He stopped renting land sometime in the 1990's [A-101]. Since that time, he grew corn and soybeans on 836 acres that he owned [A-100-101]. He had the

¹ Appendix pages A-1 through A-39 are contained within the Appendix filed by Appellant Gerald Lindgren; Appendix pages A-40 through A-227 are contained within the Appendix filed by Respondent.

capacity on his farm to hold approximately 60,000 bushels of grain in conventional storage (6 grain bins), and the ability to store an additional 100,000 bushels of grain in temporary storage [A-103-104; 147-148]. He preferred to always have his six grain storage bins full [A-105-106]. Of the available grain bin storage space, approximately 10,000 bushels would be soybeans, the remaining bins would hold corn [A-146-147].

Lindgren has sold grain to various grain elevators throughout the years including Cenex Harvest States, Cargill, United Farmers Elevator, and Respondent Glacial Plains [A-98-99; A-149-150; A-197-200]. Over the years Lindgren has entered into grain contracts with Harvest States, Cargill, and Glacial Plains [A-149-150; 66; A-197-200; A-201-204]. Cargill had a policy that required farmers to sign grain contracts at their facility before Cargill would consider the contracts valid [A-117; 150]. Lindgren recognized that to do business with Cargill, it was necessary to actually sign the contract, but Harvest States and Glacial Plains did not have the same policy [A-117; A-155; A-176]. By signing the Cargill contracts Lindgren represented and warranted that he was “a MERCHANT (as that term is used in the UCC) with respect to” corn (emphasis in the original) [A-197-200]. He further stated in an affidavit that he is a “professional producer of grain” [A-211]. Lindgren has been a grain farmer for forty years and has been aware of “Fixed Future Contracts,” “Basis only contracts,” and “Hedge to Arrive Contracts” for approximately 10 years [A-210].

The current litigation arose out of two of four contracts that Lindgren orally entered into with Glacial Plains on April 20, 2006 [A-2-4]. Lindgren admitted that he entered into the four contracts at that time, and that he had no dispute with the specific

terms [A-118-119; A-158-159]. His wife also confirmed that the contracts had been entered into in April. [A-187]. The following terms were subsequently set forth in confirmatory documents prepared by Glacial Plains and delivered to Lindgren²:

Contract 18346: Grain & Grade: #2 yellow corn
Net Bushels: 65,000
Price Per Bushel: \$2.09
Delivery Date (s): October/November 2006

Contract 18347: Grain & Grade: #1 yellow soybeans
Net Bushels: 9,000
Price Per Bushel: \$5.35
Delivery Date (s): LH Sept/Oct 2006

Contract 18348: Grain & Grade: #1 yellow soybeans
Net Bushels: 10,000
Price Per Bushel: \$5.35
Delivery Date (s): LH Sept/Oct 2006

Hedge to Arrive: Commodity: #2 Yellow Corn
Price: \$2.86 \$/bushel
Futures Month: December 2007
Quantity: 30,000 bushels
Delivery: October 1 - Dec 31, 2007

[A-155-160; Ex A-24-27]. In addition, the confirmatory documents provided that “in the event of default of seller in seller’s performance of this contract, seller agrees to pay all costs of buyer’s enforcement of this contract, including, but not limited to, reasonable attorneys fees and court costs” [A-24, A-26-27].

² The two contracts at issue will be referred to individually as “Delivery Contract,” evidenced by confirmatory document “Contract 18346”(A-24) and “Hedge to Arrive Contract” (A-25). Contracts 18347 (A-26) and 18348 (A-27) were fully performed and are not at issue in this litigation.

Lindgren admitted that he received copies of the confirmatory documents in the mail, but did not actually see the documents until he and his wife searched for them and found the unopened envelope in October 2006, at a time after he had already delivered some bushels of corn under the Delivery Contract [A158-159; A-189]. In reviewing the documents at that time, Lindgren agreed with all of the general terms of sale, but was upset with some of the generic form terms that were included [A-158-159]. However, the four confirmatory documents (Delivery Contract, 18347, 18348, and Hedge to Arrive) were identical to numerous grain contracts he had previously entered into and performed on throughout the years [A-170-171; A-192-193; see also examples, United Farmers Elevator 2000 contract no. 8780 (A-197); UFE 2001 contract numbers 9635, 9452, 9451 (A-198-200); and Glacial Plains September 2005 contracts 17402, 17403, 17404 and 17250 (A-201-204)]. Lindgren alleges he never read the terms of any of the prior contracts, yet admits he fully performed on each prior contract with the exception of a 1995 breached contract [A-171-172].

In June 2006, Lindgren became concerned with his crop potential because of an ongoing drought [A-120]. He therefore met with Keith Bebler, Respondent's Merchandising Manager, in an effort to "settle" or "get out of" the corn contracts [A-120-121; A-212]. Lindgren wanted the corn contracts nullified that day, and did not feel that he had Bebler's full attention because of constant phone interruptions [A-121-124]. According to Lindgren, Bebler stated that Glacial Plains wanted the corn but Lindgren kept insisting that he wanted to bail on the contracts [Id.]. Bebler eventually offered to buy him out at the price of \$0.37 per bushel [Id.]. Lindgren believed this offer was

ridiculous and rejected it [A-125-126]. Although Lindgren had the ability to deliver corn that was in storage to satisfy the contracts, he rejected this option because of Bebler's "belligerence" [A-122].

Lindgren allegedly called Bebler once in July and once in August, expressing his concern that he might lose his crop because of drought [A-127; A-132-133]. Both times, Bebler told Lindgren that Glacial Plains wanted the corn delivered [Id.]. The actual delivery date for the 65,000 bushels of corn in the Delivery Contract was October through November, 2006 [A-24]. In late August 2006, Lindgren's acres received enough rain that he was able to discontinue further irrigation [A-138]. Nonetheless, Lindgren continued to contact Glacial Plains to try to get out of, or "nullify", the contracts due to the drought [A-137-138; A-162-163; A-213].

Lindgren eventually realized a decent corn harvest, bringing in an average of 125 to 150 bushels per acre on the irrigated land, with a slightly lower yield in one field where an irrigator had been down for 6 days [A-129-130; A-139]. In total, he harvested between 50,000 and 60,000 bushels of corn during the 2006 harvest season [A-141-142]. Of the harvested corn, Lindgren delivered 724.68 bushels to Glacial Plains West Benson facility in September and October 2006, which was all applied without objection to the Delivery Contract [A-172; A-225-226]. At the time that Lindgren delivered the corn to Glacial Plains, he believed the Delivery Contract was valid and he had to perform [A-176]. In October, Lindgren found the confirmatory documents that had been sent to him in the mail [A-158]. At that time, he realized he had not signed the documents and believed the contracts would therefore be unenforceable [A-158]. The only reason he

subsequently disputed the enforceability of the contracts was because he did not sign the confirmatory documents [A-119-120; A-165-167; A-188]. Lindgren testified:

Q: Obviously I never entered into a contract because a contract was never signed.

Q: And it's your belief that unless the document is signed, it's not a valid contract?

A: Correct.

[A-165].

Q: so the only reason that you are disputing this contract is because you did not sign it?

A: No. The truth of the matter is -- Yes, of course. But I mean the reality is I had been harassing these people all summer discussing this issue of the drought and being treated in a, you know, rather unreasonable fashion. I mean, like after I talked to Keith about it in June, sometime later, I called Lowell Nelson who is an attorney, runs a lot of land. And I -- I'm discussing this 37 cent issue with him, and his sentiments were exactly as mine. He had never heard of anything so ridiculous. He said that is absolutely outrageous. So here's a man who deals with a lot of farmers telling me exactly what I thought. I thought it was ridiculous. He thought it was ridiculous. He said, "I've never heard of anything so ridiculous." So I had -- I have never been involved in this before. So I thought I have never entered into a contract where I thought this -- these production problems are so serious, I better try to negotiate my way out of this contract. So I didn't actually know, and I became even more concerned when I found out -- See, I went in here that day; and the price of corn was down at 1.99 in June. And I have this alleged contract at 2.09. And the guy wants -- and I know -- Understanding the basis in December, the basis would have been probably cents. And in that time of the year, it would have been 30 cents probably. I don't know what it was. So subsequently you got 37 cents; you got the 10 cents; and then you probably got another possibly pretty reasonable to expect 20 cents. That's a lot of money.

Q: Was it clear that all he was asking was the 37 cents and not everything else?

A: He was asking for the 37 cents.

Q: Okay. All right. And so eventually you made it clear to them that you were not going to recognize these alleged contracts?

A: Yeah.

Q: Okay. And any other reason other than what we've just talked about for your reason for not -- for deciding that you were not going to recognize these alleged contracts?

A: The main reason is of course that they weren't -- there was no signatures.

[A-167-168].

Instead of delivering the 2006 corn to Glacial Plains to satisfy the Delivery Contract, Lindgren sold it to Cargill in November and December, 2006 [A-141-143]. He also sold all of his stored corn (approximately 62,000 bushel) to Cargill in 2006 [A-142]. Lindgren refused to deliver the outstanding 64,275.32 bushels on the Delivery Contract because he was mad at Glacial Plains for the way he was treated over the summer when he tried to get out of the contracts [A-122; A-164].

Despite the fact that his soybean yield was substantially lower than expected, Lindgren fully performed on both Glacial Plains contracts 18347 (9,000 bushels of soybeans) and 18248 (10,000 bushels soybeans) that had been entered into at the same time as the corn contracts [A-143-144]. Some of the soybeans to fulfill these contracts came from storage [A-146]. In 2006, soybean prices at harvest time were lower than Lindgren's contract price [A-226-227]. Corn prices, however, had risen above his contract price and kept moving substantially higher [Id.].

Prior to 2006, there was one occasion where Lindgren did not fulfill a grain contract [A-109-110]. In 1995, Lindgren entered into a hedge-to-arrive contract with Cenex Harvest States [Id.]. When the time arrived to deliver corn under the contract, the market had fallen such that he was going to receive very low compensation for his corn [Id.]. He therefore refused to deliver [Id.]. Cenex brought an action against Lindgren

alleging damages in excess of \$200,000 for breach of contract (actual contract price of \$128,000) for refusing to deliver grain [Id.; A-217-218] Lindgren eventually settled with Cenex. [Id.].

Lindgren has admitted that he entered into the subject contracts with Glacial Plains on April 20, 2006 [A-205; A-56, A-61 “ . . . it appears that an ‘oral’ agreement was made on 20 April 2006, that Gerald Lindgren upon delivery of 65,000 bushels of #2 yellow corn would be paid \$2.09. There are no allegations or indications to the contrary”; A-68 “the only admitted agreement between both parties were the ‘specific terms’, i.e. ‘oral’ agreement and/or ‘oral’ contract, which are the following . . .”]. Despite this admission, he has refused to fulfill his obligation to Glacial Plains.

STANDARD ON REVIEW

The district court must render summary judgment:

if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law.

Minn.R.Civ.P. 56.03. “‘Summary judgement is a fully appropriate procedural vehicle’ for a court to use when applying statutory language to the undisputed facts of a case.” *Wallin v. Letourneau*, 534 N.W.2d 712, 715 (Minn. 1995) (citing *A.J. Chromy Constr. Co. v. Commercial Mechanical Servs., Inc.*, 260 N.W.2d 579, 581 (Minn. 1977)). “On appeal from a summary judgment, this court must ask two questions: (1) whether there are any genuine issues of material fact in dispute; and (2) whether the district court erred in applying the law.” *River Valley Truck Center, Inc. v. Interstate Comp., Inc.*, 680 N.W.2d 99, 103 (Minn. App. 2004) (citing *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990)). In opposing summary judgment, Appellant did not argue to the trial court below that there were material issues of fact in dispute. Appellant did not dispute any of the material facts alleged by Respondent below, and has not presented any evidence that material facts were in dispute. The trial court correctly applied the law to the undisputed facts and its decision should be affirmed.

ARGUMENT

1. The trial court did not err in concluding that the parties entered into two enforceable contracts.

To prevail in a breach of contract action, “plaintiff must show that a contract has been formed.” *Cargill Inc. v. Jorgenson Farms*, 719 N.W.2d 226, 232 (Minn. App. 2006) “Whether a contract exists is generally a question of fact.” *Id.* (citing *Gresser v. Hotzler*, 604 N.W.2d 379, 382 (Minn. App. 2000)). “A contract for sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract.” M.S.A. §336.2-204(1). Although a contract for the sale of goods over \$500 normally must be in writing to be enforceable, a contract that is not in writing may nonetheless be enforced against a party that “admits in pleading, testimony or otherwise in court that a contract for sale was made.” M.S.A. § 336.2-201(3)(b).

The undisputed facts confirm that Appellant Lindgren entered into oral contracts with Glacial Plains on April 20, 2006. He has admitted as much in depositions and pleadings. Specifically:

- “it appears that an ‘oral’ agreement was made on 20 April 2006, that Gerald Lindgren upon delivery of 65,000 bushels of #2 yellow corn would be paid \$2.09. There are no allegations or indications to the contrary” (Defendant’s Memorandum in Opposition of Plaintiff’s Motion for Summary Judgment, A-56, A-61).
- “the only admitted agreement between both parties were the ‘specific terms’, i.e. ‘oral’ agreement and/or ‘oral’ contract . . .” (Defendant’s Memorandum in Opposition of Plaintiff’s Motion for Summary Judgment, A-68).
- Lindgren admitted that he entered into the four contracts in April, and that he had no dispute with the specific terms. A-118-119; A-158-162.

- Lindgren's wife confirmed that the contracts had been entered into in April. A-187.
- Lindgren partially delivered on the Delivery Contract in September and October 2006, recognizing that the contract was valid and he had to perform. A-176.

The undisputed facts before the trial court verified Lindgren's repeated admission that he entered into a total of four contracts on April 20, 2006. Lindgren has never denied on the record that he entered into those four contracts, though he subsequently refused to deliver on two of those contracts. Lindgren's confusion before this court and the court below is with the terms that existed in the contract "documents" that were sent to him to confirm the April 20, 2006, agreement. Lindgren has not presented any legal argument to now void the four contracts that were orally agreed to on April 20, 2006. The trial court did not err in its conclusion of law that Lindgren entered into the two breached contracts with Glacial Plains. Additionally, even without his admission of entering into the contracts, Lindgren is bound by the terms of the written confirmatory contracts pursuant to the Uniform Commercial Code.

2. The trial court did not err in concluding Appellant Lindgren was a "merchant" as defined by the Uniform Commercial Code.

Pursuant to the Uniform Commercial Code, an oral contract for more than \$500 is enforceable "(b)etween 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." M.S.A. §336.2-201(2). *See also Cargill Inc.*, 719 N.W.2d 226. A party who receives written confirmation pursuant to M.S.A. §336.2-201(2) cannot assert a statute of fraud defense unless that party objects in writing to the confirmatory

document “within ten days after it is received.” *Id.*.

For purposes of commercial transactions, “[b]etween merchants’ means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants.” M.S.A. §336.2-104(3). The UCC defines “merchant” as “a person who deals in goods of the kind or otherwise by occupation holds out as having knowledge or skill peculiar to the practices or goods involved in the transaction” M.S.A. §336.2-104(1). “The term merchant denotes a business professional as opposed to a casual or inexperienced seller or buyer.” *Marvin Lumber and Cedar Co. v. Johnson*, 733 F.Supp. 1302, 1305 (D. Minn. 1990) (citing M.S.A. §336.2-104, Minnesota and UCC Comment; *Armco, Inc. v. New Horizons Dev. Co. of Va.*, 229 Va. 561, 331 S.E.2d 456 (1985)). Farmers that enter into grain contracts, including hedge to arrive contracts, have been found by Minnesota courts to be merchants that deal in goods of a kind for purposes of the UCC. See *In Re Grain Land Co-op*, 978 F.Supp. 1267, 1279 (D. Minn. 1997), and *Thofson v. Redex Indus., Inc.*, 433 N.W.2d 901 (Minn. App. 1988)(farmers are merchants under the UCC).

No specific form is required to meet the merchant’s exception to M.S.A. §336.2-201(1). See *Melford Olsen Honey, Inc. v. Adee*, 452 F.3d 956 (8th Cir. (Minn.) 2006). Rather, the writing must be “sufficient to indicate a contract.” *W.H. Barber Co. v. McNamara-Vivant Contracting Co., Inc.*, 293 N.W.2d 351, 356 (Minn. 1979). “To be ‘sufficient against the sender’ a writing in confirmation of an oral contract must evidence a contract, be signed by the sender and specify a quantity.” *Marvin Lumber and Cedar Co.*, 733 F.Supp. at 1306 (Citing M.S.A. §336.2-201, subd. 1; *Purdue Farms, Inc. v.*

Mott's Inc. of Mississippi, 459 F.Supp. 7, 19 (N.D.Miss.1978)); see also *Melford Olsen Honey, Inc.*, 452 F.3d at 962 (purchase order sent to seller satisfied the merchant exception to statute of frauds).

The facts of this situation are very similar to *Hunting Elevator Co. v. Biwer*, 1998 WL 747170 (Minn. App.)(A-228). Although unpublished cases do not hold precedential value, they can be instructive. In *Hunting Elevator*, the producer entered into two hedge-to-arrive contracts with the grain elevator. When the producer asked to defer delivery, and the buyer refused, the producer sold his grain to another elevator. The district court granted summary judgment to the buyer finding that the producer had breached the contract by not delivering. Although the producer tried to argue he was not a merchant, the court correctly concluded that the “producer acted as a merchant in selling his grain products to the grain elevator.” *Id.* at 3.

Gerald Lindgren admitted during his deposition that on April 20, 2006, the parties entered into the Delivery Contract and the Hedge to Arrive Contract. Thus, on this evidence alone, the statute of frauds is defeated. Further, Gerald Lindgren is a merchant who deals in goods of a kind. As a farmer who regularly deals in grain, under Minnesota law, Lindgren is considered a merchant for purposes of the UCC.

In denying his status as a merchant, Lindgren relies almost exclusively upon foreign case law. While such case law may be instructive, where Minnesota has already ruled on the issue there is no reason to analyze law from other states. Lindgren asserts that the lower court has “cited no authority” for finding he is a merchant. @ 11. This assertion is incorrect. See Court Order @ 8. Furthermore, the law is clear in Minnesota

that a farmer can be a merchant. See *In Re Grain Land Co-op*, 978 F.Supp. at 1279, and *Thofson*, 433 N.W.2d 901 (farmers are merchants under the UCC). In those cases where Minnesota courts have determined a farmer is not a merchant for UCC purposes, the unique facts of the cases have compelled the result, but those cases are also clearly distinguishable from the case at bar. See *ex. Holden Farms, Inc. v. Hog Slat, Inc.*, 347 F.3d 1055 (8th Cir. 2003) (farmer who specialized in raising hogs was a consumer, as opposed to a merchant, with respect to the purchase and building of a hog nursery).

Nonetheless, a careful analysis of the cases cited by Lindgren reveals that they do not support his position. Lindgren cites to *Colorado-Kansas Grain Co. v. Reifschneider*, 817 P.2d 637 (Colo. App. 1991), where the court found that a farmer was a merchant. Lindgren, though initially agreeing that the *Reifschneider* case was “somewhat similar to this case,” ultimately concludes it is not applicable because:

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.

Id. at 12. In fact, the opposite is true. The record is full of evidence indicating Lindgren did have expertise in not only growing, but also marketing his crops:

- Lindgren attended the University of Minnesota in St. Paul for agricultural schooling for a few years in the early 1960’s. He resumed his agricultural schooling in approximately the winter of 1968 and continued either part-time or full-time for the next few years. In addition to agricultural courses, he took some general business courses.
- Lindgren’s entire 40+ year career has consisted of grain farming. He makes all the marketing decisions for his farm. Although he has four sons who help him with farming (ages 16, 18, 21, and 23), they do not make any of the farm decisions for him. His wife does not make any farm decisions for him. He has

never had assistance in making farming decisions, but relies instead upon his own knowledge, experience and expertise.

- At one time Lindgren farmed in excess of 836 acres and for the past ten or more years has farmed 836 acres. When the market is right, he may wait for over a year before selling any of his grain [A-102].
- Lindgren has sold grain to various grain elevators throughout the years including Cenex Harvest States, Cargill, United Farmers Elevator, and Defendant Glacial Plains. Over the years Lindgren has entered into grain contracts with Harvest States, Cargill, and Glacial Plains. He has been aware of “Fixed Future Contracts,” “Basis only contracts,” and “Hedge to Arrive Contracts” for approximately 10 years.
- By signing grain contracts in the past, Lindgren has represented and warranted that he was “a MERCHANT (as that term is used in the UCC) with respect to” corn. (Emphasis in the original). He further stated in his affidavit that he is a “professional producer of grain.”

Clearly, by his own admissions as well as his actions throughout the years, Lindgren has held himself out as a merchant of grain even if he has not used the specific word “merchant.”

Lindgren further relies upon *Terminal Grain Corp. v. Freeman*, 270 N.W.2d 806 (SD 1978) to distinguish himself from a “merchant.”. While it is true that the South Dakota Supreme Court concluded in that case that the farmer was not a merchant, those facts are distinguishable from the present case. Freeman was a farmer who raised and sold wheat, but only sold the wheat to a local elevator on a cash basis. The court concluded he had no knowledge of future transactions and could not be considered a merchant as to such matters. In contrast, Lindgren attended school for farming, studied business courses, has sold grain on contract for many years, has done his own marketing, has shopped around for the elevator he intended to sell to, and has even been the subject of prior litigation involving his refusal to deliver under a contract. His status as a

merchant is confirmed by his extensive experience and knowledge well beyond simply selling grain on a crop basis to a local elevator.

The facts of this case are more comparable to *Bennett v. Jansma*, 329 N.W.2d 134 (S.D. 1983), a South Dakota Supreme Court case also cited by Appellant, wherein the court concluded a farmer - an individual raising cattle - was a merchant for UCC purposes (distinguishing the facts from the farmer involved in *Terminal Grain Corp.*):

A merchant is defined by SDCL 57A-2-104(1) as a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill. We note that "courts which have considered whether or not a 'farmer' is or may be considered a 'merchant' under the above Uniform Commercial Code provisions are almost equally divided in their opinions." *Terminal Grain Corp. v. Freeman*, 270 N.W.2d 806, 811 (S.D.1978). In *Terminal Grain Corp.*, supra, we held that a farmer with no particular knowledge or experience in dealing in future commodity transactions and who sold only the crops he raised to local elevators for cash or placed his grain in storage under a federal loan program, is not a merchant. In contrast, Jansma regularly deals in the buying and selling of cattle. Jansma also holds himself out as having knowledge or skill peculiar to cattle transactions and further, employed an intermediary, Auctioneer, "who by his occupation holds himself out as having such knowledge or skill." SDCL 57A-2-104(1). Consequently, Jansma is a merchant and an implied warranty of merchantability arose from the sale of these cattle.

Id. at 136. Similarly, where Lindgren has held himself out as having knowledge or skill peculiar to grain farming, he is a merchant with regard to transactions involving the sale of grain.

Finally, Appellant has relied upon one Minnesota case to support his view that the confirmatory documents at issue were not enforceable because they were not signed. His

reliance is misplaced. In *Cargill, Inc. v Jorgenson Farms*, 719 N.W.2d 226, Cargill attempted to enforce the terms of a written document that had been sent to Jorgenson Farms but was not signed or returned by Jorgenson Farms. Critical to the court's conclusion that the contract was not enforceable was the fact that both parties denied the existence of an oral agreement. In fact, an agent of Cargill admitted that the confirmatory document sent to Jorgenson Farms was a clerical error. In the case at bar, both parties have clearly admitted the existence of the underlying oral agreements.

On April 20, 2006, Lindgren and Glacial Plains Cooperative entered into four oral contracts. After entering into the contracts, Glacial Plains mailed four confirmatory documents to Lindgren. Lindgren received the documents and did not object in writing. The statute of frauds does not apply.

As to the enforceability of the subject contracts, there are no genuine issues of material fact. The contracts evidenced by the four confirmatory documents were identical to the many contracts Lindgren had entered into and performed on in the past. Lindgren does not dispute that he entered into the subject contracts in April, rather, he alleges he attempted to *void* the contracts when he was concerned that his crops might fail. When Glacial Plains did not cooperate in this regard, Lindgren became upset and ultimately decided not to deliver on two of the four contracts. When the decision was made not to deliver, Lindgren then investigated the contracts and concluded he did not have to perform because he had never signed the confirmatory documents. There is no legal support for this position. The parties entered into valid and enforceable contracts which

Appellant Lindgren then breached. The trial court did not err in granting summary judgment to Respondent Glacial Plains.

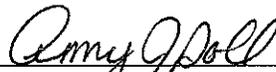
CONCLUSION

Appellant has failed to present any legal or factual arguments to support its request for a reversal of the trial court's opinion. The Order of the trial court for Summary Judgment should be affirmed.

RESPECTFULLY SUBMITTED,

Dated Apr. 18, 2008

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