

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

THE POTATO KING, INC.,
VIKING PRODUCE, INC.,
WHOLESALE PRODUCE SUPPLY CO.,
W.A. WHITE BROKERAGE CO.,
KELLOGG COMPANY FOOD BROKERS and
OKRAY FAMILY FARMS, INC.,

Plaintiffs,

v.

BENSON'S WHOLESALE FRUIT, INC.,
DAVID A. ROALKVAM, RHONDA
ROALKVAM, ROYAL BANCSHARES, INC.
and ROYAL BANK,

Defendants.

OPINION AND
ORDER

03-C-552-C

In this civil action for declaratory, injunctive and monetary relief, plaintiffs The Potato King, Inc., Viking Produce, Inc., Wholesale Produce Supply Co., W.A. White Brokerage Co., Kellogg Company Food Brokers and Okray Family Farms, Inc. are suing defendants Benson's Wholesale Fruit, Inc., David Roalkvam, Rhonda Roalkvam, Royal Bancshares, Inc. and Royal Bank for breach of contract and violation of the Perishable Agricultural Commodities Act of 1930, 7 U.S.C. § 499a et seq. Plaintiffs argue that they

incurred damages when defendants failed to maintain and use trust funds as required under the Act. Jurisdiction is present. 28 U.S.C. § 1331.

Presently before the court is plaintiffs' motion for partial summary judgment against defendant Benson's Wholesale Fruit, Inc. for failure to pay promptly and maintain trust assets and breach of contract and against defendants David and Rhonda Roalkvam for breach of fiduciary duty. Plaintiffs seek \$185,760.54 from defendants. Defendants have not submitted any response to plaintiffs' motion for summary judgment against them. On February 4, 2004, I entered a final default judgment against defendant Benson's Wholesale Fruit, Inc., ordering defendant to pay plaintiffs \$153,101.54 plus pre-judgment and post-judgment interest and costs and disbursements of this action, totaling \$164,641.95. The default judgment did not include the amount owed to plaintiff Okray Family Farms, Inc. Because I have entered final judgment against defendant Benson's Wholesale Fruit, Inc., I will deny plaintiffs' motion for partial summary judgment with respect to defendant Bensons' as moot as it applies to plaintiffs The Potato King, Inc., Viking Produce, Inc., Wholesale Produce Supply Co., W.A. White Brokerage Co. and Kellogg Company Food Brokers. However, I will grant the motion as it applies to plaintiff Okray Family Farms, Inc.

In addition, plaintiffs argue that because defendants David and Rhonda Roalkvam are officers and shareholders of defendant Benson's Wholesale Fruit, Inc., they are liable to plaintiffs for breach of trust under the Act. Because the Act permits recovery against both

the corporation and its controlling officers and because plaintiffs have shown they are entitled to judgment as a matter of law, I will grant plaintiffs' motion for summary judgment against defendants David and Rhonda Roalkvam.

From the plaintiffs' proposed findings of fact and the record, I find the following facts to be material and undisputed.

UNDISPUTED FACTS

A. The Parties

Plaintiff The Potato King, Inc. is a Wisconsin corporation with its principal place of business in La Crosse, Wisconsin. Plaintiff Viking Produce, Inc. is a Minnesota corporation with its principal place of business in Minneapolis, Minnesota. Plaintiff W.A. White Brokerage Co., is a Minnesota corporation with its principal place of business in Maiden Rock, Wisconsin. Plaintiff Wholesale Produce Supply Co. is a Minnesota corporation with its principal place of business in Minneapolis, Minnesota. Plaintiff Kellogg Company Food Brokers is a Minnesota corporation with its principal place of business in Mound, Minnesota. Plaintiff Okray Family Farms, Inc. is a Wisconsin corporation with its principal place of business in Plover, Wisconsin. All plaintiffs are engaged in the business of buying and selling wholesale quantities of perishable agricultural commodities in interstate commerce.

Defendant Benson's Wholesale Fruit, Inc. distributes wholesale fresh produce and is a Wisconsin corporation with its principal place of business in Elroy, Wisconsin. Defendants David A. Roalkvam and Rhonda Roalkvam are officers of defendant Benson's. Defendants David and Rhonda Roalkvam purchased Benson's in 1991 and each owns 50% of the company's outstanding stock. In addition, they own the building where defendant Benson's is located and leased it to defendant Benson's until May 2003. Defendant Benson's paid the lease payments to David and Rhonda Roalkvam, who deposited those payments into their personal checking account.

B. Plaintiffs' Relationship with Defendants

Plaintiffs The Potato King, Viking Produce, W.A. White, Wholesale Produce and Kellogg Company entered into contracts with defendant Benson's under which plaintiffs agreed to sell produce and Benson's agreed to purchase that produce. Although plaintiffs sold Benson's \$185,760.54 in produce, defendant Benson's failed to pay the contracts. Defendant Benson's owes the following amounts to plaintiffs: 1) \$17,895.47 to plaintiff The Potato King; 2) \$8,843.79 to plaintiff Viking Produce; 3) \$78,042.85 to plaintiff W.A. White; 4) \$41,086.80 to plaintiff Wholesale Produce; 5) \$7,232.63 to plaintiff Kellogg Company; and 6) \$32,659.00 to plaintiff Okray Family Farms.

C. Violations under the Perishable Agricultural Commodities Act of 1930

When plaintiffs sold produce to defendant Benson's, plaintiffs became beneficiaries of a trust pursuant to the Perishable Agricultural Commodities Act. The trust assets consist of all defendant Benson's produce or produce-related assets, including all funds commingled with funds from other sources and all assets procured by such funds in the possession or control of Benson's since the creation of the trust. Benson's failed to maintain sufficient trust assets to fully satisfy all qualified trust claims under the Act, such as plaintiffs' unpaid claims asserted in this action. Therefore, defendant Benson's breached its fiduciary duty to maintain sufficient trust assets to pay all trust claims under the Act. Benson's is in possession, custody and control of the trust assets for the benefit of plaintiffs and other similarly situated trust beneficiaries.

Defendants David and Rhonda Roalkvam are the only people in a position to control the trust assets of Benson's. Defendants David and Rhonda Roalkvam failed to maintain the trust fund, as required under the Act and they permitted assets subject to the trust fund to be transferred to third parties such as defendant Royal Bank and used for payroll, insurance and other bills. There was never a period when all of Benson's produce debt was paid in full.

Plaintiffs gave written notices of their intent to preserve trust benefits to Benson's in accordance with the Act's amendments of 1995 by including the statutory trust language,

as set forth in 7 U.S.C. § 4999e(c)(4), on each of their invoices and by sending those invoices to Benson's. Plaintiffs are "creditors," "suppliers" and "sellers" of produce under the Act. Defendants have no reason to dispute the validity of plaintiffs' claims under the Act and are aware of no facts that void plaintiffs' trust rights under the Act.

OPINION

On February 4, 2004, I entered a default judgment against defendant Benson's, ordering it to pay plaintiffs \$153,101.54, plus pre-judgment interest in the amount of \$7,618.07 plus \$469.00 in costs, for a total award of \$164,641.95, plus post-judgment interest. Defendant Benson's owed this amount pursuant to the agreements that it had with plaintiffs The Potato King, W.A. White, Wholesale Produce, The Kellogg Company and Viking Produce. The amount owed to plaintiff Okray Family Farms, Inc. was not included in the default judgment. Now plaintiffs, including plaintiff Okray Family Farms, Inc., move for partial summary judgment against defendant Benson's and defendants David and Rhonda Roalkvam. The undisputed facts that support plaintiffs' motion for partial summary judgment show that defendant Benson's owes plaintiffs a total of \$185,760.54. The discrepancy in the amounts owed to plaintiffs under the default judgment and the motion for partial summary judgment is the result of adding the amount defendant Benson's owes to plaintiff Okray Family Farms, Inc., \$32,659.00, to the total award sought (\$153,101.51

plus \$32,659.00 equals \$185,760.54). In addition, I understand that plaintiffs are moving for partial summary judgment against defendants David and Rhonda Roalkvam to secure a secondary source of payment for its unpaid claims under the Perishable Agricultural Commodities Act.

7 U.S.C. § 499e(c)(2) provides in pertinent part that all “[p]erishable agricultural commodities received by a . . . dealer . . . and any receivables or proceeds from the sale of such commodities . . . shall be held by such . . . dealer . . . in trust for the benefit of all unpaid suppliers or sellers of such commodities . . . until full payment of the sums owing in connection with such transactions has been received.” Thus, when a dealer receives perishable agricultural commodities from a seller, a trust is created in favor of that unpaid seller. 7 U.S.C. § 499e(c)(2). This trust remains in effect until the seller receives full payment for the perishable agricultural commodities. Id. The Act defines “dealer” as “any person engaged in the business of buying or selling in wholesale or jobbing quantities . . . any perishable agricultural commodity in interstate or foreign commerce . . .” 7 U.S.C. § 499a(b)(6).

Defendants Benson’s Wholesale Fruit, Inc. and David and Rhonda Roalkvam do not oppose plaintiffs’ motion for partial summary judgment. However, because I entered a default judgment against defendant Benson’s Wholesale Fruit, Inc. on February 4, 2004, I will deny plaintiffs’ motion against defendant Benson’s as moot to the extent that the

motion applies to plaintiffs The Potato King, W.A. White, Wholesale Produce, The Kellogg Company and Viking Produce. Because plaintiff Okray Family Farms, Inc. was not included in the default judgment and because it is undisputed that defendant Benson's owes this plaintiff \$32,659.00, I will grant plaintiffs' motion for partial summary judgment against defendant Benson's Wholesale Fruit, Inc. only as it applies to the amount owed to plaintiff Okray Family Farms, Inc.

As to plaintiffs' motion against defendants David and Rhonda Roalkvam, it is undisputed that defendant Benson's is a distributor of wholesale fresh produce and that defendants David and Rhonda Roalkvam own defendant Benson's entirely. Furthermore, it is undisputed that defendants David and Rhonda Roalkvam failed to maintain the trust fund, as required under the Act, by permitting assets subject to the trust fund to be transferred to third parties such as defendant Royal Bank and used for payroll, insurance and other bills. Plaintiffs are beneficiaries of the trust assets and have rights under the Act to those assets. Trust rights under the Act "may be enforced either through a reparation order issued by the Secretary of Agriculture and subsequent judicial enforcement, 7 U.S.C. § 499f & g, or through a court action for breach of fiduciary trust, 7 U.S.C. § 499e(c)(5)." Patterson Frozen Foods v. Crown Foods International, 307 F.3d 666, 669 (7th Cir. 2002). "The latter remedy permits recovery against both the corporation and its controlling officers." Id.

Because it is undisputed that defendants David and Rhonda Roalkvam are controlling officers of defendant Benson's, which breached its fiduciary duty to maintain sufficient trust assets to pay all trust claims under the Act, I will grant plaintiffs' motion for partial summary judgment against defendants David A. Roalkvam and Rhonda Roalkvam. Defendants David and Rhonda Roalkvam are liable to plaintiffs' unpaid claims under the Act, totaling \$185,760.54 and owed to the plaintiffs as follows: 1) \$17,895.47 to plaintiff The Potato King; 2) \$8,843.79 to plaintiff Viking Produce; 3) \$78,042.85 to plaintiff W.A. White; 4) \$41,086.80 to plaintiff Wholesale Produce; 5) \$7,232.63 to plaintiff Kellogg Company; and 6) \$32,659.00 to plaintiff Okray Family Farms.

ORDER

IT IS ORDERED that

1. The motion for partial summary judgment by plaintiffs The Potato King, Inc., Viking Produce, Inc., Wholesale Produce Supply Co., W.A. White Brokerage Co. and Kellogg Company Food Brokers against defendant Benson's Wholesale Fruit, Inc. is DENIED as moot;

2. The motion for partial summary judgment by plaintiff Okray Family Farms, Inc. against defendant Benson's Wholesale Fruit, Inc. is GRANTED;

3. The motion for partial summary judgment by plaintiffs The Potato King, Inc.,

Viking Produce, Inc., Wholesale Produce Supply Co., W.A. White Brokerage Co., Kellogg Company Food Brokers and Okray Family Farms, Inc. against defendants David A. Roalkvam and Rhonda Roalkvam is GRANTED for breaching their fiduciary duty under the Perishable Agricultural Commodities Act of 1930;

4. Defendants David and Rhonda Roalkvam are liable to plaintiffs' unpaid claims under the Act, totaling \$185,760.54 and owed to the plaintiffs as follows: 1) \$17,895.47 to plaintiff The Potato King; 2) \$8,843.79 to plaintiff Viking Produce; 3) \$78,042.85 to plaintiff W.A. White; 4) \$41,086.80 to plaintiff Wholesale Produce; 5) \$7,232.63 to plaintiff Kellogg Company; and 6) \$32,659.00 to plaintiff Okray Family Farms.

Entered this 27th day of August, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge