IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
THIRTEENTH DIVISION

CARWELL ELEVATOR CO., INC., et al. — PLAINTIFFS

vs. CASE NO. OT-2000-758

TIMOTHY LEATHERS, et al. — DEFENDANTS

RICELAND FOODS, INC., individually and as representative for the class of rice buyers supporting statutory use of rice promotion funds — INTERVENOR COUNTERCLAIMANT CROSS-CLAIMANT

vs.

CARWELL ELEVATOR CO., INC. and POINSETT RICE & GRAIN, INC. — COUNTER-RESPONDENTS

and

TIMOTHY LEATHERS, Commissioner of Revenues for the State of Arkansas; JOHN ANDREWS, RANDY VEACH, RUSSELL SMITH, JOE RENNICKE, BRYAN MOERY, JON LAMBI, JERRY HOSKYN, MARVIN HARE, and GEORGE DUNKLIN, in their capacities as Directors of the ARKANSAS RICE RESEARCH AND PROMOTION BOARD — CROSS-RESPONDENTS

AMENDED COUNTERCLAIM AND CROSS-CLAIM FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

Intervenor, Riceland Foods, Inc. ("Riceland"), individually and as representative for the class of buyers of Arkansas rice at the first point of sale that support the continued use of rice promotion funds for the statutory purposes, by and through its attorneys, Perkins & Trotter, PLLC, and for its Amended Counterclaim and Cross-claim for Declaratory Judgment, states as follows:

currently in force and is constitutional. Under the 1999 Act, the purposes for which the rice assessment funds may be used is defined and restricted as follows:

> The proceeds of the assessment, less not more than three percent (3%) to cover the cost of collections, shall be deposited with the Treasurer of State in a special fund to be established for the Arkansas Rice Research and Promotion Board to the credit of the board. Disbursement shall be made only upon motions duly passed by the board and presented to the Treasurer of State and only for purposes prescribed in this subchapter.

Ark. Code Ann. § 2-20-507(c) (emphasis added). The "purposes prescribed in this subchapter" are for the Rice Board to "plan and conduct a program of research, extension, market development, and advertising designed to promote the rice industry in Arkansas." Ark. Code Ann. § 2-20-510(a).

7. Plaintiffs are representatives of a class of "first buyers" that are seeking refunds of fees collected under Act 344 of 1995. The requested refunds are substantial, approximately $1.2 million, and loss of those funds would have a significant negative impact on the Rice Board's ability to carry out its statutory mission.

8. The Rice Board has no funds from prior assessments pursuant to Act 344 of 1995. Therefore, there are no "rice buyer" assessment funds to use for refunds to the Plaintiff class except current and future assessments collected from rice buyers at the first point of sale pursuant to Act 16 of 1999, Ark. Code Ann. §§ 2-20-507 (Michie 2003). The use of current and future assessments to pay refunds to the Plaintiff class would prevent the Rice Board from conducting its programs for a significant period of time.

Count I. Illegal Exaction

9. All preceding paragraphs are incorporated herein by reference.

10. The use of assessments paid by Riceland and other buyers at the first point of sale to pay refunds to the Plaintiff class would violate the restrictions placed on use of the funds by the statute. Ark. Code Ann. §§ 2-20-507(c), -510(a).

11. The use of current rice buyer assessments for refunds, a purpose not allowed by statute, would constitute an illegal exaction in violation of Ark. Const. art. XVI, §§ 11 and 13, as a misapplication of public funds.

12. This Court should declare that any refunds to the Plaintiff class cannot be funded by future assessments collected from Riceland and the class of first buyers that support the rice research and promotion purposes of the Rice Board.

13. This Court should enjoin the Rice Board and the Commissioner of Revenues for the State of Arkansas from expending any funds from future assessments against Riceland and similarly situated "first buyers" for the purpose of refunds to the Plaintiff class members.

Count II. Unjust Enrichment

14. All preceding paragraphs are incorporated herein by reference.

15. The Plaintiff class members were "first buyers" of rice who benefited directly from the rice research and promotion activities conducted by the Rice Board and funded by assessments for which the Plaintiffs now seek a refund. It would be inequitable to refund the assessments because the Plaintiff class has enjoyed the benefits of the programs funded by the assessments.

16. The Plaintiff class members sustained no economic loss by paying the assessments under Act 344 of 1995, because they passed the economic burden of the assessments under that former Act along to the rice producers (farmers) by paying less for the rice purchased in an amount sufficient to account for the cost of the assessment. It would be inequitable to refund the assessments to the Plaintiff class that did not bear the economic burden of the assessments.

17. It would be inequitable for the Rice Board to provide refunds to the Plaintiff class from assessments to be paid now and in the future by Riceland and other rice buyers similarly

situated. Riceland and others similarly situated are innocent parties to any wrong that may have occurred when the Plaintiff class paid the assessments under Act 344 of 1995. It would, therefore, constitute unjust enrichment to take the assessments paid by Riceland and others similarly situated, as totally innocent parties, and pay them over in the form of refunds to the Plaintiff class.

18. This Court should declare that equity bars the Plaintiff class from obtaining refunds out of funds paid pursuant to the current and future assessments on Riceland and other rice buyers similarly situated. In the event this Court determines that Plaintiffs are entitled to refunds, the Court should enjoin the Rice Board and the Commissioner of Revenues for the State of Arkansas from expending any funds from current and future assessments against Riceland and similarly situated "first buyers" for that purpose under the doctrine of unjust enrichment.

WHEREFORE, Riceland Foods, Inc., individually and as representative for the class of buyers of Arkansas rice at the first point of sale that support the continued use of rice promotion funds for the statutory purposes, pray that this Court enter an order as follows:

(1) Declaring that paying refunds to the Plaintiff class would constitute unjust enrichment and is prohibited;

(2) Declaring that Ark. Code Ann. § 2-20-501 et seq. (Michie 2003) prohibits funds collected from assessments to be used for refunds to the Plaintiff class, and requires that those funds be used to "plan and conduct a program of research, extension, market development, and advertising designed to promote the rice industry in Arkansas;"

(3) Declaring that any refunds to the Plaintiff class cannot be funded by future assessments collected from Riceland and the class of first buyers that support the rice research and promotion purposes of the Rice Board;

(4) Enjoining the Arkansas Rice Research and Promotion Board and the Commissioner of Revenues for the State of Arkansas from expending any funds from future assessments against Riceland and similarly situated "first buyers" for the purpose of refunds to the Plaintiff class members; and

(5) For all other just and equitable relief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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