

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

<p>ADM Alliance Nutrition, Inc.,</p> <p>Plaintiff,</p> <p>vs.</p> <p>Charles Vancura, Gladys Vancura, CDS Pork, Inc., Scott C. Vancura, Melonie J. Vancura, David Vancura, and Dawn Vancura,</p> <p>Defendants.</p>	<p>Civil No. _____</p> <p>COMPLAINT</p>
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COMES NOW Plaintiff ADM Alliance Nutrition, Inc. (“ADM”), by and through its undersigned counsel, and brings this action against Defendants (collectively “Vancura” or “Defendants”) and for its Complaint, states and alleges as follows:

BACKGROUND

1. ADM brings this action for damages arising from the Defendants’ breach of two weaner pig sales agreements (collectively, the “Weaner Pig Agreements”) together with the amendments to those agreements (collectively, the “Amendments”).

2. Under the Weaner Pig Agreements, ADM was to deliver several weanling pigs to Defendants at regular intervals. Defendants performed some of their obligations under the Weaner Pig Agreements, however, Defendants breached the Weaner Pig Agreements by refusing to accept delivery of certain installments of the pigs causing ADM substantial damages. Under the Amendments, ADM agreed to allow Defendants to temporarily reduce the amount due on each shipment, with the balance tracked on a ledger and paid later. Defendants, however, also breached the Amendments by failing to make the agreed payments.

3. ADM seeks an award of damages as outlined in this Complaint, as well as a recovery of its attorneys' fees, the costs of this action, and any other award the Court deems just and proper.

PARTIES

4. Plaintiff ADM is an Illinois corporation with its principal place of business in Quincy, Illinois.

5. ADM manufactures and distributes feeds and feed supplements for a wide range of livestock, including swine, at various locations throughout the United States, including Minnesota.

6. Defendants Charles Vancura and Gladys Vancura are husband and wife. They are citizens and residents of Minnesota with their principal place of business in Lakefield, Minnesota.

7. Defendant CDS Pork, Inc. (hereinafter "CDS") is a Minnesota corporation, with its principal place of business in Lakefield, Minnesota.

8. At all times material to this dispute, Defendants Charles Vancura and Gladys Vancura and CDS Pork, Inc. were engaged in pork production and/or operated pork production facilities in the District of Minnesota, including in or around Lakefield, Minnesota.

9. Defendants Scott C. Vancura and Melonie J. Vancura are husband and wife. They are citizens and residents of Minnesota with their principal place of business in Lakefield, Minnesota.

10. Defendants David Vancura and Dawn Vancura are husband and wife. They are citizens and residents of Minnesota with their principal place of business in Lakefield, Minnesota.

JURISDICTION

11. Jurisdiction of this Court is founded upon 28 U.S.C. § 1332(a). The amount in controversy exceeds \$75,000 and it is between citizens of different states.

VENUE

12. Venue is proper in this Court under 28 U.S.C. § 1391(b)(1) and (2), because Defendants reside in this district and a substantial portion of events giving rise to the claims occurred in this judicial district.

FACTS

13. On September 25, 2006, Charles and Gladys Vancura contracted with ADM for the purchase of ten (10) lot sizes of 1,100 Grade One Pigs every 17 to 22 weeks for a purchase price equal to: “the Base Rate plus or minus the Weight Adjustment, plus ADM Fee plus Freight Charges” as defined in the contract. *See* September 2006, Weaner Pig Sales Agreement (Vancura Agreement”), attached as Exhibit A.

14. On July 17, 2006, CDS Pork Inc. similarly contracted with ADM for the purchase of two lot sizes of 1,100 Grade One Pigs every 17 to 22 weeks. *See* Weaner Pig Sales Agreement (“CDS Agreement”), attached as Exhibit B.

15. Defendants Charles Vancura, Gladys Vancura, David Vancura, Dawn Vancura, Scott C. Vancura and Melonie J. Vancura (hereinafter the “Vancura Guarantors”) executed a Guaranty Agreement by which they unconditionally guaranteed unto ADM all of CDS Pork Inc.’s obligations to ADM under the CDS Agreement. A copy of the Guaranty Agreement is attached as Exhibit C.

16. The Vancura and CDS Agreements define the “ADM Fee” as one dollar per Qualifying Pig purchased. Exhibit A, at ¶ 6 Exhibit B, at ¶ 6.

17. In addition, the Vancura and CDS Agreements required Charles and Gladys Vancura and CDS (collectively referred to as “Buyers”) to feed all their swine exclusively ADM Alliance Nutrition Brand feed and nutritional products manufactured and/or sold and distributed by ADM. Exhibit A, at ¶ 8 Exhibit B, at ¶ 8.

18. If Buyers failed to feed their swine exclusively ADM Alliance Nutrition Brand Products from ADM, they further agreed to pay ADM additional fees which increased according to the percentage of non-ADM Alliance Nutrition Brand Products used. Exhibit A, at ¶ 8 Exhibit B, at ¶ 8.

19. The Vancura and CDS Agreements also provide that Buyers’ obligations under the contract would continue through the end of the initial term on October 31, 2011, unless otherwise properly terminated as provided in the contract. Otherwise, the contract was automatically renewed for successive twelve month terms until the terminating party gives the other party written notice at least twelve months in advance. Exhibit A, at ¶ 15, Exhibit B, at ¶ 15.

20. The Vancura and CDS Agreements each expressly provide:

FAILURE TO ACCEPT DELIVERY. If Buyer fails to purchase and accept delivery of a Lot of Grade One Pigs as required herein, and if ADM places or sells such Grade One Pigs with another buyer, Buyer shall pay ADM, as damages therefore, the difference between the aggregate Purchase Price for such Grade One Pigs determined as if Buyer had accepted the same and the actual price received by ADM upon the sale to another of all such Grade One Pigs. In addition, as part of ADM’s damages, Buyer shall reimburse ADM for all transportation costs and all other costs and expense incurred by ADM in delivering the Grade One Pigs to another buyer. Buyer shall also pay to ADM, ADM’s Fee on each Grade One Pig sold and delivered by ADM to another buyer. ADM agrees to make reasonable efforts to place these Pigs with an alternate buyer.

Exhibit A, at ¶ 17, Exhibit B, at ¶ 17.

21. The Vancura and CDS Agreements further provide that the non-breaching party shall be entitled to recover all reasonable attorney fees and costs incurred in enforcing its rights and pursuing all remedies afforded by the Agreement. Exhibit A, at ¶ 19(d), Exhibit B, at ¶ 19(d).

22. On May 1, 2008, ADM and Charles and Gladys Vancura executed an “Amendment to Weaner Pig Sales Agreement” a copy of which is attached as Exhibit D.

23. On June 3, 2008, ADM and CDS executed an “Amendment to Weaner Pig Sales Agreement” a copy of which is attached as Exhibit E.

24. On July 2, 2008, ADM and Charles and Gladys Vancura executed an “Amendment to “Ledger Amendment”” a copy of which is attached as Exhibit F.

25. On July 2, 2008, ADM and CDS executed an “Amendment to “Ledger Amendment”” a copy of which is attached as Exhibit G.

26. On May 18, 2010 ADM and Charles and Gladys Vancura executed a “Ledger Repayment Amendment to Weaner Pig Sales Agreement,” a copy of which is attached as H.

27. Exhibits D, E, F, G, and H (collectively the “Ledger Amendments”) allowed Charles and Gladys Vancura and CDS to temporarily reduce the amount due on each shipment of pigs with the balance of the purchase price being tracked on a ledger and paid later.

28. Amounts owed by Charles and Gladys Vancura under the Ledger Amendments were required to be paid in full by October 22, 2011. Unpaid amounts bear interest at a rate of 18% per year.

29. Amounts owed by CDS under the Ledger Amendments were required to be paid in full by September 24, 2011. Unpaid amounts bear interest at a rate of 18% per year.

30. The outstanding principal owed under the Charles and Gladys Vancura Ledger Amendments was \$354,537.50 as of October 22, 2011, which has not been paid.

31. The outstanding principal owed under the CDS Ledger Amendments as of September 24, 2011, was \$64,080, which has not been paid.

32. Additionally, on numerous occasions Charles and Gladys Vancura and CDS refused to accept delivery of scheduled shipments of pigs.

33. As a result, ADM was forced to “cover” by selling weanling pigs on the open market for substantially less than it would have received had Charles and Gladys Vancura and CDS performed their obligations under the Agreements, resulting in losses to ADM (hereinafter “Non-Delivery Losses”).

34. Damages incurred by ADM as a result of the refusal by Charles and Gladys Vancura to accept deliveries of pigs under the Charles Vancura agreement are as follows: \$1,136,489.39.

35. Damages incurred by ADM as a result of the refusal by CDS to accept deliveries of pigs under the Charles Vancura agreement are as follows: \$200,108.58.

36. Additionally, ADM has incurred damages from lost feed sales; loss of the “ADM fees” under the contract; costs associated with finding and transporting pigs to alternate buyers; attorney fees; and other costs due to Charles and Gladys Vancura’s and CDS’s breaches.

37. ADM has provided notice to Charles and Gladys Vancura and CDS of their breaches and allowed more than 30 days for them to remedy the breaches. Charles and Gladys Vancura, and CDS, however, have failed to do so.

**COUNT I – BREACH OF CONTRACT
(WEANER PIG AGREEMENTS)**

38. ADM realleges paragraphs 1 through 37 as if fully set forth herein.

39. Charles and Gladys Vancura and CDS have breached the Weaner Pig Agreements by wrongfully refusing to accept delivery of some pigs.

40. ADM fully performed its obligations under the Weaner Pig Agreements and Charles and Gladys Vancura and CDS had no justification for their nonperformance.

41. Defendants' actions are the actual and proximate cause of Plaintiff's damages.

42. ADM is entitled to damages resulting from the breach, which include, but are not limited to the difference between the amounts ADM would have received under the Weaner Pig Agreements and the price ADM actually received for the pigs, plus transportation costs, loss of the ADM Fee, damages due to lost feed volume, attorney fees, costs, and interest.

**COUNT II – BREACH OF CONTRACT
(LEDGER AMENDMENTS)**

43. ADM realleges paragraphs 1 through 43 as if fully set forth herein.

44. Charles and Gladys Vancura and CDS breached the Ledger Amendments by failing to make the required payments.

45. ADM fully performed its obligations under the Ledger Agreements and Charles and Gladys Vancura and CDS had no justification for their nonperformance.

46. Defendants' actions are the actual and proximate cause of Plaintiff's damages.

47. ADM has satisfied all conditions precedent to bringing this suit by providing Charles and Gladys Vancura and CDS more than 30 days' notice of their breaches.

48. ADM is entitled to damages resulting from the breach, which include, but are not limited to the amounts due under the Ledger Amendments, attorney fees, costs, and interest.

COUNT III – GUARANTY AGREEMENT

49. Plaintiff realleges paragraph numbers 1 through 49 as if fully set forth herein.

50. Defendants Charles Vancura, Gladys Vancura, David Vancura, Dawn Vancura, Scott C. Vancura and Melonie J. Vancura granted to ADM a "Guaranty Agreement (Performance Guaranty)," a copy of which is attached to this complaint as Exhibit C.

51. Under the Guaranty Agreement, the Vancura Defendants jointly and severally guaranteed to Plaintiff the performance of CDS's obligations under the Weaner Pig Sales Agreement executed on July 17, 2006, including renewals, extensions or modifications of the Weaner Pig Sales Agreement.

52. As of the date of this filing, the Individual Defendants have failed and refused to guaranty the obligations of CDS to Plaintiff as required under the Guaranty Agreement.

53. Plaintiff is entitled to recover from the Individual Defendants damages resulting from the above-described breach by CDS as set forth above, including costs and attorney fees incurred in enforcing the Weaner Pig Sales agreement and Guaranty Agreement.

RESERVATION OF RIGHTS

ADM reserves the right to raise such additional claims as may be appropriate upon further investigation and discovery.

RELIEF SOUGHT

WHEREFORE, ADM requests that the Court:

- (a) Award ADM its actual damages for Defendants' breaches;
- (b) Award ADM attorney fees and costs in accordance with the terms of the Agreements;
- (c) Award ADM all costs expended herein and assess all costs against Defendants;
- (d) Grant ADM such other and further relief as may be deemed appropriate.

Respectfully submitted,

FAEGRE BAKER DANIELS LLP

Date: July 24, 2014

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**ATTORNEYS FOR PLAINTIFF
ADM ALLIANCE NUTRITION
INC.**

CERTIFICATE OF FILING

The undersigned hereby certifies that on July 24, 2014, a true copy of the foregoing instrument was filed electronically with the Clerk of Court.

/s/ Ll. Rhyddid Watkins

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