

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA

FILED  
U.S. DIST COURT  
MIDDLE DIST. OF LA  
2009 AUG 26 P 2:06

CARGILL INCORPORATED  
VERSUS  
PHILEN FARM PARTNERSHIP

CIVIL ACTION  
NO. 08-458-JVP-SCR

**RULING**

This matter is before the court on a motion by defendant, Philen Farm Partnership ("Philen Farm"), to lift stay to reconsider prior ruling (doc. 21). Plaintiff, Cargill Incorporated ("Cargill") has opposed the motion (doc. 24) and defendant has filed a substitute memorandum in support of the motion (doc. 26). Jurisdiction is based on 28 U.S.C. 1332. The matter is now submitted and there is no need for oral argument.

On January 8, 2009, this court found that Philen Farm had, in its answer, admitted agreeing to the provisions of the written contract, numbered PORA-GO-26593, including the first paragraph of the Terms and Conditions which requires the parties to arbitrate all disputes that arise under a grain contract or are related to its formation (doc. 20). Accordingly, the court granted a motion by Cargill to stay these proceedings pending arbitration.

Philen Farms asserts that the ruling was entered due to mistake, inadvertence or excusable neglect in failing to distinguish an oral versus a written contract and

lack of consent (doc. 26). Philen Farm argues that, in its answer, it only admitted to an oral contract with Cargill. However, as noted in the January 8, 2009 ruling:

In its answer to the complaint,[] Philen Farm admits contracting with Cargill for the sale of soybeans (answer, ¶ 11). Moreover, Philen Farm admits agreeing to the amendment of the soybean contract referenced in paragraph thirteen of the complaint (answer, ¶ 13). That amendment specifically references the original contract, PORA-GO-26593, and provides that all terms and conditions of the original contract remain in full force and effect unless modified by the amendment (answer, ¶ 13; complaint, Ex. B, p. 2).<sup>1</sup>


(Doc. 20, pp. 4-5).

After having thoroughly reviewed defendant's motion, the January 8, 2009 ruling, and the record, the court concludes that defendant's motion is without merit.

### CONCLUSION

Accordingly, for the reasons stated in the ruling dated January 8, 2009, the motion by defendant, Philen Farm Partnership, to lift stay and reconsider ruling is hereby **DENIED**.

Baton Rouge, Louisiana, August 25, 2009.

  
RALPH E. TYSON  
UNITED STATES DISTRICT JUDGE  
MIDDLE DISTRICT OF LOUISIANA

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<sup>1</sup>Moreover, the complaint specifies that the amendment to contract number PORA-GO-26593 is "*captioned Premium Offer (Credit Sale Contract)*." (Complaint, ¶ 13 (italics added).