IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

NO. A.26/84

BETWEEN THE CANTERBURY BERRYFRUIT GROWERS CO-OPERATIVE LIMITED

Plaintiff

A N D HUGH JOHN BLAIR QUIGLEY and JANICE MARGARET QUIGLEY

Defendants

Hearing: 22 February 1984

Counsel: P.F. Whiteside for Plaintiff
D.I. Jones for Defendants

Judgment: 23 February 1984

(ORAL) JUDGMENT OF COOK J.

The plaintiff company has issued a writ and statement of claim against the defendants in which it alleges, in brief, that in August 1980 the defendants agreed to supply to the plaintiff the whole, or such portion, of the fruit crop, grown on a certain farm property owned by them, for a period of five years or such lesser period as the directors of the plaintiff company might decide; that the defendants have failed and refused to supply any of their 83/84 crop and have sold 18 tonnes of this crop to another company; that they have grown a further 54 tonnes on the farm in question. On the basis of those allegations it is claimed that there has been a breach of contract and the plaintiff seeks:-

(a) An injunction restraining the Defendants directly or indirectly from selling or in any dealing with the black-currants grown on their farm property known as Ngahua Farm during the 1983-84 season (other than the 18 tonnes of blackcurrants sold to Beecham (N.Z.) Limited) other than by sale to the Plaintiff.

(b) An injunction requiring the Defendants to deliver up to

the Plaintiff all the blackcurrants grown on their farm property known as Ngahua Farm during the 1983-84 season other than the 18 tonnes of blackcurrants sold to Beecham (N.Z.) Limited.

In addition, the plaintiff seeks an inquiry into damages sustained and judgment for damages thus assessed.

The present application is for interim injunctions in the same terms as those sought in the statement of claim and set out above.

The plaintiff is a co-operative in which the defendants are shareholders, the first defendant also being a director. Its members supply fruit to it and, in the case of blackcurrants, all the fruit is placed in a common pool and sold either in New Zealand or overseas for the best price. After deduction of a commission of 2½% by the plaintiff, the proceeds of sale are distributed pro rata amongst the shareholders according to the quantity and quality of fruit supplied by each.

According to the affidavit of the managing director, the directors of the plaintiff company have never advised the defendants that they do not require all the latter's fruit crop nor have they agreed to shorten the period of five years referred to in the agreement. No fruit had been received from the defendants in the 83/84 season and upon inquiry being made, it was ascertained that some of their fruit had been sold elsewhere, a quantity of 18 tonnes having been purchased by Beecham (N.Z.) Limited at a substantially higher price than the return likely to be received from the plaintiff. The directors' concern is that, if the defendants negotiate their own sale of their blackcurrants other than the 18 tonnes already sold, the plaintiff will lose control of the proceeds of sale and be unable to put them in the general pool for the benefit of all members of the plaintiff company. In addition, a commission of 2½% payable to the plaintiff will be lost.

The first named defendant has sworn an affidavit in reply setting out his and his wife's side of the controversy which has developed between them and the plaintiff. It is

confirmed that they have sold 18 tonnes of blackcurrants to Beecham (N.Z.) Limited and details of how this came about are given, also as to discussions with the managing director of the plaintiff company. From this affidavit it appears that the balance of the defendant's crop is 13 tonnes, not 54 as estimated by the plaintiff, and that this tonnage has been washed, had the stalks removed and then intermingled with the crop of another grower, repacked and frozen with a view to negotiating a private sale of the total tonnage thus produced. This had been done prior to the defendants receiving a letter from the plaintiff, dated 25th January 1984, which contains the sentence - "The directors require that all fruit harvested from Ngahua Farm be placed in the co-operative pool". The defendants claim that prior to receiving that letter, no similar request had been made by the plaintiff. The agreement between the plaintiff and the defendants is in a form set out in the Articles of Association and signed by all members.

It seems that, as between the plaintiff and the defendants, the true construction to be placed upon it is in issue. One aspect is in respect of the words "and I further specifically agree to supply to the Company the whole or such portion of my fruit crop as may be required by the Company whether grown on land owned or leased by me for a period of 5 years or such lesser period as the directors may in their discretion decide ..." The defendants wish to argue that the words "as may be required by the Company" relate to "the whole or such portion of my fruit crop" whereas the plaintiff will contend that the words have application only when a portion less than the whole is required. There may be other questions which will arise. It is not intended that they be decided now and it is accepted by either side that there are serious matters to be resolved. While Mr Whiteside submits that there is a strong prima facie case in favour of the plaintiff, Mr Jones suggests that the merits of the respective arguments are equally balanced. I do not propose to determine that, however.

On the question of convenience, Mr Whiteside submits that an interim injunction should be granted; that there are very real difficulties in the assessment of damages if the defendants are found to be in breach. He suggests that the

damage suffered is not limited to the commission lost to the plaintiff; that in view of the provisions of Article 119 it affects the return to members generally. It may be that, should the substantive matter come to be argued and full evidence on all these aspects is before the Court, this may be demonstrated to be so; but on the basis of the information which is before me, I am unable to see that it is.

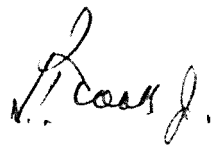
For the defendants, Mr Jones submitted that the purpose of an interim injunction is to preserve the status quo, when that is desirable, until the matters in issue may be resolved, not to require specific performance of a contract, the terms of which are in dispute; that in the present case, in any event, since the balance of the crop has been intermingle with the crop of another grower, it would be impossible to comply with a mandatory injunction to supply to the plaintiff.

On the information at present before me, it seems that, if the defendants are in breach of this contract and it should be so determined, any loss resulting to the plaintiff between the present time and the ultimate determination, can readily be fixed; that what the plaintiff has suffered is a loss of commission on the fruit sold elsewhere. As indicated, I am unable to see that other members have suffered, unless it could be argued that a co-operative is dependent upon the support of all its members and upon a certain level of supply of fruit available to it in order to enter into advantageous contracts. I can only say that no such suggestion has been made, nor is there evidence which indicates that that is so.

At this stage, without, of course, making any findings of fact or final decision on any point, I am not persuaded that, taking the worst view for the defendants, there is more than a breach of contract for which an adequate remedy would lie in damages. To grant an injunction in the terms sought, or any other terms in order to restrain the defendants from selling, other than to the plaintiff, would amount to ordering specific performance of the contract for the present season and I am not persuaded that this is a situation where such a remedy should be ordered. In any event, the balance of the crop has been mixed with that of another grower

and I cannot accept the suggestion that the defendants should be directed to fulfil their obligation (if such exists) by supplying 13 tonnes of the mixed fruit; nor do I consider that an order should be made, as suggested by Mr Whiteside, requiring the defendants to pay moneys received in respect of that tonnage to the plaintiff or into Court.

The application must be dismissed. Costs are reserved.



Solicitors:

Wynn, Williams & Co., Christchurch, for Plaintiff
C.V. Quigley & Sons, Christchurch, for Defendants.