

IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY

25/8

CP NO 158/931269  
BETWEENCOUNTRY COOLERS LIMITEDPlaintiffA N DFRUITFED LIMITEDFirst DefendantA N DAWA NEW ZEALAND LIMITEDSecond DefendantHearing: 25 July 1994Counsel: J C La Hatte for the plaintiff  
M B Wigley for the first defendant  
G J H Sharp for the second defendantJudgment: 25 July 1994

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(ORAL) JUDGMENT OF MASTER KENNEDY-GRANT

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Solicitors for the plaintiff  
Wadsworth Norton  
DX 6919, Auckland

Solicitors for the first defendant  
B Wigley  
P O Box 1458, Wellington

Solicitors for the second defendant  
Bell Gully Buddle Weir  
DX 8204, Wellington

This is an application by the second defendant for further and better particulars of the plaintiff's first amended statement of claim. The particulars sought fall into three categories:

- (a) Particulars of the standards to which the plaintiff alleges that the defendants contracted. The first amended statement of claim uses the expressions "*high reliability*", "*fast operation*" and "*efficiently*". Mr Sharp, for the second defendant, supported by Mr Wigley, submits that it is impossible for the defendants to know what is alleged by these expressions.
- (b) Particulars of the terms of the contract between the plaintiff and the defendants, of persons involved in the making of the contract and of documents forming part of or evidencing the contract.
- (c) Particulars of alleged breaches and special damages.

Mr Sharp, supported by Mr Wigley, submits that the particulars sought in the first and second categories are required in terms of r185 of the High Court Rules, and those sought in the third category in terms of rr185 and 117.

I consider the three categories in turn. In dealing with each category I will make specific findings in relation to each of the requests for further particulars.

#### Category 1: Further particulars of standards

- (a) Paragraph 5.1 of the first amended statement of claim

The application for further particulars of this paragraph is denied. The expression "*high reliability*" must be read in the light of the words also included in the pleading "*to minimise disruption to the normal operation of the packhouse during the packing season*". The minimisation of disruption is the standard. It is also to be noted that the expression is the defendant's own term. It hardly seems appropriate for it to ask the plaintiff to define the term

which it has itself incorporated into the contract. It follows from this ruling that the further particulars sought of paragraphs 7.1, 7.7 and 13.1 are also denied.

(b) Paragraph 5.4

The further particulars sought in this paragraph are denied. The word "*efficient*" or its cognates means operating without unusual disruption. Again, it is a term introduced into the contract by the defendants. The same comments as I have already made in respect of the request for further particulars of paragraph 5.1 apply. It follows from this ruling that the application for further particulars of paragraphs 7.4, 7.7 and 13.4 are also denied.

(c) Paragraph 7.2

The request for further particulars of the expression "*fast operation*" is denied. Paragraph 7.2 is to be read with paragraph 5.2 of the first amended statement of claim. That makes it clear what fast operation was, namely operation up to 300 bars per minute. Again, the expression was introduced into the contract by the defendants.

Category 2: Further particulars of terms, persons or documents

(a) Paragraph 4

I have amended the request for further particulars in respect of this paragraph by deleting in the number of the paragraph the part of the number ".2", by inserting in the third line after the word "*brochure*" the words "*or agreed orally*" and by substituting 4.1 for 4.2 in sub-paragraph (ii). As amended the request for further particulars is allowed.

Paragraph 4 of the first amended statement of claim says that "*details of the contract are:*" and then sets them out in three sub-paragraphs 4.1, 4.2, 4.3, from which it is clear that the contract was partly written and partly oral. It is not clear that the terms of the contract were limited to those set out in terms of paragraph 5 of the first amended statement of claim. There is therefore a potential for further terms to be argued at a later stage as being found in the correspondence and the oral discussions referred to in paragraph 4 even though not expressed in paragraph 5. It is for these reasons that this request is allowed.

(b) Paragraph 5.5

The request for further particulars of the person to whom, on behalf of the plaintiff, Mr Waghorn stated the fruitsizer part of the machine would be installed and available for training and identifying any other persons present is allowed. The first part of this is clearly relevant, it is a question of to whom the advice was given, the statement was made. So far as the second part is concerned, it enables the second defendant to identify a witness who may be able to confirm or contradict the evidence given by the second defendant on this point.

(c) Paragraph 6

The request for further particulars of the arrangement by which the first defendant arranged for the AWA Lynx machine to be supplied and installed in the plaintiff's packhouse and the date or dates upon which this occurred is allowed, although it appears there may be some doubt as to whether or not the plaintiff can supply the particulars sought.

(d) Paragraph 10.1

The application for further particulars of the correspondence is denied. Taking the paragraph as a whole, it is clear, in my view, from paragraph 10.4 that the items of correspondence relied upon are those set out in paragraph 10.4. Further particulars are therefore unnecessary.

(e) Paragraph 10.4

I allow the application in respect of the documents listed. The particulars sought are a reference by page and line number to the parts of the documents relied on as constituting or evidencing the offer to supply and install.

Category 3: Particulars of breaches and of special damages

I deal with these separately under the two sub-categories, breaches and special damages.

So far as breaches are concerned, there are two groups of particulars sought. They are particulars of paragraphs 7.6 and 7.8 of the first amended statement of claim and particulars of paragraphs 20.2.3, 20.2.4, 20.6 and 20.8.2 to 20.8.4 of the first amended statement of claim.

So far as the first sub-category of the paragraphs alleging breaches is concerned, namely paragraphs 7.6 and 7.8, I allow the application for further particulars. The defendants need to have the particulars sought in order to be able to concentrate their enquiries in relation to:

- (a) The likelihood of the losses alleged in subsequent years being in fact incurred. How many of the defects still existed? what were they? Those are both questions that are relevant to the likely losses suffered in those later years.

- (b) The costs of the remedial work. In regard to this latter point, the comment made in *McGechan on Procedure*, para 117.04(3) that the particulars of special damages "*should contain sufficient detail for the defendant to be able to check and confirm prior to trial*" apply.

So far as the second sub-category of paragraphs alleging breaches is concerned, that commencing at paragraph 20.2.3 and going through to paragraph 20.8.4, as Mr Sharp points out, the plaintiff has pleaded with greater particularity in paragraph 20.5.5 in relation to a similar allegation. There is no justification for not doing the same in respect of these paragraphs. I therefore allow the application in respect of those paragraphs.

I turn now to consider the request for further particulars of the paragraphs in which special damages are pleaded. These cover:

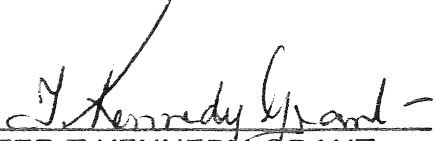
- (a) Costs incurred; and
- (b) Losses suffered, the losses being claims by growers for fruit loss.

The paragraphs in question are 8.1, 8.2 and 8.4. In reliance on the passage from *McGechan* already quoted I allow the request for further particulars of those paragraphs.

In conclusion I make the following orders.

1. The plaintiff is ordered to supply the further particulars sought of paragraphs 4, 5.5, 6, 7.6, 7.8, 8.1, 8.2, 8.4, 10.4, 20.2.3, 20.2.4, 20.6 and 20.8.2 to 20.8.4 of the first amended statement of claim.
2. For the rest, the second defendant's application for further particulars is denied.
3. The further particulars ordered to be supplied are to be supplied by 19 August 1994.

4. Leave is reserved to the plaintiff to apply for an extension of the time for compliance with the order for further particulars. Application may be made simply, if he is able to obtain the consent of counsel for the defendants (and Mr Sharp at least has indicated that, if there is a genuine problem, there will be no difficulty about obtaining such consent), by filing a consent memorandum.
5. The question of costs is reserved.

  
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MASTER T KENNEDY-GRANT  
