



## *Mushroom Composters Pty Ltd v IS & DE Robertson Pty Ltd [2015] NSWCA 1*

### **FACTS**

Mushroom Composters Pty Ltd ['Mushroom'] approached IS & DE Robertson Pty Ltd ['Robertson'] to supply 10,000 tonnes of straw to Mushroom for a period of four years on a base price of \$140 per bale, subject to CPI increases, with a royalty payment which Robertson estimated to be \$60 per bale, subject to over-supply of straw as they were in a drought period. Mushroom confirmed the conversation up with a letter.

Further discussions were followed up with a document entitled "Head of Agreement for supply of Wheaten Straw to Mushroom Composters for the 2008/9 Season By Ian Robertson" which relevantly provided that the price of straw to be made up of \$60 per tonne royalty and \$83.60 per tonne baling cost at a total of \$143.60 per tonne for 10,000 tonnes straw. There were some amendments to this agreement however the Heads of Agreement document was not re-written as Mushroom advised "there's no need Robbo, we've worked together for many years and we know what we've agreed".

Robertson supplied the straw to Mushroom for the 2008/9 season and a further agreement to the price for the 2009/10 season was agreed upon, being \$60 royalty and \$83.60 bailing cost.

In 2010 Mushroom reduced its requirements for the 2010/11 season from 10,000 bales to 5,000 bales. Robertson disputed the reduction as a breach of the contract but Mushroom denied there was any contract in place.

### **THE JUDGMENT APPEALED**

The judge at first instance considered that there was a binding agreement to supply straw between Mushroom and Robertson, with the price fixed at \$143.60 per tonne and in the second third and fourth years, subject to CPI increases in the bailing component and a review of the royalty component in the event that straw prices decreased substantially over the life of the contract.

### **ISSUES**

The issue in the appeal was whether the parties reached consensus on all the essential terms of an agreement to supply and purchase wheaten straw, so as to create a binding contract for a term of four years.

### **FINDING**

The parties had reached an arrangement in respect of a four year supply, however the agreement had not been concluded in respect of each of the four years because the parties had not conclusively set a price which was to be paid in each successive year.

### **QUOTE**

Sackville AJA:

85. "The parties never discussed what would happen in the event that negotiations for review of the royalty component of the overall price failed to produce an agreement in respect of the second, third or fourth seasons...The parties were content to leave the price for years two, three and four of the arrangement to be resolved by negotiations prior to each season. The negotiations were concluded for the second year of the agreement, but not for the third or fourth years.
86. It follows that the parties never reached final agreement on an essential term of the alleged four year contract, namely the price to be paid by Composters to Robertson for the straw. Thus there was no binding and concluded four year contract between the parties."

### **IMPACT**

The case highlights the importance of concluding agreement in respect of all necessary terms of a contract. Where there is no concluded agreement, no enforceable obligations will arise.

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