



COMMERCIAL COURT

Trials Listed to Commence 21 – 31 May 2012

Monday 21 May

Case: *Casama Group Pty Ltd v Four Sisters Pty Ltd & ors*, S CI 2011 00650

Judge: Judd J

Court: Courtroom 3 (Old High Court)

Description: The plaintiff entered into two contracts to distribute wine produced by the first defendant and plaintiff by counterclaim and the second defendant. The defendants terminated the contracts.

That the contracts were validly terminated is disputed on three grounds:

- i. whether the procedure for terminating the agreements was subject to an implied term of good faith designed to give business efficacy to the agreement;
- ii. whether the parties entered into contracts under a mutual or unilateral mistake of fact with respect to the effect of that implied term; and
- iii. whether the first and second defendants acted unconscionably in terminating the contract.

There is a further dispute between the plaintiff and the third defendant, as to whether the third defendant wrongfully induced the first and second defendant to breach the terms of their contracts.

The counterclaim concerns whether the plaintiff had acted inconsistently with express and implied terms of the distribution contract in a way that caused loss to the first defendant and plaintiff by counterclaim.

Case: *In the Matter of Ceasarstone Australia Pty Ltd*, S CI 2010 03809 and S CI 2010 5851

Judge: Davies J

Court: Courtroom 2 (Old High Court)

Description: The plaintiff is a director and minority shareholder of the first defendant, and is also first defendant by counterclaim. He had entered into employment and co-investment agreements with the defendants. In partial fulfilment of the agreement, shares in the first defendant were allocated to a family trust. At that time the plaintiff was the trustee. The plaintiff was allegedly then issued with two separate termination notices which purported to end his employment on different bases. The first defendant then sought to exercise its alleged contractual right, contingent upon the cessation of his employment, to acquire the allegedly unvested shares held in the trust of which the second defendant by counterclaim is now the trustee. In addition,

the first defendant altered the terms of a capital raising notice issued to the plaintiff which reflected an increased cost of maintaining his percentage of overall shareholding.

The plaintiff alleges that this was an improper attempt to divest him of his shares and amounts to oppressive and unfairly discriminatory conduct. He seeks orders under s 233 of the *Corporations Act 2001* (Cth) to the effect that he be issued shares in accordance with the initial terms of the capital raising, and then to have those shares purchased from him by the defendants.

The defendants and plaintiffs by counterclaim seek orders to the effect that they are entitled to have the shares held in the trust transferred into their possession, or alternatively to have the shares cancelled. Further in the alternative, they seek orders that they be awarded the amount with interest of a non-recourse loan, initially provided to the trust to assist in the purchase of shares per the co-investment agreement.

This matter turns in great part upon whether the plaintiff's termination was valid. This is because the acquisition of shares per the co-investment agreement was contingent upon the plaintiff's valid termination. The plaintiff claims that his termination was based on false premises. The defendants deny this and argue the termination was for valid cause.

Tuesday, 29 May

Case: *Allison, Daniel J v BDO Group Pty Ltd & ors*, S CI 2012 02273

Judge: Almond J

Court: Courtroom 13

Description: The plaintiff and certain of the defendants entered into an agreement to settle two prior proceedings. A term of the agreement provides that the defendant parties to the agreement are required, upon the request of the plaintiff, to deliver documents and records which have been prepared for or relate to past or future clients of the plaintiff. Those defendants party to the agreement entered into negotiations with the thirty-eighth defendant. A transaction occurred in which certain files and records were transferred into the possession of the thirty-eighth defendant.

The dispute concerns whether that transfer of files and records is contrary to the settlement agreement and section 20 of the *Australian Consumer Law* (in schedule 2 of the *Competition and Consumer Act 2010* (Cth)). Issues arising include:

- i. whether there is an implied duty of co-operation in the settlement agreement that required all parties to do all such things that are necessary to enable other parties to fully benefit from the agreement; and
- ii. whether an agreement between the defendants which denied access of the files to the plaintiff constitutes unconscionable conduct and is in contravention of section 20 of the *Australian Consumer Law*.

Case: *Nicholson, John David v Hilldove Pty Ltd*, S CI 2012 02198

Judge: Croft J

Court: Courtroom 15

Description: The plaintiff and defendants dispute the nature and legal effect of an agreement with respect to the purchase of a hotel. The plaintiff had offered to purchase the hotel and lease it to the first defendant. At issue is whether any agreement between the parties can constitute a binding, enforceable contract. This issue turns in part on whether the third defendant, who was the sole director of the first and second defendant, had intended or had authority to approve the sale of assets held in trust. It also turns on whether the purported agent for the defendants had acted within the scope of their authority, and if not, whether the plaintiff could be taken to have inferred knowledge of that fact. The defendant also alleges in the alternative that the parties mutually abandoned the agreement by virtue of their conduct.