

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 114/2019
[2019] NZSC 145

BETWEEN SAVVY VINEYARDS 4334 LIMITED
First Applicant

SAVVY VINEYARDS 3552 LIMITED
Second Applicant

AND WETA ESTATE LIMITED
First Respondent

TIROSH ESTATE LIMITED
Second Respondent

Court: Glazebrook, O'Regan and Ellen France JJ

Counsel: D P H Jones QC and C L Bryant for Applicants
R E Harrison QC for Respondents

Judgment: 12 December 2019

JUDGMENT OF THE COURT

A The application for leave to appeal is granted on the question (*Weta Estate Ltd v Savvy Vineyards 4334 Ltd* [2019] NZCA 437) whether the Court of Appeal was correct as to:

(a) the effect on the parties' legal positions of the two earlier judgments, referred to in [4] below, dealing with whether the contract had been terminated; and

(b) the interpretation of cl 2.2 and cl 2.4.

B The application is otherwise dismissed.

REASONS

Introduction

[1] The applicants (Savvy) are winemakers and the respondents (Weta) are grape growers.¹ The parties entered into various inter-related agreements for the development, management and long-term supply of the grapes produced on Weta's land. Relevantly, the grape supply agreements gave Savvy an option to purchase the entire crop of grapes from each of Weta's blocks of land. If Savvy exercised the option in relation to any block, Savvy had to purchase all of the grapes for the term of the agreement.²

[2] The key provisions in the grape-supply contract relating to the exercise of the option to purchase are cl 2.2 and cl 2.4 which provide as follows:³

2. SUPPLY OF GRAPES

...

2.2 The Grower hereby grants to the Buyer a right of first refusal to purchase the entire crop of Grapes grown on each of the Blocks. Such right of first refusal shall be deemed to be effective on the Commencement Date and to be repeated on each third anniversary of the Commencement Date provided that if the Buyer does not exercise the right of first refusal in respect of any Block for 2 consecutive periods of 3 years the right of first refusal shall be deemed to have lapsed. If the Buyer elects to purchase part of the crop of Grapes only then the Buyer must at the time of giving notice as provided in this agreement specify the specific Block or Blocks in respect of which the Buyer wishes to purchase Grapes. The Buyer must purchase all Grapes from any such Block or Blocks specified for the remainder of the term of this agreement.

2.4 Should the Buyer wish to exercise its right of purchase pursuant to this Agreement it shall give written notice of that exercise in the manner hereinbefore specified at any time prior to the Commencement Date or such other date the right of first refusal is to be exercised. Once notice is given to purchase Grapes from any Block or Blocks then the Purchaser shall have an ongoing obligation to purchase all the Grapes from such Block or Blocks for the term of this agreement.

¹ The agreements between the first and second applicants and respondents are not materially different. For convenience we refer to them collectively as the Court of Appeal did.

² The contract expires after the harvest of the tenth fruit producing vintage. There are two rights of renewal, each for a further 20 fruit picking vintages.

³ There is no cl 2.3.

[3] It is common ground that the commencement date for this agreement was 1 May 2009. Savvy did not exercise the option at that time. There was also an option which was exercisable three years after that date, being 1 May 2012. Savvy did not exercise this option either because at the time Weta had purported to cancel the contract and there was ongoing litigation. The parties agreed to extend this option to 1 May 2013. There was also an option that could be exercised three years later, after the 2012 date, on 1 May 2015. The agreement provided it would lapse if two consecutive options were declined.

[4] At 1 May 2013, Weta had just successfully argued in the Court of Appeal that it had terminated the agreement.⁴ On 5 September 2014, the Supreme Court allowed Savvy's appeal against the Court of Appeal's judgment.⁵ Savvy purported to exercise the second option by notice on 17 November 2014, claiming that Savvy had an additional option available on 1 May 2015. Weta responded on 8 December 2014 asserting that the options had lapsed when they were not exercised by notice prior to 1 May 2013.

[5] Savvy then brought a fresh proceeding in the High Court contending, essentially, that it had six years from the commencement date to exercise the option. On this basis, the option would only lapse if it was not exercised on the sixth anniversary of the commencement date, namely, 1 May 2015. It contends the two consecutive three-year periods described in the agreement would not expire until then. Weta, by contrast, argued the options lapsed when they were not exercised on 1 May 2013 by notice served prior to then. At that point (1 May 2013), Weta says the options had not been exercised by notice for two consecutive periods. That is, the first being the three-year period commencing on the commencement date (1 May 2009) and the second being the three-year period starting on the third anniversary of the commencement date as extended (1 May 2013).

[6] Savvy's interpretation of the contract was upheld in the High Court.⁶ The Court of Appeal allowed Weta's appeal and dismissed Savvy's cross-appeal against

⁴ *Kakara Estate Ltd v Savvy Vineyards 3552 Ltd* [2013] NZCA 101, [2013] 3 NZLR 297.

⁵ *Savvy Vineyards 3552 Ltd v Kakara Estate Ltd* [2014] NZSC 121, [2015] 1 NZLR 281.

⁶ *Savvy Vineyards 4334 Ltd v Weta Estate Ltd* [2018] NZHC 989 (Gordon J).

other aspects of the High Court judgment.⁷ In doing so, the Court of Appeal determined that, “as a matter of law”, the Court’s earlier judgment, referred to in [4] above, that the grape supply agreements were at an end “did not prevent Savvy from giving notice exercising the rights it continued to assert it had under the grape supply agreements”.⁸ Nor did this Court’s judgment overturning the earlier Court of Appeal judgment amend “the grape supply agreements so that the third anniversary of the commencement date shifted”.⁹

The proposed grounds of appeal

[7] Savvy’s written submissions identify the following proposed grounds of appeal:

- (a) The correct approach to contract interpretation, including the relevance of pre-contract negotiations and post-contractual conduct.
- (b) Whether the applicants can claim an estoppel by convention.
- (c) The effect of a judgment that a contract has been terminated: (i) before avenues for appeal have been exhausted; and (ii) if the judgment confirming termination is later overturned on appeal.
- (d) The circumstances in which a repudiating party can rely on non-performance by the other party as a bar to a claim.

[8] The criteria for leave are met in relation to the third of these proposed grounds of appeal (ground (c) above), namely, that relating to the correctness of the Court of Appeal’s approach to the effect of the two earlier judgments.¹⁰

[9] We see this ground as closely intertwined with the first of the proposed grounds which will require the Court to determine the meaning of cl 2.2 and cl 2.4 (ground (a) above). The connection between these two questions is such that leave to appeal is also granted on the question of interpretation of cl 2.2 and cl 2.4. That question would otherwise be a fact-specific one which would not ordinarily meet the leave criteria. However, we make it clear that leave is granted on the basis the interpretation of the clauses is to be dealt with without reference to pre-contract negotiations and

⁷ *Weta Estate Ltd v Savvy Vineyards 4334 Ltd* [2019] NZCA 437 (Cooper, Clifford and Gilbert JJ).

⁸ At [76].

⁹ At [80].

¹⁰ Senior Courts Act 2016, s 74(2).

post-contractual conduct. It is not necessary to address those aspects to determine the interpretation issue. Nor is this case the appropriate vehicle to deal with broader questions about the approach to such negotiations and conduct.

[10] The other two proposed grounds of appeal (grounds (b) and (d) above) raise no questions of general or public importance or of commercial significance.¹¹ Nor does anything raised by Savvy in respect of these grounds give rise to any appearance of a miscarriage of justice.¹² These proposed grounds do not meet the criteria for leave to appeal.

Result

[11] For these reasons, the application for leave to appeal is granted on the question whether the Court of Appeal was correct as to:

- (a) the effect on the parties' legal positions of the two earlier judgments, referred to in [4] above, dealing with whether the contract had been terminated; and
- (b) the interpretation of cl 2.2 and cl 2.4.

[12] The application is otherwise dismissed.

Solicitors:
Hesketh Henry, Auckland for Applicants
Boyle Mathieson, Auckland for Respondents

¹¹ Senior Courts Act, s 74(2)(a) and (c).

¹² Senior Courts Act, s 74(2)(b); and *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369 at [4]–[5].