ORDER PROHIBITING PUBLICATION OF NAME OR IDENTIFYING PARTICULARS OF WITNESS TB.

IN THE HIGH COURT OF NEW ZEALAND
GREYMOUTH REGISTRY

I TE KŌTI MATUA O AOTEAROA
MĀWHERA ROHE

CIV-2022-418-000005
[2022] NZHC 2524

	BETWEEN	CANAAN FARMING DAIRY LTD Applicant
	AND	WESTLAND DAIRY COMPANY LTD Respondent

Hearing:	25 and 29 July and 28 September 2022
Appearances:	R W Raymond KC and A V Foote for Applicant J A Craig and S A Comber for Respondent
Judgment:	3 October 2022
Reissued:	4 October 2022

JUDGMENT OF DOOGUE J

This judgment was delivered by me on 3 October 2022 at 3.30 pm pursuant to Rule 11.5 of the High Court Rules

Registrar/Deputy Registrar
Date:

INTRODUCTION

[1] The applicant, Canaan Farming Dairy Ltd (Canaan), is a dairy farming operation on the West Coast of the South Island. Canaan operates three dairy farms (Bell Hill, Gloriavale and Glen Hopeful) and is owned by the Christian Church Community Trust Inc (the Trust), a registered charitable trust with links to the Christian community known as Gloriavale.

[2] The respondent, Westland Dairy Company Ltd (Westland), was established as a farmer-owned dairy co-operative in 1937. In 2019, 100 per cent of the shares in Westland were sold to Hongkong Jingang Trade Holding Co Ltd (Jingang). On the sale Westland, Jingang and Canaan (along with other suppliers of milk) entered into a deed of commitment (the Deed) whereby Westland agreed to take delivery of Canaan's milk supply for 10 years.

[3] The parties' general contractual relationship is governed by the Deed and a Suppliers' Handbook which set out the terms and conditions for Canaan and others to supply milk to Westland. The parties also have three specialty contracts which include two current contracts for winter UHT milk supply and a third for the supply of A2 milk.

[4] On 10 May 2022, the Chief Judge of the Employment Court delivered an interim judgment in the matter of *Courage v Attorney-General* (the judgment).[1] In that decision the Chief Judge was being asked to determine whether the three plaintiffs who had worked for commercial entities associated with Gloriavale were employees for the purposes of s 6 of the Employment Relations Act 2000 (the Act). She found they were. In the narrative of the judgment she observed that children working for these entities were exploited and abused.

[5] On 8 June 2022, as a result of reviewing the judgment, Westland advised Canaan it had decided not to collect Canaan's milk supply. Westland said it should not be required to continue to take Canaan's milk supply when there were significant

---

1 *Courage v Attorney-General* [2022] NZEmpC 77, (2022) 18 NZELR 746.

doubts as to the legality of Canaan's employment practices and where Westland had lost, and was likely to lose, customers as a result of taking milk supply from Canaan.

[6] Canaan says there was no legal or factual basis on which Westland could refuse to take delivery of Canaan's milk under the three contracts referred to in [3] above.

[7] The parties are agreed that this decision should be concerned only with the parties' rights insofar as the general milk supply is concerned. They do not seek judgment in respect of the three specialty contracts and will continue to abide by their obligations under those contracts for this winter milking season.

[8] Canaan seeks an interim injunction:

(a) requiring Westland to collect Canaan's milk supply from its farms in terms of its obligations under the Deed/Suppliers' Handbook;

(b) damages in a sum to be quantified prior to trial; and

(c) costs.

Procedural history

[9] The case for the interim injunction was closed at the conclusion of the hearing on 25 July 2022.

[10] On 4 August 2022 counsel were informed the Court's judgment would be released later that day. Mr Raymond KC, for Canaan, advised the Court he had come into possession of information that needed to be disclosed to Westland and the Court before the judgment was issued. This information related to Mr Raymond's previous submission that no minors had worked on Canaan's farms in the past five years. In response, a telephone conference was convened on 5 August 2022.

[11] As a result of the submissions made during the telephone conference, leave was granted to the parties to file updated evidence and submissions. The Court also sought an undertaking from Canaan that no minors and "associate partners" under the

age of 18 were working on Canaan's dairy farms and would not do so pending further order of the Court.

[12] Prior to and at the hearing of this matter in July 2022, Mr Raymond defined "minor" as a person under the age of 16. This is the age of majority for employment law purposes, such as the requirement to pay the minimum wage.[2]

[13] The requirement that the undertaking be directed to "minors" aged 16 and 17 arose because of comments made in the judgment (below at [44]) concerning associate partners (who only work as such on attaining the age of 16).[3]

[14] That undertaking was subsequently provided to the Court on 8 August 2022.

[15] The hearing was resumed on 28 September 2022.

BACKGROUND

The relevant contracts

The Milk Supply Commitment Deed

[16] The founding contract was the Deed dated 29 May 2019.

[17] In cl 1.1 of the Deed the commitment period is defined as being 10 years from that date.

[18] Clause 2.2 describes the continuing obligations as follows:

> **Continuing obligations**
>
> This Deed Poll is irrevocable and, subject to clause 3, remains in full force and effect until either:
>
> (a) Westland and the Bidder have fully performed their respective obligations under it; or
>
> (b) It is terminated under clause 3.2.

---

2 Minimum Wage Act 1983, s 4.

3 *Courage v Attorney-General*, above n 1, at [191], [193] and [202].

[19] The termination clause is set out at 3.2:

> **Termination**
>
> The obligations of Westland and the Bidder under this Deed Poll will automatically terminate, and the terms of this Deed Poll will be of no force or effect, if:
>
> (a) the Scheme Implementation Agreement is terminated in accordance with its terms before the Scheme becomes Effective; or
>
> (b) the Scheme does not become Effective before the End Date,
>
> unless the Bidder and Westland otherwise agree in writing.

[20] Clause 4.1 says:

> **Collection of Milk**
>
> During the Commitment Period, Westland undertakes to accept and collect Milk from each Qualifying Farm on terms and conditions of supply which are no less favourable to the Qualifying Supplier than the terms and conditions of supply which are set out in the Suppliers' Handbook. Westland acknowledges that, when assessing whether an economic volume is available for processing in accordance with clause 6.1 of the Suppliers' Handbook, it will make such assessment in the same manner and applying the same principles as Westland applied in the 12 months prior to the Implementation Date.

The Suppliers' Handbook

[21] Clause 1 of the Suppliers' Handbook describes how the Deed and the Suppliers' Handbook interrelate. It says:

> **General**
>
> These Terms and Conditions of supply are subject to the terms of the Milk Commitment Deed.
>
> As a Supplier, your supply of milk to Westland is governed by:
>
> (a) The Milk Commitment Deed.
>
> (b) These Terms of Supply.
>
> (c) Any other Westland publications or policies relating to the supply of milk that Westland tells you about in accordance with these Terms of Supply.
>
> (d) Any other terms and conditions that the Board sets in accordance with these Terms of Supply.
>
> (e) The Dairy Industry Restructuring Act 2001.

(f) All other relevant statutes and regulations set by central or local government, including the Agricultural Compounds and Veterinary Medicines Act 1997, the Animal Products Act 1999, and the Animal Welfare Act 1999.

(g) The relevant contract terms between you and Westland for Contract Supply, Colostrum Supply, UHT Supply or other specialty milk.

(h) Any other terms and conditions relating to the supply of your milk that you and Westland agree in writing.

If there is a difference between the Terms of Supply and any of the other documents listed above, the other document will apply (noting that any specifically agreed terms and conditions between you and Westland will prevail).

[22] Clause 3 sets out the suppliers' obligations in relation to term and termination. Relevantly, cl 3.1 says:

> If you are a Supplier, you must supply all your milk to Westland according to these Terms of Supply until 31st May in the year falling not less than twelve (12) months after you give written notice to cease supplying Westland (or any other date Westland consents to) (the "End Date").

[23] A further relevant obligation on the suppliers is set out at cl 5.2:

> As a Supplier, you must:
>
> …
>
> **Supply:** Subject to clause 6.1, make available for supply to the collection point agreed by Westland, all milk produced on any dairy farm you occupy …

[24] Clause 5.8 sets out the suppliers' obligations so far as Westland's milk collection policies are concerned:

> **Compliance:** You must comply with any terms, conditions or standards set by Westland (or by law or otherwise) for:
>
> (a) Westland's Risk Management Programme
>
> (b) Milk cooling
>
> (c) Milking animal health
>
> (d) Farm dairy water
>
> (e) Acceptance standards for milk
>
> (f) Farm dairy codes of practice

(g) Dairy industry environmental and animal welfare policies and guidelines

(h) Westland's quality management programme

(i) The production of high quality milk

(j) Milk grading

(k) Animal health, including mastitis control and enzootic bovine leucosis *(EBL)*.

[25] Westland's obligations are set out at cl 6. Clause 6.1 contains the overarching obligation:

> **Collecting milk:** Westland will for a period of ten years from [***insert scheme implementation date***] 2019 accept and collect all milk supplied by a Supplier in accordance with these Terms of Supply and the Milk Commitment Deed whenever an economic volume (in Westland's opinion) is available for processing and manufacture, and, in particular, pursuant to Clause 7.

[26] Clause 7.2 regulates the control of supply:

> **7.2 Control of supply**
>
> (a) **Your duties:** You must:
>
> (i) Ensure that any FHT contains milk exclusively from that dairy farm.
>
> (ii) Ensure that milk is continually refrigerated and agitated.
>
> (b) **Westland's right to reject milk:**
>
> (i) Westland may, at its discretion, refuse to accept any milk you offer for collection or intend to offer for collection if, in its opinion:
>
> (a) The milk is not sweet, wholesome, sound and free from any foreign or extraneous substances or liquid, or does not meet any quality standard required by Westland (as notified to all Suppliers).
>
> (b) You have not complied with the Terms of Supply.
>
> (c) Any governmental agency or health authority has imposed any restriction on the use of milk from you.
>
> (d) You (or your agents or servants) have been dishonest in your dealings with Westland.
>
> (e) The dairy farm, surroundings, or place from which the milk is obtained is dirty, unhealthy or hazardous.

(f) Your cows are being fed any animal feed which causes a food safety risk or any other risk.

(g) Your dairy farm or amenities are potentially hazardous to any Westland employee, contractor, advisor, agent or property.

(h) You breach any dairy effluent requirements.

(i) Your farm or surroundings have any material animal health or welfare or bio-security issues.

(j) You, a member of your family, any assistant, or any assistant's family member, is suffering from any infectious disease that could detrimentally affect milk.

(k) Access over any road or bridge (whether public or provided and maintained by you between the public road and the collection point), is dangerous or unsuitable for Westland's vehicles.

(l) Due to force majeure (as set out in clause 7.3) it would be impracticable to use milk, if it was collected.

(m) The milk was not produced in compliance with any legal requirements.

(n) It would not be in Westland's best interests to accept the milk.

(o) The milk is from cloned cows or from cows sired by cloned bulls.

(p) There is any other reason for Westland to refuse the milk.

(ii) Except as provided in clause 7.3, Westland will not be liable to you in any way relating to its refusal to collect milk from you, and you will have no recourse against either Westland or any of its directors in respect of that refusal.

[27] Clause 7.2(b) therefore sets out the circumstances in which Westland has a right to reject milk. These largely, but not exclusively, relate to hygiene and workplace safety concerns.

[28] Westland relies on the following provisions from cl 7.2(b):

(b) Westland's right to reject milk:

(i) Westland may, at its discretion, refuse to accept any milk you offer for collection or intend to offer for collection if, in its opinion:

…

(b) You have not complied with the Terms of Supply.

...

(m) The milk was not produced in compliance with any legal requirements.

(n) It would not be in Westland's best interests to accept the milk.

…

(p) There is any other reason for Westland to refuse the milk.

[29] Nothing of any real significance turns on cl 7.2(b)(i)(b) in this case because no particulars of this breach have been specified by Westland. Therefore, this case is concerned with Westland's rights under cls 7.2(b)(i)(m), (n) and (p).

[30] Westland's decision to reject Canaan's milk was initially directly linked solely to the judgment. Prior to that judgment the parties are agreed they had enjoyed a harmonious working relationship.

[31] Westland now rely both on the judgment and evidence produced in the injunction proceedings in support of its case that it has a right to reject Canaan's milk.

The judgment

[32] The Employment Court's proceedings were brought by three former members of Gloriavale: Hosea Courage, Daniel Pilgrim and Levi Courage (the plaintiffs).[4] They had all left Gloriavale before the proceedings were commenced.

[33] The judgment followed a preliminary hearing focused on the plaintiffs' claim against the named defendants that they were employees for the purposes of s 6 of the Act. The Chief Judge noted that, in the event the plaintiffs were found to be

4 *Courage v Attorney-General*, above n 1.

employees, the identity of the employer within the Gloriavale structure would be reserved and dealt with later which, by virtue of s 6(6)(b), may require applications for joinder or an opportunity for the proposed employer to be heard.[5]

[34] The defendants to that proceeding were:

(a) the Attorney-General sued on behalf of the Ministry of Business, Innovation and Employment (MBIE) (the Labour Inspectorate has visited Gloriavale on various occasions, concluding that those working at Gloriavale who were not partners to the partnership had the status of volunteers);

(b) seven individuals who are responsible for the day-to-day life of the community and are appointed as religious leaders known as "Shepherds";

(c) Forest Gold Honey Ltd (a honey manufacturing company);

(d) Harvest Honey Ltd (a former honey manufacturing company that is no longer trading); and

(e) Apetiza Ltd (a former pet food manufacturing company that is no longer trading).

[35] The plaintiffs applied in particular for declarations that they were employees during their time at Gloriavale, spanning three periods of time — from six to 14 years of age, the transitional year (15 years of age), and 16-plus years of age. Each of the plaintiffs also brought claims against the Labour Inspectorate in relation to the alleged failure to exercise the Labour Inspector's protective statutory duties under the Act.

[36] The Chief Judge made findings that, notwithstanding the fact the three plaintiffs attended school fulltime, they were employees from the age of six.

---

5 *Courage v Attorney-General*, above n 1, at [23].

[37] The Chief Judge's conclusions about the plaintiffs' work placement from the age of six to 12 years of were as follows:

> [54] While I accept that children within the Gloriavale Community did not spend their entire time working, and that there were some opportunities for play (as some of the witnesses for the Gloriavale defendants pointed out and some of the plaintiffs' witnesses agreed), I was left with the firm impression that these opportunities were limited and very much second to the prevailing work ethos and the way in which it manifested in the three plaintiffs' lives during their time at the Community. …

[38] She concluded that the work was:[6]

> … laborious, often dangerous, required physical exertion over extended periods of time and it was for commercial benefit. The work was not assigned by the plaintiffs' parents, but by the Gloriavale leadership.

[39] And that:

> [56] Each of the plaintiffs was subjected to rigorous, sometimes violent, supervision in their work. If they were not working hard enough or fast enough they were hit. On one occasion Hosea Courage was struck six times with a shovel handle, with sufficient force to leave bruising that lasted for several days. …

[40] During her narrative on the second of the declarations in relation to work placement from 12 to 14 years of age, the Chief Judge found that the boys were rostered to Gloriavale businesses "having regard to business need". She also found:[7]

> … their placement in particular businesses was prioritised according to where labour was required. Most of the boys worked consistently on a dairy farm in the mornings before school and then worked on jobs assigned to them … after school.

[41] The Chief Judge then considered work placement of 15-year-olds. She recorded that:

> [63] When each of the plaintiffs reached 15 years of age they participated in what was referred to as "a transitional education/work experience programme" for 12 months. This programme's official purpose was to provide work experience for students in their final year of study at school (and while they were legally obliged to remain in school). …
>
> …

---

6 At [55].
7 At [58].

> [68] Despite the apparently positive reviews from the Education Review Office (the reviews were not before the Court), the evidence disclosed that, in reality, what was termed a work experience programme was simply the transition into full time work within the Gloriavale businesses.

[42] The Chief Judge added:

> [75] The evidence squarely pointed to the plaintiffs' work during this period being geared towards the utilisation of the 15-year old male work force to meet the commercial needs of the Gloriavale business enterprises.

[43] Finally, the Chief Judge dealt with the employment of the plaintiffs in the 16-years-plus category. She said:

> [182] The Associate Partnership years were subject to a documentary overlay, being the Deed of Adherence and the Partnership Agreement. This period was effectively a holding position until the plaintiffs were of age to sign the Declaration and become a partner in Christian Partners. …

[44] The Chief Judge concluded as follows:

> [191] I make the general point that the argument that the plaintiffs were working on some sort of voluntary basis does not sit well with the title of "Associate Partner", nor does it sit well with the concept of being in a business partnership more broadly. The plaintiffs were not volunteers — they were plainly not offering to work as a matter of free choice, "without solicitation, compulsion, constraint or influence of another".
>
> …
>
> [193] … the intention of the parties reflected in the documentation, and use of the "Associate Partner" label, must be viewed with scepticism. The evidence of the plaintiffs, which I have accepted, is that they did not feel they had any choice but to enter into the arrangement given the consequences which they had been raised to believe would follow. They were, as minors, presented with the "stark choice".
>
> …
>
> [202] … It will be apparent from my findings that I would not have accepted that the plaintiffs were independent contractors — in essence, none of them could be said to have been running a business on their own account. It will also be apparent that I would not have accepted that the plaintiffs were partners during this timeframe. …
>
> (footnote omitted)

[45] Notwithstanding the findings I have quoted from the judgment, the Chief Judge did not make findings as to the identity of the plaintiffs' employers or as to the consequences of the declarations that the plaintiffs were employees.

[46] Canaan was not a party to the Employment Court proceeding. Its employment practices were not expressly examined in the judgment and were not under scrutiny. Even though there is reference in the judgment to the plaintiffs working on dairy farms it is substantially incomplete as to where or when this is alleged to have occurred.

[47] As a result of the evidence Canaan may be the subject of a proposed joinder. However, in that event Canaan would be given the opportunity to be heard in opposition either as to joinder or, if joined, as to the facts at issue.

[48] As can be observed, there is mention of Canaan at various points in the narrative in the judgment. I shall summarise those references, but I reiterate that no findings were made against Canaan in the judgment.

[49] Canaan is identified as a limited liability company forming part of the Gloriavale community's commercial enterprises.[8]

[50] Reference is also made to the plaintiffs working on Gloriavale dairy farms,[9] and there is generic reference to "boys" from the community having "worked consistently on a dairy farm".[10]

Westland's reaction to the Employment Court judgment

Westland's public statement

[51] In response to the judgment, on 15 May 2022, Richard Wyeth, the Chief Executive Officer of Westland, published a statement on the Westland website that was widely circulated and reported on in the New Zealand news media. The statement included the following passages:

---

8 *Courage v Attorney-General*, above n 1, at [42].
9 At [47]–[49] and [69].
10 At [58].

> Westland Milk Products is wholeheartedly committed to the rights of children and the freedom and dignity of everyone involved in our supply chains. We welcome the decision of the Employment Court which, as a consequence, will further support New Zealand companies to protect the rights of children, employees and others across the entire supply chain.
>
> Dairy farms controlled by Gloriavale, like all Westland suppliers, are contractually obliged to comply with New Zealand employment law and standards, and to keep up-to-date employment records. Failure to do so could lead to termination of that contract.
>
> … Westland is investigating legal avenues to suspend milk collection from dairy farms operated within the Gloriavale community group of companies.
>
> We will work through a range of other issues that would be caused by abrupt cessation of milk collection from dairy farms associated with Gloriavale, such as animal welfare and environmental issues caused by milk disposal.

[52] That statement was removed from Westland's website a short while thereafter, at some point on or before 13 June 2022.

[53] Canaan first became aware that Westland may have an issue with Gloriavale at a suppliers' meeting held in Reefton in mid-May 2022.

Canaan's letter to Westland dated 24 May 2022

[54] As a result of the meeting referred to in [53], Canaan's directors wrote to Westland on 24 May 2022 referring to their previous discussions with one another about the judgment. They also referenced the media statement referred to at [51]. At paragraph 3 of the letter they said:

> 3. So that there is complete clarity about the factual and legal position arising out of the Employment Court proceeding, we record that:
>
> - [Canaan] was not a defendant to the Employment Court proceeding. Its employment practices were not at issue and were not examined in the proceeding;
> - The plaintiffs in the proceeding do not live at Gloriavale or work on the [Canaan] farm;
> - [Canaan] does not use child labour (we reference the definition contained in the International Labour Organisation Minimum Age Convention 1973);
> - A limited number of teenage boys assist from time to time (for example during calving season) consistent with what is done on many family dairy farms around New Zealand, including no

> doubt in other dairy farms which supply to [Westland]. This is fully compliant with New Zealand law which, as you will be aware, contains specific exceptions for agriculture, and the images of a "family" farm using child labour (which [Canaan] does not) is used by [Westland] in its marketing material …;
>
> - [Canaan] complies with New Zealand employment law and standards, and keeps up-to-date records – noting that those who undertake work for it are partners, and receive a share of partnership income;
>
> - While [Canaan] was not a defendant to the Employment Court proceedings, it is committed to working with WorkSafe, the Labour Inspectorate, or any other relevant government agency in a constructive and transparent way as it has done in the past. In fact, previous investigations by the Labour Inspectorate found that others working in other Gloriavale companies were **not** employees – which is why the Labour Inspectorate was named as a defendant in the Employment Court case.

[55] Representatives from Canaan then attended a meeting with Mr Wyeth and Westland's Chief Financial Officer on 31 May 2022. At Westland's request, this was not held at its premises. No resolutions appear to have been reached between the parties as a result of that meeting.

Westland's letter to Canaan

[56] On 8 June 2022, Westland wrote to Canaan stating Westland would cease collecting milk supply after 13 June 2022.

[57] In that letter Westland stated that:

(a) recent negative publicity flowing from the Employment Court judgment cast Gloriavale and its associated commercial operations "in a very negative light";

(b) Westland had "legitimate and reasonable grounds to conclude that it [had] suffered damage" as a result of its association with Gloriavale;

(c) Westland had "the express right to reject Canaan's milk at its discretion on a number of grounds, including (but not limited to)":

(i) Canaan had not complied with the Terms of Supply (cl 7.2(b)(i)(b) of the Suppliers' Handbook);

(ii) the milk was not produced in compliance with any legal requirements (cl 7.2(b)(i)(m));

(iii) it would not be in Westland's best interests to accept the milk (cl 7.2(b)(i)(n)); or

(iv) there is any other reason for Westland to refuse the milk (cl 7.2(b)(i)(p)).

[58] Despite the above, the letter stated that "Westland is not terminating the Agreements" between itself and Canaan, it would "continue to assess this decision" and that "Westland would collect milk from Canaan once again if its concerns are adequately addressed".

[59] Westland claimed it had already lost a customer and suffered loss due to the presence of Canaan's milk in its products. Westland also anticipated losing further significant customers if it continued to purchase Canaan's milk without Canaan first addressing the issues raised by the judgment.

[60] Arising out of these events and the exchange of correspondence between the parties Canaan asserted there was a serious issue to be tried — which is whether Westland had the right to "refuse to accept" Canaan's milk under cls 7.2(b)(i)(b), (m), (n) or (p) of the Deed/Suppliers' Handbook — and applied for an injunction from the Court directing Westland to collect Canaan's milk.

Subsequent events

Evidence of Stephen Standfast

[61] As outlined at [9] to [15] above, on the day the judgment was to be delivered, Mr Raymond advised the Court of further information as to whether minors had worked on Canaan's farms. He informed the Court he had had a discussion on

4 August 2022 with a potential witness who, contrary to Canaan's submissions, said he worked in a dairy shed up to September 2020 while he was aged under 16.

[62] At the hearing on 25 July 2022, Mr Raymond made oral submissions to the effect that "since 2017, there were no children at all" working on Canaan's dairy farms, that Canaan "is not employing child labour", that "they will not find children [working on the farms] and they would not have since 2017" and "nobody under the age of 16 works there other than during calving". He made these submissions based on paragraph [9] of Mr Standfast's affidavit in reply dated 1 July 2022 which reads as follows:

> 9. As I said in my first affirmation, I have overseen the farms since 2017. No one under the age of 16 works in the dairy or on the farm other than during calving. The farms work with around four or five full time workers. There are four staff permanently on each of two farms, and two staff on the other. On any dairy farm, the early morning milkings tend to be the most challenging for staff. Generally, the men are rostered on for three early mornings a week, but the farm manager may do four. Other workers in the community work as relief milkers. The expectation is that all work should be finished by tea time (generally 5.30 or 6), although this does not always happen

[63] As a result of leave being granted to file further evidence as set out in [11] (and in response to further evidence filed by Westland discussed at [67]-[68] below), Mr Standfast filed another affidavit dated 31 August 2022. In that affidavit he sought to elaborate on paragraph [9] of his 1 July 2022 affidavit because, in his view, both his own counsel and the Court had drawn incorrect inferences from it.

[64] His explanation is set out as follows:

> 3 Like any organisation, our practices have changed over time. They changed as I took over as manager of the farms in 2017, and have continued to evolve. In my reply affidavit (at paragraph 9), I referred in the first sentence to having overseen the farms since 2017. I then said in the second sentence *that no one under the age of 16 works in the dairy or on the farm other than calving.*
>
> 4 In hindsight, I should have split those two issues/sentences into separate paragraphs or topics and acknowledge that when read together an inference may be drawn that no one under the age of 16 has worked in the dairy sheds or on the farm other than during calving since I took over management in 2017. I did not intend to convey this. I was simply intending to reiterate my role since 2017 as set out in my first affidavit and then, separately, re-stating the current position in the second sentence.

> 5 I understand that counsel and therefore the Court may have drawn the above inference from the first two sentences of paragraph 9 of my reply affidavit, and when the oral submission was made by counsel in response to arguments from the defendant I was not present to correct it and apologise for any confusion that may have been caused.
>
> (emphasis in original)

[65] Based on the above, Mr Raymond apologised to the Court for conflating the first and second sentences of paragraph [9] of Mr Standfast's 1 July 2022 affidavit and thereby inadvertently misstating the actual position to the Court in his submission.

Summary of Canaan's position

[66] Setting the misstatements to one side, Mr Raymond submitted the evidence establishes that:

(a) minors (under the age of 16) have historically worked on Canaan's farms, particularly in the calving season;

(b) up until the judgment there had been two Labour Inspectorate reports which effectively sanctioned Gloriavale's employment structure that workers at Glorivale were volunteers not employees;

(c) after, and in response to, the judgment (delivered on 10 May 2022) the position changed and minors under the age of 16 no longer worked on Canaan's farms; and

(d) after the undertaking was given on 8 August 2022 no one under the age of 18 has worked on the farms.

Evidence of TB (a minor)

[67] Pursuant to the leave granted to file further evidence, Westland filed an affidavit sworn by TB, a former member of Gloriavale, dated 16 August 2022. The affidavit responds to the inaccurate submissions made by Mr Raymond at the first hearing.

[68] In his affidavit Mr B stated:

(a) from the ages of six to 13 (being 2011 to 2018) he worked after school in the Gloriavale gardens or the Canaan dairy farms for around 18 hours a week;

(b) from the ages of six to 13, during the calving season (being approximately four months of the year) he would be assigned to feed calves at the Canaan farms before and after school for approximately six to eight hours each day. He also carried out work on the farms outside the calving season such as mustering the cows;

(c) at the age of 13 (April 2018) he started doing morning milkings at the Canaan farms from 3.30 am to 7.30 am on an ad hoc basis, and continued calving and other jobs on the farm between 2.30 pm to 5.30 pm;

(d) from the age of 14 (December 2019) to when he left Gloriavale with his family aged 15 (September 2020) he worked fulltime on the Canaan farms for around 40 hours per week, which included work in the dairy sheds;

(e) there were at least two other minors (aged 13 to 14) working on the Canaan farms in 2019 to 2020, and they were still working on the dairy farms in 2021 aged 14 or 15;

(f) Stephen Standfast did not significantly change the labour practices of Canaan when he took over the day-to-day management of the dairy farms in 2017 and, in particular, he did not change the practice of allowing minors under the age of 16 to work on the farms (although he did ban children under the age of 12 from working in the dairy sheds); and

(g) during the entire period he worked on the Canaan dairy farms (from 2011 to 2020) he was not paid and did not sign any legal agreements.

Westland's position

[69] Westland noted Mr Standfast did not take issue with "most of what [Mr B] says in his affidavit" and that Mr Raymond had submitted Mr B's evidence is not in conflict with Canaan's actual position as set out above at [66].

[70] Mr Craig, for Westland, submitted the Court was expressly advised on more than one occasion that no minors had worked on Canaan's farms other than during calving. He submitted the "fresh" evidence that is provided to qualify these statements in the way now sought by Mr Standfast misrepresents the actual state of affairs.

[71] In particular, Mr Craig referred to the evidence of Mr Samuel Valor, a director of Canaan, in affidavits dated 14 and 30 June 2022 and submitted that minors (under the age of 16) were still working on Canaan's farms at the times Mr Valor attested to the contrary.

[72] In addition to the points made in its earlier submissions at the July hearing, Westland submitted that Canaan was operating in breach of New Zealand's employment law in its use of labour by minors, both in the period up to the release of the judgment on 10 May 2022 (in respect of minors aged under 16), and up until the time of the undertaking on 8 August 2022 (in respect of minors aged under 18). Westland submitted it was therefore entitled to exercise its discretion in June 2022 to refuse to accept Canaan's milk on the basis that it was not produced in compliance with the relevant legal requirements.

[73] Westland submitted there is nothing controversial about its opinion in June 2022 that it would not be in its best interests to continue accepting Canaan's milk. Westland submitted it could not satisfy itself or its customers at that time that Canaan's milk had been produced in compliance with New Zealand law and its collection would not result in further reputational damage to Westland and its customers.

[74] Accordingly, Westland submitted it had a reasonable basis for exercising its wide discretionary rights to refuse to accept Canaan's milk and there is therefore no serious question to be tried.

[75] Westland further submitted that the recent use of illegal labour by minors on Canaan's farms is relevant to the balance of convenience assessment and that the most recent evidence highlights that Canaan is not coming to the Court with clean hands and is responsible for its own predicament.[11] I explore this at [182] to [185] below.

Canaan's reply

[76] Canaan submitted that the further evidence filed does not change the positions of the parties as at June 2022 when the interim injunction application was filed and that there is still a serious question to be tried. It submitted further that, having determined the balance of convenience, the Court should compel Westland to collect Canaan's milk supply.

[77] Canaan accepted that minors under 16 undertook some farm duties prior to the judgment. It stated that when that was, how extensive it was, what age the boys were, whether it was on the school farm (not supplying Westland) or on the main farms, and whether there was a requirement to work by farm management or amounted to assistance at the request of family members is not specifically addressed in the context of the application before the Court.

[78] Canaan submitted the past position was different from the position at the time of the hearing of the injunction because following the judgment the position changed. Canaan submitted that since the judgment no one under the age of 16 has been working on the farms, and since the undertaking was given no one under the age of 18 has been working on the farms.

[79] In summary, Canaan submitted the "serious question to be tried" test to be met for the granting of the interim injunction is established. It said the factual questions as to Canaan's use of younger community members in the past, to what extent and at

---

[11] Citing *Woolley v Fonterra Co-operative Group Ltd* [2021] NZHC 2690 at [491]; and *Water Babies International Ltd v Williams* [2020] NZHC 1289 at [66]–[67].

what age, and the legal question as to whether those circumstances give Westland the right to suspend collection in June 2022 (when minors under 16 were no longer on the farms) should be tested at trial.

Has the new evidence changed the position as it was at the first hearing on 25 July 2022?

[80] Mr Standfast's affidavit of 1 July 2022 can be read in the way he says he intended it. That provides a proper evidential foundation for the submission made by Mr Raymond as set out in [66] hereof. Whether it is ultimately accepted by the Court will of course be a matter for trial.

[81] As to the conclusions reached by Westland about Mr Valor's evidence, I find that on close reading of the relevant paragraphs in Mr Valor's affidavits there was careful reference to children not working in the dairy sheds and that there was always reference to "children" (that is, in the sense of children under the age of 16) working during calving season on Canaan's farms up until Canaan changed its practices as a result of the judgment. That said, there is no apparent basis for suggesting there has been an attempt by the witnesses to mislead the Court.

[82] Thus, the position has not substantially altered between the first hearing on 25 July 2022 and the resumed hearing on 28 September 2022.

[83] As at the date of the injunction application there is no evidence (including that of Mr B) that contradicts or disproves Canaan's witnesses' evidence that children under the age of 16 were no longer working on Canaan's farms.

[84] Nor have Canaan's witnesses ever denied that 16 and 17-year-olds have worked on their farms. Whether the terms under which such young persons have historically worked on Canaan's farms are ultimately found to offend against any such individual's rights is still an issue reasonably open to debate to be resolved at trial.

[85] I note that as soon as the Court directed that for the avoidance of doubt the practice of 16 and 17-year-olds working on the farms should be suspended pending

the substantive hearing, Canaan responded by filing the undertaking sought. There is no evidence they are in breach of it.

[86] In summary, there has been no material change to the parties' positions for the purposes of determining the injunction application as a result of Mr B's evidence and Mr Standfast's evidence in reply.

RELEVANT LEGAL PRINCIPLES

[87] The parties accept that consideration of an application for an interim injunction focuses on three matters:[12]

(a) whether there is a serious question to be tried;

(b) the balance of convenience between the parties; and

(c) an assessment of the overall justice of the case.

[88] The onus is on the applicant for an injunction to "adduce sufficiently precise factual evidence to satisfy the court that he has a real prospect of succeeding in his claim for a permanent injunction at the trial".[13]

[89] Mandatory injunctions are relatively uncommon and interim mandatory injunctions are rarer still.[14] The potential injustice to a defendant will be increased by requiring them to do something.[15]

[90] It is inappropriate to award an interim injunction having the effect of specific performance in circumstances where the Court is satisfied there is a strong argument that specific performance would not be awarded at trial.[16]

---

12 *Intellihub Ltd v Genesis Energy Ltd* [2020] NZCA 344, [2020] NZCCLR 29 at [23], citing *Klissers Farmhouse Bakeries Ltd v Harvest Bakeries Ltd* [1985] 2 NZLR 129 (CA) at 142.

13 *Muzz Buzz Franchising Pty Ltd v JB Holdings (2010) Ltd* [2012] NZHC 2490 at [10], citing *Re Lord Cable (dec'd)* [1977] 1 WLR 7 (ChD) at 19.

14 *Soft-Tech International Pty Ltd v Ball* (1990) 3 PRNZ 683 (HC) at 684.

15 *Telecom New Zealand Ltd v Clear Communications Ltd* (1997) 6 NZBLC 102,325 (HC) at 102,335.

16 *Retail Focus Group Ltd v Forsgren NZ Ltd* [2014] NZHC 1984 at [79].

Is there a serious question to be tried?

The approach the Court should take

[91] The New Zealand Courts tend to take a closer look at the claim than was advocated by Lord Diplock in *American Cyanamid Co v Ethicon Ltd*, in which his Lordship said that this head was only there to weed out frivolous or vexatious claims with no real prospect of success.[17]

[92] A process often followed in New Zealand is that set out by Lush J in the Australian case *Henry Roach (Petroleum) Pty Ltd v Credit House (Vic) Pty Ltd*.[18] That approach is to consider the applicable law, the facts put forward by each side and where the issues lie, and to then assess whether there is a tenable resolution of the issues of law and fact on which the applicant could succeed.

[93] The High Court more recently articulated the applicable test in *Western Work Boats Ltd v Kelly*:[19]

> [19] There is no real difference between the parties about the legal test to be applied in considering whether to grant an interim injunction. As Arnold J summarised for the Court of Appeal in *NZ Tax Refunds v Brooks Homes Ltd*:
>
> > The applicant must first establish that there is a serious question to be tried or, put another way, that the claim is not vexatious or frivolous. Next the balance of convenience must be considered. This requires consideration of the impact on the parties of the granting of, and the refusal to grant, an order. Finally, an assessment of the overall justice of the position is required as a check.

[94] *Muzz Buzz Franchising Pty Ltd v JB Holdings (2010) Ltd* was a dispute between two coffee franchises which related to matters concerning copyright, trademark infringement and the like.[20] The Judge usefully summarised some of the key principles applicable to interim injunction applications:[21]

> … there are two broad questions to consider, as to whether an interim injunction should be granted. The first is whether there is a serious question

---

17 *American Cyanamid Co v Ethicon Ltd* [1975] AC 396 (HL) at 407–408.

18 *Henry Roach (Petroleum) Pty Ltd v Credit House (Vic) Pty Ltd* [1976] VR 309 at 31; *Development Consultants Ltd v Lion Breweries Ltd* [1981] 2 NZLR 258 (HC).

19 *Western Work Boats Ltd v Kelly* [2016] NZHC 2577, citing *NZ Tax Refunds Ltd v Brooks Homes Ltd* [2013] NZCA 90, (2013) 13 TCLR 531 at [12].

20 *Muzz Buzz Franchising Pty Ltd v JB Holdings (2010) Ltd*, above n 13.

21 At [7] (footnote omitted).

> to be tried in the proceeding; and the second is where the balance of convenience lies. The Court of Appeal in *Klissers Farmhouse Bakeries Ltd v Harvest Bakeries Ltd*, held that while those two broad questions provide an accepted framework for approaching applications for interim injunctions, they are not exhaustive and relief is essentially discretionary.

[95] That is important. While the key principles provide a framework, the list is not exhaustive and relief is still entirely discretionary.

Can Canaan advance a tenable case that Westland is not entitled to refuse to take their milk supply?

[96] The answer to this question lies in reviewing the provisions of cl 7.2(b)(i) of the Suppliers' Handbook on which Westland relies. I have at [29] already dealt with cl 7.2(b)(i)(b), namely that Canaan has not complied with the Terms of Supply.

Clause 7.2(b)(i)(m) — the milk was not produced in compliance with any legal requirements

Westland's case

[97] Based on the judgment and the fresh evidence of Messrs B and Standfast, Westland says the production of Canaan's milk was, and is, not in compliance with New Zealand legal requirements (namely, employment law) for a number of reasons.

[98] First, Westland says Canaan is part of the "complex overlay of commercial and legal structures" in place at Gloriavale.

[99] Second, Westland says in the present case there are 15 to 16 individuals who provide services and work on Canaan farms who are either associate partners (of whom there are three) or partners of the Christian Partners partnership, the same partnership that was at issue in the judgment.

[100] Third, Westland says the three associate partners working at Canaan will not be partners or independent contractors but should be categorised as employees in line with the judgment. Accordingly, their involvement in the production of the milk has not been in compliance with New Zealand's employment law.

[101] Fourth, Westland says similarly that it is a live issue whether the remainder of the partners working at Canaan are partners or independent contractors, as opposed to employees. As the judgment records:[22]

> … a strict contractual focus on identifying the existence and nature of the contract, such as might be adopted in respect of arm's length business partners, is inapt. Rather, the answer to the ultimate question emerges from a fact specific inquiry.

Canaan's case

[102] First, Canaan emphatically denies anyone under the age of 16 has been working on Canaan's farms since the judgment.

[103] Second, Canaan says since it was required to give the undertaking by the Court no one under the age of 18 is working on Canaan's farms.

[104] Third, Mr Valor's evidence about the associate partners who provide services to Canaan was as follows:

> The three exceptions I mention above are all associate partners. They too received independent legal advice before signing to be associate partners. They are all over 18. One works with his father on the farm at Bell Hill. Another drives tractors across all farms. The third works on the Glen Hopeful farm. From time to time other associate partners will assist periodically with relief milking and at busy times on the farms such as calving.
>
> The Employment Court made comments on the status of associate partners in its decision. We are receiving advice from a specialist employer lawyer as to what now to do with associate partners, and how they should be treated in light of that decision.

[105] The current undertaking resolves any remaining issues relating to associate partners under the age of 18.

[106] Fourth, Canaan emphasises it is not currently subject to any open and ongoing investigations by WorkSafe, the Labour Inspectorate or the police arising from the judgment.

---

22 *Courage v Attorney-General*, above n 1, at [134].

[107] Fifth, since the judgment all relevant government agencies (including WorkSafe and the Labour Inspectorate) have signed off on the legality of Canaan's commercial operations (and Westland has been provided with a copy of the relevant reports). One issue was raised by WorkSafe concerning a calf-feed dispenser that was not being used. An improvement notice was issued, and the issue was immediately remedied.

[108] Sixth, in an attempt to give further assurances to Westland, Canaan has engaged an external auditor (SGS) to undertake a review of operations. SGS is a company which is concerned with external compliance of matters such as sustainability, supply chain assurances, ethical conduct and the like. Canaan is willing to provide a copy of that review once obtained to Westland.

Discussion

[109] There is no evidence before the Court to establish that at the time the injunction was sought Canaan was currently in breach of its obligations as an employer.

[110] Furthermore, it is premature to come to and act on the following conclusions:

(a) that an application will be made for joinder of Canaan to the Employment Court proceedings; and

(b) that if joined, the Employment Court will make adverse findings about Canaan's current practices.

[111] I note that even if the Employment Court was to make adverse findings as to Canaan's historical practices it would more likely than not take account of the fact that Canaan's practices were developed in reliance on two Labour Inspectorate reports approving those practices and a Crown Law opinion that they were lawful.

[112] I have been provided with no information about the three associate partners and whether, in the particular circumstances, Canaan's conduct in relation to its employment practices would or would not be comparable to that experienced by the plaintiffs in the judgment. I reiterate no findings have been made against Canaan in

this respect. In any event, the current undertaking preserves Canaan's compliance with the law in relation to associate partners between the ages of 16 and 18.

[113] Thus, I conclude in the circumstances of this case there is a serious question to be tried, namely Canaan has an arguable case that Westland cannot refuse to take its milk supply in reliance on cl 7.2(b)(i)(m).

Clauses 7.2(b)(i)(n) and 7.2(b)(i)(p) — it would not be in Westland's best interests to accept the milk or there is any other reason to refuse the milk

[114] Westland has not made any distinction between these two clauses. It has submitted its case on the basis that these clauses provide the same or similar right to Westland to refuse to collect Canaan's milk supply. These grounds for refusal concern the exercise of a contractual discretion, the principles for which first require articulation.

The relevant principles that apply to an exercise of an absolute contractual discretion

[115] The common law places limits on such discretions, even when contracts do not. The position was summarised by the High Court in *C & S Kelly Properties Ltd v Earthquake Commission*:[23]

> … the position is reflected in New Zealand cases which recognise absolute discretions in a contract must be exercised in a way that is not capricious, arbitrary or unreasonable, and that an apparently unfettered discretion may be subject to an implied term of reasonableness and the need to give business efficacy to the contract.

[116] In *Vero Insurance New Zealand Ltd v Fleet Insurance & Risk Management Ltd*, Asher J stated:[24]

> [47] Thus, the proposition can be put that parties to a contract must, in exercising a broad contractual discretion, be true to the ideal that lies behind the contract. In the words of Lord Steyn in *First Energy (U.K.) Ltd v Hungarian International Bank Ltd* [1993] 2 Lloyd's Rep 194:
>
> > A theme that runs through our law of contract is that the reasonable expectations of honest men must be protected. It is not a rule or

---

23 *C & S Kelly Properties Ltd v Earthquake Commission* [2015] NZHC 1690 at [68].

24 *Vero Insurance New Zealand Ltd v Fleet Insurance & Risk Management Ltd* HC Auckland CIV-2007-404-1438, 21 May 2007 at [47].

> principle of law. It is the objective which has been and still is the principal moulding force of our law of contract …
>
> Another way of articulating the meaning of good faith in this context is to say that a discretion, having regard to the provisions of the contract by which it is conferred, must not be exercised arbitrarily, capriciously, or unreasonably: *Abu Dhabi National Tanker Co. v Product Star Shipping Ltd (The "Product Star" (No. 2))* [1993] 1 Lloyd's Rep 397 at 404.

[117] That is, a broad contractual discretion imports the obligations of good faith and must not be exercised arbitrarily, capriciously or unreasonably having regard to the provisions of the contract.[25]

[118] The recent case of *Woolley v Fonterra Co-operative Group Ltd* concerned the exercise of a contractual discretion.[26] At issue was whether Fonterra was justified in suspending milk collection under its supply contract with Mr Woolley in response to an allegation that Mr Woolley was acting unlawfully at his farm. The Court found that Fonterra's exercise of its contractual discretion was not unreasonable in the circumstances and its notice suspending milk collection was properly issued and effective. Amongst other points, Isac J noted that:

> [443] Courts have set a high threshold for interfering in the exercise of a contractual discretion. The logic for that is clear. Where parties enter a contract freely — and have agreed to the introduction of a discretion — it is not for the courts to re-write that contract or impose its views as to the contract's operation in the absence of an unreasonable exercise of the discretion. Nor have the courts generally accepted that contractual rights and powers ought to be judicially regulated by reference to an imbalance of negotiating power between the parties.

[119] In order to regulate the exercise of such contractual discretions by balancing freedom of contract with the risk of abuse of power, Isac J explained the common law has developed what is known as "the default rule":

> [411] Contractual discretions are powers granted by one contracting party to another, and generally allow one party to exercise contractual rights for their own purposes, or without express restrictions. While contracts that confer unilateral powers are common, they have the potential to be abused. The common law has therefore developed a default rule controlling the exercise of contractual discretions. The default rule provides that where a contract confers a discretionary power on one party, that party must not exercise the

---

[25] *Abu Dhabi National Tanker Co v Product Star Shipping* [1993] 1 Lloyd's Rep 397 (CA) at 404, cited in *Vero Insurance New Zealand Ltd v Fleet Insurance & Risk Management Ltd*, above n 24, at [47].

[26] *Woolley v Fonterra Co-operative Group Ltd*, above n 11.

> discretion arbitrarily, capriciously or in bad faith, or unreasonably, in the sense that no reasonable contracting party could have so acted.
>
> (footnote omitted)

[120] Isac J considered whether the default rule should continue to be applied in its current form or whether a more expansive rule incorporating substantive standards of review from public law into contractual decision-making should be adopted, following the United Kingdom Supreme Court's judgment in *Braganza v BP Shipping Ltd*.[27] He stated:

> [452] However, *Braganza*, and its subsequent treatment, has demonstrated the difficulties that can arise from the wholesale transplantation of public law tools into purely commercial dealings. Given the very different underlying values at play, concepts such as *Wednesbury* unreasonableness may undermine the coherence of contract law.
>
> [453] In my view, it is better to set aside the default rule in favour of a new set of rules focussed on the terms of the contract and the policies informing the law of contract. It is better to recognise that discretions take their quality from the context in which they arise, and that principles of, say, employment law — or public law doctrines — will not always be appropriate in other contexts where the relationships between the parties, the nature of the parties, and the purpose of the controlling rules are different.

[121] Having exhaustively explored the debate on this issue, Isac J endorsed an approach that focuses on the internal limits of a contractual power by reference to the purposes of the contract,[28] and concluded:

> [460] For those reasons, I decline to follow the expanded default rule from *Braganza* in this case. An approach focussed on the contract itself, a broad view of the purpose of the venture, and the uncertainty the contractual discretion was designed to manage ensures the Court is focussed on giving effect to the bargain the parties made. It also avoids category errors caused by the application of public law concepts to a contract, or employment based fiduciary obligations to strictly commercial contracts.

[122] In summary, the following principles emerge:

(a) absolute contractual discretions may not be exercised in a way that is arbitrary, capricious, or unreasonable, having regard to the provisions of the contract;

---

27 *Braganza v BP Shipping Ltd* [2015] UKSC 17, [2015] 1 WLR 1661.

28 At [454]–[459], referring to Philip Sales "Use of powers for proper purposes in private law" (2020) 136 LQR 384

(b) the meaning of good faith in this context is the parties to the contract must be true to the ideal that lies behind the contract or, in other words, "the reasonable expectations of honest men must be protected"; and

(c) an approach focused on the contract itself, a broad view of the purpose of the venture, and the uncertainty the contractual discretion was designed to manage ensures the Court is focused on giving effect to the bargain the parties made.

Westland's case

[123] Westland accepts it cannot exercise its discretion under these cls 7.2(b)(i)(n) and (p) to reject the milk in a way that is arbitrary, capricious or unreasonable. It says its position is reasonable in the circumstances.

[124] First, Westland says it has already lost one customer ("Company A") since the judgment was released. That customer advised it would only resume orders if Westland's product did not contain Gloriavale/Canaan milk.

[125] Second, Westland anticipated that at least four of its most significant customers would have grounds to suspend or terminate their contracts with Westland based on breach of the suppliers' codes of conduct with them and/or reputational concerns if it did not suspend collection of Canaan's milk.

[126] For instance, one of those significant customers received a query from news website Stuff on 20 June 2022 in relation to its sustainability policy, and how its commitment to reducing modern slavery risks was consistent with taking products from Westland that contain milk from Canaan.

[127] Third, Westland says there is a developing trend amongst businesses to investigate and require supply chain compliance with corporate social responsibility policies, including with regard to issues of modern slavery and labour exploitation.

[128] Westland says it is obligated under various supplier codes of conduct to ensure its supply chain complies with local employment laws and does not contain child

labour or modern slavery. Westland is an exporter of various dairy products to over 40 countries around the world. Many of Westland's customers are large multinational companies that require Westland to abide by a "supplier code of conduct".

[129] These codes of conduct are confidential, but they almost all require Westland to adhere to all "applicable international, national and local laws and regulations" and contain references to "human rights and labour" and "health and safety".

[130] Westland identifies that non-compliance with a code of conduct allows that customer to suspend working with Westland until Westland can illustrate its compliance with the code. For more serious breaches (including evidence of illegal child labour), the customers could completely terminate their contracts with Westland.

[131] Fourth, Westland relies on the fact it is not alone in reviewing its supply arrangements with Gloriavale's commercial operations. Specifically, it notes at least two other companies have terminated or suspended their contracts with companies owned and operated by the Gloriavale community and others are still considering whether to do so.

[132] Fifth, Westland also relies on the fact that there is currently a Bill before Parliament that proposes to amend s 131 of the Companies Act 1993 to clarify that, in determining the best interests of the company, a director may take into account environmental, social and governance factors, including upholding high standards of ethical behaviour, following fair and equitable employment practices and recognising the interests of the wider community.[29]

[133] Sixth, and finally, Westland refers to the fact that MBIE has recently closed a consultation seeking feedback on a legislative response to "Modern Slavery and Worker Exploitation, Forced Labour, People Trafficking and Slavery".[30] The proposed legislation would create new responsibilities on companies across New Zealand to take due diligence to identify modern slavery or worker exploitation, and

---

29 Companies (Directors Duties) Amendment Bill 2021 (75-1).

30 See Ministry of Business, Innovation and Employment *Discussion Document: A Legislative Response to Modern Slavery and Worker Exploitation* (8 April 2022).

to take action if they became aware of any such practices within their organisations or their supply chains.

[134] In summary, Westland submitted that its actions are entirely consistent with its legal obligations (both current and anticipated) and the expectations of its customers and other suppliers.

Canaan's case

[135] First, Canaan says read literally, the third and fourth grounds for rejection are infinitely wide and must be read in the context of the contracts between the parties in their entirety. To interpret these two clauses as having infinite application would render pointless the inclusion of 14 other specific grounds set out in cl 7, which, in its submission, typically refer to urgent health and safety matters and milk quality that might give rise to a genuine need for Westland to reject milk on a one-off or short-term basis.

[136] Second, Canaan says the clauses must be read in a way that makes commercial sense. To suggest that Westland can reject milk when it is not in its best interests cannot mean it can reject milk at will. It could, for example, reject milk if the price was too low, if it was short-staffed, or if it wanted to close its factory for a period. Canaan submits an ability to reject at will would render the actual supply contract (and indeed the assurance given by Jingang to collect milk for a 10-year period) meaningless.

[137] Third, Canaan says the provision of termination clauses (separate from rejection clauses) in the contracts also supports the interpretation that the rejection clauses are not intended to allow for long-term open-ended non-performance of contractual obligations at Westland's absolute discretion. None of the termination clauses are engaged.[31]

---

[31] As set out above at [19] and [22].

[138] Fourth, as to the first two grounds advanced by Westland, Canaan says the evidence is scant and does not provide a reasonable basis for termination or effective termination of the contracts between the parties.

[139] Fifth, it says if Westland had properly analysed the judgment (rather than responding to the sensation it created in the media) it would be able to reassure customers that no adverse findings of fact had been made against Canaan in proceedings in which they had had the opportunity to take part and present their case. It says responsible corporate decision-makers in that instance would be unlikely to make unreasonable demands of Westland so far as its contractual obligations are concerned.

[140] In a similar vein, Canaan says Westland is welcome to inspect all three farms in order to satisfy itself and others that Canaan has not since the judgment employed any minors aged under 16 on its farms.

[141] As to the third to sixth reasons advanced by Westland, Canaan says that while those developments are representative of moves by corporates and government towards more ethical and sustainable corporate activity, they are not relevant matters to the analysis of Westland's rights under the contracts between the parties. That is because if there is no breach of legal requirements by Canaan then no responsible corporate organisation would or could threaten Westland over its supply chain policies and practice.

Conclusion

[142] Utilising a contract-focused approach I consider the first, second and third observations made about the contract by Canaan are correct. The discretions must be set in the context of the contracts as a whole and must not be interpreted in such an expansive way as to render other provisions agreed by the parties redundant or meaningless.

[143] It is clear the bargain the parties (and the predecessors) made was a simple one. Westland agreed to take Canaan's milk supply for 10 years subject to the control of supply provision set out in cl 7.2. Canaan's duties were to ensure that the milk was to

come exclusively from the specified farm and that the milk was continually refrigerated and agitated in accordance with cl 7.2(a)(i) and (ii). Westland had the right at its discretion to refuse the milk on the grounds set out in cl 7.2(b)(i). These grounds largely relate to matters of milk purity, biosecurity, hazardous working conditions and animal welfare.

[144] It would appear, at their core, cls 7.2(b)(i)(n) and (p) are being used in reliance on the same factual basis as that relied upon in 7.2(b)(i)(m). There is nothing new or additional being advanced under these clauses. It is Canaan's employment practices that lie at the heart of Westland's case that it has a right to reject Canaan's milk supply.

[145] Even if Westland was advancing its right to refuse milk for some reason other than Canaan's alleged failure to comply with the legal requirements of cl 7.2(b)(i)(m), the evidential basis for invoking the discretions is weak.

[146] I deal now with the adverse customer reaction to Canaan on which Westland seeks to rely. The first was an alleged termination by Company A, which involved the sum of no more than $150,000. There is no evidence of actual loss. The evidence is silent as to whether that money could be recovered from elsewhere and by other clients. The second one was a concern by "Company B" about in-store promotions, which Mr Wyeth stated might have an impact of $95,000. The third relates to "Company C". The correspondence consists of Company C receiving an enquiry from an investigative journalist about Canaan's practices. Its only response was to forward the email from the journalist on to Westland. That email's entire text was "FYI". It thus did not contain any threat of termination or suspension, nor of a threat to seek any other remedy under its contractual arrangements with Westland.

[147] I have reviewed the emails from various suppliers to Westland which have the heading and reference "modern slavery ethics". It is clear on analysis that the terminology and concerns can be sourced back to the same journalist and are in response to her enquiries rather than any other independent source.

[148] I find that the third to sixth reasons for refusal of the milk relied upon by Westland are irrelevant.

[149] Canaan has offered to provide Westland with any information or reports it requires, to make its premises and records available for inspection and to obtain whatever external oversight Westland requires to satisfy itself as to Canaan's operations. Westland should first avail itself of such opportunities to satisfy itself of the current position between the parties, rather than relying on related historical matters, before exercising its discretion under these clauses.

[150] There has been a 30-year amicable contractual business relationship between the parties. There has been no finding of a breach of any legal obligations against Canaan nor any breach of its cl 7.2(a) duties. There is also no evidence of breaches of its obligations in relation to milk purity, biosecurity, hazardous working conditions and animal welfare.

[151] The contracts' termination clauses have not been invoked.

[152] In these circumstances and having regard to the principles set out at [122], I find there is a strong case that Westland's discretions have not been exercised reasonably nor with the need to give effect to the bargain the parties made in the contracts at issue.

[153] In those circumstances Canaan's claim cannot possibly be characterised as seriously unarguable, vexatious or frivolous. In other words, Canaan has satisfied the Court that it has a real prospect of succeeding in its claim for a permanent injunction at trial.

Balance of convenience

[154] The balance of convenience can also be described as "the balance of the risk of doing an injustice".[32] It is the "guiding principle" in granting an interim injunction.[33] This stage requires the Court to balance the injustice or harm that may be caused to the applicant if an interim injunction is not granted and the applicant ultimately succeeds in gaining a permanent injunction, against the injustice or harm

---

32 *Cayne v Global Natural Resources plc* [1984] 1 All ER 225 (CA) at 237; affirmed in *McLaughlin v McLaughlin* [2019] NZHC 2597, [2019] NZFLR 299 at [37].

33 *Eng Mee Yong v Letchumanan* [1980] AC 331 (PC) at 337.

that may be caused to the respondent if an interim injunction is granted and the applicant ultimately fails to gain a permanent injunction. Although this inquiry is "broad and flexible",[34] the courts usually consider factors such as:[35]

(a) the adequacy of damages to both parties;

(b) preservation of the status quo;

(c) the relative strength of each parties' case;

(d) the conduct of the parties; and

(e) the effect on innocent third parties.

Uncontested facts

[155] There are numerous uncontested facts to be taken into account as background when considering the balance of convenience in this case. I shall now refer to them.

[156] Westland is the sole milk processor which collects milk produced on the West Coast.

[157] The Canaan farms are one of the only, if not the only, suppliers of milk to Westland in winter. Canaan's whole operation has been structured to meet that requirement. It has invested heavily in its herd, which is genetically superior. Canaan has invested significant sums in infrastructure at its farms in reliance on the ongoing ability to supply milk. For instance, it has built for this winter, and subsequent winters, a $1.4 million facility for the benefit of the animals, and has invested heavily in the mating programme and genetics of this herd. At the time the injunction was initially sought, Canaan had 430 cows which were in milk, 250 of which had recently calved. Canaan has a contract to supply Westland with winter milk and has 1,500 additional cows calving this year.

---

34 *McLaughlin v McLaughlin*, above n 32, at [38].

35 *McLaughlin v McLaughlin*, above n 32, at [38], citing *American Cyanamid Co v Ethican Ltd*, above n 17, at 408.

[158] Were Westland not to collect Canaan's milk supply, Canaan would be required to take steps to immediately dry off the in-milk cows. This creates animal welfare issues, particularly when they are in full lactation. Pending drying off the cows, the milk would need to be stored in vats at the farms. The vats have insufficient capacity to store the milk required and there are no resource consents that allow the milk to be discharged on to land.

[159] To sell cows in-milk would require them to be transported to another farm that is currently milking. There does not appear to be any other farm on the West Coast that has cows in milk over winter. In the absence of a West Coast farm able to milk over winter, the cows would need to be transported to Canterbury, over the passes, during winter. The uncontroverted evidence of Mr Shorten, a veterinarian, is that the transport of cows in such conditions would create animal welfare issues.

[160] Further, the cows that commenced calving in July would need to be sold off. Such sale would likely be to a Canterbury dairy farm, requiring the transport of such cows over the passes during winter, in late pregnancy. That too would create animal welfare issues.

[161] One of the three Canaan farms milks solely jersey cows and there is a limited market for those cows in Canterbury.

[162] The cows cannot be easily replaced, having been subject to a breeding programme over 20 to 25 years. They include a pure jersey herd and a herd which produces A2 milk. As Mr Shorten observed:

> **Herd quality**
>
> The cows that form the herds at [Canaan] have been bred over many years to improve the genetic merit of the herd. I am aware that [Canaan] has had bulls on the LIC (Livestock Improvement Company) team, which is considered prestigious in dairy circles, and takes generations of careful breeding to achieve. I am also aware that [Canaan] bulls are also involved in contract mating across New Zealand. This is only done by farms which are looking for the best herd. It really is the top farmers that are doing these things. These are high quality cows and they are very well managed and looked after. The cow quality at [Canaan] is within the top 10% of cows I see.

[163] In these circumstances, the nationally recognised genetic value which Canaan has built up for three decades in its herd would be gone overnight. Even if Canaan managed to get back on its feet eventually as a farming operator, it would have to start from scratch with a new herd of lesser genetic merit. The Canaan stud has been developed for the particular conditions at Canaan farms in and around Haupiri. The cows cannot simply be replaced with other breeds.

[164] Canaan has complied with the terms and conditions of its contracts, and the independent audit reports undertaken by Westland confirm Canaan complies with Westland's farm excellence programme and was graded as a "role model" in many categories.

[165] Further, were Westland to cease collecting Canaan's milk supply, the financial viability of the farms would be put in jeopardy, requiring the termination of labour contracts for the 14 men who work on the farm, with associated flow-on effects for those rely on that income.

Adequacy of damages for both parties

[166] In relation to the adequacy of damages, the House of Lords in *American Cyanamid* held:[36]

> … the court should first consider whether, if the plaintiff were to succeed at the trial in establishing his right to a permanent injunction, he would be adequately compensated by an award of damages for the loss he would have sustained as a result of the defendant's continuing to do what was sought to be enjoined between the time of the application and the time of the trial. If damages in the measure recoverable at common law would be adequate remedy and the defendant would be in a financial position to pay them, no interlocutory injunction should normally be granted, however strong the plaintiff's claim appeared to be at that stage. If, on the other hand, damages would not provide an adequate remedy for the plaintiff in the event of his succeeding at the trial, the court should then consider whether, on the contrary hypothesis that the defendant were to succeed at the trial in establishing his right to do that which was sought to be enjoined, he would be adequately compensated under the plaintiff's undertaking as to damages for the loss he would have sustained by being prevented from doing so between the time of the application and the time of the trial. If damages in the measure recoverable under such an undertaking would be an adequate remedy and the plaintiff would be in a financial position to pay them, there would be no reason upon this ground to refuse an interlocutory injunction.

---

[36] *American Cyanamid Co v Ethicon Ltd*, above n 17, at 408.

[167] Adequate compensation in this context is what is fair and just in the circumstances of the case, including consideration of intangible harm and the difficulty of assessing damages.[37]

[168] Damages are clearly not an adequate remedy for Canaan in this case. I do not take Westland's submissions to seriously suggest otherwise.

[169] Canaan has three farms with significant infrastructure that would become redundant, quite apart from the fact that the community would suffer directly in the meantime for the reasons I traverse at [156] to [165].

[170] Canaan has a herd which has been built up over many years. It is an extremely valuable asset which cannot be replaced simply by repurchasing the herd in the future. The impact on future production is significant. Herds cannot just be replaced as years of breeding worth and genetics cannot be purchased.

[171] Westland's very public statements would likely mean that a fire sale could not be avoided. The market would know that Canaan is a seller who would have to sell its herd no matter what the price. Loss is therefore inevitable.

[172] Westland says it has concerns whether Canaan would be able to meet its undertaking as to damages. This was not really developed in its submissions. There is extremely limited credible evidence that Westland has lost, or would actually lose, contracts, let alone anything like the figure that is provided in the submissions.

[173] In any event, if an injunction is granted Westland's customers will recognise that Westland is obliged by law to collect Canaan's milk supplies. Responsible commercial entities would not likely cancel contracts when they become aware of the actual facts as set out in this judgment. Responsible commercial entities will likely continue to go about their business with Westland in the normal way pending the outcome of the substantive proceedings.

---

[37] *Gilks v Marsh* (1982) 1 NZCLC 95-063 (HC) at 6.

Preservation of the status quo

[174] A useful description of the approach to this consideration was provided by Lord Diplock in *American Cyanamid*:[38]

> Where other factors appear to be evenly balanced it is a counsel of prudence to take such measures as are calculated to preserve the status quo. If the defendant is enjoined temporarily from doing something that he has not done before, the only effect of the interlocutory injunction in the event of his succeeding at the trial is to postpone the date at which he is able to embark upon a course of action which he has not previously found it necessary to undertake; whereas to interrupt him in the conduct of an established enterprise would cause much greater inconvenience to him since he would have to start again to establish it in the event of his succeeding at the trial.

[175] The status quo has been referred to as "the last peaceable state between the parties".[39] However, I note there is some disagreement over when the status quo is to be assessed: before the alleged wrongdoing or immediately before the commencement of proceedings.

[176] While the status quo is not to be treated as a mantra, in the words of Asher J in *Vero*:[40]

> … as with a case where a building is about to be destroyed, a commercial edifice in successful existence for seven years faces destruction. Maintaining the existing state of affairs until a full hearing has the mark of common sense.

[177] The position is more marked here. The relationship is decades long. It has been of mutual benefit to both parties. It has been amicable and constructive. There has been no evidence of wrongdoing by Canaan in relation to children under the age of 16 since the judgment. There has also been no conclusive evidence of wrongdoing in relation to associate partners or teenagers between the ages of 16 and 18. In any event, since the undertaking was given it is apparent that Canaan has complied with the legal position as espoused by the Chief Judge in the judgment.

[178] In these circumstances preservation of the status quo favours the granting of the injunction.

---

38 *American Cyanamid Co v Ethicon Ltd*, above n 17, at 408.
39 *R & M Wright Ltd v Ellerslie Gateway Motels Ltd* HC Wellington CP188-90, 11 July 1990 at 8.
40 *Vero Insurance New Zealand Ltd v Fleet Insurance & Risk Management Ltd*, above n 24, at [93].

Relative strength of each parties' case

[179] In finding where the balance of convenience lies, the strength of the plaintiff's case is one factor to be considered. Hardie Boys J in *Shotover Gorge Jet Boats Ltd v Marine Enterprises Ltd* said that where a plaintiff has established there is a serious question to be tried, "the relative merits of the parties' cases ought not to assume prominence in a consideration of where the balance of convenience lies".[41]

[180] There is an intrinsic limit to the examination of the merits of the argument based on the affidavit evidence provided and the interlocutory nature of the application. As Lord Diplock observed:[42]

> The extent to which the disadvantages to each party would be incapable of being compensated in damages in the event of his succeeding at the trial is always a significant factor in assessing where the balance of convenience lies; and if the extent of the uncompensatable disadvantage to each party would not differ widely, it may not be improper to take into account in tipping the balance the relative strength of each party's case as revealed by the affidavit evidence adduced on the hearing of the application. This, however, should be done only where it is apparent upon the facts disclosed by evidence as to which there is no credible dispute that the strength of one party's case is disproportionate to that of the other party. The court is not justified in embarking upon anything resembling a trial of the action upon conflicting affidavits in order to evaluate the strength of either party's case.

[181] It will be obvious from the findings I have made that there is a serious issue to be tried and that the relative strength of the parties' cases disproportionately favours Canaan.

The conduct of the parties

[182] The applicant's conduct can be relevant, as an injunction may be refused if the applicant does not come to the Court with clean hands, in such a way that would make the granting of an injunction unconscionable.[43]

---

41 *Shotover Gorge Jet Boats Ltd v Marine Enterprises Ltd* [1984] 2 NZLR 154 (HC) at 157.
42 *American Cyanamid Co v Ethicon Ltd*, above n 17, at 409.
43 *Media Works NZ Ltd v Sky Television Network Ltd* (2007) 74 IPR 205 (HC) at [106].

[183] Westland submitted that Canaan is not coming to the Court with clean hands. In particular, they refer to the evidence of Messrs Standfast and Valor and cast aspersions on the veracity of their evidence.

[184] As I have observed at [83] to [84] and [109] to [112], there is no countervailing evidence produced by Westland that disproves the evidence of Mr Standfast and Mr Valor that no children under the age of 16 have worked on Canaan's farms since the judgment. There is also no countervailing evidence to prove the existence of any illegality in relation to any individual aged between 16 to 17 years working on Canaan's farms as at the date of the judgment. Finally, there is no evidence that Canaan has breached the undertaking made to the Court.

[185] Whilst some doubt has arisen as to the accuracy of statements made by Messrs Standfast and Valor insofar as Canaan's historic practices are concerned, that is not at such a level of proven unconscionability so as to affect the assessment of where the balance of convenience lies between the parties.

Effect on innocent third parties

[186] Westland accepts the welfare of Canaan's animals would be detrimentally affected by refusing to grant the injunction sought as set out at [158] to [160].

[187] Innocent members of the Gloriavale community would also be detrimentally affected. The milk cheque from Westland exceeds $8 million per year. It keeps around 14 men in full-time work, with the exact number on-farm depending on the season at any particular time.

[188] Of course, much of the milk cheque is used for farm expenses. Profits are distributed back to the shareholder charitable trust. Approximately $1 million flows to the Partnership for payment of the labour it supplies to Canaan. The Partnership uses this money to support everyone who lives within the community. Without this money, the impact on the community would be significant. The Trust uses the income to meet the various costs of operating the community, for which it does not charge its residents.

[189] These costs include fresh water supply, backup electricity generation, roading, community central heating, wastewater treatment, community kitchens, schools and preschools, community buildings, internet, computers and cell phones, vehicles, fuel, as well as recreation facilities such as the swimming pool and playgrounds, and field trips for the school children. The income is also used for payments made to people who leave the community in order to support them in starting their new life. Without the income from its contracts with Westland, the community would have to look at cutting down on some, or all, of these items of expenditure.

[190] At a wider level, there will be a flow-on effect to the community outside Gloriavale. Multiple contractors visit them on a weekly basis. Canaan supplies work to numerous people in the surrounding community in the form of trucking contracts (such as for moving stock, feed, fertiliser), silage and baleage production, concreting and building work, vet services, and consultants in various forms (including LIC FarmWise for monthly services, feed consultants, herd improvement consultants). The impact on the wider West Coast would be significant.

[191] The consequences for Westland flowing from the judgment have, to date, been minimal.

[192] In these circumstances the balance of convenience plainly favours the applicant in this case.

Overall justice

[193] This final stage requires the Court to "stand back from the case and consider where the justice of the case lies".[44] Although the balance of convenience will normally determine whether the Court should grant an interim injunction, a consideration of the overall justice of the case may mean this is not so.[45]

---

44 *Vero Insurance New Zealand Ltd v Fleet Insurance & Risk Management Ltd*, above n 24, at [90].
45 *McLaughlin v McLaughlin*, above n 32, at [67].

Westland's assertion that Canaan could have, and has not, mitigated its position

[194] Westland asserts that Canaan will not be irreparably harmed if Westland does not collect its milk supply. Westland says Canaan has alternatives available to alleviate the animal welfare and resource consent issues.

[195] Westland says that from 10 May 2022 (or certainly by 15 May 2022), Canaan was on notice that Westland was considering suspending its collection of Canaan's milk and Canaan could have taken steps to:

(a) appoint a third-party sharemilker to operate its dairy farm, including the collection and sale of its milk;

(b) sell the milk to another producer;

(c) obtain a resource consent to discharge the collected and unsold milk onto land or otherwise obtain an exemption from the West Coast Regional Council;

(d) sell the cattle to a third party;

(e) dry off the cows in a staged and safe manner;

(f) review future mating programmes with a view to reducing the number of cows "put in calf" going forward; and/or

(g) build temporary milk storage facilities or lease milk storage from a third party.

[196] The suggestion at (a) of appointing a third-party sharemilker to operate its dairy farm, including the collection and sale of its milk, was not viable unless Westland's ongoing collection of Canaan's milk is assured. Mr Valor's uncontroverted evidence was:

> … First, running a 2000 cow herd and three dairy farms would require a sharemilker with experience and expertise. It is not possible to find

> sharemilkers at short notice. We had in fact asked Farmwise (which assists us with some consultancy matters) to see if they could assist finding a sharemilker for one of our farms. One couple was interested, but once Westland had publicly said that it was going to stop taking our milk they withdrew their interest. The "milk year" for Fonterra suppliers starts on 1 June, and so by mid May those looking for a sharemilking agreement already have made arrangements. I also do not believe it is fair to expect us to give a minimum 21% of our income to a third party. That equates to about $1.9m.

[197] It is difficult to understand how (b) is a viable alternative when no other producer collects milk on the West Coast.

[198] The difficulties posed by (c) are also apparent from Mr Valor's evidence:

> 55 It will take around two weeks to dry off the cows. Our tanks hold about five days milk. We have to keep milking in the meantime, gradually cutting down. I am aware of the resource consent requirements for [Canaan]. We would need a consent to dispose of milk to the ground. It is a discharge to land in circumstances where it could enter water. We have started a discussion with the Regional Council. The Regional Council has said that he [sic] needs to look into matters and gave no clear direction as to what to do. It is unacceptable to me that we could be left in a position where we could be undertaking an activity without a consent. The issue with milk disposal is that we have very high rainfall. That is particularly so in the winter months. The water table is high and that causes problems for disposal to ground.

[199] The difficulties posed by (d) are obvious. Westland has announced to the world, certainly the dairying world, its intention to cease collecting milk. The market will know these are forced sale circumstances. The value of those cows will seriously be impacted by that public knowledge, with Canaan standing to lose tens of thousands if not millions of dollars.

[200] The suggestion at (e) that Canaan should "dry off the cows in a staged and safe manner" is addressed by the uncontroverted evidence of Mr Shorten:

> 4 I understand that Westland has said in its evidence that Canaan "has exacerbated any potential animal welfare issues by continuing the calving of its cows."
>
> 5 This statement is wrong. The cows are heavily pregnant. There is no option for Canaan except to "continue with the calving". The only possible alternatives are:
>
> 5.1 Very late term forced termination of the otherwise healthy calf foetuses. This would be unfeasible from a medical, logistical,

and animal health standpoint, and no responsible veterinarian would approve this.

5.2 Very early inducement of the births. Induction of dairy calves was previously more common, but induction of calves in non-medical circumstances was voluntarily banned by the dairy industry and Veterinarian Council in 2015. The relevant MPI Code of Conduct notes that the National Animal Welfare Advisory Committee *"does not support the use of induction of otherwise healthy cows in order to manipulate calving patterns because it has the potential to affect the welfare of both cow and calf adversely"* and states that all inductions must be conducted under the direct supervision of a veterinarian, and no responsible veterinarian would approve of inducing births in these circumstances.

5.3 Selling the cows. This is not an option as set out in my first affidavit, and it would take time in any case to arrange a sale of a large herd.

6 The suggestion that Canaan has any reasonable alternative to "continuing with the calving" is absurd.

[201] The suggestion contained in (f) is inexplicable in a context where refusal of all milk supply is threatened.

[202] The suggestion in (g) is wholly unrealistic. I refer here to the evidence of Mr Valor who said:

> We have 60,000 litres of capacity for milk on farm (30,000 at each of Gloriavale and Bell Hill). Those farms are producing between 4500 and 5000 litres a day in total. When we are at full spring production the farms are producing 38,000 to 40,000 litres per day.
>
> I am a qualified builder. Constructing milk storage is a major undertaking. The milk storage we have is provided by Westland. A concrete pad would need to be poured. Tanks would need to be purchased and transported to site. Engineering would be required given the size and weight of the tanks. The milk would still need to be disposed of or transported somewhere else for disposal.

[203] Westland is adopting an irreconcilable position here. On the one hand it is attempting to say it is not terminating the contracts and will resume collection when its concerns are addressed. Yet, on the other hand, it says Canaan should take what amount to permanent steps, all of which would destroy the commercial viability of the farms.

[204] Nothing in considering the overall justice in this case affects the finding that the balance of convenience lies in Canaan's favour.

Variation of existing undertaking

[205] As discussed at the resumed hearing, it has been necessary for Canaan to seek out a sharemilker for the Bell Hill farm which it has done through a farming consultant.

[206] That sharemilker is currently a milker on another farm, which supplies Westland.

[207] The sharemilker is set to commence his employment for Canaan on 15 October 2022, on the condition that Westland is still required to collect milk from Canaan.

[208] The sharemilking arrangement involves one party to the sharemilking agreement supplying the cows, land, buildings and plant, and the other (the sharemilker) supplying the labour. The agreement has been prepared by a farming consultant and Mr Raymond submits it complies with the relevant regulations.

[209] Canaan sought a variation to the undertaking sanctioned and recorded by the Court, insofar as the Bell Hill farm is concerned, to ensure the sharemilker is able to employ, should he wish to do so, persons under the age of 18. This is to avoid any uncertainty, or risk, around the undertaking being breached by Canaan should a person or persons under the age of 18 work on the farm for the sharemilker.

CONCLUSIONS

[210] Canaan has discharged the onus on it to adduce sufficiently precise factual evidence to satisfy the Court that it has a real prospect of succeeding in its claim for a permanent injunction at trial.

[211] The injunctive relief sought will not require Westland to do anything new. It will simply require it to observe the status quo which has been in existence for some 30 years.

[212] The balance of convenience lies overwhelmingly in favour of Canaan. The refusal of an injunction will have dire and immediate consequences for Canaan, which would include (but not be limited to) significant detriment to animal welfare, innocent members of the Gloriavale community and to third-party suppliers to Canaan.

[213] Refusal of an injunction would also cause detriment to the environment.

[214] Finally, refusal to grant the injunction would cause permanent and irrecoverable losses for Canaan in terms of infrastructure, genetics, training and specialist knowledge.

[215] Circumstances exist whereby the existing undertaking should be varied as proposed by Canaan.

ORDERS AND DIRECTIONS

[216] Canaan's application for an interim injunction is granted.

[217] There shall be an order requiring Westland to collect the milk supply from Canaan's farms Bell Hill, Gloriavale and Glen Hopeful pending further order of the Court subject to the condition that Canaan not employ any minors or associate partners under the age of 18 on its farms pending determination of the substantive proceedings.

[218] The undertaking shall be varied as follows:

> Canaan Farming Dairy Limited, (CFD) by its directors and duly authorised officers, hereby undertakes that no minors and associate partners under the age of 18 are working on its dairy farms and will not do so pending further order of the Court; save, for the avoidance of doubt, that for the Bell Hill farm from 15 October 2022, the sharemilker on that farm, [name to be inserted when undertaking filed] may at his discretion employ persons under the age of 18 on terms suitable to the sharemilker and employee. CFD will not be a party to any such employment arrangement (if any).

[219] If it becomes necessary for Canaan to bring a sharemilker on to another one (or both) of its two remaining farms leave is reserved to counsel to revert to the Court for a further variation to the undertaking at that point (and when details of the arrangements are clear).

[220] The issue of costs on this application shall be dealt with in written submissions (of no more than five pages in length).

[221] Canaan shall file and serve its memorandum within five working days *(by 10 October 2022).*

[222] Westland shall file and serve its submissions five working days thereafter, by *17 October 2022*.

[223] Canaan shall have a further five days thereafter to reply *(by 24 October 2022).*

[224] The Registrar shall schedule a case management conference before an Associate Judge for the purposes of the Court making further directions to facilitate the substantive hearing of the matter.

[225] Prior to that conference counsel are to file memoranda addressing the matters set out in r 7.3(2) of the High Court Rules 2016.

[226] There is an order prohibiting publication of the name or identifying particulars of the witness TB.

Doogue J

Solicitors:
Duncan Cotterill, Christchurch
Simpson Grierson, Auckland
CC:
R W Raymond KC, Christchurch