



Supreme Court of New Zealand | Te Kōti Mana Nui o Aotearoa

22 OCTOBER 2020

## **MEDIA RELEASE**

SAVVY VINEYARDS 4334 LTD v WETA ESTATE LTD

(SC 114/2019) [2020] NZSC 115

## **PRESS SUMMARY**

This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at Judicial Decisions of Public Interest: [www.courtsofnz.govt.nz](http://www.courtsofnz.govt.nz).

### **Issues**

This appeal concerns two questions. The first relates to the meaning of terms in agreements entered into by the parties for the supply of grapes. The second concerns the way in which earlier litigation between the parties affected their rights under the agreements.

### **Background**

The agreements gave the appellants (Savvy) the option to purchase grapes from vineyards owned by the respondents (Weta). The agreements provided that if the option was not exercised within the time periods prescribed, the option would lapse. The parties disagreed about the meaning of these provisions. In essence, Savvy said it had three opportunities to exercise the option but Weta said it only had two. This disagreement meant that when Savvy attempted to exercise the option on 17 November 2014, Weta said the option had already lapsed. As Weta refused to supply, Savvy filed proceedings in the High Court. The High Court agreed with Savvy's interpretation, made a declaration to that effect and ordered an inquiry into damages. The Court of Appeal disagreed, favouring Weta's interpretation.

The parties' earlier litigation arose out of a notice given by Weta on 20 December 2010 purporting to terminate the agreements. The factual background to this dispute is complex. Relevantly for the present appeal, the High Court ruled that the December 2010 notice was invalid which meant that the agreements remained on foot. The Court of Appeal overturned that decision. Savvy then appealed to the Supreme Court which restored the High Court judgment. Weta now agrees that its December 2010 notice was a wrongful repudiation of the agreements. But the chain of events meant that for the interim period after the Court of Appeal judgment and before the Supreme Court judgment, there was a declaration that the agreements were terminated. In the present proceedings, Savvy argued that Weta's wrongful repudiation had caused it loss for which Weta should be liable. Weta said the loss was not caused by Weta's actions. Rather, Weta contended that Savvy was seeking compensation for damage caused by the earlier litigation itself and that such damages were not available. The High Court and Court of Appeal accepted Weta's argument.

The Supreme Court granted Savvy leave to appeal on the question concerning the meaning of the disputed terms in the agreements and the question about the effect of the earlier litigation on the parties' rights under the agreements.

## **Decision**

The Supreme Court has unanimously allowed Savvy's appeal on both questions.

All members of the Court agreed with the High Court as to the meaning of the agreements which meant that, contrary to the Court of Appeal judgment, Savvy's November 2014 notice was given in time and effective. In reaching this conclusion, the Court applied the settled approach to contractual interpretation of commercial contracts as set out by the Court in *Firm PI 1 Ltd v Zurich Australian Insurance Ltd*.

Winkelmann CJ, Glazebrook, O'Regan and Ellen France JJ took a different view to the lower Courts on the effect of the earlier litigation and found that, as a matter of law, the earlier Court of Appeal judgment relating to the December 2010 notice of termination had prevented Savvy from giving notice to exercise the options. This was for two main reasons. First, the agreements contemplated a situation where if Savvy gave notice, Weta became contractually bound to supply the grapes. Second, while the earlier Court of Appeal judgment was in force, Weta was entitled to act as if the agreements were at an end. That was the effect of the declaration made by the Court of Appeal, albeit only for an interim period before that judgment was reversed by this Court. This approach reflects general principles about the enforceability of judgments. What this meant was that in the interim period between the earlier Court of Appeal and Supreme Court judgments, Savvy could not give notice that triggered enforceable supply from Weta. Giving notice to trigger a voluntary decision by Weta whether to supply the grapes, as the lower Courts suggested, is not what the agreements had contemplated. Therefore, the earlier Court of Appeal judgment had, as a matter of law, prevented Savvy from giving notice. And that legal position arose because of Weta's actions, which preceded any involvement of the Court, in wrongfully repudiating the agreements via the December 2010 notice. As a result, the Court found that Weta's wrongful repudiation caused Savvy's loss and that Weta was liable in damages.

On the effect of the earlier litigation, William Young J offered an alternative analysis but he concurred in the judgment of the other members of the Court.

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