

CPD SEMINAR

Arbitration in Action: Principles, Process and Practicalities — Points of Claim

Thursday 17 October 2019

Presenters

Royden Hindle

Commercial Arbitrator

Polly Pope

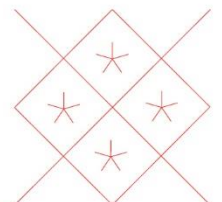
Partner — Russell McVeagh

Anna Kirk

Barrister — Bankside Chambers

Jeremy Johnson

Partner — Wynn Williams



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**UNDER THE ARBITRATION ACT 1996
AND ITS AMENDMENTS**

BETWEEN QUALITY PRODUCE EXPORTERS (2018) LIMITED

Claimant

AND SQUASH PRODUCERS LIMITED

Respondent

POINTS OF CLAIM
Dated 27 May 2019

Counsel:

Anna Kirk, Barrister, Auckland

Points of Claim

- 1 The claimant is a duly incorporated company having its registered office at Auckland and carrying on business as an exporter of horticultural produce.
- 2 The respondent is a duly incorporated company having its registered office at Auckland and carrying on business as a grower of squash and other produce.
- 3 On 4 June 2018, the parties entered into an agreement whereby the respondent agreed to sell the claimant 10,000 tonnes of squash for a price of \$70.00 a tonne, to be delivered in four instalments of 2,500 on each of 1 December 2018; 14 December 2018; 28 December 2018; and 11 January 2019.¹
- 4 In reliance on that agreement, the claimant entered into various contracts with overseas third parties to export the squash.²
- 5 However, in breach of the agreement, on 1 December 2018 the respondent failed to deliver the first instalment of 2,500 tonnes of squash. The claimant requested that the respondent remedy the breach by delivering the squash to the claimant by the following day, 2 December 2018. The respondent refused.³
- 6 The claimant's case is simple. The parties had a contract for the delivery of squash. The respondent has failed and/or refused to deliver any squash under the contract to the claimant. By doing so, the respondent repudiated the contract which was subsequently terminated by the claimant.⁴
- 7 As a consequence, and in order to meet its commitments for sale of squash to its buyers, in or about December 2018 and January 2019 the claimant was required to buy 10,000 tonnes of squash at spot market rates averaging \$140.00 per tonne.⁵
- 8 The claimant has as a result suffered losses amounting to not less than \$700,000 being the cost incurred to buy replacement squash.

Wherefore the claimant claims:

- a) An award of damages in the amount of \$700,000.00;
- b) Interest at such rate and for such period as may seem just; and
- c) Costs.

1 Exhibit C-1.

2 See Exhibits C-2 to C-5.

3 Exhibit C-6; Witness Statement of Sam Jackson, [20].

4 Exhibit C-7; Witness Statement of Sam Jackson, [25].

5 Exhibits C-7 to C-10; Witness Statement of Sam Jackson, [30]-[35].

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BETWEEN QUALITY PRODUCE EXPORTERS (2018) LIMITED

Claimant

AND SQUASH PRODUCERS LIMITED

Respondent

Witness Statement of Mr Sam Jackson
Dated 27 May 2019

[witness statement text not included]