

## **Cutting business ties**

Wade Pearson

Sometimes you might do business with people you don't like. But sometimes you get to cut those ties and end a contract. For example, global shoe company Adidas recently cut ties with Ye (formerly Kanye West), after he made a number of bizarre and hurtful antisemitic statements. Time will tell what the fallout of this decision is – but today let's look at an example closer to home, which shows it is not always easy cutting ties with businesses in your supply chain.

### **Canaan Farming Dairy vs Westland Dairy Company**

Canaan Farming Dairy is (as the name implies) a dairy farm on the West Coast. Canaan is owned by a trust with links to the Christian community Gloriavale. In May 2022, certain parts of the Gloriavale community got in trouble with the Employment Court for employing underage workers – although Canaan wasn't actually part of the judgment. The Employment Court judgment led to Canaan's main milk buyer, Westland Dairy Company, refusing to collect milk under a longstanding milk supply agreement with Canaan – without actually terminating the contract. That's where the trouble began.

The milk supply agreement was obviously a crucial contract for Canaan. Without a buyer for its milk, the farms would have been unviable, and the cows would have been hard to replace (they had been part of a breeding programme over 25 years). So Canaan went to the High Court to seek an injunction to prevent Westland from refusing to accept milk.

### **The arguments**

Westland argued that Canaan was breaching legal requirements (on underage employment) in producing the milk. Westland claimed this was a breach of contract, entitling Westland to refuse to collect milk. However, Canaan argued that it was in fact now complying with employment laws. It had even provided an undertaking to the Employment Court, and there was no evidence that it had breached that undertaking.

Westland tried to argue that it would lose contracts with other businesses by being associated with Gloriavale and the underage employment issues. However, there was little evidence of this, but plenty of evidence of the loss Canaan would suffer if milk was not collected (including having to lay off 14 adult employees and creating potential animal welfare concerns).

This was just an application for an injunction, so the parties didn't provide large amounts of evidence. The judge was only determining whether there was a "serious question to be tried" – not determining who was ultimately right or wrong. So with this disclaimer in place, what can we learn from the case?

### **Lessons from the case**

One key issue was Westland's exercise of a contractual discretion. The contract said that Westland could refuse to collect milk in its discretion if (among other things) Canaan was breaching legal requirements in producing the milk.

However, the Court found that discretion wasn't unlimited, and Westland couldn't just do whatever it wanted. As a legal principle, even if a contract says someone can make a decision "in its sole discretion", that person can't do so "arbitrarily, capriciously or unreasonably".

Westland tried arguing that its customers were going to terminate contracts with Westland due to supply chain concerns. Again the actual evidence of this was low – in one case it was simply an email from a customer attaching a newspaper article and saying "FYI". Westland also pointed to various anticipated law changes that would require companies to work to eradicate modern slavery and worker exploitation in their supply chains. The judge found these "anticipated" concerns not relevant to the contract that Westland had freely entered into.

Of course, this case was specific to its facts, and I've only briefly summarised some interesting points. For more detail please read the case (you can search for: *Canaan Farming Dairy Ltd v Westland Dairy Company Ltd* [2022] NZHC 2524). And keep an eye out for what Westland and Canaan decide to do next.

### **Lessons for businesses**

What does this case mean for you if you're considering terminating a contract (or taking some strong action) due to your business partner doing something unpleasant?

The first step is to always read the contract. And preferably have a good lawyer read the contract too – to advise you on what you can and can't do. Don't assume that having discretion to do something means you can just decide whatever you want. You may need to be able to show that it was a reasonable decision to exercise that discretion. A good reminder that words in a contract don't always mean exactly what you think they might mean.

If you're considering entering into a business relationship with someone, consider whether your contract is adequate. You may need to add specific contractual triggers to protect yourself if the potential reputational risks are important for your business. The devil is always in the detail, so it's important to get it right – or risk being stuck in a business relationship with someone you'd rather not associate with.

*Wade Pearson is an Associate in law firm Gallaway Cook Allan's commercial team in Dunedin. This article is general in nature, so don't use it as a substitute for legal advice.*