

**IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY**

CIV-2014-485-11493

BETWEEN STRATHBOSS KIWIFRUIT LIMITED
First Plaintiff

SEEKA KIWIFRUIT INDUSTRIES
LIMITED
Second Plaintiff

AND THE ATTORNEY-GENERAL
Defendant

Date: 9 June 2017

Counsel: D Salmon and M Heard for the plaintiffs
J Hodder QC, J Catran and M Nicholson for the defendants

Minute: 9 June 2017

MINUTE OF MALLON J

[1] Today's case management conference was a helpful discussion of the outstanding procedural and evidence matters at this stage. The following is the agreed position as a result of that discussion.

Timetable

[2] Incorporating existing timetable directions that remain applicable, the following timetable applies:

- a) By 12 June 2017 the defendant will advise the plaintiff whether it will be serving briefs of evidence relating to the MPI related witnesses (that is, those listed in the schedule to the plaintiffs' 8 June 2017 memorandum);

- b) By 16 June 2017 the plaintiffs will (if it wishes to do so) serve interrogatories on some or all of the MPI related witnesses for which a brief of evidence has not been provided;
- c) Also by 16 June 2017 the plaintiffs are to file and serve their evidence in reply;
- d) By 30 June 2017 the defendant is to respond to the interrogatories (such response may include an objection on the basis that leave is necessary and is opposed – the plaintiffs understand leave is not necessary but the defendant wishes to check the position);
- e) By 14 July 2017 the defendant is to file and serve its reply (if any) to the reply evidence – any such evidence, if it is opposed, is subject to the Court granting permission for it to be adduced and this will be considered at trial as and when appropriate/necessary;
- f) By 24 July 2017 the plaintiffs will file and serve copies of the common bundle;
- g) By 31 July 2017 the plaintiffs will file and serve its opening submissions.

[3] The parties will endeavour to collaborate on a chronology of key dates. It would be helpful if this was provided at the same time as the plaintiffs' opening submissions although this is not critical. As discussed I envisage the chronology proving a quick reference point of dates for understanding the timing of events, rather than seeking to set out each side's perspective of what happened throughout the period to which the claim relates.

[4] In recording these timetable directions it has become apparent that there is inconsistency in the earlier case management memoranda regarding whether briefs are to be filed and served, or simply served. The defendant has taken the former approach whereas the plaintiffs have taken the latter. It is useful to the Court if they

are filed in advance of trial. The above directions accordingly have taken this approach.

AVL

[5] Where a witness is to give evidence by AVL, the protocol set out in schedule 1 to the defendant's 6 June 2017 memorandum applies (with references to "the defendant" and "the plaintiff" being read as references to "the plaintiffs" and "the defendant" respectively for any witness for the plaintiffs who give their evidence by AVL).

[6] Ms Stanton and Ms Petter, witnesses to be called by the defendant, are to give their evidence by AVL.

[7] The defendant wishes to have Dr Sathyapala's evidence given by AVL. This is opposed by the plaintiffs. The defendant intends to pursue an application for this to occur and to support the application with an affidavit from Dr Sathyapala. Assuming it continues to be opposed, the application will be considered at the trial at an appropriate time.

Confidentiality/non-publication orders

[8] Orders set out in schedule 3 to the defendant's 6 June 2017 memorandum are made subject to further order of the Court. It is noted that the plaintiffs do not accept confidentiality/non-publication orders are necessary regarding evidence described as "diplomatically sensitive". They retain the right to argue that evidence under that description should not be subject to the orders.

[9] These orders will also apply to the plaintiffs' commercially sensitive evidence, and are also subject to further order to the Court and the right for the defendant to contest a commercially sensitive claim.

Treatment of non-party information

[10] An order is made that the volume of the common bundle containing non-party sensitive material may not be searched as part of the Court file, without leave.

Subpoenas of the MPI related witnesses

[11] Of the 15 MPI related witnesses, four of them are current employees of MPI. The plaintiffs may serve subpoenas on all the MPI related witnesses. However:

- a) the plaintiffs will provide 48 hours' notice to the defendant before serving a subpoena on a MPI employee;
- b) the defendant may oppose evidence being adduced from the MPI related witnesses. Any such opposition will be considered as necessary and at an appropriate time at trial.

Kiwi Pollen witnesses

[12] The plaintiffs anticipate obtaining briefs of evidence from certain Kiwi Pollen witnesses. Any such briefs of evidence may be filed and served. However, as they will be filed outside the timetable directions, leave will be required. If leave is opposed, that will be considered at trial.

Discovery

[13] The parties are hopeful they can resolve by agreement the outstanding discovery issues.

The Sapere Report

[14] So far as the defendant is concerned, there remain issues as to the extent to which the Sapere Report is admissible. This will be considered as necessary at trial.

Security for costs

[15] Additional security for costs of \$340,000 is ordered, such security is to be provided by 16 August 2017 by way of bank guarantee (in the same way as previous tranches of security) or as otherwise agreed.

Publication of this case management chambers hearing

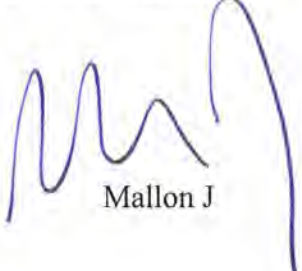
[16] Today's chambers hearing may not be published subject to further order of the Court. However this minute may be published.

Publication of Court minutes on plaintiffs and MPI websites

[17] The order that Court minutes in this proceeding may continue to be published on the plaintiffs and MPI websites (subject to redactions for confidential material) continues.

Future case management conference?

[18] It is not envisaged there will be a further case management conference prior to the start of the trial. However if a matter arises that a party believes it is necessary to have resolved before the start of trial, they may file a memorandum requesting time in the week prior to the trial. There is no guarantee that such a request will be accommodated as it would require a change to the existing Court schedule, but the Court scheduler will do her best should it be necessary.



Mallon J