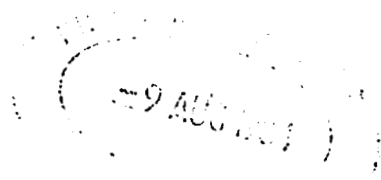


1981 No. 914  
THE HIGH COURT



BETWEEN:

INCORPORATED FOOD PRODUCTS  
LIMITED (IN LIQUIDATION)

Plaintiffs

and

THE MINISTER FOR AGRICULTURE

Defendant

Judgment of Mr. Justice Lynch delivered the 6th day of June, 1984.

This is a claim brought by the plaintiffs for over £30,000 for monies alleged to be due to the plaintiffs by way of aid in respect of storage of beef in intervention between September 1976 and April 1977 and for monies forfeited from the plaintiffs for alleged breach of the terms of the contracts for such storage. Shortly after the transactions giving rise to this claim the plaintiffs went into voluntary liquidation on the 29th December, 1977 and the proceedings have been brought by the plaintiffs acting by their liquidator. The defendant is the Minister for Agriculture being the person responsible for the payment of the storage monies if they should be payable and being the person who has forfeited the security from the plaintiffs.

The claim arises out of two identical contracts made by means of offers by the plaintiffs in writing on a standard form both dated the 7th September, 1976 and acceptances by the defendant also on a standard form and both dated

the 10th September, 1976. These two contracts bore reference numbers 1500/A/339 and 1500/A/340 respectively and are collectively referred to in this judgment as "the contracts".

The contracts incorporated a number of other documents which are later defined in this judgment, namely the general conditions, the 1968 Council Regulations, the 1968 Commission Regulations and the 1976 Regulations.

The contracts in addition to incorporating the foregoing documents themselves contain the following provisions which are relevant to this action:

"4. Quantity to be stored (net weight in metric tonnes bone-in):

50 metric tonnes

5. Amount of aid to be fixed and storage period requested:

£341-87 per metric tonne for six months.

6. We, the offerer, hereby offer to store for private storage

purposes in accordance with Sections 3, 4 and 5 above and we

undertake, if our offer is taken up, to:

(a) place in store for the purpose of obtaining private storage

aid only meat from livestock which have been slaughtered

for not more than six days:

(b) place the products in store in bone-in or boneless form at

our own risk and expense within sixty days of the date of

acceptance of our offer:

- (c) keep the products in store in the same condition for at least the storage period requested in Section 5 overleaf:
- (d) to conform with in all respects and accept the general conditions taken together with the special conditions and the relevant Community legislation. "

The general conditions means in this judgment a circular issued by the Department of Agriculture and Fisheries entitled "General Conditions for the Granting of Private Storage and in the Beef and Veal Sector (May 1976 Edition)".

Of the general conditions the only relevant one is No. 6 which provides:

"In the case of aid granted at a standard rate fixed in advance, the contract consists of the applications for the establishment of a contract taken with that application's acceptance by the Department. The date of the contract is deemed to be the date of that acceptance."

The 1968 Council Regulations means in this judgment "Regulation (E.E.C.) No. 989/68 of the Council".

Of the 1968 Council Regulations the only relevant one is Article 1, Section 3 which provides:-

"Aid shall be granted in accordance with the terms of contracts

"concluded with intervention agencies: such contracts shall express the reciprocal obligations of the contracting parties in standard terms for each product."

The 1968 Commission Regulations means in this judgment "Regulation (E.E.C.) No. 1071/68 of the Commission."

Of the 1968 Commission Regulations the following provisions are relevant namely:

" Article 2

2. Private storage aid may be granted only for products derived from animals slaughtered not more than six days previously.
3. The contract may not relate to a quantity less than a minimum to be determined for each product.

Article 3

4. The obligation to store the agreed quantity shall be considered as fulfilled if not less than 90% and not more than 110% of that quantity has been taken in store and stored.

Article 4

3. The deposit shall be forfeited in full if the obligations imposed by the contract are not fulfilled: however, if less than 90% of the quantity agreed in the contract has been taken in store and stored within the time limits laid down, the deposit shall be

forfeited proportionately to the missing part of the quantity referred to in Article 3 (1) (a)."

The 1976 Regulations means in this judgment "Commission Regulations (E.E.C.) No. 1500/76."

Of the 1976 Regulations the following provisions are relevant namely:

" Article 4

2. For the purposes of this regulation:

(a) 100 kilogrammes of the unboned meat referred to in the annex under (a) and (b) shall be equivalent to 77 kilogrammes of boned meat:

3. In the case of meat stored in the unaltered state, if the quantity stored is less than the quantity for which the contract was concluded and:

(a) not less than 90% of that quantity, the amount of private storage aid shall be reduced proportionately: or

(b) less than 90% of that quantity, private storage aid shall not be paid.

In the case of boned meat, the percentage indicated in (a) and (b) and the lower percentage indicated in Article 4 (3) of Regulation

(E.E.C.) No. 1071/68 shall be equal to 85%.

- 4. If the quantity placed in store is greater than the quantity in respect of which the contract was concluded the amount of aid shall be equal to that appropriate to the quantity contracted for.

Article 5

- 2. Entitlement to the payment of aid shall be acquired only if all the meat remains in storage during the entire storage period.

Article 6

Storing must be completed within sixty days following the conclusion of the contract.

The storage period shall begin on the day on which storing is completed."

No issue arose between the parties as to the facts of the case. No witness was called at the trial as to the facts which were established by the affidavits filed in support of and in answer to the Summary Summons

and the documents produced by the plaintiffs and admitted by the defendant at the trial. From the pleadings, affidavits and these documents the relevant facts appear hereafter.

The plaintiffs made the offers dated the 7th day of September, 1976 which were accepted by the defendant by forms of acceptance dated the 10th day of September, 1976 and the offers and acceptances thereby became concluded contracts on the 11th day of September, 1976 being the date of receipt by the plaintiffs of the said acceptances. The period of sixty days within which storage must be completed as required by Article 6 of the 1976 Regulations therefore expired on the 10th day of November, 1976.

In pursuance of the contracts the plaintiffs put beef into storage. In relation to contract 339 the plaintiffs by undated letter informed the defendant that storage had been completed under that contract on the 8th October, 1976. In relation to contract 340 the plaintiffs by a further undated letter informed the defendant that storage had been completed under that contract on the 20th October, 1976. The effect of these letters was that as of the end of October the six months period specified as being the storage period by Clause 5 of the contracts would have expired on the 8th and the 20th April, 1977 respectively. Some time in October, 1976 however it was discovered that some of the beef put into storage by the

plaintiffs in respect of each of the contracts had been derived from animals slaughtered more than six days before being put into storage contrary to Article 2, Section 2 of the 1968 Commission Regulations and Clause 6 (a) of the contracts. Following this discovery the plaintiffs communicated with the defendant with a view to rectifying the position in regard to the contract 339 in respect of which the fact that beef slaughtered more than six days before being put into storage had first been discovered. By a telex dated the 2nd November, 1976 the defendant agreed to the re-opening of the contract no. 339 in the following terms:

"For contract no. 1500/A/339 the sixty day period expires on 10th November, 1976. As some of the beef under these contracts was not stored six days from date of slaughter it is proposed to allow you to place additional quantities of beef in store equal to the quantities for which the six days were exceeded. The original amount plus the additional quantities which must be stored prior to the dates mentioned above must be kept in store for the full storage period which will be determined from the date that the additional amounts have been stored."

The plaintiffs accepted the terms of this telex.



The plaintiffs finally completed the storage of beef purportedly under the contracts on the 10th day of November, 1976 which was the last day for putting beef into storage under both the contracts. The defendant contends accordingly that storage under each of the contracts was finally completed on the 10th day of November, 1976 within the meaning of Article 6 of the 1976 Regulations and that the period of six months specified in Clause 5 of the contracts commenced to run from that date for both of the contracts and expired on the 10th day of May, 1977 for the purposes of Article 5, Section 2 of the 1976 Regulations.

It appeared from the documentation admitted at the trial and it was accepted that the plaintiffs had in fact stored sufficient beef which had been slaughtered within the six day period to qualify for aid without having to count or resort to the beef which had been slaughtered more than six days before being put into storage or the beef later put into storage in substitution therefor. The plaintiffs contend that as they had a sufficient quantity of beef in storage in any event to satisfy the requirements of the contracts as to quantity and as such quantity was in fact stored for a full six months they should be entitled to be paid the aid provided by the regulations for that quantity of beef disregarding the beef slaughtered more than six days before being put into storage and the

beef substituted therefor and that their security ought not therefore to be forfeited in respect of either of the contracts.

So far as quantity is concerned, the scheme of the standard forms of offer and acceptance, the general conditions and the various E.F.C. Regulations allows for some tolerance. A person is not disqualified for falling below or exceeding the amounts specified in the contracts provided that not less than 90% nor more than 110% of the amounts so specified is stored. Article 3, Section 4 of the 1968 Commission Regulations.

So far as the period of storage is concerned, however, the position is more strict in view of the terms of Article 5, Section 2 of the 1976 Regulations

A person may put beef into storage over a period of sixty days from the conclusion of the contract which in this case in relation to both contracts was the 11th September, 1976. It is quite conceivable that a person might put enough beef into storage in the first thirty days to meet the minimum qualifications so far as quantity is concerned. Nevertheless he would be entitled to put further beef into storage and if he did so some fifty days after the conclusion of the contract and then closed his contract by informing the defendant that he had completed the storage thereunder it is clear that under Article 5, Section 2 of the 1976 Regulations he must leave the whole quantity in storage for six months from the date when beef was last put into storage.

If he should fail to do so unless he were to withdraw some of the beef pursuant to Article 5, Section 3 of the 1976 Regulations which provides for early withdrawal provided the beef is exported outside the territory of the E.E.C. (which does not arise in this case) then by virtue of Article 5, Section 2 of the 1976 Regulations, no aid would be payable in respect of any of the beef stored.

As regards Contract 359 the right of the plaintiffs to put further beef into storage was expressly agreed between the plaintiffs and the defendant and that contract was thus re-opened. It was so re-opened on the basis that the storage period should run from the date when beef was last put into storage pursuant to the contract. That date was the 10th November, 1976 and the storage period therefore expired on the 10th May, 1977 and not earlier.

The plaintiffs were expressly on notice that the storage period commenced to run from the 10th November, 1976 for Contract 359 by virtue of the telex from the defendant of the 2nd November, 1976 and the conduct of the parties thereafter but unfortunately the plaintiffs' shipping department was not informed of this altered date by their production department which was the section of the plaintiff company which had re-negotiated the closing date of the Contract 359 with the defendant.

As a result of this lack of communication between the plaintiffs' production department on the one hand and the plaintiffs' shipping department and accounts department on the other hand the plaintiffs withdrew the beef in respect of Contract 339 from storage on the 13th April, 1977 and some of the beef in respect of Contract 340 on the 27th April, 1977.

By an undated telex the plaintiffs had informed the defendant that they intended to withdraw the beef stored pursuant to the contracts after the 8th and 20th April, 1977 respectively. This telex was received by the defendant at the earliest sometime after 5.30 p.m. on the 12th April, 1977. The dates referred to in the plaintiffs' undated telex were confirmed by the defendant's officer on the telephone on the 15th April, 1977 as being the correct release dates, the defendant's officers overlooking the revised date of the 10th May, 1977. The primary error rests however with the plaintiffs themselves due to their own lack of communication between different departments of their business and due to their own inclusion in their undated telex of the then erroneous release date or dates. The reason for the alteration in the release date or dates also originates with an error on the part of the plaintiffs in that they stored beef which had been slaughtered more than six days before the date when it was put into storage contrary to the express provisions of the contract at

Clause 6 (a) and of Article 2, Section 2 of the 1968 Commission Regulations.

The defendant did not in any way mislead the plaintiffs in relation to Contract 339 because the beef stored pursuant to that contract was removed from storage on the 13th April, 1977 before the defendant's officers erroneously confirmed the release dates as set out in the plaintiffs' undated telex, such confirmation by telephone being on the 15th April, 1977.

The plaintiffs' claim therefore fails both as to the return of the security and as to the payment of aid in respect of Contract 339.

As regards Contract 340 however, this contract was never expressly agreed by the defendant to be re-opened. The plaintiffs had expressly closed this contract as of the 20th October, 1976 by their undated letter presumably of about that date. It is averred in paragraph 9 of the affidavit filed on behalf of the defendant and I accept the averments that:

"The second contract which is the subject matter of these proceedings (A/340) contained 6.033 metric tonnes bone-in (i.e. 4.662 metric tonnes boneless) of inelligible beef. This fact did not come to the notice of the defendant until 24th November, 1976 when a full investigation of the problem had been carried out. However the plaintiff voluntarily and unilaterally stored an additional quantity of 1.374 metric tonnes of boneless beef in partial replacement of the

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"inelligible beef. This beef was completed into storage on  
10th November, 1976."

Having expressly closed this contract as of the 20th October, 1976

I do not think that the plaintiffs could re-open it unilaterally  
that is to say without the consent of the defendant who clearly did not  
consent before the 24th November, 1976 in view of the averments in paragraph 9  
of the affidavit which I have just quoted. There is nothing to show that  
the defendant consented subsequent to the 24th November, 1976 to the  
plaintiffs reopening Contract 340 and storing further beef thereunder  
other than the defendant's refusal to pay aid and to refund the security  
from in or about the month of May, 1977 onwards. I consider it very  
doubtful if the beef stored after the 20th October, 1976 purportedly  
under Contract 340 can be regarded as in fact stored under that contract  
at all in the absence of a prior agreement by the defendant to the  
re-opening of the contract and the storage of further beef thereunder.  
I think therefore that the further beef purportedly stored under  
Contract 340 was not in fact stored under it at all in which event  
beef was last stored under Contract 340 on the 20th October, 1976:  
the storage period therefore ran from that date and expired on the  
20th April, 1977 in which event the plaintiffs would be entitled to relief

under Contract 340.

If, however, it is shown that the true position is that the release date was the 10th May, 1977 then a question arises as to whether the defendant may not be estopped from alleging that the release date is the 10th May, 1977 rather than the 20th April, 1977 in relation to Contract 340.

Beef which had been stored under Contract 340 was not removed until the 27th April, 1977. The plaintiffs had sent the undated telex to the defendant which was received by the defendant sometime after 5.30 p.m. at the earliest on the 12th April, 1977. If the defendant had not replied to this telex at all then there could be no question of the defendant being estopped for failing to advert to and correct the error of the plaintiffs. In fact however the defendant's officer telephoned the plaintiffs on the 15th April, 1977 and confirmed the date the 20th April, 1977 as the release date in respect of the beef stored under Contract 340. On the 20th April, and again on the 22nd April, 1977 the plaintiffs wrote to the defendant requesting payment on foot of Contract 340. There was no reply to these requests until the 27th April, 1977 when the defendant telexed the plaintiffs drawing their attention to the altered release dates but

which was then too late so far as the plaintiffs were concerned as some of the beef stored under Contract 340 had been already loaded out.

The affidavits, correspondence and documents show in relation to the series of storage contracts of which the contracts were two of a total of apparently forty four, that the plaintiffs conducted their business in an extremely haphazard fashion. They committed the following breaches of important conditions of the various contracts into which they had entered with the defendant:

1. They put into storage beef which had been slaughtered more than six days previously.
2. They put beef into storage more than sixty days after the contract date.
3. They failed to store the minimum quantity of beef contracted for.
4. They withdrew beef from storage before the expiration of the storage period.

The documentation shows that out of the total of forty four contracts there were breaches of the above nature in twenty-four of them so that it is little wonder that the plaintiffs went into liquidation in December, 1977.

In these circumstances it may seem a little optimistic to think that



if the defendant had not confirmed the 20th April, 1977 as the correct release date in relation to Contract 340 the plaintiffs would have adverted to their error (if it was an error) before the 27th April, 1977 and thus saved their position under that contract. I think however that as a matter of probability they would have adverted to the position. If there had been no confirmation of their undated telex which was received by the Minister sometime late on the 12th April, 1977 and no payment in answer to their requests of the 20th and 22nd April, 1977, I think the plaintiffs would have looked into their records before the 27th April, 1977 and have ascertained the true position.

I quote from the 4th Edition of Halsbury's Laws of England, Volume 16, paragraph 1620 and footnote 6:

"Accordingly if in the course of a business a man volunteers a statement upon which another businessman may probably act it is his duty to take reasonable care that the statement is correct.

Seton v. Lafone (1887) 19 Q.B.D. 68 where the defendant warehousemen erroneously stated that goods which in fact had been parted with lay at their warehouse and were liable to be sold for charges. The plaintiff thereupon bought the warrant for the goods

"and the defendants were estopped from averring that they had not got them when they made the statement."

If, therefore, the correct view of the facts in relation to Contract 340 is that the release date was the 10th May, 1977 instead of the 20th April, 1977 I have come to the conclusion that the defendant is estopped from denying that the true release date was the 20th April, 1977 having confirmed that that was so by telephone on the 15th April, 1977 and thus induced the plaintiffs to load out the beef stored under Contract 340 on the 27th April, 1977.

The plaintiffs are therefore entitled to the relief which they seek in relation to Contract 340, namely an order for the return of the security £2,947 and to aid in respect of the storage of qualifying beef which was put into store on or prior to the 20th October, 1976 and remained in store for six months thereafter.

The plaintiffs have also sought the payment of interest at commercial rates on the amount found due to them. I do not think that this is a case for awarding such interest. If such interest were being awarded it would be as damages for delay in payment. There is no basis for awarding damages against the defendant for such delay in this case where the plaintiffs themselves were mainly to blame

for the delays in payment through their own business inefficiency.

In any event this does not appear to be a case where such interest

can be awarded in the absence of a demand for payment coupled with

a demand of interest having regard to the decision of the Supreme

Court in East Cork Foods .v. O'Dwyer Steel Company Limited (1978)

I.R.103 and of Mr. Justice D'Arcy in Irish Grain Board Limited .v.

Minister for Agriculture (1981) I.L.R.M. 10. Alternatively I am

asked on behalf of the plaintiffs to award interest under the provisions

of Section 22 of the Courts Act 1931. The basis for such interest

does not impute any element of awarding damages against the defendant

and I think that it is an appropriate case to allow interest from the

date of the summary summons which was the 17th December, 1981.

I will allow interest therefore at the rate of 11% per annum

on the sum total of the security £2,947 hereby ordered to be returned

and the amount of the aid payable in accordance with the above

directions from the 17th December, 1981 to date.

