

**PIRT BIOTECHNOLOGIES PTY LTD V PIRTFERM LTD [2001] WASCC 96**

Supreme Court of WA (Full Court) – 2 April 2001

**FACTS**

Pirtferm was the owner of a patent for a waste disposal process and wished to commercially develop this process. Professor Pirt and Dr Pirt, the directors of Pirtferm, entered into negotiations with Eley and Castledine to commercially exploit the patent and eventually the Pirts, Eley and Castledine executed a letter of intent.

The letter of intent included a clause stating that Pirtferm would licence the patent to Pirt Biotechnology provided that company had sufficient financial and administrative support. The letter of intent also included a clause stating that the parties at that stage did not seek a contractual obligation but wanted to clearly indicate their interests and intentions. As a result of this document being executed Pirt Biotechnologies was incorporated with the Pirts, Eley and Castledine appointed directors.

Later a draft Deed of Assignment of the patent was prepared but not executed by Pirtferm and negotiations eventually broke down with Pirtferm stating that it would not assign the patent.

**ISSUES**

Was there a binding contract between Pirt Biotechnology and Pirtferm?

**FINDING**

There was no contract, as the parties had not intended to be legally bound. The execution of the letter of intent and related negotiations indicated that the parties were still negotiating and that the parties intended to execute a written document before being legally bound. Also, some terms of the letter of intent were unclear and this evidenced a lack of an intention to be legally bound.

**QUOTE**

Murray J said:

*“By ‘intention’ in this context the law is concerned with an objective intention, imputed to the parties who are said to have contracted, from a consideration of what was said and done in the course of their dealings.*

*It is not a subjective intention of the parties individually, and so it will be irrelevant for any party giving evidence to say that he or she either did or did not mean to form a binding agreement. Relevant evidence will be concerned with the terms of their agreement and what inference may be drawn therefrom.*

*In that context, if it should be the case that there is uncertainty about important aspects of the proposed transaction, ambiguity or the omission of important terms, that may aid the drawing of a conclusion that there was to that point no intention to form a binding legal agreement.”*

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## **IMPACT**

When negotiating a commercial agreement, the parties to the negotiation usually have the intention of entering into a legally enforceable agreement as a result of the negotiations.

Letters of intent by themselves are not evidence that the parties intend to contract though such a letter could be important evidence of an oral contract. All parties to such negotiations should ensure that the current status of the negotiation is understood and agreed between the parties.

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