

WALLERA PTY LTD V CGM INVESTMENTS PTY LTD & ANOR [2001] NSWSC 96

Supreme Court of New South Wales – 1 March 2001

FACTS

Wallera had franchised a carpet dry-cleaning process from CGM and Whistle. The process of electromagnetically dry-cleaning carpets (“the process”) that was used by Wallera and the use of the name “Electrodry” (“the name”) was owned by Whistle but CGM had exclusive rights to use this process and the name pursuant to a Deed of Licence. Wallera was granted an exclusive license to use the process and a right to grant sub-franchises under a Franchise Agreement (“the contract”). Wallera purchased the chemicals (Electro 1 and 2) from Whistle for many years until the price offered by another supplier was more comparable and it ceased purchasing from Whistle.

In August 1999 a notice was issued under clause 8 of the contract where CGM claimed that Wallera was in breach for not using the appropriate level of chemicals for the process as specified in the contract. Clause 8 stated that if either party failed to remedy a breach within 1 month after a notice, the contract would be terminated.

ISSUES

Whether the notice of intention to terminate, if a breach of contract was not rectified, sufficiently described the relevant breach?

FINDINGS

The notice issued in 1999 was not valid because it failed to draw Wallera’s attention to what the breach was that should be remedied. The notice referred to the required levels of chemicals but did not specify what the levels were or where there may be found.

Clause 8 implied that the notice should provide adequate notification to the Wallera of what was required to be done if the contract was not to be terminated for breach. The automatic termination in the clause was an additional indication that it was appropriate to require that the notice should be made clear what the breach was which if not remedied would lead to termination. The Notice issued by CGM therefore could not be used by CGM as a basis for terminating the contract.

QUOTE

“In the context of the clause 8 a notice must bring to the attention of the recipient the fact that it is alleged that a breach has occurred and that the franchisor requires the breach to be remedied. It must be sufficiently explicit to make it clear to the franchisee what is the breach, which the franchisor requires to be remedied.”

“... I am satisfied that the notice issued in August 1999 was not a valid notice for the purpose of clause 8 of the contract. It did not draw Wallera’s attention to what was alleged to be the breach to be remedied.”

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IMPACT

If a notice in a contract purports to include a provision for automatic termination upon failure of either party to remedy a breach then the notice should specify explicitly the cause of the breach which the recipient is required to remedy.

A general reference to a breach may not be sufficient to allow the automatic termination of the contract.

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