

## **Legal Issues for Suppliers/Service Providers**

### **Supply of Defective Product – Where does your liability end?**

A 2017 case illustrates this nicely. The case involved a dairy farming company that had planted over 30 hectares of land in a mixed pea and barley crop. A contractor was appointed to harvest the crop which was converted into silage for winter feed.

The quality of the silage proved to be poor, some cows would not eat it, others who did fell ill. The crop had become contaminated with soil caused by deficiencies in the harvesting process and the dairy company issued proceedings against the contractor. They claimed that the contractor failed to use the care and skill expected of a reasonably competent silage contractor when harvesting and processing the crop.

Was the contractor liable for the value of the defective crop or was he also liable for the losses that followed on, namely the cows that died through eating the silage and lost milk production?

The dairy company claimed both, damages for having to find alternative feed of about \$250,000 and loss of value of over 60 cows, which it had planned to milk. There was no written contract in this case and the claim founded on an implied term that the silage must meet quality standards, to a reasonable level.

The contractor escaped all liability as it turned out; had he not escaped liability he would have been liable for what was "just and equitable" as a consequence of his fault. This would certainly have gone beyond the cost of sourcing alternative feed and would have extended to losses from the lost milk production.

The scope of a supplier's liability can be limited by written contract that carves out "consequential losses" and limits it to "direct losses". Applying such a clause here, the contractor's liability (had he been found to be at fault) would have ended at the cost of replacing the feed. If you would like to know more about these limitation clauses, please let me know.

### **Supplier Defeated by Asset Stripping**

What do you do when a customer refuses to make payment and frustrates you by going into liquidation, appointing its own liquidator? A construction company, DHC, recently found itself in that position having completed a property development for its customer and finding itself hung out to dry for its final payment. Prior to liquidation the assets of the company had been stripped out, so there remains nothing available to attack.

One solution is to apply to have the liquidation set aside and clawback the assets that had been stripped out. That would enable you to make out your claim against the company and once that is done, normal recovery processes follow (ie liquidation at your own behest and clawback of amounts stripped out in the 2 years preceding liquidation using the voidable preference procedures in the Companies Act). Another option is to seek to have your own liquidator appointed in substitution for the existing "friendly" liquidator. The Companies Act specifically accommodates this. So all is not lost, there are avenues open to you if you find yourself in this situation. Either of the options outlined here should reward you with the right result, as it did in the DHC case.

Don't hesitate to contact me for further information.