

**THE HIGH COURT  
COMMERCIAL****[2005 No. 1273P]****BETWEEN****SLANEY FOODS INTERNATIONAL LIMITED****PLAINTIFF****AND  
BRADSHAW FOODS LIMITED****DEFENDANT****Judgment of Mr. Justice Kelly delivered on the 22nd day of March, 2006****The Claim**

1. The plaintiff seeks an order for specific performance of an option contained in a written agreement of 6th April, 2004, made between it and the defendant. It contends that it has exercised that option in a valid fashion. By so doing it claims that it is entitled to acquire the lands, premises, plant, machinery and fittings of an abattoir owned by the defendant at Bridge Street, Freshford, Co. Kilkenny. The purchase price is €1,531,859.

**The Defence**

2. The defendant does not deny the existence of the agreement in question. Neither does it deny the exercise of the option in accordance with its terms. Rather it contends that there was no entitlement to exercise the option and still less to obtain specific performance of it because the plaintiff is in breach of a collateral oral agreement made between the parties.

3. The defendant also counterclaims for possession of the premises and mesne rates from 5th April, 2005.

**Dramatis Personae**

4. Three witnesses gave evidence in the action.

5. The first witness was Alec Waugh (Mr. Waugh). He is a director of the plaintiff which is registered and carries on business in Co. Wexford. He is also a director of a Northern Irish company called Linden Foods Limited.

6. The second witness was Rory Fanning (Mr. Fanning). He is the general manager of the plaintiff.

7. The third witness was Robert Bradshaw (Mr. Bradshaw). He is a director of the defendant company and described himself as its owner.

8. It is necessary to mention a fourth person. He is Tom English (Mr. English). He did not give evidence although his name was mentioned many times during the hearing. He is and was at all material times a director of the defendant and is now an employee of the plaintiff. Neither side notified him as a likely witness to the other prior to trial. Neither side procured a witness statement from him. However at the conclusion of the first day of the hearing counsel on behalf of the defendant asked me to make an order directing his attendance in court the following day. I declined to do so since there was ample opportunity to issue a subpoena in the normal way well in advance of the trial. During the overnight adjournment the defendant procured the attendance of Mr. English in court but he was not called to give evidence.

**The Premises**

9. The premises is an abattoir at Freshford, Co. Kilkenny. It was formerly owned by a company called Honeyclover which was controlled by two brothers with the surname Blake.

10. In July, 2003, Honeyclover wished to dispose of the premises. Negotiations with a view to doing so were apparently conducted with two Pakistani nationals. They approached Mr. Bradshaw with a view to him becoming involved. A meeting was proposed for 30th September, 2003, at which those individuals were to purchase the premises. The sale did not go ahead.

11. When that arrangement fell through one of the Blakes approached Mr. Bradshaw and he contracted to purchase the premises instead. The purchase price was €1.4 million. The contract was executed on 30th September, 2003.

12. Mr. English was the general manager of Honeyclover when it ran the abattoir. Mr. Bradshaw apprised him as to his intentions in respect of the factory and invited him to become involved in the venture. He agreed.

13. Mr. Bradshaw has been buying and selling cattle from the time that he left school at the age of 12. His intention was to run the premises as an abattoir having been involved with the Blake brothers whilst their company, Honeyclover, was running it.

14. Before Christmas 2003, Mr. Bradshaw got a phone call from Mr. English. It was an invitation to meet Mr. English in the abattoir. At that time, apparently, Mr. English had agreed to go into business with Mr. Bradshaw and was involved in drawing up a business plan to present to the bank. Despite that, Mr. English served a 28 day notice on behalf of Honeyclover on Mr. Bradshaw to force him to complete the sale. Mr. Bradshaw then proceeded to organise his finances. He had received a letter of offer on 20th November, 2003, from the Bank of Ireland agreeing to advance him the sum of €1.1 million. It would appear that at the time that he executed the contract on 30th September, 2003, to purchase the premises personally for €1.4 million, he did not have any funds organised to enable him to do so.

15. Mr. Bradshaw was apparently owed €300,000 by one of the Blake brothers and this was utilised in part discharge of the purchase price of €1.4 million.

16. In any event, the sale of the premises was completed on 1st April, 2004. The property was in fact transferred to the defendant rather than to Mr. Bradshaw personally.

17. Meanwhile, prior to the closing of the sale, the ubiquitous Mr. English was busying himself in arranging contacts between Mr. Bradshaw and representatives of the plaintiff. Those contacts resulted in a series of meetings at which negotiations took place.

**The Negotiations**

18. The first meeting took place at Freshford on 9th February, 2004. Whilst it was attended by Messrs. Waugh and Bradshaw there were also present Mr. Jim Smith of a company called Irish Country Meats and Mr. English. There is considerable dispute as to things that were said at that meeting. The starkest contrast is in respect of Mr. Waugh's evidence that Mr. Bradshaw was proposing that the abattoir be sold outright. Mr. Bradshaw contends that he made it clear that the premises were not for sale. Rather he said that he was interested only in leasing the premises with certain entitlements to him to kill 100 to 200 cattle for what were described as "home sales". Whatever about these discussions and the conflict of evidence in relation to them there is no dispute but that nothing was agreed at this meeting.
19. The second meeting took place about a week later at the same venue. Again this meeting was attended by a number of persons, none of whom gave evidence with the exception of Messrs. Waugh and Bradshaw. Again there is very substantial conflict between these two witnesses as to what went on at the meeting. Mr. Bradshaw contends that, having retired from the meeting with Mr. English who gave him certain advice, an agreement was made with Mr. Waugh. That alleged agreement included terms that the plaintiff would purchase a 90% interest in the factory with Mr. Bradshaw retaining 10%, that he would remain as head of procurement, that he would be allowed to kill in excess of 100 cattle for himself and would be paid €5 per head per animal killed by the plaintiff at the premises. Mr. Bradshaw was also to have rights to phone masts and the rents received from them and the factory was to be run under the name Bradshaw Foods. Mr. Waugh does not accept any of this. In fact he said that he had to go back and have discussions with his own board which was divided on the topic of becoming involved at all.
20. Mr. Bradshaw gave evidence of a third meeting in Freshford attended only by himself and Mr. Allen, a director of the plaintiff. This meeting was concerned with the disposal of waste water and effluent. This encounter led to the setting up of a further meeting.
21. Mr. Waugh says that the next instalment in the saga occurred when Mr. English came up with a proposal of granting a lease on the factory for one year with an option to buy it. That gave rise to another meeting between Messrs. Waugh, Bradshaw and English. Mr. Waugh believes this meeting took place probably in the first week in March. This proposal was acceptable to the plaintiff and he says instructions were given to Mr. Fanning to proceed, along with the plaintiff's solicitors, to give effect to it.
22. Mr. Fanning only became involved in the negotiations at a time when the plaintiff had decided to proceed with an arrangement involving a letting of the premises for one year with an option of purchase at the end of that year.
23. Mr. Fanning attended his first meeting with Messrs. Bradshaw and English on 5th March, 2004, at the Seven Oaks Hotel in Carlow. As far as he was concerned the meeting fell into two parts. The first was to deal with the lease and the option to purchase and the second was to deal with what he described as operational issues.
24. He took notes at that meeting and they were put in evidence before me. They are consistent with his testimony. I am satisfied that there was a discussion about the lease having a term of one or two years. The plaintiff was firmly against the notion of a two year lease. That appears to have been accepted on the defendant's side because it produced a one year lease document within a short time. A rent of €15,000 per month was also agreed as was the question of waste water disposal being attended to by the defendant at an agreed price of €15 per tonne.
25. A further meeting took place on 24th March, 2004. Messrs. Fanning and Bradshaw were amongst the attendees. Again Mr. Fanning took contemporaneous notes which were put in evidence. There were also two parts to this meeting. The first involved a discussion of the lease and purchase agreement and the second involved a discussion on operational matters. Between the two meetings Mr. Fanning had been in regular communication with Mr. English.
26. Once again the notes which were taken by Mr. Fanning appear to me to support the version of events which he gave in evidence.
27. Another meeting took place on 5th April. Mr. Fanning was not present at that. Mr. Waugh, Mr. Bradshaw and Mr. English were. This took place on the day before the written agreement was executed.
28. By this time there was a draft agreement in existence. Indeed such a document had existed for some time and legal advice had been taken upon it. The agreement was essentially a tenancy agreement whereby the plaintiff took a letting from the defendant for a term of one year. As a result of the negotiations which had taken place the agreement also provided an option on the part of the plaintiff to purchase the premises at the expiration of the one year term subject to certain conditions. It also contained a number of other terms which had been the subject of discussions in the various meetings to which I have referred and were by then agreed. They were specifically incorporated into the draft.
29. The evidence satisfies me that over a period of time the defendant sought to modify the purchase option so as to ensure that if it were exercised he would be entitled to retain 10% of the ownership of the premises. He had been seeking to do this from the time that the plaintiff first intimated its wish to purchase the premises. At the meeting of 5th April, the plaintiff relented and agreed to such a proposition. Steps had then to be taken to ensure that it would be incorporated into the written agreement.
30. A number of other amendments to the draft agreement were also agreed upon at this meeting.
31. Subsequent to it, steps were taken to bring about amendments to the draft. Mr. Fanning was at this stage brought back into the picture. Curiously enough that appears to have occurred as a result of him being sent an email by Mr. English which summarised a number of points that had been agreed at the meeting of 5th April. These points were to be incorporated into the agreement. Amongst these points was the entitlement on the part of the defendant to retain 10% on certain conditions should the purchase option be exercised. Other points dealt with in the email concerned the telephone masts, intake dockets and the retention of Mr. Bradshaw as head of procurement.
32. Mr. Fanning took instructions from his superiors in relation to the contents of this email from Mr. English and dealt with the plaintiff's solicitors in that regard. These dealings took place on the morning of 6th April, 2005.
33. It was in the afternoon of that day that the ultimate agreement was signed.
34. I accept the evidence of Mr. Fanning as to what transpired on that day. I am satisfied that he liaised with the plaintiff's solicitors for a good part of the morning of 6th April and then set off to the meeting which was scheduled to finalise the contractual arrangements at Bewley's Hotel, Newlands Cross that afternoon.

### **The Final Meeting**

35. This meeting took place on the afternoon of 6th April, 2004. Mr. Fanning was responsible for booking the room at the hotel and for

generally ensuring that the relevant parties were present to enable the written agreement be executed. He was the person responsible for producing the agreement and doing whatever explaining was required in relation to it.

36. Of the three witnesses who gave evidence before me he was undoubtedly the most businesslike. He was the only person who kept notes of the earlier meetings that he attended.

37. I accept his evidence of what transpired on the afternoon in question.

38. In particular I accept his evidence in relation to the alterations which were necessary in order to provide for the possibility of the 10% interest being retained by the defendant. As he was on his way to Dublin it occurred to him that if that option were to be availed of it would result in an adjustment to the purchase price. He remained in contact with his solicitors on that matter and received an e-mail on the topic after he arrived in the hotel. The revision provided for in that e-mail was explained to Mr. Bradshaw and the agreement was executed with that being incorporated into it.

39. I reject the suggestion that was made to the effect that the agreement was altered subsequent to its execution. On the contrary I am satisfied that Mr. Fanning was the person who was responsible for the presentation of the final draft to the parties who executed it. He was there during its execution. Subsequent thereto he took the document away with him.

40. Two other features of the meeting on this afternoon are notable. The first is the absence of Mr. English. He participated in many of the negotiations which took place prior to this day and I am satisfied that he did so for the most part in his capacity as a director of the defendant and on its behalf. Secondly, on his own evidence Mr. Bradshaw never read the document that afternoon prior to its execution by him. He executed it in two capacities. The first was as a director of the defendant. Secondly, he did so personally.

41. He gave evidence that the question of what he described as a complete buyout which is provided for in the agreement was unknown to him when he signed. There is no doubt but that from his own discovery such a proposition featured in a version of the agreement which antedated that produced at the meeting on 6th April. The explanation for this is that much of both the negotiating and textual changes to drafts were done not by Mr. Bradshaw but by Mr. English. In fact it is clear from the evidence that for the most part Mr. Bradshaw relied upon Mr. English when it came to detailed business negotiations or the drafting of documents. He never read the documents himself.

### **The Written Agreement**

42. The agreement which was executed on 6th April, 2004, and is the subject of these proceedings contains a number of elements which are pertinent to the issues in this case.

43. The first part of the document is a letting agreement whereby the defendant agrees to let the premises for a term of one year from 6th April, 2004, at an annual rent of €180,000 plus VAT. Many of the covenants in this part of the agreement are unremarkable and could be found in any standard letting agreement.

44. Clause 2(o) is however atypical of such an agreement. It provides that Mr. Bradshaw is to be retained as head of procurement for the beef slaughtering activity on the premises for the duration of the term. He in turn agrees that that position is strictly subject to the direction of the plaintiff and that he will be obliged at all times to report and account to it in respect of any decisions required in connection with such engagement.

45. The landlord's covenants are unremarkable.

46. Clause 4 of the agreement provides that the plaintiff is to have the option to purchase the premises at the expiration of the term subject to a number of conditions. They include service of a notice exercising the right at any time during the term but in any event not later than one month prior to the expiry of it. The purchase price and how it is made up is stipulated. The closing date is prescribed as being four weeks from the date of service of the option notice.

47. Clause 5 of the agreement provides that in the event of the plaintiff in its sole discretion electing to exercise the option through the method of purchasing 90% of the issued share capital of the defendant rather than by purchasing the premises, then the parties are obliged to negotiate a share purchase agreement in good faith as soon as practicable. In such event the following terms are to be included in such agreement. They are:

(a) Mr. Bradshaw shall retain 10% of the entire issued share capital in the defendant and;

(b) In the event that the defendant is run as a non-profit making entity Mr. Bradshaw shall not be required to contribute to capital expenditure costs.

48. Clause 5(ii) provides that in the event of the plaintiff electing to exercise the option by acquiring 90% of the issued share capital in the defendant and the shareholder retaining 10% of the issued share capital in the defendant the amount due by the plaintiff in exercise of the option on completion is to be the sum which represents 90% of the purchase price less the deposit. This adjustment was necessary to reflect the 10% interest being retained by Mr. Bradshaw.

49. The agreement contains 10 special conditions. Some are unremarkable and very much what one would expect in an agreement of this sort. Two however do have a bearing upon the issues that I have to decide.

50. The first is condition number eight whereby the defendant retains the right for the duration of the term to erect telephone masts on the premises subject to certain conditions. The second is condition number ten whereby the lairage intake dockets are required to be prepared under the logo of the defendant.

### **The Alleged Collateral Contract**

51. The defendant contends that the evidence establishes the existence of a collateral agreement which was negotiated at various stages during the negotiating process dealing with nine different matters. They are as follows:

1. The payment to the defendant of a sum of money for each head of cattle slaughtered. Mr. Bradshaw contends that this sum was fixed at €4 per head. He contends that that was agreed between himself and Mr. English with the latter acting not as a director of the defendant but as general manager of the plaintiff.

I am unable to hold as a matter of probability that there was such a term agreed. In so far as there was a conflict

of evidence between Mr. Bradshaw and the plaintiff's witnesses I prefer their testimony to his. Quite apart from the absence of any evidence from Mr. English there is also Mr. Bradshaw's own evidence to the effect that he was at a loss of between €2,500 and €3,000 a week because of the failure to pay this sum to him. Despite that loss he took no steps to recover any of that sum during the year of the term. He says that he spoke to Mr. Fanning about it at one stage but that appears to be the height of it. Not merely were no steps taken to deal with such a substantial loss over the period of a year but no claim is made in the counterclaim in these proceedings either. If there was such an agreement it is most unlikely that such arrears would be allowed to mount up with no action being taken to deal with the issue. As a matter of probability therefore I hold that there was no such term agreed.

2. The second term allegedly agreed concerned what were called home sales. This amounts to an alleged entitlement on the part of Mr. Bradshaw to slaughter at least a hundred animals for what he described as the home trade. Again I am not satisfied as a matter of probability that any such agreement was entered into. Again I prefer the evidence of the plaintiff's witnesses to that of Mr. Bradshaw in this regard.

3. The third matter which is alleged to have been agreed collateral to the written agreement concerns the running of the business under the title Bradshaw Foods Limited. Insofar as there was any agreement between the parties, in my view, it is reflected in the terms of the written agreement at special condition number ten and is limited to that alone. This term accurately reproduces what is contained in the email from Mr. English of 5th April, 2004. That is all that was agreed on this topic.

4. The fourth matter which is alleged to form part of the collateral arrangements involved the continued employment of Anne-Marie Tiernan. It is not denied on the part of the plaintiffs that there was such an arrangement and indeed it is accepted by both sides that it has been honoured throughout. It did not find its way into the written agreement but there appears to have been no necessity for it to do so since it was never in contention. Neither has it been breached.

5. The fifth collateral arrangement alleged concerns the answering of the telephones in the name of Bradshaw Foods. I am not satisfied as a matter of probability that there was any such agreement and in that regard I once again prefer the evidence of the plaintiff's witnesses to that of Mr. Bradshaw.

6. The sixth element of agreement concerns the disposal of waste water. I am satisfied that there was an arrangement between the parties in that regard. It is not the subject of the written agreement before me but there is no dispute as to its terms. It has not been breached.

7. The seventh term of the collateral arrangement relates to the retention of Mr. Bradshaw as head of procurement. There is no doubt but that there was an agreement between the parties in that regard and it has found its way into the written agreement. It is expressly provided for at Clause 2(o). It also figured in Mr. English's email of 5th April, 2004. That term of the written agreement has been honoured throughout.

8. There was negotiation between the parties concerning the telephone masts at the premises. There was an agreement in respect of that and it has found its way into the written agreement and is contained at special condition eight.

9. The ninth alleged term concerns an entitlement whereby Mr. Bradshaw would obtain the rents from masts already existing. On balance I think that unlikely to be the case.

## **Conclusion**

52. As is clear from the above I take the view that the defendant has not discharged the burden of proof in satisfying me of the existence of any collateral agreement over and above that which I have already found to be the case. Neither has the defendant demonstrated a breach of any of those terms such as to disentitle the plaintiff to exercise the option as it did. There is no question but that the option was exercised within time and accordingly it follows that the plaintiff is entitled to specific performance of the agreement as claimed.

53. I have some sympathy for the position of Mr. Bradshaw. He is, as his counsel admitted, not a man to deal in written documents or matters of that sort. He put nothing in writing. He read very little if any of the documents which were generated in respect of this transaction. He did not even read the agreement in suit before executing it.

54. Despite his lack of formal education he has obviously had considerable success in his dealings with cattle and their slaughter. But the business side of such arrangements were not attended to by him. He reposed considerable faith in Mr. English and appears to have relied upon him to look after his interests and that of the defendant company. Mr. Bradshaw appears to be a man of very considerable optimism as evidenced by his agreement to purchase the property in the first place at a time when he hadn't even obtained sanction from the bank for the €1.1million which he had to find. A similar optimism appears to have been displayed in his belief that contractual arrangements had been entered into with the plaintiff when they had not. In that regard much of his belief was formed as a result of conversations with Mr. English. In the event his beliefs have proven to be without substance.

## **The Counterclaim**

55. The defendant's counterclaim seeks possession of the premises on the basis that the plaintiff has wrongly remained in possession of them. In the light of my findings that is not the case. Consequently there is no entitlement on the part of the defendant to possession of the premises.

56. There is also a claim for mesne rates from 5th April, 2005. This is on the basis that the plaintiff is in unlawful occupation of the premises since that date. That manifestly is not the case. Either the plaintiff is in occupation pursuant to the provisions of Clause 6 of the agreement which provides that if the tenancy should continue beyond the date specified then it shall in the absence of a new agreement be deemed to be a tenancy determinable by one calendar month's notice in writing, or alternatively, as purchaser in possession. In my view the facts of the case demonstrate that the plaintiff occupies the premises in the latter capacity.

57. The plaintiff was at all times ready willing and able to complete the purchase of the premises. The only reason that it could not do so was the refusal on the part of the defendant to accept the exercise of the option. It's belief in its entitlement to do so has not been borne out and consequently the counterclaim is dismissed.

58. There will be a decree for specific performance of the sale of the premises to the plaintiff.