



Supreme Court of New Zealand

5 September 2014

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

**SAVVY VINEYARDS 3552 LTD AND SAVVY VINEYARDS 4334 LTD v
KAKARA ESTATE LTD AND WETA ESTATE LTD
(SC 44/2013) [2014] NZSC 121**

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court’s judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at Judicial Decisions of Public Interest www.courtsofnz.govt.nz

Kakara Estate Ltd and Weta Estate Ltd entered into contracts to purchase land that was to be developed as vineyards. As part of the transaction, Kakara and Weta became parties to agreements with Goldridge Estate Ltd for the development and management of the vineyards and the supply of the grapes produced. These vineyard agreements provided that Goldridge could assign the agreements to related companies without the consent of Kakara and Weta.

In 2009, Goldridge decided to restructure and incorporated two new companies. After changes of name, these companies became Savvy Vineyards 3552 Ltd and Savvy Vineyards 4334 Ltd. Goldridge informed Kakara and Weta that it intended to transfer its interests in the vineyard agreements to the Savvy companies. In August 2009, Goldridge executed “deeds of assignment” to transfer the agreements relating to Kakara’s land to Savvy 3552 and those relating to Weta’s land to Savvy 4334.

Goldridge forwarded the deeds to Kakara and Weta. The covering letter said that assignment of the agreements had already taken effect in accordance with Goldridge’s right to assign its interests to related companies, but also

requested execution of the deeds by Kakara and Weta. The terms of the deeds included substitution of the Savvy companies in place of Goldridge.

Kakara and Weta did not execute the deeds. Neither did they communicate to Goldridge their refusal to do so. Kakara and Weta did, however, deal with the Savvy companies when they began to provide the vineyard management services and exercise rights to purchase the grapes as set out in the agreements.

The business relationship between the parties deteriorated. In 2010, Kakara and Weta purported to terminate the agreements on the basis that Goldridge had gone into voluntary liquidation. The agreements permitted termination by either party if the other party went into liquidation.

The issue on appeal before the Supreme Court was the legal effect of the transfer of the vineyard agreements from Goldridge to the Savvy companies. If the effect was that Goldridge was no longer a party bound by the agreements, the purported termination by Kakara and Weta was invalid.

The High Court held that the transfer had effected a novation of the vineyard agreements, with the Savvy companies being substituted as parties in place of Goldridge. By the time Goldridge went into liquidation, it was no longer a party to the agreements. The termination of the vineyard agreements by Kakara and Weta was accordingly invalid.

Kakara and Weta appealed to the Court of Appeal. The Court of Appeal held that the vineyard agreements had been assigned by Goldridge to the Savvy companies. There had been no novation, so Goldridge was still a party to the vineyard agreements at the time of its liquidation and Kakara and Weta were entitled to terminate the agreements. The Savvy companies appealed to the Supreme Court.

A majority of the Supreme Court has held that the termination of the vineyard agreements was invalid. William Young, Glazebrook and Arnold JJ have decided that the transfer of contractual obligations can only be achieved by novation. Because it was common ground in the appeal that the Savvy companies assumed both the rights and obligations of Goldridge, Kakara and Weta had necessarily assented to a novation.

On this basis, the next question was whether the terms of the novation agreed to by Kakara and Weta resulted in Goldridge no longer being a party to the vineyard agreements. The majority has decided that the only terms that Goldridge and the Savvy companies offered to Kakara and Weta were those set out in the deeds, including the provision that the Savvy companies would replace Goldridge. It was therefore not possible for Kakara and Weta to accept the Savvy companies as contracting parties without also accepting the release of Goldridge from liability as a party. Accordingly, at the time of the purported termination of the vineyard agreements, Goldridge was no longer a party.

The Chief Justice and McGrath J dissented. Their view was that there was an assignment from Goldridge to the Savvy companies but there was no concluded contract of novation in terms that would substitute the Savvy companies for Goldridge. On that basis, Goldridge remained a party to the vineyard agreements and its liquidation was a valid basis for Kakara and Weta to terminate them.

In accordance with the views of the majority, the appeal has been allowed and the judgment of the High Court reinstated.

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