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ENFORCEABLE CONTRACT OR A MERE "AGREEMENT TO AGREE" - *KSY JUICE BLENDS UK LIMITED V CITROSUCO GMBH* [2025] EWCA CIV 760

In a recent appeal in *KSY Juice Blends UK Limited v Citrosuco GmbH* [2025] EWCA 760 the Court of Appeal considered whether a three-year long supply contract, which in respect of a certain part of quantity provided for a price to be fixed by a specific date was an enforceable contract. The Court of Appeal, disagreeing with the Commercial Court, found that the agreement was enforceable and that the lack of an agreed price was not fatal since a term was to be implied that in the absence of an agreement, the price was to be fixed as a reasonable or market price.

The judgment provides useful guidance on the enforceability of contracts where price is left to be agreed in the future and whether they can be "saved" by implication of a term or whether they fail for uncertainty.

FACTS

By a contract dated 18 May 2018 (the "**2018 Contract**"), the appellant, KSY Juice Blends UK Limited ("**KSY**") agreed to supply Citrosuco GmbH ("**Citrosuco**"), the respondent, with a quantity of 3,600 MT orange juice pulp wash, known as Wesos¹, over a three-year period starting in January 2019, delivered in annual tranches of 1,200 MT.

¹ Wesos stands for "water extracted soluble orange solids" and it is produced after extracting water from the orange pulp which is left after extraction of juice from oranges. It has number of uses and can be reconstituted into a drink similar to orange juice or being used as a base for orange flavoured drinks.



The relevant parts of the 2018 Contract provided as follows:

"Clause 3. Price

Invoicing price is 1.600euro/mt for 60 brix²

Price adjustable according to brix value +-5 brix

Free trucks³ will be offered from the seller according to the agreed volume & price of each year.

Calculation basis for the 1.200mt fixed is 1.350euro/mt which corresponds to the 400mt/year 2019-2020-2021

...

Clause 5. Delivery Period

1.200MT per each year

Deliveries to start January to December with the following split:

400mt fixed at 1.350euro/mt – invoicing price is 1600euro/mt

Difference of price in free trucks 800mt at open price to be fixed latest by December of the previous year

Difference of price in free trucks

...

Clause 10. Quantity

3600mt"

The 2018 Contract also contained detailed provisions regarding delivery, instructions for dispatch, payment, applicable law (but no jurisdiction clause), entire agreement clause, as well as clause which provided that the parties intended the 2018 Contract to be valid and enforceable to the fullest extent possible, meaning that any invalid or unenforceable terms could be severed from it.

It was common ground that the effect of the price, delivery and quantity clauses was that each year the amount KSY would supply would always be at least 1,274 MT (474 MT at a real price of €1,250, plus the additional 800 MT at a price to be fixed latest by December of the previous year).

The 2018 Contract was not the first one between the Parties – on 13 March 2017 KSY agreed to sell to Citrosuco 200 MT of Wesos at a price of €1,600/MT for 60 Brix with the "price adjustable according to Brix value +- 5 brix" and on 7 July 2017 for an immediate quantity of 100 MT at a price of €1,600/MT for 60 Brix (with a similar price adjustment), plus two further quantities of 400 MT and 500 MT, with price for those quantities left "to be agreed" by a specified date. Both of these contracts were performed, with priced having been agreed in due course.

By the end of 2018, Citrosuco's need for Wesos declined and it became apparent to it that the 2018 Contract had become a bad bargain for it. No agreement was reached by the Parties for the 800 MT of Wesos for any of the years of the 2018 Contract. Citrosuco took delivery of, and paid for, 400 MT of Wesos in 2019, but declined to take delivery of any more. In 2020, KSY delivered 126 MT of Wesos, but Citrosuco paid for only 84 MT.

In September 2020 KSY terminated the contract alleging that Citrosuco was in repudiatory breach and claimed damages for the unpaid balance.

COMMERCIAL COURT DECISION

It was common ground that in respect of part of the quantity referred to in the 2018 Contract, the Parties had agreed upon a price and therefore had reached an enforceable contract and the main issue for the Court was what was the position in respect of the 800 MT in respect of which price was left to be agreed.

² "Brix" is a measure of the amount of dissolved solids in a liquid via its specific gravity and the "Brix unit" is commonly used in the orange juice business as a means of pricing, the price being fixed on the basis of an assumption as to the Brix level with an adjustment to reflect the actual level.

³ The concept of "free trucks" is a promotional pricing strategy, which is a mechanism used to adjust the contracted price in response to market price fluctuations. It involves providing free product on top of the contracted volume, thus aligning the price of the goods with the current market conditions.



Citrosuco contended that, as to the 800 MT per year, the contract was unenforceable because the price, an essential ingredient of a contract, was left to be agreed – and this was a case of a classic "agreement to agree." KYS on the other hand argued that the contract was enforceable as to the full quantity and that a reasonable or market price should be implied for the open-priced portion either by statute or at common law.

The Commercial Court agreed with Citrosuco and held that, while there was a binding contract as to the 400 MT per year at the fixed price, and the Parties had intended to deal in 1,200 MT of Wesos annually, after having considered principles of contractual construction and implication of terms, concluded that the part of the 2018 Contract relating to that 800 MT was unenforceable. As a result, KSY's claim for damages in respect of the 800 MT per year was dismissed. In coming to his conclusions, the trial judge noted that *"it must be correct that the court need be less troubled by a finding that there was no agreement as to contractual price in circumstances where that finding would undermine part but not all of a bargain that the parties believed they had reached – to destroy rather than preserve only part of a bargain is better than destroying the bargain altogether."*

COURT OF APPEAL DECISION

KSY appealed, with permission from the trial judge, on two grounds:

- (1) That the trial judge failed to find:
 - a. That on a true construction of the 2018 Contract or by way of an implied term (implied by section 8(2) of the Sale of Goods Act 1979 or otherwise) the Parties agreed that a reasonable, or a market, price was to be paid in relation to the 800 MT per year; or
 - b. That on a true construction of the 2018 Contract or by way of an implied term, the Parties agreed to exercise reasonable endeavours to agree the number of free trucks (and therefore the price) and/or the price in relation to the 800 MT per year.

- (2) In doing so the trial judge erred in (inter alia) finding that such terms would be too uncertain to be enforceable and/or inconsistent with the 2018 Contract, in particular the phrase *"open price to be fixed"* at Clause 5 of the 2018 Contract.

On appeal, the Court of Appeal came to a different conclusion to the trial judge and upheld KSY's appeal.

First, the Court dismissed Citrosuco's argument that s. 8(2) of the Sale of Goods Act 1979, precluded implication of a term as to reasonable or market price, where the contract left the price to be agreed subsequently. Section 8(2) applies where the price is not determined by the contract – either by reference to its express or implied terms – and it would be perverse if the existence of this section, a provision which is designed to save contracts from unenforceability where nothing has been agreed, rendered it impossible for the Courts to imply a term as to reasonable or market price.

As to identifying what the 2018 Contract said, on its true construction, as to the price of the 800 MT of Wesos, whilst Clause 5 provided for the price *"to be fixed"* this implicitly meant that the price would, at least in the first instance, be fixed by agreement. However, this did not preclude the implication of a term for a reasonable or market price in the absence of agreement, with the question being whether the Parties entered into a binding agreement not dependent on any future agreement for its validity or left a term to be agreed between them in the future on the basis that either will remain free to agree or disagree about that matter and by reference to their separate commercial interest.

The starting point for implication of the term by the Court of Appeal was the fact that the Parties had intended to reach a binding agreement as to the full quantity of Wesos contemplated by the 2018 Contract and that the commercial context – both Parties were experienced in the trade which had a generally volatile market, had previously operated similar flexible arrangements and the 2018 Contract did not provide for renegotiation of any other terms. These pointed towards the 2018 Contract being firmly in the territory of the contracts that courts would strive to uphold and supported the implication of a term of reasonable or market price. In finding that, the Court of



Appeal disagreed with the trial judge's view that that the court should be less concerned with seeking to uphold a bargain simply because on any view there is a binding agreement as to *part* of the subject matter.

In the Court's view, the strongest potential obstacle to implying such a term was the difficulty of ascertaining a reasonable or market price, however considering the evidence before it, it found that there was sufficient information for it to determine a reasonable price.

The Court of Appeal disagreed with the Commercial Court, allowed the appeal and found that a term should be implied into the 2018 Contract so that, in the absence of agreement, the price for the 800 MT per year would be a reasonable or market price, finding it unnecessary to consider the alternative argument.

COMMENT

This Judgment contains a useful summary of the factors the English Court should consider when determining whether it is a case of a mere "agreement to agree" or a valid and enforceable contract. It is a good example of English law striving to uphold commercial bargains even where some terms, such as the price, have been left open, provided there is an objective standard by which the court can determine those terms. It provides reassurance to parties and traders operating in volatile markets where there is a need for flexible long-term arrangements in that contracts will not lightly be set aside for uncertainty, and that Courts try to be pragmatic in preserving the substance of commercial agreements where possible. However, all of the judgments referred to in the case emphasise that each case will turn on its own facts and how the particular contract would be construed and therefore not all contracts where terms will be left "to be agreed" could be saved, being mere unenforceable "agreements to agree".

It remains to be seen whether the Supreme Court agrees with the Court of Appeal as at the time of writing this article a permission to appeal application had been lodged by Citrosuco.

Please click [here](#) for a copy of the full judgment.

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