



10 March 2010

PRESS SUMMARY

RTS Flexible Systems Limited (Respondents) v Molkerei Alois Müller GmbH & Co (Appellants) [2010] UKSC 14

On appeal from the Court of Appeal Civil Division [2009] EWCA Civ 26

JUSTICES: Lord Phillips (President) Lord Mance, Lord Collins, Lord Kerr, Lord Clarke

BACKGROUND TO THE APPLICATION

RTS specialises in the supply of automated machines for packaging and product handling in the food and consumer goods industry. Müller, a well known leading European dairy product supplier, entered into discussions with RTS regarding automating its product re-packaging process. While negotiations were continuing, and before the terms of the contract between them had been agreed, the parties decided to start work on the basis of a letter of intent and the understanding that ultimately terms would be finalised. However, no final contract was ever signed. A dispute later arose between the parties in relation to the delivery by RTS of certain equipment to Müller.

The main issue to be decided by the Supreme Court was whether the parties entered into a contract following the expiry of the letter of intent and, if so, the terms of that contract.

At the trial of preliminary issues in the High Court, the judge held that after the expiry of the letter of intent and by no later than 29 June 2005, there was a contract: the parties had reached full agreement on the work that was to be done for the price they had already agreed. The judge held that the contract was based on limited terms and did not include the final draft version of certain terms known as the MF/1 conditions (Müller's standard contract conditions).

RTS appealed the judge's conclusions. The Court of Appeal unanimously allowed the appeal and made a declaration that no contract came into existence after termination of the letter of intent.

JUDGMENT OF THE COURT

The Supreme Court unanimously allows the appeal. In doing so, it reaches a different conclusion from both the High Court and the Court of Appeal finding that although there was no formal contract, Muller and RTS did reach a legally binding agreement and that that agreement contained wider terms than the limited terms found by the judge. The order of the Court of Appeal is set aside and the court declares that (1) the parties reached a binding agreement on or about 25 August 2005 on the terms agreed on or before 5 July (as subsequently varied on 25 August), and (2) that that binding agreement was not subject to contract. The judgment delivered by Lord Clarke is the judgment of the court to which all of its members contributed.

REASONS FOR THE JUDGMENT

The Supreme Court identified the relevant principles to be applied (**paragraphs [44]-[55]**). It identified three possible conclusions that were open to it: (1) there was no contract between the parties (as held by the Court of Appeal); (2) there was a contract between the parties on the limited

terms found by the judge; or (3) there was an agreement between the parties on some other wider terms (**paragraph [56]**).

In relation to the first possibility, it is unrealistic to suppose that the parties did not intend to create legal relations. It was common ground that the parties had agreed the price, which must have formed part of a contract between them. As the parties accepted that the letter of intent expired and was not revived, the contract containing the price must be some other agreement (**paragraphs [57]-[58]**).

In relation to the second possible conclusion, it is relevant that the parties treated the agreement of 25 August as a variation of the agreement that they had reached by 5 July. It does not make commercial sense to hold, as the judge did, that the agreement between the parties contained some but not all of the terms agreed by 5 July (**paragraphs [59]-[67]**).

In considering the third possibility, two questions arise: (i) whether the parties intended to be bound by what was agreed or whether there were further terms which they regarded as essential or which the law regards essential in order for the contract to be legally enforceable, and (ii) whether the parties departed from the original understanding or agreement that it was to be subject to contract (**paragraph [68]**).

In answer to (i), the parties had reached essential agreement by 5 July. None of the issues remaining after that date were regarded by the parties as an essential matter which required agreement before a contract could be binding (**paragraphs [69]-[84]**). As for (ii), it is possible for an agreement 'subject to contract' or 'subject to written contract' to become legally binding if the parties later agree to waive that condition. The court holds that in this case on or by 25 August the parties had agreed to waive the subject to contract provision. Any other conclusion makes no commercial sense (**paragraphs [85]-[87]**).

The court notes that the case demonstrates the perils of parties agreeing that work should proceed before a formal written contract is executed. The moral of the story is to agree terms first and start work later (**paragraph [1]**).

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document.

Judgments are public documents and are available at: www.supremecourt.gov.uk/decided-cases/index.html