

SUPREME COURT OF QUEENSLAND

CITATION: *Quadrio v Mackay Sugar Limited & Anor* [2014] QSC 148

PARTIES: **PASQUALE QUADRIO**
(plaintiff)
v
MACKAY SUGAR LIMITED
ACN 057 463 671
(first defendant)

v
TABLELANDS CANEGROWERS LTD
ACN 114 759 376
(second defendant)

FILE NO: SC No 123 of 2014

DIVISION: Trial

PROCEEDING: Civil Hearing

ORIGINATING COURT: Supreme Court at Cairns

DELIVERED EX TEMPORE ON: 3 July 2014

DELIVERED AT: Cairns

HEARING DATE: 30 June 2014, 1 July 2014

JUDGE: Henry J

ORDERS: **1. It is declared that the plaintiff has not committed to a concluded and binding contract with the first and second defendants in the terms of the instrument entitled 'Tableland Collective Cane Supply and Processing Agreement'.**

2. I will hear the parties as to costs.

CATCHWORDS: CONTRACTS – STATUTORY INTERPRETATION - INTERPRETATION OF THE *SUGAR INDUSTRY ACT* 1999 – where the plaintiff seeks a declaration that he has not committed to a concluded and binding contract with the first and second defendants in the terms of an instrument entitled 'Tableland Collective Cane Supply and Processing Agreement' – where the plaintiff signed the execution page of the Agreement in circumstances where the execution page was not annexed to the Agreement – where the execution page contained no reference to the terms of the Agreement - where there was no copy of the Agreement provided to the plaintiff prior to signing - where section 33(2) of the *Sugar*

Industry Act 1999 requires each grower to a collective supply contract to sign the collective contract - whether by signing the execution page the plaintiff signed a collective contract for the purposes of the *Sugar Industry Act 1999*

CONTRACTS – FORMATION OF CONTRACTUAL RELATIONS – INTENTION TO BE LEGALLY BOUND – where the plaintiff alleges the parties had no intention to enter into a legally binding supply contract - whether the plaintiff evinced an intention to enter into legal relations with the first and second defendants by signing the execution page of the Agreement

Sugar Industry Act 1999 (Qld), s 29, s 31, s 32, s 33, s 46
Sugar Industry Reform Act 2004 (Qld)

Toll (FGCT) Pty Limited v Alphapharm Pty Limited & others (2004) 219 CLR 165, distinguished
Wilton v Farnworth (1948) 76 CLR 646, discussed

COUNSEL: MA Jonsson for the plaintiff
MR Hodge for the first defendant
J Jacobs for the second defendant

SOLICITORS: Greenwoods Solicitors for the plaintiff
McCullough Robertson for the first defendant
CJ Cooper & Associates for the second defendant

- [1] The plaintiff, Mr Quadrio, is a sugar cane grower on the Atherton Tablelands. He wants to avoid the potential consequences of having signed a document at a meeting of sugar cane growers and representatives of the first and second defendants at the Tolga CWA Hall on the Atherton Tablelands on 16 of April 2013.
- [2] The defendants, Mackay Sugar Limited (“MSL”) and Tableland Cane Growers Limited (“TCL”) contend Mr Quadrio signed a written cane supply contract. That contract, if he is bound by it, requires him to supply cane to the MSL owned Mossman Sugar Mill as distinct from, for example, the more proximate Tableland Sugar Mill which Mr Quadrio has supplied in the past. Mr Quadrio argues, firstly, that the document he signed was not a written cane supply contract and secondly, that even if it was, there existed no intention for the parties to be legally bound by his action.
- [3] Mr Quadrio seeks a declaration that he has not committed to a concluded and binding contract with the defendants in the terms of the instrument entitled “Tableland Collective Cane Supply and Processing Agreement”, that being the name of the purported contract, the original of which is exhibit 16 in these proceedings. The merit of his primary argument, that the document he signed was not a written cane supply contract, bears inevitably upon the merit of his secondary argument as to a lack of intention to be legally bound.
- [4] His primary argument turns to a large extent upon the proper interpretation of provisions of the *Sugar Industry Act 1999* (Qld) (“the Act”). In particular, it turns upon whether the act of signing an execution page which contained no contractual

terms and was not annexed to any document containing contractual terms, fulfils the Act's specific requirement at s 31(5) and s 33(2) that the grower sign a supply contract.

The legislative regime

- [5] Arrangements for the supply of cane by cane growers to sugar mills have long been regulated by statute. To the present day the Act mandates that growers cannot supply cane to a mill without a supply contract being in place (see s 31(1)).
- [6] In the past, local boards would negotiate the terms of contracts to supply cane to sugar mills by growers in geographically zoned cane production areas. It was a regime which was restrictive on the freedoms of growers to supply the mill of their choice and to negotiate their own contract rather than being bound by collective agreements struck with millers by representative bodies. While in time, growers were accorded a right to enter into supply agreements with mill owners, it remained the position that growers who did not voluntarily enter into supply agreements were taken to have entered into collective agreements made for the mill in the relevant cane production area (see s 46 *Sugar Industry Act 1999* (Qld) reprint number 3G reprinted as in force 1 December 2003).
- [7] More material reform occurred with the passage of the *Sugar Industry Reform Act 2004* (Qld). It removed the Act's system of cane production areas and increased growers' freedom from being legislatively bound by collective arrangements struck by others. As to the latter, the Reform Bill's explanatory notes said:

“The bill allows growers to freely engage in the market for the supply of their cane. Importantly, the bill also enables growers to participate in “opt-in” collective arrangements with millers, as well as other interested third parties. There is an opportunity, not an obligation, to bargain collectively. Parties to supply contracts are provided with scope to participate in more than one such contract. Removal of the existing and onerous statutory bargaining system will result in industry participants benefiting from greater freedom to direct and control their own interests.”

- [8] It is readily apparent from the statutory framework introduced by the Reform Act that the legislature sought to safeguard grower autonomy by ensuring there were written contracts between growers and mill owners. That part of the Act which governs the contract processes contains an express statement reflecting such a purpose:

“29 Purpose of pt 2

The purpose of this part is to ensure the supply by growers of cane to a mill and the payment to growers in return are governed by written contracts (each a **supply contract**) between growers and mill owners.”

- [9] More particularly, the critical ensuing provisions obviously seek to promote grower autonomy by requiring that supply contracts must be signed by the individual growers, even if they are negotiated collectively. Sections 31 to 33 provide:

31 Supply contract

- (1) A grower may supply cane to a mill for a crushing season only if the grower has a supply contract with the mill owner for the season.
- (2) A supply contract may be for 1 or more than 1 crushing season.
- (3) A supply contract may be either an individual contract or a collective contract.
- (4) An interested third party may be a party to a supply contract between a mill owner and a grower.
- (5) Each of the parties to a supply contract must sign the contract.

32 Individual contract

An individual contract—

- (a) is a supply contract made directly between a grower and a mill owner; and
- (b) may be for all or part of the supply of cane grown by the grower.

33 Collective contract

- (1) A collective contract is a supply contract made between 2 or more growers (a group of growers) and a mill owner.
- (2) Each grower in a group of growers must sign the collective contract.
- (3) A group of growers may appoint a bargaining representative to negotiate a collective contract on behalf of the group.
- (4) There may be more than 1 collective contract in force at the same time for a mill.
- (5) A grower may be a party to more than 1 collective contract.

- [10] Those provisions require that a grower can only supply cane to a mill if the grower has the supply contract (s 31(1)). The supply contract may be an individual contract, made directly between a grower and a mill owner (s 32(a)) or a collective contract between a group of growers and a mill owner (s 33(1)). Collective contracts may be negotiated by a bargaining representative (s 33(3)), who pursuant to the definition of that term (s 30) is a person with the written authority of a group of growers.
- [11] Section 31(5) requires that the parties to a supply contract “must sign the contract”. A grower is plainly a party to an individual contract as contemplated in s 32 and must thus sign the individual contract. Further, it is tolerably clear by virtue of 33(1) that a grower is inevitably also a party to a collective contract and must thus sign the collective contract. However, if there be any doubt as to the legislature’s intent in that regard, namely that a grower must sign a collective contract, it is dispelled by 33(2)’s express requirement that each relevant grower “must sign the collective contract”.
- [12] In the present dispute, there is no doubt that Mr Quadrio did sign something. The pivotal issue is whether what he signed was a supply contract within the meaning of the Act.

Background

- [13] Mr Quadrio owns a number of cane farms on the Atherton Tablelands. His wife is a co-owner of some of those farms and his company operates his cane farming business. It is not suggested he was not authorised to contract for the supply of cane from those farms to a mill and he had done so in the past. He is a “grower” within the meaning of the Act.
- [14] Mr Quadrio used to supply cane from his Tableland farms to the South Johnstone Mill near Innisfail. After a sugar mill was built on the Atherton Tablelands and came into operation in 1998, he supplied cane to it. That mill, the Tableland Mill, is obviously more conveniently located to his Tableland farms than mills down on the coastal plains and foothills, such as the South Johnstone Mill, or further north, the Mossman Mill.
- [15] The Tableland Mill was once owned by Bundaberg Sugar Ltd but in 2011 it was purchased by MSF Sugar Ltd (“MSF”). The Mossman Mill was purchased by a different company, the first defendant, MSL, in 2012.
- [16] In 2013 the negotiation of a new collective contract for growers was afoot. The second defendant, TCL, was purportedly acting as a bargaining representative. It appears it only had Mr Quadrio’s written authority to negotiate with Tableland Mill, a topic to which I will return later.
- [17] It is tolerably clear that MSF, the owner of Tableland Mill, and MSL, the owner of the Mossman Mill, would have been potential rivals in negotiations with TCL for a collective contract with growers on the Tablelands. An apparently topical underlying issue of interest to some growers but requiring no particular elaboration here was whether the owner to be supplied was contracted to on supply sugar to exporter Queensland Sugar Limited.
- [18] As events unfolded, TCL negotiated a collective contract with MSL, the owner of the Mossman Mill, and then sought to enlist Tableland growers to sign that contract. MSL’s and TCL’s particular interest in the outcome of that process was whether sufficient growers would be enlisted to deliver the combined total minimum of 7500 hectares of cane growing land required under the collective contract that had been negotiated. TCL sought to inform growers about the collective contract and enlist them to it by way of meetings with local growers, including the meeting to which I have referred at the Tolga CWA Hall on the 16th of April 2013 at about 1 pm.
- [19] The meeting was attended by growers including Mr Quadrio, representatives of MSL, particularly its Chief Executive Officer, Quinton Hildebrand, and representatives of TCL, particularly its Chair, Thomas Maisel, its Deputy Chairperson, Maryann Salvetti, and its manager, Bronwyn Dwyer.
- [20] Ms Dwyer had earlier contacted local growers seeking their attendance and indicating attendance was important. At the outset of the meeting, the growers present were required to, and apparently did, sign a confidentiality agreement. On the preponderance of the evidence, it appears MSL representatives initially stayed out of the meeting while growers were briefed by TCL representatives.
- [21] Mr Maisel opened the meeting speaking briefly. Ms Salvetti then reviewed the history of failed negotiation with MSF and successful negotiation with MSL. Ms

Dwyer then addressed the meeting. As she spoke, an image of the collective contract's content was projected on a screen by a data projector. The content was scrolled through on screen.

[22] Ms Dwyer recalls Ms Salvetti "discussed in detail, the major commercial clauses" in the collective contract. However she seems to be the only witness with that recollection. It seems likely from Ms Salvetti's notes that Ms Dwyer may be recalling, in that context, Ms Salvetti's explanation of the commercial remuneration rates agreed on during the negotiations. Ms Salvetti's evidence is that it was Ms Dwyer who actually reviewed the contract content.

[23] Ms Dwyer deposed in her first affidavit:

"21. I then went through the CSA with the growers, reading and explaining all of the clauses, focusing on those that were materially different from their current MSF sugar contract ...

30. The freight clause was one of the clauses in the CSA that I explained to the growers. The basic effect of this clause was that a freight charge would be triggered, and could be payable by the growers, if supply to MSL was less than 7,500 HA of cane land."

[23] In cross-examination, she was taken to her affidavit evidence on this aspect in the following questions and answers:

"And then you say in paragraph 21 that you personally went through the agreement with the growers, reading - - -?---Yes. I did.

Reading and explaining all of the clauses?---All of the clauses that were materially different from the previous contract. We did go through each clause. Yes."¹

[24] Ms Dwyer was then taken to some specific clauses in the collective contract, which she spoke of using the initials "CSA", and was tested as to whether she really did "go through each clause":

"Could you turn to ... clause 34.1?---Yes. 34.1.

Yes. By that clause, the parties purport to acknowledge that the Mossman Mill might not have the capacity to process all of the cane to be supplied from the in excess of 7,500 hectares under the agreement from the 2014 season. Now, is that something that you explained to the growers?---Yes. It was.

Okay. Could I ask you to turn back a page?---Yes.

And could I direct your attention to clause 29.2?---Yes.

You see that that clause contemplates that notwithstanding anything else contained in the agreement, the agreement might be

¹ (T2-14 LL37-47).

varied by further agreement reached between the mill owner and the bargaining agent?---Correct ...

Ms Dwyer, is that something that you explained to the growers that were present?---That clause is identical to the clause that has been in the previous contracts before it in 2008 so it is one that we just said was an identical clause to the previous contract.

So you said nothing about its content or effect?---We didn't read it word for word. We said it was exactly the same as the previous contract."²

- [25] Her recollection that the main focus of her review was on the variations between the proposed collective contract and the previous cane supply agreement, is consistent with other evidence. The review was not intended to be, nor was it, a complete commentary on the content of each clause of the collective contract.
- [26] The collective contract in question contains 21 pages of contractual terms followed by a page 22, the execution page. The contract has five appendices. Those appendices were referred to within the contractual clauses of the main body of the contract. The length of those appendices is unknown. They were likely not appended to the original contract which Mr Quadrio received at a later date and was tendered (exhibit 16), nor were they appended to any copy of the contract exhibited to affidavits which were tendered during the trial in substitution of evidence-in-chief. The evidence is silent as to whether Ms Dwyer scrolled the appendices on screen, but I infer that is unlikely, particularly given the nature of the exercise generally described as undertaken by her.
- [27] The growers present were of course at liberty to ask Ms Dwyer questions about the collective contract's content, or, to ask her to pause scrolling so that they might read every word of the contract. There is no suggestion the latter occurred. That is unsurprising. It is obvious that the exercise undertaken by Ms Dwyer was not intended as a means by which the growers would read the whole of the contract's terms and nor would the growers have regarded it in that way. It was an information session by which TCL was highlighting the main variations between the recently negotiated collective contract and the former agreement.
- [28] After Ms Dwyer's presentation, MSL's representatives entered and Mr Hildebrand spoke briefly. He intimated that MSL remained desirous of brokering some form of joint venture with MSF so that the Tableland Mill might also crush some of the grower's cane. Such an assertion may well have placated the concerns of some growers present.
- [29] The growers in attendance were each provided with two different pages. One was an execution page. It had the words "Tableland collective cane supply and processing agreement" in standard size, unbolded typewriting across the page header (as did each page of the draft collective contract) and the number 22 at the page footer where page numbers typically appear on typewritten documents. It contained typewritten sections for a representative of MSL to sign, for a representative of TSL to sign and for the grower to sign.

² (T2-15 L18-T2-16 L17).

- [30] The other page had a heading, as distinct from a header, in capital letters viz “TABLELAND COLLECTIVE CANE SUPPLY AND PROCESSING AGREEMENT.” Beneath that was the underlined and bolded heading “Schedule 1.” The writing beneath identified details relating to a named grower and the grower’s land description capacity.
- [31] Ms Dwyer asked the growers present to sign their execution page. Her recollection is that two copies of that page were provided for execution in duplicate. Ultimately nothing turns on that feature of the matter. She explained to the growers counter-signing by TCL and MSL would occur later once the minimum total hectares of land under collective cultivation by the growers prepared to sign was reached.
- [32] It is beyond dispute that Mr Quadrio did, at the meeting, sign the execution page which he accepts he was given. His signature was then or later endorsed as witnessed by Ms Dwyer. At a later date he received a full copy of the contract with the execution page annexed and endorsed by the representatives of MSL and TSL. There are some anomalies between different copies of the execution page relating to date entries but nothing turns on that.
- [33] Mr Quadrio claims it was only after he received the document in full that he realised its content. He claims he developed a suspicion in the intervening period that he had unwittingly committed to a contract to supply Mossman Mill at the meeting. Yet curiously when he spoke to Ms Dwyer in the interim and she said he had signed such a contract, he did not tell her of the misunderstanding he now lays claim to. Mr Quadrio claims that at the meeting he thought that the document he signed was merely an authority to TCL to negotiate with MSL. I reject that evidence. It is at odds with the generally consistent evidence of other witnesses that it was the proposed collective contract, which had already been negotiated, that was under discussion.
- [34] Mr Quadrio sought to distance himself from having had any real understanding of what was explained and shown to him at the meeting. His attempts to do so were transparent and unconvincing. I accept that he may have had some difficulty hearing. At one point, probably earlier in the meeting, the sound of a motor mower operating nearby may have made it difficult to hear, but a door was closed and thus largely muted that sound. As he demonstrated in the witness box during the trial, Mr Quadrio was quite capable of being assertive. If he genuinely could not hear what was being said at the meeting, he is unlikely to have not remedied the problem, or, for that matter, to have signed the execution page. Mr Quadrio also claims he was at such an angle to the screen that he could not properly see the images on it. Again, it is inherently improbable that if Mr Quadrio had such a dire problem, he would not have remedied it at the time.
- [35] On his own account, Mr Quadrio positively contributed to discussion at the meeting, and after Ms Salvetti spoke, he recalls:
- “I said that if we were to supply Mossman, there must be a set of crushing rollers installed somewhere around Mareeba, because I did not want my cane responsible for accidents when the cane trucks were going down the Rex Range.” (Affidavit, paragraph 16)
- [36] Mr Quadrio’s expression of resistance to the prospect of supplying Mossman Mill at that stage is not inconsistent with him later making a knowing decision to relent and

agree to do just that. It will be recalled some speakers were still to address at that stage. Ms Dwyer's review would have followed and when Mr Hildebrand addressed the meeting, he apparently attempted to placate concerns by intimating attempts to involve Tableland Mill in a joint venture would continue. It is apparent a substantial number of growers present did elect to sign their execution page at the meeting. Against that background it is unremarkable, notwithstanding holding some misgivings, that Mr Quadrio also chose to do so.

[37] Mr Quadrio's evidence bore the hallmarks of a witness who was reluctant to concede the obvious. At times it appeared when he made concessions he later perceived might hurt his cause, he tended to retreat from them. He frequently failed to answer the question he was asked. There were repeated signs in his testimony that he was giving evidence, not of fact, as to which he was often vague, but of his belief or interpretation. It may be he has genuinely come to believe the extent of his ignorance at the meeting, but his core assertion that he believed he was only signing an authority to negotiate, is patently unreliable.

[38] Mr Quadrio even claimed that when he came to sign the document it was partially obscured by the schedule page on top of it. Moreover, he made out he could not read the writing in the document because it was too small. That evidence was unconvincing. I note, for example, he managed to insert his writing with the date in between the relevant typed writing and must, apparently, have been able to read it satisfactorily. My impression of this area of his evidence is that he was attempting to minimise any perception that he might have actually read what he was signing. Ironically, that was an unnecessary ruse by Mr Quadrio, for merely reading the document was unlikely to clearly indicate to an uninformed player what it was intended to be. However Mr Quadrio, of course, was not uninformed. He had already had the collective contract to which the document related explained by overview at the meeting.

[39] I find Mr Quadrio believed he was signing a document he understood constituted an agreement by him to the collective contract which had been reviewed at the meeting. But did he sign the contract in conformity with the Act?

First argument – supply contract not signed

[40] The Act's provisions canvassed above unambiguously require that the supply contract, whether an individual contract or a collective contract, must be signed by the grower.

[41] It was submitted against the plaintiff that even if the Act's requirement as to the grower's signature is not met, the Act does not provide the contract is therefore unenforceable. It was effectively contended that the requirement of section 31(1) that a grower cannot supply a mill without having a supply contract with the mill owner is a stand-alone provision so that the other requirements of that section, and section 33 for that matter, do not bear upon what is meant by "supply contract" in section 31(1).

[42] Read in context however, the clear meaning of those sections is that a contract will not be a supply contract within the meaning of section 31(1) unless it is signed by each party as section 31(5) and 33(2) each clearly require. The only lawful way a grower can supply cane to a mill is by entering into a supply contract, whether an individual contract or a collective contract, with the mill. A contract will not be a

supply contract unless signed by the grower. If the document Mr Quadrio signed was not a supply contract, he did not commit to a concluded and binding contract to do that which was provided for in the content of exhibit 16, the collective contract, namely, to supply cane to a mill.

[43] The defendants submit that given the absence of any elaboration in the Act as to the physical state of what must be signed, the issue falls to be considered by reference to common law principle. That is correct, so long as doing so does not offend the actual requirement that it is a contract which must be signed. That requirement presents a formidable obstacle to the defendant's position. What was signed was a page containing mere execution provisions. Neither it nor the accompanying schedule contained a skerrick of contractual terms.

[44] In contract the significance of the act of signature is well established. Its consequences cannot be readily avoided. In *Wilton v Farnworth* (1948) 76 CLR 646 and 649 Latham CJ said;

“In the absence of fraud or some other of the special circumstances of the character mentioned, a man cannot escape the consequences of signing a document by saying, and proving, that he did not understand it. Unless he was prepared to take the chance of being bound by the terms of the document, whatever they might be, it was for him to protect himself by abstaining from signing the document until he understood it and was satisfied with it. Any weakening of these principles would make chaos of everyday business transactions.”

[45] That passage was cited with obvious approval in *Toll (FGCT) v Alphapharm* (2004) 219 CLR 165 at 180. Toll was relied on heavily by the defendants, but on analysis its facts are considerably different from the present case. It shares with this case the fact that the document which was signed did not contain all the contractual terms, but in Toll the document did at least contain some contractual terms. Its front page contained an invitation to read the terms and conditions endorsed on the reverse. In the circumstances in Toll, a failure to read the terms and a decision to go ahead and sign, regardless, did not provide a basis to avoid being bound. The High Court also rejected the impost of an obligation to give some reasonable notice of what was, in any event, contained within the signed document.

[46] In the present case however, the signed document contained no contractual terms. At the highest, it described the title of the contract, namely, the Tableland Collective Cane Supply and Processing Agreement. A contract may, of course, incorporate reference to terms contained elsewhere. Thus, in Cheshire & Fifoot's *Law of Contract* 9th Australian Edition at 10.27 the authors explain:

“The law accepts that terms may be incorporated into a contract by reference or citation, for example, terms contained in some standard form such as, in the sale of land, ‘the usual terms of the Real Estate Institute’ or the ‘conditions of the Transfer of Land Act’, or in bills of lading, the Hague Rules, or other terms generally applicable to a particular transaction. Whether a particular reference is effective to incorporate the terms in question is a matter of construction.” (Footnotes omitted.)

- [47] Here, however, there was simply no reference incorporating terms contained elsewhere. The bare inclusion of the name or title of the collective contract document did not constitute an incorporation of anything. Nor did the page number 22 at the base of the execution document. The document signed by Mr Quadrio was devoid of any contractual terms, including any incorporation of contractual terms.
- [48] The Act required that Mr Quadrio sign a supply contract. The document he signed was simply bereft of contractual content. It did not have any content sufficient for it to meet the description of a contract. It is not to the point that Mr Quadrio realised what it was intended to achieve. It is regrettable that the problem presenting itself could so easily have been avoided by presenting him with the contract document in full. However, the insurmountable obstacle to the defendants' position is that the document Mr Quadrio in fact signed was not a contract. The mandatory requirement of the Act, that he sign a supply contract, was not complied with. It follows, given my earlier reasoning, that I should make the declaration sought in favour of the plaintiff.

Second argument – no intention to be legally bound

- [49] In the event the above conclusion is wrong, it is necessary to go on to consider the plaintiff's second argument. The plaintiff also seeks to avoid the contract on the basis the parties did not possess or should not be taken to possess the requisite intention to become legally bound by the collective contract. I consider this argument on the premise that I am wrong as to the first argument and the signing requirement of the Act was complied with, for if I am right, this argument is irrelevant.
- [50] Approaching the argument in that way demonstrates its lack of force. The argument advanced relies, to a large if not determinative extent, on the premise that Mr Quadrio did not sign in circumstances meeting the Act's requirements. It is obviously a significant obstacle to the lack of intention to be legally bound argument if, contrary to my above finding, Mr Quadrio did sign a supply contract within the meaning of the Act.
- [51] The other features emphasised as suggesting a lack of intention to be legally bound are as follows.
- [52] Firstly, it was submitted the presentation of an execution page and schedule was a departure from past patterns involving collective agreements. However, the preponderance of evidence suggests that was not atypical at all.
- [53] Secondly, it is submitted the proposed transition to a new mill was a significant departure from past arrangements which by inference is said to support the view that the requisite intention would not have been present. Thirdly, in support of that inference, it is submitted there was limited time and opportunity for reflection at the meeting or to consult others including Mr Quadrio's family. Fourthly, it is submitted Mr Quadrio's expression of dissatisfaction at cane being processed down the Rex Range and not on the Tablelands was at odds with the requisite intention.
- [54] As to those submissions, I have already rejected Mr Quadrio's claim of an understanding that the document he signed was an authority to negotiate. It is likely Mr Quadrio did, as he claims, expressed dissatisfaction at the meeting about cane not being processed on the Tablelands, so he well knew of the proposed transition to

a new mill. The probability is that despite his concerns, he relented, perhaps because other growers were not resistant, and he decided to sign a document he understood was meant to indicate his assent to the contract which had been reviewed at the meeting. He is an experienced cane farmer. As his behaviour in the witness box demonstrated, he is an assertive man. He would well have appreciated he could have left the meeting without signing so that he could consider the issue further. He may have come to regret his decision, perhaps because of a desire to sell some of his interests, explored to some extent in evidence, but he well appreciated by signing the execution page that he thought he was indicating his intention to enter into the contract which had been discussed at the meeting.

- [55] Fifthly, it was submitted that the circumstance of the execution page and schedule being taken away and only returned to him later after the first and second defendants apparently executed the document was at odds with the requisite intention. There is of course no need for the parties to a contract to execute it simultaneously. The defendants' intentions were qualified in the sense they needed enough growers to enter into the contract to meet the contract's minimum hectares under cultivation, but that does not suggest an absence of intention to be bound once the parties each executed the contract.
- [56] Finally, it was submitted TCL was only appointed in writing as Mr Quadrio's bargaining agent relating to supply to the Tableland Mill (exhibit PQ 3 to Mr Quadrio's affidavit, exhibit 1), a feature telling against an intention to be bound in respect of Mossman Mill. Section 33(3) of the Act relating to the appointment of a bargaining representative is permissive in character. It was not submitted that a failure to comply with it would render a collective contract negotiated by a bargaining representative invalid. Given my findings as to Mr Quadrio's appreciation that, however reluctantly, he was intending to assent to supplying the Mossman Mill, the absence of TCL's written authority to bargain for such an arrangement does not bear materially on an assessment of the intention to be bound.
- [57] The plaintiff's argument there was not the requisite intention to be legally bound must for all of these reasons fail. However, for the reasons earlier given in respect of the plaintiff's successful argument, I will make the declaration sought, modified slightly to make reference to the contract that was actually exhibited as exhibit 16.

Orders

- [58] My orders are:
1. It is declared that the plaintiff has not committed to a concluded and binding contract with the first defendant and second defendant in the terms of the instrument entitled 'Tableland Collective Cane Supply and Processing Agreement', a copy of which is exhibit 16 in these proceedings.
 2. I will hear the parties as to costs.