



## HIGH COURT OF AUSTRALIA

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### LINDSAY GORDON PARK AND JILL PARK v CLIVE ROY BROTHERS

The High Court of Australia today upheld an appeal from the New South Wales Court of Appeal relating to the amount of damages awarded for breach of a contract for the sale of rural land.

On 12 September 2000, the Parks agreed to buy Mr Brothers' property, "Jellalabad", 40km west of Hay in southern NSW, for \$3.35 million. The property had extensive areas suited to irrigation and rice growing. Mr Park had grown both wheat and rice and was keen to expand the farm's potential for rice production. The contract provided for the purchasers to take possession immediately, subject to certain contractual requirements. Settlement was due on 7 December 2000 but the Parks arranged to move on to Jellalabad immediately to plant a rice crop for the 2000-01 season. The settlement date would have allowed Mr Park to develop another 860 hectares in time for the 2001-02 season, work which have taken about five months. Mr Brothers was aware of these plans. Special condition 24 in the contract included that the Parks could enter the property before settlement and work up ground for crops in locations first approved by Mr Brothers.

Various disputes arose between Mr Brothers and the Parks, particularly over a \$150,000 bill for water connection, and Mr Brothers ordered them off the property. Mr Brothers purported to rescind the contract. The Supreme Court later held that such rescission was invalid. Settlement finally took place on 24 March 2001. The Parks later sought damages, claiming loss of profit from a reduced yield from the 2000-01 crop due to their inability to oversee it, and loss of profits due to their inability to undertake landform works in time to plant the extra 860 hectares for 2001-02. The landform works had to be done before the arrival of winter rains, but the eventual settlement in March 2001 meant it was too late to undertake such work that year.

In 2003 the NSW Supreme Court awarded damages of \$1,512,052. Mr Brothers appealed to the NSW Court of Appeal, which upheld a ground relating to the Parks' claim of loss of profit for 2001-02, and reduced the award to \$464,641. The issue, raised for the first time on appeal, was that the Parks had not established that the 2001-02 losses were caused by Mr Brothers breaching special condition 24 because without prior approval from him there was no entitlement to access the 860 hectares before the March 2001 settlement. The Parks appealed to the High Court.

The Court unanimously allowed the appeal. It held that no question of approval actually arose as Mr Brothers had excluded the Parks from Jellalabad in mid-December 2000 and purported to rescind the contract. The Court held that the evidence and arguments at trial had not raised for consideration the possibility that, acting reasonably, Mr Brothers may have refused such approval. The Court noted there was nothing to show that Mr Brothers would wish to withhold approval when development would improve the value of the land and cause him no harm or inconvenience. However, in light of Mr Brothers' stance rescinding the contract, to then seek approval for the 860 hectares was futile. The claim was for damages for breach of special condition 24 by totally refusing access. If evidence had been directed to the point, damages could have reflected the possibility, if any, that approval of the 860 hectares could be withheld. The High Court held that the Court of Appeal should not have allowed the issue to be raised on appeal because by then it could not be dealt with fairly.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*