



HIGH COURT OF AUSTRALIA

8 March 2023

LAUNDY HOTELS (QUARRY) PTY LTD v DYCO HOTELS PTY LTD AS TRUSTEE FOR
THE PARRAS FAMILY TRUST & ORS
[2023] HCA 6

Today, the High Court unanimously allowed an appeal from a judgment of the Court of Appeal of the Supreme Court of New South Wales. The appeal concerned the construction of a contract for the sale and purchase of the property and assets of a hotel business (the Quarrymans Hotel). The appellant was the Vendor, and the first and second respondents together were the Purchaser. Clause 50.1 provided that, from the contract date until Completion, the Vendor was required to "carry on the Business in the usual and ordinary course as regards its nature, scope and manner".

During that period, in response to the COVID-19 pandemic, the Minister made a public health order directing that pubs "must not be open to members of the public" except for the sale of food or beverages to be consumed off the premises. In compliance with that public health order, the Quarrymans Hotel sold only takeaway alcohol and food until 1 June 2020 when it re-opened subject to customer number restrictions as directed by subsequent public health orders. Prior to Completion, the Purchaser informed the Vendor that it would not complete the contract as the Vendor was not ready, willing and able to complete the contract as it was in breach of cl 50.1, amongst other clauses. The Vendor maintained that it was ready, willing and able to complete and, after the Completion Date had passed, served a notice to complete upon the Purchaser. Ultimately, the Vendor served a notice of termination upon the Purchaser for non-compliance with the notice to complete. The Purchaser commenced proceedings seeking declaratory relief to the effect that the contract had been frustrated or that the Vendor was not entitled to issue the notice to complete.

The primary judge held that the contract had not been frustrated and that cl 50.1 required the Vendor to carry on the business in the usual and ordinary course so far as it was possible to do so in accordance with law. The Court of Appeal, by majority, held that the public health order was a supervening event rendering the Vendor's compliance with cl 50.1 illegal, and suspending that contractual obligation. The majority concluded that the purported termination by the Vendor involved a repudiation of the contract by the Vendor.

The High Court allowed the appeal. The Court held that the Vendor was "ready, willing and able to complete" and not in default of its contractual obligations when it served the notice to complete upon the Purchaser. Construing cl 50.1 in its context, the obligation on the Vendor to "carry on the Business in the usual and ordinary course as regards its nature, scope and manner" incorporated an inherent requirement to do so in accordance with law. The "Business" was defined to include a licence pursuant to the *Liquor Act 2007* (NSW) which was one of the assets to be purchased along with gaming machine entitlements allocated to that licence. The licence was subject to statutory conditions, and the Vendor's warranties acknowledged that the requirements for the lawful operation of the hotel were variable. The past, current, and anticipated future lawfulness of the operation of the Business was objectively essential and a commercial necessity to the parties. There was no obligation, and could not have been an obligation, imposed on the Vendor to carry on the Business unlawfully.

- *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.*