

CITATION: *Tovehead Pty Ltd v Branir Pty Ltd* [2002] NTMC 009

PARTIES: TOVEHEAD PTY LTD
&
BRANIR PTY LTD
v
A R & M A ROCCA

TITLE OF COURT: LOCAL COURT

JURISDICTION: LOCAL COURT ACT

FILE NO(s): 20015792

DELIVERED ON: 20 MARCH, 2002

DELIVERED AT: DARWIN

HEARING DATE(s): 29 – 31 OCTOBER, 1 NOVEMBER, 2001

JUDGMENT OF: MR HUGH BRADLEY CM

CATCHWORDS:

REPRESENTATION:

Counsel:

Plaintiffs: P. Ward
Defendants: J. Tippett

Solicitors:

Plaintiffs: Cridlands
Defendants: De Silva Hebron

Judgment category classification: B
Judgment ID number: [2002] NTMC 009
Number of paragraphs: 53

IN THE LOCAL COURT
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 20015792

[2002] NTMC 009

BETWEEN:

**TOVEHEAD PTY LTD &
BRANIR PTY LTD**
Plaintiffs

AND:

ANTONIO ROBERTO ROCCA
1st Defendant
MICHAEL AURILLO ROCCA
2nd Defendant

REASONS FOR JUDGMENT

(Delivered 20 March 2002)

Mr BRADLEY CM:

BACKGROUND

1. In this action, the plaintiffs Tovehead Pty Ltd and Branir Pty Ltd were the managers of Tipperary Station in the Northern Territory. I shall in a shorthand way, refer to the plaintiffs as “Tipperary”. Tipperary have sued the defendants Antonio Roberto Rocca and Michael Aurillo Rocca (“the Rocca’s”) for \$17,172.75 being the balance of funds alleged to be due pursuant to a Grain Production Agreement entered into between Tipperary and the Rocca’s on or about 23 December 1998.
2. The agreement was a sharefarming agreement whereby Tipperary agreed to provide and certain facilities and services and the Rocca’s were to plant and husband the crop. The parties agreed to share the product in a 60/40 proportion as between the Rocca’s and Tipperary respectively.

3. The crop which was grown was a sorghum grain crop known as “Success 42”. On the evidence, I find that its prime purpose is to produce grain. A by-product, after product or additional benefit of growing grain sorghum is to make the stubble (that which is left after harvesting the grain) available as feed for stock. This can be done, it seems, in two ways; namely to allow the cattle to graze upon the stubble or to bail and sell the stubble commercially. This case concerns the rights of the parties to the stubble and the value of it.
4. Essentially, the plaintiff’s case is that it was always entitled to the benefit of the stubble under the Grain Production Agreement; that there was no variation of the same and that the sum claimed (\$17,172.75) is the balance of monies due by the defendant under the grain production agreement. It says further that the debt was acknowledged by the Rocca’s as being due by an acknowledgment agreement dated 23 November 1999 (The “November Agreement”).
5. The Rocca’s case is that the Grain Production Agreement did not give the rights to the stubble to Tipperary; that, whatever the grain production agreement provided, there was an oral variation to it in April 1999 to the effect that Tipperary would pay the costs of spraying the crop in return for the right to graze its cattle on the stubble (the April Agreement). The defendants say further that the November agreement was void by virtue of the plaintiffs unconscionable conduct.

HISTORY

6. A brief statement of the facts and chronology of events is important to understanding the issues and I find as follows:
 - 6.1 The Rocca’s who were reasonably experienced farmers in Queensland, came to the Northern Territory in 1998 to look for sharefarming opportunities.

- 6.2 During the 1998 dry season, the Rocca's approached Tipperary and were shown over the station and discussed the growing of irrigation and/or dry land crops.
- 6.3 On a second visit to the Territory in or about November or December 1998, the Rocca's reached agreement with Tipperary to sharefarm 300 Hectares of the Blane paddocks on Tipperary Station. The Grain Production Agreement was prepared and signed by the parties.
- 6.4 Pursuant to the said agreement, Tipperary cleared the land and the Rocca's prepared the field and planted a Success 42 grain sorghum crop.
- 6.5 What appeared to be an excellent crop in the early stages, became affected by a caterpillar at the end March or early April 1999. After discussions constituting the alleged April Agreement, the terms of which are not agreed, the crop was sprayed by Tipperary.
- 6.6 In mid May 1999 the grain was harvested and stored in silos for subsequent sale. The sale of the grain was slow, taking 12 months for the financial results of such sales to be concluded. The sales are agreed between the parties and they are not an issue in these proceedings.
- 6.7 The Rocca's departed Tipperary at the end of May or early June 1999 at which time cattle were grazing on the stubble and the Rocca's were given an account for the sum of \$34,940.50. The account was for several services provided by Tipperary including the cost of spraying the crop.
- 6.8 In November 1999, the Rocca's returned to the Territory to discuss the outstanding amount with Tipperary as a result of which a further written document, the November Agreement, was signed by the parties acknowledging an indebtedness of \$34,345.50 due by the

Rocca's to Tipperary. This document was signed by the Rocca's on 23 November 1999.

- 6.9 In or about March 2000, half of the outstanding amount was paid in accordance with the terms of the November Agreement and the balance was then said to remain outstanding.
- 6.10 In August 2000, after a demand for payment the defendants wrote to the plaintiffs (exhibit P11) making a written claim for the benefit of the stubble and putting a value on it. These proceedings were thereupon commenced.
7. It was agreed by the parties that each hectare of the crop would have yielded 3 tonnes of bailable stubble less any damage to the stubble due to infestation or harvesting procedures. It was also agreed that Tipperary had accounted appropriately to the Rocca's for the proceeds of sale of the grain. Whilst there was a small amount of grain left on site, this was neither part of the pleadings nor was there any proof of its value on site.

THE ISSUES

8. The parties by their counsel essentially agreed prior to the commencement of this hearing, that there were four main issues to be resolved, mainly:
 - 8.1 Whether the Grain Production Agreement gave the rights of the stubble to Tipperary or to Tipperary and the Rocca's in the appropriate proportions.
 - 8.2 The value of the stubble.
 - 8.3 Whether the November Agreement overrides any prior agreement and constitutes a final statement of rights as between the parties, and
 - 8.4 Whether the November Agreement is void on the basis of unconscionable conduct.

9. To these issues, there needs to be added a fifth issue which was litigated during the course of the trial, namely whether the alleged April Agreement was in fact made and validly made to affect the rights of the parties to the stubble.

THE EVIDENCE

10. The plaintiff called four witnesses to prove its case and to counter-act the defendants counter claims.
11. Mr McCord gave evidence of the discussions leading to the signing of the Grain Production Agreement. He was then a senior executive with Tipperary, but is no longer associated in any way with the company. There is no evidence of the circumstances of his departure from Tipperary which took place in or about February 2000, i.e. after the November Agreement, but before any part of the \$34,345.50 was paid. His evidence was given in a forthright manner and I have no reason to suspect that he has anything to gain from giving evidence in this case. He says that it was always his intention to graze Tipperary's cattle on the stubble, and that he made this known to the Rocca's. He says that the Rocca's appeared to be competent and the crop looked in excellent condition until it was infested by a grub which he says affected up to 80% of the crop. On inspection, he noticed a slimy residue on the grain and that the advice that he and Michael Rocca jointly received from the Department of Primary Industry was that the crop should be sprayed. He said he believed the spraying was to favour the grain more than the stubble, although he acknowledged that the stubble also would have been affected by the grub.
12. Mr McCord agrees that Michael Rocca came to him in April to discuss Tipperary paying for the spraying of the crop. He says that he did not discuss the ownership of the stubble at that time, nor agree to pay for the spraying in return for the rights to the stubble. He says he told the Rocca's at all times that the stubble was Tipperary's. He denied Michael Rocca's version, namely that Tipperary only acquired 100% of the rights to the

stubble in return for spraying the crop. During his evidence, he gave a number of reasons for this including:

- 12.1 His belief that the stubble always belonged to Tipperary.
 - 12.2 In the Northern Territory, stubble was normally ploughed in or eaten by cattle.
 - 12.3 That he believed there was no reasonable market for the stubble and that this was established by virtue of the fact that Tipperary had experienced difficulty selling its legume crop of cavalcade which was generally regarded as a superior legume crop.
 - 12.4 The Rocca's never argued with him regarding the ownership of the stubble.
 - 12.5 The Rocca's did not contest the account given to them at the end of May 1999, although he readily accepted that they later tried to persuade him to make some deduction from that account to relieve them of their economic difficulties.
13. Michael (Mick) Shannon was also called by the plaintiff. He was a supervisor at Tipperary and is now employed as a diesel fitter at Jabiru. He met the Rocca's in the 1998 Dry Season and showed them over the station. He confirms the evidence of others on the basic progress and good quality of the crop until infected by "insects". He inspected the affected crop with Michael Rocca and Mr Tom Price from the Department of Primary Production. He said Michael Rocca was concerned about a white substance in the head of the crop. Following that visit, he was not present when Michael Rocca and Mr McCord spoke in April, but said that Michael Rocca went on to arrange to get the necessary chemicals and he, that is Mr Shannon, organised a helicopter to take fuel to the site. Rotor Services came to do the spraying. He said he was not further involved in any discussions or in the spraying of the crop. His next involvement with the Rocca's was when he was assigned to arrange for the harvesting of the

grain by Tipperary and its delivery to silos in the Douglas/Daly Region for storage.

14. Mick Shannon gave uncontroverted evidence that the harvester had a 30 foot head and two wheels about 18 inches wide. He therefore estimated that 3 feet in each 30 feet (ie. 10%) would be significantly damaged by the harvester operations. Mr Shannon said he was present during only some of the discussions in November 1999 and he does not recall any dispute about the amount outstanding to Tipperary. He confirms also that there were difficulties at the time selling the seed and he recollects that the last of the seed was not sold by Tipperary until approximately August 1999. He recalls that there were difficulties selling the cavalcade hay as well and that both had to be stored to maintain price levels.
15. During cross examination, Mr Shannon said he believed the crop was sprayed to protect the grain; that it was not usual practice to bale sorghum stubble in the Northern Territory and that he had only seen it done once in the past when his father did it in New South Wales because people were desperate for feed. He said further that when he saw the crop after spraying, he believed that the “caterpillars” had gone and some of the leaf had been eaten which lessened the value of the stubble.
16. I found Mr Shannon to be a very credible witness with no interest in the outcome of the proceedings.
17. Mr Steve Bakalian a stock cube manufacturer was called. He has had considerable experience in the hay and stock feed industry over 25 years in the United States and for the last 5 years in the Northern Territory. He purchases more hay than any other person in the Northern Territory. His evidence was essentially to the effect that there were three basic types of sorghum product, namely, sorghum hay, sorghum grain and sorghum stubble. He said that the stubble was adequate as a filler and for stock feed, but low on nutrition by comparison to better quality hay and grain. He prefers the better, more nutritious products for his cubing business. He

said generally sorghum stubble was used by allowing cattle to graze upon it.

18. Mr Bakalian was of the view that there was no real market for the sale of stubble, although some small quantities could be sold from time to time. He said that he could not imagine that there would be any market for the amount of stubble that the Rocca's say could have been produced from the crop on the Blane paddocks. He expressed the view that he would expect someone to have trouble recovering the costs of bailing such a large quantity. He says that he did buy a small amount of sorghum stubble to test it but found that it did not suit his processes.
19. Under cross examination it turned out that Mr Bakalian was involved in other litigation with the Rocca's and although his temper showed from time to time I could not say that he was lying or exaggerating on the principal aspects of his evidence.
20. Mr Bakalian's evidence was substantially supported by Mr Barry Hart a hay bailing contractor of some considerable experience. He also conducts a sharefarming business. He bails 4 – 8000 tonnes of sorghum hay per year. He opined that it was not usual to bail grain sorghum stubble because there was little left to bail; down in feed value and it was not worth the effort because it was very difficult to sell.
21. Mr Hart said that a price of \$60 to \$80 per tonne would be a good price for grain sorghum hay commenting that if anyone knew of such a purchaser he would like them to send the purchaser to him. As a contractor he says his charges to bail stubble would depend on a number of factors but would be something in the order as follows:
 - 21.1 \$30 per hectare for cutting;
 - 21.2 \$30 per hectare to rake;
 - 21.3 \$25 per hectare to bail;

21.4 \$1 to \$2 per hectare to stack; and

21.5 \$1 to \$2 per hectare to load onto a truck on site.

A total of \$88 dollars per hectare.

22. In cross-examination Mr Hart conceded that, given good prices, it was possible but not likely that a farmer could make \$20 per tonne. He said he bailed 80 hectares of forage sorghum (a superior product) in the year 2000 and it was still lying in the paddock as he gave evidence because he was unable to sell it.
23. Mr Hart presented as an unsophisticated and straight forward witness who was in my view telling the truth as he saw it.
24. The defendant's witnesses consisted of the two Rocca brothers and a Mr Weatherspoon. Michael Rocca appeared to be the business brains behind the Rocca's farming enterprise. He gave evidence that he had been a farmer all his life. He confirmed the major events referred to at paragraph [6] above. He gave evidence that the apparently favourable terms of the Grain Production Agreement to Tipperary were because he wanted to establish a good relationship. He conceded in cross examination however that matters attended to by Tipperary were a factor in determining the share of the crop that the parties would receive. Tipperary had cleared the land, provided the seed and harvested the grain crop. He says that the Tipperary representatives had never made it clear to him that they regarded the stubble as belonging to Tipperary. His evidence was that Heliothis Caterpillar was found in the crop; and when it was found the crop was close to maturity and there was no particular damage to the grain. He said he would not have sprayed the crop as recommended by the Department of Primary Industry adviser if it was for the purpose only of saving the grain. Mr Rocca said that during the discussions with Mr McCord in April, 1999 Mr McCord wanted to spray the crop and graze the stubble and that he (Mr

Rocca) replied that 60 percent of the stubble belonged to the Rocca's. He says that because of financial difficulties then experienced by them he offered their share of the stubble to Tipperary in return for spraying and that Mr McCord had agreed to that proposition.

25. He said further that upon leaving Tipperary he was given an account for \$34,940.50 which included the cost of spraying. He says he protested at the time but not formally because he had a plane to catch and so he took the bill and flew to Queensland. Mr Rocca says further that when he returned to Tipperary with his cousin in November, 1999 he tried to persuade Mr McCord to stand by their deal but that Mr McCord refused saying that variations to the contract had to be in writing. He says that although he signed the November agreement (which incorporated a time payment provision) he was not happy with it.
26. It appears that the Rocca's signed the November agreement and left it in the office for subsequent signature by Mr McCord. It seems on the evidence that Mr McCord did sign the agreement subsequently and sent it with an endorsement and a covering letter which the defendant's say incorporated an additional term. The document was, according to Mr Rocca, "Just an agreement to finalise the outstanding account of \$34,000". Indeed that is what the Plaintiff says also.
27. Mr Rocca says further that he did not write further regarding the account until August, 2000 because the Rocca's were in a difficult trading position. He says further that it was only after Tipperary contacted them about payment that they sought legal advice.
28. Mr Rocca claims that the stubble had a very real value to the Rocca's and that he had received a quotation of \$32 - \$37 per tonne to bail the stubble. He estimates that although the gross amount of stubble per hectare was 3 tonnes there was approximately 5 percent damage due to the effect of the grub and the harvesting process. He says therefore that the value of the stubble crop is calculated thus; 300 hectares x 3 tonnes per hectare x \$100

per tonne less 5 percent. Presuming that a bailing cost of \$35 per tonne is deducted from this, my calculations translate his valuation of the stubble at \$55,575. Mr Rocca said that 60 percent of this would have yielded the Rocca's a sum of \$33,345.

29. Through his counsel however it was conceded that there would be cartage costs of approximately \$22.50 per tonne to take the product to a place for sale. By my calculations therefore taking into account a sale price in the range of \$90 - \$110, a cost of bailing in the range of \$32 - \$37 and cartage costs the best and worst results for the Rocca's would have been as follows:

	Profit from sale of stubble	
	Best Case	Worst Case
Net price per tonne	\$55.50	\$30.00
x Hectares	300	300
x Yield	<u>2.85</u>	<u>2.85</u>
	\$47,452.50	\$25,650.00
x 60%	\$28,471.50	\$15,390.00

30. These figures assume a market for the stubble and the prices quoted by Mr Rocca. They do not take storage, marketing or other business expenses into account.
31. I had considerable difficulty accepting the totality of Mr Rocca's evidence. He was reluctant to concede anything other than where it was plainly obvious no other course was objectively open to him. He was at odds with Mr McCord, Mr Shannon, Mr Bakalian and Mr Hart on issues such as the April agreement, saleability of the bailed stubble, whether it was usual to bail and sell stubble from a grain crop, the market for bailed stubble and the price that could be obtained for sales of significant quantities.

Notwithstanding that he was at odds with these witnesses, some of whom were independent, he did not call any independent witnesses of his own. Mr Rocca's evidence of prices for small amounts of stubble were due to unusual circumstances. For example the sale to Mr Bakalian was a sale to test the viability of stubble and the other sale was a sale to a person to whom they owed money.

32. Notwithstanding that the conflict about whether to crop was sprayed for the benefit of the grain or the stubble was able, on the evidence given to me, to be resolved by calling Mr Tom Price, the officer from the Department of Primary Industries, neither party did so. Given that the oral April agreement was being asserted by the Rocca's to avoid payment of the cost of spraying as would be required under the provisions of a Grain Production Agreement I would have expected that witness to be an important part of satisfying the court that the alleged April agreement was made and was a sensible one in the circumstances. I therefore draw the conclusion that the evidence of Mr Price would not have assisted the Rocca's.
33. Mr Weatherspoon, a farmer and grazier from the Katherine Region, was next to be called by the Rocca's. He has been in the industry in Queensland and the Northern Territory since 1956. He held various relevant appointments as a Director of Agricultural Cooperatives. In 1968 he was ordered the Australian Nuffield Farming scholarship to travel to England and Europe for six months. He had not sold stubble for 5 years although he had sold some hay in 1999 which was a bad crop of similar quality to that which you would expect from sorghum stubble. He had made that sale to the cubing plant in Katherine (I take this to be the sale to which Mr Bakalian had earlier referred).
34. Mr Weatherspoon said he had sold sorghum hay for \$100.00 per tonne and that it had not been in good condition. He said that he had also fed bailed sorghum stubble to beasts and put livestock onto the paddock of all forms

of grain crops. He says further that stubble was recognised as being valuable and that there was a market for it in Katherine when available.

35. Mr Antonio (Tony) Rocca also gave evidence. He presently farms land on Maude Creek Station for the Roccas. He described his role in the partnership as being the person doing the work in the paddock whilst his cousin Michael did the office work. He and Michael always stayed in touch and he described his farming experience to be mainly in Queensland.
36. On the question of markets for bailed grain crop stubble he said that although they hadn't actually looked for a market in 1998 he was sure there would have been because the Northern Territory is a big cattle region.
37. Tony Rocca said further that he put in the crop on the Blane paddocks and looked after the early stages of the crop. He said he left Michael Rocca in charge of the program until he returned with Michael in November 1999 to discuss the outstanding account with Mr McCord. Tony Rocca said that he and Michael tried to persuade Mr McCord to stand by the April Agreement. He says further that they showed Mr McCord that Tipperary had done well out of the agreement and that the stubble belonged to them. He says Mr McCord denied the agreement and kept going back to the original agreement. Whether any discussion of an 'original agreement' amounts to an admission that stubble was not included in the grain production agreement is open to conjecture but it seems to me that Mr Tony Rocca seemed to rely principally on the terms of the earlier April Agreement as the basis for their rights. Since he was not present during the discussions forming part of the alleged April Agreement, his knowledge of it must be only a result of what he was told by his cousin Michael Rocca.
38. After failing to achieve consensus on the April Agreement Mr Rocca then said they tried (as Mr McCord had said) to persuade Mr McCord to make a compromise on the amount outstanding. This also was unsuccessful except to the extent perhaps that they got extra time to pay the outstanding amount. He agrees that the November Agreement was signed by the

Roccas before it was signed by Mr McCord. He says he signed the document because they had outstanding accounts and needed to reduce creditors. He says that stubble is part of the crop and has value.

39. Mr Tony Rocca also said that the reason why they had not made a claim for the stubble until August 2000 was because they had hoped Tipperary had forgotten. This does not, it seems to me, to be entirely logical when one considers that the value of the claim for stubble as valued by the Roccas themselves exceeded the balance of the money claimed by Tipperary by a factor of almost 2.
40. Looking at the witnesses and taking the evidence as a whole, I have reached the conclusion that where ever there is a direct conflict between the evidence given on behalf of the plaintiff and the evidence given on behalf of the Roccas, I should and do prefer the evidence of the plaintiff.

THE AGREEMENT

41. The agreement drafted by Messrs Cridlands, the solicitors for the plaintiffs is exhibit P1 to these proceedings and is entitled 'Grain Production Agreement'. As all too often, it seems in this case that the drafts-person would appear not to have anticipated the details of this particular dispute. Had he done so, he would have expressly stated who was entitled to or what would have been done with the stubble.
42. First principles require me to fathom from the words of the contract itself what the terms of the agreement were. In case of doubt I may look to extrinsic evidence to assist me in determining the intention of the parties or the meaning of particular words. In this case the words used are, in my view, plain enough; the question that arises is really whether it was intended that the stubble should form part of the joint venture. I take care, as legal principle and the terms of the contract itself require, not to take into account the statements of the parties as to their intentions at the time nor to imply additional terms as a means of resolving doubt.

43. In my view the words of the contract are reasonably clear. The contract itself is entitled 'Grain Production Agreement' and the first and most telling clause of the contract in my view states that the term of the contract is to be for 'a period of one growing season commencing on 23 December, 1998 and expiring on the day that the last part of the grain crop is harvested'. Whilst the language of the contract is not consistent (referring to 'Grain Crop', 'Crop', 'Grain' and even, almost in contradiction to its principle terms, to 'proceeds of other crops') it seems to me to show a preoccupation with what is to happen to the grain. There is a clear process laid out for the storage and sale of grain and for accounting between the parties should either decide to retain any of the grain for seed, stock feed or other purposes. No such arrangements are made for the stubble which, if it were to be part of the bargain, one would have expected. There is no reference to 'stubble' or even 'hay' in the contract and I am therefore satisfied that the contract is intended to cover the grain alone and that the contract envisaged the stubble to be left in the paddock. If I were in any doubt then my finding (that I so make) that it is not usual to bail sorghum stubble reinforces this interpretation of the intention of the parties as expressed in the agreement. As it is usual for stubble to remain it seems to me it would require some specific reference in the agreement for a share farmer to acquire any interest in its value where the proposed venture is the production of a crop designed to produce grain. It seems much more likely to me to be a part of the bargain struck by the parties when deciding on their percentage shares of the crop. In other words the value of the stubble to the land owner would be one of the things taken into account when the parties, in this case decided on the 60/40 split.
44. The next issue logically is whether the 'April Agreement' was in fact made. This is an agreement alleged by Mr Michael Rocca following discussions with Mr McCord. For reasons expressed earlier I do not accept Mr Rocca's version of the events in relation to this. Whilst it was clear that discussions were held about spraying the crop I do not accept that the

Roccas right to the stubble if it existed was forgone on the basis that Tipperary paid for the spraying of the crop. It simply did not make sense from Tipperarys point of view. There is no satisfactory evidence to establish that the spraying was for the benefit of the stubble not the grain (and Mr Tom Price was not called by the Roccas). The Grain Production Agreement itself said there were to be no oral variations and the conduct of the parties seems to me to support the probability that the claim to the stubble was only seen later as a potential means to delay or avoid payment of the amounts outstanding to Tipperary. It is more likely in my view that the financial constraints placed on the Roccas at the time forced them to ask Tipperary to assist by agreeing to pay for the cost of spraying the crop.

45. Subsequent history too fits with the concept of the claim to the stubble being made late in the day. The letter written by Mr Michael Rocca dated 19 August 2000 (which itself follows an 'adjustment note' which appears to confirm the debt of \$34,345.50) by its own language seems to be raising the issue for the first time on the basis that something had been overlooked by the plaintiffs accounts department.
46. I therefore find that the April Agreement as alleged by the Roccas simply did not take place and that the only arrangement made was for Tipperary to pay for the spraying of the crop in accordance with the advice received from the Department of Primary Industry.
47. These findings seem to me to be sufficient to dispose of the matter but for the sake of completeness and in case I am wrong about the interpretation of the contract I continue to make some findings in relation to the issues raised at paragraphs (8) and (9) above.
48. The November Agreement is in my view not a fresh agreement at all but rather an acknowledgment of the debt arising from the proper administration of the grain production agreement. I find that the Roccas did not argue for a right to the stubble at that time but rather for short term relief from their financial constraints of which they had made so much in

evidence. I find further that Mr McCord refused the Roccas request to reduce the amount outstanding and in asking for the signed acknowledgment (exhibit P5) was in fact obtaining verification of the amount outstanding whilst at the same time agree to extending the time for payment by the Rocca's. There was no unfair bargaining tactics used and on my reading of the evidence the financial affairs of the Roccas was not so bad that they were at the mercy of Tipperary nor had the plaintiffs had acted unconscionably. Had they truly believed in their claim to the stubble in November they are more likely to have refused to sign the acknowledgment and defended the claim as indeed they now have. On their calculations the value of the stubble was approximately equal to the total amount then claimed by Tipperary and so if they were right there was no need for them to pay the outstanding amount claimed by Tipperary. I am therefore unable to accept the defendants version of the events and accept the version given by Mr McCord namely, that the defendants first sought to reduce the bill but then signed the document willingly which allowed them some time for payment.

49. On the topic of stubble I find on the evidence that stubble is rarely bailed in the Northern Territory; that the reason for this is that there is no real market for it – particularly in any volume. The evidence suggests that at the relevant time people were experiencing difficulty in selling even superior crops such as specialty legume crops. Mr Hart made that very clear in his evidence. He specialises in bailing crops and is still looking for a buyer of a crop grown in the year 2000.
50. I find further that if any sale were able to be made it would be more likely than not to be at a price in the lower end of the range indicated by Mr Hart of \$60 - \$80 per tonne. I find that it is likely that there was a probable loss of approximately 15% (10% for the damage during harvesting and approximately 5% due to the infestation) of the crop. Given the agreement by counsel that the theoretical yield of the stubble from the crop based on

grain recovered is 3 tonnes per hectare less any damage due to infestation, harvesting etc. I find that each hectare was likely to produce 2.55 tonnes of sorghum stubble. Using the costs provided by Mr Hart I find that the cost of bailing is something in the order of \$35.00 (which agrees with Mr Roccas evidence of an indicative price given to him on site). The parties have agreed upon \$22.50 for cartage.

51. These numbers produce a cost per tonne of \$57.00 plus associated business expenses. In my view therefore, on the evidence before the court, the potential profit per tonne if the bailed sorghum could have been sold at all would have been in the order of \$5 - \$15 per tonne less business expenses of handling, storing and sale. Such a venture may, in the market circumstances of the time, have been regarded as foolhardy given the high risk to the capital which had to be invested in the bailing operations.
52. I have said earlier that it is my finding that the stubble and its value is not part of the Roccas entitlement under the Grain Production Agreement and there will therefore accordingly be judgement for the plaintiff in the sum claimed.
53. I'll hear the parties as to any issue on costs.

Dated this 20th day of March 2002.

HUGH BRADLEY
CHIEF MAGISTRATE