



**IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMERCIAL COURT
GENERAL COMMERCIAL LIST**

No. S ECI 2020 02588

Case: S ECI 2020 02588

Filed on: 18/12/2020 12:35 PM

BETWEEN:

GEOFFREY and LYNDEN IDDLES

Plaintiffs

- and -

**FONTERRA AUSTRALIA PTY LTD (ABN 52 005 483 665)
and Ors according to the attached Schedule**

Defendants

REPLY

Date of document: 18 December 2020

Filed on behalf of: The Plaintiffs

Prepared by:

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To the defence dated 10 November 2020 (**Defence**) the Plaintiffs say as follows:

1. As to paragraph 1, the Plaintiffs do not admit subparagraph (1)(b).
2. As to paragraph 4.2 and 4.3, subject that they will refer at trial to the full terms of the MSAA for their full force and effect, the Plaintiffs admit that the MSAA contained the terms and conditions set out in paragraph 4.3.
3. As to paragraph 4.5, subject that they will refer at trial to the full terms of the documents for their full force and effect, the Plaintiffs:
 - 3.1. admit that the documents with which the Plaintiffs have been provided in the course of this Proceeding contain the terms and conditions set out in paragraph 4.5 and
 - 3.2. otherwise do not admit the allegations in paragraph 4.5.
4. As to paragraph 4.6, subject that they will refer at trial to the full terms of the documents for their full force and effect, the Plaintiffs:
 - 4.1. admit that the documents with which the Plaintiffs have been provided in the course of this proceeding contain the statements set out in paragraph 4.6 and

- 4.2. otherwise do not admit the allegations in paragraph 4.6.
5. As to paragraph 4.7, subject to paragraph 4 of this Reply and that they will refer at trial to the full terms of the Fixed Base Milk Price Agreements for their full force and effect, the Plaintiffs admit that the Fixed Base Milk Price Agreements contained the terms set out in paragraph 4.7.
6. As to paragraph 4.9, subject that they will refer at trial to the full terms of the documents for their full force and effect, the Plaintiffs:
 - 6.1. admit that the documents with which the Plaintiffs have been provided in the course of this proceeding contain the terms and conditions set out in paragraph 4.9 and
 - 6.2. otherwise do not admit the allegations in paragraph 4.9.
7. As to paragraph 4.10, subject that they will refer at trial to the full terms of the documents for their full force and effect, the Plaintiffs:
 - 7.1. admit that the documents with which the Plaintiffs have been provided in the course of this proceeding contain the statements set out in paragraph 4.10 and
 - 7.2. otherwise do not admit the allegations in paragraph 4.10.
8. As to paragraph 4.11, subject to paragraph 7 of this Reply and that they will refer at trial to the full terms of the Milk Price Range Agreements for their full force and effect, the Plaintiffs admit that the Milk Price Range Agreements contained the terms set out in paragraph 4.11.
9. As to paragraph 4.12, save that the Plaintiffs refer to and repeat the allegations made in paragraphs 5, 6 and 7 of the Amended Statement of Claim (**ASOC**), the Plaintiffs do not admit the matters contained therein.
10. As to paragraph 4.13, save that the Plaintiffs refer to and repeat the allegations made in paragraphs 5, 6 and 7 of the ASOC, the Plaintiffs do not admit the matters contained therein.
11. As to paragraph 4.14, save that the Plaintiffs refer to and repeat the allegations made in paragraphs 5, 6 and 7 of the ASOC, the Plaintiffs do not admit the matters contained therein.
12. As to paragraph 4.15, save that the Plaintiffs refer to and repeat the allegations made in paragraphs 5, 6 and 7 of the ASOC, the Plaintiffs do not admit the matters contained therein.
13. As to paragraph 4.16, save that the Plaintiffs refer to and repeat the allegations made in paragraphs 5, 6 and 7 of the ASOC, the Plaintiffs do not admit the matters contained therein.

14. As to paragraph 4.17, save that the Plaintiffs refer to and repeat the allegations made in paragraphs 5, 6 and 7 of the ASOC, the Plaintiffs do not admit the matters contained therein.
15. As to paragraph 4.18, save that the Plaintiffs refer to and repeat the allegations made in paragraphs 5, 6 and 7 of the ASOC, the Plaintiffs do not admit the matters contained therein.
16. As to paragraph 4.19, save that the Plaintiffs refer to and repeat the allegations made in paragraphs 5, 6 and 7 of the ASOC, the Plaintiffs do not admit the matters contained therein.
17. As to paragraph 4.20, save that the Plaintiffs refer to and repeat the allegations made in paragraphs 5, 6 and 7 of the ASOC, the Plaintiffs do not admit the matters contained therein.
18. As to paragraph 4.21, save that the Plaintiffs refer to and repeat the allegations made in paragraphs 5, 6 and 7 of the ASOC, the Plaintiffs do not admit the matters contained therein.
19. As to paragraph 4.24, save that the Plaintiffs refer to and repeat the allegations made in paragraphs 8, 9 and 10 of the ASOC, the Plaintiffs do not admit the matters contained therein.
20. As to paragraph 4.25, save that the Plaintiffs refer to and repeat the allegations made in paragraphs 8, 9 and 10 of the ASOC, the Plaintiffs do not admit the matters contained therein.
21. As to paragraph 4.26, save that the Plaintiffs:
 - 21.1. refer to and repeat the allegations made in paragraphs 8, 9 and 10 of the ASOC, and
 - 21.2. will refer at trial to the full terms of the Incentive EMSAs for their full force and effect,
 - 21.3. admit the Incentive EMSAs in the form provided to the in the course of this proceeding contain the terms set out in paragraphs 4.26(v) and (vi);the Plaintiffs do not admit the matters contained therein.
22. As to paragraph 4.27, save that the Plaintiffs:
 - 22.1. refer to and repeat the allegations made in paragraphs 8, 9 and 10 of the ASOC,
 - 22.2. will refer at trial to the full terms of the North Fresh EMSAs for their full force and effect; and

22.3. admit the North Fresh EMSAs in the form provided to the Plaintiffs in the course of this proceeding contain the terms set out therein;

the Plaintiffs do not admit the matters contained therein.

23. As to paragraph 4.28, save that the Plaintiffs:

23.1. refer to and repeat the allegations made in paragraphs 8, 9 and 10 of the ASOC,

23.2. will refer at trial to the full terms of the West Fresh EMSAs for their full force and effect; and

23.3. admit the West Fresh EMSAs in the form provided to the Plaintiff in the course of this proceeding contain the terms set out therein at paragraphs 4.29(a) to (d),

the Plaintiffs do not admit the matters contained therein.

24. As to paragraph 4.29, save that the Plaintiffs:

24.1. refer to and repeat the allegations made in paragraphs 8, 9 and 10 of the ASOC;

24.2. will refer at trial to the full terms of the VDL EMSA for their full force and effect; and

24.3. admit the VDL EMSA in the form provided to the Plaintiff in the course of this proceeding does contain the terms set out therein;

the Plaintiffs do not admit the matters contained therein.

25. As to paragraph 4.30, save that the Plaintiffs refer to and repeat the allegations made in paragraphs 8, 9 and 10 of the ASOC, the Plaintiffs do not admit the matters contained therein.

26. As to paragraph 4.34, save that the Plaintiffs:

26.1. refer to and repeat the allegations made in paragraphs 23 of the ASOC,

26.2. admit that an email was sent to some Farmers on 7 August 2015 containing words to the effect stated in paragraph 4.34(b) of the Defence, but say that the words 'incredibly tough time' were not explicitly referencing the forecast total payout of \$4.25 - \$4.35;

the Plaintiffs do not admit the matters contained therein.

27. As to paragraph 4.35, save that the Plaintiffs refer to and repeat the allegations made in paragraphs 23, 28, 29, 30, 31 and 35(m) of the ASOC, the Plaintiffs do not admit the matters contained therein.
28. As to paragraph 4.36, save that the Plaintiffs refer to and repeat the allegations made in paragraphs 23, 28, 29, 30, 31 and 35(m) of the ASOC, the Plaintiffs do not admit the matters contained therein.
29. As to paragraph 4.37, save that the Plaintiffs refer to and repeat the allegations made in paragraphs 23, 28, 29, 30, 31 and 35(m) of the ASOC, the Plaintiffs do not admit the matters contained therein.
30. As to paragraph 4.38, save that the Plaintiffs refer to and repeat the allegations made in paragraphs 23, 28, 29, 30, 31 and 35(m) of the ASOC, the Plaintiffs do not admit the matters contained therein.
31. As to paragraph 4.39, save that the Plaintiffs refer to and repeat the allegations made in paragraph 35(n) of the ASOC, the Plaintiffs do not admit the matters contained therein.
32. As to paragraph 4.40, save that the Plaintiffs refer to and repeat the allegations made in paragraphs 23, 28, 29, 30, 31 and 35(m) of the ASOC, the Plaintiffs do not admit the matters contained therein.
33. As to paragraph 4.41, save that the Plaintiffs refer to and repeat the allegations made in paragraphs 23, 28, 29, 30, 31 and 35(m) of the ASOC, the Plaintiffs do not admit the matters contained therein.
34. As to paragraph 4.42, save that the Plaintiffs refer to and repeat the allegations made in paragraphs 23, 28, 29, 30, 31 and 35(m) of the ASOC, the Plaintiffs do not admit the matters contained therein.
35. As to paragraph 4.43, save that the Plaintiffs refer to and repeat the allegations made in paragraphs 23, 28, 29, 30, 31 and 35(m) of the ASOC, the Plaintiffs do not admit the matters contained therein.
36. As to paragraph 4.44, save that the Plaintiffs refer to and repeat the allegations made in paragraphs 23, 28, 29, 30, 31 and 35(m) of the ASOC, the Plaintiffs do not admit the matters contained therein.

37. As to paragraph 4.45, save that the Plaintiffs refer to and repeat the allegations made in paragraphs 23, 28, 29, 30, 31 and 35(m) of the ASOC, the Plaintiffs do not admit the matters contained therein.
38. As to paragraph 4.46, save that the Plaintiffs refer to and repeat the allegations made in paragraphs 23, 28, 29, 30, 31 and 35(m) of the ASOC, the Plaintiffs do not admit the matters contained therein.
39. As to paragraph 4.47, save that the Plaintiffs refer to and repeat the allegations made in paragraphs 23, 28, 29, 30, 31 and 35(m) of the ASOC, the Plaintiffs do not admit the matters contained therein.
40. As to paragraph 4.48, save that the Plaintiffs refer to and repeat the allegations made in paragraphs 23, 28, 29, 30, 31 and 35(m) of the ASOC, the Plaintiffs do not admit the matters contained therein.
41. As to paragraph 4.49, save that the Plaintiffs refer to and repeat the allegations made in paragraphs 23, 28, 29, 30, 31 and 35(m) of the ASOC, the Plaintiffs do not admit the matters contained therein.
42. As to paragraph 4.50, save that the Plaintiffs refer to and repeat the allegations made in paragraphs 15, 16 and 17 of the ASOC, the Plaintiffs do not admit the matters contained therein.
43. As to paragraph 4.51, save that the Plaintiffs refer to and repeat the allegations made in paragraphs 15, 16, 17 and 18 of the ASOC, the Plaintiffs do not admit the matters contained therein.
44. As to paragraph 4.52, save that the Plaintiffs refer to and repeat the allegations made in paragraphs 15, 16, 17, 18, 35(b) to (d), (l) to (v), (y) and (x), and 36 to 38 of the ASOC, the Plaintiffs do not admit the matters contained therein.
45. As to paragraph 4.53, save that the Plaintiffs refer to and repeat the allegations made in paragraphs 13 and 14 of the ASOC, the Plaintiffs do not admit the matters contained therein.
46. As to paragraph 4.54, subject that they will refer at trial to the full terms of the documents referred to for their full force and effect, the Plaintiffs:
 - 46.1. admit that the Support Loans provided to the Plaintiffs contained the terms set out at paragraph 4.54,

46.2. say further that:

46.2.1. the cost of the Support Loans was, initially, funded by deductions of around 2c/kgMS then 1c/kgMS from milk payments otherwise due to all Fonterra farmers in the 2016/2017 Season, including Farmers who had not taken a Support Loan;

46.2.2. in the premises in 46.2.1 – the cost of the Support Loan was borne by Fonterra farmers and not by Fonterra;

Particulars

Sources for the deductions of around 2c/kgMS include the undated Fonterra Australia Support Loan brochure, the May 2016 “Milk Price Revision and Fonterra Australia Support Loan Q & A for suppliers” document and publication on the Australian Taxation Office website as updated on 15 August 2016.

46.2.3. the loan was payable over 36 monthly instalments commencing from 1 July 2017 and became immediately repayable if the Farmer ceased supplying Fonterra;

46.2.4. in the premises in 46.2.3 – required the borrower Farmer to commit to supplying Fonterra for four years from 1 July 2016.

Particulars

Clause 3.2 and 3.3(a) of the Support Loan between Fonterra Australia and the Plaintiffs dated 31 May 2016.

46.2.5. Fonterra could require a Farmer to repay all or part of the loan, if, among other things, the Farmer’s production had dropped materially;

Particulars

Clause 3.4 of the Support Loan between Fonterra Australia and the Plaintiffs dated 31 May 2016.

46.2.6. Fonterra has in fact issued recovery proceedings against a number of Group Members or related parties claiming repayment of loans.

Particulars

Fonterra Brands (Australia) Pty Ltd (ACN 095 181 699) v Geoffrey Kenneth Iddles and Lynden Elizabeth Iddles CI-19-02195 was issued in the County Court of Victoria on 14 May 2019 and transferred by order of Judicial Registrar Burchell to the Supreme Court of Victoria on 4 August 2020, and ordered on 30 September 2020 to be stayed until judgment in this proceeding S ECI 2020 02588 or further order.

Fonterra Australia Pty Ltd (ACN 006483665) v Paul O'Malley was filed on about 6 September 2019 in the Magistrates' Court of Victoria and dismissed by orders made on or about 21 November 2020.

Fonterra Milk Australia Pty Ltd (ACN 114 326 448) and another v Mt Clay Farms Pty Ltd ACN 129 075 789 CI-20-03489 was filed in the County Court of Victoria on or about 4 August 2020.

46.2.7. Lawyers for Fonterra (Brands) Australia Pty Ltd (CIE Legal) have sent letters of demand in respect of a number of Group Members who have ceased supplying milk to Fonterra in the period 3 August 2017 through to 17 August 2018.

Particulars

In about December 2018 at least seven group members received letters of demands from Fonterra, and during March to May 2020 CIE Legal stated that the debts would be pursued.

In about November 2020 at least two group members received letters of demands from Fonterra threatening legal proceedings.

46.2.8. The Support Loan contained a clause that Fonterra was able to change any of the terms at any time by giving no less than 30 days' prior notice; and

Particulars

Clause 5.3 of the Support Loan between Fonterra Australia and the Plaintiffs dated 31 May 2016.

46.3. otherwise do not admit the allegations contained therein.

47. As to paragraph 4.57, save that the Plaintiffs refer to and repeat the allegations made in paragraphs 5 to 18, 27 to 31 and 35 to 39 of the ASOC, the Plaintiffs deny the matters contained therein, and say further that:

47.1. as to (a), the May 2016 Price Decrease (being the “Revised 2015/2016 FMP” as defined in the Defence) was not “mid season” but rather in the eleventh month of the season;

47.2. as to (c), save that they admit step ups were effected under similar contractual arrangements as the arrangements that applied in the 2015 Season, they do not admit that the provisions as to step ups are identical to or the mirror of provisions relating to step downs:

47.2.1. step ups are consistent with the system which Fonterra holds out as commencing with a conservative price which is low and will not be reduced save for the most exceptional of circumstances and is in fact intended to be increased (and the price is in fact labelled a base price);

47.2.2. the explicit wording is different for price increases and price decreases, including statements that price increases may have retrospective effect whereas there is no mention of similar possibility for a price decrease; and

47.2.3. in circumstances where the two price drops the defendants allege in paragraph 35(t)(ii) have previously occurred were in December and January (of the Global Financial Crisis).

47.3. as to (d), the MSAA Benchmark Price Term, so far as the Plaintiffs are able to say, is a term of a contract between Fonterra Milk and Bonlac Supply Company:

47.3.1. to which contract the Farmers were not party; and

47.3.2. the terms of which were confidential and not disclosed (except by way of summaries) to Farmers.

Part C – Contract Claims

48. As to paragraph 6(m), the Plaintiffs admit that the Opening Price Letter contained the statements alleged, and otherwise do not admit the allegations contained therein.

49. As to paragraph 13(b), the Plaintiffs:
- 49.1. refer to and repeat the allegations made in ASOC paragraphs 13 and 14;
 - 49.2. admit that the ASX announcements contained statements as noted in paragraphs 13(b)(i) and (ii);
 - 49.3. say that in the ASX announcement Murray Goulburn also said that the milk support payment would be introduced ‘so that suppliers receive payments during FY16 equivalent to an FMP of \$5.47 per kgms’;
 - 49.4. deny the allegations made in (iii) and say that Murray Goulburn’s ASX announcement stated to the effect that Murray Goulburn would be funding the MSSP by additional group borrowings, not cash on balance sheet; and
 - 49.5. otherwise the Plaintiffs do not admit the matters contained therein.
50. As to paragraph 14.1, the Plaintiffs:
- 50.1. refer to and repeat the allegations made in ASOC paragraphs 13 and 14;
 - 50.2. admit that the ASX Announcement contained the statement in paragraph 14.1(b)(i)(ii) and say further that the announcement also contained the statement that “this delivered an average cash price for milk to our suppliers of \$5.53 per kgms”;
 - 50.3. say further that the Annual Report of Murray Goulburn dated 24 August 2016 (p.2) states that Murray Goulburn “delivered an average cash price for milk to suppliers of \$5.53 per kgms in FY16, made up of the final FMP of \$4.80 per kgms and \$0.73 cents of MSSP support”; and
 - 50.4. otherwise deny the allegations made therein.
51. As to paragraph 15, the Plaintiffs admit that the announcement also contained the statements set out therein, and otherwise do not admit the allegations set out in paragraph 15.

Part D – misleading and deceptive conduct

52. As to paragraph 27, save that the Plaintiffs refer to and repeat the allegations made in paragraph 27 of the ASOC, the Plaintiffs do not admit the allegations in paragraph 27(a)(i).

Save as aforesaid, and save as to admissions contained in the Defence, the Plaintiffs join issue with the Defendants upon the whole of their Defence.

Dated: 18 December 2020



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Adley Burstyner
solicitors for the plaintiffs

SCHEDULE OF PARTIES

Geoffrey and Lynden Iddles

Plaintiffs

-and-

Fonterra Australia Pty Ltd ACN 006 483 665

First Defendant

-and-

Fonterra Milk Australia Pty Ltd ACN 114 326 448

Second Defendant

-and-

Fonterra Brands (Australia) Pty Ltd ACN 095 181 669

Third Defendant