YOUR WRITTEN CONTRACT SHOULD COVER EVERYTHING – NO ORAL EVIDENCE ALLOWED!

Here’s another warning from our courts to make sure that all your contracts are properly drawn to reflect both accurately and fully what you have agreed to.

The problem with leaving anything out – or agreeing to something that isn’t then fully recorded in your contract – is a principle in our law known as “the rule of parol evidence”.

A recent SCA (Supreme Court of Appeal) decision illustrates the rule in action, and the facts will resonate with the many farmers, businesses and city dwellers facing empty dams in drought-stricken areas…

The water diviner and the “insufficiently yielding” borehole

* A fruit farm/wine estate accepted a quote from a contractor to drill a borehole.

* The contractor, having successfully used his water divining skills and over 20 years’ experience to locate a good drilling spot, quoted to drill on the basis of his standard “No Water, No Pay” policy. The farm accepted the quote with a modification requiring a drill to 70m (or 100m if no water was found at 70).

* The resultant 76m deep borehole yielded some 4,000 litres of water per hour - something which, as the Court put it, “would put a smile on the face of most farmers in this country”.

* Nevertheless, and despite the borehole “gaily being used by the [farm] to irrigate its orchards”, the farm refused to pay the drilling contractor a cent, arguing that the water yield was insufficient to meet the contractor’s agreed obligations.

* One long (and no doubt expensive) legal battle through the courts later, the fight ended up before the SCA.

* One of the farm’s defences to the claim (and the one relevant to this article) was its (hotly denied) insistence that the contractor had guaranteed a minimum water supply of 10,000 litres per hour.

Oral evidence disallowed - it’s the written contract that counts

* Bad defence, said the Court. A guarantee of water yield “is not what the agreement says, and to find that there was agreement on such a guarantee would breach the rule of parol evidence which prescribes that where the parties to a contract have reduced their agreement to writing, it becomes the exclusive memorial of the transaction; and no evidence may be led to prove its terms other than the document itself, nor may the contents of the document be contradicted, altered, added to or varied by oral evidence.” (Emphasis supplied).

* On that basis “the considerable volume of evidence led by both sides in regard to their negotiations and what their intention had been was all clearly inadmissible”. All that mattered was that the contract specified that payment was due if the borehole produced water and wasn’t “dry” – its actual yield was irrelevant.

* The farm also tried to rely on the “partial integration rule” whereby, when a contract is partially written and partially oral, evidence can be led to prove the oral part of the agreement. But, held the Court, that rule cannot be used to “contradict or vary the written portion” of the agreement – which is exactly what the farm was trying to do.

* End of that argument, so the farm must pay its borehole bill in full, plus legal costs.

The bottom line – make sure your contracts cover everything both clearly and comprehensively!