

A Legal Perspective as to why the ARU won the Western Force case in the New South Wales Supreme Court

Author : Aaron McDonald

Date : 2 October 2017



The result of a poorly worded agreement clearly in favor of the Australian Rugby Union has allowed the expulsion of the Western Force from the Super Rugby Competition despite opposition both from the Western Force and Perth local Billionaire, Andrew Forrest.

Background

In April 2017, the Australian Rugby Union (ARU) announced that in accordance with an international broadcasting network, SANZAR, that one Australian side would be removed from the

Super Rugby Competition in 2018. Subsequently the Western Force (Force) was axed from the Super Rugby Competition after the ARU resolved to renegotiate the Forces contract, allowing the ARU to prematurely terminate the contract from which the Force derived their existence. This contract is referred to as the Alliance Agreement.

Issue – How is the Alliance Agreement to be read?

Reading the Alliance Agreement in favour of the ARU would allow the ARU to cut the Western Force from the Super Rugby competition. This power resides from the ARU's acquisition of the Western Force from the Western Australian Rugby Union (WARU) in July 2016, as a result of financial hardship on the part of WARU in late 2015. This unconditional ownership was subject to the contractual term presently in dispute, namely whether the renegotiation that cut the Western Force from the Super Rugby Competition, was a valid renegotiation according to the terms of the contract.

If the term was read in favour of the WARU it means that clause 1.1 which the Force used to derive its existence within the ARU and the Super Rugby Competition, could not be renegotiated. This would preclude renegotiation as this was not a valid renegotiation under the meaning of the provision. Hence the Force would escape potential exclusion from the competition until, earliest 31 December 2020 when the contract expires.

Decision

The arbitrator ruled in favor of the ARU, reasoning that the ARU was within their contractual rights to renegotiate the terms of the agreement and terminate its contract with the Force. Consequently, the Force would not compete within the Super Rugby Competition from 2018 onwards. This decision was appealed by the WARU, however this appeal was dismissed in the Supreme Court on 5 September 2017.

Reasons for Decision

The court identified that if the parties only intended for termination of the contract upon the expiry of the broadcasting agreement with SANZAR, then this would have been expressly provided for. Rather, the renegotiation term was included within the contract, and this was held to be a valid renegotiation of the contract terms, hence allowing for the ARU to terminate its contract with the Force prematurely.

End of an Era

Amidst the flurry of legal action surrounds significant speculation by Perth's own Andrew "Twiggy" Forrest, who came across legal advice sent to the ARU dated February 2017, stating that the Force was the best Australian Super Rugby team to axe as the legal risk was low. Forrest states that "*The Western Force was set up to be ambushed. It was going to be bullied into submission*".^[1] These comments came to light after Twiggy's attempts to save the club through the offering of \$50 million worth of sponsorship to help the club in any financial hardships, and to entice the ARU into reversing its decision to drop the Force.

Key Takeaway

This case demonstrates the importance of ensuring that a written agreement reflects the common intention of the parties when its entered into.

The full decision can be found [here](#).

[1] <http://www.dailytelegraph.com.au/sport/rugby/western-force-axed-andrew-twiggy-forrest-says-arua-chairman-cameron-clyne-should-resign/news-story/e66d843ee47c1afeb3be3dbfec870fe3>