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| <i>Judgment: approved by the court for handing down<br/>(subject to editorial corrections)*</i> | Delivered: 30/06/2022 |

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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION  
(COMMERCIAL LIST)

Between:

SM PIGS LIMITED

Plaintiff

and

KARRO FOOD GROUP LIMITED

Defendant

Keith Gibson (instructed by Mills Selig) for the Plaintiff  
Alistair Fletcher (instructed by Tughans) for the Defendant

**HUMPHREYS J**

***Introduction***

[1] The plaintiff is a limited company which raises and produces pigs from premises at Sion Mills in Co Tyrone. The defendant is a Yorkshire-based food production company which processes and supplies pork products to retailers.

[2] On 11 December 2020 the parties entered into a Production and Cost Sharing Agreement ('the Agreement') whereby the plaintiff agreed to supply pigs to the defendant on a solus basis in consideration of which the defendant would pay for the cost of rearing and producing the pigs.

[3] In November 2021 the plaintiff issued proceedings seeking payment for outstanding invoices in relation to the cost of pig production. The defendant counterclaimed in respect of alleged overpayments, being the cost of the production of pigs which were not ultimately delivered to it.

[4] Both cases were the subject of refinement as a result of the discovery process, case management and the advice of expert witnesses. Ultimately, the dispute which proceeded to hearing was on a relatively net issue. The legal representatives and expert witnesses are to be congratulated on the focussed efforts to distil down the actual issue between the parties as a result of which considerable court time and costs were saved. Given that the case has now been heard and determined within seven months of the writ of summons being issued, this represents a paradigm example of how the commercial hub can work in practice.

### *The Contract*

[5] The obligation under the Agreement imposed upon the defendant was to “pay all operating costs incurred by the [plaintiff] in the production of the products up to and including delivery to the [defendant’s] premises.” These Costs of Production (“COP”) were defined by clause 2.2. Clause 1.1 defines “products” as being:

“swine/pigs ordered by and supplied to the [defendant]”

[6] Clause 5.1 of the Agreement referred to a projection model setting out the number of pigs and the weight per pig which would be produced and supplied during any given 12 month period. This model would be used to determine a quarterly price per kilo of product. This model included provision for both mortality and replacement sows. The plaintiff was, in addition, to be paid a margin for each kilogramme of product delivered in line with clause 5.6.

[7] Pursuant to the Agreement, therefore, the plaintiff is only entitled to be paid for the COP of pigs actually supplied to the defendant, albeit that the COP recognises that some pigs will die and sows require to be replaced.

### *The Missing Pigs*

[8] The defendant’s pleaded case was always that there was a discrepancy between the number of pigs the plaintiff claimed to supply and the number actually received by the defendant. In sworn answers to interrogatories dated 12 May 2022, Mr McReynolds, director of the plaintiff company, acknowledged there was a discrepancy but claimed this was due to human error in stock counting and/or mortality in pigs.

[9] In cross-examination, Mr McReynolds was compelled to accept that neither of these reasons accounted for a quantity of the missing pigs. Different figures for this discrepancy have been proposed but following further analysis, the experts and counsel agreed that this number was 1,233 pigs.

[10] The parties then agreed that the plaintiff was not entitled to be paid in respect of this number of pigs but disagreed as to the correct means of calculating this particular cost.

### *Pig Production*

[11] When a sow farrows, she has a litter of, on average, 15 piglets. The piglets remain with the sow for 28 days in what is known as the lactation period. Following that, the piglets are weaned and moved to stage 1 accommodation for around 4 to 5 weeks.

[12] At the end of stage 1, pigs are moved to stage 2 until they are 12 weeks old. Some gilts are selected to replace ageing sows and others are then moved to finishing accommodation. This is often off-site, with the pig producer paying the owner of the finishing accommodation either on a per pig or a per kilo basis. Pigs are usually ready for slaughter around 22 to 24 weeks.

### *The Competing Positions*

[13] The expert accountants agreed that the sum of £270,413 is due and owing to the plaintiff, subject to a proper deduction for the missing pigs. There are four different methods suggested for this exercise. Firstly, if one assumes that all the missing pigs were at the end of their stage of development, and weighed an average of 89 kg, the deduction would have amounted to £190,942, leaving a balance due of £79,471.

[14] Scenario 2 is based on a deduction which assumes all missing pigs were at the mid weight stage, i.e. a live weight 78.7 kg. This would result in a deduction of £169,815 and a balance due of £100,598.

[15] Scenario 3 operates from the same assumption but the calculation is based on dead weight of 59.8kg. The deduction generated by this figure is £129,059 and a balance due of £141,353.

[16] Finally, scenario 4 considers that the missing pigs were at a variety of different stages of their development, including stage 1, stage 2 and finisher. Depending on how this split is carried out, the deduction, in the view of the experts, would be between £93,591 and £126,557, leaving a balance due between £143,856 and £176,822.

### *Consideration*

[17] Evidently, it is not possible for the court to determine the age and size of each of the 1,233 missing pigs. It is, however, incumbent on it to carry out an assessment of loss so as to resolve this dispute as fairly as possible. As Devlin J said in *Biggin v Permanite* [1951] KB 422:

“Where precise evidence is obtainable, the court naturally expects to have it, [but] where it is not, the court must do the best it can.”

[18] The defendant makes the case that the missing pigs were unlikely to be at stage 1 or stage 2 of their development since, during these periods, they were housed in secure premises with the benefit of closed circuit cameras. It is therefore inherently more likely that the pigs were in their finisher stage, at which time many of them were transferred to finisher farms.

[19] The plaintiff accepts this proposition but submits that it would be wrong to assume that all such pigs were at the final stage of their development which is the premise of scenario 1.

[20] I have therefore concluded, doing the best that I can in light of the evidence, that it would be appropriate to consider the missing pigs as being at the average weight of the finisher stage. This is the basis of scenarios 2 and 3, the only distinction there being between ‘live’ and ‘dead’ weight.

[21] The COP model annexed to the Agreement uses the average delivered dead weight to calculate the cost of production. The Agreement itself does not address any means of calculating the COP of missing pigs but it is reasonable, in my view, to adopt the dead weight as the basis for this exercise also.

[22] As a result, I find that the defendant is not obliged to pay for the cost of production of the 1,233 missing pigs and the appropriate means of calculating this sum is as set out at scenario 3, based on the average mid dead weight of the finisher stage.

### ***Conclusion***

[23] Accordingly, I find that there is a sum properly due and owing to the plaintiff of £141,353 and it will have judgment for this principal sum. The counterclaim is dismissed. I will hear the parties on the questions of interest and costs.