

McDougalls Ltd. -v- Branson

Branson runs a fast food outlet under a franchise agreement with a firm called Burger Queen. The franchise agreement is about to come to an end, and Branson approaches a representative of McDougalls Ltd, the rival of Burger Queen, with a view to reaching a new franchise agreement, for a five year period, with McDougalls. McDougalls' representative, Kroc, tells Branson that McDougalls would like to have an outlet in the area, and Branson and Kroc commence negotiations. When the negotiations are nearing completion, but before the parties have reached complete agreement, Burger Queen ask Branson if he will agree to renew his franchise contract with them. When Branson tells Kroc this, Kroc tells Branson that McDougalls are committed to the prospective contract with Branson, and that they will sign a contract "as soon as the technicalities are sorted out". Reassured by this, Branson informs Burger Queen that he does not wish to renew his contract with them. Burger Queen then grant a franchise to another outlet in the same area as that of Branson. A week later Kroc tells Branson that McDougalls have changed their mind, and no longer want to grant Branson a franchise.

If Branson had operated as a McDougalls franchisee for five years, it is estimated that he would have made a profit of £200,000. If he had remained with Burger Queen, he would have made about £100,000. Operating independently, he will make only £50,000 net profit. Confidently expecting a contract with McDougalls, Branson has spent £5000 on new logos for his shop which are of no use in the absence of a contract with McDougalls.

Branson concedes that his conversation with Kroc did not in itself give rise to a contract between Branson and McDougalls. Nevertheless, he sues McDougalls, claiming that because of his detrimental reliance on the promise of Kroc (a) McDougalls is estopped from denying that a contract came into existence or (b) McDougalls' promise is otherwise actionable. Hamilton J finds in favour of Branson, relying on *Walton Stores (Interstate) Ltd v Maher* (1988) 164 CLR 387, and awards him damages of £150,000. The Court of Appeal dismissed McDougalls' appeal. McDougalls now appeal to the House of Lords on the grounds that:

1. Branson cannot rely on the doctrine of estoppel, because (a) there was no pre-existing contractual relationship between McDougalls and Branson, and (b) estoppel can only be used as a shield, and not as a sword; and
2. Branson appears to have suffered no loss beyond £5,000 but even if McDougalls are liable in damages to Branson, the damages awarded should compensate Branson for £50,000 viz the reduction in profit caused by his withdrawal from the agreement with Burger Queen, plus the £5,000 incurred in expenses, and not his expectation interest of £150,000.

This problem is taken from the first round of the Observer-ESU-Lovell White Durrant Mooting Competition 1996-97, and was provided courtesy of the English Speaking Union.