

Managers, Artists & Lawyers: The Good, the Bad and the Ugly?

Lessons from the Holly Valance decision.

Introduction – A Rare Case

Holly Vukadinovic was reluctantly ripped from suburban Australia. She was “discovered”, gracefully groomed and managed by Scott Michaelson - a face that many of us still know as “Brad”, the amiable surfer, from *Neighbours*. She was thrust with Machiavellian cunning towards the world music stage as “Holly Valance” – a star is born and a much-coveted career is launched. Brad is then unceremoniously dumped mid-stream and on the eve of success. The lawyers and press amass. Justice Einstein presides.

It is rare that disputes between artists and managers come before the courts. It is rarer still that they continue until judgement. The vast majority of these disputes, without an altruistic thought for lawyers and principles of precedent, settle. Most artists and managers are too sage, prudent or impecunious to bless the hallowed halls of justice. Sadly, most artists’ careers are not, from a commercial perspective, worth fighting over.

The *Valance* decision provides us then with some rare and valuable judicial consideration of the legal relationships between artists and managers. Justice Einstein delivers an eminently readable judgement providing an insight into the lives of Ms. Valance and Mr. Michaelson.

Much of the judgement could have been serialised in *Hello!* magazine – it was full of scandal, conspiracy and international intrigue with guest appearances from some of the glowing stars of the entertainment industry.

It canvasses the terms of a relatively typical management contract many of which are common in other personal service agreements. It provides some sharp lessons for managers, artists and lawyers.

I will talk to you today about what I thought was the most interesting and indeed the most pivotal issue of the case. It is an issue upon which two large and respected law firms faltered and upon which the case was won and lost. It is the issue of termination. More particularly it is the interpretation and proper use of a common form of termination provision – the notice to cure clause.

For those who may be unfamiliar with artist-manager relationships, I’ll begin by racing through the nature of these relationships as this sets the scene. I hope it will also invite those who do not practice in the music industry to see common features with other areas of practice.

With this background in mind, I’ll quickly summarise the common law grounds for termination, the pertinent facts of the case, carefully omitting the saucy parts, before focusing on the particular termination provision in issue.

I will then set out the court’s construction of the clause and what that meant for the terminating party. We’ll see why Valance got it wrong – twice.

I’ll conclude with a summary of the lessons and hopefully leave you with a new appreciation of these termination clauses.

I’ll then make a suggestion as to how Valance may have successfully terminated the agreement.

Managers and Artists in the Music Industry

The music industry is a tough one. It is highly speculative and competitive. It is substantially dependent on personal relationships. Talent on its own does not guarantee success. Success is won by the application of a myriad of collaborative and skilled efforts.

A skilled manager forms a critical part of the artist's team. The manager has many difficult roles to play – hard-headed business executive, snake oil seller, economist, Tangier rug-trader, kick-boxer, parent, psychologist and fall guy. The skilled manager will know the music industry and know the players. Such skills are often rare. They become rarer as one moves up the evolutionary chain from emerging artist to established star. Few managers have experience in managing top acts – they are highly sought after. While some established artists evidently disagree, in my mind, rare is the case that your mother should be your manager.

The development of a new artist can take many years. Indeed it can be many years before an artist can earn a decent income. Some artists, despite apparent success, never earn decent income. With this in mind, managers of artists insist on contracts that provide the manager with some security of tenure. This security takes two common forms. Firstly, an exclusive term of often 3 to 5 years. Secondly, a right to post-term income. This was the case with Holly Valance and Mr. Michaelson.

In this way, most manager-artist agreements are long-term personal services agreements.

While the manager often tends to be able to terminate the arrangement almost at will, the artist is bound for many years. It is a serious commitment.

As many of us know, even those relationships embraced by the most glorious of starts can turn subsequently turn dark and ominous. The manager's legitimate need for a long exclusive period to justify his or her commitment in the early and often loss bearing years can pose some real problems for the artist. The most common of which is if the relationship isn't working or the manager turns out to be less than expected. This was the case with Holly and Mr. Michaelson.

Such issues give rise to lawyers seeking to negotiate provisions in such agreements that attempt to balance the manager's and artist's needs. While such needs can be infinitely variable they often have common themes. Some of those themes are found in the following types of provisions:

- (a) Appointment of co-managers (which can assist when the artist becomes international – a co-manager may look after an artist in a particular country);
- (b) Post-termination income provisions (can give the manager additional security that if the agreement comes to an end he or she will continue to be rewarded after termination for their work up until termination)
- (c) Appointment of personal managers (to work more closely with the artist and almost as an intermediary between the artist and manager); and
- (d) Dispute resolution clauses (to provide a mechanism by which issues that arise can be dealt with sensibly);

- (e) Termination clauses (that allow the agreement to come to an end in a particular manner).

It is upon this last theme I wish to now expand. In particular, I'll be looking at those termination clauses that provide an opportunity for the termination of an agreement to be avoided by providing an opportunity to fix (or cure) what has been complained of. They seek to vary the common law provisions enabling termination. They provide an opportunity for one party to make amends and repent. The one in this case, saved the manager's skin.

The Facts

Holly was aged 15 at the time when she was first "discovered" by Mr. Michaelson in early 1999. The two began working together pursuant to a "handshake" deal. Mr Michaelson arranged for and indeed persuaded Ms Valance to attend her first audition for *Neighbours*. About a year later, as things were progressing well for both parties, a formal management agreement was drafted, negotiated and signed making Mr. Michaelson's company Holly's entertainment industry manager throughout the world.

Mr. Michaelson spent considerable effort developing Holly as an actor and recording artist. There was no real contention that he launched her career through the well-known and long-running TV drama series *Neighbours*. It is common ground that *Neighbours* gives tremendous international exposure for those actors who have participated in it.

He also procured her recording agreement with Engine Room Music - then famous as the label for launching *The Vines*.

For a year after the signing of the agreement, at least, all seemed well

From at least mid 2001 however life got complicated for the two. On the evidence, Mr. Michaelson was beginning to be shut out from the activities of Ms Valance as she, and perhaps influential others were becoming dissatisfied with Mr. Michaelson's work.

The reasons for Ms. Valance's dissatisfaction, in final submissions, were that the manager failed to:

- represent Valance in negotiations regarding terms of the various contracts between Valance with London Records and Engine Room during the latter half of 2001;
- supervise Valance's professional employment;
- negotiate and liaise with record companies, publishers and distributors; and
- keep Valance informed of all matters which arose for consideration in relation her career; and
- be reasonably available to consult with Valance.

Ms. Valance's did not communicate any real dissatisfaction at the time. This was to play an important part in the outcome of the case – it affected the creditability of Ms. Valance as a witness and cast doubt on the veracity her complaints. Corresponding with this gradual shut out, was the search for a UK manager for Ms Valance by Ms. Valance's other advisors.

At a meeting held at the Bambini Trust Café in Sydney on 26 July 2001, it was put to Mr Michaelson by Mr. Wagstaff of Engine Room Music that in order to secure a deal for Ms Valance in the UK, it might be better to retain an experienced UK manager. Mr. Michaelson gave evidence that he was being asked to step aside as Ms Valance's managing agent in the United Kingdom. Mr. Michaelson said at the Bambini Trust Café that he would go to the UK when Ms Valance moved there and if necessary he would use the advice of experienced UK Managers when the time came.

During this period, despite not being fully informed of the affairs of Ms Valance, Mr Michaelson continued to liaise with the producers of *Neighbours* on behalf of Ms Valance.

Mr. Michaelson, from about mid-2001 had plans to relocate to the UK in order to manage Ms Valance's career. He informed Ms Valance of this on numerous occasions and also discussed it with Ms Stevens in December 2001, just prior to Ms Stevens seeking legal advice about terminating the Agreement.

In December 2001 Ms Stevens sought legal advice from Louis Davis Shapiro & Lewit in relation to whether, in light of the Agreement, Ms Valance was able to obtain alternative professional management and terminate the agreement. In January 2002, Ms. Valance's lawyers, Louis Davis Shapiro & Lewit, sent off a thundering "Dear John" letter of termination to Mr. Michaelson. In May 2002, Mr John Fowler, a UK manager recommended by London Records, was engaged as Ms Valance's manager.

Efforts were made to reconcile the differences and restore the relationship. Lawyers exchanged broadsides.

Proceedings were commenced.

The proceedings were brought by Biscayne Partners Pty Ltd seeking relief in respect of the management agreement made in early 2000. The proceedings were brought against Holly's company Valance Corp Pty Ltd, Holly and her mother Ms. Rachel Stevens (a director of Holly's company).

Michaelson alleged breach of contract by Valance and her company, conspiracy with her mother to injure and torts of interference with contractual relations.

Valance countered with rightful termination upon alleged breach by Michaelson.

The Agreement was, thankfully for the manager, in writing. It was entered into between Biscayne, Valance Corp Pty Ltd and Ms Valance. The agreement provided for the appointment of Biscayne as the sole and exclusive manager of Ms Valance in the entertainment industry throughout the world for a period of three years. It provided for post-term remuneration to flow to Biscayne should the agreement end. While some management agreements are scribbled on the back of napkins or not in writing at all, this was a well-drafted and comprehensive agreement. It provided for detailed obligations for both parties. It provided that if Holly's company failed to abide by the agreement, Holly would step in. These and other provisions are set out in the judgement.

There was an important and illuminating conversation between Holly and Ms. Valentine (an actress from *Neighbours*) before the Louis Davis Shapiro & Lewit letter purporting to terminate. It sheds a delicate hue of background light to the proceedings.

Ms. Valentine gave evidence of a conversation with Ms Valance in around late January when they were both in

the "Green Room" at the *Neighbours* studio in Melbourne. Although Ms Valentine could not recall the exact words, the conversation had been along the lines that Ms Valance was feeling bad, she was "a bit stressed out" because she was leaving Mr. Michaelson as her manager. She questioned Ms Valance in terms of her contract with Mr. Michaelson and on her evidence the substance of what Ms Valance said was that the solicitors for the record company would *get her out* of that contract and they would be faxing the paperwork to Mr. Michaelson in order to do so. In the course of the discussion Ms Valance had referred to terminating Mr. Michaelson as her manager.

Ms Valance had said that the record company did not really need Mr Michaelson any more and that *they* could take care of her now. Ms Valentine was closely tested in relation to this conversation in cross-examination. Her evidence was that she was overwhelmed because she knew how serious this was and she knew how much time Mr. Michaelson had invested in Ms Valance and she knew "*that this was going to be a very big deal*".

Indeed it was. Holly lost the case. She paid was ordered to pay hundreds of thousands of dollars in damages and legal fees.

The Common Law Position compared to Contractual Position In Relation to Termination

Before going further, I would like to take a side step for a moment to provide some brief background on the common law provisions for termination. As it is these provisions that termination clauses seek to vary.

A breach of contract by one party may, of course, entitle the other to terminate it. A right to terminate for breach may be conferred by the contract itself or it may arise by law. With some limited exceptions, the parties are free to stipulate by contract whether and in what circumstances either party may terminate for breach. A right to terminate a contract also arises by law if the breach is sufficiently serious or material.

Only a serious breach of a contract justifies termination by law. Such a breach does not automatically terminate the contract it confers an elective right upon the innocent party. That right should not be treated lightly; an unjustifiable termination constitutes a breach by repudiation itself and can give rise to damages and allow the other party to accept termination.

The law recognises two forms of conduct as constituting breach of contract: (a) failing to perform and (b) manifesting unwillingness or inability to perform. One may classify three types of breaches that justify termination:

- (a) repudiation – a breach consisting of a manifestation of unwillingness or inability to perform the contract in substance or at all;
- (b) breach of an essential term – a breach consisting of failure to perform a term designated by the agreement as essential by the contract or by the law;
- (c) breach causing substantial loss of benefit – a breach consisting of a failure to perform which has the effect of depriving the injured party of a substantial benefit of the contract.

The contractual right to terminate for breach, unless otherwise agreed, operates concurrently with any right conferred by law to terminate for the breach. But if the parties agree that the right to terminate for breach shall be

governed exclusively by the contract, the court will give effect to their agreement. That said, such intention will require clear words to rebut the presumption that a contracting party does not intend to abandon any remedies for breach of contract arising by operation of law. As we shall see below, such was the case with Valance and Michaelson.

Contractual provisions that confer a right to terminate for breach often require that notice must be given in some prescribed manner. In such cases, notice is generally regarded as a condition of the exercise of the right so that termination cannot be achieved without it.

With this in mind, we turn now to the termination provision in the management agreement that varied the position at common law.

What you now see before you is the termination provision.

The Termination Provision

Clause 14 of the agreement provided:

“14. TERMINATION

14.1 No breach of this Agreement is a material breach giving the other party the right to terminate, unless:

- (a) the party allegedly in breach is given written notice specifying the nature of the breach (this notice must be clearly headed “Breach of Agreement – Notice to Cure”); and*
- (b) the party receiving the notice fails to rectify the breach within 30 days of receipt of such notice.*

14.2 In the event that this Agreement is terminated pursuant to Clause 14.1, the parties will promptly account to each other in good faith for amounts owed to each other at that time.”

The clause clearly varies the common law provision by dictating and restricting what constitutes a material breach and thereby limiting a parties common law right to terminate.

There were two termination letters.

The Purported Termination Letters

The First Termination Letter

In the first termination letter:

- (a) Ms Valance purported to elect to treat the Agreement as void on a number of rather spurious bases including the fact that the Agreement was signed by Ms Valance in March 2000 when she was 16 years old and that its content was not to her benefit (this was not later pursued);

- (b) Valance Corp and Ms Valance purported to terminate the Agreement with immediate effect.

The Second Termination Letter

Perhaps with some growing concerns about the validity of the first letter, on 27 September 2002, Mr. Michaelson received a second termination letter from Allens Arthur Robinson. This letter purported to terminate the Agreement, although was written without prejudice to the rights of Ms Valance and Valance Corp as presented in the 30 January facsimile. The letter purported to give Mr Michaelson 30 days notice of the Valance parties' intention to terminate the Agreement pursuant to clause 14.1 if Biscayne Partners fails to rectify a material breach, such material breach being described as "during the period March 2000 to date Biscayne has failed to perform at all times its obligations pursuant to clause 4.1 of the Agreement".

Well it wasn't actually a high court case....

Justice Einstein's Construction of the Termination Clause

In summary, Justice Einstein held that;

- the clause comprehensively set out the mechanism for termination for a material breach – the common law provisions enabling termination were not intended to apply;
- the parties were obliged to follow the form of the termination notice;
- it restricted Ms. Valance's rights to terminate the agreement as it required Ms. Valance to give notice as a condition precedent to the right to terminate;
- it only gave rise to a right to terminate after the notice to cure was unremedied - Ms. Valance was also required to issue a notice terminating the agreement if the breach was not cured.
- was intended to allow the remedy of past conduct even if the conduct complained of was required to be performed at a particular time;

Taking these in a bit more detail.

The Clause Was A Comprehensive Provision for Termination to Which the Parties Should be Bound

Einstein held the view that clause 14.1 provided a comprehensive procedure for the termination of the Agreement. The parties should be held to their bargain. He said that outside of situations of an express repudiation, which may have enabled immediate termination, the provisions of the common law were intended by the parties not to apply.

His Honour drew a distinction between on the one hand, a circumstance involving a repudiation by one of the parties in terms of the evincing of an intention no longer to be bound by the contract, and on the other hand, a circumstance where the claimed repudiation falls short of such of an *express* repudiation. He said that Clause 14.1 did not deal with the former situation but it did deal with the latter. The facts of this case were where the claimed repudiation by Biscayne falls short of such of an *express* repudiation - the claimed repudiation is to be inferred from a range of conduct said to constitute breaches of the Agreement.

Because that is so, the Valance parties were obliged to utilise the clause 14.1 procedure before being entitled to terminate.

His Honour went on to say that even if the common law had applied concurrently with the provisions of clause 14.1, in his view none of the alleged breaches of the Agreement put forward by Valance justified the view that Biscayne had so conducted itself as to evince an intention no longer to be bound by the Agreement. Biscayne had always maintained that it was ready, willing and able to continue to perform.

The Clause Provided for Curing Breaches as to Time

Of particular interest to me was Justice Einstein's reaffirmation of the practical operation of the notice to cure clauses. I have had a number of gentle arguments with other lawyers about whether breaches of time relevant obligations can in fact be remedied at all. For example, let's say a contract provides that a record company is required to deliver royalty statements to an artist each financial quarter. It is not too hard to imagine that from time to time, such statements are delivered late. If a statement was required to be delivered by 30 June and it was not, can such a breach be remedied at all?

The court referred to *Burger King Corporation v Hungry Jack's Pty Ltd* [2001] NSWCA 187, a decision by the Court of Appeal, where an examination, albeit obiter dicta, is to be found in relation to the proper construction and approach to be taken to contractual termination clauses requiring the giving of notices to cure breaches.

Considering a clause not dissimilar to the one before us today, Rolfe J held that, "***the purpose of each clause [being] to give the party [in breach] the opportunity of curing the position for the future***".

It is, in other words, an opportunity to make amends and repent.

This is affirmed in other decisions such as *L Schuler AG v Wickman Machine Tool Sales Ltd*. Lord Reid was asked to consider the word "remedy", he said:

"The question then is what is meant in this context by the word "remedy". It could mean obviate or nullify the effect of a breach so that any damage already done is in some way made good. Or it could mean cure so that matters are put right for the future. I think that the latter is the more natural meaning."

The statement of Sugerman J in *Batson v de Carvalho*, at 427, is to the same effect:

"To 'remedy' a breach is not to perform the impossible task of wiping it out - of producing the same condition of affairs as if the breach had never occurred. It is to set things right for the future, and that may be done even though they have for some period not been right, and even though that may have caused some damage to the lessor. ... A breach may be remedied ... even though the time for doing the thing under the covenant may have passed ..."

Notwithstanding the above, I suggest some breaches cannot be remedied. If, for example, time has been expressed as "of the essence", a general termination clause like the one before us today should not operate to defeat the specific and express intention of the parties to make time critical.

The Giving of Notice Was A Condition Precedent to the Right to Terminate

His Honour concluded that the commencement provision that no breach "*is a material breach*" was a deeming provision. Effectively the parties have been content to regulate their respective entitlement to claim any breach to be a 'material breach' by this requirement for the giving of notice.

The giving of a 30 day notice can be seen to be a condition precedent to the right to terminate for material breach

From this it is made clear that clause 14.1 gave right to an *entitlement* to terminate if the specified breach was not remedied rather than an exercise of that entitlement itself.

Requisite Exercise of the Right to Terminate

Justice Einstein said that a separate question arises going to whether the party with the right to terminate has exercised that right. Conventionally the exercise of that right would be a matter of some formality as by a second communication explicitly terminating the contract (although in some circumstances it may be possible to infer the exercise by other conduct).

[time permitting]

The Valance parties put forward the proposition that clause 14.1 simply operated to suspend for a 30 day period, what would otherwise be regarded as a material breach.

The proposition was that if the breach was rectified within the 30 day period following the giving of a clause 14.1 notice, then as between the parties, clause 14.1 simply provided a deeming provision so that in that circumstance there *never was* a material breach.

The proposition was that for that reason, following the giving of a clause 14.1 notice not rectified within 30 days, there was no necessity to give a further notice terminating the Agreement. Hence at least one approach taken by the Valance parties was that there was a termination notice given on 30 January or alternatively on 27 September 2002.

These arguments were rejected by the court.

The Parties Must Follow the Form of the Termination Notice

As to whether the requirement to give a particular form of written notice with the particular clear heading provided for in clause 14.1 (a) can be said to be only procedural and not a matter of substance, Justice Einstein said that there was much to be said for the view that *in this particular context* this requirement should be regarded as one of substance and as a condition precedent to the entitlement of to terminate. The parties were obviously astute to ensure that they would have the clearest possible notice if either of them sought to engage the clause 14.1 procedure. The heading gave the parties a clear and practical warning about the seriousness of the matter and the possible consequences – it was a call to action.

Justice Einstein Views of Termination Letters

Both letters were held invalid.

First Termination Letter Invalid

His Honour made the following comments about the letter from Louis Davis Shapiro & Lewit.

The first termination letter purported to terminate the Agreement with immediate effect. Hence the notice cannot be described as in substance a "Notice to Cure".

His Honour said: Clearly enough the first termination letter was in substance the very antithesis of a notification which could fairly have put Biscayne on notice that, unless matters were put right for the future within the next 30 days, the Valance parties were entitled to terminate the Agreement for material breach. What the first termination letter was calculated to achieve was quite simply an understanding in the recipient that the Agreement *had been* terminated.

The Second Termination Notice

As to the second termination letter, Justice Einstein said this completely failed to specify within the meaning of clause 14.1 (a), the nature of the alleged breaches of the Agreement. What was required in the relevant notice was a specification of "the nature of the breach". The specification was too broad it only said:

"during the period March 2000 to date Biscayne has failed to perform at all times its obligations pursuant to clause 4.1 of the Agreement."

It fell far short of what was required. It was more akin to an ambit claim as reference was made to all the managers obligations and in any event was ambiguous. The reference to a bracket of time in which Biscayne was said to have been guilty of "*failing to perform at all times its obligations*", is ambiguous and could be read as:

- an allegation that Biscayne had at no time during the relevant bracket, performed its clause 4.1 obligations; or
- an allegation that Biscayne had, during part only, of the relevant bracket of time, performed its clause 4.1 obligations and during some other part of the relevant bracket, failed to perform those obligations.

His Honour said that the giving of notice requirements were a matter of a "signal significance". The notice of termination did not provide sufficient specificity to allow remedy. In any event, the Judge said:

- that the notice failed anyway as the notice was not clearly headed in the form prescribed by clause 14.1 (a);
- the fact is that there never was an exercise by the Valance parties of any right to terminate which may have accrued to those parties 30 days following the giving of such clause 14.1 notice;
- the evidence discloses that during that seven-month period between termination letters, the manager-artist relationship between Mr Michaelson and Ms Valance was effectively shut down by the Valance

parties. It was all the more necessary for the second termination letter to be precise in terms of identifying the nature of the alleged breach. This it failed to do.

- Yet a further obstacle in the way of the Valance parties lies is the Court's holding that on the evidence, those parties in sending that letter, were not ready, or willing to proceed to perform the contract. The letter made no explicit offer to restore the relationship and was patently a communication sent with a view to simply improving the Valance parties prospects of making good in a court of law. The second termination letter was for that reason alone, invalid and ineffective in purporting to invoke and mobilise the clause 14.1 procedure.

Conclusions

As we have seen, the court gave very clear indications about the operation of the notice to cure provisions. It was very clear that the Valance parties failed to comply. While there were difficulties with the material breaches that Valance alleged the manager committed, it was not in establishing these that Valance failed. It was because they did not comply with the termination provisions.

The case highlights the need to carefully consider:

- The drafting and negotiation of these types of notice to cure provisions to ensure as best as possible they meet the future needs of clients; and
- If there is such a provision embedded into a contract, how to properly terminate the contract.

In relation to the drafting and negotiation of these clauses, it is important to bear in mind:

- What are the likely concerns of the client in relation to the performance of the contract?
- With these in mind, what may be their needs to terminate?
- Does a party need protection from his or her own material breaches? That is, to give them an opportunity to maintain the commercial relationship and avoid termination? For example, despite ones best intentions contracts can be inadvertently breached.
- Are there clauses that should be deemed to be material so as to avoid arguments as to what is and is not material under the common law?

One particular issue to consider is the issue of repeated breaches. Repeated minor breaches can constitute grounds for termination under the common law. That said, establishing such a breach may not be easy. One might consider deeming certain repeated breaches as material. Repeated breaches, also give rise to a question of the practical operation of a notice to cure provision. If we were to take the clause currently in issue, the party that suffers under repeated breaches would be obliged to continually issue notices to cure which may be more trouble than the contract is worth.

For this reason, some contracts stipulate in their notice to cure provisions that repeated breaches give rise to termination in any event.

In relation to terminating a contract with a clause such as the one here one must:

- specify the nature of a breach in sufficient detail to allow the other party to identify the breach and remedy it within the requisite time;
- abide by any form that is dictated by the agreement;
- have and demonstrate a willingness to continue with the agreement;
- conduct oneself in a *bona fide* good faith manner.

What Could Have Happened:

- Valance should have communicated complaint as soon as it arose; (sometimes difficult in close relationships but can be done with sensitivity)
- the notice letter should have specified the breach they were in reality most concerned about – the inability of Michaelson to carry out management tasks overseas and particularly London (they were happy for him to keep on in Australia) – the breach was the failure of Biscayne to provide someone who could provide such services – the continued work of Michaelson could have been seen as a repudiation;
- It should have demonstrated a willingness to continue.
- it should have enumerated the particulars of breach as far as possible and could have indicated how the breach was to be remedied;

(Benefit of Hindsight)

- Biscayne would then have been faced with the task of finding a replacement manager within 30 days and one that:
 - Demonstrably had the skills sought (a rare thing);
 - Would have been willing to be contracted by Biscayne;
 - Would have been willing to take less than the commission of Biscayne;
 - Would have been willing to manage Holly for the remaining limited term (about 12 months).
- Had these steps been taken from the outset it would be highly unlikely the manager would have commenced proceedings.
- Had these steps been taken during the proceedings the damages available to the manager

would have been substantially reduced.

For me, this case prompted a renewed rigour in considering the need for and nature of notice to cure provisions. It lead to a tightening of various termination provisions to protect clients and give them greater certainty in their contractual arrangements.

But, as we are about to see, the fine drafting of a tight contract is not the end of the story. Contractual certainty can be illusory when one is dashed upon the jagged rocks that adorn the Industrial Relations Commission.

We turn now to Jules Munro to tell us of the expansive jurisdiction of the IRC in resolving entertainment industry disputes.