



HIGH COURT OF AUSTRALIA

Public Information Officer

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PETER JAMES BATTERHAM AND MAYLORD EQUITY MANAGEMENT PTY LTD v QSR LIMITED AND INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

A former company director who lost his share options when the company did not perform sufficiently well could not have recourse to the Industrial Relations Commission of New South Wales, the High Court of Australia held today.

In November 1999, QSR sought to raise capital to acquire 41 KFC stores in NSW from the American owner of the KFC brand. Mr Batterham was a QSR director. QSR's share prospectus stated that the directors had been issued with share options, exercisable in early 2003, if QSR met certain performance criteria, including the company achieving earnings before interest, tax, depreciation and amortisation (EBITDA) of an average of at least 18 per cent for the calendar years 2000, 2001 and 2002. However, the deed setting out the terms in which Mr Batterham's options were issued described as a condition the achieving of EBITDA of 18 per cent in each of the three calendar years. In its first two years, QSR achieved EBITDA of more than 18 per cent, but in 2002 the figure slipped to 16.2 per cent. Although QSR achieved an average EBITDA of 18 per cent of funds invested over the three years, it did not achieve EBITDA of 18 per cent in each of those years. Mr Batterham performed various work for the company until he resigned as a director in April 2002. He contends that he was forced to resign.

Mr Batterham and his trust company Maylord applied to the IRC under section 106 of the *Industrial Relations Act*, alleging that the option deed was unfair, harsh or unconscionable and seeking to have it varied. Section 106(1) of the Act provides that the IRC may make an order declaring wholly or partly void, or varying, any contract whereby a person performs work in any industry if the IRC finds the contract is unfair. QSR applied to the IRC for orders dismissing the proceedings for want of jurisdiction. The IRC refused to dismiss the proceedings. QSR then applied to the NSW Court of Appeal for prohibition directed to the IRC and certiorari removing the proceedings into the Court of Appeal for the purpose of dismissing the proceedings. By majority, the Court of Appeal ordered that the IRC be prohibited from hearing the proceedings in respect of the option deed except where they were based on a contract or arrangement whereby Mr Batterham performed work in an industry. He and Maylord appealed to the High Court.

The Court, by a 5-2 majority, dismissed the appeal and upheld the Court of Appeal's decision.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*