

**IN THE SUPREME COURT OF WESTERN AUSTRALIA  
COMMERCIAL AND MANAGED CASES LIST**

**No. CIV 1561 of 2012**

B E T W E E N

**STEPHEN WILLIAM MARSH**

First Plaintiff

**SUSAN GENEVIEVE MARSH**

Second Plaintiff

and

**MICHAEL OWEN BAXTER**

Defendant

**WITNESS STATEMENT OF JONATHAN DANTON MORTON**

I, **JONATHAN DANTON MORTON** of 92 Hope Valley Road, Hope Valley in the state of Western Australia, director, make the following statement:

1. I am the sole director of Morton Seed & Grain Pty Ltd (**'Morton's'**) and run the business with my wife Janine. Morton's is primarily an exporter of oats for human consumption, but we also pack and export pulses, legumes and other cereal products.
2. Morton's buys and sells both non-organic and certified organic oats and other products. We pay a premium for products that are certified organic because we can charge a premium when we sell those products. If products are grown organically but are not certified organic we pay farmers the non-organic price because these products cannot be sold at the premium prices which certified organic products achieve, either in Australia or in any of our export markets.
3. Morton's customers in Australia do not purchase organic grains which are not certified organic. In the past Morton's has tried to sell "chemical free" or "in transition" oats which were effectively uncertified organic but we found that Australian customers have either not been willing to buy it because it was uncertified or not willing to pay more than what we charged for conventional (non-organic) oats. Given my experience, I would now not bother trying to sell uncertified grain to my Australian customers at prices above what I sell non-organic grain for.
4. The difference between the price Morton's will pay for certified organic and non-organic produce depends on a number of factors, including the type of produce and the market demands. For example, in recent years Morton's paid about double for certified organic oats as we did for non-organic oats.

5. Morton's does not sell any products labelled as "organic" unless the product is certified organic by a recognised certifier whose standards are consistent with the *NASAA Organic Standard* and the *National Standard for Organic & Bio-Dynamic Produce*. I refer to *NASAA Organic Standard* [TB 1293-1407] and the *National Standard for Organic & Bio-Dynamic Produce* [TB 1408-1480].
6. Since about 2007 Morton's has purchased non-organic linseed which we clean and bag and sell for animal feed or to bakeries.
7. The demand for both organic linseed and non-organic linseed is greater than we meet with local suppliers. Presently we need to import linseed from Victoria. We import about 60 to 100 tonnes of non-organic linseed each year.
8. Morton's would prefer to source linseed locally if we could. When we import linseed from Victoria we pay an additional \$75.00 per tonne for freight and \$50.00 per tonne to have the linseed cleaned and certified weed free.
9. I met Stephen Marsh ('**Steve**') in 2002 and I have been purchasing organic oats from him since 2004.
10. Steve and I usually meet at the start of each year to discuss what Steve will plant and what Morton's will buy from him for the year.
11. In or about March of 2013, I met with Steve at the Morton's office in Bibra Lake to discuss what he would plant in 2013.
12. During this meeting I asked Steve if he had considered growing linseed. I suggested this to Steve because he told me that he had lost his organic certification on some of his land and I knew the prices for non-organic linseed were good.
13. Morton's agreed to supply Steve with 2.45 tonnes of linseed seed and Steve agreed to pay \$2,964.50.
14. Morton's agreed to buy as much non-organic linseed as Steve could grow, with the seed we sold him for \$1000.00 per tonne.
15. If Steve had been able to grow organic linseed Morton's would have purchased that from him on the same terms but for \$1,500.00 per tonne ungraded.

16. If Steve continues to grow linseed in future years Morton's would purchase it from him. I intend to meet with Steve in February 2014 to discuss what Morton's will purchase from him next year.

I have read the contents of this my witness statement and the documents referred to in it and I am satisfied that it is correct and that this is the evidence-in-chief which I wish to give at the trial of the proceeding.

**Jonathan Morton**

Dated: 14 January 2014

Amended: 18 February 2014