Stevenson v Regents Park Sporting and Community Club Ltd [2012] NSWSC 424
(Supreme Court of New South Wales, Fullerton J, 4 May 2012)

Between March 2009 and October 2010 the plaintiff operated a bistro from a licensed club at Regent's Park operated by the defendant company (the Club). The plaintiff operated the bistro pursuant to a written contract entitled 'Independent Contractor Agreement' (the agreement), under which he was obliged to work in conjunction with the Club's trading hours and to 'order, prepare and cook in the Club's Bistro'. The contract was executed on 30 May 2009 for a term of three years.

In April 2010 the defendant company entered voluntary administration. An administrator assumed control of the Club's business under a Deed of Company Arrangement in May 2010. The Club continued to trade while the administrator attempted (as is usual) to obtain a better financial outcome for the company's creditors than that which might have been obtained by liquidation.

By letter dated 21 October 2010, the administrator notified the plaintiff that the agreement was terminated effective from that date. A number of bases were nominated as grounds for the exercise of the company's right to terminate, including breaches of the plaintiff's obligations under the agreement to deliver dining services in accordance with specified standards. Reference was also made to previous correspondence where the same or similar breaches were identified as requiring rectification and which the plaintiff is said to have persistently failed to address.

The plaintiff sued for breach of contract and damages. He submitted that the agreement was terminated without proper cause and even if he was in breach of the agreement, which he refuted, he was entitled to a reasonable notice which was denied him.

The single issue arising in these proceedings was whether the defendant company's exercise of the contractual right to terminate under Clause 8.1.3 of the agreement was justified. The resolution of that question was determinative of the plaintiff's case on liability. The plaintiff failed in his claim.

Issues arose under the agreement as to the quality of food, menu selection and hours of operation of the bistro. These issues were raised in the termination letter sent to the plaintiff. The administrator gave evidence that the provision of food services were fundamental to the operation of the business, and to his ability to obtain some outcome from the administration. The bistro was required to operate seven days a week for lunch and dinner. The plaintiff did not do this because trading on some of the seven days was not profitable. Her Honour did not think that it was unreasonable to require the bistro’s operation to coincide with the Club's opening hours. On this point, she said (at [56]):

Even if that were not an express contractual obligation, I do not consider that applying an objective assessment of the terms of the written agreement it was unreasonable for the Administrator to require that the Bistro be open for lunch and dinner seven days a week, both as a service to its existing patrons and to attract patronage to improve the Club's revenue during the period of administration. To the
extent that the Sunday and Monday trade was not immediately profitable, and that to open the Bistro on both days necessitated that the plaintiff restructure his operations, perhaps by a modest increase in the price of some food items, that was an option open to him under the contract. Clause 2.1 provided that he was to have full control over the delivery of services (subject only to meeting reasonable standards) which must be taken to include the price of meals at the plaintiff's discretion.

Her Honour did not feel it necessary to deal with the other issues raised in the termination letter. The plaintiff had not complied with the agreement by not operating the bistro over the same hours as the opening hours of the Club. Therefore, the plaintiff failed in his claim that the agreement had been wrongly terminated. Her Honour said (at [61]-[62]):

...the plaintiff has not proved that the company was in breach of contract in issuing and acting upon the letter of termination and accordingly he has no entitlement to damages for breach of contract. Even were I satisfied that it was unreasonable for the defendant company to require the plaintiff to operate the Bistro in conjunction with the Club's trading hours, and that termination of the agreement on the basis of his refusal to do so was unjustified, the defendant submitted that the plaintiff has suffered no loss from which he would be entitled to an award of damages, having fully mitigated any loss that he suffered by returning to paid employment....

The defendant company was also awarded costs.

The case may be viewed at:  http://www.austlii.edu.au/au/cases/nsw/NSWSC/2012/424.html

Implications of this case
The plaintiff in this case said that the Club had breached its contract with him. Breaches of contract can be very serious and lead to damages being payable for any loss that is suffered. In this case, the judge held that there had been no breach by the defendant Club. Rather, the Club had the right to terminate the contract with the plaintiff because the plaintiff had breached its terms. Even if the breach by the Club had been proven, Her Honour said that the plaintiff suffered no loss because he earned more in other employment than he had from operating the bistro. If there is no loss in a breach of contract case, then no damages are payable.