



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2019] NZDT 1478

APPLICANT **CO Ltd**

RESPONDENT **GM Ltd**

The Tribunal hereby orders:

GM Ltd is to pay CO Ltd the sum of \$15,000.00 on or before 16 August 2019.

Reasons:

1. CO Ltd supplied stock to GM Ltd. In April and May 2019 orders were placed and the goods delivered to GM Ltd. GM Ltd has only sold a small portion of those items and wishes to return the remaining stock and receive a credit note for its value. CO Ltd does not wish to have the stock returned and wants to be paid in full for the orders.
2. CO Ltd claims the sum of \$15,000.00 towards its invoices.
3. GM Ltd counterclaims the sum of \$3,430.00 for storage costs.
4. Is GM Ltd entitled to reject the unsold goods?
 - (a) If so, is it entitled to storage costs, and what amount is reasonable?
 - (b) What amount is CO Ltd entitled to on its invoices?

Is GM Ltd entitled to reject the unsold goods?

5. Section 144 of the Contract and Commercial Law Act provides that “the property in the goods is transferred to the buyer at the time that the parties to the contract intend for it to be transferred.” That section stipulates that “For the purpose of ascertaining the intention of the parties, regard must be had to— (a) the terms of the contract; and (b) the conduct of the parties; and (c) the circumstances of the case.
6. Section 145 states “Unless a different intention appears, the rules in section 146 are the rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer.” The relevant rules are as follows:

Rule 4

- (5) If goods are delivered to the buyer on approval, or on sale or return or other similar terms, the property in the goods passes to the buyer—
when the buyer indicates the buyer’s approval or acceptance to the seller,
or does any other act adopting the transaction; or
- (b) if the buyer does not indicate the buyer’s approval or acceptance to the

seller, but retains the goods without giving notice of rejection,—
when the time (if any) that is fixed for the return of the goods
expires; or
(ii) when a reasonable time expires (if no time has been fixed for the
return of the goods).

Rule 5

(6) Subsection (7) applies if there is a contract of sale for unascertained or future goods by description.

(7) The property in the goods passes to the buyer when goods of that description that are in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller.

7. At the hearing both parties and the witness agreed that no approval, sale or return, or similar term or condition was agreed when the contracts for these orders were made. I do not accept that the acceptance of a return on one earlier order is sufficient to imply such a term into all future contracts. For these reasons I find that Rule 4 does not apply to these contracts. Therefore, I find that Rule 5 applies, and the goods are GM Ltd' property because they have been appropriated to the order by CO Ltd which was assented to by GM Ltd' staff who signed for the goods.
8. At the hearing GM Ltd argued that under the Credit Sales Act property does not pass until full payment has been made, so therefore the stock still belongs to CO Ltd. However, there is no New Zealand Act with this title, and such a provision would be inconsistent with the Contract and Commercial Law Act. For these reasons I do not accept this argument.
9. As ownership of the goods has passed to GM Ltd, CO Ltd is not obligated to accept their return and has elected not to do so. Therefore GM Ltd is to keep the goods and may dispose of them as it wishes. For these reasons issue (b) need not be determined.

What amount is CO Ltd entitled to on its invoices?

10. GM Ltd must make payment for the goods in accordance with the contract. At the hearing a discrepancy between the agreed price and the invoiced price was identified, however it was established that a credit note of \$620.69 has subsequently been provided to rectify this. Invoice #0125 is for \$9,885.86 and Invoice #0163 is for \$8,852.40, totalling \$18,869.33. CO Ltd limits its claim to \$15,000.00 in accordance with the Tribunal's jurisdictional limit.

Conclusion

11. For these reasons GM Ltd is to pay CO Ltd the sum of \$15,000.00 by the date stated in the order.

Referee: K Rendall
Date: 26 July 2019



Information for Parties

Rehearings

You can apply for a rehearing if you believe that something prevented the proper decision from being made: for example, the relevant information was not available or a mistake was made.

If you wish to apply for a rehearing, you can apply online, download a form from the Disputes Tribunal website or obtain an application form from any Tribunal office. The application must be lodged within 28 days of the decision having been made. If you are outside of time, you must also fill out an Application for Rehearing Out of Time.

PLEASE NOTE: A rehearing will not be granted just because you disagree with the decision.

Ground for Appeal

There is only one ground for appealing a decision of the Tribunal. This is that the Referee conducted the proceedings (or a Tribunal investigator carried out an enquiry) in a way that was unfair and prejudiced the result of the proceedings.

A Notice of Appeal may be obtained from the Disputes Tribunal website. The Notice must be filed at the District Court of which the Tribunal that made the decision is a division, within 28 days of the decision having been made. There is a \$200 filing fee for an appeal. You can only appeal outside of 28 days if you have been granted an extension of time by a District Court Judge. To apply for an extension of time you must file an Interlocutory Application on Notice and a supporting affidavit, and serve it on the other parties. There is a fee for this application. District Court proceedings are more complex than Disputes Tribunal proceedings, and you may wish to seek legal advice.

The District Court may, on determination of the appeal, award such costs to either party as it sees fit.

Enforcement of Tribunal Decisions

If the Order or Agreed Settlement is not complied with, you can apply to the Collections Unit of the District Court to have the order enforced.

Application forms and information about the different civil enforcement options are available on the Ministry of Justice's civil debt page: <http://www.justice.govt.nz/fines/about-civil-debt/collect-civil-debt>

For Civil Enforcement enquiries, please phone 0800 233 222.

Help and Further Information

Further information and contact details are available on our website: <http://disputestribunal.govt.nz>.