

**BETWEEN**

**GT**  
APPLICANT

**AND**

**SGG Ltd**  
FIRST RESPONDENT

**AND**

**KS**  
SECOND RESPONDENT

**AND**

**HG**  
THIRD RESPONDENT

**AND**

**TL**  
FOURTH RESPONDENT

Date of Order:

27 November 2017

Referee:

Referee: Paton-Simpson

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**ORDER OF THE DISPUTES TRIBUNAL**

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**The Tribunal hereby orders that SGG Ltd, KS, HG, and TL, jointly and severally, are to pay the sum of \$12,737.05 to GT on or before 11 December 2017.**

## **Facts**

[1] In September 2016, Ms GT entered into an agreement to purchase a trailer to be manufactured by HKL Limited, at a cost of \$10,990.00 plus GST, with a view to having a “tiny house” built on the trailer. A few weeks later, she entered a second agreement with HKL for the construction of the house.

[2] On 8 November 2016, HKL notified Ms GT that the trailer was finished, and asked her to call regarding registration so that it could be taken for a warrant. The next day, HKL emailed Ms GT the final invoice for the trailer, and asked her to courier her number plate and registration sticker to HKL. The email also stated, “once paid trailer ownership transfers fully to you”. Ms GT paid the final invoice and registered the trailer in her name. HKL took the trailer to the vehicle testing station to get a warrant of fitness on 10 November, then to its factory at X Street, Y Suburb, for the construction of the tiny house.

[3] However, HKL went into liquidation on 7 April 2017, with the tiny house still only partially built. The liquidators, who are the individual respondents in this proceeding, included the trailer and build along with three other trailers in the sale of HKL’s business to a third party.

[4] Ms GT now claims \$12,737.05 from the liquidators and their employer SGG Ltd in damages for the conversion of the trailer.

## **Issues**

[5] The issues to be determined are:

- a. Does the Tribunal have jurisdiction to hear the claim?
- b. Should the matter be transferred to the District Court?
- c. Had title in the trailer passed to Ms GT?
- d. Are the liquidators liable to Ms GT for conversion of the trailer?

*Does the Tribunal have jurisdiction to hear the claim?*

[6] The liquidators argued that any dispute regarding the exercise of the liquidators’ powers under the Companies Act 1993 must be dealt with by the High Court under s 284 of

the Act. However, a similar argument was rejected by the High Court in *Warren Metals Limited v Grant* [2013] NZHC 263. Asher J stated that s 284 of the Companies Act 1993 “has no direct relevance to a claim by a third party in relation to property that has been unlawfully interfered with by persons who happen to be liquidators”.

[7] The liquidators took the view that Asher J’s decision regarding jurisdiction did not apply to Ms GT’s claim, on the basis that HKL had clearly retained title in the trailer under clause 18 of the contract. However, interpreting clause 18 is relevant to the merits of Ms GT’s claim rather than the issue of whether the Tribunal has jurisdiction.

[8] Ms GT’s claim regarding the trailer is based on ownership of property rather than debt. If title in the trailer has passed, then Ms GT is not entitled to claim as a creditor under s 284, since the relationship between Ms GT and HKL concerning the trailer has changed from creditor and debtor to bailor and bailee. I therefore find that the Tribunal has jurisdiction to hear Ms GT’s claim against the liquidators in conversion.

*Should the matter be transferred to the District Court?*

[9] Contrary to the liquidators’ submissions, transfer of title in goods and interpretation of contracts are matters regularly dealt with in the Tribunal, and do not provide good reason to transfer the matter to the District Court.

*Had title in the trailer passed to Ms GT?*

[10] Rules for transfer of title in goods under a contract for the sale of goods are contained in Part 3 of the Contract and Commercial Law Act 2017 (CCLA). The liquidators queried whether the CCLA would apply, given the agreements were entered into before the CCLA came into force. However, the CCLA is a revision Act under the Legislation Act 2012, and applies to contracts regardless of whether they are entered into before or after the Act came into force.

[11] Since the trailer had not yet been built at the time the contract was formed, the contract involved a sale of future goods by description. Unless “a different intention appears” (s 145), rule 5 in s 146 applies, and property passes “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”.

[12] The liquidators argued that the trailer was not in a deliverable state on its own, because the two agreements made up one overall contract, and the trailer was only the foundation for the house. However, the first agreement stated that “a separate contract” would follow. Also,

Ms GT pointed out that the trailer is designed to be removable from the house and has its own separate trademark. I find that the registered and warranted trailer was in a deliverable state.

[13] By attaching the registration plates to the trailer and taking it to get a warrant of fitness under that registration number, I find that HKL unconditionally appropriated the trailer to the contract (if it had not already done so). Ms GT assented by providing the registration plates. Therefore the requirements of rule 5 had been satisfied.

[14] However, it is necessary to consider whether the parties had shown a different intention regarding when property would pass. Clause 18 of the agreement provided:

“Title passes in the Manufacturing works upon delivery to the purchaser’s nominated site. For the avoidance of doubt, no delivery will take place, until the purchaser has paid the contract price in full.”

[15] The liquidators pointed out that the first agreement was unsigned, but I find that the parties intended it to be binding anyway. Ms GT argued that the trailer was delivered to two sites that she nominated: first, to the vehicle testing station for the warrant of fitness, and then to the other HKL factory at X Street, Y Suburb. The liquidators countered that clause 20 of the agreement required all notices to be in writing. However I find that, having accepted Ms GT’s instructions verbally, HKL had waived any requirement for the site to be nominated in writing.

[16] In any case, I find that clause 18 was superseded by HKL’s email stating that ownership would “transfer fully” once payment was made. Ms GT accepted this variation to the agreement by paying the invoice and sending the registration plates. While registration is generally not proof of ownership in itself, I find that the plates being attached to the trailer signified the intention of the parties to transfer title and the risks associated with ownership to Ms GT. I therefore find that Ms GT was the rightful owner of the trailer.

*Are the liquidators liable to Ms GT for conversion of the trailer?*

[17] The courts have held that there are three essential features of the tort of conversion: first, the defendant’s conduct is inconsistent with the rights of the owner or other person entitled to possession; second, the conduct is deliberate; and third, the conduct is so extensive an encroachment on the rights of the owner or other person as to exclude him or her from use and possession of the goods.

[18] Although the trailer was in HKL’s possession for the purposes of building the tiny house, I find that Ms GT was entitled to recover possession of the trailer when HKL went into

liquidation. The conduct of the liquidators in refusing to allow Ms GT to retrieve the trailer, and then selling the trailer to a third party, permanently excluded her from possession.

[19] I also find that the liquidators' conduct was deliberate because they deliberately sold the trailer. It does not matter whether they believed that HKL owned the trailer, or whether they could have discovered that it did not. The courts have held that there is a heavy onus on the non-owner, who acts at his or her peril. People can be liable for conversion even if they could not by the exercise of any reasonable care have known of the owner's interest in the goods.

[20] I therefore find that the liquidators are liable to Ms GT for conversion of her trailer. Since the liquidators acted in the course of their employment, SGG is vicariously liable.

[21] I accept that the \$12,638.50 purchase price of the trailer together with the \$98.55 cost of registration is the approximate market value of the converted trailer, so Ms GT is entitled to recover \$12,737.05 in damages for the conversion.