



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2021] NZDT 1472

APPLICANT **SQ**

RESPONDENT **MN Incorporated**

The Tribunal orders:

The claim is dismissed.

Reasons:

1. SQ's cat [Cat] went missing from SQ's property in [Suburb] around 18 April 2021. [Cat] had been a much-loved family pet since March 2020, when SQ's family got him as a kitten. When he did not come home, the family were all most upset. They printed more than a hundred flyers, posted on the [Suburb] Grapevine, registered him online with Lost Pet Finders, and spent considerable time combing the area trying to find him.
2. In early June, the family heard that a neighbour had taken a cat matching [Cat]'s description to [Veterinarian] around the time [Cat] went missing. [Veterinarian] had passed the cat on to MN Incorporated, and he had recently been adopted by another family. Although MN volunteers asked the adoptive family if they would return [Cat], the family and their other cat had bonded with him and refused to return him.
3. SQ seeks an order for MN to return her cat to her.
4. The issues to be determined are:
 - a) Is MN liable to SQ for conversion of her cat?
 - b) What order, if any, should be made?

Is MN liable to SQ for conversion of her cat?

5. The tort of conversion applies where someone intentionally asserts rights or dominion over goods that is inconsistent with the owner's rights. The courts have held that domestic pets are property that is capable of being converted. The law of bailment also applies, which governs the situation where a person (a "bailee") is in possession of property belonging to someone else.
6. MN initially placed [Cat] in a foster home, which was not inconsistent with SQ's ownership rights, since the cat required care. However, the subsequent sale to a third party would generally constitute conversion, unless MN can establish a defence.
7. According to MN, [Veterinarian] passed on that the neighbour had claimed the cat was left behind by someone who had moved away. This was not true, because SQ had not moved

away. The parties did not know whether the neighbour was mistaken or malicious in what she said, but MN assumed at the time that the neighbour's statement was true.

8. Abandonment can be a valid defence to a claim in conversion, but the party using the defence bears the onus of proving that the goods were abandoned. Clearly SQ did not abandon her cat.
9. There has been some discussion in the legal cases and texts of the situation where goods might reasonably appear to have been abandoned even though the owner has not in fact abandoned them. In *Robot Arenas Ltd v Waterfield* [2010] EWHC 115 (QB), an English judge took the view that, depending on the circumstances, liability for conversion could depend on whether the bailee knew or ought reasonably to have known that the goods belonged to a third party. However, he observed (at para 22) that if the circumstances ought to put the defendant on notice that the goods might not have been abandoned, appropriate enquiries should be made. He added:

“The more valuable (whether in monetary terms or as a personal item) the property might possibly be, the more the [bailee] might reasonably be required to await a response before treating the property as if it had been abandoned.”

10. In the current situation, animal welfare considerations need to be considered as well as the rights of the owner and the costs and inconvenience to the bailee. The approach taken by the Animal Welfare Act 1999 (AWA) s 141 is to allow an approved organisation that has custody of an animal to sell, rehome or destroy the animal only if the organisation has first taken reasonable steps to identify and contact the owner. The Act does not specify what might constitute “reasonable steps”, but does specify that the animal must have been in the organisation's custody for at least seven days.
11. MN acknowledged that it did not qualify as an approved organisation – the Royal New Zealand Society for the Prevention of Cruelty to Animals (SPCA) is currently the only approved organisation in New Zealand. However, MN submitted that it had exceeded the requirements of AWA s 141 by waiting 35 days after the cat was delivered to [Veterinarian] before resale. Steps taken to locate the owner included posts on Facebook, MN's website and TradeMe, as well as checking Lost Pet Finders. (Unfortunately, SQ's “lost” listing incorrectly described [Cat] as a Bengal, so MN did not realise it was the same cat.)
12. I am unable to find that MN can take the benefit of the rights accorded to an approved organisation by AWA s 141, even if it exceeded the duties imposed by that section. However, the approach taken in AWA s 141 supports the view, applying the approach suggested in *Robot Arenas Ltd v Waterfield*, that an animal welfare organisation relying on apparent abandonment as a defence to conversion must prove that it first took reasonable steps to locate the owner.
13. Although I accept that MN acted in good faith as a volunteer organisation trying to find good homes for stray cats, I am unable to find that it took reasonable steps to find the owner in this instance. Even if the neighbour's story about the owner moving away had been true, it would not follow that the owner had abandoned the cat. It is not uncommon for a pet to find its way to the old house after the owners move. MN did not contact the neighbour to ask the address of the person who had supposedly moved away. I find that this would have been a reasonable step to take, given the information that [Veterinarian] had received. Since MN failed to take this step, I find that it is liable to SQ for the conversion of her cat.

What order, if any, should be made?

14. Since a third party who was not involved in the proceedings now has possession of SQ's cat, I cannot order MN to return [Cat] to SQ. I considered whether I could order MN to disclose the contact details of the purchaser in order to join them as a respondent. However, there are privacy considerations given the unconditional sale terms, and SQ did not wish to pursue this person. SQ made it clear that she did not want damages, and did not wish to accept MN's offer of a different cat for free. She just wanted her cat back, even though she accepted that this could not now happen.
15. The claim therefore must be dismissed, but MN has acknowledged that that this is a tragic situation, and that there are things it will do differently from now on. Perhaps SQ can take some

comfort in the thought that she may have helped avoid the same thing happening to someone else in future.

Referee: E Paton-Simpson

Date: 8 August 2021



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 at the time.

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 20 working days of the decision having been made. If you are applying outside of the 20 working day timeframe, 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.

Grounds for Appeal

There are very limited grounds for appealing a decision of the Tribunal. Specifically, 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. This means you consider there was a breach of natural justice, as a result of procedural unfairness that affected the result of the proceedings.

PLEASE NOTE: Parties need to be aware they cannot appeal a Referee's finding of fact.

Where a Referee has made a decision on the issues raised as part of the Disputes Tribunal hearing there is no jurisdiction for the District Court to reach a finding different to that of the Referee.

A Notice of Appeal may be obtained from the Ministry of Justice, Disputes Tribunal website. The Notice must be filed at the District Court of which the Tribunal that made the decision is a division, within 20 working days of the decision having been made. There is a \$200 filing fee for an appeal.

You can only appeal outside 20 working 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, then 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>.