



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 284

APPLICANT X Ltd

RESPONDENT K Ltd

The Tribunal orders:

The claim is dismissed.

Reasons

1. X Ltd purchased some tractor duals (wheels) from K Ltd. SB from K Ltd and DP from X Ltd agreed that X Ltd could pick the duals up at any time from K Ltd's yard. SB was not always at his yard in [City] and noticed about three months later that the duals were gone. About a further year later, DP contacted him to say that he had tried to pick up the duals and they were not on the property. SB investigated, and it appeared they had been stolen. SB reported the matter to the Police. Each tried to make an insurance claim but received advice from their respective insurance brokers that the other party was the owner and so they could not claim. X Ltd filed a claim in the Disputes Tribunal for a refund of the purchase price.
2. This is a claim by the purchaser for the refund of the purchase price (\$2,000.00) of some tractor duals which were not received from the seller.
3. The issues to be determined were as follows"
 - a. Which party was the owner of the duals at the time they were stolen?
 - b. Considering the answer to the first question, is K Ltd required to pay any money to X Ltd?

Which party was the owner of the duals at the time they were stolen?

4. In any sale and purchase of goods, ownership passes in accordance with the provisions of the Contract and Commercial Law Act 2017, sections 143-148. The sections provide that ownership (called "property" in the Act), is passed in accordance with the parties' intentions, which, unless otherwise agreed, are to be determined by the Rules in section 146. The insurable risk in the goods passes with ownership unless otherwise agreed (section 148).
5. The contract in this case was a simple sale and purchase through the Trademe website, and the parties did not discuss when ownership would pass. The circumstances were that the money was paid and the parties agreed the purchaser would pick up the goods from the yard operated by the seller at any time.
6. In this case Rule 1 of section 143 applies. In the case of an unconditional contract for the sale of specific goods in a deliverable state, property/ownership passes at the time the contract was

made, or in other words, when the parties reached agreement. The second part of the rule states that it is immaterial whether the time of payment or the time of delivery is delayed.

7. This sale and purchase was unconditional, the goods were specific goods and they were in a deliverable state. As a consequence, the goods became the property of the purchaser at the time the agreement to purchase the goods was made. At that time, the goods were at the yard belonging to K Ltd. The insurable risk passed at the same time as the ownership passed. When the goods were later stolen, they therefore were owned by X Ltd as the purchaser.
8. Both parties were told by their respective insurance brokers that they could not make a claim on their insurance because they were not the owner of the goods at the time the goods were stolen. However I have found that legally, X Ltd was the owner of the goods at the relevant time. That suggests that X Ltd ought to be able to make a claim on its insurance, depending on the terms of the company's policy.
9. SB advised in the hearing that he had filed a complaint with the Police about the goods being stolen, and he said he would forward the documentation of the Police complaint to DP to assist with X Ltd's insurance claim.
10. Because I have found that X Ltd was the owner of the goods at the time they were stolen, K Ltd is not required to compensate X Ltd for breach of the contract, because I have not found that any breach has occurred.

Referee: M Wilson
Date: 25 July 2023



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 of 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>.