

BETWEEN

FG Ltd (FG)
APPLICANT

AND

TT
RESPONDENT

Date of Order:

9 March 2018

Referee:

Referee: Perfect

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that the respondents, Ms TT and Mr TT, are jointly and severally liable to pay the sum of \$999.81 directly to FG Ltd on or before 28 March 2018.

Facts

In 2016 Ms TT and Mr TT supplied 54,000 grapevine rootstocks to FG Ltd('FG'). The rootstocks were supplied in several consignments from late July to mid-August 2016. FG began the processing of the rootstocks in September and this continued until mid-December.

In January 2017 FG advised Ms TT and Mr TT that approximately 1600 cuttings had been rejected and a dispute arose about the timeframe for rejection of rootstocks. In July 2017 FG clarified the exact number of rejections was 2200 and invoiced for that amount at the rate charged to them of 45 cents per rootstock plus GST, being a total of \$1138.50.

FG claims the invoiced amount of \$1138.50, legal fees of \$240.00 and interest at 5% from July 2017. Ms TT and Mr TT dispute the invoice, saying the rootstocks were not rejected within a reasonable time.

The relevant law is the Sale of Goods provisions in the Contract and Commercial Law Act 2017 ('CCLA').

Issues

What length of time constitutes a reasonable period for FG to examine the rootstocks for the purposes of ascertaining they conform with the contract?

Did FG indicate to Ms TT/Mr TT that it had accepted the rootstocks at any stage prior to notification that there were a number of rejected rootstocks?

What is a reasonable time for FG to retain the rootstocks without indicating to Ms TT/Mr TT that they were rejecting some?

Is a refund for rejected rootstocks justified and if so, for what number of rootstocks?

Is FG's claim for legal fees and interest on the invoiced amount payable by Ms TT/Mr TT?

What length of time constitutes a reasonable period for FG to examine the rootstocks for the purposes of ascertaining they conform with the contract?

Section 169 of the CCLA provides that if goods are delivered to the buyer without the buyer previously examining them, the buyer is not treated as having accepted them unless and until the buyer has had a reasonable opportunity to examine them for the purpose of ascertaining whether they conform with the contract. What is reasonable in any given situation will depend on the nature of the goods, and in this case, the number of rootstocks supplied is also relevant as is any time delay between delivery and processing.

The parties agree that the goods were delivered in multiple consignments between late July and mid-August. Mr XX for FG says processing did not begin until September and continued through until mid-December. Mr TT acknowledged that it is usual for some rejections to occur with the nature of the product and is usually based on curvature and the location of cut at the bottom of each rootstock.

Mr XX added that rootstock size is also an issue and he specified the required size and curvature in an email from him to Ms TT/Mr TT in April 2016, prior to this order being placed. In that email he also states that "we reserve the right to reject and have refunded any material that does not meet our standard which is commensurate with the national grafted grapevine standard". MsTT/Mr TT did not dispute the contents of this email but contend that FG took too long to notify them of any rejections. However, they did not respond to the email of April 2016 with any timeframe requirement for

rejection so there was no timeframe determined by the contract formed between the parties.

I find that given all the above, and particularly the nature of the product, being live plant material, and the quantity supplied (54,000 rootstocks), it was reasonable for FG to examine individual cuttings and assess their suitability over its processing period from September to December 2016. Because the rootstocks needed to be chilled, they went straight into chilled storage upon delivery of each consignment and I accept that it was commercially practicable to examine each rootstock individually only once processing commenced in September.

Ms TT and Mr TT raise the argument that other buyers of theirs were able to examine and provide notification of rejection within a significantly shorter period. However the evidence they have provided to this effect is for lower quantities of product (504 units and 23,000 units for two buyers respectively) and in one of the examples (the one for the larger amount of 23,000 rootstocks), delivery occurred in September, so there was presumably no delay for that buyer between delivery and the beginning of processing. Regarding the number of rootstocks supplied to these other buyers, the respondents say that higher numbers were provided to each but they have provided no evidence of that.

The timing of notification of rejection by FG to the respondents will be addressed below.

Did FG indicate to Ms TT/Mr TT that it had accepted the rootstocks at any stage prior to notification that there were a number of rejected rootstocks?

Ms TT and Mr TT contend that at the time rootstock was delivered to FG, Mr XX reported back that the sticks “look very good” and were “moist and nice and cool”. However, this does not constitute acceptance of the rootstocks on an individual basis because it does not address the criteria for acceptance of size, curvature and location

of cut and I accept that examination of individual cuttings was not carried out until processing of them began in September.

There was no other communication presented to the effect that the rootstocks were accepted prior to the end of processing in December 2016 and notification of rejection in January 2017.

What is a reasonable time for FG to retain the rootstocks without indicating to Ms TT/Mr TT that they were rejecting some?

The reasonable timeframe for examining the rootstocks has been determined above as the processing period from September to December 2016, taking into consideration that Mr TT has accepted that some rate of rejection for the reasons already identified is not unusual.

Given the processing ended in December 2016, I find that notification of the rejection in January 2017 occurred within a reasonable time. Ms TT contends that the notification at that time was linked to her correspondence in mid-January to FG about a price increase for 2017, but any relationship between the communications is speculative and 21 January, being the date of notification by FG, stands alone in terms of consideration of the issue of 'reasonable time' under the CCLA.

In addition, I find that there was no particular loss to Ms TT/Mr TT as a result of being notified of rejections in January 2017 rather than in July/August (upon delivery) or September 2016 (at the beginning of processing). When asked what difference it would have made, Ms TT said only that she could perhaps have offered a credit against next year's order. No party put forward the argument that the rejected rootstocks had any value and Ms TT/Mr TT did not seek their return, which further supports the finding that notification in January was reasonable.

Conclusion

Is a refund for rejected rootstocks justified and if so, for what number of rootstocks?

I find that as the number of rejected rootstocks notified within a reasonable time after the end of processing was “approx. 1600 cuttings” and there is no tangible evidence of the 2200 invoiced for in 2017, a refund at 45 cents per rootstock is justified (as damages under section 196(b) of the CCLA), but only for the number notified as at January 2017. Allowing a 15% margin for the approximation given at that time, I set the refund at \$952.20, being 1840 rootstocks at 45 cents per item, plus GST.

Is FG’s claim for legal fees and interest on the invoiced amount payable by Ms TT/Mr TT?

As there was no provision in the contract for payment of legal fees by either party in the event of a dispute the legal fees are not awarded. Further, the incurring of legal fees was optional as either party could also have filed with the Disputes Tribunal from July 2017 as it was clear that a dispute existed.

Interest at the judicature rate of 5% is awarded on \$952.20 from the time of notification in January 2017 but limited to 12 months (being the reasonable time in which a Tribunal claim could have been filed and determined), interest being \$47.61. The total amount Ms TT and Mr TT are liable to pay is therefore \$999.81.