

Retention of Title - All Accounts Clauses

Armour v Thyssen Edelslahalwerke AG, House of Lords, (1990) 3WLR 810

Puma Australia Ltd v Sportsman Australia Ltd, Supreme Court of Queensland, Moynihan J., 7 December 1990, No 346/90

Recent decisions have reinforced the validity of "all accounts or all monies" retention of title clauses for the supply of goods.

In *Armour v Thyssen* the House of Lords decided that clauses which provide that title to goods supplied does not pass to a buyer until monies on all accounts have been paid are effective to retain title. The decision was made despite the fact that such clauses do in a sense give the seller security for unpaid debts.

The Supreme Court of Queensland last December also held that such clauses are effective to reserve title (*Puma Australia v Sportsman's Australia*).

These two recent cases now remove for all intents and purposes any doubt that such clauses properly reserve title.

A financier's security over a business can be significantly eroded if a supplier of goods to a business has such a clause in the terms of supply. The result could be that the supplier can take back all of the goods he has supplied even where they have been paid for in full, if there are any debts owing to the supplier on any other account. The loss of security over stock-in-trade which a financier may suffer can be far-reaching and may in some circumstances deprive a financier of any security at all.

Financiers should review the value of their securities bearing in mind the prevalence of such clauses in the business community.

- **Lloyd Nash, Partner and Haydn Oriti, Solicitor, Henderson Trout, Solicitors, Brisbane. Reprinted with permission from Henderson Trout's HT Update.**

Sales Tax - Fitout Partitioning

Feltex Commercial Interiors Pty Limited (trading as Co Design) v Commissioner of Taxation, Federal Court of Australia, No G564 of 1989, Lockhart J, 26 September 1990.

This case concerned the question whether ducted panelling and related accessories supplied by Feltex Commercial Interiors Pty Limited, trading as Co Design, and installed by it in commercial premises in Sydney were exempt from sales tax pursuant to section 5 and certain items in the First Schedule of the Sales Tax (Exemption and Classifications) Act 1935 ("the Act"). These proceedings were commenced in the High Court, but the High Court made an order under Section 44 of the Judiciary Act 1903 (Clth) that the matter be remitted to the Federal Court.

Co Design carries on the business of manufacturing ducted panelling and related accessories and its supply and installation in premises throughout Australia. This case concerned the supply and installation of Co Design's "System 2" panelling at the Sydney head office of Coles Myer.

The partitioning components consisted of fabric covered aluminium framed panels, both ducted and non-ducted, aluminium power posts, rectangular aluminium frames to receive glass panels (generally referred to as "office frames"), wall starters to enable panels to be attached to a wall, aluminium posts, fixing brackets, ductcover plates, power outlets, post caps and panel caps, steel strengthening bars, joining keys, screws and clips and various items of hardware such as dynabolts and wall. Co Design also supplied Coles Myer with work tops, metal storage units and mobile drawer units.

The Commissioner of Taxation argued that the "goods" the subject of the contract were not the individual components but the assembled partitions and workstations. The Commissioner described this as "furniture" and said that this furniture was manufactured by Co Design from various components and became distinct from those components once supplied and installed. The Commissioner submitted that the goods so manufactured and sold were not within any of the exemption items in the First Schedule and in particular not within Item 83.

Lockhart J held that this was not the correct construction of the contract. The contract was to supply and install a large number of specific items of equipment each of which was assigned a particular price and, ultimately, the total price was stated with no overall charge for installation. It was not a contract of the kind for which the Commissioner contended.

Lockhart J said that, even if the contract was of a kind which the Commissioner contended, then it did not follow that the goods would fail to qualify for sales tax exemption. In that event, the goods would answer the description of goods having structural uses similar to those of plaster or plaster products and of a kind used principally in the construction of and wrought into or attached so as to form part of the building in which the Coles Myer premises were situated thus qualifying under Item 83(2) of the Act.

- **John Tyrill**