

Asserting Retention of Title (ROT) over mixed goods

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Retention of title (ROT) clauses are commonly used when suppliers are supplying goods, however, problems often arise when the goods subject to an ROT clause are mixed with, or incorporated into, something else.

Facts

CKE Engineering Limited (CKE) was in the business of galvanising metal and possessed 265 tonnes of solidified zinc at the point it entered administration. The solidified zinc, which was held within a tank, was obtained from various suppliers, including CKE. The court determined that CKE had supplied approximately 82% of the zinc within the tank on the basis of detailed contractual conditions, including, importantly, a lengthy ROT clause.

The court was asked to determine if CKE had validly retained title to the zinc it had supplied. CKE argued that the zinc had not been converted into a new product (despite being melted down and mixed with other molten zinc). The company in administration argued that the ROT clause only applied to the supplied zinc ingots and not the molten zinc, which it argued had lost its identity when refined and mixed with other zinc.

Decision

The judge found in favour of CKE. The key principles upon which he relied were as follows:

- whether the goods are still identifiable is a question of fact and degree in each case and where goods are mixed by agreement, the owners have an interest in the combined product in proportion to their respective contributions.
- as the ROT clause was effective and given that both parties contemplated the immediate melting of the zinc, to be mixed with other zinc, the judge found no conceptual difficulty with the parties sharing ownership in the combined molten zinc.
- the judge also found no practical difficulty in deciding that the molten zinc was essentially the same material as the solid zinc ingots which had been initially supplied.

As CKE had supplied 217 of the 265 tonnes of zinc in the tank, CKE was therefore entitled to claim ownership of 82% of the zinc held within the tank.

Comment

For a retention of title clause to be effective, it is necessary that the goods supplied remain identifiable. Crucially, in this case, the zinc in the tank was essentially the same material.

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