

International Convention on Sale of Goods

What you need to know when purchasing a truck from overseas

A recent case decided by the Court of Appeal considered the issue of the extent to which a seller of trucks can be found liable to a purchaser when the trucks sold are not fit for their purpose. In this case the reason why the trucks were not fit for their purpose was not because of any physical defect in the trucks themselves, but because the vehicles did not comply with the regulatory requirements for such vehicles in the country in which the vehicles were going to be used.

The plaintiffs in the case were a couple who operated road transport, water and earthmoving business in Queensland, Australia. They decided to purchase from a New Zealand company four trucks to use in their business.

The four trucks, Volvos, were originally assembled in Australia to comply with the Australian Design Rules. At the time of assembly, the compliance plates which certify that the vehicles are manufactured to comply with the Design Rules, were not attached to the trucks since they were intended for export to New Zealand, and they required some minor modifications for that market.

The defendant in the case was the vendor's sales agent.

The four trucks were purchased in New Zealand by the couple and shipped to Queensland. After the trucks arrived, the couple discovered they could not be registered because they did not have the compliance plates attached, and because they had not obtained an authority to import them from the National Transport Department.



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The contract between the sales agent and the couple did not contain an express term as to the registerability of the trucks in Queensland. The issue at trial therefore was whether, and in what circumstances, a seller of goods could be liable because the goods were not fit for their purpose when the lack of fitness arose as a result of the non-compliance with regulatory requirements in the purchaser's country.

The relevant law (unless the parties contractually agree to exclude it) is the United Nations Convention on Contracts for the International Sale of Goods. That convention provides that goods must be fit for the purpose for which the goods would ordinarily be used or fit for any particular purpose expressly or impliedly made known to the vendor.

The Court found that in principle under the convention, for an international sale of goods the vendor is not responsible for compliance with the regulatory requirements or standards of the purchaser's country unless particular circumstances can be shown so as to demonstrate the vendor knew or ought to have known about those regulatory requirements.

The couple submitted that the following amounted to circumstances such that the vendor's agent ought to have known about the particular registration requirements in Australia: the advertising by the vendor's agents of trucks for sale in Australia and, the fact that prior to this sale they had sold seven other used Volvo trucks to buyers in Australia.

The Court found that those circumstances were not sufficient to show that the vendor's agent ought to have known about the regulatory requirements in Australia.

The Court said that the fact that the vendor's agent promoted trucks for sale in an Australian trade magazine did not carry much weight as the advertisement did not promise anything in respect of achieving registration in Queensland. The advertisement in fact offered shipping prices ex New Zealand or landed at Brisbane or elsewhere indicating that the vendor's role ceased at the latest upon delivery by ship on to the wharf at Brisbane.

With respect to the fact that the vendor's agent had previously exported seven Volvo trucks to Australia, the Court considered in a like manner that that fact was not of any particular weight because the vendor's agent was not aware of any problems encountered by any of those purchasers when importing the vehicles or in achieving registration in Queensland.

The Court also found it relevant that the vendor's agent expressly recommended to the couple two expert Australian contractors who could assist with the importation and registration process, thereby clearly excluding those steps from their responsibility. By suggesting expert contractors, the vendor's agent was informing the couple about the limits of their own expertise and knowledge about the regulatory requirements within Australia.

Finally, the Court also considered it material that the couple themselves were experienced transport operators and were in a better position than the vendor's agent to know the relevant registration requirements in their own country. They had inspected the four trucks and could see that they did not have compliance plates on them.

The message that can be taken from this case is that if you are purchasing a vehicle from another country, it is your responsibility as purchaser to ensure that the vehicle complies with the requirements in your local area. Only in special circumstances could that responsibility be moved to the vendor.

This is a brief summary only on Driver Licence Stop Orders. For more information on this topic, please contact Cathy Fisher at Fortune Manning on 915 2412, cathy.fisher@fortunemanning.co.nz, or Shafraz Khan on 915 2422, shafraz.khan@fortunemanning.co.nz

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