

LETTER OF THE LAW

The value of lost goods

If a manufacturer and seller of goods loses products through the fault of another before he can make delivery and earn the sale price, what happens? Alan Ma finds the answer in a Court of Appeal case

Goods can be valued based on either their cost price or their sale price. The manufacturer or seller will be able to recover only the cost price if it can mitigate its loss by making a sale of replacement goods. On the other hand, the sale price is recoverable if the loss of the goods means the loss of the sale. However, does the burden of proof rest upon claimant manufacturer or seller to prove that it has lost the sale, or does the burden rest with the defendant to prove that a replacement sale has occurred?

Burden of proof

In *Sony Computer Entertainment UK v Cinram Logistics UK*, Sony sold computer games and peripherals. Cinram Logistics was responsible for the warehousing and distribution of Sony's products. A retailer ordered memory cards from Sony as a continuous product, and received them at an agreed price that was more than three times the cost price to Sony.

A consignment of 17,000 memory cards due to be delivered to the retailer was stolen. Cinram admitted liability, but the issue arose as to whether Sony's claim was for the sale price or the cost price.

Initially, the court decided that the burden of proof rested on Sony to show it had lost the sale. The Court of Appeal reversed this. It was not for Sony to establish that there had not been a replacement sale. The owner of goods lost



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through the fault of another was entitled to the sale price unless the defaulting party can prove the profit was earned by a replacement sale.

Remarks

The reversal of the burden of proof is particularly relevant when a seller or manufacturer is undertaking regular and continuous transactions with a buyer because it is difficult for the seller to know if any subsequent orders are allocated for stolen stock or part of ongoing refills of stock.

Here, the Court of Appeal's decision shows a seller or manufacturer that has lost goods as a result of someone else's fault will be entitled to recover the sale price, unless the defendant can establish that a subsequent sale has gone ahead with replacement goods.

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