

# CGGLAW

## LESSONS IN LITIGATION

In this edition of Lessons in Litigation we learn that even though the other party in your dispute is much larger and potentially better resourced than yourself you should still be willing to assert your legal entitlements. We also learn that if you intend to assert some breach by the other party, you should do so in a timely fashion.

Our client – a long-established and iconic Toowoomba business - was the exclusive distributor for an internationally recognised company with a high-quality, high-cost product. After years of enjoying a mutually happy and profitable relationship, the international company informed our client that they would be terminating the agreements that were on foot unless our client could satisfy certain demands (and they were very expensive and onerous demands) that the international company (“IC”) said they were entitled to insist upon under the distribution agreements. The IC offered to pay a total of just under \$20,000 to our client if the agreements were terminated. That’s when our client came to us.

When we examined the dealings between the parties and then applied those facts to both the IC’s entitlements to terminate under the agreements, and to the law, we formed the strong view that if the IC had ever had the right to terminate under the agreements, then they had long ago ‘waived’ that right. While the IC had complained about possible breaches over 18 months prior to our involvement, they had then allowed those complaints to ‘drift away’, while at the same time both parties had continued on with the agreements on a ‘business as usual’ basis. The IC couldn’t now turn around and terminate. In those circumstances we were able to assist our client to say that if (which, incidentally, our client denied) there ever had been breaches, it was far too late for the IC to rely on those breaches to terminate. Instead, our client was able to say that the agreements were on foot and perfectly enforceable.

That very strong legal position was put with polite force to the IC, and that in turn allowed our client to negotiate an outcome that resulted in our client agreeing to allow the IC to ‘walk away’ from the agreements – but only upon the payment of over \$65,000 to our client.

Properly understanding the legal position – and being prepared to insist upon their legal entitlements - allowed our client to improve their outcome by over \$45,000.

The matter is a reminder to all business owners that they need to handle possible breaches of agreements with their suppliers or customers very carefully. If – like the IC in this instance – they fail to do something to preserve their rights to rely upon a possible breach of an agreement when that breach occurs, then there’s a real risk that they will lose entitlements that they might otherwise have had. Equally, the matter is a reminder that ‘the rules’ – whether contained in agreements, or in legislation, or in case law – are enforceable. It’s one thing to act commercially, but no business owner should walk away from their legitimate entitlements just because another party says so – even if that other party is a large international company.

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