

Both the parties in the question have come to a problematic situation which is complicated to resolve. Friend's of the Forest (Friends), represented by Christabel, is involved in a commercial trade with Paper Supplies Pty Ltd (Paper) which is represented by Dee.

A contract needs four essential elements to exist. In the situation, it is obvious that the four elements are satisfied. As the details are not fully provided, it is arguable as to when the contract was formed which will affect the legal rights and obligations of both parties.

The first main issues to be discussed regarding the contract is whether is the exemption clause binding and enforceable, is the document contractual in nature, and was the exemption clause a term of the contract.

It is arguable that the contract was formed only after the goods and delivery note had been delivered, and Christabel retained the goods without making any objection to the conditions on the note. But this did not mean that all conditions contained in the note were terms of the contract. It was not possible for Christabel to negotiate the terms in the document as it was delivered by the driver and is reasonable to assume that the driver is not an agent of Paper. Thus, Christabel could not negotiate the terms with Dee.¹ Nevertheless, Christabel did sign the document which will become binding as the fact that a person that has signed a document is strong evidence that the person has agreed to be bound by it. In the case of *L'Estrange v F Graucob Ltd*, Mrs L'Estrange signed a document containing an exemption clause without reading it. The court held that Mrs L'Estrange had signed the agreement and therefore was bound to it. In the

¹ *Interfoto Picture Library Ltd v Stiletto Visual Programmes Ltd* [1988] 1 All ER 348 (Court of Appeal)

situation, regardless of whether Christabel has read the terms of the document, the signed agreement has been signed by her and therefore she is bound to it.

A possible exception is that Christabel can argue that the contract was already formed after the negotiations and it was before the document containing the clause was presented. To prove this, Christabel has to prove that it was a fully oral contract which was formed right after the negotiations where the four essential elements of a contract already exist. Following that, Christabel has to argue that the document did not appear to be contractual. In *D J Hill and Co Pty Ltd v Walter H Wright Pty Ltd*, the negotiations were conducted entirely by telephone and when the goods were delivered, Hill's employee signed a form which contained an exemption clause. The document signed was regarded as a delivery docket and that when they signed it; all they were doing was acknowledging delivery. Christabel can argue that she was merely acknowledging delivery.

Apart from that, issues in the contract involves both explicit and implicit terms as well. In the negotiation stage, Christabel explains the importance the high-quality recycled paper which is not treated with chemicals of the product to Dee. As Friends is an environmental organisation, it is essential that the products they sell are environmentally friendly products. Dee is aware of this as he claims that Paper was entirely supportive of Friend's ethos. As the contract was done to provide those goods to a third person and not for personal, domestic or household use, the Goods Act Part I apply. Although twenty boxes were to be used for

Friend's own office, it is not included within personal or household use but business use.

Although there was no written document on the terms, the oral representations are still binding as the terms are conditions which go into the root of the contract. Paper has breached the terms of the contract as problems arose when some of the paper was found to be thick, coarsely textured and heavily impregnated with chemicals. As the terms are conditions, breach of those terms can allow Christabel the remedies of termination of the contract and/or damages. Christabel has the rights to terminate the contract where the parties are relieved from all future obligations and there is no attempt to return the parties to the positions they occupied prior to the contract.² But under the Goods Act Part I s.16(3), it is stated that once a buyer accepted the goods, any breach of condition must be treated as a breach of warranty for the purpose of limiting the remedy to damages.

Apart from that, Paper has breached the Goods Act Part I s.19(a) which states that "where the buyer expressly or by implication makes known to the seller the particular purpose for which the goods are required so as to show that the buyer relies on the seller's skill or judgement and the goods are of a description which it is in the course of the seller's business to supply (whether he be the manufacturer or not) there is an implied condition that the goods shall be reasonably fit for such purpose...". As mentioned above, Christabel has explained the importance of the product to Dee who is the person acting on behalf of the seller. Regardless of it, Paper has breached this implied term by delivering papers

² Sweeney and Oreily (2001) pp. 214-215

which are thick, coarsely textured and heavily impregnated with chemicals. Under this act, a breach of this implied term will amount to a breach of condition which entitles Christabel the remedies similar to those mentioned above.

Other than that, Paper breached Goods Act Part I s.87 of sale of description. According to the facts of *Beale v Taylor*, the seller advertised a car for sale as a convertible 1961 but then the buyer later found out that the car does not correspond with the description by which it was sold. So, though a buyer has inspected the car, it was still a sale by description so there was a breach of contract. In Christabel's case, though she has inspected the papers, but still it was a sale by description therefore Paper has breached the contract.

Paper also breached the Goods Act Part I s.20 (2) of sale by sample. "In the case of sale by sample-- (a) there is an implied term that the bulk shall correspond with the sample in quality; (b) there is an implied condition that the buyer shall a reasonable opportunity of comparing the bulk with the sample; (c) there is an implied condition that the goods shall be free from any defect rendering them unmerchantable which would not be apparent on reasonable examination of the sample." In the situation, Christabel was shown Paper's letterhead which looked to be the type and quality that she had specified as a sample. But the paper she received appeared to be far different from the sample as they were thick, coarsely textured and heavily impregnated with chemicals which rendered them to become unmerchantable. It is arguable that Christabel could not inspect all the boxes of papers as there were 200 large boxes and it is only normal to inspect one box. Because of this, Christabel was misled to accept the bulk of unmerchantable papers. Paper has once again breached an implied term which is the Goods Act Part I s.20 (2)

which will provide Christabel the available remedies. There are also many occasions when both the implied condition and also the implied condition of merchantable quality will apply. According to David Jones Ltd v Willis, Willis asked for a pair of walking shoes that must fit comfortably over a bunion on her foot but on the third occasion which she used the shoes, one of the heels collapsed. Therefore, Willis sued for the shoes of unmerchantable quality and unfit for purpose as specified by Mrs Willis. In Christabel's case, she specifically asked for high quality recycled papers but Paper Supplies failed to deliver such goods.

As Paper has breached all these explicit and implicit terms, the only defence possible is related to the exclusion clause mentioned earlier. In the Goods Act Part I s. 61, "where any right duty or liability would arise under a contract of sale by implication of law it may be negated or varied by express agreement or by the course of dealing between the parties or by usage if the usage be such as to bind both parties to the contract." This means that the implied terms can be totally excluded with the implication of an exclusion clause in the contract. In order for Paper to exercise this option, they will have to prove that the exemption clause was a term in the contract and that it is binding.

Because of the exemption clause issue Christabel will have to argue with the exception that was explained earlier.

In the situation, it was explained earlier that Paper's breaches will entitle Christabel possible remedies of termination and damages. Damages are an award that is designed to place the plaintiff in the position in which the plaintiff would have been had the tort not been committed, including allowance for expenditure

incurred in reliance on defendant's conduct. Fair compensation rather than punishment or retribution is the primary purpose of an award of damages.³

According to the question, Paper's breach caused the expensive laser printer in Friend's office to break down causing with the repair costs of \$1000 for replacing damaged components. Friends will be able to claim damages for this loss if the exemption clause is not binding.

There is also another way for Christabel to sue for damages which is by proving negligence, step one is whether the representor owed a duty of care. A duty of care was originally only owed for the chance of the goods harming somebody physically or mentally. However since Shaddock & associates Pty Ltd v Parramatta City Council, a purely economic loss can also be considered in the duty of care. Under Christabel's circumstances, a duty of care was owed because Papers were told that she was in an environmental friendly organization and needed high quality recycled papers. However, the papers bought were not fit for purpose and found to be heavily impregnated with chemicals causing her laser printer to break down.

The second step is the standard of care owed. The standard of care is what a reasonable person in the community would expect be owed knowing the qualifications and means of the person or company. Under these circumstances, Paper should know what Christabel's requirements are as they specialize in supplying papers. The final step is the remoteness of the damage. Under the circumstances in this situation Christabel could get damages for the printer and the hiring of the operator. In Reg G lass Pty Ltd v Rivers Locking Systems Pty Ltd,

³ Latimer (2001) p. 222

the high court held that goods would not have been stolen if the correct security door had been installed. In Christabel's situation, if not for the chemically treated papers, the printer would not have broken down; neither would the operator fall sick. However there is also a possibility that the exclusion clause at the end of the contract could remove Paper's duty of care in this case.

On the other hand, the damage caused to the printer due to the breach by Paper, Friend's word processor operator has several serious allergies. Therefore, Paper can argue that the damages for the replacement is too remote following the *Hadley v Baxendale* case. In *Koufous v C Czarnikow*, the House of Lords agree that "...as a reasonable business man have contemplated that Czarnikow would very likely suffer loss... it was a foreseeable loss that flowed in the usual course of events from the breach." It will be argued by Paper that the damage caused to the word processor operator was not a foreseeable loss or an incident that would happen in the usual course of events from the breach. Therefore, the damages for the cost of finding and hiring a replacement for the period of four weeks is too remote and unforeseeable and will not be awarded to Christabel.

The next issue relates to the loss of several Friend's clients due to the 'environmentally unfriendly' products where two clients have demanded a full refund and have cancelled future contracts. Christabel may with extreme difficulty be able sue for damages for disappointment and distress if referred to *Jarvis v Swan Tours*. Courts have generally been reluctant to grant damages for disappointment and distress in commercial cases. However, she may attempt to

prove that she was extremely distressed when her clients demanded full refunds and cancelled future contracts. According to Baltic Shipping company v Dillon, the High Court approved the award of damages, including damages for disappointment and distress at the loss of entertainment and enjoyment. In Christabel's case, she may plead for distress because when her clients cancel the future contracts which may be of an importance to her business, caused her company to lose its image and hence, directly affecting her image as well.

The last issue here is that Paper agreed not to enforce payment on the delivery and would offer a 10% discount on future purchases. This however is short lived as Paper sent Friends a letter, with an account enclosed, stating that is intends to rely on the document signed by Christabel at the time of delivery. The agreement offered by Dee to Christabel is not contractual by nature but it is more of a promise. Christabel can argue on promissory estoppel. Following Central London Property Trust Ltd v High Trees House Ltd, the plaintiff agreed to reduce the rent and did not try to claim back the rent. If he did, it would be rejected as the plaintiff would have been estopped from claiming back the rent. Ditto, Christabel can argue that they have an agreement that payment on this delivery will not be enforced and if Paper does do so, they will be estopped from claiming it. For Christabel to rely on the promissory estoppel rule, she will have to prove all four elements of promissory estoppel which is the assumption, the promisor was responsible for the assumption, the reliance and the detriment. In this case, Dee and Christabel have a legal relationship and Dee as the representative of Paper made assumptions of not collecting the payment of the delivery. In reliance,

Christabel acted on the faith of the assumption and manage to calm down the unsatisfied clients and she will suffer detriment if Dee reneges on the promise.

In conclusion, Christabel's claims for damages and breach of warranty will most likely be approved based on facts and cases given above.

Bibliography

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