Goodexample in business law assignment

Introduction to Business Law Assignment- 20% Lecturer: Arthur Hoyle Tutor: Rosa Raco- Tues 4. 30-5. 30pm LEGAL ADVICE Subject University of Canberra – Breach of Contract and Damages matter You have sought my advice as to you rights under the original contact between your company, Peerless Computers and the University of Canberra, which you consider that the University has breached. Your company has requested advice as to whether a term such as delay by a third party can be successfully implied into the contract.

Additionally, your company has sought advice as to whether the University can recover its additional costs arising from the failure to meet the obligations of the contract, and if so how much of these costs can be recovered. Background The University of Canberra invited tenders from computer manufacturers to re-equip its computer centre. Peerless computers made an offer to University to supply the computers. The offer was accepted by the University and a contract was signed requiring delivery no later than one week prior to the start of the next semester.

Two weeks prior to the commencement of the semester as the result of a fire at Peerless' supplier's factory a delay of three weeks is placed on essential computer components. Upon being informed of the fire the manager of Peerless computers immediately contacted the University to advise that they would be unable to meet the terms of the contract. The manager did not offer any suggestions as to what solutions were available to the University.

The University then formally cancelled the contract with Peerless and engaged into a contract with another supplier, Fujitsu. The consideration of

the new contract with Fujitsu was 20 percent higher than that of the contract with Peerless. The computers were delivered by Fujitsu in the required timeframe. The University invoiced Peerless computers for the 20% additional cost incurred. Advice Breach of Contract The breach of a contract can be defined as the failure of a party to a contract to perform a contractual obligation. 1] The contractual obligations that were to be carried out by your company were to supply the University of Canberra with computers one week prior to the commencement of the semester and the University was required to provide consideration for the computers. Both of these obligations could be considered as conditions of the contract as they are vital to the contract and so important that non performance may be considered by the injured party as amounting to substantial failure to honour the contract at all and could be grounds for setting the contract aside and or suing for damages. 2] It would appear that the fire is the result of an unforseen circumstance and similarities may be drawn to the case of Taylor v. Caldwell (1863) 122 ER 309 in which the obligations were physically impossible to be carried out due to destruction of subject matter. However in the case of Taylor v. Caldwell the entire subject matter was destroyed and in this case only parts of the subject matter were destroyed not the entire objects.

Although you did anticipate that you would be unable to carry out your obligations due to the fire in a timely manner, it would appear that your company failed to mitigate the loss[3] that would occur as a result of not having the computers delivered on time. No solutions were provided to the University and it may also be noted that your company did not attempt to

contact alternate suppliers to seek out the parts that were unavailable from your regular supplier.

It would be reasonable to assume that if such an event was to occur resulting in the unavailability of parts that a firm would make a reasonable attempt to acquire the parts from an alternate supplier. In regards to whether or not the University of Canberra has breached the contract by the act of cancelling the contract with your company and engaging an alternate supplier depends on the circumstances that led them to be put into a position in which to do so.

Prior to the University cancelling the contract they were advised by your company that due to a fire at their supplier's factory in Silicon Valley they ' would be unable to meet the strict terms of the contract' and as a result essential components would be delayed by three weeks. This making the delivery later than that of the time specified in the contract of ' no later than one week prior to the start of the next semester'. As mentioned above the delivery time was a condition of the contract and has a serious impact on the contract.

As in the case of Possuard v. Spiers & Bond [1876] 1 QBD 410 services were required to be carried out by a specific date and it was a crucial part of the contract that this was to occur. When the acts were not carried out it resulted in a breach which entitled the contract to be repudiated. It seems as though this case would be similar to the case of Possuard v. Spiers & Bond and as such the University may not have breached their contract by

cancelling as a breach had already occurred when your company was unable to deliver the goods on time.

It would be reasonable to assume that your company left them with no alternate option other than to cancel as they were not offered any alternate solutions by your company. However, it should be noted that the University did cancel the contract in an abrupt manner and swiftly entered into a contract with another supplier, they should have at least tried to negotiate a solution to the issue with your company. This issue will be further explored in the awarding of damages section. Implied terms

Whether or not a term can be implied into a contract depends on if it satisfies five criterion that were outlined in the case of BP Refinery (Westernport) Pty Ltd v. President, Councillors and Ratepayers of the Shire of Hastings (1978) 52 ALJR 20, these are as follows: (1) It must be reasonable and equitable; (2) It must be necessary to give business efficacy to the contract, so that no term will be implied if the contract is effective without it; (3) It must be so obvious that " it goes without saying"; (4) It must be capable of clear expression; 5) It must not contradict any express term of the contract. Your company enquired as to whether a term such as time delay by a third party could be implied into the contract and if so this would result in a breach of the contract by the University of Canberra. As mentioned in the above case, BP Refinery (Westernport) Pty Ltd v. President, Councillors and Ratepayers of the Shire of Hastings the fifth criterion clearly states if a term is to be implied into a contract it must not contradict any express term of the contract.

An express term was defined in the case of Friedlander v Bank of Australia (1909) 8 CLR 85 as ' An expressed declaration of a particular promise or stipulation in the contract itself. ' The contract between your company, Peerless and the University clearly stated that '(delivery was required) no later than one week prior to the start of the next semester'. It would appear that this statement could be viewed as an express term of the contract.

Due to a fire at your suppliers factory you were unable to meet the express term of the contract which required your company to deliver the goods ' no later than one week prior to the start of the next semester'. Accordingly in our view it could be seen that your company does not have a basis for claiming that a breach has occurred due to an implied term in the contract as the implied term of delay due to a third party is contradicted by the express term requiring the delivery no later than the required date of one week prior to the commencement of the semester.

Awarding of Damages Your company has sought advice as to whether the University can recover its additional costs arising from the failure to meet the obligations of the contract, and if so how much of these costs can be recovered. It has been established that a breach in the form of a condition, has occurred as a result of your company being unable to deliver the computers to the University by the specified time. This breach resulted in the University cancelling their contract with your company and then entering into a new contract with Fujitsu.

Fujitsu was able to deliver the computers on time however their charges were 20 percent higher than your company's. Damages are awarded to put

the injured party back in the position that they would have occupied if the contact had been performed as originally intended. [4] It could be assumed that the price provided by Fujitsu was no higher than their original offer. By the University choosing to enter into a contract with Fujitsu at a later date they were not put into a position in which they lost out on an earlier discounted offer from Fujitsu. It may seem apparent that the University was actually in no worse position than they would have een if they had decided to go with Fujitsu in the first place. Agreed Damages Clause An important aspect to consider is that if the condition of having the computers arrive on a certain date was so important to the University then an agreed damages clause[5] should have been included in the contract. As in the case of Legione v. Hateley (1983) 152 CLR 406; 46 ARL 1 an agreed damages clause is in the nature of a punishment for non-observance of a contractual stipulation. This would have placed further emphasis on the importance of the time aspect in the contract.

As this was not present in the contract it may be seen that the payment of the additional 20 percent or in fact further compensation in any form to either party was not an agreed term of the contract if the obligations were not met. Mitigation In the case of Payzu v. Saunders [1919] 2 KB 581 the decision stated that the innocent party should have made an effort to mitigate the loss. In the current circumstances it would appear that there was no mention of negotiation between parties so we can assume that at the time of cancellation there was no reasonable effort on the Universities behalf to mitigate the loss.

It would be reasonable to assume that different solutions to resolve or at least lessen the impact of the loss should have been explored. Mitigation could have occurred in the form of negotiation between the parties in which the components were sourced from an another supplier, alternatively the University could have contacted Fujitsu and enquired as to whether they could work in conjunction with Peerless to supply the computers.

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1] Peter Nygh and Peter Butt, Concise Australian Legal Dictionary (2nd ed, 2003) Butterworths, Chatswood 57. [2] Andy Gibson and Douglas Fraser Business Law (3rd ed, 2007) Pearson Education Australia, Frenchs Forest

363. [3] Peter Nygh and Peter Butt, Concise Australian Legal Dictionary (2nd ed, 2003) Butterworths, Chatswood, 293. [4] Andy Gibson and Douglas Fraser Business Law (3rd ed, 2007) Pearson Education Australia, Frenchs Forest 408. [5] Peter Nygh and Peter Butt, Concise Australian Legal Dictionary (2nd ed, 2003) Butterworths, Chatswood 331.