

Construction law coursework

Law



Introduction

This essay provides advice to Albatt plc ('Albatt'), BudgettTechnologyLtd ('Budgett') and Cansys Ltd ('Cansys') in relation to their legal positions concerning a contract for the service of Albatt's electronic processors. Firstly, the advice shall briefly outline the relevant law before analysing the applicable law and advising each party separately.

Relevant Law

A Legally Binding Contract

In English law, the traditional approach to determining whether or not a binding agreement has been entered into is to examine whether or not the following three elements are present: offer, acceptance and consideration (New Zealand Shipping Co. Ltd v A M Satterthwaite and Co. Ltd). However, in the event that the above three elements are not clearly evident from the facts of the case, the intention to enter into a binding agreement shall be deduced by enquiring into the objective intention of the parties to enter into such an agreement by considering all the circumstances of a case: the offer, counter-offers, acceptances, revocations and rejections (Gibson v Manchester City Council).

It is also noteworthy that an offer can be distinguished from an invitation to treat which arises where an individual is simply seeking to initiate negotiations as opposed to expressing an intention to be bound by their promise (Richards 2008, p 17). However, in any given case, the intention of the parties must be assessed before arriving at a decision as to whether or not there is an offer or invitation to treat (Chapelton v Barry UDC).

The facts of this case would suggest that it involves an invitation for tenders. If that is the case, an invitation for tenders constitutes an invitation for offers to be submitted which can then be either accepted or rejected (*Spencer v Harding*). Albeit, it ought to be borne in mind that in certain circumstances, where a tender has been submitted in accordance with the applicable rules, an invitation to tender can amount to an offer, thereby providing a party with a right to have their tender opened and considered (*Blackpool and Fylde Aero Club Ltd v Blackpool Borough Council*). In the case of the supply of services, the supplier whose bid is successful is making a standing offer which is accepted by the other party every time an order is placed. Further, in circumstances concerning standing orders, a supplier can refuse to supply the services before the expiry of the agreed period without being found guilty of breach of contract providing the revocation is communicated to the other party (*Great Northern Railway Co. Witham*). However, the existing orders must be honoured (*Offord v Davies*).

An exception to the general rule that acceptance must be communicated to the other party (*Powell v Lee*) is the postal rule (*Adams v Lindsell*), which provides that acceptance takes place immediately once a letter has been validly posted (*Brinkibon Ltd v Stahag Stahl und Stahlwarenhandels-gesellschaft GmbH*). However, the postal rule can be negated where there is an indication from the offeror that they must receive acceptance before it shall bind them (*Household Fire and Carriage Accident Insurance Co v Grant*).

Furthermore, in the case of forms of communication which are instantaneous, the acceptance occurs at the moment the communication is received by the

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other party (*Entores v Miles Far East Corporation*). Therefore, the position in general regarding instantaneous forms of communication is that the law in this regard seems to indicate that acceptance is effective on receipt. Finally, it is also worth noting that the terms of an offer must be unconditionally accepted otherwise any attempt to introduce new terms shall constitute a counter-offer (*Hyde v Wrench*).

Advice to the Parties

Analysis of the Law

Albatt initially offered the contract for the service of their electronic processors to Budgett. The letter outlining this offer indicated that Budgett should reply by return of post. The case law in this instance suggests that a reply by post or an equally expeditious method will be acceptable (*Tinn v Hoffman and Co*). However, the letter did not reach Budgett until 6th September, due to an error in the address which was put on the letter. Nevertheless, Budgett did receive the letter on 6th September and, immediately upon receipt, accepted the offer and posted the acceptance letter at 11: 00AM on the same day. According to the case law, the postal rule dictates that Budgett's letter shall constitute an acceptance once it had been validly posted (*Brinkibon Ltd v Stahag Stahl und Stahlwarenhandels-gesellschaft GmbH*).

However, Albatt had agreed by telephone to offer Cansys the contract on 5th September

after not receiving any reply from Budgett, and Cansys duly accepted the offer. That said, Albatt did not send a notice of withdrawal of the original

offer to Budgett until 6th September. This notice was sent by fax, which is an instantaneous form of communication (*Entores v Miles Far East Corporation*). A notice of withdrawal sent via this method shall become effective once it has been received if sent during office hours (*The Brimnes*). This is the case irrespective of whether or not the other party has had sight of the notice.

The Legal Position of the Parties

Albatt

Albatt's legal position revolves around the issue of when the fax setting out the notice of withdrawal was sent to Budgett. If it had been sent prior to 11:00AM, on 6th September, then it would appear that Albatt had not entered into a legally binding agreement with Budgett (*The Brimnes*). However, if the fax was sent after 11:00AM the issue would turn on when Budgett's acceptance letter had been validly posted (*Brinkibon Ltd v Stahag Stahl und Stahlwarenhandelsgesellschaft GmbH*). If the letter was validly posted prior to the notice of withdrawal being received, Albatt will have entered into a contract with Budgett. If not, only the contract with Cansys will be valid. In light of the fact that the fax was received by Budgett at 10:30AM, no legally binding contract had been entered into between Albatt and Budgett (*The Brimnes*), irrespective of the fact that nobody read the fax until 5:00PM.

Budgett

Budgett's legal position turns on the issue of when its letter of acceptance was validly posted, as set out above (*Brinkibon Ltd v Stahag Stahl und Stahlwarenhandelsgesellschaft GmbH*). If the letter was validly posted before Albatt's notice of withdrawal was received, Budgett can sue for

breach of contract if Albatt does not honour the agreement. If the notice of withdrawal was sent outside normal business hours, however, it would not become effective until the following day (providing that this was a normal working day) (*Mondial Shipping and Chartering BV v Astarte Shipping Ltd*). It is noteworthy that a court would place much emphasis on the intention of the parties (*Brinkibon Ltd v Stahag Stahl und Stahlwarenhandelsgesellschaft GmbH*). However, given that Albatt's fax was received by Budgett at 10:30AM on 6th September, a court would find that no contract had been entered into between the parties (*The Brimnes*). Nonetheless, Budgett may have a claim in negligence due to the mistake in the address put on the offer letter which was sent on 1st September and was directly responsible for the delay in Budgett's acceptance being communicated to Albatt.

Cansys

Cansys communicated an offer to Albatt to do the servicing work on 4th September for ? 160, 000, per annum. However, the terms of an offer must be unconditionally accepted otherwise any attempt to introduce new terms shall constitute a counter-offer (*Hyde v Wrench*). Therefore, Albatt's offer to give Cansys the contract for ? 155, 000, instead of ? 160, 000, would constitute a counter-offer which would negate the original offer.

Nevertheless, Cansys accepted this offer and an agreement was struck between the parties. The facts of the case therefore indicate that Cansys entered into a legally binding contract with Albatt for the service of its electronic processors for the sum of ? 155, 000, per annum for five years on 5th September following a telephone conversation between the respective parties. Word Count: 1422

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