

Reflective as established in chappell v nestle consideration

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REFLECTIVE DISCUSSIONAs a legal representative of Computer Break (CB) there were several issues that I wanted to raise and resolve through the negotiation process with Have You Tried Restarting It? (HYTRI).

There were anticipated concerns on behalf of both parties, which needed clarification. I hoped this would be addressed through effective communication in the negotiation process. The first and a very important issue was in regards to the termination of the contract. As a representative of CB I wanted to highlight that the contract was not wrongfully terminated by CB. The opposition argued that the contract failed to define what constituted as a “ cause” for termination, therefore, cannot terminate the contract.

HYTRI performed the consideration on their behalf by providing the service regardless of the quality of it. As established in Chappell v Nestle consideration must be something of value, therefore sufficient regardless of the adequacy. The service provided by HYTRI is something valuable, therefore, good consideration. This means that CB could not use that as a reasonable cause for termination. As a result, HYTRI argued that they will sue CB for breach of contract, to be compensated for the damages the termination resulted in.

In discussing this I noted that the quality of service provided by CB is an integral part of their reputation and the trust people had in their work was the reason, the business was doing so well, therefore, resulted in the expansion. HYTRI knowing this is obliged to provide service of the same quality and the failure to do so could result in a potential loss instead of the

intentional profit. A contractual obligation is placed upon HYTRI (in a contract known as consideration). I agree that in Chappell v Nestle the courts don't measure the adequacy of consideration because it is up to the parties involved in the agreement to decide the worth of each promise. According to the principle of consideration, due to the legally binding contract, HYTRI is obliged to meet the standard and execute their part of consideration which was to provide the best quality service to meet up with the standards. This failure could mean a loss in the business, so therefore to prevent this.

As within Consumer Rights Act 2015 the service provided by a party must correspond the description, HYTRI was failing to meet the service described by CB. Therefore, CB had a reasonable cause to terminate the contract. Furthermore, CB felt that HYTRI failed to meet all the terms of the contract.

This issue was raised from the numerous complaints from the customers, that HYTRI while providing the service the technicians were advertising HYTRI by wearing their clothing instead of CB's. Although this was not included in the negotiations, under the proposal HYTRI was initially supposed to advertise CB but they failed to do so. Instead, they advertised their own company. CB had further "cause" for the termination, and HYTRI could initially be sued for breach of contract, as the terms of the contract were not fulfilled. HYTRI accepted this failure to abide by the contractual terms and is willing to compensate CB with £10, 000.

Although CB feels that the termination was not wrongfully executed, they are willing to compensate HYTRI some of the claims for their damages, in the

hope to maintain possible business relationships in the future. The claims for damages were addressed in order. One of the claims for damages was £20,000 annual retainer fees. CB argued this issue in light of consideration stating that it was not obliged to pay that £20,000 of annual retainer fees. As Lush J in *Currie v Misa* a consideration in the legal sense "...may consist of either some right, interest, profit or benefit accruing to the one party .

.. undertaken by the other." This is because due to the termination of the contract, the annual fee of paying upfront for the service they were going to do is no longer valid. HYTRI is not providing any service in the future under this contractual agreement, therefore, will not be compensating this amount.

HYTRI pointed out, however, that they should be compensated £60,000 for the unpaid services which were provided to CB in the first six months of the contract. It was argued using restitution in unjust enrichment whereby CB acquired the service provided by HYTRI for 6 months. They, as a result, have to pay for the service as the quality is irrelevant. The inability to pay the amount for the service provided means that it constitutes unjust enrichment which the courts would award in full amount. HYTRI wanted to obtain the full amount.

CB, on the other hand, was willing to pay for the service, but not the full amount due to the defectiveness of the service. Both parties agreed it was unfair not to pay for the service, the quality of the service is extremely significant to CB, therefore, important in the contractual agreement. This means that lower prices than agreed in the contract for the paid service of 6

months will be paid instead. As in *Hoenig v Isaac*, it was stated if the claimant substantially performed their the contract consideration they are entitled to contractually agreed price minus the cost of the defects. This, therefore, means that a price of £40, 000 was agreed upon. Essentially, this brings us to discuss the anticipated profit of £70, 000 HYTRI wanted to claim.

CB arguing that it would not take liability for the amount of profit which would have been made in the future. Arguably, in a realistic setting, it is not possible to know the amount they would make in future. However, HYTRI still strongly disagreed and argued their point using the loss of expected chance. This principle stated that loss of expected chance is compensable when the chance is promised on the contract. HYTRI would have made some of the amounts of money had the contract not been terminated. CB counter-argued that the contract was terminated on the reasonable ground using the objective test, therefore, not paying the amount. However, HYTRI argued that termination of contract has resulted in the loss of reputation and steady stream of business and opportunity to build on its growing name recognition across Leicestershire. To maintain their reputation amongst other businesses and perhaps maintaining a relationship with HYTRI for future references, CB agreed to pay an amount of £20, 000 in the end.