Contract law – problem question

Law

A contract is a legally enforceable promise or an agreement. In order to establish a contract a number of preconditions must be satisfied; offer, acceptance, consideration (degree of value), certainty and intention to create legal relations. It has already been established that a binding contracts exists between Geraldine and Leo, and Geraldine and Fred. However a number of legal issues are evidently illustrated in this case with regards to the termination of these contracts. In the first part of this essay I will consider the contract terms between Geraldine and Leo; analysing whether a termination was justified and the effects of the termination in relation to remedies. In the second part I will analyse the contract between Geraldine and Fred; whether the contract was frustrated and if the contract was not, what claims Fred will be able to bring against Geraldine.

Before we examine whether the termination was justified it is important to determine whether the use of Victorian style lights were an expressed or implied term of the contract. Express terms are those the courts find have been specifically agreed by the parties, and can be made orally and/or in writing. According to authority in L'Estrange v. F Graucob Ltd [1934]1, if it is a signed contract, there is the assumption that the contents of that contract are express terms. Since Leo is being contracted to remodel the dining room in a Victorian style, the use of Victorian style lights might well be an express term of the contract. However we are unaware of the exact terms set out in the contract and it may be likely that the contract was more general.

The implementation of Victorian style lights could have well been an implied term. The courts may imply terms in fact, attempting to fill gaps, but this is very limited and requires a high threshold. In determining the implication in

fact in the present case, courts may be more likely to apply the officious bystander test. In the Court of Appeal case of Shirlaw v. Southern Foundries (1926) Ltd [1939]2, MacKinnon LJ said that a term implied in fact is so obvious that it goes without saying. If the dining room is being remodelled in a Victorian style, it is obviously expected that the lights, furniture, doors, wallpaper, etc, will be in line with this. Therefore this is clearly an implied term of the contract.

A term may also be implied in law by statute. The contract between Geraldine and Leo clearly involves the Supply of Goods and Services Act 1982. Section 13 details that there is an implied term that the supplier will carry out the service with reasonable care and skill. Leo as a skilled professional should be aware that the style of lights used must fit the Victorian style. It is arguable that he has not acted with reasonable care and skill in making such a careless mistake and in breach of the implied term in section 13.

On the basis that the term is implied in both law and in fact, it is now necessary to determine whether the termination of contract was just. When a condition (serious term) of a contract has been breached, the contract may be terminated as a remedy of self help. However if the term is merely a warranty (minor term), then the contract cannot be terminated and an attempt to do so is a breach.

The intention of the parties is a clear indicator whether a term was intended to be a condition or a warranty. It was confirmed by Court of Appeal authority in Lombard North Central plc v. Butterworth [1987]3, that deciding

whether the term is a condition is determined, not by words used but the parties' intention behind the words. In the present case the intention of the parties was the remodelling of a Victorian style dining room. Even though the words of the contract may not have specified the lighting be Victorian, evidently this was the intentions of the parties. It is arguably a condition and so Geraldine is right in terminating the contract.

The goods/service correspondence with the description is always a condition. The House of Lords in Arcos Ltd v. EA Ronaasen & Son [1933]4, illustrates that even a minimal difference was contrary to section 13 of the Sale of Goods Act 1979, which details the requirement for the goods to correspond with description. Geraldine contracted Leo for the remodelling of the dining room in a Victoria style, and the use of lights not in keeping with this style is a clear deviation from this description and condition. This is clearly contrary to section 3 of the Supply of Goods and Services Act 1982, the lights not in correspondence with the Victoria style definition, and so therefore there is a breach of contract and so termination is approved.

If the term is regarded as a warranty, then Geraldine termination of the contract is not justified. Therefore it is clear that in terms of remedies, Geraldine may face claims from Leo for reliance loss and expectation loss (outlined below). If the term that the lights were required to be of Victoria style is a condition then the contract can be terminated, giving rise to a secondary obligation for Leo to pay damages. It was applied in Hoenig v. Isaacs [1952]5 but initially decided in Cutter v. Powell (1795)6 that an entire obligation clause goes hand in hand with substantial performance. If the performance is almost entirely completed, then there is a right to be paid.

However the claimant is compensated for amount that was not performed. As the £100, 000 is payable on completion there is clearly an entire obligations clause. If the work is not deemed to be substantially performed, then Geraldine will not have to pay Leo for the work.

However, the work Leo had done had advanced considerably and may be deemed substantial, and therefore Geraldine may have to pay him the £100, 000 for his work, but then recover damages for the incomplete work in expectation loss. The aim of claiming in expectation loss, according to Robinson v. Harman (1848)7, is to place Geraldine in the position she would have been in, if the contract was not breached. Geraldine's expectation loss may be calculated by looking at the difference between the promised performance and actual performance. Another method of determining Geraldine's expectation loss is the cost of the cure; how can you get what you bargained for? This often denotes a subject value over and above the market value provided for, accessing the value of work from scratch as illustrated in Jacob & Youngs Inc v. Kent (1921)8. There would be little difference in Geraldine using cost of cure or difference in value to calculate her expectation loss as it would only involve the purchasing of Victorian style lights.

However, as Geraldine plans to redecorate the dinning room using the paint Leo left behind, she may have to pay him in quantum meruit; paying for benefit received. The Court of Appeal in Sumpter v. Hedges [1898]9 decided that if D left material behind on a property he was working on and had to pay in quantum merit. Therefore Geraldine will have to compensate Leo for using the paint he left behind to redecorate the house.

With regards to the Geraldine's contract with Fred for the sculptors of herself and her boyfriend, it may be argued that this contract can be frustrated. This is when something external to the contract occurs, resulting in an automatic end to the contract. Previously in Paradine v. Jane (1647)10, it was held that you must stick to the contract but Talyor v. Caldwell (1863)11 held that this no longer applied.

If the commercial purpose of the contract fails then the contract is frustrated. In the case of Herne Bay Steam Boat Co v. Hutton [1903]12, the court said there must be something extraordinary which destroys a lot of the value of the contract. If some value remains then there is no frustration, only a bad deal. If Geraldine's purpose of having statutes is too improve the value of the property for it's sale, the fact that the first contract with Leo was terminated, the marble statues are no longer required either as they are of no value to her. However, the statues were of Geraldine and her boyfriend, so maybe of sentimental significance and of some value to her. If the court finds that the termination of the contract between Geraldine and Leo destroyed a lot of the value of the contract between Geraldine and Fred, then the contract is frustrated. Geraldine would not have to pay Fred the £20, 000 for the statues or the marble already purchased.

However, frustration must not be self-induced, Lauritzen AS v. Wijsmuller BV (Super Servant Two) [1990]13 , and it is arguable that Geraldine self-induced frustration as she could have continued with the Victoria style immaterial of the Leo's breach. Therefore it depends on the courts outlook on the case, but frustration will be exceptionally difficult to establish.

However if the contract is not found to be frustrated then it may be a case of anticipatory breach, Geraldine showing by express words that she does not intend to fulfil her obligations under the contract. It is unlikely that White & Carter (Councils) v. McGregor [1962]14 will apply and so Fred cannot perform the contract and claim the bill as there is no evidence in him having a legitimate interest in performance. Fred may bring a claim for damages in expectation and reliance loss; not double compensation but combination of expenditure and gross profit. In determining reliance loss, according to authority in McRae v. Commonwealth Disposals Commission (1951)15, Fred must establish his expenses in the contract. Therefore, provided that Fred can prove his expenses, he is able to recover for the money spent on purchasing the marble. Furthermore he may also claim for any pre-contractual expenditure based on the decision in Anglia Television Ltd v. Reed [1972]16.

I advise my client Geraldine, that in regards to the termination of the first contract, the requirement of Victorian lights is likely to be seen as an implied condition; the words of the contract may not have specified the lighting be Victorian, the intentions of the parties may have been so. Therefore the termination of the contract was evidently just. Although Leo's performance of the contract has advanced considerably, it may not necessarily be substantially performed. Clearly further evidence is needed but ultimately, unless it is substantially performed I advise Geraldine that she will not need to pay Leo for any of the work done. However, Geraldine will have to compensate Leo in quantum merit for using the paint he left behind to redecorate the house.

I advise my client in relation to the second contract between herself and Fred, that it will be very difficult to argue a case of frustration of contract. If it can be established in court that the statues lost a lot of their value when the contract with Leo was terminated and was not self-induced, then it may be possible to frustrate the contract if it is for commercial purposes. However this will be difficult to prove as the statues were of her and her boyfriend and may therefore be arguably of some sentimental value to her. But if frustration is established successfully then she will not be liable to pay any damages to Fred. If frustration is not established then she is evidently liable to claims of expectation and reliance loss due to anticipatory breach.