

Commercial law

Law



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Commercial Law By Due Copper Wires Duncan runs a wholesale business and he has been dealing with Craftit Ltd for quite some time. Craftit Ltd and he have agreed on a set of terms and all of their dealings are on those terms. Duncan supplied Craftit Ltd with 100 four metre lengths of copper wires. Craftit Ltd cut these wires into shorter lengths and wound some of it into coils around cardboard spools. These copper wires have not been paid for. Craftit Ltd is now insolvent.

The normal course of dealing between the parties is under the retention of title clause. In the case of the copper wires, a part of them is exclusively identifiable (which is cut into shorter lengths) because it has not been mixed with any other goods. According to sections 171 and 192 of the Sale of Goods Act, 1979, Daniel can claim the identifiable part because it is unsold and is not mixed with any other goods. In *Clough Mill v Martin*³, the seller had retained the title to the goods and when the buyer became insolvent before paying for the goods, the goods were identifiable. It was held that the seller had the title to the goods and he was also entitled to damages.

Therefore, Duncan can claim this part of copper wires because he retains the title to them and this part does not form the assets of Craftit Ltd and would not be appropriated in settlement of its claims. Larry, the liquidator, would not be able to withhold possession of them.

The part that has been wound into coils around cardboard spools is not identifiable because it now forms a part of a finished or a semi-finished good. Duncan's title in respect of this part of copper wires is lost. In *Borden (UK) Ltd v Scottish Timber Products Ltd*⁴ and *Re Peachdart Ltd*⁵, the buyer had used the resin that he had bought as an ingredient in the manufacture of chipboard. He became insolvent before payment. It was held that the seller

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had lost the title to the resin as it was mixed with other goods. The wound copper wires cannot be returned to their original form. It may be argued that the parties to the contract had agreed on the terms that the title was to be retained by the seller even if the goods were processed. This term poses a problem in reality. If the supplier of cardboard spools also had supplied them on the retention of title clause, it would be quite a conundrum. Therefore, the courts might apply *Re: Bond Worth Ltd*⁶ hence allowing property in the goods to pass to Craftit Ltd and resulting in a charge being granted back to Duncan. However, the courts would first make certain whether such a charge is allowed to exist. For this purpose, it is necessary that Duncan had registered his retention of title clause within 21 days of its creation. Otherwise, this charge would be disallowed as a matter of law under Companies Act 2006, section 874 (and predecessors)⁷. If the charge is disallowed, Duncan would be able to maintain a suit for price under s. 49 SGA⁸ which would be recoverable from Larry after he has satisfied the preferred creditors of Craftit Ltd. In this case, Duncan might not be able to recover the full price if all the assets of Craftit Ltd are exhausted in satisfying the claims of preferred creditors.

Stainless Steel Tubes

Duncan had supplied Craftit Ltd with 50 one metre stainless steel tubes under an earlier contract. These tubes were sold on by Craftit Ltd but were never paid for. The terms agreed upon by the parties indicate that “ the relationship between the two parties in respect of goods and upon the sale of any of the goods the buyer shall account to the seller for the proceeds of sale.” After the emergence of *Bristol and West Building Society v Mothew*⁹ and *Foskett v McKeown*¹⁰, the courts closely inspect the label of “

fiduciary” in commercial sale agreements as it greatly depends on how the parties have dealt with each other in practice in the past. Considering that there is actually a fiduciary relationship between the two parties, Craftit Ltd would have to keep the proceeds of sale of stainless steel tubes separate from other money which is unrealistic. Also, it is improbable that Duncan would be able to prove that there is a fiduciary relationship between Craftit Ltd and him because in a contract of sale, there is no bailor/bailee relationship but simply a buyer/seller relationship. The terms of contract between the two parties suggest that there is a charge on the sold goods. The courts may grant this charge because the parties expressly agreed and Craftit Ltd has been allowed a long period of credit. However, it is unlikely that Duncan would succeed in the recovery of such charge as seen in *Compaq Computers Ltd v Abercorn Group Ltd* 11 and *Pfeiffer Weinkellerei - Weineinkauf GmbH v Arbuthnot Factors Ltd* 12 in which the importance of buyer’s contractual freedom to deal with goods in negating and fiduciary relationship has been stressed.

Therefore, Duncan can maintain a suit for recovery of price and it would be dealt with in the same manner as in the case of the wound copper wires above. Larry’s refusal to account for any sale proceeds would stand corrected.

Aluminium Rods

Duncan entered in a contract of sale of 30 aluminium rods with Edward and appropriated the rods that were to be delivered to Edward. Duncan had 60 rods in his stock and there was an assent from Edward that he would buy 30 of those. Duncan earmarked 30 rods. However, Edward had not made any payment which is a prerequisite in the transferring of property in the goods

under s. 20(A) SGA13. The rods set aside for Edward were stolen. Since the property had not passed to Edward, the rods were at the risk of Duncan and he would have to bear the loss.

After another theft, Duncan was left with 25 rods. Application of *Barrow Lane and Ballard v Phillip Phillips*¹⁴ would render the contract as indivisible and the contract would be avoided. However, to achieve a fair result, the courts may apply *Sainsbury v Street*¹⁵ under which, Duncan would have to deliver the remainder of the goods i. e. 25 aluminium rods.

Delivery Van

Duncan had bought a second-hand delivery van from Gerald for £8, 000 which was taken by the police and returned to Hanya, the rightful owner. Gerald had unknowingly bought the van from a thief. According to the general rule of *Nemo Dat Quod Non Habet*, Hanya is entitled to the recovery of the van. Also, there is no indication that Duncan or Gerald had bought the van in a market overt. As between Duncan and Gerald, there has been a total failure of consideration. In *Rowland v Divall*¹⁶, the plaintiff bought a car from the defendant for £334. It was later discovered that, unknown to the parties involved, the car was stolen. It was returned to the original owner. The plaintiff had used the car for 2 months before it was returned to the true owner. It was held that the plaintiff was able to recover the £334 that he had paid for the car regardless of the car being in his use for 2 months because there was a total failure of consideration as the plaintiff did not get any part of what he had contracted for i. e. the property in the car. Similarly, although Duncan has used the van for quite some time, he has not been able to obtain a quiet possession of the van and he was at a risk of prosecution. Gerald had a duty to pass a good title under s. 12 SGA17. There has been a breach of <https://assignbuster.com/commercial-law-essay-samples-3/>

condition and Duncan has a right to treat the contract as rescinded.

Therefore, by the application of Rowland v Divall and s. 12 SGA, Duncan would be entitled to receive the £8000 that he paid for the van.

Forklift truck

Duncan bought a forklift truck from Hamish three months ago and found out that the truck was unable to go at speeds above than 5 miles per hour when it should have been going at 15 miles per hour. For the repair of the truck he asked Hamish who sent an engineer after 2 weeks. Duncan has bought 6 forklift trucks in last two years. It can be assumed that Duncan is acting in normal course of business. According to s. 15(A) SGA18, the implied terms as to satisfactory quality will not allow the buyer to reject where the breach or damage is so slight that it would be unreasonable to allow the buyer to do so. Another important fact is that Hamish is not a dealer in forklift trucks and he never used the truck. Therefore, there is no implied condition that the truck would be of a merchantable quality. Under s. 48A(2) SGA19, Duncan is entitled to repair of the truck. He must allow Hamish a reasonable period of time. Duncan has allowed Hamish a period of more than a month. However, the determination of reasonable time, under s. 48B(5) SGA20, is a question of what is nature of the goods and the purpose for which the goods were acquired. Forklifts trucks are long life and by considering the fact that Hamish has been ill, Duncan has not yet allowed Hamish a reasonable time. Duncan has continued to use the truck and last week, he attempted a repair by himself hence making matters worse. Therefore, Duncan has lost the right to reject the truck but he is entitled to claim damages from Hamish because after repeated attempts, the truck could not be repaired.

Door Hinges

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Duncan entered in an agreement to sell 500 door hinges to Isabel when he visited a DIY store run by her two weeks ago. He was later told by Jane that Isabel was just an agent and had no such authority. Jane refused to be bound under the contract. Isabel made Duncan believe that she had the authority to purchase on behalf of the store by her conduct. There is no reason for Duncan to believe that Isabel had no such authority. This is a case of apparent authority. In *Watteau v Fenwick*²¹, the manager entered into a contract on behalf of his hotel when he had no such authority and he made the other party believe that he had the authority. The true owner was held bound under the contract through estoppel. Therefore, Jane would be bound under the contract of sale and Duncan would be entitled to sue her for the price if she refuses to pay.

Computerised Till

Duncan bought a computerised till from Mike's hardware shop. It was sold to him by a shop assistant, Lenora. She had no authority to sell the till and upon inquiry by Duncan but she made it clear to him that the till was for sale. Lenora has acted as a mercantile agent because she was in the possession of the till with the consent of Mike and she cleared all the doubts from Duncan as to her authority (*Factors Act 1889 s. 1*)²². However, it cannot be assumed that the sale was made in ordinary course of business because as a shop assistant, Lenora had the actual and an apparent authority to sell hardware items only. Despite the fact that Duncan confirmed from Lenora that the till was for sale, the sale has not been in ordinary course of business. Therefore, the contract of sale would be cancelled and the till would be returned to Mike under *Nemo Dat Quod Non Habet* rule.

References

1. Barrow Lane and Ballard v Phillip Phillips [1928] All ER Rep 74
2. Borden (UK) Ltd v Scottish Timber Products Ltd [1981] Ch 25
3. Bristol and West Building Society v Mothew [1998] Ch 1
4. Clough Mill v Martin [1984] 3 All ER 982
5. Companies Act, 2006. (UK) s 874
6. Compaq Computers Ltd v Abercorn Group Ltd [1991] BCLC 602
7. Factors Act, 1889. (UK) s 1
8. Foskett v McKeown [2001] 1 AC 102
9. Pfeiffer Weinkellerei - Weineinkauf GmbH v Arbuthnot Factors Ltd [1987] BCLC 522
10. Re: Bond Worth Ltd [1980] 2 Ch. 228
11. Re Peachdart Ltd [1983] 3 All ER 204
12. Rowland v Divall [1923] 2 KB 500
13. Sainsbury v Street [1970] 3 All E. R. 1126
14. Sale of Goods Act, 1979. (UK) s 12
15. Sale of Goods Act, 1979. (UK) s 15(A)
16. Sale of Goods Act, 1979. (UK) s 17
17. Sale of Goods Act, 1979. (UK) s 19
18. Sale of Goods Act, 1979. (UK) s 20(A)
19. Sale of Goods Act, 1979. (UK) s 48A(2)
20. Sale of Goods Act, 1979. (UK) s 48B(5)
21. Sale of Goods Act, 1979. (UK) s 49
22. Watteau v Fenwick [1893] 1 QB 346