

Hong kong fir shipping company law contract essay

Law



**ASSIGN
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Part (A) Overview of the law of contract A contract is formed in any transaction in which one or both parties make a legally enforceable promise. Body of law that governs oral and written agreements associated with exchange of goods and services, money, and properties. It includes topics such as the nature of contractual obligation, limitation of actions, freedom of contract, privity of contract, termination of contract and covers also agency relationships, commercial paper, and contracts of employment. The law of contract have four main element are there, there are offer, acceptance, consideration and intention to create legal relations. For example, a home-buyer might promise to pay \$250, 000 to the seller, who in exchange promises to deliver unencumbered title to the buyer.

Identify the issue

The key issue is turn upon whether MicroHard Company Pte Ltd has breached any term in the Software Support Services Agreement it had signed with Ravi (the Customer). Ravi engaged Microhard Company Pte Ltd to perform professional software support service for his customers relationship management software, We will assess whether MicroHard Company Pte Ltd has satisfy the terms of agreement, if not, we will do discussion about the question whether Ravi can get any compensation in incidents (a), (b) and (c) from MicroHard Company Pte Ltd.

Applicable Law (Incidents [a])

Terms of contract can either be conditions, warranties or innominate terms. It is important for parties to identify which terms are to be conditions and which are to be warranties. If there has been a breach of contract, it is

important to identify which type of term has been breached in order to set the remedies. A condition is a main and essential term of the contract which going to the root of the contract. The innocent party claim damages for the breach of the contract breaker, or, alternatively has a right to set aside the contract. In *Poussard v Spiers (1876)* case, the court held Mademe Possard breached the condition of contract and Spiers want to set aside the contract. She missed the most important performance when opening night. "

Reference: <http://www.e-lawresources.co.uk/Poussard-v-Spiers.php>

Applying Facts to Law

In this case, Ravi signed the Software Support Services Agreement with MicroHard Company Pte Ltd. The one of the term of the agreement is the MicroHard warranted their services shall be performed in a professional manner in accordance with generally accepted industry standards, This is a most important part of contract in the agreement. MicroHard' s employee who attended the service call and failed to solution the Ravi's software issues, this may cause Ravi cannot communicate with customer in the period of maintenance. Eventually, the employee of MicroHard didn't provide a correct solution to Ravi's Software issues, MicroHard did not satisfy the condition of the agreement.

Conclusion

It is a condition in the term of agreement, MicroHard Company Pte Ltd is liable to Ravi can claim the damage from MicroHard Company Pte Ltd but Ravi cannot set aside the agreement. Because of the term (6) : MicroHard's maximum liability for any breach of the term shall be a refund of the

applicable services fees paid under the Agreement, so Ravi cannot terminate the agreement with MicroHard Company Pte Ltd.

Applicable Law (Incident [b])

Warranties are minor and less essential term of the contract than contract.

The innocent party claim damages for the breach of the contract breaker but the innocent party does not has a right to set aside the contract. In Bettini v Gye (1876) case, the court held Bettini breached the warranty and therefore the Gye was not entitled to end the contract. Miss the rehearsals not the major term of contract. Gye can sue for breach of the warranty but cannot sue terminate the agreement. Reference: <http://www.e-lawresources.co.uk/Bettini-v-Gye.php>

Applying fact to Law

In this case, Ravi requires the MicroHard shall be in the Ravi's office within 30 minutes after receiving service call from Ravi (term [2]). This term should be classified become a minor term of the agreement because it is not main part of the agreement, even the main part of agreement is MicroHard should perform software support services for Ravi's company. In the way, MicroHard's employees arrived at Ravi's office 1 hour after they received service call from Ravi. MicroHard's employees are unpunctual, maybe it was traffic jam or unexpected accident to cause MicroHard's employees cannot arrive at Ravi's office within 30 minutes. According the issue of above, we classify this term be warranties because unpunctual arrive is less important. However, MicroHard's employees were not arrived at Ravi's office within 30

minutes after received service call. Therefore, MicroHard did not satisfy the term of the agreement

Conclusion

In conclusion, MicroHard breached the term of the agreement so MicroHard Company Pte Ltd is liable to Ravi. Ravi can claim damages from MicroHard Company Pte Ltd but Ravi cannot set aside the agreement.

Applicable Law

The innominate term approach was established in the case of Hong Kong Fir Shipping Company v Kawasaki Kisen Kaisha [1962]. The innominate terms themselves are hard to classify as conditions or warranties, Whether or not a agreement can be set aside when the term be breached depend on the seriousness of the breach.

If it is breach in a serious way, the innocent party can terminate the contract and sue for damages from violator. On the contrary, it is breach in trivial way, the innocent party can only claim damages from contract breaker.

Applying Facts to Law

Term (4) also should apply in incident (c) because the term showed MicroHard warrants that the services shall be performed in a professional way in accordance with generally accepted industry standards. Through incident (c), MicroHard's employee made an error in a program's code causing the program to freeze but MicroHard's employee fixed the software bug after 5 hours. In this case, it classified be an innominate terms. This incident is incompatible because, although the MicroHard's employee made

an error but he/she also fixed it after 5 hours. In this incident, it may happen some lose or not during maintenance.

Conclusion

However the breach is not in a serious way, MicroHard Company Pte Ltd is liable to Ravi. Ravi can claim damage from MicroHard but Ravi cannot void the agreement.

Part (b)

Alternative Dispute Resolution (ADR) describes process of setting disputes by means other than litigation (taking case to court). ADR includes mediation and arbitration processes. [[http://biztaxlaw. about. com/od/glossarya/g/adr. htm](http://biztaxlaw.about.com/od/glossarya/g/adr.htm)] Both major forms have their own advantages and disadvantages.

Mediation is to settle a legal dispute through neutral mediator (selected by two parties) who works to find main points of contract and assist both parties to come to a concession. A mediator does not put a decision on the parties.

However, the mediator helps both parties to agree on a mutually acceptable outcome. Mediation is faster and cheaper than litigation (settled need about 1 to 2 weeks). On the other hand, arbitration totally differs to mediation

Arbitration is the process of bringing a dispute before a mutually selected arbitrator. The arbitrator (expert in related realm) hears the proof from both party and makes a decision. Sometimes, the arbitrator's decision is binding on the parties. [http://biztaxlaw. about. com/od/glossarya/g/arbitration. htm](http://biztaxlaw.about.com/od/glossarya/g/arbitration.htm). "

Arbitration is easier, cheaper, and faster" (settled need about 3 to 6 months). [http://legal-dictionary. thefreedictionary. com/Mediation-Arbitration](http://legal-dictionary.thefreedictionary.com/Mediation-Arbitration)If they

choose mediation, the case will be Win-Win outcome for parties. Both parties

can also saving their time and cost by going for mediation to negotiate about their dispute and it can be solved with 1 or 2 weeks. However, if they choose arbitration, any other judgment given by the arbitrator which will be unjust to either parties. In conclusion, we would advise Ravi and MicroHard to solve the case by going for mediation because it will be cheaper and faster than arbitration, and both parties will get Win-Win outcome.