

International law assignment



IBL-5 Assignment-1 Students: ----- Lecturer:

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Introduction This report contains the proceedings during the set up of the agreement and the proceedings after the breach of contract between two parties: Trans Trust SPRL versus Danubian Trading co. The agreement was about the sales of 1, 000 tons of rolled steel sheets which were supposed to deliver FOB in Antwerpen on 1950. Due to this agreement there got another party involved; the American company S.

A. Azur, which was a wholesaler for the manufacturer, S. A. Metallurgique d'Esperance Londo. Because of the contract, the seller ordered a sufficient amount of steel from this third party. Because of this the seller wanted to confirm this by the hand of a letter of Kredit Bank in Brussels, this was firstly agreed by the buyer. When eventually the buyer refused to do so, the seller sued the buyer on breach of contract. Since the breach of the contract and the prosecution of the buyer, the case has been investigated by the English Court of Appeal.

Throughout this, the court found out that there indeed was a breach of the agreement. The trial judge awarded the seller ? 3, 214 damages, which was the loss of profit suffered by the seller. We will discuss this case in six parts. In the main section of this report we will discuss the main arguments and reasoning of the parties in this Court Case. Then there is an explanation of reasoning, taken by the court which is an extension of how the court makes the decision and the different court decisions for this case.

At the very end we will make links between these views. Theory When we want to understand the point of the case, we have to understand the agreement and the breach of the contract. This is almost totally based on the letter of Credit. This was required in the contract for the seller, the buyer agreed on this. So to understand this, we first have to comprehend the essence of the letter of Credit. This letter is an instrument which is issued by a bank, or another person, at the request of a customer.

This is used very often in international trades, for safety. In this case this customer (account party) was the seller. The letter of Credit thus will ensure that specified amount of money will be paid, by a bank or another person, to the beneficiary party. To define the letter of Credit, we will define the parties who are involved: (1) The applicant is in this case the buyer, Danubian. (2) The beneficiary is the seller, Trans trust (3) Krediet Bank in Belgium, this is the importers bank.

Furthermore you will find an advising bank; this will also take care of the papers and advice etc. for the beneficiary. By showing the steps of a letter of credit, it is way easier to understand the essence of it: * The seller and the buyer agrees to use the letter of Credit * The buyer applies with the issuing bank on the letter of Credit * Issuing bank issues letter of Credit to the advising bank * The advising bank gives the letter of Credit to the seller * The certain goods delivered to a carrier The Bill of Lading is given to the seller, after the delivery * This Bill of Lading will go immediately to the advising bank * Now the beneficiary gets paid by the advising bank and the Bill of Lading will go to the issuing bank, these will give it to the buyer * The buyer will give the Bill of Lading to the carrier and they will give the goods in

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return * Then the buyer will pay the issuing bank which will pay the advising bank. The essence of this is simply that the seller and the buyer will get more safety in dealing with expensive goods and contracts. In such a letter of Credit the banks, which will know the parties, will be a solid intermediary. The Uniform Customs and Practices for Documentary Credits govern all the letters of credits. Theoretical Problem The main problem in this case was if the letter of credit was the required document to establish a contract. A letter of credit can be described as follows; ' A letter from a buyer to the seller guaranteeing that a buyer's payment to a seller will be received on time and for the correct amount.

Letters of credit are often used in international transactions to ensure that payment will be received. Due to the nature of international dealings including factors such as distance, differing laws in each country and difficulty in knowing each party personally, the use of letters of credit has become a very important aspect of international trade' (<http://www.investopedia.com/terms/l/letterofcredit.asp#ixzz1ZTD3eiQ3>) The main issue here, is the fact that in some cases, if no letter of credit is issued, no contract has been agreed upon.

In other cases, the letter of credit is just a part of the total contract, so this means that there can be a contract between the two parties, even though a letter of credit has never been issued. So in this case, the court had to decide whether a breach of contract had been made by the buyer, due to the fact that they did not create an letter of credit, and therefor refused to buy the from the seller. The court decided in favor of the plaintiff (seller), and

therefore the defendant was obliged to pay the plaintiff the possible damages occurred by a breach of contract

Applicable Law CISG Article 25 ‘ A breach of contract committed by one of the parties is fundamental if it results in such detriment to the other party as substantially to deprive him of what he is entitled to expect under the contract, unless the party in breach did not foresee and a reasonable person of the same kind in the same circumstances would not have foreseen such a result. ‘ CISG Article 74 ‘ Damages for breach of contract by one party consist of a sum equal to the loss, including loss of profit, suffered by the other party as a consequence of the breach.

Such damages may not exceed the loss which the party in breach foresaw or ought to have foreseen at the time of the conclusion of the contract, in the light of the facts and matters of which he then knew or ought to have known, as a possible consequence of the breach of contract. ‘ Facts of the Case Plaintiff: British company: Danubian Trading Co. , Ltd. (seller) Defendant: Belgium company: Trans Trust SPRL. (buyer) Case “ Trans Trust SPRL v. Danubian Trading Co. , Ltd. ” In 1950, a British trading company Danubian Trading Co. Ltd. agreed to sell a 1. 000 tons of rolled steel sheets to the company Trans Trust located in Belgium. The British seller however, obtained the required steel from an American company named S. A. Azur. After a while the seller (plaintiff) requested the buyer (defendant) to provide the Letter of Credit. However, the seller (plaintiff) did not receive any news from the buyer(defendant) regarding the letter of credit. Even more problems started to arise when the buyer (defendant) refused to create a letter of credit.

This made the seller (plaintiff) decide to sue the other party, with breach of contract as the main reason. The buyer however denied this, due to the fact that no letter of credit was ever issued, therefore, there was no contract. When the court investigated the case, they concluded in favor of the plaintiff. They believed that the contract was actually established, and that a Letter of Credit should have been provided by the Defendant, as part of the contract. However, the defendant failed to do so, and therefore breached the existing contract between the two parties. Main section

Since we know that the essence of the letter of Credit is to ensure that both parties will get what they deserve, we can check the point of view for both parties. The overall question is of course whether there is a breach of contract and if there was a letter of Credit which contains conditions precedent to the contract? The plaintiff in this case, Danubian Trading Co claims that there does was existing contract and this was thus a breach of contract by Trans Trust. The plaintiff is mainly reasoning this following the intention of Trans Trust, which provided the option to set up a letter of Credit.

Since the beginning they wanted to ensure the contract by the letter of Credit, it was an essential term to finish eventually the contract. When after a while the defendant out of the blue rejected to set up a letter of Credit. While the defendant firstly replied with the message; ' a credit will be opened forthwith'. Furthermore we know that the letter of Credit was not precedent to form the contract, but it was a requirement for the seller. This has been the reason why the plaintiff was eventually financially suffered.

On the other hand, Trans Trust claims that there was not a valid contract, so they could neither breach one. The defendant is assured that they are not responsible for the financial suffer of the plaintiff, while off course the plaintiff thinks the opposite. The difference in reasoning is because of the fact that Trans Trust claim that the contract was only conditional and Danubian Trading claims that it was not only conditional. Reason for the letter of Credit was firstly only the fact that it was precedent for the formation, not an obligation.

Since that Trans Trust could not set up successfully the letter of Credit they choose to demolish the current proceedings. In their eyes this was not a problem because there was no valid contract, so there could neither be a breach of contract. Reasoning of the Court The court used the contract and the actions and intentions of both party to analyze the situation on which they should base their judgment. When we have to simplify the case it has all to do with the difference in which both parties saw the contract, but all that count is what sees the judge.

From the first moment both parties know that the letter of Credit was essential for a successful contract. It is clear that both parties agreed on that, eventually the defendant should have arranged a confirmed letter of credit with the Krediet Bank in Brussels, although, the defendant never completed this letter. Although the defendant claimed after while that they were not making any firm promises on their own account, the judge rejected this. So the judge does think that the defendant was showing more than ignitions only to set up a letter of Credit.

The court does has applied that the condition was a main issue for the succession of the contract, the defendant should have known this. The judge decided in the favor of the plaintiff, which is the seller, Danubian Trading Co. On the other hand the judge decided that the defendant, Danubian Trading Co. LTD did breach the contract. For that reason the defendant has to pay ? 3, 214 to the seller, which was the loss of profit suffered by the seller. This is exactly how we as group think about it, since there was a clear intention and action from both parties to set up a contract with a letter of Credit.

Conclusion

When the court had investigated the situation, the court decided in favor of the plaintiff, due to the fact that an contract had already been established, even though the buyer did not create a letter of credit. . The defendant had to pay the costs and the total loss of profit of the seller. The condition of obtaining a letter of credit was an essential part of the contract and it was clear for both parties that the buyer should have provided the Letter of Credit for the performance of the contract. We believe the court has taken the right decision, due to the fact that an actual contract had already been established.