Business contracts

Business

A contract is the lawful binding agreement that is either deliberate or voluntary. It is usually between competent parties. They are written, implied or oral. They generally apply to sale, employment, tenancy or lease1. The relationship contains the offer, acceptance of the offer and a valid, legal consideration. Every party attains rights and duties in relation to the ones of the other party. The contract may become void. Sale contracts must be in written form.

Gardenia

1. Liability of the Manufacturer

Goods, not of merchantable quality

The sale of goods Act2 stipulates that where the goods are available by the depiction from the seller who handles such goods, whether he is a manufacturer or not; he has an implied condition placed on him that the goods should be of merchantable quality. In this case, Earth Products being a manufacturer has an obligation under the Sale of Goods Act to ensure that the fertilizer sold to Gardenia is of merchantable quality. In the case of Wren v Holt [1903] 1KB 610, the plaintiff sued the seller in a liquor store, for selling him beer not of merchantable quality. The beer had contaminants with an abnormal content of arsenic acid it was not sufficient that the defendant argued that he was not the manufacturer as he had to take reasonable care.

Earth Products should have taken reasonable care by ensuring that it knew all the negative attributes of the product being selling and give necessary

caution to the buyer. In some instances, such a product may be banned due to adverse effects such as those of the environment3. In the United States of America DDT chemical usage may be banned after the successful suit as its other negative attributes had not been properly investigated, which should be done before the sale of the products.

Negligence

Gardenia, being a consumer of the fertilizer product manufactured by Earth Products, has a rightful claim to damages as the manufacturer was negligent in selling this product that has an uncorrected defect. EP bears a duty of care to Gardenia that the goods will cause him no harm. The product was motion sensitive, but the buyer and carrier were uninformed4.

In Grant v Australian Knitting Mills Limited [1936] AC 85 at 102, the plaintiff had damage because of the defendant’s negligence. The manufacturer had sold underwear that caused the plaintiff to be contracted dermatitis, (after he wore it for the week without prior washing) due to the high levels of sulphite. The defendants were liable by the Privy Council. The Council held that a manufacturer selling a product, intended that the product would reach the consumer in the exact form that the products left him without a possibility ofintermediate examination, and with the knowledge that lack of reasonable care in the production will result in injuring the consumer and, hence, he owes the consumer a duty of care.

Terms of goods being sent

Sending of the goods is under the Cost, Insurance and Freight (CIF), Intercoms 2010, stipulations of which are such that the port of destination of the goods should be available. The seller is the one who pays for the cost and freight to bring the goods to the designated destination. The risk immediately transfers to the buyer when the goods get on the vessel. In addition, he is required to clear the goods for export and insure the goods5.

Insurance

The insurance taken out under CIF should be in negotiable form to allow the claim to be payable to the buyer. Another party will have an insurable interest in the shipment at the material time of loss. The CIF insurance ought to cover the shipment from the port of origin to the agreed destination.

The seller normally insures goods sent under CIF, in as much as the risks whom they accrued, are the buyers. The seller provides insurance against the buyer's loss or damage to the goods en route. EP must ensure that the goods get into the ship, have been received at the named port, paid for freight and taken out an insurance policy6. EP’s responsibility over the goods is up to the loading. Where the damage or loss is because of negligence of the insured one or actions taken by the assured, the insurance company is under no obligation to indemnify loss or damage.

EP Company after realizing that the fertilizer was highly sensitive to the motion was negligent in that it did not take precaution to ensure that the product had protection from excessive motion. This is bearing the fact that the seller was aware of that type of weather being expected in November

could be one of high motion and, hence, advises the buyer of means of transport or even stall the shipment until the storms stop raging.

The policy is under the Institute of London Underwriter Companies Marine Policy Form and 2009 Institute Cargo Clauses A, where clause A covers a wide range of voyage risks, apart from the delay. This implies that all the voyage risks inclusive of destruction of the shipment is safe and, hence, if all conditions of insurance are present the insured ones are to be insured7. The London Underwriter companies have their policy form expressly acknowledged as the focus to the exclusive jurisdiction of English courts unless otherwise expressly agree.

Insurable interest

Inn any insurance policy, insured goods must have a legal relationship to the subject matter insured. In that, the insured one benefits from its safety and would suffer of loss in case the uncertain risk occurs. In marine insurance, the insurable interest must be present when a risk occurs, but not necessarily when the policy is taken. Going by this, EP can rightfully take out a policy on behalf of Gardenia as long as Gardenia has an insurable interest at the occurrence of the risk8.

Disclosure of material facts

Insurance contracts are such ones that require utmost good faith and disclosure of facts that are relevant to the policy, under the doctrine of uberrimea fides doctrine. Under this doctrine, essentially disclosure is solely the responsibility of the insured as he can understand and know the details

of the subject matter of insurance. When Earth Products realised anew fact about the product on its sensitivity to motion, it neither informed the carrier nor the insurer. This amount to disclosure by the seller, however, pursuant to dealings in Lloyd’s insurance non disclosure by the buyer does not allow the insurer to fail to make goods loss accrued by the buyer.

Loss due at a preventative action

This where damage or loss is occurs when one is trying to prevent a loss by the risk insured against. In Symington & Co v union insurance society of canton Ltd, the local authorities in trying to prevent a fire from spreading threw the cargo (cork) into the sea and poured water on the rest, even though it was not on fire. The appeal court was for the insured to be indemnified. LJ Scrutton stated that “ there being a fire, goods go by the water and not by fire used to prevent the fire from spreading, and that such a damage can be claimed under a marine policy as damage caused by fire9.

Risk caused by the nature of subject matter. An insurer can fail to make goods losses of the insured, especially in fire insurance due to the inherent nature of the subject matter.