

A Complete Account Of The Relevant Sections Of The Sales Of Goods Act 1979

Posted on October 16, 2019

Introduction

Jane is a florist who got her first big project. She wanted to be careful in completing the project, and as a precaution, she went shopping earlier than the original date of the project. She supposedly purchased soil that needed not to be watered frequently under the heat of the sun. Mark – the seller, convinced Jane about the type of soil, and she bought twenty bags. After receiving the goods, Jane planted some flowers in the soil and found them to die within a period of less than three days.

She contacted one of her friends, who told her that the soil had alkaline nature, and thus, only a limited number of plants could grow in it. Her friend also told her that the chalky soil will need to be watered frequently during the summer. Under the same contract, Jane also ordered a hundred brown flower pots as well. However, only half of them were delivered by Mark. Jane also found the small pebbles low in quality. After finding so much non-conformity in her order, Jane contacted Mark with an email and showed her intention to reject the goods. But Mark told her that she had already waived her right to bring any claim under Section 12 – 15. Therefore, Jane is worried about whether she will be compensated for the loss that she has suffered because of Mark's breach of contract. This assignment provides a complete account of the relevant sections of the Sales of Goods Act 1979.

Analysis

In case of a breach of a contract, the buyer is remedied by the Sales of Goods Act 1979 in various manners, primarily depending upon the form of breach. The buyer's entitlement to remedial actions is protected under the law so that he can reject the goods and claim the damages for the loss that has been caused by the faulty goods. In the context of a breach of a condition, the buyer can either get the goods exchanged or monetary damages received instead. However, if only a warranty has been breached, the buyer retains the right to entitlement of damages only.

To understand the scenario of Jane, the conditions must be kept separate from warranties among the terms of the contract between her and Mark – the manager. Firstly, Jane clarified that she wanted to buy soil that does not need to be fed frequently during the upcoming summer season. This description specified the goods and, thus, became a condition of the contract between the two. Following her description, Mark guided her towards the aisle of chalky soil and told her that the soil completely fitted her requirements. Thus, he indicated his understanding of the condition. Similarly, the clause concerning the hundred brown pots has two conditions: firstly, the pots must be of brown

color, and secondly, they must be hundred in number. Likewise, one hundred and fifty bags of small pebbles are conditioned to be small in size and one hundred and fifty in number. However, the quality of all these goods is an implied condition.

Having said that, Mark has breached the contract, i.e., the conditions on several occasions. Firstly, he delayed the delivery of the goods. The parties had agreed for the goods to be delivered on eighteenth June. However, Mark failed to send the fifty brown pots on the prescribed date. Under Section 27 of the Sale of Goods Act, 1979,^[1] Mark is obliged to deliver the goods on time. Failing to do so results in a breach of a condition of the contract. On the grounds of this failure, Jane reserves the right to either repudiate the contract as a whole or to reject the goods and claim damages for the loss that has been caused due to Mark's inability to deliver the pots on time.

It has been pointed out that Jane preserves her right to reject the goods under Section 11 of the Act.^[2] Section 35(1) explains that the acceptance would be established either on intimation of the buyer that he has accepted the goods or when he does any act after delivery of the goods that contradicts the ownership of the seller.^[3] However, under Section 34 of the Act, reasonable time must be given to the buyer to confirm the conformity of the goods. In Jane's case, she opened the bag of soil and used it in her pots; she planted some flowers in it as well. It shows acceptance under Section 35(1). Later, she learned through a friend that the soil did not match her requirements. All of this happened within a period of three days.^[4] She earned this right to examine the goods after acceptance under Section 35(2). Therefore, on finding non-conformity of goods with the provided description, Jane reserves the right to reject the goods.

The examination of the goods must be done within a reasonable time. The determination of this period lies in balancing the interests the opposing interests of the buyer and the seller. Therefore, the reasonable time to exercise the right of rejection cannot be less than the time of having a reasonable opportunity for the buyer to examine the goods.^[5] Although the time could be extended depending upon the dealing between the buyer and the seller (especially if the goods are in repairs), there will only be one reasonable time of examination for all goods and not different times for different defects.^[6] In Jane's case, she first received all of her goods from Mark and kept checking them. Once she received all three of them; and found them all in non-conformity to the description provided in the contract as well, she wrote an email to Mark intimating her decision to terminate the contract by rejecting all of the goods. It is acceptable as per the law. Any later than that, and Jane would have lost her right to reject the goods.^[7]

However, the ability to reject is subject to acceptability. If the goods have been accepted, then the buyer's entitlement is compromised; thus, it is reduced to a warranty instead of a condition, and therefore, the goods can no longer be rejected. Moreover, Jane had signed her waiver from Section 12 to 15 of the Act^[8] while signing the contract in haste. Therefore, she cannot exercise her right of rejection on the bags of pebbles. Sections 12 to 15[9] deal with the implied terms of the contract. Unknowingly but willingly, Jane has waived off her right to bring any claim on the implied terms of the contract. Therefore, she has to accept the bags of pebbles. On the other hand, she can

terminate the contract because the major condition concerning the description of soil has been breached by the seller.

Continuing with the discussion on Jane's waiver of bringing any claim under Section 12 to 15,^[10] Jane could not have terminated the contract or would not be able to reject the goods on the grounds of breach of contract because these sections deal with implied terms, and any slight breach of the warranties does not let the buyer repudiate the whole contract.^[11] Therefore, in any case, waiver or not waiver, Jane would not be able to terminate the contract on the basis of the poor quality of the pebbles. Firstly, only fifty of the one-hundred and fifty bags did not match the standard quality of the pebbles and secondly, she had agreed to the standard terms and conditions of the seller Mark. While doing so, Jane lost her right to bring any claim on the grounds of breach of a warranty.

On finding the non-conformity in the goods, Jane instantly contacted Mark and showed her willingness to reject them through an email. Therefore, Section 34(4) of the Act^[12] does not apply to her which explains that after being given reasonable time to examine the goods and to do nothing after finding any non-conformity, the buyer provides his intimation concerning acceptance of goods. Now, Jane has the right to either terminate whole contract as a whole, repudiate a part of the contract or claim damages for the loss that has occurred due to the non-conformity of the goods or breach of the terms of the contract by Mark.

Jane has decided to reject the goods. She wrote an email to Mark in this regard. She intimated that she wanted to reject the goods. On rejecting the goods, Mark can replace them for her under the same contract, or they can enter into a new contract and work accordingly from the beginning. Jane has the remedy to claim damages as well. She shopped at Mark's shop for the first big project of her professional career. Therefore, her contract with Mark was important for Jane. She conveyed her requirements concerning the goods in clear words to Mark. However, he failed at various points during the contract.

Firstly, Mark did not deliver the goods on time. He did not deliver half of the small brown pots and only explained his inability to do so when Jane enquired him. He failed to notify his inability to Jane beforehand as well, despite the fact that he would have known about the shortage in supplies before the date of delivery of the pots. He promised Jane to send the remaining amount of pots in ten days, i.e., the pots would be delivered on 28th June, whereas Jane needed them on 25th June. In order to avoid any errors in her first big contract, Jane contracted with Mark to deliver the goods on 18th June. Therefore, delivering the remaining fifty pots ten days after 18th June was of no use to Jane. She had suffered a loss due to Mark's inability to deliver the goods on time. Under Section 27 of the Sale of Goods Act 1979,^[13] Mark was obliged to make timely delivery of goods. Failing to do so resulted in a breach of contract from the buyer's end. Therefore, the law will compensate Jane with some remedial actions.

Secondly, Mark did not conform the goods with the description of the contract. Jane asked for a specified type of soil. Mark took her to the wrong aisle of chalky soil and convinced her to buy them

by giving her a false statement that the soil matched what Jane was looking for. He sold her twenty bags of chalky soil and told her that this soil would require less water-feeding in the coming summer. However, Jane tested the soil in her home. Her plants died after three days. She consulted a friend who told her that the alkaline nature of the soil has limited the number of plants that can be planted in it. The friend further told her that due to the chalky nature of the soil, it would get dry fast in the summer, and more watering would be required. Under Section 27 of the Sale of Goods Act 1979,^[14] Mark was obliged to conform to the description of the goods. However, he failed to do so. It resulted in a breach of contract because he did not follow the conditions of the contract. Therefore, Jane will be compensated with remedial actions by the law.

Lastly, Mark failed to provide the quality of the small pebbles to Jane, who ordered one hundred and fifty bags of these pebbles. It resulted in a breach of a warranty under Section 53(3) of the Act.^[15] After receiving the bags, Jane examined them and found that fifty of those bags contained cracked pebbles, i.e., poor-quality goods. However, Jane signed the contract with Mark and agreed to the standard terms and conditions of the business. Therefore, she is unable to bring a claim on the low quality of the small pebbles. She cannot claim the loss that this poor quality will make to her. Therefore, the law will not provide her any remedial actions in the case of the small pebbles because a warranty has been breached for which Jane had already waived her right to claim any damages.

However, Jane still can reject the goods because she examined the goods within a reasonable time and notified Mark via email. Moreover, two out of three goods are subject to non-conformity, which is the major condition of a contract, and the right to bring any claim on such a breach cannot be waived off. Therefore, Jane is eligible to file for damages due to the loss that she has suffered as a consequence of the breach by the buyer.^[16] Under Section 51 of the Act,^[17] Jane can claim her right of damages for non-delivery of goods on time and failure of the buyer to perform his obligations under the contract. Moreover, Mark was under a legal obligation to take steps to repudiate the loss.^[18] However, he failed to do so.

The calculation of damages is subject to two rules: in the ordinary course of actions and under special circumstances. For instance, in a case, the claimant had to keep his mill idle because the defendant breached the contract and the claimant suffered financial loss.^[19] The amount of the damages is calculated at the market rate. The parties can also speculate on the market on their risk.^[20] Thus, in Jane's case, she can either decide to take damages and proceed with the contract with some other seller, or she can repudiate the contract due to the severity of the breach.

Conclusion

Jane ordered twenty bags of specified soil, a hundred brown flower pots, and one hundred and fifty bags of mini pebbles from the shop of Mark. However, Mark did not deliver the goods on time. He did not deliver half of the small brown pots and only explained his inability to do so when Jane enquired about him. He failed to notify his inability to Jane beforehand as well, despite the fact that he would

have known about the shortage in supplies before the date of delivery of the pots. Moreover, Mark did not conform the goods with the description of the contract but Mark sent another type of soil which does not match with the description of the original goods on so many accounts. For both of these actions, Mark has breached his contract of sale with Jane under Section 27 of the Sales of Goods Act 1979.

Mark also failed to provide the quality of the small pebbles to Jane, who ordered one hundred and fifty bags of these pebbles. It resulted in a breach of a warranty under Section 53(3) of the Act.^[21]

However, Jane signed the contract with Mark and agreed to the standard terms and conditions of the business. Therefore, she is unable to bring a claim on the low quality of the small pebbles. However, she can exercise her right to repudiate the contract if she desires to do so under Section 51 of the Act [22] for the non-delivery of goods on time and the failure of the buyer to perform his obligations under the contract. She has waived off her right to bring any claim under Sections 12 to 15. However, she can enjoy the remedial actions under the cover of other sections of the Act.

References

Case Laws

Clegg v Olle Andersson (T/A Nordic Marine) [2003] 1 All ER (Comm) 721

Hadley v Baxendale (1854) 9 Ex 341

Jones v Gallagher (T/A Gallery Kitchens and Bathrooms) [2004] EWCA Civ 10

Kaines (UK) Ltd v Osterriechische Warrenhandels-gesellschaft [1993] 2 Lloyd's Rep 1

Surrey County Council v Bredero Homes Ltd [1993] 3 All ER 705

Truk (UK) Ltd v Tokmakidis GmbH [2000] 2 All ER (Comm) 594

White & Carter (Councils) Ltd v McGregor [1962] AC 413

Acts

Sale of Goods Act 1979, s 11

Sale of Goods Act 1979, s 12-15

Sale of Goods Act 1979, s 27

Sale of Goods Act 1979, s 34(4)

Sale of Goods Act 1979, s 35(1)

Sale of Goods Act 1979, s 51

Sale of Goods Act 1979, s 53(3)

1. Sale of Goods Act 1979, s 27. ↑
2. Sale of Goods Act 1979, s 11. ↑
3. Sale of Goods Act 1979, s 35(1). ↑
4. *Truk (UK) Ltd v Tokmakidis GmbH* [2000] 2 All ER (Comm) 594 ↑
5. *Clegg v Olle Andersson (T/A Nordic Marine)* [2003] 1 All ER (Comm) 721 ↑
6. *Truk (UK) Ltd v Tokmakidis GmbH* [2000] 2 All ER (Comm) 594 ↑
7. *Jones v Gallagher (T/A Gallery Kitchens and Bathrooms)* [2004] EWCA Civ 10 ↑
8. Sale of Goods Act 1979, s 12-15 ↑
9. *Id.* ↑
10. *Id.* ↑
11. *Jones v Gallagher (T/A Gallery Kitchens and Bathrooms)* [2004] EWCA Civ 10 ↑
12. Sale of Goods Act 1979, s 34(4) ↑
13. Sale of Goods Act 1979, s 27 ↑
14. Sale of Goods Act 1979, s 27 ↑
15. Sale of Goods Act 1979, s 53(3) ↑
16. *Surrey County Council v Bredero Homes Ltd* [1993] 3 All ER 705 ↑
17. Sale of Goods Act 1979, s 51 ↑
18. *White & Carter (Councils) Ltd v McGregor* [1962] AC 413 ↑
19. *Hadley v Baxendale* (1854) 9 Ex 341 ↑
20. *Kaines (UK) Ltd v Osterriechische Warrenhandels-gesellschaft* [1993] 2 Lloyd's Rep 1 ↑
21. Sale of Goods Act 1979, s 53(3) ↑
22. Sale of Goods Act 1979, s 51 ↑