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Contract and tort law

Introduction

In a case where a contract has been formed under a pretence or better known as a misrepresentation under UK law, there are various remedies that are awarded to the victim of said misrepresentation. One of these remedies is noted to be rescission. The notion becomes applicable when an actionable misrepresentation takes place, granting an equitable remedy of rescission to the complainant if restitution *“in integrum”* is not accessible. The given paper will expand upon the aforementioned idea of the remedy of rescission under core case law, and governing regulations.

Discussion

When it comes to remedies offered for the offence of misrepresentation, the court has to evaluate whether the misrepresentation that took place was negligent, fraudulent, or innocent. In the event that the misrepresentation is found to be fraudulent/negligent, the claimant can avail the remedy of rescission and damages under *“Section 2(1)”* of the *“Misrepresentation Act 1967.”*¹In the same vein, if the court is able to find negligent/innocent misrepresentation the remedy of recession is awarded in *“lieu of recession”* as per *“Section 2(2).”*²

Considering the case of *“Geoffrey Alan Salt v Stratstone Specialist Ltd [2015]”* it was noted that the *“Court of Appeal”* held that no discretion exists that ensures that the courts have to award damages for misrepresentation under negligence, or innocence as per *“Section 2(2)”* if the remedy of rescission is not available.³The given judgement was seen to re-evaluate the law on delay establishing a standard regarding the equitable remedy of rescission. It suggested that the heavily relied upon case law *“Leaf v International Galleries [1950]”* was no longer an apt standard concerning the legal issue in question.⁴

Salt v Stratstone Specialist Ltd

Summary of the Case

The defining case on the matter is noted to be *“Salt v Stratstone Specialist Ltd (2015)”* where the matter occurred between a seller of a sports car, and a sports car enthusiast. The car (a Cadillac) in question was described as being brand new. The buyer, (Mr. Salt) took up the offer thinking that he was purchasing a new Cadillac for *“£21,895.”*⁵ However, as the vehicle came into the use of the claimant it became apparent that the vehicle was not new. While the car did not have a registered owner, it was delivered to Stratstone Specialist Ltd (the defendant) in 2005.⁶During the course of a year, it was with the defendant, it had undergone various repairs as it was involved in a rather severe crash. Therefore, there were a number of defects with the car that became apparent as the owner started using the vehicle.

The defendant also had numerous repairs made in September of 2008, on the part of the defendant. However, the claimant did not want the repairs rather he wanted the money back that he spent on the purchase. This request was refused by the seller/plaintiff and thus the defendant

¹legislation.gov.uk *“Misrepresentation Act 1967.”* 2020. *Legislation.Gov.Uk.*
<https://www.legislation.gov.uk/ukpga/1967/7>.

²Ibid.

³Geoffrey Alan Salt v Stratstone Specialist Ltd [2015] EWCA Civ 745

⁴*Leaf's Case*, 1950 K.B.2 86 (1950).

⁵*Salt v. Stratstone Specialist Ltd*, 2015 E.W.C.A. Civ 745 (2015).

⁶Ibid.

issued charges under the claim that the product was not of “merchantable quality.” However, as the case progressed, a few documents came to light revealing that the car was not new. Due to this, the claimant included the notion of misrepresentation in his appeal and made a claim for rescission.

The Verdict by the Court

It was held by “**District Judge Hickman**” that the claimant Mr. Salt purchased the car due to the fact that the sale proclaimed that it was brand new.⁷ This account of misrepresentation at the hands of Stratstone called for the damages as a remedy in the opinion of “District Judge Hickman.” In view of the court, the notion of rescission was not plausible in the given case to undergo restoration. There were two key reasons for that being the case as the car could not be unregistered and that there was a significant lapse of time.⁸ The time passed affected the overall price of the car, thus the amount of the car that was paid at the time of purchase cannot be offered as compensation as the price of the car diminished overtime.

Therefore, Hickman held that the claimant is offered the remedy in damages amounting to “**£3,000.**” The amount was decided as it was the found difference between the value of the car if it was brand new “**£22,000**” and its original value “**£19,000,**” with an additional “**£250**” to compensate for the inconvenience faced by the claimant.⁹ However, the claimant made an appeal to have the decision of the District Judge reversed.

“The Court of Appeal”

The aforementioned verdict was revised by “**Judge Harris QC**” and found that while the DJ saw the situation to be as such that it was not possible to restore it was not the case.¹⁰ Judge Harris held that the restoration of the car to its pre-contractual position was quite possible as the vehicle was still present, registration was not viewed as a bar to rescission, and the difference of value was the risk taken by the misrepresentation and not the misrepresentee.¹¹ Lastly, it was held that the delay was not long enough to operate as the bar to rescission in the given case. Thus, it was held that the rescission should be awarded to the claimant to cover the cost of indemnity. Startstone made an appeal following this decision.

The appeal was made on the basis that “Judge Harris” utilised “**Section 2(2)**” of the Act, by which “Harris J” should not have been obstructed.¹² Secondly, it was proposed that the pre-contractual position was not possible, and that damages were a satisfactory remedy in the current context. Furthermore, the delay lasted almost four years which constituted a bar to relief as noted in “**Leaf v International Galleries [1950].**”¹³

Assessment of the Appeal

The given case was evaluated by “**Lord Justice Longmore,**” who held that “Hickman DJ” did not state that it was his intent to exercise his discretion in order to award damages under

⁷*Salt v. Stratstone Specialist Ltd*, 2015 E.W.C.A. Civ 745 (2015).

⁸*Ibid.*

⁹*Ibid.*

¹⁰*Ibid.*

¹¹*Ibid.*

¹²*Ibid.*

¹³*Leaf's Case*, 1950 K.B.2 86 (1950).

“**Section 2(2).**”¹⁴ Rather, it seemed as if Hickman DJ saw it as a choice between awarding damages, or rescission, and that damages were independent of accessibility of rescission. As per the judgement of Longmore, held that the case was focused on the availability of rescission as a remedy. To better assess the situation case law including “*Alton House Garages (Bromley) Ltd v Monk (1981)*”¹⁵ and “*Atlantic Lines & Navigation Co. Inc. v. Hallam Ltd (1983)*” was utilised.¹⁶ As per the guidance of these two case laws, it was held that if the idea of rescission as a remedy was unattainable it was noted that damages were no longer available. However, in “*Thomas Witter Ltd v TTBP Industries Ltd [1996]*” the verdict of the court was such that damages were not preventable even if rescission was unavailable. Due to these contradictions, the issue had to be further evaluated and it was noted that these precedents were all first instances. Therefore, the issue was one that remained open for discussion in particular by the Court of Appeal. Therefore, Justice Longmore noted that under Section 2(2) of the Act that; “If it is claimed...that the contract ought to be or has been rescinded...the court...may declare the contract subsisting and award damages in lieu of rescission.”¹⁷

Thus, it was implied that in order for damages to be awarded it is necessary that the remedy of rescission is accessible. By that account, if the remedy in question is not available due to there being a time-lapse, or intervention due to a third party or the idea of restitution being invalid, damages could not be awarded as per in “*lieu of rescission.*”¹⁸

Possibility of Restitution

It was noted by Longmore that rescission was in fact the normal remedy in the case for misrepresentation. Furthermore, it was held that “*prima facie*” would be available if the lawful actions could be taken. Therefore, it was stated that practical justice made it so that the misrepresenter has to be compensated under depreciation. An alternative was that the use of the vehicle should be considered, which should be asserted/proven by the misrepresenter. In that manner, Lord Longmore stated that the registration of the vehicle, which is a legal concept, did not impose any implications onto the physical aspects of the said product thus, restitution was in fact possible. Since it was held that rescission should be the norm in a misrepresentation case, if restitution is not possible, Lord Longmore stated that the claimant should receive “£21,895” which the individual paid for the vehicle, as well as “£3,250” in damages in compensation for problems he faced during the course of his ownership, and the duration of the case.

Conclusion

In cases that are surrounded around the legal offence of misrepresentation, the court has the authority to offer compensation to the plaintiff in the form of rescission. Firstly, the court has to assess whether the misrepresentation that took place was negligent, fraudulent, or innocent. If the court finds that misrepresentation, fraudulent or negligent, has taken place the claimant can avail the remedy of rescission and damages under “**Section 2(1)**” of the “*Misrepresentation Act 1967.*” With the aid of various case law used in the above essay, “*Salt v Stratstone Specialist Ltd (2015)*” in particular, it becomes apparent that an actionable misrepresentation takes place, granting an equitable remedy of rescission to the complainant if restitution “in integrum” is not

¹⁴*Salt v. Stratstone Specialist Ltd*, 2015 E.W.C.A. Civ 745 (2015).

¹⁵*Alton House Garages (Bromley) Ltd v Monk (1981)*

¹⁶*Atlantic Lines & Navigation Co. Inc. v. Hallam Ltd (The Lucy)*, 1983 Lloyd's Rep 1 188 (1983).

¹⁷*Salt v. Stratstone Specialist Ltd*, 2015 E.W.C.A. Civ 745 (2015).

¹⁸*Ibid.*

accessible. Furthermore, as noted by Lord Longmore stated the remedy in question should be viewed as a normal remedy in cases that tackle the offence of misrepresentation and “*prima facie*” becomes available if one takes lawful actions.

Bibliography

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Salt v. Stratstone Specialist Ltd, 2015 E.W.C.A. Civ 745 (2015).