

Sale of Goods: *Romalpa* clauses

Romalpa clauses

- Clause in sale contract that stipulate that seller shall retain title to goods until a stated event has happened, and in particular until he has been paid the price; may be done even though possession given to buyer
- May still be valid even if all monies clause (*Armour v Thyssen*)
 - ‘All goods and any other conditions’: retain title as long as owed money
- If purport to reserve equitable interest, a charge (*Re Bond*)
- If look for satisfaction of price to property which is worth more than that amount, probably charge
 - If sellers can sell goods by goods until they have been paid in full, but if thereafter they continue to sell, they are accountable to the buyer for having sold goods, which, upon full payment having been achieved, became the buyer’s goods (*per* Sir John Donaldson MR, obiter, *Clough Mill*)
- If clause consists of many parts, do not assume same legal framework should apply both before and after the manufacturing process (*Clough Mill*)

| <i>Genuine/effectual Romalpa clauses</i> | <i>Charges</i> |
|--|--|
| Seller reserves entire property over seller’s own property | Proprietary right granted by buyer over buyer’s property e.g. pledge, fixed/floating charge (1) Void for non-registration (against liquidator) (Companies Ordinance (Cap.32) s.80) (2) If buyer is a company and has given fixed/floating charge over its assets to bank, often charge include term which prohibits company from creating any other charge ranking ahead of that of bank ● Can prevent (1) and (2) if seller has property in the goods (by genuine <i>Romalpa</i> clause) |

| | |
|--|--|
| | <p><i>Floating charge</i></p> <ul style="list-style-type: none">➤ remains unattached to any particular property and leaves the company with the licence to deal with, and even sell, the assets falling within its ambit in the ordinary course of business, as if the charge had not been given➤ crystallises when company winds up or a receiver is appointed or some agreed events happened |
|--|--|

Types of Romalpa clauses

(1) Original goods supplied

- ◆ Valid as long as identifiable as contract goods (see also **SOGO s.21** and ***Re Andrabell***)

(2) Newly manufactured products

- ◆ Arguable
- ◆ General principle: manufactured products property of manufacturer
 - Even if claims to “retain” property: entire property “created” by manufacturing process, followed by a charge granted to seller
- ◆ Possibly valid if:
 - (a) Manufacturing process reversible (***Hendy Lennox***: engine identifiable by serial number and detachable)
- ◆ Possibly invalid if:
 - (a) Manufacturing process irreversible so that goods lost identity (***Borden***: resin in chipboard; ***Re Peachdart***: leather in leather handbags)
 - (b) Goods mixed with other goods and impossible to determine which goods were the sold one (***Re Andrabell***)
 - (c) Goods have been affixed to other property of buyer so as to become his by accretion
 - (d) Goods ceased to be property of either seller or buyer, e.g. being resold to buyer’s customer

(3) Proceeds of sub-sale (of goods or manufactured products)

- ◆ Generally regarded as belonging to buyer, then charged to seller
- ◆ 2 ways:
 - (a) By operation of law

- succeeded in Romalpa (admitted bailed; fiduciary relationship)
 - subsequent cases said no bailment between seller and buyer; even if assume bailment relationship, no necessarily have fiduciary relationship (what kind of loyalty can there be between seller and buyer; plus disposal consensual, seller knows buyer will resell)
- (b) Under express contractual provision

How to approach *Romalpa* clauses

- (1) Look at category of goods
- (2) Identify relevant clause and see whether goods fall within the clause upon correct construction of the clause
- (3) Whether clause effective though fall under it?