

Short notes on:

UNPACKING REPUDIATION IN CONTRACT

Introduction

Contracting parties are often weary of certain risks which may apply to the contractual relationship they are entering into.

Be that as it may, if we are truly honest, most contracting parties do not really want to focus on the potential failure of the agreement or souring of the contractual relationship.

In saying that however, from a legal standpoint it is important to be aware of the possible eventualities, regardless of how bleak they may seem.

Repudiation of an agreement is one of the most severe forms of breach of contract and can have serious ramifications for the contracting party on the receiving end.

Overview

Repudiation occurs where a contracting party, without valid grounds, indicates to the other party its unequivocal intention not to be bound by the contract.

Such intention may be expressed verbally, in written form or by way of conduct. The definition of repudiation as indicated above has been confirmed in ***Van Rooyen v Minister van Openbare Werke en Gemeenskapsbou* 1978 (2) SA 3 835 (A)**.

In respect of same, the receiving party may elect either to claim specific performance on the terms expressed in the contract or accept the repudiation and claim for damages sustained as a result of the repudiation.

Furthermore, in ***Denmark Productions Ltd v Boscobel Productions Ltd* [1969] 1 QB 699** it was stated that: “*Where A and B are parties to an executory contract, if A intimates by word or conduct that he no longer intends, or is unable, to perform it, or to perform it in a particular manner, he is, in effect, making an offer to B to treat the contract as dissolved or varied so far as it relates to the*

future. If B elects to treat the contract as thereby repudiated, he is deemed, according to the language of many decided cases, to ‘accept the repudiation’ and is thereupon entitled (a) to sue for damages in respect of any earlier breach committed by A and for damages in respect of the repudiation, (b) to refrain from himself performing the contract any further.”

Considering the above, it must be noted that the repudiation needs to be clear. In other words, the intention of the party not to be bound to the agreement needs to be blatantly evident from their conduct or words.

In respect of conduct, repudiation can ordinarily be noted if the contracting party expresses unwillingness to perform in terms of the contract or be willing to perform in terms of the contract in manner that is significantly different to the terms expressed in said contract.

In respect of the remedies available to the receiving party; should a party elect to accept the repudiation and cancel the contract, it is important to consider that once acceptance and cancellation has been communicated to the repudiating party, contractual obligations come to an end.

The innocent party may then only claim for damages as result of the repudiation.

Conclusion

Assessing whether repudiation of a contract has occurred can be tricky process. A contracting party never wants to be in a situation where they have prematurely accepted “repudiation” of an agreement and cancelled same as this will result in that party possibly repudiating the agreement themselves.

It is therefore important to seek legal assistance when considering whether a contract has been repudiated.

Contact an Attorney at Schoemanlaw Inc for your contractual needs.