

Failure to Pay Instalments on Time Means Contract Void

When times are hard, there is always the temptation to delay payments to those owed money and, in many cases, the main disadvantages of this will be a cooling of one's relationship with the supplier and possibly some deterioration in service received.

However, there are some payments for which 'time is of the essence' and, in such cases, failing to make the payment on time may have unfortunate results.

In a recent case, a buyer of a company agreed to purchase the shares in instalments and was taken to court by the vendor after failing to make the agreed payments. The contract did not have a clause which made the date of payment of the essence of the contract. The vendor alleged that the failure to pay the instalments as agreed breached the contract and entitled him to terminate it.

The vendor had the choice of either serving a notice making time 'of the essence' and requiring the purchaser to comply with the contract terms within a stated time, in which case failure to comply would terminate the contract, or, alternatively, if he was satisfied that the buyer's actions demonstrated an intention not to perform its obligations under the contract, the vendor would be entitled to terminate the contract.

In this case, the vendor treated the contract as terminated once the second instalment in payment for the shares was not received. He took possession of the company and managed it for his own benefit.

This action led to a predictable claim by the purchaser and counterclaim by the vendor.

The case originated in the Bahamas but went as far as the Privy Council, where the vendor's claim was upheld.

Says Kamlesh Chandarana "The case itself is unremarkable, but is important for two reasons. Firstly, it highlights the importance of careful drafting of contracts, especially those dealing with payments to be made in instalments. Secondly, it illustrates the fact that the courts will prefer to protect the right of the 'wronged' party to terminate a contract where payment terms are not met. This is particularly important in contracts of insurance – so make sure your premiums are paid on time. If you are late, you may find that the insurer terminates your cover, especially if you make a claim under the policy."