

THE LEGAL CONNOTATION IN PASSING OF PROPERTY UNDER THE SALE OF GOODS ACT

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ABSTRACT

Goods in the commercial world has been defined to include all chattels personal other than things in action and money, and includes emblements, industrial growing crops and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale. In Nigeria, sale of goods is regulated under the Sale of Goods Act of 1893 and the Sale of Goods laws of the various States. Contracts involving sale of goods also formed part of the law of contract. The general rules relating to offer, acceptance, consideration and other valid elements must necessarily be present in a contract for the sale of goods. A contract of sale of goods under the Sale of Goods Act therefore means a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration called the price. Hitherto, there had been recurrent challenges in commercial contracts between the seller and the buyer and in some cases involves mercantile agents as to the issue of passing of property in the goods. A very crucial and necessary issue to be determined is to find out at what time property in the goods passes to the prospective buyer depending on the transaction. It is submitted that once the time of passing of property is determined, the legal effect is that ownership in the goods passes from the seller. But where time of passing of property cannot be ascertained, it raises impediment in transaction. This had placed so many parties in sale of good contracts in a mess. In this regard, this paper adopted the doctrinal legal research methodology in evaluating the legal connotation in passing of property in sale of goods transaction. This in effect is premised on mitigating commercial challenges in sale of goods contract.

Keywords: Property, Title, Goods, Contract of sale, Emblements.

1. INTRODUCTION

In Nigeria, the law regulating sale of goods transaction is the Sale of Goods Act,¹ the Rules of Common Law as well as the law merchant which are not inconsistent with the provisions created under the Sale of Goods Act herein after referred to as the Act.² We also have Sale of Goods law of the various states of the Federation such as the Sale of Goods Law of the former Bendel State,³ Sale of Goods law of the former western Nigeria.⁴

It is expedient to state that although the Former Western Region of Nigeria abrogated the Act and replaced it with the Sale of Goods Law of 1959. The 1959 law is a replica of the 1893 Act.⁵ The point must be made that the study of the sale of goods is only a specialized one in the sense that contract involving sale of goods is essentially a part of the law of contract. The Act has therefore not done away with the general rules relating to contract. Hence, offer and acceptance, consideration and other elements of a valid contract must, inter alia be present in a contract for the sale of goods.⁶ This means that the vital elements that determine the legality and bindingness of a contract still have essential roles in sale of goods transactions.

A. Definition of terms

Goods

Goods means all chattels personal other than things in action and money and includes emblements, industrial growing crops and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.⁷

Mercantile Agent

Mercantile agent means an agent having in the customary course of his business as such agent authority either to sell goods or to consign goods for the purpose of sale or to buy goods or to raise money on the security of goods.⁸

Property

Property means the general property in goods and not merely a special property.

A Contract of Sale of Goods

A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration called the price.⁹

¹1893, Statute of General Application in Force in Nigeria.

² Section 61 (2)

³ 1976, Applicable to Delta State and Edo State

⁴ 1959

⁵ Okay Achike, Commercial Law in Nigeria (1985) p. 173

⁶ Adesanya M.O. and Oloyede E.O, Business Law in Nigeria (1983). P. 87

⁷ Section 2 CAP S1, Sale of Goods Law 1958. Applicable in Delta State.

⁸ Section 2 CAP S1, Sale of Goods Law 1958. Applicable in Delta State.

⁹ Section 1 (1) Sale of Goods Act, 1893

B. The Concept of Property

The term concept of property in sale of goods contract embraces generally varying objects such as clothes, shoes, machinery, furniture, aircraft, motor cars and growing crops. Thus, “goods” which is the subject matter of the contract does not include choses in action like bills of exchange and cheques or money. Furthermore, it does not include real property such as land or any interest therein. This distinguishes chattels personal from chattels real which are chattel attached to or forming part of the land. Chattels personal are sub-divided into things in possession and things in action.

The term emblements which was borrowed from ancient real property law comprises crops and vegetables such as corn and potatoes produced by the labour of man and ordinarily yielding a present annual profit.¹⁰ Similarly, it suffices to say that emblements covers crops which are planted and harvested annually. This includes crops like yam, cassava, maize, potatoes which are popularly known as emblements are not part of land and are regarded as chattels even before they are severed from the land. The term industrial growing crops have not yet been judicially defined but presumably it is wider than emblements and may include crops not maturing within a year such as clover. This covers emblements and other cultivated crops which may be harvested outside the annual period.¹¹

Things attached to or forming part of the land which are agreed to be severed as provided under the Act¹² embraces the distinction between fructus industriales and fructus naturales. Fructus industriales refers to annual cultivated crops which though growing on land are not regarded as land because of the transient nature of the cultivation. In other words, it consists largely of emblements such as crops and vegetable as are the annual result of agricultural labour. These include cassava, yam, corn, rice, wheat, potatoes and industrial growing crops, an expression which is wider than emblements and includes crops which are not annual. These can be sold as goods whether they are severed before or after the contract.

Fructus naturales on the other hand, are regarded as land. The term is used to refer to the natural products of the soil such as Iroko trees, Grass etcetera and also the products of those plants and trees which although needing retention when first planted do not require it each year to produce a crop such as fruits from fruit trees. These do not qualify as goods unless under the contract they are to be severed from land.¹³

C. Contracts for the Sale of Fructus Naturales

As earlier mentioned, fructus naturales is a term used in referring to natural products of the soil such as Iroko trees and Grass which are being treated under the Act as land. If this is the case, will it suffice to say that a contract for the sale of iroko trees is a contract for the sale of land? The legal position is that they do not fall within the definition of goods as provided for

¹⁰ Robert Lowe, Commercial Law (1970) 3rd Ed. p.125

¹¹ Achike Op. Cit. p.181, Adesanya and Oloyede, Op. Cit. p.89

¹² Section 62 (1) of the Act

¹³ Ezejiofor G., Okonkwo C.O. and Ilegbune, Nigerian Business Law (1982). P.155, Okany M.C., Nigerian Law of Property (1986) p.76

under the Act unless under the contract, the parties have agreed to sever them before contract of sale. The point must be made that in the commercial circle, there is a confusing and conflicting interest which had overtime led to the issue of whether or not a contract for the sale of fructus naturales was to be regarded as a contract for sale of goods or sale of land.

Sequel to the above, this paper argues that once prospective contractors indicate their intention and interest to go into a contract for the sale of fructus naturales, such contract should be treated a contract for the sale of goods irrespective of whether they are severed or not. In this connection, Lord Abinger, C.B. stated in the case of *Rodwell v. Philips*,¹⁴ that no general rule is laid down in any of them that is not contradicted by some other.

The reason for these conflicting cases was predicated upon the Statute¹⁵ which required different formalities for a contract for the sale of land or any interest in land¹⁶ and for contract for the sale of goods.¹⁷ One of the views on this is that if property passes before severance, the transaction is a sale of land and in the converse case it is a sale of goods. Another view was that where the contract provided for immediate severance, it was a sale of goods whereas if the buyer derives benefit from the retention of the crops in the sale it was sale of land.¹⁸ However, for the purposes of sale of goods, this case law is now largely irrelevant, because section 62 declares to be goods, anything forming part of the land which is agreed to be severed before sale or under the contract of sale. In other words, the time of severance is irrelevant and the overwhelming majority of contract of the sale of fructus naturales will now be sale of goods.¹⁹

The Act applies to things forming part of land but not to the land itself. For instance, minerals. The sale of minerals will be regarded as sale of goods if the minerals have been detached from the land. In this parlance, the mere fact that the minerals have been quarried is enough to make them goods. For the purpose of evaluating the legal implication in passing property in goods, it is expedient to look at the different types of goods as provided for under the Act.

D. Types of Goods

The Act makes provisions for different types of goods which are highlighted below.²⁰

¹⁴ (1842) 9 M and W. 501, 505

¹⁵ Statute of Fraud, 1677

¹⁶ Section 4, Re-enacted in Section 40 of the English Law of Property Act, 1925.

¹⁷ Section 17, Re-enacted in Section 40 of the Sale of Goods Act Repealed by the English Law Reform (Enforcement of Contracts) Act, 1954.

¹⁸ *Marshall and Green* (1875) 1 C.P.D. 35, Approved in *Kauri Timber Co. v. Commissioner of Taxes (N-Z)* (1913) A.C 771. A case of Taxation

¹⁹ *Marshall and Green* (1875) 1 C.P.D.

²⁰ Section 5 of the Act

Existing Goods

Existing goods as provided for under the Act means goods that are owned and possessed by the seller at the time of the contract. They are goods that are actually in existence when the contract is made. Thus existing goods may be either specific or unascertained goods.

Specific or Ascertained Goods

Specific goods are goods which are identified and agreed upon at the time of entering into contract of sale. Example of this is Rav-4 Toyota Jeep, 2002 model with chassis and engine number described in the contract of sale.

Unascertained Goods

Under the Act, unascertained goods are goods sold by description but which are not identified or agreed upon at the time of the contract but are included in a particular class of goods. For example, 12 tons of grade one cocoa.²¹

Future Goods

A future goods includes goods not yet in existence and goods in existence but not yet acquired by the seller. They are goods yet to be acquired or manufactured by the seller after the contract has been made. For the purposes of passing of property, it is a trite matter that future goods cannot be specific goods except they can be sufficiently identified in which case, if destroyed may frustrate the contract.²²

E. Legal Connotation in Passing of Property and Risk

In all commercial transactions involving contract of sale of goods, the legal effect or connotation of such contract is what determines whether or not such transaction is recognized in the eye of the law as valid contract capable of passing property in goods as well as risk. Thus, part 2 of the Act made provisions relating to transfer of property as between buyer and seller²³ while other provisions in the same part 2 are collectively headed; 'Transfer of Title'.

The term 'property' as earlier stated means the general property in goods as opposed to mere special property.²⁴ From the legal purview relating to sale of goods, the term 'general property' conveys the meaning of dominion, title or ownership.

The point must be noted to the effect that there was a deliberate effort in the provisions of the Act under part 2 to differentiate between circumstances where there is a transfer of property between the seller and the buyer from the transfer of property between a third party who may profess himself as a seller (even though he is not a true seller) and a buyer. The type of transfer that takes place between the questionable seller and a buyer is called transfer of title.

²¹ Atiya P.S., *The Sale of Goods* (1986) 5th & 6th Edns. Pp.36-7

²² Section 7 of the Act

²³ Section 16-20 of the Act

²⁴ Section 61(1) of the Act

It follows therefore that under the second heading; ‘Transfer of Title’ deals with the circumstances in which a buyer takes a good title even though the seller was not the owner and was not entitled to sell the goods in question.²⁵ This means that the seller, in the course of transaction may pass a title as against the position of the true seller who can pass the property in the goods. For instance, where a thief who may or may not be in possession of goods sells such goods belonging to another person, under this situation, the thief is not the true owner but still he passes the title to the innocent buyer who does not know his true position. This informed the rationale for the use of the term ‘Title’ in the heading of that provision of the Act.

2. CONCLUSION

Flowing from the above, it is crystal clear that the legal connotation on a transaction between an innocent buyer and a questionable seller is that title may pass to the buyer. However, the property in the goods may only pass as contemplated under the first heading of part 2 of the Act which relate to passing of property as between seller and buyer.

As earlier mentioned, property in goods means the ownership of, or the title to the goods. It therefore follows that situations may arise under which a non owner may be in physical control or custody of goods and yet he is not the true owner. Since passing of property in goods is not dependant on transfer of possession of the goods.

3. RECOMMENDATIONS

On the basis of all of the above, this paper recommends the following:

- i. It is expedient to know at what point in time does property in goods and risk passes in a contract of sale in order to avoid transaction of sale that will end up being exercise of futility which may result into litigation.
- ii. Pursuant to the provision of Section 20 of the Act, Risk generally passes with property. Consequently, if in the course of the transaction of sale, the goods are destroyed or stolen, the owner will bear the loss. In this regard, this paper recommends that protection and security of goods should take priority in transaction of sale or agreement to sell. The risk will rest on owner and as soon as property passes, it will then shift to the buyer.
- iii. Furthermore, this paper recommends amendments to the replica provisions of the Sale of Goods Laws of the respective States of the Federation with regard to section 62 (1) of the Act so as to accommodate fructus naturales such as iroko trees, grass, minerals etcetera as goods whether they have been severed or not before sale. On this premise, the confusing identity of what constitute goods between contracting parties in determining when the subject matter of transaction of sale will be seen as goods for the purpose of passing property will be mitigated in the commercial circle. For instance, a contract for the sale of iroko trees will be treated as goods whether or not they have been severed before sale.

²⁵ Okany M.C., Nigerian Commercial Law, (Africana-Fep Publishers Ltd, 1992, Reprinted by Rex Charles &Patrick Ltd, Nimo, Anambra State, Nigeria) 2001, p.242

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