

Shallow Theory of Fundamental Breach in International Contract of Buying and Selling of Goods

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Abstract: The United Nations convention on the international sale of goods in international trade plays an important role to solve international trade disputes, and one of the fundamental breach is the important system of the United Nations convention on international trade in goods. Due to fundamental breach allows the default party has the right of contract shall be declared void, so it is one of the more severe system. The author thinks that the United Nations convention on the international sale of goods, the provisions of the system of fundamental breach remains to be perfect, is combined with the case, discuss the source of the system of fundamental breach, constitutive requirements and standards, and relief measures, the impact on the Chinese contract law and enlightenment as well as the actual case analysis.

The Definition and Sources of Fundamental Breach

The United Nations international sale of goods contract stipulated in article 25: "one of the parties breach the contract as a result, such as that the other party suffer damage, that is, in fact deprived him according to the provisions of the contract shall have the right to expect, is the fundamental breach of contract, breach of contract unless one party does not know and an equivalent qualification, reasonable people in the same situation will happen there is no reason to predict the results." [1]

Fundamental breach system comes from the UK, the country's fundamental default judgment standard is to the distinction between the terms conditions and guarantee terms. If the violation of the terms, constitute a fundamental breach, the party in breach shall have the right to request to cancel the contract and claim damages. If in violation of the terms of the guarantee, it does not constitute a fundamental breach, as the general default, the default party can only claim damages. The defining standard become "clause", this measure, however, has its obvious defect is when the "middle" clause when it will be difficult to determine whether the fundamental breach of contract. While the United States will default into minor and major breach of default, in the case of material breach, the breaching party had the right to cancel the contract, in the case of a minor breach did not. In continental law system, divides into the default payment can't discuss with payment delay. The 1980 United Nations convention on the international sale of goods sales contract to absorb the standard of the two big law system, the severity of the default as the judgment standard, and the detailed rules for defect, delay in performance, to perform cannot and anticipatory breach system. So later development in today's "the doctrine", which determine whether constitute a fundamental breach of standard is: the severity of the breach of contract and its

consequences. "Fundamental breach of contract" is an expression of the severity of the outcome and the judgment standard, in today's international trade diversification, appears to be more flexible.

The Constitutive Requirements and Standards

Said some scholars have argued that the three elements that fundamental components of default for the things they have the right to expect real deprivation, there is a real fact, can be unexpected. While some scholars believe that its constitutive requirements for existence deprived of their right to expect things of actual damage, can be unexpected, the breaching party to take remedial measures is to prevent the establishment of fundamental breach of contract. The author tends to constitutive requirements can be divided into four categories, (1) there is damage. (2) the law has the right to look forward to. (3) can be unexpected to take remedial measures. (4) the breaching party didn't stop the establishment of fundamental breach.

Damage means that the seller shall bear the liability without fault, in the 1978 draft convention on trade law committee of the United Nations said in a commentary: "whether the damage is serious, should be determined according to the specific circumstances of each event, such as the contract amount, the amount of the losses resulting from the breach of contract, or breach of contract the influence degree of the other activities of the victim." A court or arbitration institution not only consider the business practices and business sense, also should consider default part of contract the influence degree of the goal; Default value of the part and the proportion between the entire contract value; The influence degree of delay in performance of contract goals; The consequences of default and damage can be mended; Partial delivery of the goods in the contract in violation of a batch of delivery obligations to the influence degree of the contract, and so on.

"Stripped" means the party in breach actually deprived of the severity of the party in breach of the contract rights, and have no means to remedy. "Shall have the right to look forward to" show at the time of contract concluded between buyer and seller can't foresee happen, fundamental breach of contract that the breaching party to the contract rights to damage, and can't realize the contract purpose.

"The United Nations convention on the international sale of goods" clause to the combination of subjective and objective way, first of all, the breaching party could not have foreseen harm to oneself the result burden of proof is on the occurrence (subjective). Second, the need to court or arbitration commission and the breaching party equivalent qualifications, reasonable people, under the same circumstances whether have the ability to foresee the harmful consequences occur. This kind of judgment will be combined with the specific situation of the case, the breaching party's specific qualifications, discretion is a concept of discretionary judgment. The author thinks that the "equivalent qualifications, reasonable people" should be with a specific case of businessmen have the same professional level, rather than as an ordinary man as rational judgment standard.[2]

To predict the time standard, this clause is not accurate. Most scholars believe that this is not a lawmakers omissions, but its intentionally, leave the judge discretion space. Most scholars believe that the perception of time standard is usually a contract, but there are exceptions is after the contract is concluded, some information to pass to the buyer and the seller, the breaching party depends on its professional knowledge should be foreseen and did not foresee, still constitute a fundamental breach of contract.

The responsibility inversion can be unexpected, normally the default party be deprived of its own actual loss for adducing evidence, can look forward to and remedy cannot be the responsibility of the remedy, but do not have to unexpected by the breaching party to assume the burden of proof.

The breaching party to take remedial measures did not prevent the establishment of fundamental

breach

Should be considered in judging whether or not constitute a fundamental breach, damage the interests of the contract. Example, the degree of importance, not only consider the damaged interests itself. For example, to after Christmas Turkey to lover only roses can be shipped to the holiday, even if only delay in a very short time, also constitute a fundamental breach of contract. When the breaching party to take remedial measures are difficult to restore to a serious damage, the breaching party assumed that fundamental breach of contract.

The United Nations convention on the international sale of goods not only made a general provisions, the fundamental breach of contract in article seventy-three the provisions of the convention "(a) for partial delivery of the goods the contract, if one party fails to perform the obligations of any goods, then the goods constitute a fundamental breach of contract, the other party may declare the contract avoided for the goods. (b) if one party fails to perform the obligations of any goods, make the other party has every reason to conclude that the shipment will happen in the future fundamental breach of contract, the other party within a reasonable time to declare the contract avoided in the future. (c) to buy a house delivery of any goods to declare the contract as invalid, can at the same time declared for the delivery of the contract or in the future delivery of the goods is valid, if the goods are interdependent, not alone for the time of the conclusion of the contract the parties intended purpose"

Fundamental Breach Remedies

The contract shall be declared void. Buyers and sellers in the other party constitutes a fundamental breach of contract, all have the right to contract shall be declared void, the contract shall be declared void has a retrospective affect, and shall become effective when the invalidation notice, and is taken to socialism in our country.

Damage compensation is the buyer and the seller can take relief measures, can be. To the relief and other measures and with compensation. The United Nations convention on the international sale of goods in the first. According to article seventy-four: "a party's breach of contract should bear the damage Compensation, should with the other party suffered for his breach of contract. Including profits, losses are equal. Such damages shall not be over. A breach of contract in entering into a contract by a party, in accordance with he had already know or ought to know the facts and circumstances, to anticipate or for breach of contract possible loss should be expected."

Actual performance is the buyer and the seller, on the other fundamental breach by a party may request the court or arbitration commission judgment or written order each other the actual performance of the contract and shall not take money or other ways to replace a way of relief. Can and claim damages and actual performance, but not with the contract shall be declared void and actual performance, they can only choose one of them.

The United Nations Convention on the International Sale of Goods on Fundamental Breach the Provisions of the Contract Law of Our Country

Our country "contract law" in reference to the "United Nations convention on the international sale of goods of fundamental breach legislative spirit, but compared with the stipulations in the convention, China's" contract law "the regulation is still too general. As prescribed in article ninety-four of the China's "contract law", legal termination of the contract, any of the following circumstances, the parties may terminate the contract: (1) the contract due to force majeure cause purpose; (2) before the time of performance, if one party has made clear or with their own behavior

show that failed to perform its main obligations;(3) the other party delayed performance of the main obligations, within a reasonable time after receiving demand still fails to perform;(4) the other party delayed performance or any other breach causes cannot realize the contract purpose;(5) other circumstances stipulated by law.In Chinese contract law is "the purpose" contract is similar to the expression of fundamental breach of contract in CISG, but for any situation as "the contract purpose can realize" no detailed rules, to judge or left a lot of discretion to the arbitration commission.The author thinks that, our country should clear the concept of fundamental breach of contract law and the concept of specific provision, make the contract the parties for their actions have more clear expectations, is the law of contract has more standardize and guide the role.On the fundamental breach of the provisions, the advantages of "convention" regulation is: take the subjective and objective consistent double standards, and deliberately left a blank space, make people in the real discretion discretion can be dealt with according to the specific case specific.But this advantage is bound to lead to it has the disadvantages of the regulation of fuzzy.

The Actual Case Analysis

China A company B company (the seller) and China (the buyer) cotton purchase contract, delivery of goods, A company B company after delivery payment for goods, cotton prices fell.Company B cotton partial is completely sold out, but still lost, found in the process to deliver A company's cotton quality not in conformity with the contract.Promptly deliver the goods to court that A company not in conformity with the quality of the contract, the contract purpose cannot be achieved, A fundamental breach its establishment, the company asks to cancel the contract.It is obvious that the case according to "the purpose of the contract can't realized" the standard of convincing enough.But from the perspective of the constitutive requirements of fundamental breach in CISG, both sides are impossible to foresee when signing a contract cotton prices will fall, so do not have can be unexpected, so do not constitute a fundamental breach of contract.The buyer cannot ask to cancel the contract.Because about fundamental breach in CISG need to conform to the four constitutive requirements, compared with the provisions of the contract law in our country, this will make the parties to a contract with the terms of the contract law on the contract the opportunity to reduce risk.[3]

References

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