



EUROPEAN CONTRACT LAW

CASES

Case No. 1 ACCOUNTING REFORM

PIGGY BANK GROUP had a tradition of charitable giving. In order to foster and outsource these activities it entered into an agreement with CHARITY FUND in 1997, which obliged PIGGY BANK GROUP to pay the CHARITY FUND

(a) a precise percentage of its group's annual profit every year or

(b) a fixed sum of € 10.000,

whichever would be greater.

An EU Regulation was passed in 2002, which changed the standard accounting calculations, and which made it compulsory for PIGGY BANK GROUP to include into its profits also additional (intangible) value: a gain occurring when the price paid for an acquisition is less than the fair value of the net tangible assets of the acquisition (this is called negative goodwill).

In 2008 PIGGY BANK GROUP acquired SHABBY BANK, a loss-making institution, for much less money than the fair value of the tangible assets of the SHABBY BANK. As a result, PIGGY BANK GROUP's accounting showed significantly increased profit figure (ca € 1 billion) under the new calculation method. However, pursuant to the original calculation the PIGGY BANK GROUP's income statement would have resulted in a loss of ca € 10,000.000.

In 2009, when the next yearly payment to the CHARITY FUND was due, it came forward to the PIGGY BANK GROUP, claiming that the higher profit figure was the correct one to use in the calculation of the amount due to them, which would result in a payment of over 3.5 million €. PIGGY BANK GROUP, on the other hand, argued that negative goodwill should be excluded from that calculation and that the CHARITY FUND's entitlement was accordingly restricted to € 10.000.

Obviously, the contract was now in a novel legal and accounting context and neither party was willing to give in instantly.

Question:

To what payment from the PIGGY BANK GROUP and under what conditions would the CHARITY FUND be entitled in 2009? Compare your results with solution pursuant to Russian regulation.

Case No. 2 SLY BOOKSELLER

A, who has a bookshop on High Street hears that C, a nationwide chain of bookshops, is negotiating with B to buy for € 1.2 million large premises that B owns and which are located opposite to A's shop. A fears competition from C, and so starts negotiations with B for the purchase of the premises, pretending he wants to move his shop to larger premises and that he is prepared to pay € 1.5 million. This makes C withdraw from the negotiations and C decides to buy another shop on Market Street at the other end of town. After that A breaks off his negotiations with B. Ultimately B succeeds in selling the premises for only € 1 million.

Question:

What liability (in contract, tort, restitution or any other form of liability), if any, does A have to B? Compare your results with solution pursuant to Russian regulation.

Case No. 3 WEDDING CAKE

Mavis is being threatened with legal action by Chrissie Saranrap. Chrissie was married a month ago and was expecting Mavis to provide her specialty - the "nouveau doveau" - a tiered tower of cupcakes, iced in white and arranged to resemble the wings of doves - as the centrepiece cake for her wedding reception. Chrissie saw information about Mavis' cake services after an article in the local paper, and called round to see Mavis, and look at the different cakes she could make. They discussed possibilities and pricing and Chrissie left with a price list. Next day after their meeting, Chrissie called and left Mavis a message on the answering machine ordering the "nouveau doveau" for her wedding, to be delivered on 2nd May at the wedding reception, for \$2,000. In her message, Chrissie had said: *"If I don't hear to the contrary, I'll assume everything is OK. Call me if there is a problem - otherwise I will see you on the 2nd. Looking forward to your lovely creation."*

Unfortunately, because of all the work being done to the kitchen and problems with electrical work and electrical supply, Mavis had experienced a number of black outs which had interrupted her answering machine. Mavis - never received the message from Chrissie, and so of course, had not provided the cake. Chrissie is very angry and claims her wedding was ruined without the cake. She has threatened to sue Mavis.

Question:

Was a contract concluded or not? Compare your results with solution pursuant to Russian regulation.

Case No. 4 TROUBLED PROFESSOR

The local Bar Association (A) has engaged Professor B to give a lecture on "Recent Developments in the Law of Contract" on 10 July for a remuneration of € 300,-. On 2 May, Professor B calls and tells the representative of A that she wants to cancel the appointment because she wants to participate in an interesting conference in Torino on 10 July. The representative of A replies that A will insist on B's contractual obligation.

Question:

Does A have a remedy to force B actually to give the lecture? Compare your results with solution pursuant to Russian regulation.

Case No. 5 GREEDY PHOTOGRAPHER

A engages professional photographer B to take pictures at her wedding reception. A promises to pay € 1,500.00, which is a fair price for such services. However, a day before the wedding, B to her own surprise gets the offer to step in for a colleague the following day and shoot photos at another wedding. Since she is offered € 3,000.00 for this job although the work is essentially the same, B accepts and does not show up at A's wedding. A is able to engage another photographer at short notice who charges € 2,000.00.

Question:

What - if any - amount of money can A claim from B? Compare your results with solution pursuant to Russian regulation.

Case No. 6 MESSAGE NEVER DELIVERED

Demarco was an oilfield worker who was working on an offshore platform (returning home every four months). During his absence from home his son Frederick became gravely ill. Demarco's wife, Leila, having no other means of contacting him, sent a written message via United Intercon Messaging, Inc. that stated, „Frederick is on his deathbed. COME HOME QUICKLY. Leila.“ The message was paid for and sent but never delivered due to an employee's negligence. In the contract with United Intercon Messaging, the company expressly guaranteed delivery to recipients by hand on the same, or next day anywhere in the world. In the event, Frederick died eleven days later, and Demarco only learned of his son's death and burial when he happened to return home two months later. Leila and Demarco seek damages against the company, claiming that the failure to deliver the message caused both of them pain, suffering, and emotional shock.

Question:

Do Leila and Demarco have any remedy due to the non-delivery against United Intercon Messaging ? Compare your results with solution pursuant to Russian regulation.

Case No. 7 DELAYED TECHNOLOGY INSTALLATION

Based on a contract between company A and company B, B shall install in A's premises a brand-new technology necessary for A's business in 4 partial performances planned in this particular time schedule: 1st May, 3rd May, 5th May and 7th May. A needed the technology to complete new orders from its clients. A paid the whole contract price of 100,000 € to B in advance in April. After timely provided first installation B due to some defects in the installation process did not manage to complete the whole installation in time and was in delay with last 3 partial performances. This subsequently caused A a delay in its own contractual obligations with clients; hence A became liable for contractual damages. After timely given notice of termination A terminated the contract based on fundamental non-performance, claimed back the whole contract price and damages incurred in relation with the delay and informed B that A is ready to start arbitration proceedings based on arbitration clause in now terminated contract. However, B replied that it is not willing to give back the part of the contract price for first partial installation as it was successfully installed in A's premises. B also refused to pay damages and did not consider the arbitration clause to be binding anymore since the contract, out of which the obligation to pay damages and arbitration clause is derived, was terminated by A.

Questions:

Can A claim the whole contract price and damages from B ? Can A initiate arbitration proceedings based on the arbitration clause ? Compare your results with solution pursuant to Russian regulation.

Case No. 8 SET-OFF

A borrowed a sum of 50,000 € from B, which he had to pay back by 1 June. In the contract it was agreed that if A fails to return the money in time, he has to pay a contractual penalty of 5,000 €. A subsequently failed to fulfil his duty. However, shortly after 1 June he learned that B allegedly caused damage to C in May and that C now claims 50,000 € from B. Despite the fact that B denies any liability, A approached C and bought from him his claim against B. After that, on 1 July, A declares set-off and informs B that by this set-off all their mutual claims are extinguished.

Questions:

Is the set-off declared by A valid? What are the formal conditions for the set-off to be effective? If the declared set-off is indeed valid, are all mutual claims between A and B in fact extinguished? Compare your results with solution pursuant to Russian regulation.