

THE RELEVANCE OF SALES OF GOODS ACT TO CONSUMER PROTECTION IN NIGERIA

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Abstract

The maxim – customers are always right, bedrocks protection of buyers and rests the Sales of Goods Act, 1893. Therefore, the Sales of Goods Act, 1893 was promulgated to protect consumers, i.e. customers, from the overreaching effect of the manufacturers, sellers of goods and providers of services. The Act was enacted to regulate sales of goods generally, and protect consumers and suppliers of goods. On this rests the various consumer protection laws. The paper employed doctrinal research methodology, by relying on textbooks, encyclopedia, journals and articles, both online and hardcopy which forms primary and secondary sources of law. This paper examined the rights and powers of consumers in the Act, vis-à-vis other regulations establishing consumers rights and found that consumers reserve some rights friendly to the ease of doing business and healthy competition in the market. It found that the market is regulated by different key players – buyers, sellers, government agencies, known as, regulators,

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ensuring fair play in the market proscribing its monopoly. Hence, should sellers outdo buyers, it is recommended that consumers secure protection from regulatory agencies that safeguards their rights, in accordance with the provisions entrenched in the local laws which derogates from the Sales of Goods Act.

Keywords: Consumers, warranties, conditions, Sales of Goods Act.

1.0.Introduction

The Sales of Goods Act, 1893 (SOGA), was promulgated to regulate activities of consumers in trading and delivery of services. A consumer is presumed as a person that receives the end process of the product. The Sales of Goods Act highlights rights available to the consumers as well as the remedial procedure redressing its breach. There are implied and express conditions that hinges on the provider, suppliers, manufacturers, importers and distributors of goods of services to observe with the aim of protecting consumers. This paper will examine these available protections and how the breach of the rights can be remedied.

2.0. Conceptual Analysis

2.1. Consumer

A consumer is the end user of goods and services. Okoro, defines a consumer as someone not forced, to purchase or ensure the performance of goods or services.¹ A consumer is a purchaser of goods or services for personal use,²a retailer of the product³ -a distributor

¹ Henry Jude, Okoro, 'Enforcement of Law Enforcement Appraisal', 250

² *Cambridge Dictionary*, <https://CONSUMER | English meaning - Cambridge Dictionary>, 'accessed 19 April 2024'.

³ *The Law Dictionary*, 'CONSUMER Definition & Legal Meaning'. [CONSUMER Definition & Meaning - Black's Law Dictionary \(thelawdictionary.org\)](https://CONSUMER Definition & Meaning - Black's Law Dictionary (thelawdictionary.org)), 'accessed, 19 April 2024'

in the value chain-. These suffice as consumers, whom producers or manufacturers owe a duty. Going by the tenure of this paper, restricting it to SOGA 1893, the consumer is whom the manufacturers, importers, distributors, or suppliers, whichever role they play in the value chain, owe the duty of *uberrimae fidei*, and other duties to be discussed in this paper.

It is noteworthy that the Sales of Goods Act, 1979 was promulgated to consolidate SOGA, 1893, which was received into Nigeria as a Statutes of General Application, and some states in Nigeria have been influenced to promulgate theirs, such as Kaduna State – the Sales of Goods Law of Kaduna State,⁴ Sales of Goods Law of Oyo State.⁵ The Sales of Goods Act, being a statute of general application is enforceable in Nigeria and oversees the protection of the rights of consumers,⁶ and influences legislators to promulgate laws that will further protect consumers' rights in the country, such as the Federal Competition and Consumer Protection Act, 2018 (FCCPA), which repealed the Consumer Protection Council Act, and other sector-regulatory laws, protecting consumers from the quirks of the sellers, manufacturers, importers, distributors, owners, and/or suppliers, of goods and services, such as the, Nigerian Civil Aviation Act, Nigerian Civil Aviation Regulations, 2015, Advertising Regulatory Council of Nigeria Act 2022, *inter alia*. It should be noted that upon the independence of Nigeria in 1960, all the laws of England that were made Statutes of General Application 1900, following the dictum of Niki Tobi, that not all the laws of England are binding on Nigeria, save those that were made Statutes of General Application⁷ are binding in the country, the Common Law and

⁴ Olukayode Olalekan Aguda, 'The Legal Framework for Sale of Goods in Nigeria: A Critical Analysis' (2022) 9 (1) NAU.JCPL 100, 103

⁵ Cap. 149, Laws of Oyo State, 2000.

⁶ Fiyinfoluwa Adeleke, 'Commercial Transactions and Consumer Rights Protection: Navigating regulation and enforcement dilemma under the Nigerian Sale of Goods Act', (2017) Commercial and Consumer Transactions Law Paper, 1-2, citing Justice Niki Tobi in *Nze Bernard Chigbu v. Tonimas Nigeria Limited & Anor* (2006) NWLR (Pt.984) 1892.

⁷ *Re Nze Bernard Chigbu*

Equitable principles are applicable in our courts, and are received into Nigeria at independence.⁸

Although, SOGA did not fully define a consumer, but the Black's Law Dictionary slightly departs from the definition by the Law Dictionary by defining a consumer as *someone who buys goods or services for personal, family, or household use, with no intention of resale; a natural person who uses products for personal rather than business purposes.*⁹

A consumer derogates from a transaction which must be seen as a contract, bearing the elements of a valid contract – offer, acceptance, capacity, consideration and intention to enter into legal relations; this constitutes a contract of sale. Both sales of goods and delivery of services have these elements in place. SOGA, defines a contract of sale as *a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration, called the price.*¹⁰ This definition has been promulgated by the Sales of Goods Law of Oyo State.¹¹ This price, which is the consideration, must be expressed.¹² It may be fixed, or agreed to be fixed in manner agreed upon or may be determined by parties' dealings.¹³ Aguda citing Sagay, defined contract as promise(s) that is legally

⁸ Olukayode Olalekan Aguda, n5

⁹ *Black's Law Dictionary*, (10th Edn 2014) vol 382

¹⁰ Sales of Goods Act 1893, s1

¹¹ *Blackstone Crushing Co. Ltd. v. Samoba (Nig) Ltd.* (2020) LPELR-51129 (CA) [38]-[43]

¹² M.E. Nwocha, 'Law of Sale of Goods in Nigeria: Interrogating Key Elements of the Sale of Goods Act Relating to the Rights of Parties to a Sale of Goods Contract' (2018) 9 Beijing Law Review, 204, citing E. Macintyre, *Business Law* (England: Pearson Education Ltd 2008). It can be accessed via: <<https://doi.org/10.4236/blr.2018.92014>>

¹³ (n11), citing M.C. Okany, *Nigerian Commercial Law* (Onitsha: Africana FEP Publishers Ltd 1992); and O. Yerokun, *Casebook on Commercial Law* (Lagos: Princeton Publishing Company 2005). See generally, Sales of Goods Act 1893, s8

enforceable that affects the parties' rights and duties.¹⁴ Aguda further defined the scope of the law of contract to be, an enclave of laws that regulate agreement spanning through all works of human activities – sale of goods, agency, hire-purchase, employment and labour relations, company law, partnership, banking relations, and the general administration of business organizations.¹⁵

2.2. Consumer Protection and the applicable Statutes

Consumers possess the rights to, own movable and immovable property, and form or join any trade association of choice; which rights are non-derogable. These rights provided in the Universal Declaration of Human Rights are entrenched in the 1999 Constitution of the Federal Republic of Nigeria (as amended).¹⁶ These rights form the substratum of consumer relations in the society, on which trading is hinged; trading itself is based on contract.¹⁷

SOGA and FCCPA establish protection of consumers. FCCPA is a repeal of the Consumer Protection Council Act, as an overall law that regulate competition and consumer protection in Nigeria.¹⁸ FCCPA underscored the consumers' rights and sellers' liabilities,¹⁹ which is a projected version of the rights and liabilities entrenched in SOGA. The FCCPA regulates trading by establishing the Federal Competition and Consumer Protection Council (FCCPC),²⁰ which protects the consumers from anti-consumer protection

¹⁴ Olukayode Olalekan Aguda, n5, 101 citing I.E. Sagay, *Nigerian Law of Contract*, (Ibadan: Spectrum law Publishing, 1985) 1

¹⁵ Ibid.

¹⁶ 1999 Constitution of the Federal Republic of Nigeria (as amended), ss 40, 43; Universal Declaration of Human Rights 1948, Arts 17, 23(4)

¹⁷ Olukayode Olalekan Aguda, (n 5), 101

¹⁸ D.O. Akabuiro, 'A Critical Review of the Federal Competition and Consumer Protection Act (FCCPA) 2019' (2022) 12 (1) NBJ, 2

¹⁹ Ibid.

²⁰ FCCPA 2018, s3

policies and practices and receives complaints from other consumer protection agencies.²¹

SOGA also protect consumers whose goods perished before risk transfers to them, from taking liability for the destroyed goods²² and have their consideration returned. This stems from the contractual principle that where there is a contract of sale, the property in goods transfers to the buyer, hence if the goods be destroyed not owing to the buyer's fault, before the buyer assumes risks, even if payment has been made, the buyer is protected from taking the deformed goods, so provides for the implied condition that goods must be in good and satisfiable condition before sale can be completed.²³

Furthermore, the Act provides for the protection of consumers, by establishing the principle of breach of condition and warranty. Despite the Act did not define a Condition, although, the court²⁴ held that an Act cannot exhaustively define terms, warranties and condition, but, the Sales of Goods Law of Kaduna State,²⁵ defines a condition as,

*“A term which goes directly to the substance of the contract for the sale of goods and so essential to it (sic) very nature that its non-performance may fairly be considered by the other party as a substantial failure to perform the contract at all and so gives him the right to repudiate the contract and reject the goods, in addition to a claim for damages”*²⁶

A condition is a term in the contract of sale, which breach goes to the core of the contract and can repudiate the contract, but a warranty does not

²¹ FCCPA 2018, s17

²² Sales of Goods Act 1893, ss 6,7

²³ -- s 14 (1)(2)

²⁴ *Chave NV v. Bremer Handels Gasellschaft* 3 (1975) 3 All ER 739, and *Hong Kong Fir Shipping Co. Ltd. vs. Kawasaki Kisen Kaisha* (1962) 1 All ER 474

²⁵ Sales of Goods Law of Kaduna State, s 3(1)

²⁶ Olukayode Olalekan Aguda, n5, 103

destroy the contract, and its breach does not go to the root of the contract, but only gives rise to claims for damages. The treatment of a breach as a warranty or condition depends on the terms of the contract.²⁷ Where a product is delivered in part and risk has been transferred to the buyer, but the seller did not fulfill the whole bargain for the delivery/rendering of the goods and services, or it doesn't fit the purpose it was sought initially, the consumer may wholly accept the goods and/or seek damages from the seller for breach of terms.²⁸ These are means of treating breaches between the supplier, manufacturer, seller and the buyer or consumer.

Consequently, there are also implied terms through which the Act protects buyers from the sellers' caprices, seeing the buyers may possess certain level of inexperience and owing to inequality of bargaining power, buyers may be disadvantaged,²⁹ so the need for the implied terms.

2.3. Terms

Consumers are protected by the terms of a contract, otherwise by the implications of the law. A Term in a contract can be a condition or a warranty, depending on its breach, its effect, and the agreement of the parties. A condition is a term which breach repudiates the contract, while a warranty, its breach does not repudiate the contract. The courts³⁰ held that a condition is either an unequivocally important term for the life of a contract which breach entitles a party to repudiate or it is a prerequisite that makes the contract dependent upon an uncertain future event.³¹ SOGA explained a condition and did not define it, but it defined a warranty as,

“... an agreement with reference to goods which are the subject of a contract of sale, but collateral to the main

²⁷ Sales of Goods Act 1893, s11; FCCPA 2018, s122

²⁸ Ibid.

²⁹ Olukayode Olalekan Aguda, n5, 105

³⁰ *Poussard v Spiers* (1876) 1 QBD 410 and *Cheshire & Fifoot*,153-4. Also *PYM V Campbell* (1910) KB 1012; *Head v. Tattersall* (1971) LR 7 Exh 7

³¹ Fiyinfoluwa Adeleke, n6, 8

*purpose of such contract, the breach of which gives rise to a claim for damages, but not to a right to reject the goods and treat the contract as repudiated*³²

Therefore, if a breach of a term causes repudiation of the contract but the parties decide to overlook it and rather ask for damages, such will be seen as a breach of warranty, hence, the will of the parties is key in the transaction. But, section 14(4) of the Act states that an express provision by the parties does not invalidate the effectiveness of the implied terms, however, section 55 of the Act provides that an implied term can be invalidated by express terms, course of dealing and usage (where the usage is binding on the parties), hence, the dichotomy between the two sections and the effectiveness of these terms guide and protect consumers. Are consumers willing to side by the term that suits them the most or otherwise? I will say that, the effectiveness of the terms is sequel to the application of the interpretation principle stating that the latter provisions in a law supersedes the earlier. Therefore, the former provision, can be said to relate with section 14 generally regarding fitness of purpose and merchantable quality, flowing from the principle of *ejusdem generis* or *noscitur a sociis*, and section 55, standing alone, may be interpreted to apply to the whole law.

Also, these conditions and warranties set out can be expressly agreed in writing or otherwise, or they may be enforced by implications through the Act, i.e. they may be implied from the provisions of the Act. There is a general contractual principle that, the court will not delve into the agreement of the parties, once it is entered in legal capacity voluntarily, but will give effect to its terms and imply the intentions of the parties, even where parties agree not on terms, recourse can be made to the custom or usage.³³ Generally, the agreement of parties is binding and no extraneous

³² Sales of Goods Act 1893, s62

³³ *Okonkwo v. Zurmi & anor (2018) LPELR-46855 (CA) 19-24*

element is to be read into it,³⁴ which parties presume that previous oral understanding is covered in whole or partly by the express written agreement; this rule is called the parole rule.³⁵ The implied terms are exceptions to the express terms, and it is a strong rebuttal and exception to the parole rule,³⁶ aside from other exceptions as reflected below as provided by John Wigmore:³⁷

“(a) Parol evidence may be adduced to prove a custom or trade usage whose implications the parties have, or may reasonably be deemed to have, tacitly assumed. (b) Parol evidence is adduced to show that the operation of the written contract was subject to an agreed antecedent condition – a condition precedent which had not occurred. (c) Parol evidence is adduced to prove that the written agreement was not the whole contract. (4) Parol evidence may be given to prove some invalidating cause outside the written contract itself, e.g. fraud, illegality, misrepresentation, mistake, incapacity or absence of consideration.”

2.3.1. Implied Terms

Flowing from the above, implied terms are terms that are incorporated into the contract by the court, law, custom or usage.³⁸ Implying terms into contracts may be for any of the reasons, that:

- i. the parties have decided to record only the most important terms, leaving other provisions to be understood;*

³⁴ Fiyinfolu Adeleke, n6, 8, citing, GH Treitel, *The Law of Contract*, (9th ed.) 176

³⁵ Fiyinfolu Adeleke, n6, 8

³⁶ Ibid.

³⁷ Ibid citing, John H. Wigmore, ‘A Brief History of the Parol Evidence Rule’, (1904) 4 *COLUM L REV* 338, 342; and Luis Zuppi, Alberto, ‘The Parol Evidence Rule: A Comparative Study of the Common Law, the Civil Law tradition and Lex Mercatoria’ (2007) 35 (2) *Georgia Journal of International and Comparative Law*, 8

³⁸ Fiyinfolu Adeleke, n6, 8

- ii. *the parties have not considered that a particular situation would arise;*
- iii. *the makers of the law governing the contract have decided that certain terms should or must be incorporated into the contract;*
- iv. *the term is needed to give efficacy to the contract, e.g. to supplement or support the express terms; or*
- v. *the term is one which the contracting parties agreed upon but inadvertently omitted”³⁹*

The court may imply terms into the contract through the provisions of the law, by performing its original function of interpreting the law as it is or as it ought to be. More so, the court as held in *Re Okonkwo (supra)* may employ some tests – the officious bystander test or efficacy test⁴⁰ in its interpretation. An Officious Bystander test means, the court will employ provisions during the contract parties ought to have agreed, which if they later become aware, it will not cause disagreement;⁴¹ the court will be seen as a bystander to read the provisions into the agreement signaling the parties to an obvious provision they should have agreed ab initio. This test was laid down in the *Shirlaw v Southern Foundries (1926) Ltd.*,⁴² where the court held that it was an implied term that the director will not be removed during his fixed term.⁴³

³⁹ Ibid, citing hlcomplexcontracting, ‘go-global-implied-terms’ <<http://www.hlcomplexcontracting.com/go-global-implied-terms#sthash.82zfL0A0.dpuf>>

⁴⁰ Fiyinfolu Adeleke, n6, 9

⁴¹ Maheran Makhtar and others, ‘The Officious Bystander Test Revisited; Special Reference to Implied Terms in PAM and PWD203A Standard Form Contracts’ (2017) 35(9) World Applied Sciences Journal, 1792

⁴² [1939] 2 KB 206

⁴³ All Answers ltd, ‘Shirlaw v Southern Foundries Ltd’ (Lawteacher.net, April 2024) <<https://www.lawteacher.net/cases/shirlaw-v-southern-foundries.php?vref=1>> accessed April 21, 2024.

The Business Efficacy test reveals that a provision will be implied into the contract, if it applies to the business.⁴⁴ This principle was laid down in *The Moorcock*,⁴⁵ where the court held that the wharfingers are impliedly warranted to have taken reasonable steps to ensure the vessel would safely ground without suffering damage, seeing that the reason for grounding the ship is to use the jetty, which could not be used except the ship/vessel grounds at low water, which the wharfingers did not check if the river bed was safe for the ship's landing.⁴⁶ In fact, by *juria novis curia*,⁴⁷ the court may descend into the arena, to imply and interpret terms as explained in the officious bystander principle, to protect consumers.

Terms may be implied by the presumptions law has for transactions, and may be implied owing to the custom and usage of the business environment. The court⁴⁸ held that lease transaction should follow custom, because it was proved by a local custom that a tenant was bound to farm according to a certain path of gardening and at the end of his tenancy, a fair allowance for seed and labour on the arable land, should be given him as his entitlement.⁴⁹ In *Produce Brokers, Co. Ltd v. Olympia Oil and Cook Co. Ltd*,⁵⁰ where the contract for sale of goods directs disputes to arbitration, the House of Lords held that the arbitrators were right to consider the particular custom of the trade, in their awards.⁵¹

⁴⁴ n36

⁴⁵ (1889) 14 PD 64

⁴⁶ All Answers Ltd, 'The Moorcock (1889)' (Lawteacher.net, April 2024) accessed via: <https://www.lawteacher.net/cases/the-moorcock.php?vref=1> accessed April 21, 2024.

⁴⁷ It is for the court to know the law.

⁴⁸ *Hutton v. Warren* (1836) 1 M and W 466

⁴⁹ Fiyinfolu Adeleke, n6, 9

⁵⁰ (1916)1 A.C 314

⁵¹ Fiyinfolu Adeleke, n6, 9

Recall, courts cannot make contract⁵² or delve into parties' personal business, but in some situations make contract for parties, by the implication of the law.⁵³

Therefore, there are some implied terms the law reads into contract, which parties cannot claim ignorance, because *ignorantia facti excusat, ignorantia juris non excusat*.⁵⁴ Some of these are, right to sell,⁵⁵ right to enjoy quiet possession,⁵⁶ sale by description should follow sale by sample,⁵⁷ condition that the goods must be fit for the purpose it is needed for,⁵⁸ and the quality of the sale by sample should correlate with the goods in bulk.⁵⁹ Afolayan opined that for these principles to work for the consumer, the consumer must as in good faith.⁶⁰

2.3.2. Analysis of FCCPA and SOGA on Terms of Contracts.

By section 55 of SOGA, a seller may ensure that the agreement supersedes the implied terms, where consumers rely on those terms to enforce his rights by an action, because the (non)performance of any rights/duties results in liability. However, where there is an apparent liability, the court does not permit overlook the breach. But, the FCCPA forbids this provision, by prohibiting sellers from avoiding liabilities that arise by the implied terms.⁶¹

⁵² *Re Okonkwo (supra)*

⁵³ *Hutton-Mills v. Nkansah II and Ors* (1940) 6 WACA 32, cited in Fiyinfolu Adeleke, n6, 9

⁵⁴ Ignorance of Facts excuses, ignorance of the law does not excuse.

⁵⁵ Sales of Goods Act 1893, s8, s12

⁵⁶ *Lloyds v. Scottish Ltd Modern Cars & Caravans* (1921) 3 KB 545; *Rowland v. Dival* (1923) 2 KB 500; *Neblet v. Confectioners Materials Co* (1921) 3 KB 545

⁵⁷ Sales of Goods Act 1893, s13; see also, *Baele v Taylor* (1976) 1 WLR 1193 cited in Fiyinfoluwa Adeleke, n6, 9

⁵⁸ *Re Blackstone Crushing Co. Ltd. (supra)*

⁵⁹ Sales of Goods Act 1893, s15; FCCPA 2018, ss121, 122

⁶⁰ M.S. AFOLAYAN and J. ALADESANMI, 'Legal Analysis of the Challenges of Unfair Terms and Consumer Protection in Hire Purchase Transactions in Nigeria', (2022) 13 (1) NAUJILJ, 77

⁶¹ FCCPA 2018, s139

Analysis of the courts' decisions revealed that in England and Nigeria, courts forbid sellers – Manufacturers, Distributors, Sellers, Importers, Suppliers, of goods and services to rely on this clause to the detriment of the other. In *Karsales (Harrow) Ltd. v. Wallis*,⁶² it was held that exemption clauses are needed in contracts, however no party can rely on it to cover up his breach;⁶³ even when it goes to the root of the contract,⁶⁴ as upheld by the Privy in *Suissee Atlantique Societe d' Armements Martine S.A. vs. Rotterdamsche Kolen Centrale*⁶⁵ and *Adel Boshalli v. Allied Commercial Exporters Ltd.*⁶⁶

Similarly, Nigerian courts protect consumers, frown and prohibit reliance on exemption clauses for breaches.⁶⁷ The decision in *Re Niger Insurance Ltd* was mutatis mutandis with *Ogwu v. Leventis Motors*⁶⁸ where the court held that the Defendant who had committed a fundamental breach under the contract, cannot rely on exemption clauses agreement to avoid liabilities.⁶⁹ So also in *Anibaba v. Dana Airlines Ltd & anor*,⁷⁰ *International Messengers Nigeria v Pegofor Industries Ltd*,⁷¹ *Union Bank of Nigeria Plc v Omniproducts (Nig) Ltd & Anor*.⁷²

The courts cautiously limit applying exemption clauses to breaches, because its application is determined by the construction of the contract, since parties ought to agree on their associated risks,⁷³ and if there is any

⁶² [1956] EWCA Civ J0612-1; [1956] 1 WLR 936

⁶³ Fiyinfolu Adeleke, n6, 13

⁶⁴ Fiyinfolu Adeleke, n6, 11

⁶⁵ (1966) 2 All ER 161 cited in n6, 12

⁶⁶ (1961) All NLR 917

⁶⁷ *Niger Insurance Ltd. v. Abed Brothers* (1976) 6 UILR (pt 1) 61; (1976) 7 SC 20; *Max-Clean Becal Ventures Ltd & Anor v Abuja Environmental Protection Board* (2016) LPELR-41204 (CA)

⁶⁸ (1963) NNLR 115

⁶⁹ Fiyinfolu Adeleke, n6, 12

⁷⁰ (2022) LPELR-57827(CA)

⁷¹ (2005) All NLR 234

⁷² [2006] 15 NWLR (Pt 1003) 660.

⁷³ Fiyinfolu Adeleke, n6, 12, see *Photo Production Ltd. v. Securicor Transports Ltd* [1980] AC 827; [1980] UKHL 2

ambiguity in the clause, it will be enforced against the party that relies on it.⁷⁴ This is an offshoot of the interpretative rules above.

Therefore, laws have been promulgated in Nigeria to remove such exemption clauses, such as Anambra Contract Law,⁷⁵ which provides, “*nothing in the foregoing shall be construed as to enable a party guilty of fundamental breach of a contract or a breach of a fundamental term to rely upon an exemption clause so as to escape liability*”⁷⁶ Although exclusion clauses may be in contract,⁷⁷ it cannot absolve any party of liability for breach.⁷⁸

Nonetheless, both SOGA and FCCPA permit consumers to, examine goods,⁷⁹ reject defective goods/services,⁸⁰ accept/reject goods partly or wholly⁸¹, but the FCCPA stands out by meting out punishments to sellers,⁸² and states that consumers are to be well informed about the goods descriptions.⁸³

3.0. Remedies

Notwithstanding the foregoing, remedies are available to consumers and sellers. There are, action for recovery of damages, return of goods for want of meeting standards/quantity,⁸⁴ and refund,⁸⁵ even by the FCCPC.⁸⁶ Even the FCCPA establishes that no subsequent contract can avoid a liability

⁷⁴ *Re Max-Clean Becal Ventures Ltd* (supra)

⁷⁵ Cap 32, Revised Laws of Anambra State, 1991, s190.

⁷⁶ See, *Ezex Courier Services Ltd v. Ugwu & Anor* (2016) LPELR-41478(CA)

⁷⁷ *ABC Transport Ltd v. Akintoye*

⁷⁸ *Niger Insurance Ltd v Abed bros* (supra)

⁷⁹ FCCPA 2018, s121, SOGA, s34

⁸⁰ -- ss122; SOGA 1893, s30

⁸¹ SOGA 1893, s30, FCCPA, s130

⁸² FCCPA 2018, part XVII

⁸³ --, ss114,115

⁸⁴ Sales of Goods Act 1893, s53

⁸⁵ FCCPA 2018, s122

⁸⁶ -- s133(e)

done by the extant contract.⁸⁷ It ensures that sellers bear liabilities for misrepresentation and breach of terms of the contract.⁸⁸ The Act further ensures that contracts that prohibits return of defective goods and/or mislead the consumers, are voided.⁸⁹

However, the general rule of damages will apply, where courts will not grant reliefs not claimed;⁹⁰ so, for courts to grant damages, the claimants – consumer or seller, have to demand for it in their pleadings before the court.

In determining damages, courts⁹¹ would consider net profit not gross anticipated profit, even as stated in the feasibility report.⁹² Also, claims for damages may arise where there is delay in delivery⁹³

Also, the consumer may seek specific performance.⁹⁴ However, this remedy is discretionary. If, there is a better remedy or the *res* is destroyed, court may not grant specific performance, rather award damages.⁹⁵

The consumer has to act timeously in examining goods, as provided by the FCCPA,⁹⁶ and rejecting unmerchantable goods.⁹⁷ Consequently, he must promptly inform the seller if he rejects the goods and must not hold on to those goods.⁹⁸ However SOGA⁹⁹ provides, it is sufficient the buyer informs the seller of his rejection but not bound to return the goods, nevertheless he

⁸⁷ -- s140

⁸⁸ -- ss134-145

⁸⁹ -- s129

⁹⁰ *Jim Jaja v. COP Rivers State & Ors* (2012) LPELR-20621(SC)

⁹¹ *Artra Industries (Nigeria) Ltd. v. Nigerian Bank for Commerce and Industry* (1998) 4 NWLR (pt. 546) 357

⁹² M. E. Nwocha, n11, 208

⁹³ *Ibid*, 207; *Abba v. Shell British Petroleum* (2013) 54 (3) NSCQR 1363

⁹⁴ Sales of Goods Act 1893, s52; FCCPA 2018, part XVII

⁹⁵ M.E. Nwocha, n11, 208; *Help (Nigeria) Ltd. vs. Silver Anchor (Nigeria) Ltd* (2006) 5 NWLR (pt. 972) 196

⁹⁶ FCCPA, s121

⁹⁷ -- s122

⁹⁸ See, M. E. Nwocha, n11, 209, see *Metal Construction (WA) Ltd v. Meridian Trade Corp. Ltd* (1990) 5 NWLR 145; *Elf Petroleum Nigeria Ltd. vs Onyekwelu* (2002) 7 NWLR 461

⁹⁹ Sales of Goods Act 1893, ss35,36

must not do anything contrary to the seller's right/title,¹⁰⁰ else he has impliedly accepted the goods.

Therefore, action can be instituted by the parties seeking remedy against breach of contract. Generally, the buyer too can institute action for diminution, extinction of price or damages for breach of warranty.¹⁰¹

4.0. Recommendation

Therefore, it is imminent that detailed provisions should be enacted in local laws, as done in Anambra State aforementioned, notwithstanding that Nigeria has enacted the FCCPA which covers the field and states remedies available thereto, even protection from unfair terms and dealings in contracts, inter alia. Consumer Protection would be productive, if all states domesticate the federal law to attend to local matters, hence bringing the knowledge of law to the grassroots. Furthermore, since the Sales of Goods Act did not define some clauses, such as merchantable quality, leaving it to the courts to interpret it, the error would be corrected in the local laws by defining and giving further perspectives to the terms.¹⁰²

More so, parties to contracts should always seek counsel of professionals before contracting, as they would be advised on the risks and possible liabilities.

Thus, Nigeria should join the United Nation Convention on Contracts for the International Sale of Goods (CISG), which regulates international trade relating to sales of goods, which will be beneficial to the country, because trade as evolved and assumed lots of complexities as against when the Act was enacted in 1893.¹⁰³ This will also improve the country's bilateral and multilateral relationship globally and with other African countries.

5.0. Conclusion

¹⁰⁰ -- s32

¹⁰¹ -- ss 49-54ff

¹⁰² Aguda, n5, 108

¹⁰³ --, 107, 108

Generally, SOGA and FCCPA have revealed various rights and liabilities of the sellers as well as the buyers, and it ensures that such rights should be safeguarded and enforced by the parties, hence upholding the law and the cause of justice, even in trade and commercial premises. The FCCPA has gone ahead of the SOGA to establish that consumers have the right to select suppliers¹⁰⁴ and to cancel bookings/services engaged in advance, although with some penalties.¹⁰⁵ This promotes ease of doing business and attracts investors, and promotes consumers' independence. The protection of the consumers aids Foreign Direct Investments¹⁰⁶ which is the mainstay of the economy, as established in the FCCPA. Nigeria, being one of the biggest centres for commerce in Africa, may improve its trade practices by tilting towards consumer protection than upholding manufacturers' rights, as well as better consumer protection institutions.¹⁰⁷ So, SOGA has been of immense benefit to the nation, even by the implementation of the its principles as entrenched in the FCCPA.

Therefore, whether or not a term will be seen as a condition or warranty, depends on its construction in the contract. Nations, consumers and business undertakings should understand how to protect themselves from adverse claims by ensuring that consumers' rights are treasured should they want to thrive.

¹⁰⁴ FCCPA 2018, s119

¹⁰⁵ FCCPA 2018, s120

¹⁰⁶ D.O. Akabuiro, n75, 16

¹⁰⁷ Ibid.