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Case Comment: Dunlop Pneumatic Tyre Co. Ltd. vs Selfridge & Co. Ltd.

Vidushi Singh^a

^aBanasthali Vidyapith University, Rajasthan, India

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INTRODUCTION

In the House of Lords presided by Hon'ble Viscount Haldane LC, Lord Dunedin, Lord Atkinson, Lord Parker of Waddington, Summer & Parmoor dismissed the appeal in the matter related to the privity of contract, consideration, and agency. When an agreement is made between two or more parties that constitutes mutual legal commitments and also that agreement is enforceable by law, it is termed a Contract. In legal language, an agreement that is enforceable by law is a contract itself. To form a contract, it is necessary that an offer is furnished by one party and the other party accepted that proposal or offer then it becomes a promise and when promise comes out with a lawful consideration it becomes an agreement and at last an agreement which is enforceable by law is called a contract. The concept of privity of contract is a customary legal rule which states that if a contract is formed between two parties, then the third party who is a stranger to the contract has no legal right enshrined under the Indian Contract Law to sue upon it. We will understand this by taking a simple illustration; A contract is formed between Raya and her friend Kamal. If Kamal breaches the

contract due to any reason, in that case, only Raya can file a case against Kamal, nor the third party who is not a party to the contract.

Now we will discuss the most famous and benchmark case i.e., Dunlop Pneumatic Tyre Co. Ltd. v Selfridge & Co. Ltd¹, which laid down the concept of Privity of Contract. This case enumerates the principle of the privity of contract exhaustively and comprehensively. It also inflicts the essential ingredients of a contract including the notions of consideration and agency agreement. It is among one of the major case laws in the matters relating to the contract law and this case comment wholly talks about the rule of privity of contract.

BRIEF FACTS

- The appellant (Dunlop Pneumatic Tyre Co. Ltd.), was known to be a famous tyre manufacturing company. The company manufactures high-quality tyres and retails them to their distributors at costly prices. Some of the distributors are selling their tyres not at reasonable prices i.e., below the actual prices and due to which the company enduring high losses by doing several projects with the distributors.
- One day, Dunlop Pneumatic Tyre Co. Ltd. comes up with a scheme that every distributor is restricted to sell the products below the mentioned retail price. Any person who infringes the condition will be liable to pay the liquidated amount of £5 to the company. And this restriction will be imposed on every distributor to whom the Dunlop Pneumatic Tyre Co. Ltd. makes a contract.
- The appellant made an agreement with the distributor i.e., Dew & Co., and supplied tyres to the distributor at a discounted rate. But the appellant i.e., Dunlop Pneumatic Tyre Co. Ltd. imposes a condition upon the distributor that the retailing price of the products will always be decided by our company i.e., the appellant. It means that the distributor i.e., Dew & Co. will not decide at what amount the product will be sold in the market. It simply means that Dew & Co. was not allowed to retail the products below the minimum resale amount. If Dew & Co. violates this condition and sells the company's product below that scheme of the resale price maintenance then we are

¹ *Dunlop Pneumatic Tyre Co. Ltd. v Selfridge & Co. Ltd* [1915] UKHL, AC 847

having a right under contract law to sue Dew & Co. and will be liable to pay the liquidated damages of £5 to the appellant. Also, whoever does any agreement with the Dew & Co. related to the supply of the appellant's product is bounded not to resell those products below the minimum resale amount.

- Distributor i.e. Dew & Co. agreed upon this condition and promised that they will not sell the products of the appellant below the price which was decided by them. And a formal contract was made between both the parties i.e., the Dunlop Pneumatic Tyre Co. Ltd. And Dew & Company.
- Further, the distributor i.e. Dew & Co. entered into a contract with the retailer; Selfridge Company Limited (the respondent). Dew & Co. sold the appellant's tyres at the listed amount to the retailer i.e., the Selfridge Company and the distributor had further transferred/stated this stipulation to the retailer imposed by the retailer; not to resell the products below the RPS (resale price maintenance). Further, it was stated by the Dew & Company that the Dunlop Pneumatic Tyre Co. has also put £5, as liquidated price to be paid to them if you i.e., the Selfridge Company infringes this condition. At that point, the Selfridge Company i.e., the respondent agreed upon this stipulation that they will not retail the products against the terms of the minimum resale price.
- Due to the bad market conditions because of that the respondent i.e., Selfridge Company faced many challenges. In order to compete in the market, the respondent's company lower down the prices and sold out the products (tyres) of Dunlop Pneumatic Tyre Co. (appellant) against the price maintenance terms and conditions.
- The appellant (Dunlop Pneumatic Tyre Co. Ltd.) came to know about this infringement made by the respondent (Selfridge Company), the Dunlop company sued the respondent and further claimed for the liquidated damages being imposed when the condition was stipulated.

ISSUES

- Whether there was any direct contract formed between both the companies i.e., Dunlop Pneumatic Tyre Co. Ltd. and the Selfridge Company?

- Whether Dew & Company entered into a contract with the Selfridge Company in the scope of the Dunlop Pneumatic Tyre Company's agent?
- Whether Dunlop Company had furnished any consideration or through the promisee, being the agent of the Dunlop company to the respondent?
- Whether the Dunlop Pneumatic Tyre Company can enforce the legal obligations on the retailer i.e. the respondent irrespective of the fact that there is no privity of contract between the parties?

CONTENTIONS SUBMITTED BY THE PARTIES

The appellant contended that it was already stated in the terms and conditions of the agreement that was made with the distributor that the distributor and the retailer both was bound with a condition i.e., the retailer was not allowed to resell the Dunlop Company's tyres below the minimum price listed by the appellant. It was also mentioned that if any retailer violates the term, then the retailer will be liable to pay the liquidated damages of £5 to the Dunlop Company i.e., the appellant. The respondent i.e., Selfridge Company infringes this condition and therefore is liable to pay the liquidated damages to the appellant.

The respondent contended that there was no direct contract made with the appellant. In case of that, the appellant can't sue upon it. Hence, there was no contractual relationship exists because there is no contract made and thus no contractual relationship exists between us. The respondent also contended that a third party who is not a party to the contract can't file a suit against us and hence, is not liable to recover any legal obligations².

JUDGEMENT

The House of Lords held that the Dunlop Pneumatic Tyre Company can't sue the Selfridge Company for reselling the tyres below the listed price because there was no direct contract formed between both parties. Hence, the appellant can't claim the compensation/damages and directions from the respondents. The House of Lords came to the decision basically focusing upon the common legal rules i.e., the privity of contract and the privity of

² *Ibid*

consideration. After analysing the above, privity of the contract defines that strangers to a contract cannot sue or sue in the case of breach of contract. In our present case, there exists no privity of contract between the parties. Thus, no breach of contract was committed by the respondent. One main essential ingredient which is very important for forming a valid contract is a consideration. It simply means something in return. It is stated in the Indian Contract Law, where there is no consideration, there is no valid contract. For the legal enforceability of the agreements, consideration needs to be there. The rule of privity of consideration simply inflicts the idea of exchanging something. It means that if both parties get to benefit from a contract, then there are very low chances that one party can take unnecessary advantage of the other party who is a party to a contract. Therefore, according to the rule of privity of consideration: it was obligatory on the part of Dunlop Company i.e., the promisee to furnish consideration to the Selfridge Company i.e., the promisor for a valid contract in order to be the irrevocable lawfully obligatory. Thus, the House of Lords also observed that no consideration has been furnished by the Dunlop Company to the Selfridge Company. And this situation depicts the case of *Nudum Pactum* (an agreement made without consideration). The House of Lords further observed that if Dew acted as the agent on behalf of any party who is privity to contract then Dunlop had the right to sue the respondent. But Dew was not the agent of the Dunlop company, thus, the Court can't consider it as a case of agency agreement as it is not applicable here. In this case, two different contracts were formed between the two different parties. In short, the Dunlop Pneumatic Tyre Company entered into a contract with the Dew & Company and the Dew & Co. entered into a contract with the Selfridge Company. There were two separate contracts formed. There was no contractual relationship existed between Selfridge Company with the Dunlop Pneumatic Tyre Company.

Keeping in view all the facts and circumstances of the case, it was held by the House of Lords that the appellant (Dunlop Company) can't sue the respondent (Selfridge Company) and also can't claim for the damages from the respondent because both the parties hold no contractual relationship among themselves. According to the principle of contract, Dunlop who is a stranger to the contract cannot file or enforce the legal obligations on the respondent. Hence, the appeal was dismissed by the Court.

REASONING

- The only party to a contract can sue or be sued. Stranger to a contract had no rights given to sue upon it.
- Consideration is the prime element in order to form a valid contract. If consideration is given to that particular contract, only then an agreement will come up the legal enforceability. The lack of consideration makes an agreement invalid.
- In this case, the Dunlop Company was not considered to be the secret principal of the Dew Company. Therefore, Dunlop can't sue the Selfridge for reselling the tyres below the minimum resale amount. Hence, at the same time, no individual can contract as a principal and an agent.

COMMENTARY/ANALYSIS

The doctrine of privity of contract is different from the privity of consideration. According to the rule of privity of contract, a third party can't sue or be sued upon any contract/ can't enforce it. But in case of the privity of consideration, a third party or stranger to consideration may sue or be sued, if that stranger is a beneficiary to that contract. The concept of privity of consideration is not applicable in India. But in India and England, this doctrine of privity of contract is the same. It means that the stranger or any other third party has no capacity to sue upon it.