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Week 1 Workshop: Worksheet 3 With Answers

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| **Module Number** | LAW604 | | **Module Title** | Civil Litigation and Advocacy |
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Using the table at the back of this worksheet, complete a case analysis on the case study you have been provided with.

Case Analysis Activity

You are acting for the defendant in proceedings. Your client is Mr Thomas Brown. Mr Brown owns a number of Mexican restaurants across the country. The claimant in the case is Kitchy Kitchens Ltd. The Claimant had fitted a number of kitchens in your client’s restaurants. This included all gas and electric installations. The project manager for the Claimant, is Mr Jonathan (Johno) Vegas.

Your client believes he has a good defence to the claim made against his company. However he accepts that the contract between himself and the claimant required payment within 21 days of the work being completed. Your client instructed you that he has engaged the services of Kitchy Kitchens previously and has known Johno Vegas for years and previously have not had any issues.

You are instructed that on previous contracts, the claimant and defendant had worked to an ad hoc hire purchase scheme where monies, when falling due, could be renegotiated to pay monthly instalments without interest accruing. This is what they've done with two of your client’s restaurants and as a consequence your client assumed previous business dealings would follow through here.

Your client spoke to Johno Vegas at the beginning of February and told him about his cash flow problems. Your client instructed you that the Kings Lynn project turned into a crisis situation and it absorbed all of his time and money. He explained to you that he and Johno Vegas had discussed how he would be allowed time to pay in February and as far as your client was concerned they had agreed to resolve this issue verbally then.

There was a couple of issues your client has with the level of work and quality too. On 2 June 2023 the first issue with the cookers arose. On that morning he received a complaint from one of the chefs, he could smell gas when trying to ignite the hob. He has the expert opinion of a CORGI registered gas fitter, and the issues he raised. Your client also instructs that the Claimant’s staff’s behaviour was less than exemplary. They arrived after 10am and left before 4pm.

Your client does not believe that the claimant has a proper claim and believes that they should be meeting the costs that it took me to replace the cookers and compensate him for his loss.

Your client has supplied you with the following documents:

1. Particulars of Claim
2. Quote and Agreement to supply goods and services
3. Invoice
4. Excerpts from standard terms sent with the above agreement
5. Engineering Report
6. Invoice 1987458459 for supply goods and services
7. Reminder: Invoice 1987458459 for supply goods and services

Document 1

**CLAIM No. BRT556478**

**IN THE BRIGHTON COUNTY COURT**

**BETWEEN:**

**KITCHY KITCHENS LTD LIMITED**

**Claimant**

**-and-**

**CHOP SHOP LTD**

**Defendant**

**PARTICULARS OF CLAIM**

1. At all material times:-
   1. The claimant was concerned in the business of supplying and fitting kitchens and;
   2. The defendant was the owner and proprietor of a number of restaurants.
2. On or about 23 February 2023, the claimant and the defendant entered into a written contract to supply and install three kitchens, including ovens and extractor fans at a cost of £50,000 plus VAT. A copy of the agreement is attached to these particulars of claim.
3. The Defendant paid a deposit of £5,000 on or around 29 February 2023.

1. It was a term of the contract that the contract price would be paid within 21 days of finishing the installation of the third kitchen.
2. The claimant finished installing the goods pursuant to the agreement on 30 May 2023 and in time. The claimant subsequently informed the defendant of this during a conversation between the project manager for the Claimant, Mr Jonathan Vegas, and the Defendant, Mr Thomas Brown. An email was also sent between them on the 1 June 2023 to that effect.
3. Full and final payment was therefore due by 22 June 2023 and the Defendant was aware of this.

PARTICULARS OF BREACH OF CONTRACT OF THE DEFENDANT

1. The Defendant was in breach of contract in that:
2. It did not pay the remaining sum of £45,000 + VAT when it fell due,
3. It did not pay the remaining due sum at all
4. Further the Claimant claims interest at a contractual rate of 20% from the time the payment fell due.

**AND** the Claimant claims:

1. Damages
2. Interest as aforesaid.

**DATED** the day of 2023

STATEMENT OF TRUTH

I believe (the Claimant believes) that the facts stated in these Particulars of Claim are true.

Signed…………………………..

Position…………………………

Dated…………………………..

Position / Office held………………………..

Document 2

**Kitchy Kitchens Ltd Ltd**

*17 Ring Road West,*

*Fiddlestickshire,*

*Coston,*

*Telephone 0445123456 Fax number 0445123458*

FAO: Thomas Brown

By email: [T.Brown@ChopShopLtd.co.uk](mailto:T.Brown@ChopShopLtd.co.uk)

23rd February 2023

Dear Thomas,

**Re: Quote and Agreement to supply goods and services**

Further to our talk today please find attached a copy of our quote and standard terms and conditions as usual. Delighted to hear that you are opening up a new restaurant. Please consider us for service contracts moving forward.

Please sign the following, electronically or otherwise, and send back to me such that we can place an order for the units, ovens and extractor fans.

Cheers Thomas,

Johno

Document 3

**Kitchy Kitchens Ltd Ltd**

*17 Ring Road West,*

*Fiddlestickshire,*

*Coston,*

*Telephone 0445123456 Fax number 0445123458*

**Hot and bothered to agree to carry out the following works;**

1. Remove old kitchen units, cooker and extractor fans and dispose of same (in each of the 3 kitchens).
2. Supply and Install 3 new XKred 47 Range Cooker in each of the 3 kitchens
3. Supply and Install 3 new XK70 extractor fans in each of the 3 kitchens
4. Dispose of the removed kitchen units, cookers and extractor fans
5. Register the Cookers, Extractor Fans and service under warranty for 2 years
6. Labour 10 men for 4 weeks
7. All ancillary equipment, piping, cables and trappings to finalise
8. To be available for 24 hour on-call issues with the extractor fan in the first 6 months of its running (in addition to standard service contract)

Total due £50,000 plus VAT

In grateful receipt of your deposit for £5,000.

Signed: Thomas Brown

Signed: Johno Vegas

Document 4

**Excerpts from standard terms sent with the above agreement:**

Clause 2.2:- “the company will carry out all works with reasonable care and attention.”

Clause 3: - “…. the balance of the cost will be paid by way of BAC or cheque within 21 days of finalising the work.”

Document 5

Dear Mr Brown,

I'm grateful for the opportunities to work in your restaurants. They are delightful and bespoke.

I was asked to review the fitting of the Cookers in 3 of your restaurants as a consequence of the smelling of gas.

In my expert opinion, this was due to incorrect flare fittings which meant that no matter how hard you try and tighten them a full seal would not be affected and as soon as the cookers were turned on it was only a matter of time before the gas would leak. I found this problem was consistent across all three restaurants.

In my opinion the way the piping was installed is dangerous and the cookers should not be used until this problem is resolved. I would be happy to put this in an expert witness report pursuant to part 35 if instructed to do so.

Yours sincerely

Seamus Breen

**Engineering Consultant**

Document 6

**Kitchy Kitchens Ltd Ltd**

*17 Ring Road West,*

*Fiddlestickshire,*

*Coston,*

*Telephone 0445123456 Fax number 0445123458*

FAO: Thomas Brown

By email: [T.Brown@ChopShopLtd.co.uk](mailto:T.Brown@ChopShopLtd.co.uk)

1 August 2023

Dear Thomas,

**Re: Reminder: Invoice 1987458459 for supply goods and services**

For goods and services supplied as agreed in the time agreed

£50,000 plus vat

Outstanding balance £23,000

This sum is due immediately.

Payment is acceptable by the BACS or cheque.

If you're unable to pay please let us know forthwith as pursuant to contract you became liable for interest from 1 August 2023 on the remaining balance at a rate of 20%.

Document 7

**Kitchy Kitchens Ltd Ltd**

*17 Ring Road West,*

*Fiddlestickshire,*

*Coston,*

*Telephone 0445123456 Fax number 0445123458*

FAO: Thomas Brown

By email: [T.Brown@ChopShopLtd.co.uk](mailto:T.Brown@ChopShopLtd.co.uk)

8 August 2023

Dear Thomas,

**Re: Reminder: Invoice 1987458459 for supply goods and services**

For goods and services supplied as agreed in the time agreed

£50,000 plus vat

Outstanding balance £23,000

This sum is due immediately.

Payment is acceptable by the BACS or cheque.

If you're unable to pay please let us know forthwith as pursuant to contract you became liable for interest from 1 August 2023 on the remaining balance at a rate of 20%.

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| **Case Analysis (Breach of Contract)** | |
| **Client:** |  |
| **Opponent:** |  |
| **Cause of Action:** |  |
| **Express Terms** |  |
| Implied Terms |  |

|  |  |  |  |
| --- | --- | --- | --- |
| **Element to Establish** | **Facts to Establish** | **Evidence Available** | **Evidence to Obtain** |
| Contract |  |  |  |
| Terms |  |  |  |
| Breach |  |  |  |
| Factual Consequences |  |  |  |
| Damage and Loss |  |  |  |