

BERMUDA
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PURCHASE OF GOODS BY INSTALMENTS ACT 1943

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[8 April 1943]

[preamble and words of enactment omitted]

Interpretation

- 1 (1) In this Act—

"cash price" means, in relation to the purchase of any goods, the purchase price of the goods if paid in full on or before the delivery of the goods, and includes any additional charges, that is to say, any charges for installation, transportation or other service charges, and any tax, impost or fee whatsoever payable at the time of the purchase;

"contract of guarantee" means, in relation to any instalment-purchase agreement or hire-purchase agreement, a contract made at the request of the customer (as hereinbefore defined) to guarantee the performance of the customer's obligations

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under the agreement; and "guarantor" shall be construed accordingly;

"credit price" means the total sum payable by the buyer under an instalment-purchase agreement or by the hirer under a hire-purchase agreement in order to effect the absolute purchase, free from any encumbrance, of the goods to which the agreement relates, and includes any additional charges, that is to say, any insurance premiums, interest charges, and any other charges or fees whatsoever (whether of the same kind as those before mentioned or not) additional to the cash price of the goods or attributable or incidental to the giving of credit;

"customer" means a person who buys goods under an instalment-purchase agreement or who hires goods under a hire-purchase agreement and includes any person to whom a customer's rights or liabilities under the agreement have passed by assignment or by operation of law;

"down payment" means payment of an instalment of the credit price of any goods, being such a payment made on or before the delivery of the goods under an instalment purchase agreement or, as the case may be, a hire-purchase agreement;

"hire-purchase agreement" means an agreement in writing under which a person hires goods and may buy the goods upon payment in full of the credit price;

"instalment-purchase agreement" means an agreement in writing for the purchase of goods on credit under which the credit price is payable by instalments, whether or no under the agreement the title to the goods remains in the seller until the credit price has been fully paid; and

"trader" means a person who sells goods under an instalment-purchase agreement or who lets goods under a hire-purchase agreement and includes any person to whom a trader's rights or liabilities under the agreement have passed by assignment or by operation of law.

(2) "agreement to which this Act applies" shall be construed in accordance with section 2.

(3) Any reference to a payment or to a payment of any sum or price shall be deemed to be a reference to a payment in money or goods or partly in money and partly in goods.

Application of Act

2 (1) Nothing in this Act shall apply in relation to any wholesale transaction, that is to say, a transaction whereby goods are sold or the

possession of goods is given to any person for the purpose of re-sale by that person and to an exempted undertaking.

(2) Subject as aforesaid, this Act shall apply in relation to every instalment-purchase agreement and every hire-purchase agreement under which the credit price exceeds twelve dollars:

Provided that where there are two or more such agreements subsisting between the same parties, whether the agreements are instalment-purchase agreements or hire-purchase agreements or some are instalment-purchase agreements while others are hire-purchase agreements, and the aggregate amount of the credit prices exceeds twelve dollars, then this Act shall apply in relation to each of such agreements notwithstanding that under any particular agreement the credit price does not exceed twelve dollars.

(3) In this section "exempted undertaking" has the meaning assigned to it in the Companies Act 1981 [title 17 item 5].

[section 2 amended by 1992:51 effective 1 July 1992]

Requirements relating to agreements

3 A trader shall not be entitled to enforce an agreement to which this Act applies or any contract of guarantee relating thereto or any right to recover the goods from the customer, and no security given by the customer or given by a guarantor in respect of any payment under the contract of guarantee shall be enforceable against the customer or guarantor by the holder thereon unless—

- (a) the agreement is executed in duplicate and signed by the trader and the customer and the duplicate thereof is delivered to the customer;
- (b) the agreement contains a provision for the down payment by the customer of not less than one quarter of the credit price and such down payment has been made and the receipt of the trader thereof has been included in or endorsed on the agreement;
- (c) the agreement contains provision for the payment of the whole of the balance of the credit price in approximately equal instalments payable at intervals of not more than one month over a period not exceeding two years from the date of the delivery of the goods, each instalment except the last instalment being not less than two dollars and forty cents;
- (d) there is included in or endorsed on the agreement, in such manner as to be at least as prominent and as clearly legible as the rest of the contents of the

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document, a statement or statements of the following particulars—

- (i) the cash price of the goods showing separately the actual price and, within the meaning of section 1(1), each additional charge;
- (ii) the credit price of the goods showing separately the actual price and, within the meaning of section 1(1), each additional charge;
- (iii) the amount of the down payment;
- (iv) the amount of the balance due in respect of the credit price, that is to say, the difference between the credit price and the down payment;
- (v) the amount of each of the instalments by which the credit price is to be paid, and the date, or the mode of determining the date, upon which each instalment is payable;
- (vi) a list of the goods to which the agreement relates sufficient to identify the goods:

Provided that, if the court before which any action is brought for the enforcement of the agreement is satisfied that a failure to comply with any requirement specified in paragraph (d) has not prejudiced the customer and that it would be just and equitable to dispense with the requirement, the court may, subject to any condition that it thinks fit to impose, dispense with that requirement for the purposes of the action.

Restriction of trader's right to recover possession

4 (1) Where goods are in the possession of a customer by virtue of an agreement to which this Act applies, being an agreement under which the title to the goods remains in the seller until the credit price has been fully paid, and one half or more of the credit price has been paid or tendered by or on behalf of the customer or any guarantor, then the trader shall not enforce any right to recover possession of the goods from the customer, except with the leave of the appropriate court.

(2) If a trader recovers possession of goods in contravention of subsection (1), the agreement shall determine, and—

- (a) the customer shall be released from all liability under the agreement and shall be entitled to recover from the owner in an action for money had and received all sums paid by the customer under the agreement or realized by the trader under any security given by the customer in respect of the agreement; and
- (b) any guarantor shall be entitled to recover from the trader in an action for money had and received all sums

paid by the guarantor under the contract of guarantee or realized by the trader under any security given by the guarantor in respect of the contract of guarantee.

(3) In this section "the appropriate court" means the Supreme Court if the credit price of the goods exceeds two hundred and forty dollars, and a court of summary jurisdiction if the credit price of the goods does not exceed two hundred and forty dollars.

(4) Where any amount recoverable under subsection (2)(a) or (b) does not exceed two hundred and forty dollars, the amount may be sued for and recovered before a court of summary jurisdiction in the manner provided by the Magistrates Act 1948 [*title 8 item 15*] for the recovery of a debt or liquidated demand.

Powers of court in action by trader to recover possession of goods

5 (1) Where, in any case to which section 4 applies, the trader brings an action to enforce a right to recover possession of the goods from a customer after one half or more of the credit price has been paid or tendered as aforesaid, the court on the hearing of the action may, without prejudice to any other power—

- (a) make an order for the specific delivery of all the goods to the trader; or
- (b) make an order for the specific delivery of all the goods to the trader and for the repayment by the trader to the customer or any guarantor of such sum as the court thinks just, having regard to any circumstances that are relevant to an equitable adjustment between the trader and the customer or guarantor, and in particular having regard to such matters as the condition and market value of the goods at the time when the order is made, the amount that should be allowed to the trader in respect of the use and enjoyment of the goods by the customer and the amount (if any) that should be allowed by way of compensation to the trader in respect of the determination of the agreement; or
- (c) make an order for the specific delivery of a part of the goods to the trader and for the transfer to the customer of the trader's title to the remainder of the goods:

Provided that the court shall not make an order under this paragraph unless it is satisfied that the amount which the customer has paid in respect of the credit price exceeds the price of the goods the title to which is to be transferred to him by at least one-third of the unpaid balance of the credit price; or

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(d) make an order for the specific delivery of all the goods to the trader and postpone the operation of the order on condition that the customer or any guarantor pays the unpaid balance of the credit price at such times and in such amounts as the court, having regard to the means of the customer and of any guarantor, thinks just, and subject to the fulfilment of such other conditions by the customer or guarantor as the court thinks just.

(2) Where any such action as aforesaid is brought, the court shall, in addition to any other powers, have power, upon the application of the trader, to make such orders as the court thinks just for the purpose of protecting the goods from damage or depreciation, including orders restricting or prohibiting the use of the goods or giving directions as to their custody.

Effect of postponement of operation of order for specific delivery of goods to trader

6 (1) While the operation of an order for the specific delivery of goods to a trader is postponed under section 5(1)(d), the customer shall be deemed to hold the goods under and on the terms of the agreement:

Provided that—

(a) no further sum shall be or become payable by the customer or a guarantor on account of the unpaid balance of the credit price except in accordance with the terms of the order; and

(b) the court may make such further modification of the terms of the agreement and of any contract or guarantee relating thereto as the court considers necessary having regard to the variation of the terms of payment.

(2) If while the operation of an order for the specific delivery of the goods to the trader is so postponed the customer or a guarantor fails to comply with any condition of the postponement, or with any term of the agreement as varied by the court, or wrongfully disposes of the goods, the trader shall not take any civil proceedings against the customer or guarantor otherwise than by making an application to the court by which the order was made.

(3) When the unpaid balance of the credit price has been paid in accordance with the terms of the order, the trader's title to the goods shall vest in the customer.

(4) The court may at any time during the postponement of the operation of such an order as aforesaid—

(a) vary the conditions of the postponement, and make such further modification of the agreement and of any contract of guarantee relating thereto as the court

considers necessary having regard to the variation of the conditions of the postponement; or

- (b) revoke the postponement; or
- (c) make an order, in accordance with section 5, for the specific delivery of a part of the goods to the trader and for the transfer to the customer of the trader's title to the remainder of the goods.

Application of sections 4,5 and 6

7 The following sections of this Act shall, to the extent hereinafter specified, apply in relation to instalment-purchase agreements and hire-purchase agreements—

- (a) section 4, in relation to the recovery of possession of goods after the commencement of this Act;
- (b) sections 5 and 6, in relation to actions brought after the commencement of this Act for the recovery of possession of goods.

Waiver void

8 Any provision in any agreement—

- (a) in waiver of any of the provisions of this Act; or
- (b) whereby a trader is relieved from liability for the acts or defaults of any person acting on his behalf in connection with the formation or operation of an instalment-purchase agreement or hire-purchase agreement,

shall be void.

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[*Amended by*

1948 25

1952 11

1992 51]