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Legal Problems Pertaining to The Manufacturer's Warranty.

“Sale of Solar Energy as A Model”

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Abstract: The manufacturer's warranty is meant for guaranteeing the product against any type of technical flaws, manufacturing defects, and weakness in the product's productivity, or product quality. This warranty is not legally assumed rather it ought to be reached by the contracting parties. Unfortunately, the manufacturer's warranty did not find sufficient attention by the legislators despite its role in the economic and investment promotion.

Therefore, when scrutinizing the significance of the manufacturer's warranty, it is nothing but a form of financial obligation. This obligation is not considered in cases where the supplier is not willing to meet their obligations or in cases of debit liquidation, eventually the consumer bears the costs of preventive maintenance and replacement maintenance particularly upon the loss of the legal character of the supplier.

Keywords: manufacturer's warranty, supplier, consumer, maintenance, legal personality, solar energy.

Introduction

The solar energy sale contract is one of the contracts that includes multiple legal acts. Selling solar energy is not limited to transferring ownership of its components, but the way to complete its work requires selling, installing, operating and, in most cases, maintenance. This maintenance may take the form of preventive maintenance or replacement maintenance according to the rules of the factory warranty that covers this obligation.

It goes without saying, that the manufacturer's warranty is not legally assumed when concluding a contract for the sale of solar energy, but rather it must be agreed upon between the supplier and the consumer. In the event that it does not exist, the consumer has no choice but to refer to the supplier for hidden defects if conditions are met, even if the legislator has made it clear In the consumer protection law, the obligations of the provider and what are the defects that the consumer can claim, but we find that the legislator has confused between what is considered a defect in its jurisprudential meaning, and what is considered a specific implementation of the obligation.

Upon examining the relevant civil and commercial legislations, there is no mention of the manufacture's warranty, although it is widely known between the supplier and the consumer when purchasing a product that requires a specific guarantee against any defect or defects that may appear in the future that hinders the agreed production capacity. This defect may be due to the sale of a poor quality or an irregularity in the agreed specifications, or a failure of the supplier to perform preventive and replacement maintenance.

The importance of the study

The importance of the study emanates from the nature of the solar energy sales contract, which includes various obligations to the supplier such as the transfer of ownership, installation, operation, and maintenance of parts. The ordinary sales contract is an immediate contract that its article goes into effect immediately upon contracting, unlike the solar energy sales contract which contains some lax implementation obligation – manufacturer's warranty - or another form of obligation - the maintenance contract - and both obligations revolve around carrying out preventive and replacement maintenance.

The study problem: The manufacturer's warranty may be in the form of an article in the solar power maintenance contract, or in the form of a standalone contract very similar to the maintenance contract. This contract is considered among the modern financial contracts i.e the nature of the manufacturer's warranty effect is based on performing both preventive

maintenance and replacement maintenance. Both accrue financial obligations due to maintenance or spare parts. The problem is highlighted in two aspects, firstly: the Jordanian legislators of the Consumer Protection Law mixed up the hidden defects in their jurisprudential meaning, and the failure of the supplier to substantially meet their obligations. Secondly: upon the loss of the legal personality of the supplier, and the division of their wealth among opponents in case of insolvency. There might not be insolvency, but the supplier willingly desired to close the company, then the consumer would find the manufacturer's warranty as mere document that lacks any form of legal power and would have no choice to bear the costs of maintenance on their own.

To define the problem, the following questions need be answered:

- What is the legal significance of the of the manufacturer's warranty, and did the legislator provide a guarantee for the consumer in the case this warranty existed?
- Could the manufacturer's warranty be financially reimbursed in the case of the loss of the legal entity?
- Is the manufacturer's warranty considered a guarantee against hidden defects or a standalone obligation?

Study methodology: The researcher relied on the analytical descriptive approach, by analyzing some provisions of the Consumer Protection Law and explaining their description and their applicability to the solar energy sale contract.

Study plan: The study was divided into two main topics, the firstly: the legal significance of the manufacturer's warranty for the use of solar energy, and secondly: the possible legal impact of the manufacturer's warranty guaranteeing the use of solar energy.

The first topic

The legal significance of the manufacturer's warranty for using solar energy.

Renewable energy, the solar energy constitutes a main pillar in the spread out a number of various contracts between the supplier and the consumer. These civil transactions include physical and executive works as well as vocational works, and the implementation of these works is under the attention of both sides.

Carrying out these works requires the principle of good faith, especially by solar energy companies; the supplier as their work is not limited to concluding a sale contract for the product, but rather providing subsequent services to keep the sold product under the same shape in terms of quality and purpose as it was when concluding the contract represented in providing

the consumer with the production of electricity.

The first requirement

Introducing the manufacturer's warranty

The seller or the executor of the solar energy contract is obligated towards the buyer (the consumer) to supply, install, maintain, and guarantee all solar energy components. Although the sale contract concluded between the two parties is immediate in its legal effects, it keeps the seller obligated towards the buyer in maintaining the sold product (manufacturer's warranty) and guaranteeing its components to achieve the basic purpose for which it was found, which is to provide the consumer with electricity through solar cells, according to what is agreed upon between both parties.

The first section: the technical concept of solar energy

Solar energy is one of the renewable energies that found attention by the Jordanian legislator in terms of regulation and exploitation. It was defined in article 2 of the renewable energy law as "energy generated from natural resources that are permanent and sustainable"¹ so these natural resources from which the solar energy is derived the automatically renewed and never run out due to consumption².

Solar energy, or what is called photovoltaic energy, is defined as: a group of solar cells that convert light energy into electrical energy, as receptors for sunlight that are connected to each other within a specific framework and are connected to each other in series or parallel³. They are also known as solar cell systems because they produce electricity directly through exposure of the panels to sunlight, especially since these panels are covered with an outer top layer saturated with the element phosphorus, which gives the panel the ability to generate electricity, and at the bottom a layer saturated with boron that contributes to the absorption of the largest amount of electrical energy generated⁴.

¹ The Renewable Energy and Energy Efficiency Law and its amendments No. 13 of 2012 published on page 1610 of Official Gazette No. 2 No. 5153 dated 4/16/2012.

² Muhammad Wajdi Nouredine, *International Protection of the Environment*, Dar Zain Jurist and Literary House, 1st edition, 2016, p. 146.

³ In this sense, Saddam Faisal, *investing in renewable energy projects*, Zain jurist publications. Beirut-Lebanon 2017, pp. 15 and beyond.

⁴ Maryam Azhar Ali Ghaleb, *Evaluating the Efficiency of a Silicon Solar Cell with Differently Shaped Grooves Using the Zymax Program*, Master Thesis, College of Physics, University of Baghdad, 2016, p. 10 et seq.

Solar energy consists of multiple solar panels, and it is the basic element of energy, and it is of several types in terms of manufacture, and its quality varies according to its origin. , and special cables made of high-quality tinned copper strands and insulated with thermal and water insulation according to technical specifications, and finally a current transformer whose primary function is to convert electrical energy from direct current to alternating current to match the way electrical devices and tools work in the relevant place⁵.

These components work in an integrated manner with each other, and one cannot be dispensed with, as some of them accept replacement and others are limited to maintenance. The chronological and operational life of these components differ from each other, and achieving the desired goal of solar energy requires the validity of all components and any specific defect or defect that loses, impedes, weakens, or reduces the purpose of using solar energy.

The second section: the legal concept of the manufacturer's warranty

The contract for the sale of solar energy results in the transfer of ownership of the solar energy components, their installation, operation, and guarantee - ensuring their quality. This legal action requires the seller to have multiple obligations, and we do not deny that the transfer of ownership is one of the main obligations, but we affirm that the commitment to operation and ensuring the continuity of its work is one of the most important obligations. The mere transfer of ownership of energy components to the consumer is of no importance if it is not suitable for achieving the purpose for which it was found, which is the generation of electrical energy from .sunlight

The principle of guaranteeing the solar energy components for continuity in the performance of their productive work is the main factor in the success of the contracting process. It is worth noting that the Jordanian legislator did not include a definition of the manufacturer's warranty or the sales guarantee in the folds of civil and commercial legislation. Referring to the legal jurisprudence, we find that he was interested in ensuring the safety of the sold item from the damages that occur to others because of its use, without regard to the damages that afflict the consumer as a result of weak production capacity, poor sales, or different specifications, which are usually financial damages⁶.

⁵ Accessed on 7/2/2023 at 1:10 pm <https://mawdoo3.com>.

⁶ Muhammad Al-Juraifi, Al-Sharif Bahmawi, Commitment to Safety Assurance as a Principle for Ensuring the Right to Compensation, published research, Al-Haqiqa Journal, Ahmed Deraya University, Algeria, Issue 36, 2017, p. 143.

As a result, the manufacturer's warranty can be defined as: It is every agreement concluded between the supplier and the consumer to guarantee the sold item from any defect, flaw, weakness in production, or poor quality of the product that appears after its operation, through preventive maintenance or replacement maintenance for damaged parts - spare parts. Based on the previous definition, the seller is committed to two things, the first of which is: the necessary maintenance work according to what is agreed upon which should be preventive maintenance work and does not require previous use, damage or defect, but rather its role is to prevent damage from occurring and to keep the thing in its original form, and it is usually periodic during periods agreed upon. And the second: replacement maintenance, where the seller is obligated to change the damaged spare parts and replace them with new ones, and the aim is to restore the thing to its first form of efficiency, quality, performance, and its conformity with specifications⁷.

The manufacturer's warranty appeared as an obligation arising from the sales contract since the invention of the machine and its entry into the production process as a form of guarantee against defects, which required factory owners and others who use the machine or any technical product to maintain its efficiency and the continuity of its production capacity throughout its life span according to manufacturing specifications; this requires taking the necessary precautions to prevent any malfunction of the machine, or to rectify any defect or malfunction and restore it to its production capacity and validity⁸. Therefore, we find that the buyer, whether a factory owner or a third party, always seeks the manufacturer's warranty or a guarantee for the work of solar energy, and that this guarantee contributes well to the marketing of this sale, especially since the consumer may not take a risk if he does not know what the actual quality of the sale is. and the continuity of its productive capacity.

Thus, when the seller undertakes the manufacturer's warranty or the guarantee of the sold product through maintenance or replacement for some parts in the event of a defect or flaw, this is considered an acknowledgment by the supplier that the sold product may be affected by certain factors in the future during usage and this is accepted by the buyer. Thus, in the event of a defect or a flaw in a specific part in sales or a weakness in the provision of service, the consumer has the right to demand maintenance or replacement according to the type of defective part⁹.

⁷ Article 5 of the Jordanian Consumer Protection Law, No. 7 of 2017, published in Official Gazette 5455 on 4/16/2017.

⁸ Atef Mohamed Hussein, Maintenance Contracts and Their Applications, A Comparative Jurisprudential Study, PhD Thesis, Cairo University, 2011, pg. 45.

⁹ Accessed 8/2/2023 at 12:30 p.m. www.kingston.com.

Accordingly, it is possible to apply the general rules that deal with the appearance of a defect in the sold product after delivery or operation, especially since the sale of solar energy components is subject to the provision of Article 519/2 of the Jordanian Civil Code¹⁰ represented in the sale of multiple things in one transaction, and thus the buyer does not have the right to claiming the return of the defective part in return for a share of the price, or refunding all in case of damage when exchanging and recovering the price, or accepting its defects at the agreed price¹¹.

The statute of limitations for hidden defects is generally six months unless the seller is committed to the warranty for a longer period¹². It may be understood from the text of Article 22 of the Consumer Protection Law that the seller is obligated towards the consumer throughout the period of the warranty and maintenance contract, and that this period may be considered a statute of limitations for the supplier's obligation in the event that he does not exempt himself from maintenance and the provision of spare parts.

It is worth noting that the Jordanian legislator in the Consumer Protection Law obligated the supplier, in the event of a defect, to return the sold item and refund its price, and that would be based on the consumer's request, and if it was not possible to return it for any reason, the supplier is obligated to compensate the consumer equivalent to the value of the damage¹³.

Needless to say, the Jordanian legislator identified within the consumer protection law the faults that the supplier is exclusively bound by, according to Article 6/a, and despite the clarity of the terms of the text, it is ambiguous in terms of content, especially since there is a fundamental difference between what is considered a defect in the jurisprudential sense and between what is considered an independent obligation on the supplier, so what the legislator obligated the supplier to do is originally a major obligation arising from the obligation to transfer ownership and not a defect in the sale.

Thus, we find that the Jordanian legislator has confused the defect that necessitates compensation with the maintenance contract. The manufacturer's warranty agreed upon between the two parties to the solar energy sale contract may be part of the sales contract, especially if the price of the sale is determined inclusive of both types of maintenance. It takes a form of maintenance contracts, where jurisprudence defines the maintenance contract as an

¹⁰ Jordanian Civil Code No. 43 of 1976 and its amendments.

¹¹ For clarification, see Sahib Obaid Al-Fatlawi, A brief Explanation of Contracts Named Sale and Lease, Dar Al-Thaqafa for Publishing and Distribution, Amman, 2022, pg. 164 et seq.

¹² Article 251 of the Jordanian Civil Code.

¹³ Article 7 of the Jordanian Consumer Protection Law.

independent netting contract, in which the person or the company undertakes to maintain and repair what a machine or other thing needs for a known period, with a known compensation, and the maintainer may be obligated to work alone, or to work and provide maintenance parts¹⁴.

The Second Requirement

The Legal Perspective of the Manufacturer's Warranty On the Use of Solar Energy

The manufacturer's warranty is a written tool issued by the supplier to guarantee the sold product for the benefit of the buyer, and this guarantee may refer to the sales guarantee document or guarantee. The significance of this is that some merchants use the term manufacturer's warranty, and others may use the term guarantee document or warranty guarantee, and all of these terms have one meaning that the supplier may be asked by the consumer about a defect that appears in the sale after the conclusion of the contract, during implementation, and during the warranty period, whether during the agreed special guarantee between the parties to the contract, or during the general warranty period represented by the hidden defects guarantee provided for in the Civil Code.

The solar energy company is committed to the consumer with the implementation of all immediate and lax obligations with the passage of time, and guarantees the safety of the sale and its chronological life and anticipation of future defects that may result in poor sales or affect its production capacity. So, whenever the defect is probable it should be expected because the failure to expect the defect or the technical problem that afflicts the product is one of the characteristics of the foreign reason that defends the responsibility of the committed seller.

The contract concluded between the company - the supplier - and the consumer specifies the nature of the liability that arises from the failure to implement obligations, and this liability is by virtue of the law a contractual liability¹⁵ bearing in mind that the buyer's claim to the seller is not based on the idea of a contractual error, but is based on a material idea implying that it is necessary to address the imbalance in the commitment relationship during the implementation phase of installing solar energy cells and the agreed time period for maintenance and manufacturer's warranty, because the seller is committed to the guarantee even if he did not commit any mistake as a result of the nature of the obligation placed upon

¹⁴ Al-Alami Naami, Maintenance Contracts and Their Jurisprudential Rulings, Master Thesis, University of Martyr Hama Lakhdar-Al-Wadi, 2021, p. 18. Posted at <https://library.iugaza.edu.ps> Accessed 2/25/2023 at 8:46 p.m.

¹⁵ Article 6/b of the Jordanian Consumer Protection Law.

him¹⁶.

It is worth noting that the nature of the manufacturer's warranty - or what is also called the guarantee - for the solar energy components differs according to each piece that enters the formation of the entire process, most of its components are cross-border, that is, for companies and factories outside the borders of Jordan. The guarantee that most companies deal with in many sales is the guarantee issued by the parent company that manufactures the product in the country of origin.

Here, the question arises whether the solar energy company - the supplier - is associated with the consumer through an agency contract, and thus the effects of the contract go back to the manufacturer directly, or is the relationship between the supplier and the consumer is a sale relationship whereby the supplier is responsible towards the consumer for any defect that appears in the solar energy?

Accordingly, if the answer is that the contract that governs the relationship between the supplier and the consumer is the agency contract, then this meaning constitutes a practical problem in demanding replacement maintenance for the defective or poor-quality commodity, especially since the consumer is not directly associated with the manufacturer, but rather directly with the supplier, and this constitutes a legal dilemma that prevents him from reconsidering the product, due to the fact that he is not a party to the contract on the one hand, and on the other hand, the difficulty of the judicial claim, especially since we have shown that the solar energy components are products of different countries and recourse to the manufacturer in those countries requires expenses that are not consistent with the price of the sale, so the consumer becomes the one victim accordingly.

But if the answer is that the contract that governs the relationship between the supplier and the consumer is a sale contract - which is the correct opinion - especially since the legislator has obligated the supplier to secure maintenance and spare parts¹⁷ in the event that there is an agreement on this, then this raises a practical problem due to the nature of the maintenance contract in which the supplier is committed to, and the problem of determining the defect and the duration of commitment to it, and what falls within the framework of preventive maintenance and what falls within the framework of replacement maintenance, and how to prove that. And what is the solution if the supplier becomes insolvent or closes his company at his request?

¹⁶ Sahib Obaid Al-Fatlawi, reference previously mentioned, p. 149.

¹⁷ Article 5 of the Jordanian Consumer Protection Law.

The second section: the limits of the manufacturer's warranty aspects

The manufacturer's warranty assumes different titles, such as a warranty, guarantee document, or warranty for defects, and all these names are not regulated or even mentioned in civil legislation, although the Consumer Protection Law mentioned some of the supplier's obligations towards the buyer with maintenance work and changing spare parts in the event of an agreement. However, the legislator did not explain the reason for this commitment, meaning whether the commitment was caused by poor solar energy, a difference in the agreed-upon characteristics, or the invalidity of its components.

Accordingly, the aspects of the manufacturer's warranty:

1. The poor quality of the components of solar energy: We previously stated that solar energy consists of several different parts that are not united by a common origin, and each piece has a different function and is based on the other piece, so we find that some may affect the basic work, which is the generation of electricity from solar energy.

This leads us to say that the components of solar energy, in their original form, are of different quality levels, the lowest quality and the highest quality, and this discrepancy fluctuation from the legal meaning of safety and the hidden defect. Accordingly, poor quality is not a defect in the jurisprudential sense, but rather it is one of the lowest descriptions¹⁸. Therefore, if the hidden defect condition is met, the supplier is bound by the guarantee without the need for that to be stipulated in the contract, while not responsible for the poor quality of the sold item unless there is a manufacturer's warranty, a guarantee, or a stipulation directly in the contract.

2. The difference in the characteristics of the components of solar energy: The supplier is considered a professional seller who knows well the characteristics of the product, while the consumer's builds experience on heard information from others or on superficial reading without understanding and knowing the exact techniques of making the sale.

This matter appears in the form of the consumer asking for certain specifications in the solar energy components and the supplier failing to implement this, and

¹⁸ Ali Hadi Al-Obeidi, *Contracts known as Sale and Lease, and the Law of Landlords and Tenants*, Dar Al-Thaqafa for Publishing and Distribution, Amman 2019, p. 160.

the legislator did not address the difference in the sold characteristics if they fall within the framework of the hidden defects guarantee, but the consumer can refer to the supplier through a claim for breach of in-kind implementation for the obligation, especially since one of the cases of resorting to execution by means of compensation is the impossibility of executing the obligation due to the fault of the debtor (the supplier) or because of defective execution¹⁹.

3. Ensuring the validity of the solar energy components: The work of the manufacturer's warranty is based on ensuring the work of the solar energy components, and each part of the configuration has a manufacturer's warranty that is consistent with the nature of its work and differs from the other part. Thus, the Consumer Protection Law obligated the supplier to carry out preventive and replacement maintenance in the event of an agreement, but if the sales contract was devoid of a guarantee agreement for solar energy components, i.e. devoid of a manufacturer's warranty or guarantee, the consumer cannot return to the supplier and claim maintenance²⁰. And the most risky is that the consumer cannot refer to the supplier on the grounds that the defect in validity is a form of hidden defects, because guaranteeing hidden defects has special ingredients that do not agree with the obligation to guarantee validity, considering the latter as an independent obligation that falls on the supplier, if it exists.

The Second Topic

The Legal Effect of the Manufacturer's Warranty Guaranteeing the Use of Solar Energy

The manufacturer's warranty is deemed one of the most important legal means to enhance confidence in dealing in the fields of civil and commercial transactions. The warranty is nothing but a legal measure that includes a modern financial contract, which is the maintenance contract, which is one of the contracts and transactions that people cannot do without in the fields of energy, devices and equipment that are increasingly used in our present time.

It is no secret that maintaining the stability and continuity of the production capacity of

¹⁹ Yassin Muhammad al-Jubouri, A brief Explanation of the Jordanian Civil Law, Dar Al-Thaqafa for Publishing and Distribution, 1st edition, 2003, p. 171.

²⁰ Ali Hadi Al-Obeidi, reference previously mentioned, p. 161,

solar energy and other devices constitute a high financial value. Therefore, the legislator seeks, in civil and commercial transactions, to ensure the contractual balance and maintain the legal value of the manufacturer's warranty contract, regardless of the existence of its source or not from a legal point of view.

The First Requirement

The Limits of the Legal Liability of the Manufacturer's Warranty Guaranteeing the Use of Solar Energy

The manufacturer's warranty obligates the supplier to guarantee the safety of the sold item from any defect or flaw throughout the agreed warranty period. In case the consumer discovers the opposite of what was agreed upon, whether in the quality of the product or its production capacity, the consumer has the right to refer to the supplier, whether a natural or legal person, and demand the in-kind implementation or compensation, and this recourse is determined according to the legal conditioning of the breach.

The first section: the connotation of the legal liability of the manufacturer's warranty.

The contractual relationship between the supplier and the consumer is described as unequal since it is between two parties that differ from each other in terms of knowledge of the content of the sales contract, the supplier is a technical specialist and expert in the details and object of the contract, while the consumer may not have the minimum information about the product. This aspect makes the contract devoid of contractual balance in the implementation of the obligations of both parties.

Thus, the supplier is the guardian of the formation of solar energy in all its details and its different sources, as it is the technical supervisor of the internal configuration operations of the product²¹. As a result, the consumer is entitled the right to claim both the producer and the supplier the in-kind implementation of the obligation or compensation or claim compensation for the hidden defect, and defines the claim's legal description legal description of the defect or weakness in the production of solar energy²². Although the legislator has defined the legal liability of the supplier as a contract liability²³, however, there is nothing legally forbidding the

²¹ In this sense, Ali Sayed Hassan, *Commitment to Safety in the Sale Contract*, Dar Al-Nahda Al-Arabiya, Cairo, 1990, p. 32 et seq.

²² In this sense, Ali Hadi Al-Obeidi, reference previously mentioned, p. 161,

²³ Article 6/b of the Jordanian Consumer Protection Law.

buyer's right to refer to the supplier of solar energy or the producer based on responsibility tort.

In all cases, the seller's obligation is determined by the obligation to achieve a result, and this result varies according to the nature of the object of the sales contract. Most sales contracts are immediate contracts whose effects go into force upon conclusion or once their formal conditions are met. In the contract for the sale of solar energy - due to the nature of its formation and the multiplicity of guarantees guaranteeing it - the intended result is not limited to transferring its ownership to the consumer, but rather includes additional after-sales work related to quality and productivity, which requires the continuity of the supplier's commitment throughout the warranty period towards the consumer as a major obligation. Regardless of the nature of the warranty, whether a maintenance guarantee or a replacement guarantee for damaged parts as a result of their use or the presence of a manufacturing defect in them.

The second section: the legal nature of the consumer's right to refer to the supplier when the manufacturer's warranty exists

The responsibility of the solar energy company - the supplier - towards the consumer is determined on the basis of contractual liability²⁴. Thus if the supplier fails to implement the obligations, especially with regard to preventive maintenance or replacement maintenance, then the supplier is held responsible in front of the consumer to recover the damaged part and refund its price, and if he is unable to return the part, the buyer can claim for compensation.

It goes without saying that the provider's guarantee towards the consumer is not a guarantee for a hidden defect, but rather a guarantee that arose from a breach of the in-kind implementation of the obligation²⁵. It is for the supplier to implement the same obligation agreed upon, whether it is immediate implementation related to the transfer of ownership or what is included in the maintenance contract, or lax implementation if its conditions are met by considering the manufacturer's warranty and the issuing obligations as an integral part of the sales contract.

Accordingly, when a defect or flaw appears in the performance of the solar energy, or the production target agreed upon was not achieved as a result of weakness in some parts, it is necessary to consider the nature of the reason for this not being achieved. If the reason is a hidden defect, the supplier is responsible for ensuring this defect if its conditions are met²⁶.

²⁴ Article 6/b of the Jordanian Consumer Protection Law.

²⁵ Adnan Al-Sarhan, Nuri Khater, *Explanation of Civil Law, Sources of Right, Person and Obligations, A Comparative Study*, Dar Al-Thaqafa for Publishing and Distribution, 2021, p. 299.

²⁶ Sahib Obaid Al-Fatlawi, reference previously mentioned pg. 150 et seq.

On the other hand, if the weakness, defect, or flaw results from the supplier's failure to perform maintenance work, poor quality of the part, or a difference in basic characteristics, and there is a guarantee agreement for that, then the supplier in this case is responsible to the consumer for the breach of the in-kind implementation of the obligation. The buyer has the right to resort to legal methods and means to implement that obligation forcibly against the company that refrained from execution through the public authority when the conditions and elements of compulsory in-kind implementation are available, and if those conditions are not met, the buyer has a claim for implementation through compensation²⁷.

Referring to the Consumer Protection Law, the legislator clarified the nature of the penalty that is imposed on the company if it fails to implement its obligation, the penalty of forcible in-kind implementation is not one of these penalties but was limited to the penalty of retrieving the defected part, refunding the defected part or claim for compensation²⁸, not as an alternative for in-kind implementation rather an alternative for inability to retrieve the defected part.

In view of the legal nature of the imposed penalties, especially if a defect, weakness, or flaw in the production capacity was found and the company did not abide by the two types of maintenance, these penalties similar to the penalty imposed for the hidden defect once conditions are met. Therefore, we conclude that there is a clear confusion between the breach of the in-kind implementation of the obligation and the presence of a defect in the product in Consumer Protection Law.

Accordingly, since the seller's commitment, or what is called in the Consumer Protection Law the "supplier"- has become independent of hidden defects, there is no reason to make this commitment a mere claim for return and refund the price or obtaining compensation if the buyer is unable to return the sold item. The actual commitment, according to the meaning of the manufacturer's warranty, is intended to improve the buyer's position and give him the opportunity to force the supplier to implement in kind, and in the event of legal impossibility, it is implemented based on compensation.

The Second Requirement

Aspects of Protection for The Consumer Who Holds the Manufacturer's Warranty for

²⁷ Yassin Muhammad al-Jubouri, reference previously mentioned, p. 171.

²⁸ Article 7 of the Jordanian Consumer Protection Law.

The Use of Solar Energy.

Consumer protection enjoys a clear attention by the Jordanian legislator, as the consumer protection law has provided for many obligations that are imposed on the supplier to the favor of the consumer. But the question that arises is what is the legal and financial value of the manufacturer's warranty when the consumer loses that supplier with whom he contracted, either by death in case of a natural person or too close of the facility at their request or due to insolvency in case of a legal person?

To answer this question, we show through this requirement the legal effect of the manufacturer's warranty in the event of the loss of the provider's presence in the first section, while in the second section: the expansion of the consumer's guarantees towards the solar energy supplier.

The First Section: The Legal Effect of the Manufacturer's Warranty in The Event of the Loss of the Legal Personality of the Supplier

The solar energy sale contract consists of two parties, the supplier, and the consumer, both of whom may be a natural person or a legal person, and this matter does not constitute a dispute regarding the implementation of the obligations under the contract if both still have legal personality. However, the problem arises when the legal personality of the supplier is lost, whether it is a natural person with his death, or a legal person by closing the institution or company, whether by his will or by force of law in the event of his insolvency.

The loss of legal personality entails different effects regarding negative liabilities, that is, about the debts that burden the natural person and the legal person. With regard to the natural person, upon his death, we apply the jurisprudential rule no inheritance until after debts are paid²⁹. After debts are paid, the remaining money is handed over to the heirs and divided among them according to the legal shares³⁰. As for the legal person, upon his insolvency, all his debts become due for payment³¹ and his money is divided among the creditors in equal proportions, unless one of the creditors has a preference and a certain privilege, then he takes precedence

²⁹ Court of Cassation Decision No. 2091/2010, 20/11/2010, Adalah Publications.

Mahmoud Mukhtar, the legal personality of the commercial company, the condition of its acquisition and the limits of invoking it, a comparative study between Egyptian, French and English law, 2nd edition, Dar Al-Fikr Al-Arabiya, 2002, 171

³⁰ Article 1109 of the Jordanian Civil Code.

³¹ Article 380 of the Jordanian Civil Code.

over the rest of the creditors³².

On the other hand, some solar energy providers may seek to hide under the guise of legal personality and exploit the idea of independence to achieve certain personal goals, ascertained that consumers are not able to return as creditors on their personal receivables.

Not to mention that the issue of recourse to the personal receivables of the suppliers as legal persons differs according to the type of company. For example, if the supplier takes the form of a partnership of persons, there is no escape from the personal and joint liability of the suppliers for all the debts of the company. However, if the supplier takes the form of a financial company, the consumer has no choice but to refer to the financial company without prejudice to the personal receivables of the supplier³³.

This leads to the fact that when the legal personality of the supplier expires for any reason, there is no party that the beneficiary can refer to, especially since the essence of the manufacturer's warranty contract is intended for preventive maintenance or replacement maintenance, regardless of the extent to which it is considered part of the sales contract or an independent contract as a form of the maintenance contract, however it includes within it an indirect financial obligation, but this obligation does not exist at the maturity of the debt, that is, the content of the manufacturer's warranty cannot be evaluated and replaced with an amount of money, which may expose the consumer to damage by bearing the costs of maintenance, especially the replacement maintenance which include spare parts.

The second section: the expansion of consumer guarantees towards the solar energy supplier.

The Consumer Protection Law provided some different legal guarantees that oblige the supplier to properly implement obligations towards the consumer of solar energy, whether in terms of maintenance or changing spare parts. However, the legislator assumed that this obligation is like any other obligation that the seller undertakes towards the buyer, in the sense that the legislator did not consider how to carry out maintenance work and replace spare parts and did not explain what the nature of this obligation is.

It is established that preventive maintenance and replacement maintenance work does

³² Abdul Qadir Al-Far, Rules of Compliance - The Effects of the Right in the Civil Law, Dar Al-Thaqafa for Publishing and Distribution, 2022, p. 124.

³³ Mahmoud Mukhtar, the legal personality of the commercial company, the condition of its acquisition and the limits of invoking it, a comparative study between Egyptian, French, and English law, 2nd edition, Dar Al-Fikr Al-Arabiya, 2002, 171

not fall outside the umbrella of the manufacturer's warranty that businessmen and professionals call for solar energy to market their products, and this warranty is not a form of financial contracts, and in the event of loss of legal personality, a legal means must be found that provides real protection for the consumer.

This method is about placing an obligation on the supplier upon loss of legal personality to provide a financial guarantor that guarantees the implementation of all manufacturer's warranties that the supplier pledged to consumers, or to reserve an amount of money that is specified by the Companies Control Department when the company is liquidated or when the establishment is closed, and a clearance is requested for that. This financial retention is for the duration of the manufacturer's warranty, and by doing so, the bad faith supplier loses the possibility of fraud by making the legal person a cover to evade his direct or indirect financial obligations.

Conclusion

The manufacturer's warranty is an agreement between the two parties to the sales contract to carry out preventive and replacement maintenance, and the meaning of maintenance in both types revolves around an indirect financial obligation, and this financial obligation did not receive attention from the legislator in civil and commercial legislation, which may eventually harm the consumer when the supplier's loss of its legal personality and the division of debts among creditors.

Accordingly, the most important findings and recommendations are as follows:

- The manufacturer's warranty is not legally assumed but must be agreed upon between the supplier and the consumer.
- The manufacturer's warranty is an agreement between the supplier and the consumer, and this agreement may take the form of a condition in the sales contract, or under an independent agreement that takes the form of a maintenance contract.
- The content of the manufacturer's warranty is based on a financial commitment represented in preventive maintenance services, spare parts, sales quality assurance, and the availability of the required specifications.
- The defects that appear in the solar energy after operation may take the description of hidden defects if conditions are met, or they may take the form of a breach in the in-kind implementation of the obligation.

- When the legal personality of the supplier ends, the consumer loses the entity that guarantees continuity in the maintenance work, which may make the manufacturer's warranty to lose its legal force and it cannot be corrected with money when distributing debts considering the existing legislation.

Recommendations

- We recommend that the Jordanian legislator reconsider amending the provisions of the Consumer Protection Law and consider the financial content of the manufacturer's warranty as a main guarantee for the consumer.
- We recommend that the Jordanian legislator add a legal provision in the Companies Law in which companies or individual establishments whose nature of work require providing manufacturer's warranty to guarantee their product must provide a financial guarantee or reserve a sum of money that guarantees continuity in maintenance work after the end of its legal personality.
- We recommend the competent authorities to audit companies regarding keeping manufacturer's warranties that are issued through them directly or as an agent for the product in special records and their information is recorded in the commercial books.
- We recommend the concerned authorities to educate the local community about the importance of the manufacturer's warranty and how to verify its legal force.

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