

Practical Developments of Non-Conforming Performance and Warranty for Goods and Works: From the 7th Resolution of 1988 to the 8th Resolution of 2007 of Supreme Court

Sheng-Lin Jan *

Abstract

Liability for non-conforming performance and for warranty is a very important issue both in theory and in practice. In order to solve the problems of the concurrent relationship between the liability for non-conforming performance and the liability for warranty for defective goods and works, the Supreme Court has delivered two resolutions in 1988 and 2007 respectively.

After the resolution of 1988, it remains questionable whether the doctrine of the liability for non-conforming performance is applicable to the case in which the delivered goods contain defect that exists prior to the conclusion of the contract of sale. According to the research of this paper, the answer to the above question should be a positive one.

As to the issue of the concurrent relationship between non-conforming performance and warranty for defective works in the case of contract of hire to work, the research of this paper demonstrates that the Supreme Court's resolution of 2007 will definitely result in the difficulty in distinguishing defective damages (damages caused to the defective work itself) and consequential damages (damages arose from the defective work and caused to the property other than the defective work or to the integrity interest of the owner of the work).

Keywords: non-conforming performance, warranty for defective goods, warranty for defective works, concurrent relationship, defective damages, consequential damages, Supreme Court's resolution of 1988, the Supreme Court's resolution of 2007

* Professor of Law, College of Law, National Taiwan University.
E-mail: shlijan@ntu.edu.tw