

Culpa in Contrahendo Liability After the Formation of Contract: Focusing on Misrepresentation

Tsung-Fu Chen*

Abstract

The culpa in contrahendo governed by Subparagraph 1, Paragraph 1, Article 245-1 of Taiwan Civil Code stipulates that a negotiator is liable for deliberately not disclosing information or giving incorrect information where the information is significant and the informer is requested to disclose such information. Although this article provides a negotiator with a duty of information, it is restricted to be applied to the negotiation that does not lead to conclusion of a contract in the end. As such, it is disputable as to whether the culpa in contrahendo stipulated in this article is applicable to the case where a contract has been entered even if a negotiator breached its duty of information.

The culpa in contrahendo is applicable to the case where a contract was concluded with negligent misrepresentation under German law, as long as such contract is harmful to the non-informed party, who is entitled to claim reliance damages. In English law, the Misrepresentation Act is enacted to govern fraud, negligent and non-negligent misrepresentation, and empowers the victim to rescind a contract and to claim damages.

This paper is aimed to examine Subparagraph 1, Paragraph 1, Article 245-1 of Taiwan Civil Code in terms of its legislative purpose and its application. It is indicated herein that this article does not recognize a general principle of duty of information since only those information requested by the victim is subject to disclosure. Although this article restricts its application to the case where a contract is not concluded in the end, it should have been interpreted to govern the case where a contract is concluded with negligent misrepresentation. It is

*Professor of Law, College of Law, National Taiwan University.

E-mail: congfu@ms6.hinet.net

arguable that culpa in contrahendo should not be eliminated by the liability of non-performance in some cases.

Keywords: culpa in contrahendo, duty of information, duty of disclosure, misrepresentation, reliance damages, liability for breach of contract, termination of contract, European contract law