Law of Obligation Ⅱ

Seller’s obligations

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There is a possibility where both buyer and seller, they all knew that they are trading, they're buying and selling somebody else's property, okay? In that case, if the seller cannot successfully acquire the thing in question and let the buyer enjoy it, then either party may be able to terminate the contract.

That is, I think, more or less clear.

What happens, perhaps more frequently, is that neither party thought that this object belonged to a third party.

But later, it turned out that this belongs to a third party.

Then what kind of remedy, what remedy buyer has? That's what is stipulated at article 571.

Okay? We were looking at a situation where buyer should have known that the property belonged to a third party.

Then buyer's contributory negligence must be taken into account.

That's the 78 다 218 case.

Do you remember? Local government, 경기도, bought land from central government.

Central government sold the land, believing that it belonged to central government, but in fact it belonged to an individual.

So the purchaser was deprived of the land which he bought.

But the court, in assessing the amount of damage payment, decided that 경기도's negligence must be taken into account.

So this actually brings up the question about the nature of this remedy under article 571.

Let's just talk about some broad issues, alright, today.

Breach of warranty.

Breach of contract.

Are they the same things or are they different things? How different? [student answer] Okay, good starting point.

Contract is something the parties have agreed, and when that agreement was not met, we may think about breach of contract.

But he pointed out that warranty is something different from agreement.

What is it, then? How different? Why do you think he said, he should have said warranty does not form part of the agreement then? But then, what is it? Any idea? Warranty, what does that mean? Warranty.

The seller warrants.

I mean, if I buy this thing from her we would obviously agree, between her and me, we'd agree that she will sell this to me, I will buy this from her, right? That we'd agree.

But what about warranty? He suggests that warranty does not form part of our agreement.

What is it? If I buy a brand new Blackberry, whatever, you know, hand set, there must be an agreement that I buy and that she or her company sells.

That is the agreement.

But what about warranty? He says that warranty is something separate, something on top of the agreement.

[student answer] Okay, okay, very good, very good.

Expectation? Expectation of a buyer? What buyer expects from that particular object or thing sold? [student answer] Okay, yeah, but let's begin with this concept.

If it's completely subjective expectation, very unreasonable expectation of a buyer, I don't think that will count, that will form part of warranty, okay? There can be two types of warranty.

Explicit and implied.

So explicit warranty would mean some promises or affirmations, statements or declaration made by the seller.

Unilaterally, it is not part..of course, they will all negotiate, alright? But conceptually we distinguish that some things form part of warranty.

So the seller can declare that this thing he sells has certain quality, or this thing he sells belongs to him, for instance.

If seller declares that 'I am selling this, and this is mine.

I'm selling my thing to you.' Okay? That, the thing I'm selling, I'm selling him, and he's buying it, and we agree that I sell it and he buys it.

But I warrant that this is mine, and I'm selling it to him - that, I...

'this is mine', that does not form part of our agreement.

It is my unilateral promise, or guarantee.

I assure him that this is mine, and I'm selling it to you, okay? So that's..there is a difference between agreement or what the parties agreed, and what seller warrants, okay? Conceptually, there is this difference.

And a lot of things are considered as implied warranty.

For instance, seller, even if I don't say that this is mine - seller is deemed to have warranted that 'this is mine'.

And if it turns out that this is not mine, I breached warranty, implied warranty.

And if I'm selling something..

I'm selling a car, let's say a brand new car, I might not explicitly say that this is in good condition, but it's implied warranty.

Okay? I assure that this is in good condition, but that's not part of the agreement, okay? So that's one way of distinguishing breach of warranty and breach of contract, okay? But, now let's think about this problem.

경기도 is the buyer, okay? And central government is the seller.

The thing sold is land, a piece of land, okay? We can say that well, this is breach of warranty issue.

We can say..we can say, because it turned out that land belonged to a third party.

But then, in this situation, is there any point, any sense in distinguishing breach of warranty and breach of contract? In the end, the seller did not perform, or failed to perform, buyer was deprived of the land..is there anything that has been performed as agreed in this situation?

You know, 경기도 bought the land, now 경기도 lost the land.

Can we say that seller nevertheless performed? What do you think, can we say that seller nevertheless performed, therefore this is not a question of breach of contract? So, what do you think? [student answer] I'm asking you.

What do you think? [student answer] That fault, negligence, in this case, is about buyer's negligence, right? This case does not at all deal with whether seller was negligent or not.

So that approach may not produce good, meaningful conclusions.

But my question was, for the moment let's not talk about negligence aspect.

My question is, has seller performed in this case? I mean he once, at one point, performed.

He might have completed the registration of title into 경기도, the buyer.

But now it's useless.

It's cancelled and 경기도 lost the land, and..

what did seller perform? Nothing.

So there is really no point in distinguishing breach of warranty and breach of contract in the situation where thing sold turned out to belong to a third party, and buyer therefore lost the thing which buyer paid for and bought.

It is breach of contract.

What more breach of contract do you need, it's the maximum breach of contract one can ever perform, no? If you..one can perform..one can commit.

What more serious breach of contract can you imagine? You couldn't, you couldn't, you didn't perform, basically.

So in such a case, there is really no point in distinguishing.

Now, let's move onto the question of fault.

Seller first..let's think, first, about seller's..whether seller's fault can..or absence of fault..no fault..has any meaning in the situation.

If we talk, if we approach from breach of warranty perspective, you will all know that we don't think about whether seller was at fault, or seller was not at fault, okay? We, you all understand that? But if we approach from breach of contract perspective, you also now know that seller, according to article 390 paragraph 2, isn't it? Or 393? Have a look at..no, 390 paragraph 2, okay? Not paragraph 2, the second sentence of 390.

That's the basic principle under Korean contract law regarding compensation in the event of..what, this, in the event of breach of contract.

And article 390 appears to provide a defense of no fault when buyer seeks damage from seller.

Now, let's apply to this situation.

Can seller claim that he was no fault? What do you think? Can you imagine, can you think of a situation where seller can claim that he was not at fault? Seller sold the land, it turned out that the land belonged to somebody else.

Anyone? Can you think of a situation where seller can successfully claim that he was not at fault? [student answer] Everybody, everybody in the long chain, let's say the land changed hand about sixty times.

And everybody were all very innocent, but someone at some point innocently were involved in some kind of dealing, and there is true owner.

And ten year has not yet passed, so that true owner could recover.

Everybody were all innocent.

Can seller, who was at the end of this innocent chain, can seller claim 'it is not my fault'? Do you think seller claim that 'it is not my fault'? I don't think seller can claim it is not his fault.

Basically there is no way that you can claim that it was not your fault.

Court would not allow it, basically.

So article 390 would simply, would not..the second sentence of article 390 simply does not apply, if it turns out that this thing belongs to a third party.

Seller breached the contract, and in this case the court just assumes that seller breached the contract, and the court, in applying article 3..uh, 571, the court treats the claim on the basis of article 571, as a breach of contract claim.

But the court does not talk about seller's fault, the court just deems, or..

the seller is deemed to be at fault.

How can you say that you are not at fault when you received the money, full price, and you sold a land, a piece of land, and it turned out that it belonged to a third party, you didn't know, okay? Ignorance.

You, you..ignorance.

But can you say that you are not at fault at all? I think seller is at fault for not knowing that it didn't..he didn't have the power to sell it, in the first place.

You can argue that 'look, I hired good lawyers and they thoroughly searched all the previous histories of this..transactions of this property, they couldn't find it.' Well, they were at fault as well.

So although you might think that liability based on fault - fault meaning either deliberate wrong or negligent wrong - that fault based liability is an important principle in modern private law.

I do think that there are many areas where fault is simply not an issue, okay? Especially when you buy and sell and seller cannot deliver, seller cannot claim that he was not at fault, okay? So here, article 571, the damage or the compensation mentioned in article 571 is basically the damage you can claim in the event of a breach of contract.

So that's why the court quite comfortably apply the notion of set-off on the basis of claimant's negligence.

The court does not investigate whether seller was at fault, simply because court just assumes, not only assumes, court attributes seller's fault, and then court looks at whether buyer was negligent.

Buyer was also to..to blame.

And in this case court found that buyer was also to blame.

So court went ahead to reduce the amount of compensation.

But the question again you have to study, is, what is the measure of damage here? One is performance measure.

Okay? Let's say this land was bought and sold at 1.5 billion won.

Now it is worth..

when at the moment when this true owner appeared and successfully claimed the land from B, so at the moment when B lost the land, it was worth 1.7 billion.

And that kind of price rise everybody was expecting.

That's assumed.

Then how much B can claim if B was not at fault at all? If B can claim 100% of damage? How much B can claim? 1.7 billion, right? Rather than 1.5 billion plus interest.

So that's performance measure.

Basically you work out the amount by looking at the market value of the thing you bought and you have been enjoying, but when it's..when you have been deprived of it, at that moment, how much it was worth.

Because that's what you should have been enjoying if seller performed properly.

If seller performed properly, you were the owner of land which is worth 1.7 billion won.

And you lost that, so that's your loss.

So that's performance measure of damage, okay? We will talk more about what is the typical measure of damage applicable to a claim based on a breach of warranty.

That is not performance measure, okay? But breach of contract, of course, performance measure is what court applies to work out the amount of damage to the audit.

Seller may not plead no fault as a defense.

But seller may avoid payment of damage by proving that it was entirely due to buyer's fault that buyer lost the thing he bought from him.

It's as if..it's as if buyer bought something, this computer, I bought this computer from him..and I very carelessly left it somewhere and I had it stolen, or I..something like that.

And I cannot claim from him 'I lost the enjoyment of the thing I bought from you.' Because it's not his fault at all.

And basically it's not even a question of his fault or not.

He has no involvement at all.

I mean, he should be involved in the first place before we talk about whether we need to talk about his fault or not.

He should be involved in the first place, right? But if I lost it entirely on..

because of my own fault, he is not even involved.

He had done everything he needs to do, but I lost because of my stupidity or whatever.

So in that case he is not involved at all.

So this is not even a question of article 571.

Because here, in this case, seller provided every documents that buyer could use to complete the transfer of title.

Registration of transfer of title.

And buyer simply didn't do it.

That's..yeah.80 ㄷ나 2750, have you seen that case? Have you seen that case, 80 ㄷ나 27..not yet? Anyone, have you? No, you didn't? Come on, it's Monday and you had your weekend.

How about you? 80 ㄷ나..no? Right.

So buyer had to face the third party's claim, okay? Buyer..the third party came up and claimed that ‘that thing you bought is actually mine, give it to me’.

And then this person sued the buyer.

Buyer defended.

Actually buyer could..buyer had many options, we will talk about the options buyer had.

But in this case, buyer started out by defending the claim, and the lawsuit was perhaps going on, at some point buyer and this claimant settled, okay? And buyer

must have paid something, quite a lot, in order to retain the thing, okay? But let's say buyer paid something like 1.2 billion won.

Alright? And this person finally agreed 'okay, you will have it.

I won't claim any more.' And then buyer can sue the seller asking 'now you must pay me 1.2 billion because I had paid, I had to pay this amount to that man in order to keep the thing you sold to me.' Can the buyer do that? That's what 80 ㄷ나 2750...and the court held that if there was a settlement, if settlement was needed for buyer to keep and retain the thing which he bought from the seller, the expenses or whatever that was necessary in reaching the settlement can be claimed from seller.

Under article 571, okay? What if they settled and buyer paid quite generously to this third party, paid 2.5 billion won? Can buyer claim 2.5 billion won from seller? What do you think? Louder please.

Yeah.

[student answer] Buyer in that case were negotiating with the third party.

Third party appears and claims that this land is mine, give it to me, and they were fighting, and they start to negotiate.

And the result of negotiation was that 'yeah, I will pay, buy..

B will pay 2.5 billion won to T.

So B paid, actually, B actually paid 2.5 billion.

And then now claims 2.5 billion from S.

Do you think S has to pay 2.5 billion? [student answer] 57..576, what is that? 576.

I don't think this has anything to do with 576.

Second..? Article 576..

Whoa, whoa whoa whoa.Ha.

Article 5..that's very interesting point actually.

Article 576 deals with the situation where, this..

there was hypothec, or 전세권, on this property.

And uh..just, okay.

And buyer bought this property on the understanding that seller will clean up the mess before conveying it, alright? Usually, this does not happen very, very often.

Usually what happens is that if there is hypothec, or 전세권, then buyer reflects that amount in the negotiation of their price.

So buyer basically picks up..

buyer undertakes to pay up the debt which is secured by hypothec or 전세권.

So let's say if this price, property is worth 2.0 billion won, if there was no hypothec or 전세권, but if there is, let's say 1 billion hypothec and 0.2 billion 전세권, then 1.2 is

deducted from the price and buyer only pays 0.8 billion in cash, the rest just buyer uses to pay up and clean this security, right? So, in that case, article 576 will not apply.

Article 576 applies when buyer didn't know that this property is..there is this burden, yeah? So when buyer paid full price, and then maybe there was some security interest which is available by virtue of statute, for example.

It's not registered and buyer didn't know about it, but there was in fact, 전세권 for example.

Then buyer is entitled to claim compensation from seller because it was not reflected in the negotiation, right? And in that case if buyer had to pay money to clear away these hypothec, or 전세권, which buyer didn't know about when they negotiated and concluded the contract, then whatever amount he had to spend, he can claim from the seller.

However, in this case, my question is: can buyer claim 100% of what he spent in negotiating a settlement? In the sense that in both cases, buyer had to spend a lot of money to retain the property.

To that extent, yes she is right and very good at pointing out the similarity.

And in this case, article 576 paragraph 2, full amount can be recovered from seller on the basis of the statute, okay? But here, this is not a situation where buyer pays to clear the burden.

Buyer negotiated with this third party who claims the title of this, the thing sold.

And the question is, can buyer claim 100% of what he spent, had to spend? What do you think? [student answer] The market value.

Let's say the market value at that time was 1.7 billion.

[student answer] Claim only that much, not more? And are you all happy with that conclusion? Oh you raised your hand, yes please, go ahead.

[student answer] Buyer..what? Yeah.

The, let's assume the market value is 1.7 billion.

[student answer] Buyer's fault.

Hmm.Buyer may be considered as having donated the difference..

0.8 billion, buyer had no need to pay to a third party, but just stupidly gave to the third party, so..

[student answer] So you are saying that this settlement was very stupid, very unfavourable to B, so B cannot claim full amount of the settlement? Hmm.

[student answer] Ahh..no, I don't think this has anything to do with 580 situation.

We will study 580 a little bit in more detail...

[student answer] You think buyer was negligent in arriving at this settlement? Oh yeah, there is no doubt, there is no doubt that seller was at fault.

Anything, anything and everything? Whatever happens? Let's say that they settled and B paid like 10 billion won.

[student answer] Okay, okay.

But the point she raised is also very interesting and it could be a topic for serious argument..the settlement, is it going to be assessed on a very careful standard so that if it was subsequently viewed as somewhat unfavourable, then B cannot claim? I mean, settlement, what is settlement, it is..you know, mutual concession, it is not judgment, so there might be various aspects which come to play, and you could win some and you could lose some but you obviously avoided the litigated outcome.

So can we, after the settlement was done, can we blame B, 'oh you were stpid, you could have settled at a lower price?' Can we blame B in that manner? In, of all the people, can seller blame B and 'oh yeah, I would only pay the exact market price.

It was your fault, you could have..you should have let P have the property and if you sued me, you would have only got 1.7 billion.

So you should have lost the property instead of trying to settle and end up paying 2.5 billion.' How does that argument sound? You should have just given up? Then sue me, and the court will have judged me to pay you 1.7 billion, so that's it, that's all I am going to pay you.

Actually, look at 80 다 2750, that case, the logic of that case does not work in this manner.

In that case the court does not even consider what is the market value of the thing sold.

Okay? If my hypothetical argument was what the court had adopted, then the court will work out how much B paid to T, okay, 2.5 billion, what is the fair market value, 1.7 billion, then court will just ignore that and court will only award 1.7 billion to B.

But that is not what happened here, okay? What happened here was that, was B at fault? But what is it? Fault, in negotiation? If you negotiate at a price which is above the market value, you are at fault? I don't think so.

So what happens, what becomes very important here is that whether this negotiation and settlement is reasonable or not.

If it..then here again, the concept of reasonableness is very flexible, but as long as it is not fraudulent in the sense that B, meaning to get money from S, just very easily agreed to pay a very high amount.

Then it would be fraudulent, right? As long as that is not the case, and as long as there was genuine negotiation effort in arriving at the settlement, I think even if the ultimate outcome is somewhat higher than the market value, you can claim that amount from here.

Plus I think, the lawyer's fee incurred in negotiating this settlement, you can claim from S.

So market value of the thing sold, that's not the end of compensation, alright? So seller basically is someone who is ultimately responsible for clearing up the mess.

If seller does not like this possibility, seller could, you know, get in touch with buyer earlier, give up, I will pay, if seller clearly told buyer to give up and he will pay, and buyer still refused to follow that advice, and negotiated..then maybe seller will later have stronger ground to argue that this settlement was unreasonable.

But I don't know, it will all depend on the facts of the case, and it's not easy to say in advance what the court's ruling will be.

But that's law, that's what law is all about.

Law is all about..about assessment, what is reasonable and what is not reasonable.

Restitution.

If the thing sold belongs to third party, buyer can of course terminate this contract, right? Because buyer can no longer enjoy it, and terminate the contract.

And buyer must return the property to seller, and disgorge the benefit of using the property in the interim to the seller.

Buyer will not be required to disgorge the benefit to the owner.

Seller must return the price, together with interest, and pay damage.

So, let's make use of this example again.

So, a piece of land was actually sold and delivered to buyer.

And buyer had been using the land for one year, okay? That's it.

And then true owner came and sued the buyer.

Buyer cannot resist.

If T wins, buyer will have to just, you know, give up the land and T will have the possession.

That's clear, I think.

Then the question is, can T claim the rent, one year's rent, from B as unjust enrichment? I think 92 다 25946 seems to suggest that owner cannot claim from B, the benefit B has been enjoying.

But I don't know whether that ruling was consistent with other cases.

The idea is that buyer must return the benefit of using the land to the seller.

And then seller will be required to disgorge the benefit to the true owner.

But it's a little bit..if they were..if the land was leased to B, and a true owner came and recovered the land, then B will not have to pay any benefit that B has been enjoying because B has been paying rent to S, okay? But this is not lease situation.

Seller sold the land to B, and buyer was enjoying the land, but true owner came up and claimed the land from buyer, and I think that perhaps the buyer must pay..let's say seller..before, seller has been enjoying the land for five years, and then sold it to buyer for one year.

And at the point, true owner came and recovered it.

And in that case, I think the true owner can claim from that party five years' worth of rent as unjust enrichment, and from this party one year of rent as unjust enrichment.

I think that's how it should be resolved.

But you will study more carefully what other reason..what other reasons were at play in 92 다 25946 case.

Buyer can..73 다 268 case, that's where court held that fraud can be committed regarding the ownership of the thing sold.

It is a situation where seller lied to the buyer that 'this is mine.

I'm selling my land,' okay? But in fact, seller knew that it was not his.

Seller intended to buy it from somebody else and ultimately convey it to buyer.

Buyer discovered this, and buyer terminated the sale contract, claiming that 'I had been cheated.

If I knew that this didn't belong to a third party, I would not have bought the land.' So that's the situation.

And I think the reason why buyer terminated is that buyer regrets? Maybe it's..he thinks that..

he thought that it was a good deal, it was a good price, but then after signing the contract, 'maybe I could've bought it cheaper or maybe I don't need that land any more'..for whatever reason buyer does not want it and now buyer found a ground to terminate, which is 'seller lied to me about the ownership.' But do you think it's alright to allow buyer to terminate on the ground of a lie? It is true that seller lied.

He knew that it did not belong to him, but he lied to seller, saying 'it's mine.' The reason why I ask you this question is..as long as seller is ready and willing to acquire

the thing and deliver it to B, what was B harmed? I mean, what's wrong? What's wrong with this? As long as..

I mean, seller is all keen to acquire it and then deliver and perform it, and maybe it is perfectly possible for seller to do it.

Okay, buyer didn't know that seller had to go through all that trouble, but it's seller's trouble and seller is ready and willing to take the trouble to perform it, why should we allow the buyer to rescind the contract? That's lower court's thinking, in that case.

If it turns out that seller cannot acquire it from the third party, then yeah, buyer can terminate the contract when seller cannot perform.

But why should buyer terminate even before whether seller can ultimately perform or not? Why should we allow that possibility? [student answer] Yeah, fraud..it's wrong, you know, it's not good to lie, but is it a ground for him to change his mind? It's true that he was cheated, right? But does it affect him in any way which is adverse to him? I don't think it affects in any way.

If he can prove, if he can demonstrate that if he knew that this didn't belong to me, he would not have entered into this contract, if he can prove, then he can rescind..that's what the supreme court ruled.

But I doubt whether there can be a situation where he can prove that.

Suppose it's the same price, you know? If it's mine, we would have agreed at 1 million won, if it belongs to a third party, I didn't tell him that it belonged to a third party, I agree that it's 1 million won.

So what..he didn't lose anything, he..I don't know.

He realized that 'oh, seller has to acquire it from third party, such a complicated procedure, I can't accept the complication.' That's a bit weird isn't it? That's a bit paranoia, or something..

This remedy, is it available for one year? Article 573, look, article 573 deals with a situation where part of thing sold belongs to third party.

And in that case, you must exercise your breach of warranty remedy within one year.

The question is, does article 573 applies to the claim under article 571? 571 deals with total loss of consideration, total failure of consideration.

Failure of consideration means that buyer paid full price, and nothing came to buyer.

So it's total failure of consideration.

That's article 571 situation.

Article 572 and 3 deals with partial failure of consideration.

The question is, does article 573 apply to total failure of consideration case? Most scholars take the view that article 573 does not apply to 571 claim.I..why? Any reason? No explicit provision, yeah.

Therefore we must not extend the scope of article 573.

Any other reason? Another reason would be claim under article 573 is essentially this: I mean, if you are a buyer and if you lost, if you cannot get, cannot enjoy, what you bought now belongs to true owner, that other guy, and you..what is it? It's breach of contract.

So what's the point of limiting it within one year? The measure of damage is performance measure, and the limitation period, no, no special limitation period, it's just a ordinary obligation and credit, you should exercise in 10 years, or 3 years, or whatever the basic relationship can last, you can.

You bought the land, you have been enjoying it for about 15 years.

No, let's say 9 years, sorry.

You have been enjoying this land for 9 years.

And true owner came and recovered it.

You lost it.

Now you can bring lawsuit, for how long? Well, for one year only? What do you think? Yeah that's an interesting question.

Let's say, let's say..

you bought a land, the contract was entered into, 2000, year 2000.

And you start, well you completed the registration under your name, 2001.

You delivered, you received, you took delivery, everything was completed and you became owner.

You have been enjoying it.

2010, true owner came and took it away from you.

So from that moment, how long can you have the claim against the seller? How long? One year? Since what, why one year? So I have to exercise it until the end of 2011 and that's it? That's your view? Anybody, any other view? Why do you think I have to exercise it within one year? Because you follow 송덕수, professor 송덕수, who is the only voice in this topic? He thinks that, you know, claims under 571 is cut off after one year.

He extends article 573 to 571 case, but he's the only who claims, and I think it's wrong.

Why, why did you think it's cut off at..? [student answer] Oh, 580's completely different issue, alright? It's completely different..no, I don't think you can draw any analogy with 580.

Let's say at this point that when I'm deprived of the thing I bought, a new claim arises.

And that claim should last at least ten years.

That claim, I have a claim to seek compensation.

And that claim, I can exercise for ten years at least.

Because it does not fall under any of the shorter limitation period on the civil code, it's a claim to seek compensation.

Seek damages.

Let's say I have been enjoying it, it was..let's say, I bought it, well, 2001, I start to occupy and I was..

I didn't register it under my name, okay? Let's say 2015, so after I had been occupying it for 14 years, I didn't register it under my name..a true owner came who didn't appear at all in the real estate registry but true owner came, maybe the very first entry in the register was fradulent or it was false and null and avoid, but the true owner came and recovered it.

After 16 years, or 15 years from the contract and after 14 years since I start to occupy.

Now I'm deprived of this thing.

Do I have a claim against the seller? Can I get back to him? Yes, of course.

How long from there? For ten years.

It's not that I have to exercise it within one year, because it's..remember? Essentially breach of contract as well as breach of warranty.

Even if you say 'okay this is breach of warranty, you lose that claim in one year,' well you do have breach of contract claim which is exactly the same.

Which is for ten years.

So what is the point of distinguishing breach of warranty and breach of contract, if buyer loses the thing, then it is breach of contract.

As well as breach of warranty.

Okay? But partial failure of consideration is different.

We'll study why it should be different and how different it is, okay? But uh..any questions about this total failure of consideration? Okay, see you on Wednesday.