Boston College Law Review

Volume 3 | Issue 3 Article 5

4-1-1962

Article 2: Sales

Walter F. Weldon Jr

John R. Murphy

Stephen J. Paris

UNIFORM COMMERCIAL CODE ANNOTATIONS

This section contains a digest of all those decisions interpreting provisions of the Uniform Commercial Code included in the published reports of the National Reporter System from December 15, 1961, through March 21, 1962, and Volume 25 of the Pennsylvania District and County Reports, 2nd series. While the Code has been adopted in fifteen states, no decisions have been found other than under the Massachusetts, Kentucky, and Pennsylvania statutes.

As in the past, Annotator's Comments have been added to significant annotations, analyzing, criticizing, commenting upon and extending a court's treatment of an issue or a section of the Code.

Where a decision interprets only a portion of a Code section, that portion is cited prior to the reported case. Appropriate notation is made concerning these decisions which are based upon language contained in the 1953 version of the Code to the extent that such language differs from the 1958 Official Text.

WALTER F. WELDON, JR.
JOHN R. MURPHY
STEPHEN J. PARIS

ARTICLE 2: SALES

SECTION 2-207. Additional Terms in Acceptance or Confirmation.

(1) A definite and seasonable expression of acceptance or a written confirmation which is sent within a reasonable time operates as an acceptance even though it states terms additional to or different from those offered or agreed upon unless acceptance is expressly made conditional on assent to the additional or different terms.

(2) The additional terms are to be construed as proposals for addition to the contract. Between merchants such terms become part of the contract unless:

(a) the offer expressly limits acceptance to the terms of the offer:

(b) they materially alter it; or

(c) notification of objection to them has already been given or is given within a reasonable time after notice of them is received.

Roto-Lith, Ltd. v. F. B. Bartlett & Co., 297 F.2d 497 (1st Cir. 1962).

See case notes, infra, for a summary and full discussion of this case.

Gateway Co. v. Charlotte Theatres, Inc., 297 F.2d 483 (1st Cir. 1961).

For a discussion of this case, see infra, Section 2-209.

(Where a cited case interprets only a portion of a Code section only that portion is set out.)

SECTION 2-209. Modification, Rescission and Waiver.

(1) An agreement modifying a contract within this Article needs no consideration to be binding.

Gateway Co. v. Charlotte Theatres, Inc., 297 F.2d 483 (1st Cir. 1961).

An air conditioning company, setting out in writing the terms of a prior oral agreement to install some units, forwarded two copies to its customer, a landlord of the theatre in which the units were to be installed. The landlord inserted a provision in one copy of the contract to the effect that the work was to be fully completed by a certain date. He returned this copy, signed, to the air conditioning company with a covering letter enclosed specifying the completion date but not referring to the signed copy. The air conditioning company made no expression of assent to the inserted provision. The court, in remanding for a determination as to whether an agreement had in fact been reached (either as a binding oral agreement, or under Section 2-207 of the Code) stated that there was no problem as to consideration since under Section 2-209, none is required to support the modification. The court also declared that the question of whether the air conditioning company had assented to the landlord's modification depended upon whether the company had reason to know of the modification.

SECTION 2-318. Third Party Beneficiaries of Warranties Express or Implied.

A seller's warranty whether express or implied extends to any natural person who is in the family or household of his buyer or who is a guest in his home if it is reasonable to expect that such person may use, consume or be affected by the goods and who is injured in person by breach of the warranty. A seller may not exclude or limit the operation of this section.

Thomson v. Reedman, 199 F. Supp. 120 (E.D. Pa. 1961).

A guest passenger in a new automobile brought an action for damages against the automobile dealer and manufacturer for personal injuries suffered when the accelerator pedal stuck, causing a collision. Plaintiff argued that since a guest in the buyer's home would be included in the seller's warranty, then a guest in his automobile should similarly be covered. The court held that an automobile is not a "home" within the meaning of the Uniform Commercial Code. "It is too much of a leap, it seems, to classify a guest passenger in an automobile as a guest in the home." Therefore, the court was relegated to Pennsylvania case law and, upon this basis, found that privity of contract was not necessary for the plaintiff's suit.

SECTION 2-712. "Cover"; Buyer's Procurement of Substitute Goods.

(2) The buyer may recover from the seller as damages the difference

(Where a cited case interprets only a portion of a Code section only that portion is set out.)

between the cost of cover and the contract price together with any incidental or consequential damages as hereinafter defined (Section 2-715), but less expenses saved in consequence of the seller's breach.

Willred Co. v. Westmoreland Metal Mfg. Co., 200 F. Supp. 59 (E.D. Pa. 1961).

Plaintiff, a sales organization which distributed school furniture, had a contract as exclusive distributor of defendant manufacturer. In a previous action for breach of that contract, defendant was found liable, and the present case involved the assessment of damages. Plaintiff claimed that prior to the breach of the contract, he suffered damages from defective goods and late and improper deliveries of merchandise. Subsequent to the breach, the plaintiff, having obtained other suppliers, and defendant, who obtained another distributor, actively competed. Plaintiff also claimed damages after the breach for lost profits. The following items of damages involving the Code were discussed:

A. Cover: As to a contract which plaintiff had for resale of furniture at the time of the breach of contract, plaintiff could properly "cover" by finding a substitute supplier and charging defendant with the cost differential. However, plaintiff had not introduced sufficient evidence; thus, this claim was disallowed both as to lost profits and difference of freight differential. The court stated that a stricter rule of evidence would be applied as to "out-of-pocket" expenses than for lost profits.

B. Repairs: Plaintiff was within his rights under the Code in accepting defective goods, repairing them, and charging the cost, including direct labor and incidental costs, to defendant. However, plaintiff was not allowed a ten percent item for profit of the direct labor, because the labor used to repair the furniture was additional, rather than diverted from some other work. Also, in this regard, the court upheld the plaintiff's courtroom demonstration by a skilled repairman, but disallowed more than half of the claim for materials used in the repairs (because of insufficient evidence) and half of the claim for travel expenses of repairmen (because it was too high in comparison to the cost of the labor itself).

C. Warehouse expense: Plaintiff claimed the expense of renting a warehouse to repair the defective furniture. This was disallowed on the basis that the warehouse had been rented for another purpose and thus did not constitute an additional expense. The court declared that even if it were hired for repairs, it would have been, at best, an expense of doubtful necessity. In addition, plaintiff asserted that the warehouses were necessary for the reassortment of improper deliveries. The claim was dismissed by the court, since it found that plaintiff's conduct, including the supervision of defendant's shipments at their source by one of plaintiff's officers, constituted a waiver.

(Where a cited case interprets only a portion of a Code section only that portion is set out.)

D. Chair rental: Plaintiff was allowed to recover for the cost of the rental of chairs necessitated by defendant's late deliveries of furniture.

E. Interest: Plaintiff claimed interest on amounts withheld by plaintiff's buyer due to defendant's improper deliveries. The court held that Section 2-714(3) and Section 2-715 provide for such recovery, but plaintiff failed to meet the burden of proving how much, if any, of the amounts withheld by the subpurchaser were due to defendant's improper deliveries. In addition, plaintiff's conduct constituted a waiver.

F. Plaintiff claimed an amount paid by plaintiff to a subpurchaser in settlement of the account with such subpurchaser. The settlement was allegedly necessitated by defendant's defective furniture. There was a similar claim for an amount withheld from plaintiff by another subpurchaser for the same reason. Both were disallowed for insufficiency of evidence.

G. A counterclaim by defendant for money that would have been due for the purchase price of furniture if the deliveries had not been defective was allowed.

SECTION 2-714. Buyer's Damages for Breach in Regard to Accepted Goods.

Where the buyer has accepted goods . . . he may recover as damages for any non-conformity of tender the loss resulting in the ordinary course of events from the seller's breach as determined in any manner which is reasonable.

Willred Co. v. Westmoreland Metal Mfg. Co., 200 F. Supp. 59 (E.D. Pa. 1961).

For a discussion of this case, see supra, Section 2-712.

SECTION 2-715. Buyer's Incidental and Consequential Damages.

(1) Incidental damages resulting from the seller's breach include . . . any commercially reasonable charges, expenses or commissions in connection with effecting cover and any other reasonable expense incident to the delay or other breach.

(2) Consequential damages resulting from the seller's breach include

(a) any loss resulting from the general or particular requirements and needs of which the seller at the time of contracting had reason to know. . . .

Willred Co. v. Westmoreland Metal Mfg. Co., 200 F. Supp. 59 (E.D. Pa. 1961).

For a discussion of this case, see supra, Section 2-712.

(Where a cited case interprets only a portion of a Code section only that portion is set out.)