Boston College Law Review

Volume 5 | Issue 3 Article 6

4-1-1964

Article 2: Sales

Ronald W. DelSesto

Thomas H. Trimarco

SECTION 1-201. General Definitions

Subject to additional definitions contained in the subsequent Articles of this Act which are applicable to specific Articles or Parts thereof, and unless the context otherwise requires, in this Act:

(19) "Good faith" means honesty in fact in the conduct or transaction concerned.

(25) A person has "notice" of a fact when

(a) he has actual knowledge of it; or

(b) he has received a notice or notification of it; or

(c) from all the facts and circumstances known to him at the time in question he has reason to know that it exists.

A person "knows" or has "knowledge" of a fact when he has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this Act.

CASES ANNOTATED UNDER OTHER SECTIONS

NORMAN v. WORLD WIDE DISTRIB. INC.
— Pa. Super. —, 195 A.2d 115 (1963)
See the Annotation to Section 3-302(1), infra.

ARTICLE 2: SALES

SECTION 2-204. Formation in General

(1) A contract for sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract.

(2) An agreement sufficient to constitute a contract for sale may be found even though the moment of its making is undetermined.

(3) Even though one or more terms are left open a contract for sale does not fail for indefiniteness if the parties have intended to make a contract and there is a reasonably certain basis for giving an appropriate remedy.

CASES ANNOTATED UNDER OTHER SECTIONS

†BRUCE LINCOLN-MERCURY, INC. v. UNIVERSAL C.I.T. CREDIT CORP.
325 F.2d 2 (3d Cir. 1963)
See the Annotation to Section 9-102, infra.

SECTION 2-302. Unconscionable Contract or Clause

(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court

† Based on 1953 Code.

may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(2) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.

CASES ANNOTATED UNDER OTHER SECTIONS

*SUTTER v. ST. CLAIR MOTORS, INC.
— Ill. App. —, 194 N.E.2d 674 (1963)
See the Annotation to Section 2-316, infra.

SECTION 2-316. Exclusion or Modification of Warranties

COMMENT

(1) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit warranty shall be construed wherever reasonable as consistent with each other; but subject to the provisions of this Article on parol or extrinsic evidence (Section 2-202) negation or limitation is inoperative to the extent that such construction is unreasonable.

(2) Subject to subsection (3), to exclude or modify the implied warranty of merchantability or any part of it the language must mention merchantability and in case of a writing must be conspicuous, and to exclude or modify any implied warranty of fitness the exclusion must be by a writing and conspicuous. Language to exclude all implied warranties of fitness is sufficient if it states, for example, that "There are no warranties which extend beyond the description on the face hereof."

ANNOTATION

*SUTTER v. ST. CLAIR MOTORS, INC.
— Ill. App. 2d —, 194 N.E.2d 674 (1963)

A farmer bought an automobile from defendant dealer which warranted in writing that the automobile and all parts thereof were free, under normal usage, from defects in material and workmanship for 4,000 miles or 90 days, whichever came first. This warranty was "expressly in lieu of all other warranties, express or implied, and of all other obligations or liabilities on the part of the dealer." On the day of and during the seven months following delivery, the car often became inoperable and underwent at least major repairs, adjustments and alterations, none of which resulted in its proper operation. Finally, the plaintiff had the automobile towed to the dealer's place of business and demanded the return of his money.

Upon the dealer's refusal to reimburse him, plaintiff brought an action to recover the purchase price of the car and his repair costs for the seven

* Code construed but did not govern the case.

month period, contending that the defendant had breached the implied warranty that the automobile would be reasonably fit for the purpose bought as provided by Section 15 of the Uniform Sales Act. The trial court dismissed, holding that the express warranty excluded the implied warranty of fitness.

On appeal, the court reversed, holding that the express warranty did not bar the plaintiff from his implied warranty since the express warranty was not inconsistent with the implied warranty of fitness as provided under Section 15(6) of the Uniform Sales Act. The court added that the same result would be reached under Section 2-316 of the UCC.

COMMENT

The court imposed onto the applicable USA provisions a "conspicuity" standard as provided in UCC Section 2-316 and also spoke in terms of "unconscionability" as described in UCC Section 2-302 even though such terms are not found in the Uniform Sales Act. The court was correct in its reasoning that Section 2-316 would not permit the dealer's implied warranty of merchantability (that the car be fit for the ordinary purposes for which it is sold) to be negatived by the express warranty extended by the dealer. Section 2-316(2) provides that in order to exclude the warranty of merchantability, the language used must *specifically* disclaim the merchantability warranty. The dealer's express warranty "in lieu of all other warranties" obviously lacked any such specific reference.

Section 2-316(2) further provides the proper method to exclude an implied warranty of fitness for a particular purpose. This implied warranty can be excluded by an express conspicuous disclaimer which is in writing. Under Section 2-317(c), unless a contrary intent is shown, an express inconsistent warranty should not be construed so as to displace an implied warranty of fitness for a particular purpose. This is a much more liberal disclaimer provision than that applied to exclude an implied warranty of merchantability. Confusion may arise from this court's reference to the dealer's implied warranty of fitness in light of this distinction within Section 2-316.

The court's disregarding the distinction between limitation of a warranty and limitation of remedy, as well as the construction and disclaimer sections of the USA, is an inexactness which should be and is easily avoided under the Code. Section 2-316 provides the methods available for the parties to limit or disclaim warranties, while Section 2-317 sets forth the manner in which multiple warranties are to be construed; Sections 2-718 and 2-719 make provision for contractual limitation of remedy for damages arising out of a breach.

T.H.T.

SECTION 2-317. Cumulation and Conflict of Warranties Express or Implied

Warranties whether express or implied shall be construed as consistent with each other and as cumulative, but if such construction is un-

reasonable the intention of the parties shall determine which warranty is dominant. In ascertaining that intention the following rules apply:

(a) Exact or technical specifications displace an inconsistent sample or model or general language of description.

(b) A sample from an existing bulk displaces inconsistent general language of description.

(c) Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose.

CASES ANNOTATED UNDER OTHER SECTIONS

*SUTTER v. ST. CLAIR MOTORS, INC.
— Ill. App. —, 194 N.E.2d 674 (1963)
See the Annotation to Section 2-316, supra.

SECTION 2-607. Effect of Acceptance; Notice of Breach; Burden of Establishing Breach After Acceptance; Notice of Claim or Litigation to Person Answerable Over

(3) Where a tender has been accepted

(a) the buyer must within a reasonable time after he discovers or should have discovered any breach notify the seller of breach or be barred from any remedy; and

CASES ANNOTATED UNDER OTHER SECTIONS

MC MEEKIN v. GIMBEL BROS., INC.
223 F. Supp. 896 (W.D. Pa. 1963)
See the Annotation to Section 2-725, infra.

SECTION 2-608. Revocation of Acceptance in Whole or in Part

(2) Revocation of acceptance must occur within a reasonable time after the buyer discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by their own defects. It is not effective until the buyer notifies the seller of it.

CASES ANNOTATED UNDER OTHER SECTIONS

MC MEEKIN v. GIMBEL BROS., INC.
223 F. Supp. 896 (W.D. Pa. 1963)
See the Annotation to Section 2-725, infra.

* Code construed but did not govern the case.

SECTION 2-718. Liquidation or Limitation of Damages; Deposits

(1) Damages for breach by either party may be liquidated in the agreement but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the breach, the difficulties of proof of loss, and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy. A term fixing unreasonably large liquidated damages is void as a penalty.

CASES ANNOTATED UNDER OTHER SECTIONS

*SUTTER v. ST. CLAIR MOTORS, INC.
— Ill. App. 2d —, 194 N.E.2d 674 (1963)
See the Annotation to Section 2-316, supra.

SECTION 2-719. Contractual Modification or Limitation of Remedy

(1) Subject to the provisions of subsections (2) and (3) of this section and of the preceding section on liquidation and limitation of damages,

(a) the agreement may provide for remedies in addition to or in substitution for those provided in this Article and may limit or alter the measure of damages recoverable under this Article, as by limiting the buyer's remedies to return of the goods and repayment of the price or to repair and replacement of non-conforming goods or parts; and

(b) resort to a remedy as provided is optional unless the remedy is expressly agreed to be exclusive, in which case it is the sole remedy.

(2) Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this Act.

(3) Consequential damages may be limited or excluded unless the limitation or exclusion is unconscionable. Limitation of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable but limitation of damages where the loss is commercial is not.

CASES ANNOTATED UNDER OTHER SECTIONS

*WORLD PRODS., INC. v. FREIGHT SERVICE, INC.
222 F. Supp. 849 (D.N.J. 1963)
See the Annotation to Section 7-204, infra.

*SUTTER v. ST. CLAIR MOTORS, INC.
— Ill. App. 2d —, 194 N.E.2d 674 (1963)
See the Annotation to Section 2-316, supra.

---

* Code construed but did not govern the case.

SECTION 2-725. Statute of Limitations in Contracts for Sale

(1) An action for breach of any contract for sale must be commenced within four years after the cause of action has accrued. By the original agreement the parties may reduce the period of limitation to not less than one year but may not extend it.

(2) A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. A breach of warranty occurs when tender of delivery is made, except that where a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance the cause of action accrues when the breach is or should have been discovered.

ANNOTATION

Mc MEEKIN v. GIMBEL BROS., INC.
223 F. Supp. 896 (W.D. Pa. 1963)

The plaintiff bought a rotary lawnmower from the defendant retailer in July 1959. From July 1959 to May 1960 the plaintiff used the mower without incident. On May 28, 1960, while plaintiff mowed his lawn, his five year old son was hit in the eye by an unknown object which caused loss of sight. The son's location when hit was in conflict at the trial of the buyer's action in negligence and breach of warranty against the seller. The trial court granted the defendant's motion for a directed verdict and denied plaintiff's motion for a new trial.

The court held that the plaintiff had no cause of action in negligence for he had failed to prove causation or, in any event, to prove that the defendant had any knowledge of the mower's injurious propensities even if they did exist. The court summarily dismissed the warranty action based on Sections 2-313 and 2-315 as there was no evidence of an express warranty by the defendant and since the evidence established that the plaintiff did not rely on the defendant's skill and judgment in selecting the mower. Finally, the court concluded, apparently based on Section 2-314 though not mentioned specifically, that there was no proof of breach of implied warranty of merchantability or fitness for cutting grass. The court stressed that the plaintiff "utterly failed to meet [his] burden of establishing that the mower was not of merchantable quality when delivered . . . ."

COMMENT

Under Section 2-725(2) a cause of action arising from a breach of warranty accrues when the breach occurs which is upon tender, unless the warranty *explicitly* extends to future performance, in which case the breach occurs when the defect is discovered or when it should have been discovered. Thus, except for an explicit warranty for future performance, a cause of action accrues and a breach occurs at the same time—tender of delivery. An action for breach of warranty must be brought within four years after the cause of action accrues unless the parties had agreed to a shorter limitation. Section 2-725(1).

Section 2-607(3)(a) provides that if the buyer desires to revoke his

acceptance because of a breach of the sales contract, he must give the seller notice of the defect within a reasonable time after he discovers or should have discovered the breach. By reason of Section 2-608(2) the buyer must also give the seller notice of his revocation within a reasonable time after he discovers or should have discovered the defect under Section 2-608(2). Notice of revocation of acceptance under Section 2-608(2) must also be given before there is any substantial change in the condition of the goods not due to defects attributable to the seller.

R.W.D.

ARTICLE 3: COMMERCIAL PAPER

SECTION 3-302. Holder in Due Course

(1) A holder in due course is a holder who takes the insrtument
  (a) for value; and
  (b) in good faith; and
  (c) without notice that it is overdue or has been dishonored or of any defense against or claim to it on the part of any person.

ANNOTATION

NORMAN v. WORLD WIDE DISTRIB., INC.
— Pa. Super. —, 195 A.2d 115 (1963)

Plaintiff purchased a breakfront from defendant World Wide with the added inducement of a referral plan under which plaintiff would be paid five dollars for each letter he wrote to a friend requesting an appointment with a salesman of World Wide. The plaintiff signed a purchase agreement and an attached judgment note in blank. Under the terms of the purchase agreement, the plaintiff agreed to sign the attached note providing for thirty equal monthly installments totaling $1,079.40, with the first payment due in forty-five days. The defendant later inserted in the note the correct amount of $1,079.40 but it was made payable in three days to "State Wide Products". Three days later the note was purchased for $831 by Peoples, which, during the prior year, had purchased similar notes from this company under three different corporate names. Peoples called the plaintiff to inquire into his satisfaction with the transaction and to indicate that Peoples in no way had anything to do with the referral plan. Plaintiff did not complain about the transaction at this time. Peoples entered judgment on the note against the plaintiff. The plaintiff was granted relief in equity against World Wide (no longer in existence) and Peoples; the sales agreement was rescinded on grounds of fraud and the holder's judgment on the note was declared void.

Upon appeal, the court affirmed, dismissing Peoples' contention that it was a holder in due course and should collect on the note despite payee's fraud. It held that under Pennsylvania case law, since the plaintiff had entered a defense of fraud against the payee, the holder of the note has the burden of establishing its claim as a holder in due course, and that Peoples was not a holder in due course since it did not act in good faith as required