Boston College Law Review

Volume 6 | Issue 2 Article 4

1-1-1965

Article 2: Sales

Matthew T. Connolly

John M. Moran

Follow this and additional works at: http://lawdigitalcommons.bc.edu/bclr

 Part of the Consumer Protection Law Commons

Recommended Citation

Matthew T. Connolly & John M. Moran, *Article 2: Sales*, 6 B.C.L. Rev. 221 (1965), http://lawdigitalcommons.bc.edu/bclr/vol6/iss2/4

This Uniform Commercial Code Commentary is brought to you for free and open access by the Law Journals at Digital Commons @ Boston College Law School. It has been accepted for inclusion in Boston College Law Review by an authorized editor of Digital Commons @ Boston College Law School. For more information, please contact nick.szydlowski@bc.edu.

UNIFORM COMMERCIAL CODE ANNOTATIONS

This section contains a digest of all reported decisions interpreting provisions of the Uniform Commercial Code published from the first week of June, 1964 through the first week of September, 1964, in the National Reporter System.

MATTHEW T. CONNOLLY
JOHN M. MORAN

ARTICLE 2: SALES

SECTION 2-302. Unconscionable Contract or Clause

AMERICAN HOME IMPROVEMENT INC. v. MACIVER
—N.H.—, 201 A.2d 886 (1964)

The defendant, a homeowner, signed an agreement with the plaintiff for home improvements and an application for financing. The plaintiff later notified the defendant that credit in the net amount of $1,759 had been approved and that his monthly payments would be $42.81 for 60 months. Relying on the agreement, the plaintiff paid a sales commission of $800. After performing a negligible amount of work, the plaintiff was ordered by the defendant to cease work on the premises. The plaintiff sued for breach of contract. In affirming a judgment for the defendant, the court held, first, that the plaintiff failed to comply with the disclosure act (RSA 399-B) which requires under Section 399-B 2 (supp.) that "any person engaged in the business of extending credit shall furnish . . . concurrently with the consummation of the transactions . . . a clear statement in writing setting forth the finance charges, expressed in dollars, rate of interest, or monthly rate of charge, or a combination thereof. . . ." and, second, that since the defendant was paying $2,568.60 for goods and services worth $959.00 ($800 being allocable to the sales commission, $809.60 to interest and finance charges), the contract was unconscionable under Section 2-302 of the Uniform Commercial Code.

COMMENT

Though the standards of unconscionability are essentially the same under the common law and the Code, there appears to be no case at common law in which a contract such as the present one has been held unconscionable. Indeed, resting the decision on the ground of unconscionability would seem to be unwarranted, since the defendant received notice of the interest and carrying charges and was not defrauded by the complexities of the transaction.

J.M.M.

SECTION 2-314. Implied Warranty: Merchantability; Usage of Trade

NEDEROSTEK v. ENDICOTT-JOHNSON SHOE CO.
415 Pa. 136, 202 A.2d 72 (1964)
Annotated under Section 2-318, infra.

SECTION 2-315. Implied Warranty: Fitness for Particular Purpose

NEDEROSTEK v. ENDICOTT-JOHNSON SHOE CO.
415 Pa. 136, 202 A.2d 72 (1964)
Annotated under Section 2-318, infra.

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

NEDEROSTEK v. ENDICOTT-JOHNSON SHOE CO.
415 Pa. 136, 202 A.2d 72 (1964)

In this suit for breach of implied warranty of fitness, the plaintiff alleged that he was "supplied" a pair of safety work shoes by his employer, that his employer had purchased the shoes from the defendant Lehigh Safety Shoe Co., and that the shoes had been manufactured by the defendant Endicott-Johnson Shoe Co. He further alleged that as a result of wearing the shoes he developed extensive contact dermatitis of his feet and hands. The lower court sustained the defendants' motions for judgment on the pleadings on the ground that the supplying of the shoes by the employer was a fringe benefit and not a sale.

On appeal, reversed, the court holding that the plaintiff's allegation that the shoes were "supplied" to him by his employer was susceptible of many interpretations and that the lower court could not hold, as a matter of fact or law, that the plaintiff was excluded from the class of persons to whom implied warranties extend under Sections 2-314, 2-315 and 2-318 and the developing case law.

COMMENT

Although it is not clear whether the plaintiff was suing under Section 2-314 for breach of the implied warranty of merchantability or under Section 2-315 for breach of the implied warranty of fitness for a particular purpose, it would seem that the breach, if there were one, would come under Section 2-314. This is because the safety shoes were unfit for the *ordinary* purposes for which they were intended, that is, for ordinary wearing, and not unfit for any *particular* purpose. The plaintiff did not receive any injury or suffer any loss which the shoes were particularly designed to prevent.

M.T.C.

SECTION 2-326. Sale on Approval and Sale or Return; Consignment Sales and Rights of Creditors

GENERAL ELEC. CO. v. PETTINGELL SUPPLY CO.
—Mass.—, 199 N.E.2d 326 (1964)

The Pettingell Supply Co. is a wholesaler of electrical merchandise whose only consignment business consisted of General Electric's large lamps. Under the consignment contract Pettingell was authorized to sell the lamps to its own customers or distribute them to other agents of General Electric. When Pettingell's business faltered, General Electric by writ of replevin repossessed its lamps from Pettingell's assignee-for-the-benefit-of-creditors. The lower court held that under Section 2-326(3), General Electric had to return the goods to the assignee.

Upon appeal, General Electric argued that no part of Section 2-326 was applicable since the relationship between it and Pettingell was not that of seller and buyer but that of principal and agent. The court ruled, however, that Section 2-326(3) by its very terms concerned itself with transactions which, though they might not be sales under Section 2-106(1), were nonetheless "deemed to be on sale or return . . . with respect to claims of creditors. . . ."

General Electric also contended that Section 2-326 did not apply because the defendant, as the plaintiff's agent, had not been sold the lamps and therefore could not *resell* them as sentence two of Section 2-326(3) contemplated. In dismissing this contention, the court found that the second sentence exemplified but did not limit the plain meaning of the first sentence which made subsection 3 applicable to transactions not ordinarily characterized as sales.

The plaintiff further argued that, since Pettingell sold only one brand of large lamps, it did not deal "in goods of the kind involved." However, the court found that the quoted phrase in Section 2-326(3) does not restrict the relevant business to dealings in the precise kind of goods. The fact that Pettingell sold other electrical items was sufficient.

The court also found that Pettingell was doing business under a name different from that of General Electric, despite the fact that the forms it used in selling the large lamps stated Pettingell was "agent for General Electric, consignor company."

The court further found that, since Pettingell was authorized to sell the lamps to its own customers, the lamps were "delivered . . . for sale" within the meaning of Section 2-326(3). It was irrelevant that 76% of the lamps were actually distributed, not sold, to General Electric's other agents.

Judgment for the assignee was affirmed.

J.M.M.