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Article 2: Sales

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the contract did bear a *reasonable* relation to both Arkansas and Tennessee. In that case, under Section 1-105(1), the court would have been free to apply the Arkansas Code if an *appropriate* relation to Arkansas could have been established. The fact that the contract was executed in Arkansas, that the originally designated place of payment was in Arkansas, that the plaintiff's assignor was an Arkansas company and that the defendant was an Arkansas resident at the time of the suit would seem to be sufficient to establish this *appropriate* relation to Arkansas and allow the court to interpret the contract according to the Code.

The defendant's claim of usury should have then caused the court to turn to Section 9-201 of the Code which denies validity to practices, such as usury, illegal under state law. In the face of this defense, the validity of the contract should have been determined by the non-Code law of the state. In doing so, the court would then have been forced to decide whether to apply only the usury statutes of Arkansas, or the whole law of Arkansas—including its conflict of laws rule. In the present case, however, the application of either alternative would not have changed the result.

J.F.B.

SECTION 1-210. General Definitions

CITIZENS NAT'L BANK v. FORT LEE SAV. & LOAN ASS'N [Section 1-201(19)]
213 A.2d 315 (N.J. Super. Ct. 1965) [Section 1-201(20)]
Annotated under Section 3-302, infra. [Section 1-201(25)]

ARTICLE 2: SALES

SECTION 2-302. Unconscionable Contract or Clause

WILLIAMS v. WALKER-THOMAS FURNITURE CO.
350 F.2d 445 (D.C. Cir. 1965)

Plaintiff, a retail furniture dealer, and defendant buyer executed a retail installment contract for the purchase of a stereo set in April 1962. Under the contract, the periodic payments were termed "rent" and title was to pass from the plaintiff to the defendant when the total payments equalled the purchase price. The contract provided for the plaintiff's right to repossess the goods in the event of a default in payments. Furthermore, according to the contract, if the defendant purchased an additional item while an unpaid balance remained outstanding on an earlier purchase, all future payments were to be credited pro-rata to the balance remaining in each account. The court ruled that the effect of this provision was to keep a balance due on every item purchased until the balance due on all items, whenever purchased, was liquidated. The defendant defaulted on a payment on the stereo set, and the plaintiff brought suit to replevy all purchases made on a series of installment contracts since 1958. The defendant claimed that the contract was unconscionable and, therefore, unenforceable. The court of general sessions granted judgment for the plaintiff, and the District of Columbia Court of Appeals affirmed on the ground that it was powerless to do otherwise in the

absence of legislation or judicial precedent. The United States Court of Appeals reversed and remanded the case to the trial court.

Although the Code was not in effect when these contracts were executed, the court found no reason to hold that its subsequent adoption effected any change in the appropriate law. It thus decided that Section 2-302, which gives the court the discretionary authority to refuse to enforce an unconscionable contract, was the codification of the evolving common law, and its adoption by the District of Columbia was "persuasive authority for following the rationale of the cases from which the section is explicitly derived."

The court then defined unconscionability "to include an absence of meaningful choice on the part of one of the parties together with contract terms which are unreasonably favorable to the other party." To determine whether such unconscionability existed, it laid down broad guidelines to be considered by the trial court in the light of all the surrounding circumstances. If there was an absence of meaningful choice because of a gross inequality in bargaining power, if the buyer, considering his educational level, did not have a reasonable opportunity to understand the terms of the contract, or if important terms were hidden in a maze of fine print or minimized by deceptive sales practices, a court may find the contract so commercially unreasonable as to preclude enforcement. Since these issues of fact were never litigated, the case was remanded to the trial court for reconsideration.

COMMENT

The court's decision in this case, while based on principles of common law, is in accord with Section 2-302 of the Code. Furthermore, the factors which the court enumerates in its discussion of unconscionability are not intended to be exhaustive in scope or automatic in application, but are illustrative of the circumstances which, under the Code, may cause a court to find a contract to be so one-sided as to be unconscionable.

The dissent advocated a more cautious approach out of fear that this decision might have an unsettling effect on a large number of installment credit transactions. This fear is baseless unless, of course, a large number of retail merchants are actually engaged in unconscionable practices. Section 2-302 may be invoked to deny enforcement of a contract only if it can be proven to the satisfaction of the court that the contract is in fact unconscionable "in the light of the general commercial background and the commercial needs of the particlar trade or case." Section 2-302, Comment 1. In addition, a finding of unconscionability does not automatically void the entire contract. The court, in the exercise of its discretion, may refuse to enforce all or part of the contract or limit the application of any unconscionable clause. In the interest of certainty, the dissent suggested that supplementary legislation ought to be utilized to deal with cases of this type. This suggested approach is contrary to the intent of Section 2-302 as expressed in Official Comment 1: "This section is intended to make it possible for the courts to police explicitly against the contracts or clauses which they find to be unconscionable."

J.F.B.

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

RAY v. DEAS

144 S.E.2d 468 (Ga. Ct. App. 1965)

Plaintiff broke a tooth while biting into a "hard, unyielding substance" imbedded in a hamburger sandwich sold to her by the defendant restaurateur. Plaintiff commenced an action for damages alleging negligence and breach of implied warranty. The lower court overruled defendant's demurrer and the appellate court affirmed, holding that the plaintiff had stated a cause of action in both negligence and warranty. As to the warranty count, the court noted that Section 2-314 abrogates prior Georgia case law which had prohibited an action in warranty against a restaurateur who furnished unwholesome food for consumption on the premises because such transaction "did not amount to a sale." Under Section 2-314, "the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale," to which a warranty of merchantability is implied.

M.L.G.

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

SUVADA v. WHITE MOTOR CO.

210 N.E.2d 182 (Ill. 1965)

Plaintiff purchased from the defendant White Motor Company a reconditioned tractor unit. The brake system for the tractor was manufactured by the co-defendant Bendix-Westinghouse Automotive Air Brake Company and installed by White. Some months later, the brake system failed and the tractor collided with a bus, injuring several passengers and causing severe damage to both the tractor and the bus. Plaintiff brought suit for damages sustained in repairing the tractor and in settlement of personal injury claims. The trial court found that plaintiff had stated a cause of action against White for damage to its tractor unit on the basis of breach of implied warranty and negligence, and against Bendix on the basis of negligence, but dismissed plaintiff's other claim for damages. The appellate court held that the plaintiff had stated a cause of action against White and Bendix for all damages on the basis of a breach of implied warranty. *Suvada v. White Motor Co.*, 51 Ill. App. 2d 318, 201 N.E.2d 313 (1964), annot. 6 B.C. Ind. & Com. L. Rev. 593 (1965).

The supreme court affirmed, declaring the law of Illinois to be that the manufacturer or seller of a product which is dangerous when defective is strictly liable in tort, regardless of any negligence. The court rejected Bendix's argument that lack of privity is a defense under Section 2-318 of the Code, stating: "our holding of strict liability in tort makes it unnecessary to decide what effect Section 2-318 has on the action for breach of warranty."

COMMENT

See *Seely v. White Motor Co.*, 45 Cal. Rptr. 17, 403 P.2d 145 (1965), noted 7 B.C. Ind. & Com. L. Rev. 767 (1966).

M.L.G.

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

LEWIS v. FOOD MACH. & CHEM. CORP.

245 F. Supp. 195 (W.D. Mich. 1965)

On August 6, 1956, plaintiff, a Pennsylvania resident, purchased a potato harvester manufactured by the defendant, a Delaware corporation. On August 6, 1962, plaintiff commenced this action in a federal court in Michigan, alleging a violation of Sections 2-313 and -315 of the Pennsylvania Code, in that the machine had not performed as warranted. The defendant moved for summary judgment, contending that the four-year statute of limitations of Section 2-725 had run. The court denied defendant's motion and held that the Michigan six-year statute of limitations applied. It reasoned that the Code's four-year statute of limitations is procedural, and, not being integrally connected with the plaintiff's cause of action, is therefore not a part of Pennsylvania substantive law. It thus concluded that "it was required to apply the applicable Michigan statute of limitations," and held that plaintiff's action had been seasonably brought.

COMMENT

While the Code had been enacted, it was not effective in Michigan at the date of this case. Had it been applicable, there would be no doubt that Section 2-725 would have controlled and that the defendant's motion would have been granted. This was the result reached when the same case was previously presented to the Pennsylvania court. *Lewis v. Jacobson*, 30 D. & C.2d 623 (Erie County Ct., Pa., 1962). See *Rufo v. Bastian-Blessing Co.*, 417 Pa. 107, 207 A.2d 823 (1965), annot. 7 B.C. Ind. & Com. L. Rev. 103 (1965).

There is also little doubt as to the correctness of the court's determination that the Pennsylvania statute of limitations, Section 2-725, is procedural rather than substantive. See *Natale v. Upjohn Co.*, 236 F. Supp. 37 (D. Del. 1964), annot. 6 B.C. Ind. & Com. L. Rev. 783 (1965).

M.L.G.

LYBECKER v. UNITED PAC. INS. CO.

406 P.2d 945 (Wash. 1965)

Plaintiffs had agreed to sell their crops to the bankrupt, a commission merchant, for specified amounts payable during 1959. Two of the plaintiffs had executed written contracts while two had made oral agreements with the bankrupt. The bankrupt was required to post a bond by statute, and the defendant was surety on the bond. The first of these actions was commenced against the surety three years and two days after the due date set forth on one of the written contracts. The trial court ruled that all four contracts, as a matter of law, were governed by a Washington three-year statute of limitations, but held that all four actions had been seasonably commenced. The court reasoned that due to a dispute between the principals over one of the contracts, and the absence of definite due dates in the other three, the bankrupt's liability on the contracts had not become final until the end of 1959. The defendant surety appealed, claiming that, since the plaintiffs and itself

were not in privity, its liability had been created by statute and a liability created by statute is controlled by a Washington two-year statute of limitations which would bar the plaintiffs' actions.

The Supreme Court of Washington affirmed the lower court's decision, but rejected both the plaintiffs' and the defendant's contentions. Instead, the court determined that, in Washington, claims based on written contracts are governed by a six-year statute of limitations and those based on oral contracts by a three-year statute of limitations. It thus held that the actions based on the written contracts were not barred by the statute of limitations, and since these claims by themselves totalled more than the amount of the bond, they were sufficient to raise the question of the defendant's liability.

The court noted in a footnote that had the Uniform Commercial Code been in effect, the four-year statute of limitations of Section 2-725 would have controlled this case. Since that section applies to actions brought on all contracts for the sale of goods, it would have governed actions based on both the oral and the written contracts.

M.L.G.

ARTICLE 3: COMMERCIAL PAPER

SECTION 3-301. Rights of a Holder

CITIZENS NAT'L BANK v. FORT LEE SAV. & LOAN ASS'N
213 A.2d 315 (N.J. Super. Ct. 1965)
Annotated under Section 3-302, infra.

SECTION 3-302. Holder in Due Course

CITIZENS NAT'L BANK v. FORT LEE SAV. & LOAN ASS'N
213 A.2d 315 (N.J. Super. Ct. 1965)

Plaintiff bank's depositor, Winter, entered into a contract for the sale of real estate with the defendant Amoroso, who requested the Fort Lee Savings and Loan Association, the co-defendant, to issue its check in the amount of $3,100 to her for use as a deposit on the contract. Fort Lee Savings complied by drawing against its account with Fort Lee Trust Co. Before the deposit, Winter's account had a balance of $225. Because of this deposit, plaintiff honored checks totaling $1,290 drawn against Winter's account. Amoroso, in the meantime, had learned of a previous sale of the real estate and demanded the return of the check. She contended that Winter had admitted the fraud and promised to return the deposit. Before making any refund, however, Winter committed suicide. Amoroso then requested Fort Lee Savings to stop payment on the check. A written stop payment order was received by the drawee bank, Fort Lee Trust, prior to clearance of the check, and upon presentment, notice of non-payment was transmitted to the plaintiff which then commenced this suit to recover the amount it had advanced to Winter. The court granted plaintiff's motion for summary judgment and held that both Fort Lee Savings, as drawer of the check, and Amoroso, as indorser of the check, were liable under Sections 3-413(2) and -414(1) respectively.