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Nelson v. Logan Motor Sales, Inc.: Providing Damages for Breach of the Implied Warranty of Merchantability

Chad A. Cicconi
West Virginia University College of Law

NELSON v. LOGAN MOTOR SALES, INC.: PROVIDING DAMAGES FOR BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY

I. INTRODUCTION

The case of *Nelson v. Logan Motor Sales, Inc.*[1] involves the issue of proving damages for breach of the implied warranty of merchantability. An implied warranty of merchantability is required by the Uniform Commercial Code and has been adopted as part of the West Virginia Code.[2] When a merchant enters into a contract of sale, an implied warranty of merchantability arises by operation of law.[3] The implied warranty assures the purchaser that the goods (a)

1. 370 S.E.2d 734 (W. Va. 1988).
2. W. VA. CODE § 46-2-314 (1963).
3. *Id.*

"would pass without objection in trade," and (b) "are fit for the ordinary purposes for which such goods are used."[4] Thus, when an auto dealer contracts to sell an auto, an implied warranty of merchantability arises to assure the buyer that the auto is fit for the ordinary purpose for which it is to be used. In other words, the seller impliedly warrants that the auto is fit to be driven.

If the seller breaches the implied warranty of merchantability by selling goods that are not fit for the ordinary purpose for which they are normally used, the buyer then has a cause of action against the seller for breach of warranty.[5] The damages for such a breach are governed by Chapter 46, Article 2, Section 714 of the West Virginia Code, and are determined by subtracting the market value of the goods received from the market value of the same goods, had they been as warranted.[6]

The cases discussed in this comment deal with how to determine the difference in the market values, and what evidence should be used to do so. Prior to *Nelson*, the law in West Virginia was inconsistent as to how one should use repair costs to show damages under the implied warranty of merchantability. *Nelson* made clear exactly how a plaintiff's repair costs can be used to show damages under Chapter 46, Article 2, Section 714 of the West Virginia Code.

The types of evidence discussed in *Nelson* are: (1) the plaintiff's own testimony as to the value of the accepted goods, and (2) the plaintiff's repair costs.[7] Prior West Virginia law will be discussed separately. The law in regard to the plaintiff's testimony will not be dealt with in depth, since *Nelson* made no change to the law in that area. The main focus of this comment will be on how *Nelson* changed the way repair costs can be used under Chapter 46, Article 2, Section 714 of the West Virginia Code to show damages for breach of the implied warranty of merchantability.

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4. *Id.*
5. *Id.*
6. W. VA. CODE § 46-2-714 (1963).
7. *Nelson*, 370 S.E.2d at 734 (W. Va. 1988).

II. Statement of the Case

The plaintiff, John P. Nelson, originally bought a used car from Logan Motor Sales, Inc., for $3,500.[8] Apparently, soon after the purchase, Mr. Nelson began to experience problems with the auto.[9] He had the automobile's transmission repaired several times, but it eventually became too difficult to drive,[10] and Mr. Nelson ceased using the car one year after its purchase.[11] Therefore, Mr. Nelson stopped making payments on the auto loan and brought suit against Logan Motor Sales, Inc., in the circuit court of Logan County, West Virginia.[12] The action alleged breach of the implied warranty of merchantability.[13] Logan Motor Sales, Inc., filed a counterclaim against Nelson for the unpaid portion of the original purchase price.[14]

At trial, both parties agreed that the original purchase price for the auto had been $3,500 and that the purchase price was the automobile's value, had it been as warranted.[15] The plaintiff attempted to introduce repair costs to prove damages for the defendant's breach of the implied warranty of merchantability.[16] The trial court ruled that repair costs were special damages which had not been plead by the plaintiff and excluded them from the evidence.[17] Subsequently, the plaintiff testified that the auto was repaired several times after he obtained it, but the automobile nevertheless became too difficult to drive.[18] The defendant introduced the balance due on the note for the auto loan, in support of it's counterclaim for $1,992.13.[19]

The jury returned a verdict of $3,400 for the plaintiff, and awarded nothing to the defendant on its counterclaim.[20] The trial

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8. *Id.* at 736.
9. *Id.*
10. *Id.*
11. *Id.*
12. *Id.* at 735.
13. *Id.*
14. *Id.* at 736.
15. *Id.*
16. *Id.*
17. *Id.*
18. *Id.*
19. *Id.*
20. *Id.*

court, on defendant's motion, set aside the verdict for the plaintiff and awarded the defendant the full amount on its counterclaim.[21] The plaintiff appealed the trial court's decision.

On appeal, the plaintiff alleged two errors on the part of the trial court.[22] First, the plaintiff argued that the jury verdict should not have been set aside, since the jury could properly have found that the car was worthless from the plaintiff's own testimony.[23] Second, the plaintiff argued that the repair bills should have been admitted into evidence as valid proof of general damages under Chapter 46, Article 2, Section 714 of the West Virginia Code.[24]

The West Virginia Supreme Court of Appeals held that the plaintiff could use repair costs to prove the market value difference under the general damages formula of the code.[25] The court reversed and remanded the case.[26]

III. Prior Law

A. Purchaser's Testimony as to Value of Goods Received

The West Virginia Supreme Court of Appeals established the general rule as to the admissibility and weight of the plaintiff's own testimony about the value of goods in two West Virginia cases: *Spencer v. Steinbrecher*,[27] and *Royal Furniture Co. v. City of Morgantown*.[28]

In *Spencer*, the plaintiff sued for unlawful conversion of an automobile.[29] The West Virginia Supreme Court of Appeals held that:

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21. *Id.*
22. *Id.* at 735-36.
23. *Id.* at 735.
24. *Id.*
25. *Id.* at 737-38.
26. *Id.* at 738.
27. 152 W. Va. 490, 164 S.E.2d 710 (1968).
28. 164 W. Va. 400, 263 S.E.2d 878 (1980).
29. *Spencer*, 152 W. Va. at 491, 164 S.E.2d at 712. The plaintiff, after an auto accident, took her car to the defendant's repair shop and agreed to have the defendant effect repairs. Since the plaintiff did not have the money, a finance plan was agreed upon by which the plaintiff would pay for the repairs over a period of some months. Some time later, when the plaintiff attempted to locate

> [t]here is no reason why an owner cannot testify as to values of his own personal property, but he must, in order to avoid speculation, have enough experience to know values and be able to tell why, so the more frequent method of proof is to have the value testimony produced by persons experienced with the type of property involved.[30]

In *Royal Furniture*, the owners of a furniture store sued the city of Morgantown for damages to stock caused by water which escaped from one of the city's water lines.[31] After a verdict for the plaintiffs at trial, the defendant appealed, alleging that the plaintiffs' testimony as to the amount of the damage and the value of the merchandise was not sufficient to establish the amount of damages.[32] The West Virginia Supreme Court of Appeals held that since the plaintiffs were prominent merchants for many years, they were certainly qualified to give competent testimony as to the value of their merchandise.[33]

The foregoing two cases illustrate the general rule that the plaintiff's own testimony as to the value of goods is admissible. However, unless the plaintiff has some level of expertise in dealing with goods of that type, the testimony will be insufficient, in the absence of some other evidence, to establish the value of the goods in question.

B. Role of Repair Costs in Determining Damages

Prior to *Nelson*, repair costs could be used in either one of two ways when attempting to prove damages for breach of the implied warranty of merchantability. One way was to use repair costs to prove special damages, i.e., consequential damages caused by the seller's breach. When used in this way, the damages must be plead specifically. Another way was to use repair costs under the "special

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her auto, she discovered that the defendant had sold the auto under a distress warrant. She then sued the defendant for unlawful conversion. During the trial, the plaintiff testified that she "imagined" that her car was worth a certain amount. After a favorable ruling for the plaintiff in the trial court, the defendant appealed, alleging, among other errors, that the plaintiff's testimony as to the value of her auto was not sufficient to establish the actual value of the auto. *Id.* at 491-96, 164 S.E.2d at 712-15.

30. *Id.* at 497, 164 S.E.2d at 715.
31. *Royal Furniture*, 164 W. Va. at 402, 263 S.E.2d at 880.
32. *Id.* at 407, 263 S.E.2d at 882.
33. *Id.* at 407, 263 S.E.2d at 883.

circumstances" provision found in Chapter 46, Article 2, Section 714 of the West Virginia Code. In order to use repair costs in this way, the court must determine that "special circumstances" warrant some other measure of damages (possibly the plaintiff's repair costs).

The idea that repair costs could be used to show general damages for breach of the implied warranty of merchantability is not new. Although the West Virginia Supreme Court of Appeals has never specifically so held, there is some support in dicta from prior cases that repair costs can be used to determine the difference in market value promised and market value received under the general damages formula of Chapter 46, Article 2, Section 714 of the West Virginia Code.

1. Difference in Market Values

In *Spencer*, the West Virginia Supreme Court of Appeals stated in dictum that "[f]requently, the cost of repairs may be equal to the difference in market values."[34] The *Spencer* court's dictum indicated that even as far back as 1968, the court considered the use of repair bills as a yardstick for general damages under Chapter 46, Article 2, Section 714 of the West Virginia Code.

In an earlier case, *Payne v. Valley Motor Sales, Inc.*,[35] the West Virginia Supreme Court of Appeals discussed how to prove the difference between market value and market value as warranted. The court suggested that "a skilled mechanic, familiar with an automobile of a particular make, can testify about its value after making an examination of it or parts thereof."[36] A mechanic's testimony as to the difference between the market values is not exactly the same thing as a repair bill, but the two are very similar. In each case, a mechanic or someone familiar with the values and repair of autos must examine the car.

The West Virginia Supreme Court of Appeals has also allowed repair bills to be used to prove damages in several other cases, with-

34. *Spencer*, 152 W. Va. at 497, 164 S.E. at 715.
35. 146 W. Va. 1063, 124 S.E.2d 622 (1962).
36. *Id.* at 1069, 124 S.E.2d at 626.

out explicitly indicating that repair bills are a valid and proper way to measure *general* damages.

In *Hardman Trucking, Inc. v. Poling Trucking Co.*,[37] the West Virginia Supreme Court of Appeals was faced with the task of determining the difference in market values of goods before and after an accident negligently caused by the defendant. In its analysis of how the parties could show the difference in market values, the court allowed repair costs to be used as the measure of damages.[38] To support its ruling, the *Hardman* court cited its prior decision in *Jarrett v. E. L. Harper & Son, Inc.*[39] *Jarrett* involved negligent damage to real property. The *Jarrett* court allowed repair costs to be used to determine the difference between the market value of the property before an accident and the value after an accident.

Neither *Jarrett* nor *Hardman* involve damages for breach of the implied warranty of merchantability. However, both cases illustrate instances where the West Virginia Supreme Court of Appeals used repair costs to measure the difference in market values.

2. Damages Under "Special Circumstances"

In *Mountaineer Contractors, Inc. v. Mountain State Mack, Inc.*,[40] the West Virginia Supreme Court of Appeals considered damages for breach of warranty. The court once again allowed repair costs to be introduced to prove damages, but justified this use by citing the special circumstances provision of Chapter 46, Article 2, Section 714 of the West Virginia Code. In *Mountaineer Contractors*, the goods in question were certain coal mining and construction equipment which were at the time extremely difficult, if not impossible, to obtain.[41] The court held that the facts constituted sufficient "special circumstances" to warrant not using the standard damages formula of market value as warranted minus market value as received.

37. 346 S.E.2d 551 (W. Va. 1986).
38. *Id.* at 554.
39. 160 W. Va. 399, 235 S.E.2d 362 (1977).
40. 165 W. Va. 292, 268 S.E.2d 886 (1979).
41. *Id.* at 303, 268 S.E.2d at 893.

Therefore, the court allowed the plaintiff to recover repair costs.[42] Using repair costs to determine damages in *Mountaineer Contractors* does not necessarily apply to a situation in which the general damages formula is being utilized. It is another instance where the Supreme Court of Appeals used the plaintiff's repair cost as the correct measure of damages.

The case of *Easley Ford Sales, Inc. v. Solomon*[43] involved a breach of express and implied warranties. In *Easley*, evidence of the costs of repairing a truck was admitted into evidence without discussion. *Easley* was the first case in which repair costs were used as proof of general damages for breach of implied warranty of merchantability. Although no explanation was given, the West Virginia Supreme Court of Appeals considered the plaintiff's repair costs to be the proper measure of damages.

The foregoing cases indicate that the West Virginia Supreme Court of Appeals has been moving toward allowing repair costs to be used as an indicator of the difference in market values to show general damages under the implied warranty of merchantability required under Chapter 46, Article 2, Section 714 of the West Virginia Code.

IV. Analysis of *Nelson*

A. *Plaintiff's Testimony as to the Value of the Goods: Prior Law Sustained*

As to the plaintiff's testimony, the West Virginia Supreme Court of Appeals followed *Spencer*[44] and *Royal Furniture*.[45] The *Nelson* court held that the plaintiff's testimony as to the value of the goods as accepted was admissible but was insufficient to support a finding of the value of the goods without other evidence.[46] Citing *Spencer* and *Royal Furniture*,[47] the *Nelson* court restated the proposition that

42. *Id.* at 304, 268 S.E.2d at 894.
43. 167 W. Va. 891, 280 S.E.2d 718 (1981).
44. Spencer v. Steinbrecher, 152 W. Va. 490, 164 S.E.2d 710 (1968).
45. Royal Furniture v. City of Morgantown, 164 W. Va. 400, 263 S.E.2d 878 (1980).
46. *Nelson*, 370 S.E.2d at 736.
47. Spencer v. Steinbrecher, 152 W. Va. 490, 164 S.E.2d 710 (1968); Royal Furniture v. City of Morgantown, 164 W. Va. 400, 263 S.E.2d 878 (1980).

"[l]ay witnesses may express their opinion as to the value of personal or real property, as long as the opinion is not speculative or conjectural."[48] As an example of speculative lay testimony, the *Nelson* court quoted language from *Spencer* wherein the plaintiff testified that she "imagined" that her car was worth a certain amount.

The plaintiff's testimony was not sufficient to meet the burden of proof as to the value of the car as received.[49] Although the plaintiff's testimony was admissible, the plaintiff had no special experience in dealing with automobiles, as the plaintiffs did in *Royal Furniture*. Consequently, the *Nelson* court held that the plaintiff's testimony was insufficient to support the jury's verdict for the plaintiff.[50] The *Nelson* court's holding as to the plaintiff's testimony makes no change in the law of this jurisdiction.

B. Role of Repair Costs in Determining Damages

Before *Nelson*, repair costs could be used to show either "special damages" or to measure damages under the "special circumstances" provision of Chapter 46, Article 2, Section 714 of the West Virginia Code.[51] In *Nelson*, however, the court extended the law and allowed repair costs to be used as proof of *general* damages under the formula for general damages found in the UCC.[52]

The West Virginia Supreme Court of Appeals disagreed with the trial court's ruling that the repair costs were to be considered as special damages. The Supreme Court of Appeals found that the plaintiff intended to use the repair costs to show general damages, i.e. the difference between the market value of the goods as warranted and the market value of the goods as received.[53] The court

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48. *Nelson*, 370 S.E.2d at 736.
49. *Id.* at 737.
50. *Id.*
51. Mountaineer Contractors v. Mountain State Mack, 165 W. Va. 292, 268 S.E.2d 886 (1979).
52. *Nelson*, 370 S.E.2d at 737. The trial court in *Nelson* held that the plaintiff's attempt to introduce the repair bills was in order to show "special circumstances." It is uncertain, however, whether he meant "special circumstances" or "special damages." The West Virginia Supreme Court of Appeals accepted the interpretation of both of the parties on appeal, and interpreted the trial court to mean "special damages," which must be plead specifically in order for evidence proving such damages to be admitted. *Id.* at 737 n.7.
53. *Id.* at 737.

cited *Mountaineer Contractors* and held that repair bills could indeed be used in this way.[54] *Mountaineer Contractors*, however, supported the use of repair costs as proof of general damages by citing the "special circumstances" provision of Chapter 46, Article 2, Section 714 of the West Virginia Code.[55] The *Nelson* court explained that its holding in *Mountaineer Contractors* was not limited to "special circumstances," and that when "special circumstances" do arise, the whole damages formula can be replaced by whatever measure of damages the court deems appropriate.[56]

The *Nelson* court stated that "[t]he cost of repairs is strong evidence of the difference between the value they would have had if they had been as warranted [and the value of the goods as received] . . . . In most cases [general] damages can be determined based on . . . what it would cost to repair or replace."[57] The *Nelson* court reversed the trial court's ruling on the admissibility of the repair costs as evidence of general damages and remanded the case for further proceedings on the issue of damages only.[58]

The significance of *Nelson* is that it allows the plaintiff's repair costs to be used directly to show the difference between the market value as warranted and the market value as received. Plaintiffs need no longer plead repair costs as consequential or incidental damages or rely on *Mountaineer Contractors* to introduce a plaintiff's repair costs under some "special circumstances." In *Nelson*, the West Virginia Supreme Court of Appeals has recognized that repair costs are indeed a good yardstick to measure the difference between market values and has explicitly held that repair costs are admissible to prove general damages under Chapter 46, Article 2, Section 714 of the West Virginia Code.

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54. *Id.*

55. *Mountaineer Contractors*, 165 W. Va. at 303, 268 S.E.2d at 893.

56. *Nelson*, 370 S.E.2d at 738 n.8. For proper examples of the use of special circumstances provision in U.C.C. § 2-714, *see* Hirst v. Elgin Metal Casket, 438 F. Supp. 906 (D.C. Mont. 1977); Baden v. Curtiss, 380 F. Supp. 243 (D.C. Mont. 1974); Wright v. T & B Auto Sales, 72 N.C. App. 449, 325 S.E.2d 493 (1985).

57. *Nelson*, 370 S.E.2d at 737 (quoting W. HAWKLAND, U.C.C. SERIES § 2-714:04 (1984)).

58. *Id.* at 738.

C. *Comparison to Other Jurisdictions*

1. Plaintiff's Testimony

The *Nelson* court's holding that the plaintiff's testimony as to the value of goods received is admissible, but not sufficient to support a finding of the value of the goods, is consistent with the prior cases in West Virginia[59] and with the general rule of other jurisdictions.[60] In a 1984 case, *Vreeman v. Davis*,[61] the Supreme Court of Minnesota stated the general rule when it said "[a]n owner is competent to express an opinion on the market value of his or her property, and ordinarily any weakness in the foundation for that opinion goes to its weight, not its admissibility."[62] *Nelson* made no substantive change in the law in the area of admissibility of weight of plaintiff's testimony as to the value of goods accepted.

2. Role of Repair Costs

Other jurisdictions also allow the use of repair costs to prove the difference in market value received and market value as warranted.[63] In *Winchester v. McCulloch Bros. Garage*,[64] the plaintiff had purchased a Jeep from the defendant. Soon after the purchase, the Jeep's drive shaft malfunctioned, and the plaintiff sued the defendant for breach of warranty. The Supreme Court of Alabama noted that "it is often difficult to ascertain the value of the goods as delivered. For this reason, where the goods are repairable, cost to repair is a useful measure of the difference in values."[65]

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59. *See, e.g.*, Spencer v. Steinbrecher, 152 W. Va. 490, 164 S.E.2d 710 (1968); Royal Furniture v. City of Morgantown, 164 W. Va. 400, 263 S.E.2d 878 (1980); Hardman Trucking v. Poling Trucking, 346 S.E.2d 551 (W. Va. 1986).

60. *See, e.g.*, Coyle Chevrolet v. Carrier, 397 N.E.2d 1283 (Ind. App. 1979); Tarter v. Monark Boat Co., 430 F. Supp. 1290 (D.C. Mo. 1977); Vreeman v. Davis, 348 N.W.2d 756 (Minn. 1984); Wharton, Aldhizer, & Weaver v. Savin Corp., 232 Va. 375, 350 S.E.2d 635 (1986).

61. 348 N.W.2d 756 (Minn. 1984).

62. *Id.* at 757.

63. *See, e.g.*, Jones v. Abriani, 169 Ind. App. 556, 350 N.E.2d 635 (1976); Custom Automated Mach. v. Penda Corp., 537 F. Supp. 77 (N.D. Ill. 1982); Winchester v. McCulloch Bros. Garage, 388 So. 2d 927 (Ala. 1980).

64. 388 So. 2d 927 (Ala. 1980).

65. *Id.*

In *Custom Automated Machinery v. Penda Corporation*,[66] the plaintiff sued the defendant for breach of warranty. The plaintiff purchased a thermoforming machine from the defendant which was apparently not fit for its intended purpose. The United States District Court for the Northern District of Illinois held that "[t]his difference in value can be computed by reference to the costs of repairing the goods so that they meet the warranty standards; i.e., the difference in value between goods as accepted and as warranted equals the cost of repairs."[67] The same view is expressed in many other cases from various jurisdictions around the country.[68]

V. Conclusion

The decision made by the West Virginia Supreme Court of Appeals in *Nelson* is neither a radical nor unheralded change in the law of this state. However, the significance of *Nelson* is that it allows repair costs to be used as proof of general damages under the implied warranty of merchantability. The effect of the change will be to make it easier for plaintiffs to show general damages. The change is only a slight extension of the law and will not shake the foundations of justice. It is in accord with the general spirit of protecting the consumer and is also in line with the view from many other jurisdictions. The only real effect of *Nelson* is to clear up ambiguity. Before *Nelson*, it was unclear just how repair costs could be used to show damages for breach of warranty. Now, on the other hand, it is clear that repair costs can be used as evidence of the difference in market values under the general damages formula in Chapter 46, Article 2, Section 714 of the West Virginia Code.

It would also seem, from a public policy point of view, that the change made by *Nelson* can also help plaintiffs recover for breach of the implied warranty of merchantability when no other method of showing damages is available. This change can only be seen as a positive one, since the very purpose of the implied warranty of

66. 537 F. Supp. 77 (N.D. Ill. 1982).

67. *Id.* at 84.

68. *See, e.g.*, Fedders Corp. v. Boatright, 493 So. 2d 301 (Miss. 1986); Bendix Home Sys. v. Jessop, 644 P.2d 843 (Alaska 1982); Int'l Petroleum Serv. v. S & N Well Serv., 230 Kan. 452, 639 P.2d 29 (1982).

merchantability is to protect the consumer. The *Nelson* ruling clarifies the application of Chapter 46, Article 2, Section 714 of the West Virginia Code, and thus increases the effect of the statute to help consumers prove damages for breach of warranty. With its decision in *Nelson*, the West Virginia Supreme Court of Appeals took a logical and helpful step to clarify the application of a statute to protect the consumers of this state.

Chad A. Cicconi