

September 1956

Sales: Buyer's Rights and Remedies for Defective Quality of F.O.B. Shipments

Sheldon J. Plager

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Recommended Citation

Sheldon J. Plager, *Sales: Buyer's Rights and Remedies for Defective Quality of F.O.B. Shipments*, 9 Fla. L. Rev. 362 (1956).

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Citations:

Bluebook 21st ed.

Sheldon J. Plager, Sales: Buyer's Rights and Remedies for Defective Quality of F.O.B. Shipments, 9 U. FLA. L. REV. 362 (1956).

ALWD 7th ed.

Sheldon J. Plager, Sales: Buyer's Rights and Remedies for Defective Quality of F.O.B. Shipments, 9 U. Fla. L. Rev. 362 (1956).

APA 7th ed.

Plager, S. J. (1956). Sales: buyer's rights and remedies for defective quality of f.o.b. shipments. University of Florida Law Review, 9(3), 362-364.

Chicago 17th ed.

Sheldon J. Plager, "Sales: Buyer's Rights and Remedies for Defective Quality of F.O.B. Shipments," University of Florida Law Review 9, no. 3 (Fall 1956): 362-364

McGill Guide 9th ed.

Sheldon J. Plager, "Sales: Buyer's Rights and Remedies for Defective Quality of F.O.B. Shipments" (1956) 9:3 U Fla L Rev 362.

AGLC 4th ed.

Sheldon J. Plager, 'Sales: Buyer's Rights and Remedies for Defective Quality of F.O.B. Shipments' (1956) 9(3) University of Florida Law Review 362

MLA 9th ed.

Plager, Sheldon J. "Sales: Buyer's Rights and Remedies for Defective Quality of F.O.B. Shipments." University of Florida Law Review, vol. 9, no. 3, Fall 1956, pp. 362-364. HeinOnline.

OSCOLA 4th ed.

Sheldon J. Plager, 'Sales: Buyer's Rights and Remedies for Defective Quality of F.O.B. Shipments' (1956) 9 U Fla L Rev 362

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drawee bank should be in no better position than a holder for value; its contractual obligation does not extend to honoring overdrafts.

In the instant case there was probably sufficient evidence of negligent retention to estop the drawer under the second view. The court, however, cited the Pennsylvania decision with approval, thereby indicating that the District of Columbia probably has adopted the estoppel in pais theory.

The issue involved has not been presented to the Florida Court. In an analogous situation¹⁵ involving the raising of a check caused by drawer's negligence, the Court stated¹⁶ that it would be too burdensome to require a bank to discover a raise that is not apparent on the face of the check when no suspicious circumstances surround its presentation. Consequently, if the question arose the Court might be expected to balance the negligence. Since it also expressed approval¹⁷ of the Pennsylvania decision, however, it is at least arguable that the third view would be followed.

The Florida Court would do well to adopt the estoppel in pais theory, which estops a drawer from pleading nondelivery when he signs his name to an otherwise blank check unless the bank fails in its duty to identify the person presenting the check. This view reflects most accurately the concepts of negotiability essential to the present-day commercial world, while leaving intact the duty of care owed by the drawee bank to the drawer.

WILLIAM B. MESMER

SALES: BUYER'S RIGHTS AND REMEDIES FOR DEFECTIVE QUALITY OF F.O.B. SHIPMENTS

McNeill v. Jack, 83 So.2d 704 (Fla. 1955)

Plaintiff seller sued for the price of lumber delivered, and defendant buyer counterclaimed for damages incurred because of defective quality discovered after delivery of the goods. The sales agree-

note 12; *contra*, S. S. Allen Grocery Co. v. Bank of Buchanan County, *supra* note 12.

¹⁵BRITTON, BILLS AND NOTES 346 (1943).

¹⁶Goldsmith v. Atlantic Nat'l Bank, 55 So.2d 804, 806 (Fla. 1951) (dictum).

¹⁷*Id.* at 807 (dictum).

ment stated the price as f.o.b.¹ cars at the seller's mill and reserved to the buyer the right to inspect and reject the lumber at destination for defective quality. On appeal from a judgment denying the buyer recovery on his counterclaim, HELD, in a sale f.o.b. cars at seller's mill, conditional title in the goods passes to the buyer upon delivery to the carrier if the buyer's right to inspect at destination and reject for defective quality is specifically stated in the contract; the buyer upon discovering defective quality may retain the goods and sue for damages. Judgment reversed.

In a sale f.o.b. the point of shipment, title in the goods passes to the buyer upon their delivery to the carrier at the shipping point, absent a contrary intention by the parties.² Even though the contract is silent on the point of the buyer's right to inspect the goods, the right may be conferred by law, permitting him to inspect at destination in order to ascertain whether the goods conform to the contract.³ The right to inspect implies the right to reject.⁴ The rationale of the courts is that delivery to the carrier does not pass such an irrevocable title as to preclude the buyer from refusing to accept the goods if they are not in conformity with the contract.⁵ The buyer may return the goods, rescind the contract, and recover any part of the purchase price paid, but not damages.⁶ If the buyer prefers to retain the goods he may elect to do so,⁷ thereby keeping the seller's contractual obligation intact and preserving the right to damages.⁸

When the right to inspect and reject is conferred solely by operation of law, the courts have had little difficulty in reconciling this extension of the buyer's rights with the general rule that delivery to the carrier passes title to the buyer. The carrier may be the buyer's agent to receive and transport the goods, but not to accept them as

¹Free on board. For a general discussion of the legal implications of the term see 2 WILLISTON, SALES §280 (rev. ed. 1948).

²United States v. R. P. Andrews & Co., 207 U.S. 229 (1907); see also Farris and Co. v. The William Schludersberg, 142 Fla. 765, 196 So. 184 (1940); UNIFORM SALES ACT §§19, 46; ANNOT. 101 A.L.R. 292 (1936).

³Fogle v. Brubaker, 122 Pa. 7, 15 Atl. 692 (1888); UNIFORM SALES ACT §47 (1).

⁴Pope v. Allis, 115 U.S. 363 (1885).

⁵Rivers Bros. Co. v. Putney, 27 N.M. 177, 199 Pac. 108 (1921).

⁶Gerli & Co. v. Mistletoe Silks Mills, 80 N.J.L. 128, 76 Atl. 335 (1910); see Dickerson v. Lankford, 69 Fla. 127, 67 So. 807 (1915). *Contra*, Russo v. Hochschild Kohn & Co., 184 Md. 462, 41 A.2d 600 (1945).

⁷UNIFORM SALES ACT §69 (1) (2).

⁸*Id.* §69 (1) (b).

conforming with the agreement.⁹ Regardless of the niceties of title, a purchaser has the right to rely on the seller to ship a commodity of the character and quality specified in and required by the contract.¹⁰

A specific contractual provision that reserves the buyer's right to inspect and reject affords some evidence that the parties did not intend title to pass until the buyer has had the opportunity to inspect and accept or reject the goods on arrival.¹¹ If by the intent of the parties title has not passed and the buyer properly rejects the goods, title remains in the seller. Returning the goods does not effect a rescission of the contract, and the buyer may maintain an action against the seller for damages.¹² Notwithstanding its evidentiary value, a specific reservation in itself is usually insufficient to overcome the presumption that the parties intend title to pass on delivery to the carrier;¹³ the general rule¹⁴ will prevail. A line of decisions¹⁵ dating back before the turn of the century denominates such title as conditional. It is reasoned that a specific reservation of this type manifests an intention by the parties that title is to pass conditioned on the buyer's right to inspect and reject the goods on arrival if they do not conform to the contract.¹⁶

An examination of the cases reveals no significant difference in fact situations and legal consequences between cases applying the general rule, which passes title subject to the buyer's right to reject, and those employing the doctrine of conditional title.¹⁷ Whatever theoretical refinements the term "conditional title" adds to the buyer's rights, it adds little to his remedies.

In the instant case the seller contended that the buyer assumed the risk of defective quality because title passed when the lumber was delivered to the carrier. The Court rejected this argument and allowed

⁹Mette & Kanne Distilling Co. v. Lowrey, 39 Mont. 124, 101 Pac. 966 (1909).

¹⁰Rosenbaum Hdwe. Co. v. Paxton Lumber Co., 124 Va. 346, 97 S.E. 784 (1919).

¹¹See 2 WILLISTON, SALES §280 (b) (rev. ed. 1948).

¹²UNIFORM SALES ACT §69 (1) (2).

¹³Nelson Bros. Coal Co. v. Perryman-Burns Coal Co., 48 F.2d 99 (2d Cir. 1931).
But see Eaton v. Blackburn, 52 Ore. 300, 96 Pac. 870 (1908); Charles E. Hires Co. v. Stromeyer, 65 Pa. Super. 241 (1916).

¹⁴Cases cited note 2 *supra*.

¹⁵*E.g.*, Hostler Coal & Lumber Co. v. Stuff, 205 Iowa 1341, 219 N.W. 481 (1928); Pierson v. Crooks, 115 N.Y. 539, 22 N.E. 349 (1889); Hurley Gasoline Co. v. Johnson Oil Refining Co., 118 Okla. 26, 246 Pac. 438 (1926).

¹⁶See Pierson v. Crooks, 115 N.Y. 539, 22 N.E. 349 (1889).

¹⁷*Compare* Pope v. Allis, 115 U.S. 363 (1885), *with* Pierson v. Crooks, 115 N.Y. 539, 22 N.E. 349 (1889).