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Article 2: Sales

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UNIFORM COMMERCIAL CODE ANNOTATIONS

This section contains annotations of all decisions interpreting provisions of the Uniform Commercial Code published from March 21, 1962, through August 15, 1962, in the National Reporter System, Pennsylvania District and County Reports, 2d series, and Pennsylvania county reports. Appropriate notation is made concerning those decisions which are based upon language contained in the 1953 version of the Code to the extent that such language differs from the 1958 Official Text. Case citations preceded by an asterisk (*) indicate decisions construing or interpreting provisions of the Code even though the Code did not govern the decisions.

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ARTICLE 1: GENERAL PROVISIONS

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.

Perfect Market, Inc. v. Serro, 42 West Co. L.J. 35 (Pa. 1960).

See the Annotation to Section 3-302, infra.

ARTICLE 2: SALES

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

(1) Unless excluded or modified (Section 2-316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale.

(2) Goods to be merchantable must be at least such as

(a) pass without objection in the trade under the contract description; and

(b) in the case of fungible goods, are of fair average quality within the description; and

(c) are fit for the ordinary purposes for which such goods are used; and

(d) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and

(e) are adequately contained, packaged, and labeled as the agreement may require; and

(f) conform to the promises or affirmations of fact made on the container or label if any.

(3) Unless excluded or modified (Section 2-316) other implied warranties may arise from course of dealing or usage of trade.

Marble Card Elec. Corp. v. Maxwell Dynamometer Co., 15 Chester 145 (Pa. 1961).

After personal solicitation by and conversations with a party who called himself a "salesman" of plaintiff seller, defendant buyer sent to the "salesman" purchase orders for two electric motors described as follows:

"1 Each 30/15 H.P. Induction Motor Drip Proof 3600/1800 RPM single winding, constant torque, 220 volt A.C., 60 cycle, 3 phase Frame 365. Shaft end to be tapered and threaded as per sketch forwarded to factory, Gladstone, Mich."

"1 Each 30/15 H.P. 3600/1800 RPM 208 volt, 60 cycle, 3 phase single winding, constant torque, drip proof motor. Shaft taper machine same as P.O. 7175 EXCEPT change dimensions 4-5/8" to 5-1/8" and 15/16" to 1-7/16". Large Box with opening for 1-1/2" conduit. 6 Copies each certified drawings operating and maintenance manual."

The motors were received and used by defendant buyer, before and after which defendant had correspondence with the "salesman" whose name appeared on plaintiff's stationery, which he used. Plaintiff brought suit for the price of the motors. Defendant answered and counterclaimed, alleging breach of express warranties made by the "salesman," and of the implied warranties of merchantability and fitness for a particular purpose. Plaintiff challenged the agency status of the "salesman" but that issue was not submitted to the jury which returned a verdict for plaintiff seller for the price plus interest. The court overruled defendant's motion for a new trial upon the following grounds:

1. While evidence of the "salesman's" agency was sufficient to go to the jury, the parol evidence rule would prohibit evidence of express warranties since it was clear that the entire contract had been reduced to writing in defendant's purchase orders.

2. Evidence did not sustain breach of warranty of merchantability under Section 2-314 since there was no showing that the motors did not pass without objection in the trade *under the contract description,* that they were not of fair average quality in the trade and *within the description,* or that they were not fit for the ordinary purposes for which they are used, even though they did not perform in accordance with defendant's requirements.

3. By giving the exact description to the seller, the buyer was not relying upon seller's skill and judgment to supply motors for a particular purpose, as required by Section 2-315 but requested only motors which were merchantable under the description given.

4. There was no evidence or offer of evidence that defendant buyer had rejected the motors under Sections 2-601 and 2-602 or that defendant had revoked acceptance under Section 2-608. Hence, defend-

ant is held to have accepted the motors under Section 2-606 and must pay the contract price as required by Sections 2-607(1) and 2-709.

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

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be fit for such purpose.

Howe Scale Co., Inc. v. Furst, 23 Camb. Co. L.J. 84 (Pa. 1960).

The defendant purchased scales from plaintiff in 1957 and 1958 and again through plaintiff's salesman in 1959 for the price of which defendant gave a promissory note. The note was assigned to a bank but, after refusal of the defendant to pay, was renegotiated to the plaintiff seller. Defendant had told the salesman that the scale was to be used for state contracts and, therefore, would have to meet certain standards. In seeking to reopen judgment by confession on the note, defendant alleged that the scale failed to meet government standards and, hence, plaintiff breached the implied warranty of fitness for a particular purpose. Dismissal by a single judge was affirmed on appeal to the full bench.

Under Section 2-315 two basic elements are required for the creation of an implied warranty. Granting that the defendant established that he informed the salesman of the purpose for which the scale was to be used, the defendant still failed to show any circumstances of reliance on any outside skill and judgment. The defendant was experienced in scales and had used the same type of scale for two years. Since no "sales talk" was made, the defendant relied on his own skill in selecting the scale.

Marble Card Elec. Corp. v. Maxwell Dynamometer Co., 15 Chester 145 (Pa. 1961).

See Annotation to Section 2-314, supra.

SECTION 2-601. Buyer's Rights on Improper Delivery.

Subject to the provisions of this article on breach in installment contracts (Section 2-612), and unless otherwise agreed under the sections on contractual limitations of remedy (Sections 2-718 and 2-719), if the goods or the tender of delivery fails in any respect to conform to the contract, the buyer may

(a) reject the whole; or
(b) accept the whole; or
(c) accept any commercial unit or units and reject the rest.

Marble Card Elec. Corp. v. Maxwell Dynamometer Co., 15 Chester 145 (Pa. 1961).

See Annotation to Section 2-314, supra.

SECTION 2-602. Manner and Effect of Rightful Rejection.

(1) Rejection of goods must be within a reasonable time after their delivery or tender. It is ineffective unless the buyer seasonably notifies the seller.

(2) Subject to the provisions of the two following sections on rejected goods (Sections 2-603 and 2-604),

(a) after rejection, any exercise of ownership by the buyer with respect to any commercial unit is wrongful as against the seller; and

(b) if the buyer has, before rejection, taken physical possession of goods, in which he does not have a security interest under the provisions of this Article (subsection (3) of Section 2-711), he is under a duty, after rejection, to hold them with reasonable care at the seller's disposition for a time sufficient to permit the seller to remove them; but

(c) the buyer has no further obligations with regard to goods rightfully rejected.

Marble Card Elec. Corp. v. Maxwell Dynamometer Co., 15 Chester 145 (Pa. 1961).

See Annotation to Section 2-314, supra.

SECTION 2-606. What Constitutes Acceptance of Goods.

(1) Acceptance of goods occurs when the buyer

(b) fails to make an effective rejection (subsection (1) of Section 2-602), but such acceptance does not occur until the buyer has had a reasonable opportunity to inspect them; . . .

Marble Card Elec. Corp. v. Maxwell Dynamometer Co., 15 Chester 145 (Pa. 1961).

See Annotation to Section 2-314, 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.

(1) The buyer must pay at the contract rate for any goods accepted.

Marble Card Elec. Corp. v. Maxwell Dynamometer Co., 15 Chester 145 (Pa. 1961).

See Annotation to Section 2-314, supra.

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.

Marble Card Elec. Corp. v. Maxwell Dynamometer Co., 15 Chester 145 (Pa. 1961).

See Annotation to Section 2-314, supra.

SECTION 2-609. Right to Adequate Assurance of Performance.

(1) A contract for sale imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party the other may in writing demand adequate assurance of due performance and until he receives such assurance may if commercially reasonable suspend any performance for which he has not already received the agreed return.

(2) Between merchants the reasonableness of grounds for insecurity and the adequacy of any assurance offered shall be determined according to commercial standards.

(3) Acceptance of any improper delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

(4) After receipt of a justified demand, failure to provide within a reasonable time not exceeding thirty days such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of the contract.

Wrightstone, Inc. v. Motter, 11 Cumb. L.J. 165 (Pa. 1961).

On April 15, 1959, plaintiff and defendant entered into an installment contract under which plaintiff agreed to sell certain farm machinery to defendant. The contract provided:

> Time is of the essence hereof, and if Purchaser defaults in any payment or Seller deems himself insecure, then Seller has the option to declare the entire balance immediately due and may take possession of the equipment wherever found, without notice, demand or legal process, sell same at public or private sale, with or without notice, pay all expenses incurred thereby, and apply net proceeds on its contract.

A judgment note, made contemporaneously with the installment contract, contained the following provision:

> Balance must be paid within twenty-four months from this date. It is understood and agreed between the parties that monthly payments shall be made when possible, but the buyer is not bound to pay any specific amount each month, provided the total balance is paid within twenty-four months.

On June 11, 1960, plaintiff repossessed the machinery and advised defendant that payment must be made in full or the machinery would be sold. On June 28, 1960, plaintiff informed defendant that the machinery had been sold and that defendant was liable for the deficiency. Judgment was entered for plaintiff July 19, 1960.

Upon defendant's petition, the court opened the judgment, holding that under the agreement, the installment contract could be terminated either when the defendant defaulted or when the plaintiff deemed itself insecure and, under these circumstances, Section 2-609 governed the procedure which plaintiff was required to follow to terminate the installment contract. Since defendant was not afforded the opportunity to

give assurance of payment as required under Section 2-609, defendant had a defense and must be allowed to show how he was injured by being deprived of that opportunity.

[Annotator's Comment: The court was clearly in error in suggesting that Section 2-609 imposes a duty upon either party to a sales transaction to seek assurance of performance from the other before enforcing by action the breach of the other. The section is designed to afford sellers or buyers, who want payment and goods respectively rather than a lawsuit, a means of determining whether performance by the other party is likely in order to prevent augmentation of damages. Following the procedure of Section 2-609 is strictly permissive. However, an acceleration clause based upon insecurity is subject to Section 1-208, which requires its exercise in good faith with the burden upon the obligor to establish lack of good faith.]

SECTION 2-708. Seller's Damages for Non-acceptance or Repudiation.

(1) Subject to subsection (2) and to the provisions of this Article with respect to proof of market price (Section 2-723), the measure of damages for non-acceptance or repudiation by the buyer is the difference between the market price at the time and place for tender and the unpaid contract price together with any incidental damages provided in this Article (Section 2-710), but less expenses saved in consequence of the buyer's breach.

(2) If the measure of damages provided in subsection (1) is inadequate to put the seller in as good a position as performance would have done then the measure of damages is the profit (including reasonable overhead) which the seller would have made from full performance by the buyer, together with any incidental damages provided in this Article (Section 2-710), due allowance for costs reasonably incurred and due credit for payments or proceeds of resale.

Hilltop Ranch, Inc. v. Rotz, 11 Cumb. L.J. 1 (Pa. 1957).

Seller contracted to sell to buyer some chinchillas and equipment for raising chinchillas. Buyer gave seller a judgment note describing the terms of payment. Buyer refused to accept the goods and to pay the note. Plaintiff seller obtained judgment on the note and buyer petitioned to open the judgment alleging repudiation of the agreement after discovering that plaintiff had misrepresented chinchillas sold prior to the contract in question.

The court held that the judgment should be opened since, if the plaintiff were allowed to recover the amount of the judgment and keep the goods, it would amount to a forfeiture. Defendant should present its defense, and damages must then be determined as required under Section 2-708.

[N.B. This case was decided under the 1953 version of the Code in which Section 2-708 provided:

"The measure of damages for non-acceptance is the difference between the price current at the time and place for tender and the unpaid contract price together with any incidental damages provided in this

Article (Section 2-710), but less any expense saved in consequence of the buyer's breach, except that if the foregoing measure of damages is inadequate to put the seller in as good a position as performance would have done then the measure of damages is the profit (including reasonable overhead) which the seller would have made from full performance by the buyer."]

SECTION 2-709. Action for the Price.

(1) When the buyer fails to pay the price as it becomes due the seller may recover, together with any incidental damages under the next section, the price

(a) of goods accepted or of conforming goods lost or damaged within a commercially reasonable time after risk of their loss has passed to the buyer; and

(b) of goods identified to the contract if the seller is unable after reasonable effort to resell them at a reasonable price, or the circumstances reasonably indicate that such effort will be unavailing.

Marble Card Elec. Corp. v. Maxwell Dynamometer Co., 15 Chester 145 (Pa. 1961).

See Annotation to Section 2-314, supra.

ARTICLE 3: COMMERCIAL PAPER

SECTION 3-302. Holder in Due Course.

(1) A holder in due course is a holder who takes the instrument

(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.

Perfect Market, Inc. v. Serro, 42 West Co. L.J. 35 (Pa. 1960).

Defendant had delivered its check in the amount of $2495 in payment for trailers to be built by a trailer company. Before completing the work, the trailer company negotiated the check to another who in turn cashed the check at plaintiff's store. Defendant had stopped payment of the check when none of the trailers were delivered. In plaintiff's action on the check, defendant alleged that plaintiff store was not a holder in due course. The question was submitted to the jury who returned a verdict for the defendant. In denying plaintiff's motions for a new trial and for judgment n.o.v., the court held that "observance of the reasonable commercial standards" in Section 3-302 required an objective test of good faith that must be satisfied by a holder in due course. The court concluded that, in view of the amount of the check and of the practice among other stores, a question sufficient for jury determination was presented by the evidence.

[N.B. This case was decided under the 1953 version of the Code in which Section 3-302 provided:

"(1) A Holder in due course is a holder who takes the instrument