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Article 2: Sales

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UNIFORM COMMERCIAL CODE ANNOTATIONS

This section contains a digest of all decisions of courts of record interpreting provisions of the Uniform Commercial Code since the previous issue of the REVIEW, encompassing the published reports of the National Reporter System from September 24, 1960 through February 25, 1961 (and Volumes 21 and 22 of the Pennsylvania District and County Reports, 2d Series). While the Code has now been adopted in 9 states (Arkansas, Connecticut, Kentucky, Massachusetts, New Hampshire, New Mexico, Pennsylvania, Rhode Island and Wyoming), no decisions have been found interpreting other than the Pennsylvania statute.

Where a decision interprets only a portion of a Code section, that portion is cited prior to the reported case. 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.

Subsequent issues of the REVIEW will keep the annotations up to date.

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ARTICLE 2: SALES

SECTION 2-204. Formation in General

(3) Even though one or more terms are left open a contract for sale does not fail for indefiniteness if the parties have intended to make a contract and there is a reasonably certain basis for giving an appropriate remedy.

Pennsylvania Company v. Wilmington Trust Company, 166 A.2d 726 (Del. Ch. 1960)

After previous negotiations, an officer of the plaintiff corporation had written to the defendant that, subject to approval by its board of directors, it desired to purchase a large number of shares of stock owned by the defendant at a certain price and asked the defendant to endorse acceptance on the letter, if the terms were approved. The letter contemplated a later formal contract which would contain any additional purchase terms. There was evidence of surrounding circumstances which might indicate that the plaintiff did not intend presently to contract. The defendant endorsed its acceptance, and, later, the board of directors of plaintiff corporation approved the purchase. The formal contract was never drawn up. The court held that there was sufficient

(Where a cited case interprets only a portion of a Code section only that portion is set out)

evidence to constitute a question of fact for the jury on the issue of whether the letter and resolutions showed an intent to contract.

Also, there was sufficient evidence to form a question of fact as to the existence of "a reasonably certain basis for giving an appropriate remedy." This phrase includes the remedy of damages as well as specific performance.

SECTION 2-401. Passing of Title; Reservation for Security; Limited Application of this Section

Each provision of this Article with regard to the rights, obligations and remedies of the seller, the buyer, purchasers or other third parties applies irrespective of title to the goods except where the provision refers to such title. Insofar as situations are not covered by the other provisions of this Article and matters concerning title become material the following rules apply:

(2) Unless otherwise explicitly agreed, title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading

(a) if the contract requires or authorizes the seller to send the goods to the buyer but does not require him to deliver them at destination, title passes to the buyer at the time and place of shipment.

Metropolitan Distributors v. Eastern Supply Co., 21 Pa. D. & C. 2d 128 (1959)

A purchase order which reads "ship direct to 30th and Harcum Way, Pitts. Pa.," does not connote a reservation of title in the seller until delivery to the place specified, and title therefore passes to the buyer at the time and place of shipment.

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.

F. W. Lang Co. v. Fleet, 193 Pa. Super. 365, 165 A.2d 258 (1960)

When buyers of an ice cream freezer and refrigeration compressor unit had used the equipment for over two years before asserting that the equipment was defective and before instituting an action in assumpsit to recover the down payment, such attempted rescission, based on breach of warranty, was not made within a reasonable time.

(Where a cited case interprets only a portion of a Code section only that portion is set out)

SECTION 2-606. What Constitutes Acceptance of Goods

(1) Acceptance of goods occurs when the buyer . . .

(c) does any act inconsistent with the seller's ownership; but if such act is wrongful as against the seller it is an acceptance only if ratified by him.

(2) Acceptance of a part of any commercial unit is acceptance of that entire unit.

F. W. Lang Co. v. Fleet, 193 Pa. Super. 365, 165 A.2d 258 (1960)

Where the buyers of an ice cream freezer and refrigeration compressor unit use the equipment as installed by the seller for one year, then move the compressor unit and use it to operate an air conditioner, this is completely inconsistent with the seller's ownership. By entering judgment for the unpaid balance, as provided by a clause for confession of judgment in an installment sales contract, after the buyer had committed an act inconsistent with the seller's ownership and wrongful as against him, the seller ratified the act.

SECTION 2-702. Seller's Remedies on Discovery of Buyer's Insolvency

(2) Where the seller discovers the buyer has received goods on credit while insolvent he may reclaim the goods upon demand made within ten days after the receipt, but if misrepresentation of solvency has been made to the particular seller in writing within three months before delivery the ten day limitation does not apply. Except as provided in this subsection the seller may not base a right to reclaim goods on the buyer's fraudulent or innocent misrepresentation of solvency or of intent to pay.

(3) The seller's right to reclaim under section (2) is subject to the rights of a buyer in ordinary course or other good faith purchaser or lien creditor under this Article (Section 2-403). Successful reclamation of goods excludes all other remedies with respect to them.

Metropolitan Distributors v. Eastern Supply Co., 21 Pa. D. & C. 2d 128 (1959)

Since section 2-702 of the UCC of April 6, 1953, which permits a seller to reclaim goods after delivery upon hearing of a buyer's insolvency, may conflict with the provisions of the Federal Bankruptcy Act pertaining to preferences, the rights of the parties should be determined by the Federal Court where bankruptcy proceedings are pending, rather than by a State tribunal.

N.B. This case was decided under the 1953 draft of the Code. The 1953 draft reads as follows:

(1) Where seller discovers buyer to be insolvent he may . . .

(b) subject to the rights of a buyer in ordinary course or other good faith purchaser or lien creditor under this Article (Section

(Where a cited case interprets only a portion of a Code section only that portion is set out)

2-403), and within ten days after receipt, reclaim any goods received by the buyer on credit, but if misrepresentation of solvency has been made to the particular seller in writing within three months before delivery the ten day limitation does not apply.

SECTION 2-711. Buyer's Remedies in General; Buyer's Security Interest in Rejected Goods

(3) On rightful rejection or justifiable revocation of acceptance a buyer has a security interest in goods in his possession or control for any payments made on their price and any expenses reasonably incurred in their inspection, receipt, transportation, care and custody and may hold such goods and resell them in like manner as an aggrieved seller (Section 2-706).

F. W. Lang Co. v. Fleet, 193 Pa. Super. 365, 165 A.2d 258 (1960)

Where the seller of an ice cream freezer and refrigeration compressor unit has received a judgment by confession for the unpaid balance of the sale as represented by an installment sales contract, the buyer cannot open the judgment by instituting an action in assumpsit to recover the down payment where he failed to assert a lien for money already paid to the seller and where he has used the equipment for over two years before instituting the action.

N.B. This case was decided under the 1953 draft of the Code which reads as follows:

(3) On rightful rejection or justifiable revocation of acceptance a buyer who has paid all or part of the price has a security interest in goods in his possession or control for the amount paid plus any expenses reasonably incurred in their inspection, receipt, transportation, care and custody and may on notifying the seller of his intention to do so hold such goods and resell them in like manner as an aggrieved seller.

ARTICLE 3: COMMERCIAL PAPER

SECTION 3-207. Negotiation Effective Although It May Be Rescinded

(1) Negotiation is effective to transfer the instrument although the negotiation is

(a) made by an infant, a corporation exceeding its powers, or any other person without capacity; . . .

(2) Except as against a subsequent holder in due course such negotiation is, in an appropriate case, subject to rescission, the declaration of a constructive trust or any other remedy permitted by law.

Snyder v. Town Hills Motors, Inc., 193 Pa. Super. 598, 165 A.2d 293 (1960)

Where a minor bought an automobile from a friend, giving a check in part payment, and the friend endorsed the check and used it as part payment on another automobile purchased from a dealer, the dealer

(Where a cited case interprets only a portion of a Code section only that portion is set out)