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Sales

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SALES

Express Warranty — Jury To Determine

Under the Uniform Sales Act,[1] "any affirmation of fact or any promise by the seller relating to the goods is an express warranty if the natural tendency of such affirmation or promise is to induce the buyer to purchase the goods, and if the buyer purchases the goods relying thereon...."[2]

In *Compton v. M. O'Neil Co.*,[3] plaintiff purchased a pressure cooker at a department store. The uncontradicted testimony of plaintiff at trial showed that she had asked the saleslady at the time of purchase whether the pressure cooker was safe and that the saleslady had replied, "absolutely, it is safe, because M. O'Neil's stands back of everything they sell." The cooker subsequently exploded and injured plaintiff. Evidence tended to show a structural defect in it.

Plaintiff's petition contained counts in negligence and breach of warranty. The trial court submitted only the latter to the jury. While it charged correctly upon the effect of a warranty by defendant, it did not instruct the jury as to what constituted a warranty, for the position taken by the trial court was that the words used by the saleslady constituted an express warranty as a matter of law, for which defendant vendor would be liable if the jury found the cooker to be in the same condition at the time of the explosion as when it was purchased.

The court of appeals found error in the failure of the trial court to submit to the jury the question whether the words used by the saleslady amounted to an express warranty. While conceding that the word "safe" imports freedom from danger of any kind, and that intention on the part of the person making the statement is not necessary, in view of the definition of an express warranty, the court nevertheless followed the great majority of cases which hold that if the statement relied on as an express warranty lies wholly or partly in parole, it is the province of the jury to determine whether the oral statement amounts to an express warranty.

Retail Installment Sales Act — Constitutionality and Applicability

In an effort to protect the type of buyer who is economically and socially least able to protect himself against frauds and avenues to fraud,

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[1] OHIO REV. CODE, Ch. 1315.

[2] OHIO REV. CODE § 1315.15.

[3] 101 Ohio App. 378, 139 N.E.2d 635 (1955).

numerous states[4] have enacted various types of Retail Installment Sales Acts.[5] There is little uniformity among those so far enacted, either as to scope, applicability, maximum amount involved in the sale or the result of failure to comply. Some are mere disclosure acts, others have sharp teeth.

Ohio's act[6] by its terms applies to all goods; requires written contracts and copies to the buyer and full disclosure of terms; policies or certificates of insurance must be delivered to the buyer; finance charges are limited and no extra charges are allowed; a contract which does not comply with the statute is unenforceable; the buyer may recover excess charges and may also make prepayments and obtain a return of finance charges; no waiver of the terms of the act before or at the time of the contract is valid and willful violation of the act is made a crime.

The Supreme Court, for the first time since the enactment of the provisions of the act, had occasion to pass upon the act in *Teegardin v. Foley.*[7] Plaintiff sought a declaration of the unconstitutionality of the act against the Motor Vehicle Dealers' and Salesmen's Licensing Board, the Director of Highways, and the Attorney General on the ground that it operated to deprive him of property without due process of law and denied him the equal protection of the laws. He prayed also for injunctive and incidental relief.

While the reader should keep in mind that the court was not asked to pass upon the applicabiltiy of any specific section of the act to particular circumstances, the opinion should be studied by any lawyer representing any retail seller. The court held:

1) That the act relates to the selling of motor vehicles.

2) That the part of Section 1317.08, Revised Code,[8] which re-

[4] California, Connecticut, Indiana, New Jersey, Massachusetts, Michigan, Ohio, Pennsylvania, Wisconsin.

[5] BOGERT AND BRITTON, CASES AND MATERIALS ON THE LAW OF SALES, 405-409 (3d ed. 1956).

[6] OHIO REV. CODE, Ch. 1317.

[7] 166 Ohio St. 449, 143 N.E.2d 824 (1957).

[8] "No person shall enter into any agreement with any retail seller regarding the purchase, assignment, or transfer of any retail installment contract whereby the retail seller shall receive or retain, directly or indirectly, any benefit from or part of any amount collected or received, or to be collected or received, from any retail buyer as a finance charge or as the cost of insurance or other benefits to the retail buyer, in excess of two per cent of the principal balance of the retail installment contract. No person shall, directly or indirectly, pay to the retail seller, and no retail seller shall, directly or indirectly, receive or retain any part of the amount collected, or to be collected, as a finance charge or retail buyer's cost of insurance or other benefits on any retail installment contract purchased, assigned, or transferred from him, in excess of two per cent of the principal balance of the retail installment contract, provided this paragraph does not apply in case of a bona fide sale of a retail installment contract, if, as part of the consideration of such sale and purchase, the retail seller

stricts the amount of participation of a retail dealer in the transfer or assignment of any retail installment contract is constitutional.

The court appears to have refrained from passing upon the constitutionality of Section 1317.06, fixing maximum finance charges.

Consumer's Action Against Manufacturer On Express Warranty In Cases Not Involving Foodstuffs

The slowness of the law to allow an action for breach of express or implied warranty, by the consumer of a deleterious article, against the manufacturer is too well known to require extensive citation.[9] A cause of action in negligence presents no difficulty insofar as, abstractly, a petition sounding therein can be framed to get by demurrer, but, in the absence of a res ipsa loquitur situation, proof is often impossible for the plaintiff.

Ohio has limited actions by consumers against manufacturers or producers, sounding in breach of warranty, to those in which privity of contract exists, to cases involving deleterious food stuffs, and refused until recently to allow a recovery in contract for injury occasioned by any other type of article.[10]

In *Rogers v. Toni Home Permanent Company*,[11] the Court of Appeals for Cuyahoga County, in a thorough opinion, sustained a consumer plaintiff's petition sounding in express warranty against a manufacturer of a preparation used in setting hair at home, which, upon use was alleged to have caused damage to the user. The court, feeling itself bound by a previous Supreme Court decision in *Wood v. General Electric Co.*,[12] refused to sustain another count in the petition sounding in implied warranty.

Since the closing date of this Survey, the Supreme Court has upheld the court of appeals.[13] The cases will be discussed at greater length in a subsequent issue of this Law Review.

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agrees to act, and does act, as agent for the purchaser in making collection of all amounts due on or otherwise completely servicing said retail installment contract, including billing, posting, and maintaining complete records applicable thereto.

". . . Any sale, assignment, or transfer of a retail installment contract in violation of this section is void. Except as specifically limited by this paragraph all instruments which are a part of a retail installment contract are freely assignable and transferrable."

[9] *Remedies for the Consumer of Deleterious Food*, 9 WEST. RES. L. REV. 75 (1957).

[10] *Liability of the Manufacturer to the Ultimate Consumer for Breach of Warranty in Ohio*, 7 WEST. RES. L. REV. 94 (1956).

[11] 139 N.E.2d 871 (Ohio Ct. App. 1957).

[12] 159 Ohio St. 273, 112 N.E.2d 9 (1953).

[13] 167 Ohio St. 244, 147 N.E.2d 612 (1958).