St. John's Law Review

Volume 60
Number 2 *Volume 60, Winter 1986, Number 2*

Article 11

UCC 2-318: Implied Warranty Cause of Action Accrues When Manufacturer or Distributor Tenders Delivery of Product Rather Than When Product Is Sold to Plaintiff

Regina A. Matejka

UCC 2-318: *Implied warranty cause of action accrues when manufacturer or distributor tenders delivery of product rather than when product is sold to plaintiff.*

In 1973, the New York Court of Appeals adopted the doctrine of strict products liability, making it possible for injured plaintiffs to sue remote parties in the distributive chain irrespective of the presence of privity.[1] Two years later the New York State legislature amended section 2-318 of the Uniform Commercial Code (U.C.C.) to eliminate completely privity requirements for personal injury actions based on breach of warranty.[2] Since this amend-

[1] *See* Codling v. Paglia, 32 N.Y.2d 330, 341-42, 298 N.E.2d 622, 627-28, 345 N.Y.S.2d 461, 468-69 (1973). In *Codling*, the court held that "the manufacturer of a defective product may be held liable to an innocent bystander, without proof of negligence, for damages sustained in consequence of the defect." *Id.* at 335, 298 N.E.2d at 624, 345 N.Y.S.2d at 463. Elimination of the need to prove negligence, it was argued, would promote greater care in manufacturing. *See id.* at 341, 298 N.E.2d at 628, 345 N.Y.S.2d at 468-69; Mead v. Warner Pruyn Div., Finch Pruyn Sales, Inc., 87 Misc. 2d 782, 785, 386 N.Y.S.2d 342, 344 (Sup. Ct. Washington County 1976), *aff'd*, 57 App. Div. 2d 340, 394 N.Y.S.2d 483 (1976); *Accord* First Nat'l Bank of Alburquerque v. Nor-Am Agricultural Prods., 88 N.M. 74, 86, 537 P.2d 682, 695 (1975); Phillips v. Kimwood Mach. Co., 269 Or. 485, 493, 525 P.2d 1033, 1041 (1974) Before the recognition of strict tort liability in New York, a plaintiff was restricted to causes of action in negligence and breach of warranty. *See* Goldberg v. Kollsman Instrument Corp., 12 N.Y.2d 432, 437, 191 N.E.2d 81, 83, 240 N.Y.S.2d 592, 595 (1963) If the injury did not occur within six years of the purchase and no negligence could be shown, the plaintiff would have no recovery even though the goods were shown to be defective. *See* Mendel v. Pittsburgh Plate Glass Co., 25 N.Y.2d 340, 344, 253 N.E.2d 207, 209 305 N.Y.S.2d 490, 493 (1969) *overruled in part*, Victorson v. Bock Laundry Mach. Co., 37 N.Y.2d 395, 400, 335 N.E.2d 275, 276, 373 N.Y.S.2d 39, 40 (1975). *See generally* Note, *Products Liability in New York: Section 2-318 of the U.C.C. - The Amendment Without a Cause* 50 FORDHAM L. REV. 61, 90-92 (1981) (discussing anomalous distinction between statute of limitations for warranty actions and strict liability actions).

[2] N.Y.U.C.C. § 2-318 (McKinney 1981). The current version of section 2-318 provides in pertinent part:

A seller's warranty whether express or implied extends to any natural person if it is reasonable to expect that such person may be affected by the goods and who is injured in person by breach of the warranty. . .

Id. The original version of U.C.C. 2-318 adopted by New York (Alternative A) extended the seller's warranty only to the buyer and members of the buyer's family or household. *See* N.Y.U.C.C. § 2-318 (McKinney 1964). The scarce legislative history available on the amendment indicates that its purpose was "to extend more intelligently the warranty provided to a purchaser of goods under the UCC." Memorandum of Assem. Silverman, *reprinted in* [1975] N.Y. LEGIS. ANN. 110. The amendment was prompted by concern over the fact that many persons were deprived of redress when injured by defective products merely because they were not the original purchasers of the products. *See id.*

After the adoption of strict liability in New York, there was some question as to whether warranty still existed as an independent basis of recovery for personal injury cases, at least when the injured plaintiff was not in privity. Note, *supra* note 1 at 85-86. *See* Martin v. Julius Dierck Equip. Co., 43 N.Y.2d 583, 589-90, 374 N.E.2d 97, 99-100, 403 N.Y.S.2d ment, implied warranty actions under section 2-318 and strict products liability actions in tort have become intertwined.[3] The only relevant distinction between the two actions is the limitations period governing each; the statute of limitations for strict tort liability is three years from the time of injury,[4] while the corresponding period for breach of warranty is four years from "tender of delivery."[5] However, in the absence of a privity requirement for

---

185, 187-88 (1978); SIEGEL § 41, Supp. at 13. In *Martin*, a case governed by the original version of section 2-318, the Court of Appeals indicated in *dictum* that 2-318 relief would be inappropriate for a plaintiff not in privity with the defendant. *See* 43 N.Y.2d at 590, 374 N.E.2d at 100, 403 N.Y.2d at 188. *But cf.* Singer v. Federated Department Stores, Inc., 112 Misc. 2d 781, 784, 447 N.Y.S.2d 582, 584-85 (Sup. Ct. N.Y. County 1981) (case governed by amended version of 2-318 in which court expressly declined to give effect to dicta in *Martin* opinion).

[3] *See* J. BEASLEY, PRODUCTS LIABILITY AND THE UNREASONABLY DANGEROUS REQUIREMENT 44 (1981); W. PROSSER & P. KEETON, THE LAW OF TORTS § 92 (5th ed. 1984); 3 R. ANDERSON, UNIFORM COMMERCIAL CODE § 2-314:50 at 154 (1983) (theories of strict liability and implied warranty intertwined); *cf.* Victorson v. Bock Laundry Mach. Co., 37 N.Y.2d 395, 402, 335 N.E.2d 275, 278, 373 N.Y.S.2d 39, 42 (1975) (strict products liability is essentially implied warranty action). In both strict products liability and warranty actions a plaintiff not in privity with the defendant can recover for personal injuries. *See* Codling v. Paglia, 32 N.Y.2d 330, 342-43, 298 N.E.2d 622, 628-29, 345 N.Y.S.2d 461, 464-70 (1973). In addition, contributory fault, *see* CPLR §§ 1412, 1413, is a defense to actions in both strict liability, *see Codling*, 32 N.Y.2d at 343, 298 N.E.2d at 630, 345 N.Y.S.2d at 471-72, and implied warranty, *see* Micallef v. Miehle Co., Div. of Miehle-Goss Dexter, Inc., 39 N.Y.2d 376, 382, 348 N.E.2d 571, 575, 384 N.Y.S.2d 115, 118-119, (1976); 1 NEW YORK CIVIL PATTERN JURY INSTRUCTIONS, 2:120 (1974 & Supp. 1984) Supp. at 156. *But cf.* Titlebaum v. Loblaws, Inc., 75 App. Div. 2d 985, 986, 429 N.Y.S.2d 91, 92-93 (4th Dep't 1980) (only the negligence of buyer *in privity* affects recovery on an implied warranty claim).

The primary practical difference between the two actions is the length of the limitations period; *see infra* notes 4 & 5 and accompanying text. Nevertheless, damages for economic loss may only be recovered in an action predicated on warranty. *See* N.Y. U.C.C. § 2-715(2)(b) (McKinney 1981); Schiavone Constr. Co. v. Elgood Mayo Corp., 81 App. Div. 2d 221, 227-34, 439 N.Y.S.2d 933, 937-40 (1st Dep't 1981) (Silverman, J., dissenting), *rev'd* 56 N.Y.2d 667, 436 N.E.2d 1322, 451 N.Y.S.2d 720 (1982).

[4] CPLR 214(4)-(5). Section 214 of the CPLR provides that an action to recover damages for personal injury must be commenced within three years. *Id.*; *see also* Victorson v. Bock Laundry Mach. Co. 37 N.Y.2d 395, 335 N.E.2d 275, 373 N.Y.S.2d 39 (1975). In *Victorson*, the court held that the statute of limitations prescribed in § 214 was applicable to a strict liability action and that it began to run at the date the plaintiff, a remote user, was injured by the extractor machine which defendant laundromat had purchased 21 years earlier. *Id.* at 399-400, 335 N.E.2d at 276, 373 N.Y.S.2d at 40. The court proceeded to overrule Mendel v. Pittsburgh Plate Glass Co., 25 N.Y.2d 340, 253 N.E.2d 209, 305 N.Y.S.2d 494 (1969), *Victorson*, 37 N.Y.2d at 399-400, 335 N.E.2d at 276, 373 N.Y.S.2d at 40, which had held that the plaintiff's personal injury action ran from the date of installation of the glass doors which caused her injury, not at the moment of her injury. *Mendel*, 25 N.Y.2d at 344, 253 N.E.2d at 209, 305 N.Y.S.2d at 493. The *Mendel* holding produced the anomalous result that the plaintiff's action was time-barred before her right to prosecute it had been perfected. WK&M ¶ 214.13.

[5] N.Y.U.C.C. § 2-725 (McKinney 1964). Section 2-725 provides in pertinent part:

implied warranty actions it has been unclear whether "tender of delivery" refers to the date of delivery by the manufacturer or distributor to its immediate purchaser, or to the date of retail delivery to the consumer.[6] Recently, in *Heller v. U.S. Suzuki Motor Corp.*,[7] the New York Court of Appeals held that, notwithstanding the elimination of the privity requirement, a cause of action in implied warranty against a manufacturer or distributor accrues on the date the party charged tenders delivery of the product, not on the date that some third party sells it to plaintiff.[8]

In *Heller*, the plaintiff sustained personal injuries in a motorcycle accident that occurred on July 7, 1979.[9] On February 15, 1983, the plaintiff instituted a products liability action for breach of express and implied warranties against U.S. Suzuki Motor Corp., the Japanese manufacturer's distributor of the motorcycle, and Jim Moroney's Harley Davidson Sales, Inc., the retailer.[10] Special Term dismissed defendant Suzuki's affirmative defense of the statute of limitations and denied its motion for summary judgment, holding that the cause of action against the distributor accrued when the retailer sold the motorcycle to the plaintiff on April 21, 1979, and that the action was timely, having been commenced within four years of that date.[11] The Appellate Division, Second Department, reversed and dismissed the complaint, holding that the plaintiff's cause of action accrued on March 30, 1978,

---

(1) An action for breach of any contract for sale must be commenced within four years after the cause of action has accrued.

. . .

> (2) A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. A breach of warranty occurs when tender of delivery is made . . .

Id.

[6] Note, *supra*, note 1 at 81-82. The majority rule seems to be that the accrual date is the date of retail tender. *Id.* at 82, and n.111. *Compare* Patterson v. Her Majesty's Indus., 450 F. Supp. 425, 433 (E.D.Pa. 1978) (limitations period under U.C.C. 2-725 accrues on retail sale date) *with* Doyle v. Happy Tumbler Wash-O-Mat, Inc., 90 App. Div. 2d 366, 370, 457 N.Y.S.2d 85, 88 (2d Dep't 1982) (§ 2-725 limitations period accrues on date of *original* sale).

[7] 64 N.Y.2d 407, 477 N.E.2d 434, 488 N.Y.S.2d 132 (1985).

[8] *Id.* at 411, 477 N.E.2d at 436, 488 N.Y.S.2d at 134.

[9] *Id.* at 407, 477 N.E.2d at 435, 488 N.Y.S.2d at 133.

[10] *Id.* The tort causes of action against both defendants in *Heller* were barred by the three year statute of limitations applicable to personal injury claims. *Id. see generally supra* note 4. Therefore, the plaintiff sought to recover on express and implied warranties that the motorcycle was both merchantable and fit for its intended use. *Heller*, 64 N.Y.2d at 409, 477 N.E.2d at 435, 488 N.Y.S.2d at 133.

[11] *See* 64 N.Y.2d at 410, 477 N.E. 2d at 435, 488 N.Y.S.2d at 133.

when the distributor tendered delivery of the motorcycle to its immediate purchaser, and that the action was therefore time-barred.[12]

A divided Court of Appeals affirmed.[13] Writing for the court, Judge Simons expressed the view that the 1975 amendment of U.C.C. section 2-318 was "not entirely necessary"[14] in light of the court's earlier adoption of a strict products liability doctrine.[15] The court also noted that when the legislature amended section 2-318, it did not amend section 2-725, which prescribes the limitations period for breach of warranty actions.[16] Judge Simons reasoned that despite the elimination of privity, it remains the rule that a cause of action against a manufacturer or distributor accrues "on the date the party charged tenders delivery of the product, not on the date some third party sells it to plaintiff."[17] Judge Simons maintained that this interpretation of section 2-725 comports with the purposes behind the enactment of the four-year statute of limitations; namely, to eliminate jurisdictional variations in limitations periods and to fix a limitations period that would be consistent with modern business record keeping procedures.[18] The court ex-

---

[12] Heller v. U.S. Suzuki Motor Corp., 101 App. Div. 2d 807, 807, 475 N.Y.S.2d 147, 147-48 (2d Dep't 1984). The motorcycle was manufactured in Japan and distributed in the United States by U.S. Suzuki Motor Corp. *Heller*, 64 N.Y.2d at 409, 477 N.E.2d at 435, 488 N.Y.S.2d at 133. Suzuki's immediate purchaser was Bakers Recreational Equipment, Inc., who then apparently transferred the motorcycle to Jim Moroney's Harley Davidson Sales, Inc., the retailer from whom the plaintiff made the purchase. *Id.* at 409-10, 477 N.E.2d at 435, 488 N.Y.S.2d at 133.

[13] *See* 64 N.Y.2d at 412, 477 N.E.2d at 437, 488 N.Y.S.2d at 135. Chief Judge Wachtler and Judges Kaye and Alexander concurred with Judge Simons. Judge Meyer dissented in an opinion in which Judge Jasen concurred. *Id.* at 418, 477 N.E.2d at 441, 488 N.Y.S.2d at 139.

[14] *See* 64 N.Y.2d at 411, 477 N.E.2d at 436, 488 N.Y.S.2d at 134.

[15] 64 N.Y.2d at 411, 477 N.E.2d at 436, 488 N.Y.S.2d at 134. The court reasoned that although the U.C.C. was amended to enable consumers to sue remote parties, consumers in New York already had that capability by virtue of *Codling v. Paglia*. *Id.* *See supra* note 1.

[16] 64 N.Y.2d at 411, 477 N.E.2d at 436, 488 N.Y.S.2d at 134. *See generally supra* note 5 and accompanying text.

[17] 64 N.Y.2d at 411, 477 N.E.2d at 436, 488 N.Y.S.2d at 134. The Court conceded that from the legislature's excision of privity requirements from section 2-318 one could infer that the intended date of accrual was the date of retail sale, but maintained that if the legislature had intended such a change, it would have so stated. *Id.*

[18] *Id.* at 412, 477 N.E.2d at 436-37, 488 N.Y.S.2d at 134-35. *See* N.Y.U.C.C. § 2-725 (McKinney 1964) Official Comment:

> Purposes: To introduce a uniform statute of limitations for sales contracts, thus eliminating the jurisdictional variations and providing needed relief for concerns doing business on a nationwide scale . . . This [four-year period] is within the normal commercial record keeping period.

Id.

plained that if the date of accrual was the date of retail sale, the period of exposure to liability would become unpredictable and the purposes of the Act would be frustrated.[19]

Dissenting, Judge Meyer rejected the court's contention that the 1975 amendment of U.C.C. section 2-318 was unnecessary in light of New York's recognition of a strict products liability doctrine,[20] and argued that the amendment afforded the consumer *an additional* cause of action in warranty against the manufacturer.[21] Judge Meyer also criticized the court's restrictive interpretation of the statutory phrase "tender of delivery."[22] The dissent reasoned that there can be no warranty running from the manufacturer to the consumer until there is a consumer; therefore, "tender of delivery" to the consumer brings the manufacturer's warranty into operation.[23] Judge Meyer cautioned that the court's construction of section 2-725 was inconsistent with the Code's stated policy of liberal construction and could bar a plaintiff's cause of action before it ever came into existence.[24]

As a result of the court's decision in *Heller*, privity of contract in warranty actions is now a prerequisite to the full four-year limitations period prescribed by U.C.C. section 2-725.[25] However, nu-

[19] 64 N.Y.2d at 412, 477 N.E.2d at 437, 488 N.Y.S.2d at 135. The *Heller* court claimed that its interpretation did not limit available remedies, 64 N.Y.2d at 412, 477 N.E.2d at 437, 488 N.Y.S.2d at 134, and that a consumer who acts in a timely manner against immediate and remote parties can recover on theories of express or implied warranty, negligence, or strict products liability. *Id.* at 412, 477 N.E.2d at 437, 488 N.Y.S.2d at 135.

[20] *Id.* at 413, 477 N.E. 2d at 438, 488 N.Y.S.2d at 136 (Meyer, J. dissenting).

[21] *Id.* (Meyer, J., dissenting).

[22] *Id.* at 413-14, 477 N.E.2d at 438, 488 N.Y.S.2d at 136. The *Heller* dissent maintained that the legislature is presumed to have been aware of *Codling* when it amended § 2-318, and that therefore it intended to give the consumer a new cause of action not dependent upon proof of negligence, as is strict liability under *Codling*, but upon proof of breach of warranty. *Id.* at 414, 477 N.E.2d at 438, 488 N.Y.S.2d at 136.

[23] *Id.* at 414, 477 N.E.2d at 438, 488 N.Y.S.2d at 136 (Meyer, J., dissenting).

[24] 64 N.Y.2d at 415-16, 477 N.E.2d at 439, 488 N.Y.S.2d at 137 (Meyer, J., dissenting). The dissent also noted that by adopting a strict liability action that runs from the date of injury, New York accepted the notion that neither unpredictability of exposure to liability nor record keeping procedures are sufficiently significant to dictate a limitations period. *Id.* at 416, 477 N.E.2d at 439-40, 488 N.Y.S.2d at 137-38. Finally, the dissent observed that the weight of authority in New York and other jurisdictions supports an interpretation of U.C.C. § 2-725 that fixes the date of retail sale as the accrual date of the four-year limitations period. *Id.* at 417, 477 N.E.2d at 440, 488 N.Y.S.2d at 138.

[25] *See supra* note 8 and accompanying text. It is now the law in New York that the limitations period prescribed in U.C.C. § 2-725 accrues upon the first commercial tender of delivery. *See id.* It is submitted that the practical result of this is that the limitations period begins to run at that date *whether or not* a potential plaintiff has purchased the product. Each day that elapses between the commercial sale and the purchase by the ultimate con-

merous courts have held that strict construction of U.C.C. notice and disclaimer provisions against consumers is improper because of recognized distinctions between lay persons and commercial buyers.[26] This philosophy should, it is submitted, be extended to cases involving section 2-725.[27] While the court claimed that its in-

---

sumer diminishes the consumer's limitations period by an equivalent amount of time. It is therefore conceivable that when a product is "on the shelf" for a four-year period, the consumer's warranty action against the manufacturer under U.C.C. § 2-318 will be time-barred before he even purchases the product. Therefore, it is submitted that the *Heller* court's interpretations of sections 2-318 and 2-725 produce an inharmonious result. If vertical privity is unnecessary to a warranty remedy under § 2-318, it should not be read into § 2-318 through another section of the Code which delineates the mode of remedy enforcement.

As the dissent indicated, the *Heller* majority is effectively reinstating the "*Mendel* result" in which a cause of action accrues before the plaintiff's right to sue has been perfected. *See* 64 N.Y.2d at 415, 477 N.E.2d at 436, 488 N.Y.S.2d at 137 (Meyer, J., dissenting). *see also* Mendel v. Pittsburgh Plate Glass Co., 25 N.Y.2d 340, 253 N.E.2d 207, 305 N.Y.S.2d 490 (1969), *overruled in part*, Victorson v. Bock Laundry Mach. Co., 37 N.Y.2d 395, 335 N.E.2d 275, 375 N.Y.S.2d 275 (1975); *supra* note 4. The rationale was aptly explained by Judge Frank in *Kincher v. Marlin Firearms Co.*, 198 F.2d 821 (2d Cir. 1952):

> Except in topsy-turvy land, you can't die before you are conceived, or be divorced before ever you marry, or harvest a crop never planted, or burn down a house never built, or miss a train running on a non-existent railroad. For substantially similar reasons, it has always heretofore been accepted, as sort of legal 'axiom,' that a statute of limitations does not begin to run against a cause of action before that cause of action exists, i.e., before a judicial remedy is available to the plaintiff.

Id. at 823 (Frank, J., dissenting), *quoted in* Heller v. U.S. Suzuki Motor Corp., 64 N.Y.2d 407, 415 n.4, 477 N.E.2d 434, 439 n.4, 488 N.Y.S.2d at 137 n.4 (Meyer, J., dissenting).

[26] *See, e.g.*, Victorson v. Bock Laundry Mach. Co., 37 N.Y.2d 395, 407, 335 N.E.2d 275, 283, 373 N.Y.S.2d 39, 47 (1975) (Fuchsberg, J., concurring) (reasonable time for notification from retail consumer judged by different standard than for consumer and disclaimer provisions read permissively in view of unconscionability doctrine); Fischer v. Mead Johnson Laboratories, 41 App. Div. 2d 737, 737, 341 N.Y.S.2d 257, 259 (2d Dep't 1973) (notification provision better suited for commercial transactions than for retail sales); Velez v. Craine & Clark Lumber Corp., 41 App. Div. 2d 747, 748, 341 N.Y.S.2d 248, 251 (2d Dep't 1973) (consumer plaintiff not party to sale of defective lumber, therefore section 2-316 disclaimer not a bar to recovery). The Code's permissiveness in section 2-316 should be read both in the light of subdivision 2 of section 2-719, which states that limitations of liability for damages in personal injury cases are prima facie unconscionable, as well as section 2-302, which gives courts the power to apply the doctrine of unconscionability as a matter of law to any contractual matter which calls for it. *See* Victorson v. Bock Laundry Mach. Co., 37 N.Y.2d at 407, 335 N.E.2d at 281, 373 N.Y.S.2d at 47 (1975) (Fuchsberg, J., concurring). *See also* N.Y. U.C.C. § 2-318 (McKinney 1981) (seller's express or implied warranties as extended by 2-318 may not be limited pursuant to 2-719).

[27] In certain respects, the policy justification for the notice requirement in 2-316 and the statute of limitations in 2-725 are similar, namely, both provisions are intended to protect the defendant (i.e. the seller or manufacturer in a products liability case) against the assertion of stale claims. *See* Courtesy Enters. v. Richard Labs, ___Ind. App.___, ___ 457 N.E.2d 572, 577 (1983) (final policy consideration behind notice requirement is that it is required to discourage assertion of stale claims in same way and for same reasons as statute

terpretation of section 2-725 does not limit available remedies,[28] the language of the decision indicates a pronounced bias toward the use of strict tort remedies and against the use of warranty remedies in cases of personal injury.[29] It is therefore submitted that the *Heller* decision may mark the inception of a trend in which the court will continue to place obstacles, both procedural and substantive, in the path of consumers seeking to bring personal injury suits based on breach of warranty. Moreover, the practical effect of the *Heller* decision is to frustrate the legislative purpose, embodied in the present version of section 2-318, of providing plaintiffs with an additional cause of action against remote seller.[30]

Regina A. Matejka

UCC 1-207: Section 1-207 supersedes the common law doctrine of accord and satisfaction in situations involving the tender of negotiable instruments in full satisfaction of disputed claims

In New York, the common law doctrine of accord and satisfaction has been recognized as a means by which parties could settle disputed debts without resort to judicial intervention.[1] Under this

---

of limitations); B. CLARK & C. SMITH, THE LAW OF PRODUCT WARRANTIES § 9.01(2) at 9-7, 9-8 (policy behind notice provision and statute of limitations similar in that both place a time limit on seller's exposure to warranty liability); *see also* WHITE & SUMMERS, UNIFORM COMMERCIAL CODE § 11-10 at 422 (2d ed. 1982). It is suggested therefore that the support for a liberal construction of the notice requirement in consumer injury cases could similarly justify a liberal construction of section 2-725 in such cases (i.e., a determination that the limitations period accrues on delivery to the retail consumer).

[28] *See* Heller v. U.S. Suzuki Motor Corp., 64 N.Y.2d at 412, 477 N.E.2d at 437, 488 N.Y.S.2d at 134; *supra* note 22.

[29] *See Heller*, 64 N.Y.2d at 410-11, 477 N.E.2d at 437, 488 N.Y.S.2d at 135. "As we noted in *Martin v. Dierck Equip. Co.*,. . . there is no need to recognize an action on implied warranty for personal injuries, and contend with the serious conceptual problems which arise when it is applied to personal injury actions, if the jurisdiction recognizes a tort action in strict products liability as New York does. . . . The tort remedy permits the injured plaintiff to seek redress from remote parties in the distributive chain regardless of privity." *Id.* [citation omitted]

[30] *See Heller*, 64 N.Y.2d at 415-16, 477 N.E.2d at 438, 488 N.Y.S.2d at 137 (Meyer, J., dissenting).

---

[1] *See* Hudson v. Yonkers Fruit Co., 258 N.Y. 168, 171, 179 N.E. 373, 374 (1932) (Cardozo C.J.); Nassoiy v. Tomlinson, 148 N.Y. 326, 329-30, 42 N.E. 715, 716 (1896); Jaffray v. Davis, 124 N.Y. 164, 173, 26 N.E. 351, 354 (1891). The doctrine of accord and satisfaction