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Breach of Warranty--Statute of Limitations--Thirty Year Warranty Held Present, Not Prospective (Citizens Util. Co. v. American Locomotive Co., 11 N.Y.2d 409 (1962))

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BREACH OF WARRANTY — STATUTE OF LIMITATIONS — THIRTY YEAR WARRANTY HELD PRESENT, NOT PROSPECTIVE. — Plaintiff, a public utility company, purchased certain generators from the defendant more than six years prior to the commencement of the action. The complaint alleged implied warranties that the sets "would be and would continue to be capable of continuous operation at full rated capacity for a full normal machine life of at least 30 years." [1] It was further declared that the generators ceased to be suitable and dependable after six and one-half years of normal operation. The Supreme Court and the Appellate Division ruled that the cause of action was barred by the six year statute of limitations on breach of warranty.[2] The Court of Appeals, by a divided court, affirmed the decision of the lower courts and *held* that a warranty that a machine will function normally for thirty years is a warranty of present characteristics, design and condition, and as such runs from the time of sale. *Citizens Util. Co. v. American Locomotive Co.*, 11 N.Y.2d 409, 184 N.E.2d 171, 230 N.Y.S.2d 194 (1962).

Since the statute of limitations, by its terminology, begins to run as soon as the cause of action accrues,[3] it is necessary to determine precisely when the breach of warranty occurred. As a general rule, an implied warranty is construed as a present warranty, and the breach can only occur as of the date of sale or delivery.[4] Frequently, however, this rule works a hardship on the plaintiff who finds his action barred before the breach is discoverable or before his damages are determinable. Some courts avoid this injustice by regarding the implied warranty as prospective so that the cause of action does not accrue, and the statute of limitations does not run until the time when the breach is discovered,[5] or should reasonably have been discovered.[6] Other courts achieve the same result by merely implying an exception

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[1] Citizens Util. Co. v. American Locomotive Co., 11 N.Y.2d 409, 416, 184 N.E.2d 171, 175, 230 N.Y.S.2d 194, 200 (1962).

[2] N.Y. CIV. PRAC. ACT § 48(1). This provision remains unchanged in N.Y. CIV. PRAC. LAW & RULES § 213(1), effective September 1, 1963.

[3] *Ibid.*

[4] Kakargo v. Grange Silo Co., 11 App. Div. 2d 796, 204 N.Y.S.2d 1010 (2d Dep't 1960) (memorandum decision); Allen v. Todd, 6 Lans. 222, 223-24 (N.Y. Sup. Ct. 1872); *cf.* WILLISTON, SALES § 212a (rev. ed. 1948).

[5] Woodworth v. Rice Bros. Co., 110 Misc. 158, 179 N.Y. Supp. 722 (Sup. Ct.), *aff'd mem.*, 193 App. Div. 971, 184 N.Y. Supp. 958 (4th Dep't 1920), *aff'd mem.*, 233 N.Y. 577, 135 N.E. 925 (1922) (warranty implied "Elberta" and "Willett" peach trees would bear such fruit).

[6] Crawford v. Duncan, 61 Cal. App. 647, 215 Pac. 573 (1923); Williamson v. Heath, 49 Tex. Civ. App. 254, 108 S.W. 983 (1908); Ingalls v. Angell, 76 Wash. 692, 137 Pac. 309 (1913).

to the applicable statute without considering whether the warranty is present or prospective.[7]

Although courts in the past have recognized the inequitable hardships which can befall innocent parties in many instances by limitations,[8] the courts still find it difficult to qualify the general rule as to when an action is barred.[9] Such a qualification is achieved by a court interpreting the warranty as prospective rather than present. One of the early cases which applied such a device was *Kennard & Sons Carpet Co. v. Dornan.*[10] There the court held that a warranty that a carpet would be free from grease spots caused in manufacturing was broken when the spots appeared, and not at the date of sale. *Aced v. Hobbs - Sesack Plumbing Co.*,[11] a recent California case, held that the implied warranty on a radiant heating system was breached when the defects were discoverable, not on the date of installation. In both cases the court found a prospective warranty situation, reasoning that otherwise there would be no meaning to the warranty in question.

One of the earliest New York cases on this point, *Allen v. Todd*,[12] decided in 1872, set the pattern for some later decisions, and reflects what according to the instant case is the settled New York view.[13] In the *Allen* case defendant represented that apple trees he sold to plaintiff would bear a certain quality of fruit. The issue was whether the statute of limitations ran from the sale of the apple trees, or when the trees first bore apples. The court discussed a prospective warranty situation, but decided that the warranty here was of the present characteristics of the tree and therefore the statute ran from the time of the sale.[14] That court did not reject the concept of prospective warranties, but decided that absent express agreement between the parties, it would not imply a prospective warranty from the elements of the transaction.

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[7] P. H. Sheehy Co. v. Eastern Importing & Mfg. Co., 44 App. D.C. 107 (Ct. App. 1915); Tomita v. Johnson, 49 Idaho 643, 290 Pac. 395 (1930). The court in the *Sheehy* case, *supra*, reasoned that by barring suits in cases where the purchaser had no opportunity to discover the defect, the statute actually promotes fraud, rather than preventing it.

[8] See cases cited notes 5, 6 & 7 *supra*.

[9] Kakargo v. Grange Silo Co., *supra* note 4; Peterson v. Brown, 216 Ark. 709, 227 S.W.2d 142 (1950); Gaffney v. Unit Crane & Shovel Corp., 49 Del. 381, 117 A.2d 237 (Super. Ct. 1955).

[10] 64 Mo. App. 17 (1895).

[11] 55 Cal. 2d 573, 360 P.2d 897, 12 Cal. Rep. 257 (1961).

[12] 6 Lans. 222 (N.Y. Sup. Ct. 1872).

[13] Citizens Util. Co. v. American Locomotive Co., 11 N.Y.2d 409, 416, 184 N.E.2d 171, 174, 230 N.Y.S.2d 194, 198 (1962).

[14] Allen v. Todd, *supra* note 4, at 224.

An apparently contrary view was taken in *Woodworth v. Rice Bros. Co.*,[15] another fruit tree case, where the court seemed to look more to the substance of the warranty than to the form. In this determination, the majority interpreted the intention of the parties to be that the guarantee "related entirely to the future, and what the trees would do when the time of bearing arrived." [16] The *Woodworth* case was the last significant New York case in this area until the present decision, which was the first direct appellate ruling on this point since *Allen v. Todd*.[17]

In the present decision, the majority, recognizing the unfairness of requiring a purchaser to sue within six years on a thirty year warranty, nevertheless held that the statute of limitations was a bar to the action. The majority reasoned that "a warranty express or implied that a machine is so built that it should last 30 years is a warranty of present characteristics, design and condition and should not be stretched by implication into a specific promise enforceable at the end of 30 years." [18] The majority opinion justified any unfairness as the "same kind of 'unfairness' that may result from almost any Statute of Limitations." [19] The opinion does not reject or even mention prospective warranties. In concluding, the majority intimated that perhaps plaintiff did not even have a cause of action on implied warranty.[20]

The three dissenting judges considered the holding in the instant case "unreasonable and unjust," and were of the opinion that the position taken by the court would necessarily reduce all such warranties to six years.[21] In holding that the warranties alleged in the complaint related to more than present conditions, the dissent maintained that these warranties "are necessarily prospective in nature, looking toward the future. . . ." [22] The warranties, they continued, would not be breached until the generators failed to operate properly, and until that time the statute of limitations would not begin to run.

Some jurisdictions have not recognized the need for qualifying the general rule on limiting actions on warranties.[23] Other

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[15] *Supra* note 5.

[16] *Id.* at 161, 179 N.Y. Supp. at 724.

[17] Liberty Mut. Ins. Co. v. Sheila-Lynn, Inc., 185 Misc. 689, 695, 57 N.Y.S. 2d 707, 712 (Sup. Ct. 1945) (concurring opinion), *aff'd mem.*, 270 App. Div. 835, 61 N.Y.S.2d 373 (1st Dep't 1946).

[18] Citizens Util. Co. v. American Locomotive Co., *supra* note 13, at 417, 184 N.E.2d at 174, 230 N.Y.S.2d at 198.

[19] *Id.* at 417, 184 N.E.2d at 175, 230 N.Y.S.2d at 199.

[20] *Ibid.*

[21] *Id.* at 419, 184 N.E.2d at 176, 230 N.Y.S.2d at 200 (dissenting opinion).

[22] *Id.* at 419, 184 N.E.2d at 176, 230 N.Y.S.2d at 201 (dissenting opinion).

[23] Liberty Mut. Ins. Co. v. Sheila-Lynn, Inc., *supra* note 17; E. O. Painter Fertilizer Co. v. Kil-Tone Co., 105 N.J.L. 109, 143 Atl. 332 (1928); Woodland Oil Co. v. A. M. Byers & Co., 223 Pa. 241, 72 Atl. 518 (1909).

jurisdictions, however, have been more liberal in recognizing prospective warranties.[24] The general acceptance of some qualification is reflected in the Uniform Commercial Code.[25] The Code adopts the general rule of present warranties by saying "a breach of warranty occurs when tender of delivery is made. . . ." [26] The Code states further that "where a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance the cause of action accrues when the breach is or should have been discovered." [27]

Williston, quoted in both the majority and dissenting opinions in the present case, also qualifies the general rule by saying that "if the seller promises that something shall happen or shall not happen to the goods within a specified future time, the promise . . . cannot be broken until that time has elapsed and until then the statute will not begin to run." [28]

The *Citizens Utilities* case leaves the question of whether a warranty is present or prospective, unsettled in New York. However, as was noted by the dissent, if the courts in the future continue to find present warranties, as was done in the instant case, they will, in effect, preclude breach of warranty actions which arise six years after sale.

As far as the courts are concerned, the decision in *Citizens Utilities* will not necessarily prevent future cases from being decided differently. It is entirely possible that in another case the court will apply the qualification or exception to the rule when the facts require it. Qualifying the statutory period in judicial proceedings should be done on an *ad hoc* basis. Because the courts sometimes have difficulty alleviating the hardships imposed by the statute of limitations, this may be a fertile area for legislative enactment. This was done in the analogous instance of an exception to the statute of limitations concerning frauds, where the cause of action is not deemed to have accrued until the discovery by the plaintiff of the fraud.[29]

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[24] Aced v. Hobbs-Sesack Plumbing Co., 55 Cal. 2d 573, 360 P.2d 897, 12 Cal. Rep. 257 (1961); Southern Cal. Enterprises v. D. M. & E. Walter & Co., 78 Cal. App. 2d 750, 178 P.2d 785 (1947); Cole v. Zellan, 55 A.2d 516 (D.C. Munic. Ct. App. 1947), *aff'd*, 183 F.2d 139 (D.D.C. 1950); Heath v. Moncrief Furnace Co., 200 N.C. 377, 156 S.E. 920 (1931); Cunningham v. Frontier Lbr. Co., 245 S.W. 270 (Tex. Civ. App. 1922); Ingalls v. Angell, 76 Wash. 692, 137 Pac. 309 (1913).

[25] UNIFORM COMMERCIAL CODE § 2-725(2). The Code has been adopted by the New York Legislature and will become effective September 27, 1964.

[26] *Ibid.*

[27] *Ibid.*

[28] 1 WILLISTON, SALES § 212a (rev. ed. 1948).

[29] N.Y. CIV. PRAC. ACT. § 48(5). This provision remains essentially unchanged in N.Y. CIV. PRAC. LAW & RULES § 206(c), effective September 1, 1963.