ContractsProf Blog

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GLOBAL K: MEET THE MICE

By Kprofs2013

One of the unexpected benefits of global acquisitions and diversification of multinational enterprises is that the companies occasionally pop up in interesting contracts cases. Such is the situation in *Hoffman v. Daimler Trucks North America, LLC*, a case from the Western District of Virginia involving the purchase of an RV that was such a lemon only the mice could love it. Daimler Trucks, a wholly owned subsidiary of Daimler AG, got itself entangled in this case through Freightliner Trucks, its U.S. truck division, and earned itself a quick education in U.S. warranty law.

Pedagogical considerations

The case offers some interesting reflections on the interrelationship and interactions between state and federal law with respect to the creation and disclaimer of warranties in the consumer purchase context, as well as the role played by specialized statutes like vehicle lemon laws. Too often, the basic *Contracts* course barely has time to deal with UCC warranty law and lore, and so the compact treatment of these issues can be a useful hand-off for students interested in exploring some of the implications of warranty law and policy.

On the federal side, we have the Magnuson–Moss Warranty Act — affectionately known as the Federal Trade Commission Improvement Act of 1975, 15 U.S.C. § 2301 *et seq.* Magnuson-Moss establishes federal minimum standards for warranties *if and when a written warranty is offered*. If a seller *does* offer a written warranty to a consumer, seller may not disclaim or modify any implied warranties. 15 U.S.C. § 2308(a). Any written warranties must be made available to the consumer prior to the sale. 15 U.S.C. § 2302(b)(1)(A).

On the state side, of course, we have substantive warranty law represented by the UCC. The UCC will be relevant even when Magnuson-Moss is not (*i.e.*, when an oral, but not a written warranty is offered to the consumer). In contrast with federal law, the UCC permits disclaimer of express and implied warranties, but imposes requirements when a seller attempts to disclaim. UCC § 2-316. Hence, the applicability of Magnuson-Moss could make a substantial difference in a case where disclaimer of warranty is an important issue.

The story so far . . .

In the fall of 2010, Donald Kent Hoffman of Fishersville, Virginia, bought a Tuscany recreational vehicle from RV dealer Camping World. The RV had been manufactured by Thor Motor Coach and included a chassis built by Daimler Trucks North America and various component parts supplied by Drew Industries. To Mr. Hoffman's deep disappointment, there were very few things about his RV that weren't problematic, and so Hoffman and the RV spent nine out of their first ten months together off the road and in the shop. Indeed, the situation was so dire that, during one of the repair episodes at Camping World, the RV developed a mouse infestation because it was left outside for an extended period of time.

The mice were apparently untroubled by the flaws in the RV. Among other

things, the automatic leveler and indicator lights did not work, nor did the water and waste water indicator lights. The aisle lights in the coach did not work. The deadbolt in the cabin did not work, but then the door didn't lock from the inside anyway. The door did manage to leak water into the cabin when it rained, however, and the sprayer on the kitchen sink leaked. There was no heat in the vehicle. The front seat did not properly swivel or recline. The map light did not work. The airbags deflated. The driver's side mirror would not stay in place. The control panel did not function properly, nor did the window shades. The steps were installed improperly. The batteries died quickly. In addition, various features that Hoffman said he had been promised were absent from the RV – there was no GPS as promised, and no satellite television.

Daimler, trading as Freightliner, entered the story during the course of Hoffman's tortuous attempts to coordinate warranty coverage. Camping World told Hoffman that the problem with the air bags would have to be addressed by Freightliner, but Hoffman reported back that Freightliner said it was "ok as per truck stand[a]rds." Meanwhile, the general twelve-month warranty on the RV was set to expire on or about October 29, 2011. Before this happened, Hoffman attempted to revoke his acceptance of the RV by dropping it off at Camping World and seeking a refund of the purchase price. (The RV apparently remains at Camping World pending the outcome of the litigation, although there is no indication in the court's opinion where the mice are at this point.)

In April 2012, the long-suffering, travel-deprived Mr. Hoffman brought suit in state court against Camping World, Daimler Trucks, Drew, and Thor for breach of express and implied warranties under Magnuson-Moss and the Virginia Uniform Commercial Code (VUCC), and against Thor under Virginia's Motor Vehicle Warranty Enforcement Act, popularly known as the Virginia Lemon Law, Va. Code Ann. § 59.1–207.11 *et seq.* Thor and Camping World, the only defendants served at that point, managed to have the action removed to federal district court, since neither apparently was a Virginia resident.

At this juncture, the scope of the Virginia Lemon Law became an issue. There is some authority that the Virginia Lemon Law does not apply to a completed motor home, but only to the "self-propelled motorized chassis," Va. Code Ann. § 59.1–207.11. Since Daimler Trucks manufactured the chassis, Hoffman amended his complaint to name Daimler Trucks as the correct defendant on the Lemon Law claim. At that point, the defendants filed motions to dismiss.

The retailer's disclaimers

The interaction of the three relevant bodies of law – Magnuson-Moss, UCC § 2-316, and the Lemon Law – is critical to the motions to dismiss. The express warranties that Hoffman relied on in his claims against Camping World were *not* written, hence not covered by Magnuson-Moss, and Camping World argued that it had validly disclaimed any express warranties via a merger clause in the written contract of sale, and that it had disclaimed any implied warranties in a conspicuous manner as required by VUCC § 2-316(2).

Boldly going where most *Contracts* students have not gone before, Judge James C. Turk found that a merger clause in the contract of sale, coupled with the parole evidence rule embodied in UCC § 2-202, overcame Hoffman's express warranty claim. As to the implied warranty, however, in a clear and succinct discussion Judge Turk found that the relevant disclaimer clause was not conspicuous for purposes of disclaiming the implied warranties, and he denied Camping World's motion to dismiss as to the implied warranty claims.

The manufacturer's disclaimers

Thor's argument was that its written warranty reduced the limitation period to "90 days after the expiration of the [designated] warranty coverage period," or in other words three months after the one-year warranty. However, Thor's warranty language was ambiguous; the same page also referred to a two-year warranty on the vehicle frame, which might make the limitation period in question 27 months instead of 15 months. Rejecting the approach taken in the now-classic RV warranty case, *Merricks v. Monaco Coach Corp.*, and relying on the limitation rules of UCC § 2-725, Judge Turk decided that "Hoffman could not accept the limitation period by passive acceptance of the RV without objection to the pertinent warranty provision."

Daimler's arguments

As to the two claims against Daimler Trucks – one for breach of express and implied warranties and the other for violation of the Lemon Law – Daimler Trucks argued that Hoffman had simply failed to state a claim for breach of warranty and that the Lemon Law claim was untimely. On the latter argument, which is somewhat beyond our scope, the court allowed relation back to the original filing date of the complaint in determining that the Lemon Law claim against Daimler Trucks in the amended complaint was not time-barred.

On the breach of warranty claim, Judge Turk agreed that Hoffman had failed to plead specific breaches attributable to Daimler Trucks, and hence dismissed the claim against the manufacturer with leave to amend. More importantly from a teaching perspective, the Daimler situation illustrates the impact of Magnuson-Moss clearly and succinctly. Daimler Trucks purported to disclaim all implied warranties in its written warranty, but that contravened Magnuson-Moss. Once the supplier gives a written warranty, it cannot wholly disclaim implied warranties. 15 U.S.C. § 2308. Hence, Hoffman's implied warranty claims against Daimler Trucks would survive a disclaimer argument.

The supplier's arguments

Drew, the components supplier, argued that Hoffman's claims were untimely and that, in any event, its express and implied warranties applied only to Thor, not to the consumer. The timeliness argument neatly illustrates the difference between warranty periods and limitation periods, which, in the court's view, Drew had confused. Drew had argued that the claims were untimely because they weren't brought within the one-year warranty period. Judge Turk was quick to point out that "[t]he warranty and limitation periods, however, are not identical concepts. The warranty period covers the component parts for a specified period of time; in other words, it defines the time in which the warrantor has a responsibility to repair or replace the covered parts. The limitation period, however, places constraints on the time in which the buyer must sue." Simply put, the parties had not agreed to reduce the limitations period "by the original agreement," *per* UCC § 2-725(1), and so the UCC default four-year statute of limitations applied.

On the warranty issues, Drew was on stronger ground. Drew claimed that its limited express warranty extended coverage only to Thor, the initial purchaser, and *not* to the consumer. The Court agreed. Based on a Fourth Circuit warranty case, *Buettner v. R.W. Martin & Sons, Inc*., which involved a remote supplier who had not even given an express warranty to its immediate purchaser, Judge Turk argued that "an original seller is still free to disclaim warranties as to foreseeable users. . . . The Drew limited warranty plainly extended only to the initial purchaser and Hoffman is not entitled to enforce its protections."

Drew also argued that it had effectively disclaimed all implied warranties in the

text of its written express warranty, but Hoffman countered that this attempt was ineffective because Magnuson-Moss prohibits such disclaimers when the supplier provides a written warranty to a consumer. Here the court found that Magnuson-Moss was *not* applicable, because Drew did not offer *Hoffman* a "written warranty" as the term is understood by Magnuson-Moss, because the warranty was intended for the product manufacturer, not the ultimate consumer, *per* 16 C.F.R. § 700.3(c). Hence, the Magnuson-Moss limitation on disclaimers of implied warranties was inapplicable, and UCC disclaimer rules governed. The court found the disclaimer sufficiently conspicuous to pass muster under UCC 2-316, and it dismissed the claim against Drew.

Conclusion

I would recommend this case to anyone seeking an exemplary discussion of the interplay of federal, UCC, and consumer law with respect to warranties. Judge Turk is undeterred by the complexities of the overlapping issues and multiple defendants, and his analysis is clear, concise, and informative. Students looking for further guidance on these issues would benefit from a careful review of *Hoffman*.

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