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Sales: Buyer's Rights and Remedies for Defective Quality of F.O.B. Shipments

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drawee bank should be in no better position than a holder for value; its contractual obligation does not extend to honoring overdrafts.

In the instant case there was probably sufficient evidence of negligent retention to estop the drawer under the second view. The court, however, cited the Pennsylvania decision with approval, thereby indicating that the District of Columbia probably has adopted the estoppel in pais theory.

The issue involved has not been presented to the Florida Court. In an analogous situation involving the raising of a check caused by drawer's negligence, the Court stated that it would be too burdensome to require a bank to discover a raise that is not apparent on the face of the check when no suspicious circumstances surround its presentation. Consequently, if the question arose the Court might be expected to balance the negligence. Since it also expressed approval of the Pennsylvania decision, however, it is at least arguable that the third view would be followed.

The Florida Court would do well to adopt the estoppel in pais theory, which estops a drawer from pleading nondelivery when he signs his name to an otherwise blank check unless the bank fails in its duty to identify the person presenting the check. This view reflects most accurately the concepts of negotiability essential to the present-day commercial world, while leaving intact the duty of care owed by the drawee bank to the drawer.

WILLIAM B. MESMER

SALES: BUYER'S RIGHTS AND REMEDIES FOR DEFECTIVE QUALITY OF F.O.B. SHIPMENTS

McNeill v. Jack, 83 So.2d 704 (Fla. 1955)

Plaintiff seller sued for the price of lumber delivered, and defendant buyer counterclaimed for damages incurred because of defective quality discovered after delivery of the goods. The sales agree-
ment stated the price as f.o.b.\textsuperscript{1} cars at the seller's mill and reserved to
the buyer the right to inspect and reject the lumber at destination for
defective quality. On appeal from a judgment denying the buyer re-
coverey on his counterclaim, \textit{Held}, in a sale f.o.b. cars at seller's mill,
conditional title in the goods passes to the buyer upon delivery to the
carrier if the buyer's right to inspect at destination and reject for de-
fective quality is specifically stated in the contract; the buyer upon
discovering defective quality may retain the goods and sue for damages.
Judgment reversed.

In a sale f.o.b. the point of shipment, title in the goods passes
to the buyer upon their delivery to the carrier at the shipping point,
absent a contrary intention by the parties.\textsuperscript{2} Even though the con-
tract is silent on the point of the buyer's right to inspect the goods,
the right may be conferred by law, permitting him to inspect at
destination in order to ascertain whether the goods conform to the
contract.\textsuperscript{3} The right to inspect implies the right to reject.\textsuperscript{4} The
rationale of the courts is that delivery to the carrier does not pass such
an irrevocable title as to preclude the buyer from refusing to accept
the goods if they are not in conformity with the contract.\textsuperscript{5} The
buyer may return the goods, rescind the contract, and recover any
part of the purchase price paid, but not damages.\textsuperscript{6} If the buyer
prefers to retain the goods he may elect to do so,\textsuperscript{7} thereby keeping the
seller's contractual obligation intact and preserving the right to
damages.\textsuperscript{8}

When the right to inspect and reject is conferred solely by opera-
tion of law, the courts have had little difficulty in reconciling this
extension of the buyer's rights with the general rule that delivery to
the carrier passes title to the buyer. The carrier may be the buyer's
agent to receive and transport the goods, but not to accept them as

\textsuperscript{1} Free on board. For a general discussion of the legal implications of the term see 2 \textit{Williston, Sales} §280 (rev. ed. 1948).

\textsuperscript{2} \textit{United States v. R. P. Andrews & Co.}, 207 U.S. 229 (1907); see also \textit{Farris and Co. v. The William Schludersberg}, 142 Fla. 765, 196 So. 104 (1940); \textit{Uniform Sales Act} §§19, 46; \textit{Annot.} 101 A.L.R. 292 (1936).

\textsuperscript{3} \textit{Fogle v. Brubaker}, 122 Pa. 7, 15 Atl. 692 (1888); \textit{Uniform Sales Act} §47 (1).

\textsuperscript{4} \textit{Pope v. Allis}, 115 U.S. 363 (1885).

\textsuperscript{5} \textit{Rivers Bros. Co. v. Putney}, 27 N.M. 177, 199 Pac. 103 (1921).


\textsuperscript{7} \textit{Uniform Sales Act} §69 (1) (2).

\textsuperscript{8} \textit{Id.} §69 (1) (b).
conforming with the agreement.\(^9\) Regardless of the niceties of title, a purchaser has the right to rely on the seller to ship a commodity of the character and quality specified in and required by the contract.\(^{10}\)

A specific contractual provision that reserves the buyer's right to inspect and reject affords some evidence that the parties did not intend title to pass until the buyer has had the opportunity to inspect and accept or reject the goods on arrival.\(^{11}\) If by the intent of the parties title has not passed and the buyer properly rejects the goods, title remains in the seller. Returning the goods does not effect a rescission of the contract, and the buyer may maintain an action against the seller for damages.\(^{12}\) Notwithstanding its evidentiary value, a specific reservation in itself is usually insufficient to overcome the presumption that the parties intend title to pass on delivery to the carrier;\(^{13}\) the general rule\(^{14}\) will prevail. A line of decisions\(^{15}\) dating back before the turn of the century denominates such title as conditional. It is reasoned that a specific reservation of this type manifests an intention by the parties that title is to pass conditioned on the buyer's right to inspect and reject the goods on arrival if they do not conform to the contract.\(^{16}\)

An examination of the cases reveals no significant difference in fact situations and legal consequences between cases applying the general rule, which passes title subject to the buyer's right to reject, and those employing the doctrine of conditional title.\(^{17}\) Whatever theoretical refinements the term "conditional title" adds to the buyer's rights, it adds little to his remedies.

In the instant case the seller contended that the buyer assumed the risk of defective quality because title passed when the lumber was delivered to the carrier. The Court rejected this argument and allowed

\(^9\)Mette & Kanne Distilling Co. v. Lowrey, 39 Mont. 124, 101 Pac. 966 (1909).
\(^{11}\)See 2 WILLISTON, SALES §280 (b) (rev. ed. 1948).
\(^{12}\)UNIFORM SALES ACT §69 (1) (2).
\(^{14}\)Cases cited note 2 supra.
\(^{15}\)E.g., Hostler Coal & Lumber Co. v. Stuff, 205 Iowa 1341, 219 N.W. 481 (1928); Pierson v. Crooks, 115 N.Y. 539, 22 N.E. 349 (1889); Hurley Gasoline Co. v. Johnson Oil Refining Co., 118 Okla. 26, 246 Pac. 498 (1926).
\(^{16}\)See Pierson v. Crooks, 115 N.Y. 539, 22 N.E. 349 (1889).
the buyer to prosecute his counterclaim for damages on the grounds that the contract specifically provided for inspection and rejection upon receipt of the goods and that the buyer's title vested "conditionally on delivery to the carrier . . . subject to [his] right to reject the articles if they [did] not conform to the requirements of the contract." If the buyer had returned the goods and thereby effected a rescission of the contract, the Florida Court's use of the conditional title doctrine would have been consistent with that of other courts, but the allowance of damages would have been contrary to established practice. Although the opinion does not so indicate, the goods in fact were retained by the buyer for disposal elsewhere. An award of damages was in order, since the contract was not rescinded; but the use of the conditional title doctrine was inappropriate.

The decision in this case does no more than adopt in terms of conditional title the general warranty principles recognized by most courts regarding sales f.o.b. the shipping point. Nevertheless, in so far as the decision affords the buyer a remedy to which he is unquestionably entitled and at the same time impliedly protects the seller from an unknown and uncontrollable risk of loss while the goods are in transit, it represents a commendable recognition by the Court of the realities of modern American business.

SHELDON J. PLAGER

SALES: LIABILITY OF FOOD WHOLESALER TO CONSUMER FOR BREACH OF WARRANTY


Plaintiff became ill after consuming canned apricot juice purchased from a retailer who had bought it from defendant, a wholesaler. Plaintiff sued the wholesaler for breach of implied warranty that the juice was fit for human consumption. The trial court sustained a demurrer

18At 707.
19Uniform Sales Act §69. The act, which is basically a codification of the common law, has been adopted in thirty-five states, the District of Columbia, and Hawaii. 1955 Handbook of Nat'l Conference of Comm'rs on Uniform State Laws 245. The act has not been adopted in Florida.
20Information supplied by counsel for appellee.