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RECENT LEGISLATION

U.C.C.—LEGISLATURE EXTENDS § 2-315 TO LEASED GOODS.
Law of April 30, 1974, ch. 315, [1974] Laws of Md. 1376-77.

In 1974 the Maryland General Assembly enacted legislation¹ which expands Maryland Code Annotated, art. 95B section 2-315² (hereinafter cited as section 2-315), the implied warranty of fitness for a particular purpose. The amendment extends the coverage of section 2-315 to leased goods.³ Since the Legislature intended to extend the warranty coverage in general from sales alone to sales and leases,⁴ it failed to accomplish its purpose by limiting its amendment to section 2-315.

Before its extension, the section 2-315 warranty applied to only the sale of goods (versus their leasing) for a particular purpose where the purchaser relies⁵ on the "seller's skill and judgment to select or furnish suitable goods . . ." and where the seller has "reason to know" of the particular purpose for which the goods are desired.⁶

In addition to the implied warranty of fitness for a particular purpose, Article 95B provides an implied warranty of merchantability in section 2-314. The latter warrants that the goods will operate safely when used for the ordinary purpose for which they were intended.⁷ This differs from use for a particular purpose in that it "envisages a specific use by the buyer which is peculiar to the nature of his business whereas the ordinary purposes for which goods are used are those envisaged in the concept of merchantability and go to uses which are customarily made of the goods in question."⁸ While there is some confusion over the relationship between sections 2-314 and 2-315,⁹ section 2-314 appears to be the broader one as it has a general use thrust while 2-315 has a particular use thrust.

In its report to the Legislative Council, the House Committee on Economic Matters stated that the consumer should have the same

1. Law of April 30, 1974, ch. 315, [1974] Laws of Md. 1376-77 [hereinafter cited as Chapter 315].

2. The amendment, effective July 1, 1974, re-enacts in tact MD. ANN. CODE art. 95B, §2-315 (1964) as MD. ANN. CODE art. 95B, §2-315(1) (1974) and adds MD. ANN. CODE art. 95B, §2-315(2) (1974) as follows:

(1) Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be fit for such purpose.

(2) The provisions of subsection (1) apply to a lease of goods and a bailment for hire of goods that pass through the physical possession and are maintained by the lessor, sublessor, or bailor.

3. Chapter 315, note 1 *supra*.

4. HOUSE COMMITTEE ON ECONOMIC MATTERS, REPORT TO THE LEGISLATIVE COUNCIL, Item 250, November 8, 1972 [hereinafter cited as Item 250].

5. *Bona v. Graefe*, 264 Md. 69, 72-74, 285 A.2d 607, 609-10, 48 A.L.R.3rd 660, 663-65 (1972).

6. MD. ANN. CODE art. 95B, §2-315(1) (1974).

7. *Erdman v. Johnson Bros.*, 260 Md. 190, 194-97, 271 A.2d 744, 746-47 (1970).

8. MD. ANN. CODE art. 95B, §2-315. Comment 2.

9. *Myers v. Montgomery Ward & Co.*, 253 Md. 282, 295-96, 252 A.2d 855, 863-64 (1969).

warranties whether he leases or buys the goods.¹⁰ Although many states have protected the consumer by extending warranties through case law,¹¹ the Maryland Court of Appeals has stated that this can only be done by statute.¹² While the Legislature attempted to respond to this ruling in 1974, Chapter 315 fails to achieve the objective of protecting consumers who lease goods because it does not apply to either particular uses under section 2-315, where the lessee does not rely on his lessor's judgement or, more importantly, to ordinary uses in general under section 2-314.

The inadequacy of the legislation is best demonstrated by the case that precipitated it, *Bona v. Graefe*.¹³ The plaintiff leased a golf cart from the defendant to use for its ordinary purpose of driving around the course. While traveling from the first tee to the first green, the cart's brakes failed and Bona was thrown from the cart and sustained physical injury. In rejecting Bona's contention that Article 95B sections 2-313 and 2-315 applied to bailments for hire, the court reasoned that the Uniform Commercial Code (U.C.C.) applied only to sales.¹⁴ For the court to extend the coverage of the U.C.C. to leases would be judicial legislation.¹⁵ Under the present Chapter 315, which was intended to respond to this call for legislative relief, Bona would still find no remedy as he was using an ordinary instrumentality, the golf cart, for its ordinary purpose, driving down the course.¹⁶ This situation is covered by the implied warranty of merchantability, section 2-314, which the Legislature failed to extend to leases.

There is some language in dicta in Maryland and other jurisdictions which indicated that those courts may entertain arguments that sections 2-314 and 2-315 overlap.¹⁷ The legislative intent of Chapter 315 could be achieved only if those arguments became legal precedent so that at least in the 2-314 cases, where overlap with 2-315 is found, the lessee will have a remedy in Chapter 315. Nevertheless, the current support of the overlap theory is weak.

10. Item 250, note 4 *supra*.

11. *W. E. Johnson Equip. Co. v. United Airlines, Inc.*, 238 So. 2d 98 (Fla. 1970); *Owens v. Patent Scaffolding Co.*, 354 N.Y.S.2d 778 (Sup. Ct. 1974); *Baker v. City of Seattle*, 79 Wash. 2d 198, 484 P.2d 405 (1971).

12. 264 Md. at 72-74, 285 A.2d at 609-10, 48 A.L.R.3rd at 663-65. The court also stated that the only avenue of relief for the aggrieved lessee was action in tort for negligence in which the lessee must prove "either that the lessor knew of the defect or that a reasonable inspection, if made, would have disclosed the defect...." *Id.* at 77-78, 285 A.2d at 611, 48 A.L.R.3rd at 666. This method of recovery is noted for those cases where the lessee does not rely on his lessor's skill and judgment and therefore does not come under sec. 2-315.

13. 264 Md. 69, 285 A.2d 607, 48 A.L.R.3rd 660 (1972).

14. *Id.* at 72-74, 285 A.2d at 609-10, 48 A.L.R.3rd at 664.

15. *Id.* at 74, 285 A.2d at 609-10, 48 A.L.R.3rd at 664.

16. While the Maryland Court has not commented outside of dicta on its interpretation of the respective coverages of sections 2-315 and 2-314, comment 1 of 2-315 seems to indicate that both the unusual use of an ordinary instrumentality and the ordinary use of an unusual, highly sophisticated or technical instrumentality "peculiar to the buyer's business" fall within section 2-315 while ordinary uses of common products are warranted by section 2-314.

17. 253 Md. at 295-96, 252 A.2d at 863-64; *Tennessee Carolina Transp., Inc. v. Strick Corp.*, 283 N.C. 423, 431-33, 196 S.E.2d 711, 717 (1973).

In *Myer v. Montgomery Ward*,¹⁸ the Maryland Court of Appeals, in dicta, quoted a treatise which spoke of the overlap of the two sections. While the court apparently agreed with the treatise, in a one sentence commentary which immediately followed the quoted passage, the court contradicted itself,¹⁹ indicating at least its confusion regarding these sections.

Applying Pennsylvania law, a North Carolina case²⁰ also stated in dicta that sections 2-314 and 2-315 are not mutually exclusive. In that case a transportation company purchased fifty trailers whose brakes failed. The plaintiff brought his case under section 2-315 and the defendant argued that since the trailers were used for their ordinary purpose, the section 2-314 warranty, which was not pleaded, applied. The court allowed recovery under section 2-315. This result, however, appeared to be based on the theory that the trailers were *peculiar to the plaintiff's business* and therefore qualified as a particular purpose under section 2-315, even though they were put to the ordinary use for which they were designed.²¹ This interpretation preserves the distinction between the two sections while it recognizes that a given set of facts may allow a plaintiff to recover under either section 2-314 or 2-315.

These cases notwithstanding, because it overlooked section 2-314, the current legislation as enacted fails to protect the consumer who leases under all but "particular" circumstances. The remedy is for the Legislature to extend section 2-314, as well as 2-315, to leases.

DECEDENTS' ESTATES — LAWS ENACTED AT THE 1974 SESSION OF THE GENERAL ASSEMBLY OF MARYLAND AFFECTING THE ADMINISTRATION OF DECEDENTS' ESTATES

James G. McCabe*

Chapter 11 (S.B. 133)** — This statute, known as the "Estates and Trusts Article" completely replaces Article 93 as it existed before July 1, 1974. It codifies in one Article, eventually to be published by Michie as a new volume of the Code, not only Article 93 pertaining to decedents' estates but also Article 93A, pertaining to the estates of minors and persons under a disability; the Uniform Gifts to Minors Act; and Minors Recovery in Tort; as well as Article 37A, the Uniform Fiduciaries Act; Article 43, the Anatomical Gift Act; Article 75B, the Uniform Principal and Income Act; a number

18. 253 Md. 282, 252 A.2d 855 (1969).

19. *Id.* at 295-96, 252 A.2d at 863-64.

20. *Tennessee Carolina Transp., Inc. v. Strick Corp.*, 283 N.C. 423, 431-33, 196 S.E.2d 711, 717 (1972).

21. See note 16 *supra*, cf. section 2-315, Comment 2. The court also referred to the inclusion in Comment 2 of the statement that a contract may contain both a warranty of merchantability and of fitness for a particular purpose.