Reconciling Song-Beverly and Commercial Warranty Provisions

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In a breach of warranty claim, the California Commercial Code and the Song-Beverly Consumer Warranty Act work in conjunction to provide relief to California's consumers. Originally, only the Commercial Code covered causes of action for breach of warranty. The Consumer Warranty Act was later enacted to add additional rights and provisions for breach of warranty claims. The Act extended protection to purchasers of consumer goods by requiring specified implied warranties and placing strict limitations on how and when a manufacturer may disclaim implied warranties.

The Commercial Code and the Consumer Warranty Act have different notice requirements limiting when a plaintiff can sue under the Consumer Warranty Act. In an action for personal injury or property damage, a plaintiff is not required to give prior notice before asserting a breach of implied warranty claim if he or she has not directly dealt with the manufacturer or supplier. On the other hand, the Act requires the consumer to notify the manufacturer of the non-conformity and allow the manufacturer an opportunity to repair or replace the non-conforming good. See California Civil Code Sections 1793.2, 1793.22.

The Consumer Warranty Act also requires that the good be bought or leased in California, and that it is not used primarily for business purposes. Given these limitations, plaintiffs who sue under the Commercial Code often have not met the requirements of the Act. This article explores the applicability of the Act in a breach of warranty claim brought under the Commercial Code.

Breach of warranty claims emerged from strict liability and national agitation over the sale of "defective food." According to Prosser's 1966 article "Strict Liability to the Consumer in California," 18 Hastings L.J. 9, "[t]here was considerable historical support for the idea that the seller of food incurred a more or less undefined special responsibility to the immediate purchaser, which nineteenth-century cases had called a special implied warranty." In its early form, warranty law presented many obstacles for a consumer wishing to bring an action under a warranty claim. A plaintiff was required to demonstrate that he or she acted in reliance upon some express or implied representation by the defendant, which presented complications when the consumer could not identify the manufacturer. Moreover, most states had adopted the Uniform Sales Act, which did not provide for warranties to parties not in strict privity of contract with the manufacturer. Finally, under the Uniform Sales Act, most, if not all, warranties could be disclaimed.

California took its first pro-consumer step in Klein v. Duchess Sandwich Co. (1939) 14 Cal. 2d 272, where it extended the concept of an implied warranty to consumers beyond those in strict privity of contract with the manufacturer. Duchess Sandwich Co. manufactured prepared sandwiches, which it sold wholesale to retailers, who then sold the sandwiches to the public. The plaintiffs, husband and wife, purchased a sandwich made by Duchess from a retailer, and after taking her first bite, the wife discovered that the sandwich was "crawling with worms" or "maggots."

The plaintiffs filed an action against both the retailer and Duchess for breach of an implied warranty that the sandwich was fit for human consumption. Rejecting the defendant's argument for a narrow construction of Civil Code Section 1735 as creating an implied warranty only between an immediate seller to an immediate buyer, the state Supreme Court expanded the principle to include the ultimate consumer, reasoning that the Legislature's clear intent was that "the implied warranty provision therein contained should inure to the benefit of any ultimate purchaser or consumer of food; and that it was not intended that a strict 'privity of contract' would be essential for the bringing of an action by such ultimate consumer for an asserted breach of the implied warranty."

In 1965, and in light of evolving case law, California replaced Civil Code Section 1735 with Commercial Code Section 2314. Although Section 2314 broadened the scope of implied warranties and placed restrictions on disclaimers, it also limited the applicability of Section 2314 to transactions with merchants.

Once in effect, Section 2314 was criticized because the provisions did little to provide recourse to consumers dissatisfied with a purchase. In response, the Legislature enacted the Song-Beverly Consumer Protection Act in 1971. The Consumer Warranty Act was drafted to provide relief

in conjunction with the Commercial Code and remains strongly pro-consumer.

Under the Consumer Warranty Act, every retail sale of consumer goods includes an implied warranty by the manufacturer and the retail seller that the goods are "merchantable," unless the goods are expressly sold "as is" or "with all faults." One innovative development of the Act was an express provision for the duration of the implied warranty of merchantability. In contrast, the Commercial Code is silent on this point.

By reading the Consumer Warranty Act in conjunction with the Commercial Code, manufacturers may impose limits on implied warranties. Under the Act, the state Legislature prescribed an express duration on the implied warranty of merchantability and the implied warranty of fitness. Both are coextensive in duration with an express warranty, which accompanies the consumer goods, provided the duration of the express warranty is reasonable.

California courts have consistently affirmed that the two acts apply together. In Murillo v. Fleetwood Enterprises (1998) 17 Cal.4th 985, 990, the state Supreme Court stated that the Consumer Warranty Act "makes clear its pro-consumer remedies are in addition to those available to a consumer pursuant to the [Uniform] Commercial Code..." As recently as 2009, the state appellate court reiterated the same principle in Mexia v. Rinker Boat Co. Inc. (2009) 174 Cal. App. 4th 1297. Thus, the Act incorporates and supplements the provisions of the Commercial Code, rather than superseding them, particularly Section2314. When a plaintiff brings an action for breach of warranty in any context, the provisions of both the California Commercial Code as well as the Act should apply.

The two also should work coextensively as a matter of policy. Although some might advocate that limiting the duration of the implied warranty limits relief to consumers, as a matter of practicality, the two should supplement each other in the absence of a conflict. The Consumer Warranty Act does not refer to a different set of warranties than those present in the Commercial Code. And, a seller does not give two sets of warranties to a buyer; one set governed by the Act, and one set governed by the Commercial Code. A seller gives one set of warranties to a buyer which contain the same terms, rights and obligations regardless of whether a plaintiff is bringing an action because the good needs repair or because of allegations that a product failed in some aspect. Both actions are grounded in the argument that the product did not conform to the warranty. If that defect constituted a breach of warranty, then the courts should apply the same standards, to the extent that the Consumer Warranty Act and Commercial Code do not conflict.

Based on this reasoning, Civil Code Section 1790 et seq. is applicable to any breach of warranty claim, extending the duration limits that the Legislature has imposed to all causes of action for breach of implied warranty. This should facilitate a consistent framework to apply to breach of implied warranty claims among the courts and greatly assist counsel with narrowing the issues early in the course of litigation.

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