



Implied Warranties

by Jeffery G. Gilmore and Bill Fisher

In recent Legal Columns we have addressed the topic of warranties. In the last issue we reviewed the enforceability of "express" warranties created by affirmative promises and statements made by a seller. The law of warranties, however, goes beyond the express promises of a seller. Sellers and manufacturers of goods also assume certain implied obligations.

In essence, the law imposes certain minimum standards or warranties which arise in the context of many transactions. This article will address two implied warranties: (1) the implied warranty of merchantability and, (2) the implied warranty of fitness for a particular purpose.

Both of these implied warranties are established under the Uniform Commercial Code (UCC). Although the UCC applies solely to the sale of goods, as demonstrated by a case discussed within, the implied warranty principles have been adopted in typical construction disputes involving the performance of work as well as the quality of goods supplied.

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Implied Warranty of Merchantability

An implied warranty of merchantability only arises if (1) it has not been specifically excluded by buyer and seller, and (2) the seller is a *merchant* with respect to the goods sold. The UCC provides several broad standards defining merchantability, including requirements that the goods: "pass without objection in the trade under the contract description"; "be of fair quality"; and, "be fit for the ordinary purpose for which such goods are used." In addition to these general standards, implied warranties of merchantability may arise from the course of dealing or usage of trade with respect to the goods being sold.

The requirements for a warranty of merchantability are discussed in the case of *Mac Pon Company, Inc. v. Vinsant Painting & Decorating Company* (1982). In the *Mac Pon* case, a general contractor agreed to build a church with tinted concrete

blocks in order to achieve a desired wall color and to eliminate the need to paint.

After the blocks had been supplied and incorporated into the building, the general contractor and owner were convinced that the blocks were not the proper color. In order to correct this perceived color variation the general contractor elected to pair the building and sue the brick supplier for breach of warranty.

The brick supplier defended against the warranty claim, relying on evidence that variations in shade existed with any order of block even though that order consists of only one type and color of tinted block. The Court observed that the manufacturer gave no express warranty on the shade of the blocks because the variations in shade were an inherent result of the manufacturer's process. Finding that the blocks *were fit for the ordinary purpose for which they were sold*, the Court held there was no breach of the implied warranty of merchantability as a result of the shade variations.

Warranty of Fitness for a Particular Purpose

Another implied warranty provided by the Code is the warranty of fitness for a particular purpose:

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.

The advantage of the "fitness for a particular purpose" warranty is that it goes beyond the product itself and focuses on the particular needs of the buyer.

Courts apply this standard in construction contracts as demonstrated by the case of *Semler v. Knowling*, (1982). The Supreme Court of Iowa held that an implied warranty of fitness for a particular purpose covered the installation of a sewer system.

In reaching its decision, the Court first examined whether the implied warranties of the UCC applied to the transaction. The contract was not a contract solely for the sale of goods. Instead, it was a mixed contract for goods—the sewer pipes and fittings—and services—the installation. Although the Court concluded the contract was not covered by the UCC, it elected to apply the implied warranty policies of the UCC.

The contractor's work involved installation of a cast iron sewer line linking a newly constructed apartment building with the City sanitary sewer line. The contractor

agreed to install the sewer using a special method that did not necessitate cutting into the adjacent street. Following completion of the sewer work and occupancy of the apartment building, tenants experienced repeated sewer backups in the basement level. Ultimately the line was removed and replaced with a clay tile sewer. The owner sued the contractor for breach of warranty. The Court held:

Where a contractor agrees to build a structure to be used for a particular purpose, there is an implied agreement on his part that the structure, when completed, will be serviceable for the purpose intended. . .

* * *

... there is no substantial performance unless the work is sufficient for such purpose or accomplishes such result.

Unlike the warranty of merchantability, in order for an implied warranty of fitness for a particular purpose to arise, the seller need not be a "merchant." However, the seller must have reason to know the buyer's particular purpose in buying the goods; the buyer must be looking to the seller to select and furnish the right product; and the seller must be aware of the buyer's reliance on the seller's skill or judgment.

Should the brick prematurely deteriorate, or prove insufficient for its intended purpose, the brick supplier will be responsible for a breach of warranty.

Although the *Semler* case demonstrates the application of this warranty in a construction services dispute, the implied warranty of fitness for a particular purpose is more likely to arise with the supply of speciality materials for a construction project. For example, if a contractor solicits brick for walkways and relies upon the seller to furnish sufficiently durable paving bricks, so long as the seller is aware of the buyer's reliance on the seller's skill and judgment, an implied warranty of fitness for a particular purpose will arise by operation of law. Should the brick furnished by the supplier prematurely deteriorate or prove insufficient for the intended purpose, the brick supplier will be responsible for a breach of warranty. The supplier's knowledge of the buyer's special needs and the buyer's reliance on the seller's expertise establish an implied warranty that the bricks will be suitable for a walkway. Even if the bricks are otherwise adequate—they must be sufficient for the *particular purpose* of a walkway.

Implied warranties afford a level of protection to buyers which may seem

to be simple common sense. However, prior to the relatively recent development of these principles, buyers were subject to a policy of "caveat emptor" or—let the buyer beware. Now, the contractor as buyer of materials, and the owner as buyer of construction goods and services, are assured the protection of these implied minimum standards. ■

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