University of Richmond Law Review

Volume 6 | Issue 1 Article 14

1971

Uniform Commercial Code- Breach of Warranty- Applicable Statute of Limitations For Personal Injury

Uniform Commercial Code—Breach of Warranty—Applicable Statute of Limitations for Personal Injury—*Tyler v. Street*

> Statutes of limitation are statutes of repose, the object of which is to compel the exercise of a right of action within a reasonable time. They are designed to suppress fraudulent and stale claims from being asserted after a great lapse of time, to the surprise of the parties, when the evidence may have been lost, the facts may have become obscure because of defective memory, or the witnesses have died or disappeared.[1]

Prior to the adoption in Virginia of the Uniform Commercial Code[2] with its four year statute of limitations, a two year statute[3] was held applicable to actions for personal injury based on breach of common law warranty,[4] a contract action, and also to actions based on negli-

---

[1] Richmond Redevelopment and Housing Authority v. Laburnum Constr. Corp., 195 Va. 827, 839, 80 S.E.2d 574, 581 (1954).

[2] Va. Code Ann. § 8.10-101 (1965) prescribes January 1, 1966 as the effective date of Uniform Commercial Code in Virginia.

[3] Va. Code Ann. § 8-24 (1957) provides in part that:

> Every action for personal injuries shall be brought within two years next after the right to bring the same shall have accrued.

[4] *See* Caudill v. Wise Rambler, Inc., 210 Va. 11, 168 S.E.2d 257 (1969); Friedman v. Peoples Serv. Drug Stores, Inc., 208 Va. 700, 160 S.E.2d 563 (1968). The *Caudill* case involved an action for personal injuries resulting from breach of the common law implied warranty of fitness for a particular purpose. Though the injury occurred after the effective date of the Uniform Commercial Code, the sale did not. Therefore the U.C.C. did not apply and the court decided the case upon common law principles. The court in holding *Va. Code Ann.* § 8-24 (1957) to be applicable stated:

> Obviously, since the plaintiff had not been injured at the time she purchased the car, she could not then maintain an action for her injuries. To say, then, that her right of action accrued before her injuries were received is to say that she was without remedy to recover damages for her alleged injuries. 210 Va. at 12-13.

The logic of the court fails here. In a negligence action to recover for personal injuries in Virginia, the statute of limitations begins to run at the time the injury occurs regardless of the fact that the plaintiff may not have discovered his injury until after the two year period has elapsed. *See, e.g.*, Hawks v. DeHart, 206 Va. 810, 146 S.E.2d 187 (1966). Under U.C.C. warranties, the breach occurs at tender of delivery, at which time the statute of limitations commences to run. Breach of a Code warranty gives rise to a cause of action regardless of the aggrieved party's lack of knowledge of the breach. Va. Code Ann. § 8.2-725(2) (1965). Personal injury resulting from breach of warranty under the U.C.C. is only a consequential damage of the original breach. *See* Va. Code Ann. § 8.2-715(2)(b) (1965). This personal injury is only evidence of the breach which occurred at tender of delivery (or upon acceptance if future performance is expressly required). In light of the fact that the Virginia court will bar an action for

gence,[5] a tort action. In warranty the cause of action accrues at the time of the breach,[6] while in negligence it accrues at the time of injury.[7] In the five years since the adoption of the Uniform Commercial Code by Virginia, the Supreme Court of Virginia has not yet had the occasion to determine which statute of limitations is applicable in an action for breach of warranty under the Uniform Commercial Code to recover for personal injury. However, in *Tyler v. Street*,[8] the United States District Court for the Eastern District of Virginia recently anticipated what the Supreme Court of Virginia would decide in this situation.

In *Tyler* the plaintiffs allegedly sustained injuries by the inhalation of

---

personal injuries caused by negligence, even though the injuries are not discovered until after two years had passed, and in light of the fact that an action for property damages from breach of warranty, due to a defect which does not evidence itself until after four years from tender of delivery, is also barred; then it follows that recovery for personal injuries resulting from this same defect which are not evidenced until after the period of limitations has elapsed, should also be barred. If the Virginia Supreme Court had not professed the rule stated in *Hawkes v. DeHart* (that the cause of action accrues at the time of injury even if unknown), but had instead adopted the "discovery" rule as stated in *Morgan v. Grace Hospital, Inc.*, 149 W.Va. 783, 144 S.E.2d 156 (1965) (that the period of limitations begins to run when the injury is or should have been discovered), there would be some justification in applying the two year statute to all personal injury actions based on warranty. However, since Virginia takes the view that in personal injury actions the period of limitations begins to run when the wrongful act is done rather than when the damage occurs or the wrongful act is discovered, then the four year statute of limitations commencing at tender of delivery should be applied in a personal injury action based on breach of warranty. It seems illogical that a plaintiff, suing on the basis of breach of warranty, should be barred after four years from recovery of economic loss due to an existing defect in the goods but allowed to recover for his personal injuries resulting from that defect because a different statute of limitations (two years) is held to apply and runs from a different point in time. *See* Rufo v. Bastian-Blessing Co., 417 Pa. 107, 207 A.2d 823 (1965), applying the U.C.C. four year statute of limitations in an action for breach of warranty to recover for personal injury. The court held that the statute began to run from the time of sale and not the time of injury. *See also* Hodge v. Service Mach. Co., 314 F. Supp. 707 (E.D. Tenn. 1970); Annot., 17 A.L.R.3d 1010, § 60(c) (1968). The court in *Hodge* held that since the breach had occurred at the time of sale (tender of delivery), rather than at the time of injury, the statute of limitations had lapsed and an action in warranty to recover for personal injury was barred. The fact that the action was barred before the injury occurred did not unconstitutionally deprive the plaintiff of a cause of action.

[5] *See* Barnes v. Sears, Roebuck & Co., 406 F.2d 859 (4th Cir. 1969); Sides v. Richard Mach. Works, Inc., 406 F.2d 445 (4th Cir. 1969).

[6] *See* VA. CODE ANN. § 8.2-725 (1965). *But see* Caudill v. Wise Rambler, Inc., 210 Va. 11, 168 S.E.2d 257 (1969); Friedman v. Peoples Serv. Drug Stores, Inc., 208 Va. 700, 160 S.E.2d 563 (1968).

[7] *See* cases cited note 5 *supra*.

[8] 322 F. Supp. 541 (E.D. Va. 1971).

fumes emitted from a product manufactured by the defendants.[9] The plaintiffs' action to recover for personal injuries for breach of a Uniform Commercial Code warranty[10] was brought more than two years after the alleged initial injuries.[11] The court held that the two year statute of limitations for personal injury[12] was the applicable statute[13] rather than the more recently enacted four year statute of limitations, which the Uniform Commercial Code provides for breach of warranty.[14] The *Tyler* court reasoned that since the two year statute had been applied to actions for breach of common law warranty to recover for personal injury,[15] arising prior to the effective date of the Uniform Commercial Code, it should also be applied to actions for breach of a Code warranty resulting in personal injury.[16]

It should be noted that the court was not hard pressed to allow recovery in warranty in the present case. It recognized that, based on the doctrine of continuing negligence,[17] the plaintiffs might recover for subsequent personal injuries arising within the period of limitations. Though the decision reached in *Tyler* may seem at first blush to be indicative of what the Supreme Court of Virginia would have held on

---

9 *Id.* at 542. Lack of a contractual or business relationship between the plaintiff and the defendant in warranty is of no consequence in Virginia due to the adoption of a very liberal anti-privity statute. *See* VA. CODE ANN. § 8.2-318 (1965).

10 322 F. Supp. at 542.

11 *Id.* at 542. The sale, as well as the injuries, occurred after the effective date of the U.C.C., therefore making the U.C.C. applicable here, whereas it was inapplicable in *Caudill.*

12 *See* note 3 *supra.*

13 322 F. Supp. at 543.

14 VA. CODE ANN. § 8.2-725. The applicable provisions are as follows:

> (1) An action for breach of any contract for sale must be commenced within four years after the cause of action has accrued. By the original agreement the parties may reduce the period of limitation to not less than one year but may not extend it.
>
> (2) A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. A breach of warranty occurs when tender of delivery is made, except where a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance the cause of action accrues when the breach is or should have been discovered.

15 *See* Tyler v. Street, 322 F. Supp. 541, 543 (E.D. Va. 1971); Friedman v. Peoples Serv. Drug Stores, Inc., 208 Va. 700, 160 S.E.2d 563 (1968).

16 322 F. Supp. at 543.

17 *Id.* at 544. *See* Sides v. Richard Mach. Works, Inc., 406 F.2d 445 (4th Cir. 1969) *commented on in* 4 U. RICH. L. REV. 148 (1969).

the same facts, it is contrary to the overall purposes[18] and express provisions of the Uniform Commercial Code.[19]

The Uniform Commercial Code, as adopted in Virginia, establishes a cause of action for breach of warranty[20] and allows recovery for both incidental and consequential damages resulting from the breach.[21] Consequential damages expressly include personal injury.[22] The Code further provides a four year statute of limitations applicable to this cause of action.[23] Its purpose is to eliminate jurisdictional variations, by introducing a uniform period of limitations into the area of sales dealt with in Article II of the Code.[24] In light of modern business practices, four years was selected as an appropriate period within which to bring an action.[25] The cause of action for breach of warranty to recover for personal injury under the Uniform Commercial Code is only a narrow segment carved out of the broad field of personal injury actions[26] to which the two year personal injury statute has been applied.[27] Since the Code provisions applicable to breach of warranty were enacted more recently than the two year statute,[28] they should be held to supersede it in the limited area[29] of breach of warranty, whether to recover damages for injury to persons or property. Otherwise, the purposes and express provisions of the Code in this area will not be effected.

---

18 The underlying purposes of the U.C.C. are to simplify, clarify and modernize the law which governs commercial transactions and to make uniform the laws among the various jurisdictions. VA. CODE ANN. § 8.1-102 (1965). The purpose of VA. CODE ANN. § 8.2-725 (1965) is to introduce a uniform statute of limitations for sales contracts, thereby eliminating jurisdictional variations. In this way business concerns doing business in several jurisdictions will not have their commercial transactions frustrated by unanticipated variations in the applicable law.

19 *See* VA. CODE ANN. § 8.2-725 (1965); note 26 *infra.*

20 *See* VA. CODE ANN. §§ 8.2-312 through 315 (1965).

21 VA. CODE ANN. § 8.2-715 (1965).

22 VA. CODE ANN. § 8.2-715(2)b (1965).

23 VA. CODE ANN. § 8.2-725(1) (1965).

24 *See* note 18 *supra.*

25 *See* VA. CODE ANN. § 8.2-725 (1965), Comment.

26 The four year statute of limitations for breach of warranty is only applicable in the area of sales covered by Article II of the U.C.C. VA. CODE ANN. § 8-24 (1957) would still apply in all situations involving personal injury which are not based upon a theory of breach of warranty.

27 *See, e.g.*, Caudill v. Wise Rambler, Inc., 210 Va. 11, 168 S.E.2d 257 (1969); Friedman v. Peoples Serv. Drug Stores, Inc., 208 Va. 700, 160 S.E.2d 563 (1968).

28 *See* Va. Acts of Assembly 1964, ch. 219, at 293 (Virginia legislature adopting the Uniform Commercial Code).

29 *Cf. In re* Smith, 311 F. Supp. 900 (W.D. Va. 1970), *aff'd mem. sub nom.*, Callaghan v. Commercial Credit Corp., 437 F.2d 898 (4th Cir. 1971).

Furthermore, the Code provides in Article X that all acts and parts of acts are repealed to the extent that they are inconsistent with the provisions of the Uniform Commercial Code.[30] It is clear that the two year personal injury statute conflicts with the four year statute of limitations provided in the Code. Either period might be applied to an action for breach of a code warranty to recover for personal injury. Therefore, the two year statute should be repealed insofar as it is inconsistent.[31]

The statute of limitations for contract actions in general[32] was construed in *Friedman v. Peoples Service Drug Stores, Inc.*[33] not to be applicable to an action for breach of common law warranty to recover for personal injury. The 1964 amendment to this statute, which was enacted simultaneously with the Uniform Commercial Code,[34] provides that where the Code four year statute of limitations is applicable, the four year statute should be controlling.[35] This amendment, along with the general repealer in Article X of the Code,[36] requires the conclusion that the Code four year statute should supersede the previous state law[37] in its applicable area.

Pennsylvania has decided the same question in their state as presented by the facts of the *Tyler* case. There, the Uniform Commercial Code four year statute of limitations was held to be controlling rather than previous state authority that had applied a two year personal injury statute in actions for breach of warranty.[38]

---

30 VA. CODE ANN. § 8.10-103 (1965). This section states:

> Except as provided in the following section, all acts and parts of acts inconsistent with this act are hereby repealed.

The exception referred to is applicable only to Article VII concerning documents of title. *See* VA. CODE ANN. § 8.10-104 (1965).

31 *See* VA. CODE ANN. § 8.10-103 (1965).

32 VA. CODE ANN. § 8-13 (Cum. Supp. 1970).

33 208 Va. 700, 160 S.E.2d 563 (1968).

34 *See* Va. Acts of Assembly 1964, ch. 219, at 411, *amended in* Va. Acts of Assembly 1966, ch. 118, 215, to correctly specify the number of the code section previously intended.

35 VA. CODE ANN. § 8-13 (Cum. Supp. 1970).

36 VA. CODE ANN. § 8.10-103 (1965).

37 VA. CODE ANN. § 8-24 (1957).

38 *See* Rufo v. Bastian-Blessing Co., 417 Pa. 107, 207 A.2d 823 (1965); Gardiner v. Philadelphia Gas Works, 413 Pa. 415, 197 A.2d 612 (1964); Engelman v. Eastern Light Co., 30 Pa. D. & C.2d 38 (Com. Pl. 1962). *See also* Hoeflich v. W. S. Merrell Co., 288 F. Supp. 659 (E.D. Pa. 1968); Matlack, Inc. v. Butler Mfg. Co., 253 F. Supp. 972 (E.D. Pa. 1966) (both recognizing the Pennsylvania rule); Bort v. Sears, Roebuck & Co., 58 Misc. 2d 889, 296 N.Y.S.2d 739 (1969); Layman v. Keller Ladders, Inc., — Tenn. —, 455 S.W.2d 594 (1970) (all applying the four year U.C.C. statute to a breach of

The consequences of applying the two year statute or the four year statute in a given situation are significant. In applying the two year personal injury statute,[39] which begins to run at the time of injury,[40] the cause of action may not accrue until an indefinite number of years after receipt of the goods.[41] By contrast, the Code's four year statute begins to run at the time of the breach, that is, upon tender of delivery,[42] and so the time of injury is completely immaterial. Therefore, in a tender of delivery situation there exists a maximum of four years during which an action for breach of warranty may be brought.[43] This being true, a plaintiff should give consideration to the date of tender of delivery for purposes of a remedy in warranty, while for purposes of a remedy in negligence, the date of injury should be noted. The obvious consequence is that either an action for negligence or one for breach of warranty may be barred while the other remains available to the plaintiff.[44]

---

warranty action to recover for personal injury. *Cf.* International Union of Operating Eng'rs v. Chrysler Motors Corp., — R.I. —, 258 A.2d 271 (1969), in which the court refused to apply the four year U.C.C. statute of limitations because there was no contractual relationship between the parties. Lack of privity is not a defense in Virginia since a liberal anti-privity statute has been adopted. *See* VA. CODE ANN. § 8.2-318 (1965). *Contra,* Abate v. Bankers of Wallingford, Inc., 27 Conn. Supp. 46, 229 A.2d 366 (1967). *See generally* Annot., 17 A.L.R.3d 1010, 1145 (1968).

39 VA. CODE ANN. § 8-24 (1957).

40 *See* Caudill v. Wise Rambler, Inc., 210 Va. 11, 168 S.E.2d 257 (1969).

41 A retailer or manufacturer would be potentially liable in warranty for injuries caused by a defect in the goods for an indefinite period. In many instances there would be no practical limitation on an action since the injury might not occur for twenty, thirty or more years after the sale.

42 VA. CODE ANN. § 8.2-725(2) (1965). It should be noted that where the warranty explicity extends to future performance and discovery of the breach must await the time of such performance, the cause of action accrues when the breach is or should have been discovered.

43 VA. CODE ANN. § 8.2-725 (1965). Since the cause of action accrues at the time of the breach, normally at tender of delivery, if evidence of the breach—failure of the goods to conform or personal injuries—is not found to have occurred within four years of the sale, then the plaintiff is precluded from recovery under the U.C.C. on the basis of breach of warranty. He must prove negligence and recover for personal injuries in tort, unless, of course, two years have expired since the time of injury, thereby barring his remedy on that theory also.

44 If the injury occurred three years from the time of sale, the plaintiff would have a possible remedy in warranty (four years having not yet elapsed), and possibly a remedy based on negligence (two years from the time of injury). But if the injury occurs five years after the sale, a remedy in warranty is barred while one in negligence remains. Where the plaintiff is unknowingly injured on the day of the sale and three

In the area of personal injury, where liability has become increasingly strict—moving from negligence[45] into the realm of warranty,[46] into strict products liability[47] and tomorrow, perhaps, into liability without fault in all areas, is it more desirable to leave indefinitely long the period before which an action is barred[48] or to establish a definite limit?[49] The application of the two year statute by the *Tyler* court, in a breach of warranty action to recover for personal injury, extends a merchant's or manufacturer's potential period of liability for an indefinite length of time.[50] The Uniform Commercial Code's attempt to establish a definite limit on the period of liability for breach of warranty is the better solution.[51]

M. E. B.

years pass before he discovers the injury, he is barred from recovery based on negligence, while a remedy in warranty remains available.

[45] *See, e.g.*, Palsgraf v. Long Island Ry., 248 N.Y. 339, 162 N.E. 99 (1928).

[46] VA. CODE ANN. §§ 8.2-312 thru -315 (1965).

[47] *See, e.g.*, Emroch, *Caveat Emptor to Strict Liability: One Hundred Years of Products Liability Law*, 4 U. RICH. L. REV. 155 (1970).

[48] *See* note 41 *supra.*

[49] *See* VA. CODE ANN. § 8.2-725 (1965), which sets such a definite limit.

[50] *See* note 41 *supra.*

[51] The remaining inquiry is whether or not four years given by the U.C.C. is a reasonable period of time. Perhaps it would be better to leave definite the length of time, but make it longer. The authors of the U.C.C. felt that four years was a commercially reasonable time commensurate with modern business practice and record keeping.

WILLIAM TAYLOR MUSE