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Validity of Warranty Clauses Limiting Damages in Michigan

Questions Presented

1. Do Michigan courts hold as valid and enforce warranty clauses limiting damages?

Short Answer

Under Michigan law, warranty clauses placing a limitation on damages are generally valid and enforceable. However, when the limited remedy contained in the contract fails in its essential purpose, the purchaser will not be bound by the contractual limitation on damages and will be entitled to seek other remedies provided by the UCC. Thus, the enforceability of the clause will depend on a factual analysis of whether the remedy failed in its essential purpose.

Discussion

Actions arising out of transactions in goods are governed by the Uniform Commercial Code, *Sullivan Industries, Inc. v. Double Seal Glass Co.*, 192 Mich. App. 333, 344 (Mich. Ct. App. 1991). MCL 440.2105(1) defines “goods” as “all things, (including specially manufactured goods) which are movable at the time of identification to the contract for sale” Where the loss caused by a defective product is solely economic, the UCC provides the only remedy. *Neibarger v Universal Cooperatives, Inc.*, 439 Mich 512, 527-528 (1992). Since Ric-man seeks economic damages stemming from

the purchase of a moveable tunnel boring machine, its sole remedy is to be found in the UCC.

Under the UCC, contractual limitations on damages are valid and enforceable. MCL § 440.2719 provides that agreements may limit damages to the repair or replacement of nonconforming goods, and may designate this as the buyer's exclusive remedy. However, if the limited remedy fails in its essential purpose, or is unconscionable, the plaintiff may resort to normal, UCC damages. The statute reads as follows:

§ 440.2719. Additional or substitute remedies, agreement, optional or exclusive, failure of exclusive or limited remedy; limitation of damages including consequential damages.

Sec. 2719. (1) Subject to the provisions of subsections (2) and (3) of this section and of the preceding section on liquidation and limitation of damages

(a) the agreement may provide for remedies in addition to or in substitution for those provided in this article and may limit or alter the measure of damages recoverable under this article, as by limiting the buyer's remedies to return of the goods and repayment of the price or to repair and replacement of nonconforming goods or parts; and

(b) resort to a remedy as provided is optional unless the remedy is expressly agreed to be exclusive, in which case it is the sole remedy.

(2) Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this act.

(3) Consequential damages may be limited or excluded unless the limitation or exclusion is unconscionable. Limitation of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable but limitation of damages where the loss is commercial is not.

Under this section parties are left free to shape their remedies to their particular requirements, and reasonable agreements limiting or modifying remedies are given effect. However, under subsection (2), where a damage limitation clause fails in its essential purpose, it must give way to the general remedy provisions of the UCC. Subsection (3)

invalidates such damage limitation clauses if they are unconscionable. Barring unconscionability, the limitation of remedies in the Technicore Underground Corporation Warranty must be enforced unless it has failed in its essential purpose.

Whether a damage limitation clause fails in its essential purpose is a different question entirely from whether it is unconscionable. *Price Bros. Co. v. Charles J. Rogers Constr. Co.*, 104 Mich. App. 369, 374 (Mich. Ct. App. 1981). MCL § 440.2719(2) is only triggered when the remedy the parties agreed to fails in its essential purpose—when unanticipated circumstances make the seller unable to provide the buyer with the agreed remedy. *Id.* The fact that the agreed remedy really leaves the buyer with no remedy at all does not necessarily mean the remedy has failed in its purpose, because the unreasonableness or unconscionability of the remedy is a separate question. Moreover, the court must look not at the essential purpose of the goods purchased, but rather at the essential purpose of the exclusive remedy in the warranty—to provide the buyer with goods that conform to the sales agreement, while limiting the seller’s exposure to damages otherwise available. *Watson v. Damon Corp.*, 2003 U.S. Dist. LEXIS 12972 at 12 (D. Mich. 2003). A repair or replace, exclusive-damages provision will fail in its purpose when the seller does not cure the nonconformity within a reasonable time, or is unwilling or unable to cure it at all:

Whether an exclusive or limited remedy has failed of its essential purpose is a question of fact and consideration must be given to the facts of the case... [W]hen a seller does not repair or replace in order to cure a nonconformity ... the limited remedy stated in terms of repair or replacement has failed of its essential purpose. Such remedy also fails of its essential purpose when a seller is simply unable to cure the nonconformity notwithstanding that the seller's failure to cure was neither willful nor negligent. Moreover, the nonconformity must be removed within a reasonable time. The buyer is not bound to permit the warrantor to tinker

with the goods indefinitely in the hope that it ultimately may be made to conform.

Id. at p.13.

A “repair or replace” warranty will fail in its essential purpose if the defective product is not repaired or replaced within a reasonable time. *Pack v. Damon Corp.*, 434 F.3d 810, 816 (6th Cir. 2006). In *Pack*, plaintiff purchased a motor home under a one-year, 12,000-mile warranty, which provided that the manufacturer’s sole obligation under the warranty was to repair or replace defective parts. There was evidence that due to various defects, the motor home was out of service for 162 days in the first year of ownership. The Court held that this appeared to be, on its face, an unreasonably long time for the manufacturer to make repairs, and that if proven at trial, the warranty would likely be held to have failed in its essential purpose. *Id.* at 817.

What constitutes a reasonable time to make repairs, so as to fulfill the essential purpose of the warranty, depends on the circumstances of each case. *Kelynack v. Yamaha Motor Corp.*, 152 Mich. App. 105, 113 (Mich. Ct. App. 1986). In *Kelynack*, the plaintiff purchased a motorcycle manufactured by the defendant Yamaha Motor Corporation. The vehicle carried a six-month, limited warranty to repair or replace defective parts. *Id.* at 108. The Court held that although the terms of warranty would generally restrict plaintiff’s remedies to replacement of defective parts, the limited warranty failed in its essential purpose and hence the plaintiff was entitled to pursue other remedies:

Under § 2-719 of the UCC, *MCL 440.2719*; *MSA 19.2719*, the parties to a sales agreement may agree to limit remedies and damages for breach of the agreement. However, subsection (2) further provides that, where the limited remedy fails in its purpose or operates to deprive either party of the value of the bargain, the parties may pursue other remedies provided elsewhere in the UCC.

Id. at 111.

The court reasoned that where a manufacturer or dealer has limited its obligation under the sales agreement to repair or replace defective parts, the seller does not have an unlimited time to make the repairs, but rather must repair or replace the parts within a reasonable time. *Id.* at 112. After plaintiff returned his inoperable motorcycle to the dealer for repairs, it remained there for over three months, mainly due to an initial misdiagnosis of the problem. By the time the motorcycle was fixed, it was November and the weather precluded its use. *Id.* The Court held that the dealer's good faith was irrelevant because "commendable efforts alone do not relieve a seller of his obligation to repair." *Id.* No willful delay or even negligence need be shown, and good or bad faith is irrelevant to whether the repairs were made in a reasonable time. *Id.* Because defendant failed to repair the motorcycle within a reasonable time, plaintiff was deprived of his exclusive remedy, and the limited warranty failed in its essential purpose. *Id.* at 112-113.

An exclusive repair or replace provision will also be deemed to have failed in its essential purpose if the seller refuses to make repairs, or attempts to make the repairs and fails. For example, in *King v. Taylor*, 184 Mich. App. 204, under a repair warranty that expressly excluded incidental and consequential damages, the plaintiff took her car to seller for repairs seven times over nine months, but the seller failed to correct the stalling problem. *Id.* at 213. Therefore the exclusive repair warranty failed in its essential purpose and buyer was allowed to pursue other remedies. *Id.*

Similarly, an exclusive remedy provision was invalidated due to a failure to make repairs in *Severn v. Sperry Corp.*, 212 Mich. App. 406 (Mich. Ct. App. 1995). In *Severn*, the plaintiff buyers and operators of a dairy farm, sought damages because a cattle feed

grinder they bought from defendant manufacturer failed to work as guaranteed. The device was supposed to grind and mix feed and supplemental nutrients uniformly. The grinder was covered by a two-year written warranty under which defendant's obligations were limited to repairing defects or, at defendant's option, replacing any parts that in defendant's judgment were defective. The warranty also stated that “the company shall have no obligation or liability of any kind on account of any of its equipment, and shall not be liable for special or consequential damages. The company makes no other warranty, express or implied, and specifically, the company disclaims any implied warranty of merchantability or fitness.” The warranty was not to apply to “damage resulting from accident, misapplication, abuse, or damage caused by environment (such as exposure to corrosive material).” *Id.* at 409. Upon noticing a decrease in milk production among their cows, which were fed from the grinder, plaintiffs stopped making payments on the grinder, and defendant's credit company threatened legal action. Plaintiff filed a complaint alleging breaches of warranty under the Uniform Commercial Code (UCC), *MCL 440.1101* et seq.; *MSA 19.1101* et seq., and the commission of various torts. The issue before the court was whether the defect was actionable in light of defendant's limited written warranty. The Court reasoned:

Under UCC § 2-719, *MCL 440.2719*; *MSA 19.2719*, plaintiffs were limited to defendant's written warranty, providing only for replacement of defective parts and materials, unless the warranty failed of its essential purpose.

Id. at 413.

The court held that a warranty fails of its essential purpose where unanticipated circumstances preclude the seller from providing the buyer with the remedy to which the parties agreed, in which event the buyer is entitled to seek remedies

under the standard UCC warranty provisions. *Id.* at 413, 414. A seller's good-faith efforts to repair or replace defective parts under a limited warranty are insufficient to justify reliance on the limited warranty alone when the seller is unable to effect repairs within a reasonable time. *Id.* at 414. After plaintiffs initially reported the defect, defendant essentially told plaintiffs to fix it themselves. Defendants did not give any indication of an ability or willingness to discover or fix the problem, and did not offer to replace the grinder with a new one. *Id.* at 419. Thus, the warranty failed in its essential purpose. As a result, “both the warranty and its accompanying limitation of damages were inoperable and plaintiffs were entitled to recovery under the standard UCC warranty provisions.” *Id.*

If the exclusive repair and replace provision of Technicore’s warranty is deemed to have failed in its essential purpose, then the provisions excluding any additional liability will also be held invalid. *See Kelynack*, 152 Mich. App. At 115 (holding that an exclusive repair or replace remedy and an exclusion of consequential damages are interdependent, and if the remedy provision fails then the exclusion of damages also must be invalidated). Otherwise, the limitation on damages is valid and enforceable.

Conclusion

Courts in Michigan hold as valid and enforce clauses in warranties placing a limitation on damages. But when the limited remedy contained in the contract fails in its essential purpose, the purchaser will not be bound by the contractual limitation of damages and will be entitled to seek remedies provided by the UCC. The remedy will be deemed to have failed in its purpose if Technicore refused to make the repairs or

replacements described in the warranty, or were unwilling or unable to do so in a reasonable time, regardless of good faith. If the warranty did not fail in its essential purpose, then the limitation on damages will be enforced.

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