

4.22 BREACH OF IMPLIED WARRANTY OF FITNESS FOR PARTICULAR PURPOSE UNDER U.C.C.

(Approved before 1984)

Where at the time of contracting a seller has reason to know that the buyer requires the goods for a particular purpose and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, the law implies a warranty by the seller that the goods are fit for that purpose.

Therefore, the first question for you to determine is whether plaintiff in fact relied upon defendant's skill or judgment as distinguished from his/her own skill or judgment in buying [describe the goods].

In making that determination you should consider all the facts and circumstances, both what was said and what was done, at the time of the sale, (including, if you find that to be the fact, the reference to the [describe the goods] by trade or brand name, but I charge you that the use of a trade or brand name is but one of the circumstances for you to consider in determining whether plaintiff relied upon seller's skill or judgment rather than upon his/her own judgment). If you find that plaintiff did not rely on defendant's skill or judgment your verdict must be for defendant.

If you find that plaintiff did in fact rely upon defendant's skill or judgement, you must next determine whether under all of the facts and circumstances existing at the time of the sale, defendant had reason to know that plaintiff required [the goods] for a particular purpose and was relying on defendant's skill, or judgment.

It is not necessary that plaintiff have stated his/her purpose in so many words; it is enough that the circumstances gave defendant reason to know of plaintiff's purpose and that plaintiff was relying upon defendant's skill or judgment.

If you find that defendant did not have reason to know those facts, your verdict will be for defendant.

If you find that plaintiff did in fact rely upon defendant and that defendant had reason to know that plaintiff was relying upon him/her and that plaintiff required [the goods] for a particular purpose, you must next consider whether [the goods] was/were fit for that purpose. If you find that [the goods] was/were fit for the particular purpose your verdict will be for defendant.

If you find that [the goods] was/were not, you must then determine whether plaintiff gave notice of that fact to defendant within a reasonable time after he/she discovered or should have discovered that [the goods] was/were not fit for the particular purpose. When plaintiff should have discovered the defect depends upon all the facts and circumstances, including the nature of the defect, the time when [the goods] was/were put in use and whether the defect was discoverable by customary and reasonable inspections.

Notice will be sufficient in form if it informed the defendant that the buyer claimed that [the goods] was/were defective. If you find that plaintiff did not give such notice or did not give it within a reasonable time¹ after he/she discovered or should have discovered the defect, your verdict will be for defendant. If you find that notice was given within a reasonable time after plaintiff discovered or should have discovered the defect, your verdict will be for plaintiff and you will proceed to consider the measure of damages.

¹“What is a reasonable time for taking any action [under the U.C.C.] depends on the nature, purpose and circumstances of such action.” *N.J.S.A. 12A:1-204(2)*.

Commentary:

The above charge is based on *N.J.S.A.* 12A:2-315 and 12A:2-607. Note that the above charge deals with fitness for a particular purpose whereas the implied warranty of merchantability under *N.J.S.A.* 12A:2-314 deals with fitness for the ordinary purposes for which such goods are used. As to damages for breach of warranty under the U.C.C., *see N.J.S.A.* 12A:2-714 and 2-715; *see also* “cover” as defined by *N.J.S.A.* 12A:2-712.

See also Model Civil Charge 4.45 regarding actions brought under the Motor Vehicle Lemon Law, *N.J.S.A.* 56:12-29 *et seq.*