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Key considerations concerning contracts for the sale of goods - by Emyr Remy

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Contracts governed by Massachusetts law are typically covered by one of two independent legal frameworks; the common law and the Massachusetts Uniform Commercial Code (the "UCC"). Contracts concerning the provision of services, real estate, and intangible assets are generally covered by the Commonwealths' common law of contracts whereas transactions for the sale of goods and other tangible assets are governed by the UCC at G.L. c. 106, Article 2 ("Article 2").

Whether a contract is governed by the common law or Article 2 carries important implications and often requires a detailed analysis of the facts and circumstances surrounding the transaction in question.

Defining the term "Goods" and the Predominant Purpose Test

Article 2 generally defines the term "goods" as all things, including specially manufactured goods, that are movable at the time of contract formation. When a contract involves both the sale of goods and the provision of services, Article 2 governs where the contract's "predominant purpose, factor, or thrust" is the sale of goods, and not the rendition of services. To determine a contract's predominant purpose, courts consider several factors, including the terminology of the contract, the objective of the parties in entering the contract, the ratio of the price of the goods to the whole price of the contract, the nature of the supplier's business, and the intrinsic value of the goods without the service.

What Distinguishes Contracts for The Sale of Goods?

If a contract for the sale of goods is in place, the purchaser of said goods should always consider these factors that distinguish such contracts from other contracts governed by common law:

1. Statute of Limitations: The statute of limitations for a claim arising from a contract governed by Article 2 is four (4) years from the date the claim accrued. Article 2 § 2-725. The parties may reduce the statute of limitations to a period "not less than one year," but may not extend it past four years. Conversely, the statute of limitations for claims arising from a contract governed by the common law is six (6) years from the date the claim accrued.

Notably, a cause of action under Article 2 accrues on the date of delivery of the goods, unless the seller expressly warrants the future performance of the goods (discussed below).

2. Implied Warranties: All contracts for the sale of goods contain implied warranties of merchantability and fitness for a particular purpose. Article 2 §§ 2-314, 2-315.

Concerning the implied warranty of merchantability, § 2-314 establishes that merchantability is implied in a contract for the sale of goods "if the seller is a merchant with respect to goods of that kind" and outlines in detail the elements constituting merchantability.

Concerning the implied warranty of fitness for a particular purpose, § 2-315 places additional warranty obligations on a seller of goods with specific knowledge of a buyer's intended use of the goods:

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 [...] an implied warranty that the goods shall be fit for such purpose.

3. Disclaimer of Implied Warranties: The implied warranties of merchantability and fitness for a particular purpose may be disclaimed as provided by § 2-316:

[T]o exclude or modify the implied warranty of merchantability or any part of it the language must mention merchantability and in case of a writing must be conspicuous[.]

[T]o exclude or modify any implied warranty of fitness the exclusion must be by a writing and conspicuous.

Generally, the test for conspicuousness is whether a reasonable person ought to have noticed it. Practically, conspicuousness depends upon an evaluation of the size of type, location of the disclaimer clause, capitalization or other highlighting of relevant language, and sophistication of the contracting parties. If the disclaimer is not conspicuous, it is not effective.

4. Express Warranties: In addition to the above-described implied warranties, the parties to a contract for the sale of goods may also negotiate express warranties.

A "promise to repair" warranty is an express warranty that stipulates the remedy to be invoked if a purchased good becomes faulty. If the promisor does not abide by the promise to repair, then the promisee has a cause of action for the underlying breach of warranty for the defective product. A "promise to repair" warranty is separate and distinct from a warranty of future performance, which explicitly guarantees the future performance of a good.

For example, if a warranty states that a good "will be free from defects in materials and workmanship for a period of five years," it explicitly extends to the future performance of the goods. If, however, the warranty merely promises to repair the good if it malfunctions within the first five years, it does not explicitly guarantee the future performance of the goods and warrants the future performance of the seller, rather than the goods.

Article 2 governing contracts for the sale of goods in Massachusetts is a complex, intricate statute, and the above discussion is merely a sampling of the issues and other key considerations that may arise when entering such agreements. It is always advisable to consult an attorney when entering a contract for the sale of goods, or when considering a claim stemming from the purchase of goods.

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