IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION - CIVIL

NORTH COAST ENTERPRISES d/b/a SURF MOTEL AND GARDENS,	:	MAY TERM, 2021
	:	NO. 03058
Plaintiff,	:	
	:	COMMERCE PROGRAM
v.	:	
	:	Control No. 22102874
HOTEL SUPPLIES, INC.	:	
	:	
Defendant.	:	

ORDER

AND NOW, this 31st day of May, 2023, upon consideration of defendant's Motion for Summary Judgment, the responses thereto and all other matters of record, it is **ORDERED** as follows:

1. The Motion is **GRANTED in part**, and judgment is entered against plaintiff and in favor of defendant on Counts II (Express Warranty) and III (Implied Warranty) of the Complaint; and
2. The remainder of the Motion is **DENIED**, and the parties shall proceed to trial on Count I of the Complaint for Breach of Contract.

BY THE COURT

RAMY I. DJERASSI, J.

210503058-North Coast Enterprises, Inc. D/B/A Surf Motel And

21050305800059

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NORTH COAST ENTERPRISES d/b/a SURF MOTEL AND GARDENS,	:	MAY TERM, 2021
	:	NO. 03058
Plaintiff,	:	
	:	COMMERCE PROGRAM
v.	:	
	:	Control No. 22102873
HOTEL SUPPLIES, INC.	:	
	:	
Defendant.	:	

OPINION

Plaintiff owns a motel in California. In or about March, 2019, plaintiff purchased over $100,000 worth of hotel/motel furniture from defendant Hotel Supplies, Inc. Some of the furniture carried an express five-year warranty. According to plaintiff, "barely five months after the date of the invoice . . . [t]he furniture began to [show] significant signs of damage well beyond natural wear and tear (especially in the context where this furniture was advertised and marketed as suitable for the intense usage of a motel setting), including scratches and chips out of table surfaces, damaged bathroom vanities, damaged headboards, scratches and chips out of entertainment center surfaces, damaged headboards [sic], damaged nightstands, and damaged chairs."[1] Roughly a year later, in August, 2020, plaintiff formally requested replacement of the damaged furniture or refund of the price paid.[2]

Plaintiff asserts claims for breach of contract, breach of express warranty, and breach of implied warranty of fitness for intended purpose. In doing so, plaintiff alleges that "defendant knew that plaintiff would be utilizing the furniture in the motel and indeed represented the same

[1] Complaint ¶¶ 18-19.

[2] Complaint, Ex. 5, p.1.

was suitable for that purpose. Despite this knowledge, the furniture that was provided to plaintiff [by defendant] was not of the quality, construction, or engineering capable of withstanding the ongoing use of a hospitality, hotel/motel accommodation setting."[3]

I. Plaintiff Has Proffered Sufficient Evidence to go to Trial on Its Breach of Contract/Recission Claim.

Defendant's sale of hotel/motel furniture to plaintiff is a sale of goods governed by the Uniform Commercial Code ("U.C.C."). Defendant apparently delivered most or all of the furniture to plaintiff, and plaintiff paid defendant for it. Plaintiff subsequently notified defendant of an alleged breach in the form of purported defects in the furniture, all as required under Pennsylvania U.C.C. § 2607:

> **a) Payment for accepted goods.**--The buyer must pay at the contract rate for any goods accepted.
> **(b) Effect of acceptance on remedies for breach.**--Acceptance of goods by the buyer precludes rejection of the goods accepted and if made with knowledge of a nonconformity cannot be revoked because of it unless the acceptance was on the reasonable assumption that the nonconformity would be seasonably cured but acceptance does not of itself impair any other remedy provided by this division for nonconformity.
> **(c) Notice of breach.**--Where a tender has been accepted:
> (1) the buyer must within a reasonable time after he discovers or should have discovered any breach notify the seller of breach or be barred from any remedy[.][4]

After plaintiff apparently communicated with defendant for some time, plaintiff's then counsel sent a letter to defendant requesting that defendant "either replace all of the damaged furniture you have provided to [plaintiff] or refund the money [it] spent on the furniture."[5] Defendant does not appear to have agreed to either option, so this lawsuit ensued.

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[3] Complaint ¶¶ 55-56.

[4] 13 Pa. Cons. Stat. § 2607(a)-(c).

[5] Complaint, Ex. 5, p.1.

Under the Pennsylvania UCC, a buyer may revoke its acceptance of goods in certain circumstances:

> **(a) Grounds for revocation.**--The buyer may revoke his acceptance of a lot or commercial unit whose nonconformity substantially impairs its value to him if he has accepted it:
> (1) on the reasonable assumption that its nonconformity would be cured and it has not been seasonably cured; or
> (2) without discovery of such nonconformity if his acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the assurances of the seller.
> **(b) Time and notice of revocation.**--Revocation of acceptance must occur within a reasonable time after the buyer discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by their own defects. It is not effective until the buyer notifies the seller of it.
> **(c) Rights and duties of revoking buyer.**--A buyer who so revokes has the same rights and duties with regard to the goods involved as if he had rejected them.[6]

"Whether goods are substantially impaired by nonconformity and whether revocation of acceptance is given within a reasonable time are questions of fact subject to the jury's determination."[7]

> Under section [2608(b)] of the [PA] U.C.C., a party revoking a prior acceptance of goods found to be defective must notify the seller within a reasonable time of the revocation. A party gives notice "to another by taking such steps as may be reasonably required to inform the other in ordinary course," PA U.C.C. section [1202(d)], and "(a) person has 'notice' of a fact when ... from all the facts and circumstances known to him at the time in question he has reason to know that it exists." PA U.C.C. section [1202(a)(3)]. In establishing the appropriate standard for giving notice, comment 5 to section 2608 employs the criteria of "good faith, prevention of surprise and reasonable adjustment", and provides that "(f)ollowing the general policy of this Article, the requirements of the content of notification are less stringent in the case of a non-merchant buyer," although the same comment states that merely objecting to defects in the goods does not, without more, constitute notice that the buyer is revoking his acceptance.[8]

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[6] 13 Pa. Cons. Stat. § 2608(a)-(c).

[7] Trost v. Porreco Motors, Inc., 297 Pa. Super. 393, 396, 443 A.2d 1179, 1180 (1982).

[8] Cardwell v. Int'l Hous., Inc., 282 Pa. Super. 498, 510–11, 423 A.2d 355, 361–62 (1980)

> Section [1205(a)] of the [PA] U.C.C. establishes that "a reasonable time for taking any action depends on the nature, purposes and circumstances of such action." What is a reasonable time is generally determined to be a question of fact to be resolved by the jury. Among the factors to be considered in determining the passage of a reasonable time for revoking acceptance is whether the seller attempted to correct the nonconforming nature of the goods. In such a situation, a buyer will not be penalized for affording the seller an opportunity to correct the defects and the time for revoking acceptance "should extend ... beyond the time in which notification of breach must be given, beyond the time for discovery of non-conformity after acceptance and beyond the time for rejection after tender." [PA] U.C.C. section 2608, comment 4. Applying this standard, delays in excess of two years have been held not to constitute an unreasonable delay for revoking acceptance.[9]

"Where . . . the buyer rightfully rejects or justifiably revokes acceptance then with respect to any goods involved, and with respect to the whole if the breach goes to the whole contract, the

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("Examining the evidence in light of the above parameters, we conclude that the letter from appellees' counsel on May 29, 1974, while perhaps lacking the clarity of purpose expected of a trained counselor in a commercial transaction, could have reasonably been construed by the jury as a revocation of acceptance by appellees. That notice expressed appellee's dissatisfaction with the condition of the [goods] and stated that appellees would not be satisfied until they received [replacement goods.] Thus, by this correspondence and the attendant circumstances appellant had 'reason to know' that appellees had revoked their prior acceptance.")

[9] Cardwell v. Int'l Hous., Inc., 282 Pa. Super. 498, 511-513, 423 A.2d 355, 363 (1980) ("Appellant next contends that appellees' revocation of acceptance violated PA U.C.C. section [2608(b)], which requires revocation to take place 'within a reasonable time after the buyer discovers or should have discovered the ground for it and before any substantial change in the condition of goods which is not caused by their own defects.' Appellant alleges that the delay from August 1972 until May 1974 in revoking acceptance of the home constitutes an unreasonable delay as a matter of law. We disagree. . . . In the instant case, appellees notified appellant of the defects in the trailer shortly after they began residing in the home in August 1972, and appellant's repairmen expended considerable effort to correct the defects until May 1973. Thereafter, appellant continued to be aware of appellees' dissatisfaction with the mobile home through 1973 and 1974 based upon appellees' refusal to sign the application for the certificate of title to the three-bedroom number 277 mobile home, and commencing in January 1974, appellees' attorney negotiated with appellant to placate appellees' objections and to cure the nonconformities in the home in return for appellees' agreement to execute the title application for the number 277 home. Thus, appellant continued to be made aware of appellees' dissatisfaction with the home. Moreover, the evidence was not so clear that the deteriorated condition of the goods was caused by the passage of time before revoking acceptance rather than as a result of damages stemming from the latent defects. As such, we cannot conclude as a matter of law that the twenty-one month delay from August 1972 until May 1974 before revoking acceptance was unreasonable within the meaning of [PA] U.C.C. section [2608(b)].")

buyer may . . . recover[] so much of the price as has been paid."[10] The damages sought by plaintiff in this action appear to be a refund of the purchase price for the furniture, which is a known amount. Furthermore, the issues surrounding plaintiff's alleged revocation of acceptance and the alleged substantial impairment of the goods must go to the jury. Therefore, plaintiff may proceed to trial on its claim for breach of contract.

II. Plaintiff Has Failed to Proffer Sufficient Evidence of Its Breach of Warranty Claims.

A. Defendant Appears to Have Given Plaintiff an Express Warranty.

> Express warranties by the seller are created as follows:
> (1) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.
> (2) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.[11]

In this case, defendant's Harmony Collection Brochure, which contained the specifications for some of the furniture plaintiff purchased from defendant, also contained the following language:

> Features
> * Solid wood edges, legs, panels, and trim
> * Made with hardwood solids and veneers
> * Scratch and stain resistant high pressure laminate tops
> * Smooth gliding Full extension drawers with guides
> * 5 Year Warranty[12]

This passage reads as an express warranty applicable to those pieces of furniture that were part of the Harmony Collection.

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[10] 13 Pa. Cons. Stat. § 2711(a).

[11] 13 Pa. Cons. Stat. § 2313(a).

[12] Complaint, Ex. 2, p. 2.

B. Defendant Appears to Have Given Plaintiff an Implied Warranty.

> Where the seller at the time of contracting has reason to know:
> (1) any particular purpose for which the goods are required; and
> (2) that the buyer is relying on the skill or judgment of the seller to select or furnish suitable goods;
> there is unless excluded or modified . . . an implied warranty that the goods shall be fit for such purpose.[13]

There does not appear to be any real dispute between the parties that defendant held itself out as selling hotel furniture and plaintiff bought such furniture for use in its motel. Therefore, it is not a stretch to say that the furniture came with an implied warranty that it was fit for use in a hotel/motel setting.

C. Plaintiff Failed to Proffer Sufficient Evidence of Its Breach of Warranty Claims.

"To prevail on a claim for breach of warranty under the Pennsylvania Uniform Commercial Code, a plaintiff must establish that a breach of warranty occurred and that the breach was the proximate cause of the specific damages sustained. If a party chooses to prove the defect by circumstantial evidence, it must negate abnormal use and reasonable secondary causes."[14] Expert testimony is often necessary in . . . breach of warranty cases.[15]

> [In this case, plaintiff has] provided absolutely no evidence that would tend to prove that the defect was not caused by [an] accident, or to negate [defendant's] argument in anyway. Rather, [plaintiff's] case rest[s] on the presumption that the continuing malfunctions were caused by a manufacturer's defect and that the seriousness of the defect warranted relief. [Plaintiff] failed to meet [its] burden of negating that abnormal use or a secondary cause, such as [an] accident, caused the defect."[16]

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[13] 13 Pa. Cons. Stat. § 2315.

[14] Price v. Chevrolet Motor Div. of Gen. Motors Corp., 765 A.2d 800, 809 (Pa. Super. 2000).

[15] French v. Commonwealth Assocs., Inc., 980 A.2d 623, 634 (Pa. Super. 2009).

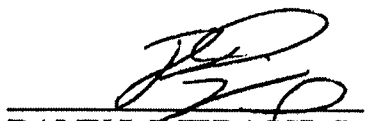
[16] Price v. Chevrolet Motor Div. of Gen. Motors Corp., 765 A.2d 800, 810 (Pa. Super. 2000).

Furthermore, "[t]he measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount.[17] Plaintiff has not proffered any evidence as to the difference in value between the furniture as warranted and as received, nor as to any other proximate damages. Therefore, it has failed to sustain its burden of proof on its claims for breach of warranty.

CONCLUSION

For all the foregoing reasons, defendant's Motion for Summary Judgment is granted in part and denied in part.

BY THE COURT



RAMY I. DJERASSI, J.

[17] 13 Pa. Cons. Stat. § 2714(b).