Protection Extends Beyond Operator in Car Lease Arrangement

By WILLIAM JABINE

Does the implied or expressed warranty of a golf car, made by the seller, by advertising or other means protect only the actual owner of the car, or does it extend its protection to the actual user of the car who has hired it from its owner?

That question was presented to a Connecticut court recently (the Court of Common Pleas, Hartford county, a court of first instance) when a man was injured when the arms and back rest of the golf car in which was riding fell apart. He had rented the car from the professional at the course on which he was playing. His action for damages was brought against the professional who owned the car, the retailer who had sold it to the professional, and the manufacturer.

The retailer filed a demurrer, contending that whatever warranty it may have made, expressed or implied, covered only the professional, who was the purchaser and owner of the car, and did not cover the plaintiff who had no ownership of the car but had merely rented it.

Asks for Dismissal

The retailer asked for dismissal of the complaint on the grounds stated above. Before a trial of the actions against any of the three defendants could be held, the court had to pass on the validity of the retailer's contention.

Much of the court's opinion is devoted to distinguishing the case from a case decided two years ago by the Supreme Court of Errors and Appeals of Connecticut. In the course of this discussion, the opinion of the Court of Common Pleas says: "The plaintiff further argues that the dealer's warranty to Gerardi (the professional — Ed.) should be extended to the plaintiff since it was in the contemplation of Magovern (the retailer — Ed.) that he might be a user of a car, and because he is a third party beneficiary of the sales contract between Gerardi and Magovern.

"Very large numbers of golf cars are in use on courses throughout this state and the country. A major percentage of them are owned and maintained by organizations or individuals operating courses. They have cars for rental to players. This is a matter of common knowledge and as such is the subject of judicial notice. (Citation) 'Facts patent to all persons concerning popular pastimes of the people are judicially known.' 31 C.J.S. Evidence Sec. 83, p. 678."

Not the Ultimate Purchaser

After pointing out that the sale with which it was concerned took place before Connecticut's adoption of the Uniform Commercial code and so was not subject to the apparently more liberal provisions of that code, the court continued: "The court in the Hamon case relied upon cases where recovery was allowed on the breach of warranty theory to injured parties who were not the ultimate purchaser, nor indeed, in any other than a gratuitous relationship to him. (Citations) To these citations must be added others in which victorious plaintiffs were not the ultimate purchaser, but in various relationships to him."

Beginning with a California case in which the court said: "We see no reason to hold that he (the defendant) escapes liability because the ultimate consumer, whose use of the product is the essential consideration of its manufacture for the market, is not a purchaser under a contract of sale", the Court of Common Pleas cities a long list of cases from other states in support of the theory that others than the actual purchaser and owner of a product are protected by the manufacturer's and seller's warranties of fitness.

Necessary for Acceptance

The opinion concludes as follows: "The manufacturer, wholesaler or retailer, in order to market his products, makes representations, and he intends that they shall be relied upon by many others besides the ultimate purchaser alone. The very nature and purpose of a myriad of marketed objects presupposes that acceptance and use by the general public, without which their manufacture would be impractical and their merchantability or sale almost impossible. These things are obviously true as to this golf car. Certainly it was intended for the precise use to which it was here put. It does not accord with logic to allow Gerardi to recover, but to deny a similar right to the plaintiff, whose use of the car, as a member of the general public, was patently anticipated.

"The demurrer is overruled." (Simpson v. Powered Products of Michigan, Inc., 192 A 2d 555.)