

N.Y. Court Rules Palmer Assumed No Personal Responsibility in Car Sales

By WILLIAM JABINE

Two disgruntled deserters from "Arnie's Army" sought satisfaction in a New York court of law recently by attempting to have Arnold Palmer declared personally liable for the alleged failure of golf cars to perform in the manner promised in the manufacturer's advertisements. Palmer was vice president of the company which made the cars and his signature was appended to sales letters which the plaintiffs received. It also appeared in facsimile on advertisements which accompanied the letter. In each case the title, vice president, followed the name.

The trial court granted a motion by Palmer's attorney for dismissal of the complaint insofar as it applied to his personal liability. The plaintiffs appealed this ruling to the Appellate Division of the Supreme Court of New York, Third Department.

In its opinion, the Appellate Division stated these facts: "The defendants, Birdie Co., Inc., and Arnold Palmer Golf Cart Co., Inc., which replaced the Birdie Co., Inc., being insolvent, the plaintiffs seek to hold Arnold Palmer personally liable for the price of the cars.

Charge Warranty Breach

"The plaintiffs' actions are premised on a breach of warranty on the sale of a Birdie golf car which the defendants allegedly represented 'could be driven under the power of its 100 amp battery a full 25 holes of golf under normal conditions without recharging'.

"The facts are not contradicted. In the fall of 1960 Stohn, who was then presi-

dent of the Plattsburgh G&CC, received a communication from the Birdie Co., Inc., which contained three advertisements, one in the form of a letter from the Birdie Co., Inc. It was addressed 'Dear Mr. Golf Club President' and signed by 'Arnold Palmer, vice president'. Enclosed with the advertisements was an order form.

"Stohn, wishing to purchase a golf car, sent in an order form accompanied by his check. Subsequently Stohn showed McDougal, president of the North County GC, the advertisements and McDougal ordered a golf car. After receiving their golf cars, the plaintiffs discovered they did not take 'hills, slopes and rough like a mountain goat' or 'drive a full 25 holes before recharging' as advertised."

After this summary of the situation which gave rise to the action, the Appellate Division declared: "There is no liability as to Palmer based on contract" and in support of this declaration, said in part:

Explicit Evidence Required

"It is well established that ' * * * where an agency is disclosed and the contract relates to the matter of the agency and is within the authority conferred, the agent will not be personally bound unless there is clear and explicit evidence of an intention to substitute or to super-add the personal liability of the agent to that of his principal.' (Citations.) The evidence produced by plaintiffs at trial consists of their testimony of the transaction with defendants and the advertisements. The contract itself and the cancelled checks were not in evidence.

"From the exhibits before us, it would appear that applicable thereto is the Restatement of the Law of Agency, Second (1957) at page 373:

"Sec. 157 Instrument in Which Agency Shown Only in One Part.

• • •

"In order to prevent himself from becoming a party to an instrument, it is only necessary that the agent should make clear that he is acting solely as a representative for a disclosed principal. If he has made this clear in any portion of the instrument, the fact that it is not equally

(Continued on page 88)



Improve
your tee with

New

CHEK
-yards

Ceramic Tee Markers

Watch the compliments come your way once your members see these beautifully glazed and rugged ceramic tee markers. Made of enduring high fired, highly glazed ceramic, they are practically indestructible. They are sold in complete 9 and 18 hole sets, custom made with your actual course distances permanently fired in. Available in championship blue, men's white or women's red. White faces, colored lettering and sides. Write directly to us for complete information and prices or ask your regular distributor.

NEW JERSEY PORCELAIN CO.,

Box 5103, Trenton, 5, N. J.

tem for weekend play in 1964. Their schedule has been staggered so as to leave every other tee time open for them on Saturdays and Sundays.

Private members at Meadow Hills have generally accepted the associate membership program, although at times there is bound to be some resentment of the intrusion that is inherent in this kind of a plan. Club officials, however, have worked hard to arrange golf schedules so that there is a minimum of inconvenience to the regular members and, in the future, further refinements of the tee-off time system will be made. We have brought our dining room operations to a break-even point and, as far as we can see, nobody has been inconvenienced because the restaurant and bar facilities have been thrown open to a larger clientele.

Perhaps the associate membership plan is not the ideal solution, but small clubs that are rather financially hard pressed have no choice but to adopt it if they are to stay in business. It has enabled us to make improvements to both the course and clubhouse and more of these are planned for the future when increased revenue will become available. These things have been done without adding to the private member's assessment and with very little, if any, loss of privileges to him.

No Personal Responsibility

(Continued from page 62)

clear in other parts is immaterial. It is not necessary that he should constantly appear throughout the instrument to act only as a representative.

"Since the ads were all sent under the same cover, one cannot be read without the other. As to contractual liability, they establish that Palmer was acting solely in his capacity as vice-president of the Birdie Co., Inc.

"There was no personal liability assumed by Palmer."

After commenting upon the fact that this phase of the action is unique and not previously decided by the courts of this state, the court discussed and disagreed with authorities cited by the plaintiffs



WEED KILLERS



INSECTICIDES



**GOLF BALL
WASH**



**MOLE & GOPHER
KILLER**

DOLGE PRODUCTS for MAINTENANCE

FREE TURF OF DANDELIONS, PLANTAIN E.W.T. (2, 4-D) WEED KILLER

Selective. Rids turf of dandelions, plantain, other broad leafed weeds without injuring good grass. Non-poisonous. Dilute up to 400 parts of water; spray.

RID TURF OF DESTRUCTIVE INSECTS SOLEXTO

Kills bugs in and on turf. Dilute in up to 400 parts of water.

EXTERMINATE MOLES AND GOPHERS NOMOLE

Finishes moles; punch holes in runs and pour in. Kills gophers, too.

Eradicate Weeds on Parking Lots, Roads SS WEED KILLER

Can kill any weed it hits. Use on parking lots, drives, walks, sand traps, and other places where you want no growth whatsoever.

Wash Golf Balls, Quickly, Thoroughly DOLCO PINE BALL WASH

Right for rotary or paddle machines; has pine aroma; efficient and agreeable.

For literature on above products write to The C. B. Dolge Company, Westport, Connecticut



in support of their contention that by allowing his signature to appear on the sales letter and in facsimile on the three advertisements, Palmer had assumed personal liability for the performance of the golf cars as advertised.

In conclusion the Court said: "A reading of the record and examination of the advertisements, including the letter, demonstrate no basis for personal liability. The plaintiffs testified they knew that they were doing business with Birdie Co., Inc., of which Palmer was vice-president, and that the order blank — not in evidence — was directed to Birdie Co., Inc.

"This record does not sustain any legal basis for a finding of ambiguity as to the contractual relationship between the plaintiffs and Palmer, or any direct assumption of personal liability by Palmer."

Teenage Market

(Continued from page 48)

age purchases on to parents' accounts, some sales specialists feel, is inconsistent with attempts to attract teenage customers. If a shop wants teenage sales, it should be willing to recognize the potential young customers as financially responsible individuals and extend direct credit to them.

More conservative merchandisers point out that there are no legal obligations in teenage credit contracts. A compromise step, these salesmen suggest, is teenage accounts guaranteed by parents.

Several department store and specialty shop credit managers have pointed out that the pro shop is in a particularly good position to analyze the character of its customers. Close relationships not usually enjoyed by local stores, permit pro shop operators to determine credit risks in given situations. Pro Dick Farley at Montauk Downs GC in Montauk Point, N.Y., has had experience that supports this idea. Farley has extended credit to teenagers in amounts up to \$500 on little else than his judgment of their character. "Over the years, there have been surprisingly few bad accounts in this age group," he says. "Most kids are very conscientious about paying their debts promptly."