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Extension of Liability in the Bailment for Hire

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involved.[42] The court, treating the case as one of first impression, gave no specific criteria for future reference other than that of announcing a general rule without specifying what the government must show to negate the newsman's privilege.[43] It is submitted that the court employed questionable authority to support general statements in order to achieve the desired result.[44] Had the court utilized more precise legal reasoning to develop the opinion with a firm foundation, this decision could have had far-reaching effects. However, later decisions have either rejected the extended interpretation of "freedom of the press" and followed prior precedent[45] or have limited the application of *Caldwell* to the factual situation presented.[46]

R. FRED LEWIS

EXTENSION OF LIABILITY IN THE BAILMENT FOR HIRE

Plaintiff, United Airlines, was in need of a method by which passengers requiring wheelchairs could be loaded onto and unloaded from its aircraft. This need was revealed to the defendant, W. E. Johnson Equipment Co., Inc., and the two entered into a month-to-month lease agreement for a forklift type hoist, with lessor furnishing all maintenance, repair, and service. Fifteen days later, while a passenger was deplaning, the hoist fell and the passenger was severely injured. Plaintiff settled with the passenger and then brought suit against the Johnson Equipment Company for indemnification, alleging negligent maintenance and breach of implied

42. The court stated: "It is not every news source that is as sensitive as the Black Panther Party. . . ." 434 F.2d at 1090.

43. *See* note 8 *supra.*

The only suggestion of the Government's burden to negate such a privilege was advanced by the reporter.

> . . . the Government must show at least: (1) that there are reasonable grounds to believe the journalist has information, (2) specifically relevant to an identified episode that the grand jury has some factual basis for investigating as a possible violation of designated criminal statutes within its jurisdiction, and (3) that the government has no alternative sources of the same or equivalent information whose use would not entail an equal degree of incursion upon First Amendment freedoms. Once this minimal showing has been made, it remains for the courts to weigh the precise degree of investigative need that thus appears against the demonstrated degree of harm to First Amendment interests involved in compelling the journalist's testimony.

Caldwell v. United States, 434 F.2d 1081, 1090 (9th Cir. 1970). *See* People v. Dohrn, Case No. 69-3808, May 20, 1970, Cir. Ct. Cook County, Calif., Criminal Division.

44. *See* note 31 *supra.*

45. *See, In re* Pappas, 39 U.S.L.W. 2444 (Mass. Sup. Jud. Ct. 1971).

> We adhere to the view that there exists *no* constitutional newsman's privilege, either qualified or absolute, to refuse to appear and testify before a court or *grand jury.*

In re Pappas, *supra* at 2444.

46. United States v. Calley, 39 U.S.L.W. 2463 (Army General Court Martial, 5th Jud. Cir. 1971).

warranty of fitness for intended use. The trial court directed a verdict for defendant on the implied warranty count, the jury found in defendant's favor on the negligence issue and judgment was entered. The District Court of Appeal, Fourth District, reversed.[1] On certiorari, the Supreme Court of Florida, *held*, affirmed: In the absence of a contrary agreement, a lessor who has reason to know the purpose for which the leased chattel is to be used and reason to know that the lessee has relied upon the lessor's judgment in furnishing a suitable chattel, impliedly warrants that the chattel is fit for that purpose. *W. E. Johnson Equipment Co. v. United Airlines, Inc.*, 238 So.2d 98 (Fla. 1970).

The concept of implied warranties covering the quality of goods is firmly embedded in modern sales laws. These warranties provide the consumer with a basis of relief for unsuitable or defective merchandise.[2] Under the UNIFORM COMMERCIAL CODE, which has been adopted in Florida,[3] a seller, who is a merchant dealing in goods of that kind, warrants that the goods will be of merchantable quality.[4] In addition, a seller who knows the particular purpose for which an article is to be used and also knows that the buyer is relying on his (the seller's) expertise in furnishing a suitable article, warrants that the goods will be fit for that purpose.[5]

There is, however, no justification for the assertion that because warranties are implied in sales cases, the courts are precluded from implying such warranties in non-sales cases.[6] In fact, a lease (or bailment for hire)[7] differs from a sale only in the contemplated future return of the chattel: a sale transfers ownership in exchange for a price while a bailment for hire transfers mere possession in exchange for a price.[8] Nevertheless, because a lease is not technically the equivalent of a sale, judges

1. United Airlines, Inc. v. W. E. Johnson Equip. Co., 227 So.2d 528 (Fla. 4th Dist. 1969).

2. Farnsworth, *Implied Warranties of Quality in Non-Sales Cases*, 57 COLUM. L. REV. 653, n.1 (1957).

3. The sales warranties are found in FLA. STAT. §§ 672.312 to 672.318 (1969).

4. IMPLIED WARRANTY: MERCHANTABILITY: USAGE OF TRADE.

> (1) A warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind.

UNIFORM COMMERCIAL CODE § 2-314; FLA. STAT. § 672.314 (1969).

5. IMPLIED WARRANTY: FITNESS FOR PARTICULAR PURPOSE

> 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.

UNIFORM COMMERCIAL CODE § 2-315; FLA. STAT. § 672.315 (1969).

6. Farnsworth, *supra* note 2, at 653.

7. In general, legal sources have used "bailment for hire" and "lease" interchangeably to mean temporary possession in exchange for a price. While BLACK'S LAW DICTIONARY (rev. 4th ed. 1957) makes the distinction that a bailment for hire is a contract by which the bailor pays "an adequate recompense for the safe-keeping of the thing intrusted to the custody of the bailee" (at 179) while a lease is a "grant of use and possession, in consideration of something to be rendered" (at 1035), it is submitted that this is an overly technical distinction. Comment, *The Extension of Warranty Protection to Lease Transactions*, 10 B.C. IND. & COM. L. REV. 127, n.3 (1968). The terms will be used interchangeably herein.

8. Farnsworth, *supra* note 2, at 655 n.16.

have encountered problems when attempting to extend the warranty protections. Courts have been more willing to make the extension when dealing with a dangerous instrumentality, recognizing that the same elements that justify warranty imposition in sales cases were present.[9] However, with the increasing responsibility which has been imposed on the seller of goods, and with the increasing numbers of rental businesses,[10] parallel reasoning has been applied to place the risk of harm on the one who places such goods into the mainstream of a commercial society.[11] It is hardly surprising, therefore, that as the courts appreciate the artificiality of the sales-lease distinction, the concept of implied warranty has been recognized in the lease situation.[12] The UNIFORM COMMERCIAL CODE itself alludes to the possibility of such an extension.[13] Encyclopedias[14] and legal periodicals[15] have frequently noted the analogy with favor, as has the RESTATEMENT OF TORTS[16] and such distinguished authorities as

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9. *See* note 12 *infra.*

10. In Cintrone v. Hertz Truck Leasing & Rental Serv., 45 N.J. 434, 448, 212 A.2d 769, 776 (1965), the court takes judicial notice of the growth of the business of renting motor vehicles, trucks, and cars for pleasure.

11. *See, e.g.,* Brown, *Rights and Duties of Bailor and Bailee Under the Law of Pennsylvania,* 18 TEMP. L.Q. 199 (1944); Farnsworth, *supra* note 2 at 653; Comment, *The Extension of Warranty Protection to Lease Transactions, supra* note 7 at 128; Comment, *Implied Warranties of Quality: Protection in Chattel Leases,* 1969 U. ILL. L.F. 115; Comment, *Bailee's Rights Against Bailor—A Look at the Developments,* 4 WILLAMETTE L.J. 421 (1967); Notes, 31 IND. L.J. 367 (1956), 17 MINN. L. REV. 210 (1933), 2 VAND. L. REV. 675 (1949); Annot., 68 A.L.R.2d 850, 854 (1959).

12. *See, e.g.,* Cintrone v. Hertz Truck Leasing & Rental Serv., 45 N.J. 434, 212 A.2d 769 (1965) (truck); Eastern Motor Express, Inc. v. A. Maschmeijer, Jr., Inc., 247 F.2d 826 (2d Cir. 1957) (drums); Hoisting Engine Sales Co. v. Hart, 237 N.Y. 30, 142 N.E. 342 (1923) (hoist); Mowbray v. Merryweather, [1895] 2 Q.B. 640 (C.A.) (chain); Leach v. French, 69 Me. 389 (1879) (horse); Sims v. Chance, 7 Tex. 561 (1852) (slave).

13. Although section 2-313 is limited in its scope and direct purpose to warranties made by the seller to the buyer as a part of a contract for sale, the warranty sections of this Article are not designed in any way to disturb those lines of case law growth which have recognized that warranties need not be confined either to sales contracts or to the direct parties to such a contract. They may arise in other appropriate circumstances such as in the case of bailments for hire, whether such bailment is itself the main contract or is merely a supplying of containers under a contract for the sale of their contents.

UNIFORM COMMERCIAL CODE § 2-313, comment 2.

14. *See* 8 AM. JUR. 2d *Bailments* § 144 (1962); 8 C.J.S. *Bailments* § 25 (1962). The general principle, in the words of 8 AM. JUR. 2D *Bailments* § 144, is:

> [I]n the absence of an agreement to the contrary, the bailor of a chattel to be used by the bailee for a particular purpose known to the bailor, impliedly warrants the reasonable suitability of the chattel for the bailee's known use of it.

15. *See* note 11 *supra.*

16. This can be seen by a reading of two sections of RESTATEMENT (SECOND) OF TORTS (1964) in conjunction.

> CHATTEL KNOWN TO BE DANGEROUS FOR INTENDED USE:
> One who supplies directly or through a third person a chattel for another to use is subject to liability to those whom the supplier should expect to use the chattel with the consent of the owner or to be endangered by its probable use, for physical harm caused by the use of the chattel in the manner for which and by a person for whose use it is supplied, if the supplier

Williston[17] and Prosser.[18]

Florida's position on implied warranty reflects the principles discussed herein. In 1914, the Florida Supreme Court, in *Williamson v. Phillipoff*,[19] held that because the lessor of a lighter knew the specific purpose for which the lighter was to be used, he (the lessor) was liable for damages on the basis of an implied warranty of fitness. In 1963, the third district retreated from this position in *Brookshire v. Florida Bendix Co.*,[20] and held that the duty of a bailor of a coin-operated washing machine extended only to a "duty on his part to exercise due care to furnish an article in a reasonably safe condition."[21] Nonetheless, the *Williamson* theory that the doctrine of implied warranty has application even to products which are the subject of a bailment, was re-adopted by the Supreme Court in 1968 in the case of *Toombs v. Fort Pierce Gas Co.*[22] Thus, the decision reached in the instant case is a rejection of the limited liability espoused in *Brookshire* and an affirmation of the position taken in *Williamson* and echoed in the dictum of *Toombs,* that the lessor's liability does include a warranty of fitness under appropriate circumstances. The court notes the adoption by Florida of the UNIFORM COMMERCIAL CODE.[23] It then discusses the reasons for extending such principles to lease transactions: (a) protection of the consumer in an era of expansion of rental enterprises on the basis of public policy; (b) reliance on the expertise of the lessor due to the contemplation of temporary possession; (c) greater ability on the part of the lessor to sustain and distribute the

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(a) knows or has reason to know that the chattel is or is likely to be dangerous for the use for which it is supplied, and

(b) has no reason to believe that those for whose use the chattel is supplied will realize its dangerous condition, and

(c) fails to exercise reasonable care to inform them of its dangerous condition or of the facts which make it likely to be dangerous.

RESTATEMENT (SECOND) OF TORTS § 388 (1964).

LESSORS OF CHATTELS KNOWN TO BE DANGEROUS:

A lessor who leases a chattel for the use of others, knowing or having reason to know that it is or is likely to be dangerous for the purpose for which it is to be used, is subject to liability as a supplier of the chattel.

RESTATEMENT (SECOND) OF TORTS § 407 (1964).

17. One who lets property for hire may reasonably be subjected to the same implied and constructive warranties as one who sells goods. . . . Analogy with the law of sales justifies the further statement that if the hirer reasonably relied on the bailor's superior skill or knowledge in furnishing suitable property, the latter would be liable even though in fact ignorant of the defects in the goods which he furnished.

4 S. WILLISTON, CONTRACTS § 1041 (4th ed. 1967).

18. It frequently is said that the bailor of a chattel for hire impliedly warrants its fitness for the bailee's use. . . . No reason suggests itself to prevent the ultimate extension of such liability, subject to all of the limitations now found in the case of sales, to any person who furnishes goods under a contract.

W. PROSSER, LAW OF TORTS § 95 (3d ed. 1964).

19. 66 Fla. 549, 64 So. 269 (1914).

20. 153 So.2d 55 (Fla. 3d Dist. 1963).

21. *Id.* at 58.

22. 208 So.2d 615 (Fla. 1968).

23. 238 So.2d 98, 99 (Fla. 1970).

loss as one of the hazards of doing business.[24] Whether or not the warranty of fitness arises will therefore depend, as in the sales transaction, on the totality of the commercial setting. This setting includes, but is not limited to, such factors as expertise of the lessor, reliance by the lessee, and the general character of the lessor's business.[25] In conclusion, the court states a rule which echoes the language of the UNIFORM COMMERCIAL CODE,[26]

> In the absence of an agreement to the contrary, where the lessor has reason to know any particular purpose for which the leased chattel is required and that the lessee is relying upon the lessor's skill or judgment to select or furnish a suitable chattel, there is an implied warranty that the chattel shall be fit for such purpose.[27]

In the opinion of this writer, the position taken by the Supreme Court of Florida in the case at bar is a realistic one which recognizes the demands of a commercial society in which greater numbers of people are leasing rather than purchasing. Since the sale-lease distinction is, at best, an artificial one, there is little justification for not applying the same theory of liability in both situations. It is clear that the movement towards extending warranty liability in chattel lease cases will necessitate greater protection for the lessee. It is clear that the principles of the UNIFORM COMMERCIAL CODE encourage and afford an ideal and convenient means for the development of this line of judicial reasoning.

KAREN BETH KAY

IMPEACHMENT OF A DEFENDANT IN A CRIMINAL CASE: THE DOOR IS OPEN

The defendant, Viven Harris, was charged with the sale of heroin. After arrest but without having been given the Miranda warnings, he made certain statements to the police. These statements, concerning what the defendant had sold—heroin or baking powder—were introduced into evidence at defendant's trial for impeachment purposes to contradict parts of his direct testimony. The jury was instructed to consider these statements *only* in the context of the defendant's credibility and not as an admission or evidence of guilt. Harris was found guilty. The Supreme Court of New York affirmed.[1] The New York Court of Appeals affirmed in a *per curiam* opinion holding that notice need not be given to a defendant before

24. *Id.* at 100.
25. *Id.*
26. UNIFORM COMMERCIAL CODE § 2-315. *See* note 5 *supra.*
27. 238 So.2d 98, 100 (Fla. 1970).

1. 31 A.D.2d 828, 298 N.Y.S.2d 245 (1969).