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Contracts—Warranties Of Manufacturer Concerning Design And Construction of Generating Units Declared Not Prospective in Nature

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extensions. The opinion states that although a landlord is willing to give an option to purchase for a limited period, the considerations for such an agreement cannot sustain a twenty-year interval. Without specific reference otherwise, the landlord's intention will be deemed only to grant the purchase option for the life of the lease wherein it is contained:

> Although the landlord may be content for a fixed time to be bound to a fixed price, it is another matter altogether to say that the option is to continue for an extended period *unless clear words are used for that purpose.*[7] (Emphasis supplied.)

The decision is a proper one. What is an option? It is simply a purchase of time during which the party securing it may be assured the property will not be disposed of by the landlord. This both protects his desire to purchase and allows him an opportunity to consider all the facets of the property in determining whether the purchase will be advantageous. Certainly such an option is an added inducement to the lessee to rent. However, the extra consideration, clearly is to run only for the term specified, and in absence of a specification, for the term of the lease. This is necessarily so, for the consideration received for granting the option is the signing of the lease which is extinguished at the termination of the term. It is improbable that a property owner, especially if he is a businessman, will create a situation where his property can be purchased for a specific price indefinitely. The value of land fluctuates and the factors prompting such an offer change with such rapidity, that such a contract could prove almost ridiculous. The conclusion of the Court reflects this common intention by validating the simple extension agreements, which are less arduous and less expensive, while declaring the agreements do not apply to all the stipulations of the original contract, unless they are specifically referred to in the contract. This holding and these added considerations do not advocate a rule which would make a long term purchase option clause in a lease or the extension of it impossible. They simply attempt to prevent a court or the parties from misconstruing the intention of the parties making such an agreement by requiring them to be explicit, when their motives are not obvious upon scrutinizing the document, or when their intention varies from general contracts of this type.

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WARRANTIES OF MANUFACTURER CONCERNING DESIGN AND CONSTRUCTION OF GENERATING UNITS DECLARED NOT PROSPECTIVE IN NATURE

A generator manufacturer sold separately two sets of generating units to a utility company for the latter's use at its generating plants. The manufacturer orally guaranteed that "the sets were so designed and constructed that with

7. Sherwood v. Tucker, 2 Ch. 440 (1924).

normal operation they would last 30 years," and it impliedly warranted that "the sets would be capable of continuous operation at full rated capacity for the usual life span of 30 years."[1] The first set (hereafter called the Newport set) was put into operation at Newport, Vermont in December 1948. A second set was installed in plaintiff's plant at Nogales, Arizona (hereafter called the Nogales set), and controversy arose almost immediately concerning the capacity and suitability of this set. The utility company instituted proceedings in a federal court, whereupon both parties agreed to a series of tests to be conducted by engineers of both companies. The results of these tests formed the basis for a settlement agreement by which the utility company accepted the Nogales set in its original condition and the manufacturer reduced the unpaid balance by a considerable sum. Subsequently other defects were found in the Nogales set and similar defects were then found in the Newport set, which had been installed more than six years beforehand. The utility company sued, joining several causes of action. On appeal from a dismissal of all causes of action, *held,* affirmed, three judges dissenting in part, one judge concurring in part only. Because the settlement agreement was complete on its face and there was no showing of fraud in its inducement, it was a bar to future suits upon the Nogales contract. Furthermore, since an action was not begun until after the statute of limitations had elapsed, the suit for defects in the Newport set was barred. *Citizens Utilities Co. v. American Locomotive Co.,* 11 N.Y.2d. 409, 184 N.E.2d 171, 230 N.Y.S.2d 194 (1962).[2]

Generally, warranties, both express and implied, are only applicable to the present condition of the goods. Therefore, as Professor Williston has declared, "The representation (that a machine will work well for a certain number of years) means that the machine as it stands is so well constructed as to be capable of enduring use for that period."[3] If the warranties only apply to present conditions, defects in merchandise are considered to be discoverable upon delivery, and a cause of action arising out of the sale accrues at the time the sale is completed.[4] Therefore, in New York a suit upon a cause of action based on a present warranty must be instituted within six years, the statutory limit applicable to such warranties, after the sale is completed.[5] However, there is an exception to the general rule. "If the seller promises that something shall happen or shall not happen to the goods within a specified time, the promise though it may be called a warranty cannot be broken until that time has elapsed and until then the statute [of limitations] will not begin to run."[6] The

1. Citizens Utilities Co. v. American Locomotive Co., 11 N.Y.2d 409, 416, 184 N.E.2d 171, 174, 230 N.Y.S.2d 194, 198 (1962).
2. Citizens Utilities Co. v. American Locomotive Co., 15 A.D.2d 473, 222 N.Y.S.2d 246 (1st Dep't 1961).
3. 1 Williston, Sales, § 212, p. 549, n.5 (rev. ed. 1948).
4. Liberty Mut. v. Sheila-Lynn Inc., 270 App. Div. 835, 61 N.Y.S.2d 373 (1st Dep't 1946) (mem.), affirming 185 Misc. 689, 57 N.Y.S.2d 707 (Sup. Ct. 1945).
5. N.Y. Civ. Prac. Act § 48(1).
6. 1 Williston, Sales, op. cit., § 212(a), p. 550.

only New York case recognizing this exception is *Woodworth v. Rice Bros.*[7] There the seller warranted that the saplings he sold would bear Elberta and Willet peaches; however, several years later, the trees bore peaches of a different variety. The Court there held that since the guarantee related entirely to the future and because the buyer could not know in advance what variety of peach the tree would bear, the statute of limitations began to run at the time the tree bore the fruit and not at the time of the completion of the sale.

The Court in the instant case held that the sweeping broadness of the settlement agreement conclusively barred the plaintiff from suing for defects in the Nogales set. It further declared that the rule barring parol evidence prevented any suit upon the defendant's oral representations as to the Newport set. The only problem left to decide was whether the implied warranty pertaining to the Newport set was prospective in nature. Declaring that "where the warranty is as to kind, characteristics, suitability, etc., of the sold article the limitation runs from the date of sale and present inability to ascertain quality or condition is irrelevant,"[8] the Court concluded that warranties as to design and construction merely relate to present suitability. Taking cognizance of the possible difficulties of discovering defects and the unfairness which might result, the Court concluded that such unfairness was inherent in the statute of limitations. The dissent was disturbed by the consequences of the Court's holding, believing that it gave manufacturers a distinct advantage over purchasers by allowing manufacturers to rely upon the statute of limitations to relieve them of their own warranties.

This decision is important because it relieves manufacturers from responsibility after a prescribed length of time and puts a definite burden on the purchaser to discover all defects within that time. Although *Woodworth* only involved an express warranty, courts in foreign jurisdictions have recognized that implied warranties may also be prospective in nature.[9] Logically, the Court, by extending its holding in the *Woodworth* case, might have done likewise. Unlike the case of fruit trees, however, it appears that defects in this type of machinery are discoverable within six years, especially since utility companies maintain large staffs of engineers who design, operate, and test machinery. For this reason, the Court was correct in placing this particular case outside the narrow limits of prospective warranties. However, machinery exists today in which defects are virtually impossible to detect readily and whose expected life is longer than the statute of limitations. Certainly an extension of the *Woodworth* rule would be permissible in these circumstances.

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7. 233 N.Y. 577, 135 N.E. 925 (1922), affirming 193 App. Div. 971, 184 N.Y.S. 958 (4th Dep't 1920), affirming 110 Misc. 158, 179 N.Y.S. 722 (Sup. Ct. 1920).

8. Citizens Utilities Co. v. American Locomotive Co., 11 N.Y.2d 409, 416, 184 N.E.2d 171, 174, 230 N.Y.S.2d 194, 198 (1962).

9. E.g., Aced v. Hobbs-Sesack Plumbing Co., 55 Cal. 2d 573, 360 P.2d 897 (1961).