Revue générale de droit

LOUISIANA REDHIBITION: AN OVERVIEW

William F. Bologna, Esq.

Volume 10, Number 1, 1979

URI: https://id.erudit.org/iderudit/1059626ar
DOI: https://doi.org/10.7202/1059626ar

See table of contents

Publisher(s)

Éditions de l'Université d'Ottawa

ISSN

0035-3086 (print)
2292-2512 (digital)

Explore this journal

Cite this article

Bologna, W. F. (1979). LOUISIANA REDHIBITION: AN OVERVIEW. *Revue générale de droit*, *10*(1), 149–155. https://doi.org/10.7202/1059626ar

Thème III
RECOURS EN GARANTIE

LOUISIANA REDHIBITION: AN OVERVIEW

by William F. BOLOGNA, Esq.
McGlinchey, Stafford, Mintz and Hoffman
New Orleans, Louisiana.

INTRODUCTION.

Preliminarily, I would like to thank the Association Henri-Capitant, Louisiana and Quebec Chapters, for inviting me to participate in this symposium. It is only through programs such as this that we are able to share our experiences and thereby more intelligently address the problems that confront all of us in providing fair and equitable solutions to consumer problems. I must begin by confessing that I represent manufacturer interests in Louisiana, with particular emphasis on the defense of automobile warranty claims. My philosophy has always been to insure that the warranty rights of the consumer are protected but not at the expense of placing unreasonable and impossible burdens upon the manufacturer of a product. As a result, 95% of all warranty claims are settled outside of court on an amicable basis.

I have reviewed Quebec's proposed *Consumer Protection Act* and I must honestly confess that my feelings are extremely negative. This is neither to denigrate from the noble effort nor detract from the well written provisions of the legislation. Rather, it is my opinion that the proposed Act attempts to deal with product warranty claims in far too specific a fashion, thereby making a determination of the consumer's rights a more difficult task. Quite simply, my thesis is that the Louisiana experience in solving warranty claims, within the context of a limited number of Civil Code Articles, is extremely effective in protecting consumer rights. The 28 Civil Code Articles[1] address the problems of warranty succinctly and yet in a general manner, so as to allow a determination of the consumer's rights without reference to arbitrary standards for granting the consumer relief on a warranty claim.

---

* J.D., 1974, Tulane University; Member of the Bar, New Orleans, Louisiana.

[1] Louisiana Civil Code, Articles 2520-48, entitled *"Of the Vices of the Thing Sold."*

The application of the Louisiana Civil Code has been flexible and, I believe, fair to the consumer. The weakness of the Louisiana approach is the lack of consistent interpretation of the Civil Code Articles by the courts. Critics claim that the manufacturers' warranty obligation is made indefinite by this *ad hoc* judicial application and as a result is detrimental to consumer interests. Specifically, the manufacturer protects himself from inconsistent judical interpretation of its warranty obligation by raising prices of the product. Nonetheless, while there are weaknesses, the Louisiana experience in warranty actions has resulted in an extremely effective tool for the consumer. Additionally, with minimal legislative house cleaning, the Civil Code can be a model for solving warranty problems. The Code can be an important remedy for the consumer and yet provide a fair forum for the manufacturer to defend an action where the claim is not justified.

The most beneficial thing I can bring to this gathering is to provide you with a broad overview of the relevant Louisiana Civil Code Articles, and point out the areas that the Louisiana Civil Code handles extremely well and address the problems that have arisen in Louisiana. I will humbly suggest solutions to Louisiana's problems, with the result, I trust, that I will have provided you with the framework of a good warranty statute. I should add that it is my firm belief that warranty rights should be protected by a limited number of statutory provisions, which are both understandable to the consumer and easily applied by the judiciary.

LOUISIANA'S WARRANTY REMEDIES.

Under the Louisiana Civil Code, the buyer of a defective product has three possible remedies, depending upon the nature of the defect and whether the seller had knowledge of the defect. Specifically, Louisiana Civil Code Articles 2520-2540, deal with the action in redhibition, *i.e.*, a suit to rescind the sale of a defective product where neither the buyer nor the seller had knowledge of the defect. Articles 2541-2544 relate to the action in *quanti minoris*, an action for reduction of the purchase price where the defect is minor and does not render the product useless; or where the consumer wishes only to recover a partial return of his purchase price. Finally, Articles 2545-2548, allow a rescission of the sale, plus damages, including attorney's fees, against the seller who had knowledge of the defect and failed to declare it to the buyer. It is in this latter area that the Louisiana consumers possess a powerful weapon and manufacturers are placed in an extremely difficult, and in some cases unfair, position in defending warranty claims. I shall address this problem more specifically in a few moments.

REDHIBITION: SELLER IN GOOD FAITH.

The Louisiana Civil Code defines redhibition as the avoidance of a sale because of a latent vice or defect in the thing sold, which renders it either absolutely useless or its use so inconvenient and imperfect that it must be supposed that the buyer would not have purchased it had he known of the defect.[2]

[2] Louisiana Civil Code, Article 2520 (1870).

The determination whether a product is defective is primarily a question of fact. The test provided by the Code allows a trier of fact to rescind the sale because a defect renders the product either useless or its use so imperfect "it must be supposed" that the buyer would not have purchased it. Today in Louisiana, the "must be supposed" test is liberally applied, resulting in a greatly expanded remedy for the consumer.

It should be noted that the Louisiana jurisprudence has developed a special category of redhibitorily defective products, commonly referred to as "the lemon." A lemon is plagued by problems, minor in nature, but so numerous that "it must be supposed" an ordinary buyer would not have purchased the product. Stated more simply, the lemon is a product with numerous defects, which individually, are insignificant, but together warrant redhibition.[3] It is through this flexible approach to defining a redhibitory defect that the Louisiana consumer has benefited most. Indeed, the job of defending manufacturer interests against the lemon is difficult, however, it is my opinion that rescinding the sale of a true lemon is a proper remedy for the consumer.

The Louisiana Civil Code does provide that if a defect is apparent, it is not redhibitory and cannot be the basis for rescinding the sale of the product.[4] Further, if the seller declares the defect to the buyer, the buyer cannot later file an action in redhibition.[5] However, if the seller declares that the product has a specific quality which is absent, redhibition is the appropriate remedy to the buyer, *if* the absent quality is the principal motive for purchasing the product.[5] Therefore, the Civil Code provides the consumer with a complete remedy and yet protects the manufacturer by allowing him to avoid suit by simply declaring to the consumer any problems that exist in the product.

In the case of a good faith seller, *i.e.*, one that has no knowledge of the defect, the Civil Code provides that the seller is "only bound to repair, remedy or correct the vices...."[7] If the seller cannot repair the vice, he must return the purchase price, reimburse the reasonable expenses of the buyer, including any costs to preserve the thing. However, the seller is entitled to off-set the amount owed the purchaser by the value of the buyer's use of the product while it was in his possession. The important feature of this provision of the Civil Code is that it recognizes that the complex products of modern society may require repair and adjustment to make them fully serviceable. Therefore, the seller is granted the opportunity to correct any problems with the product and foreclose a suit to rescind the sale. As will be discussed later, the manufacturer of a product is not afforded this relief because manufacturers are presumed to know of defects and, consequently, cannot be in good faith.

---

[3] See *Cleveland* v. *Chrysler Motors Corp.*, 259 So. 2d 450 (La. App. 4th Cir. 1972).
[4] Louisiana Civil Code, Article 2521 (1870).
[5] Louisiana Civil Code, Article 2522 (1870).
[6] Louisiana Civil Code, Article 2529 (1870).
[7] Louisiana Civil Code, Article 2531 (1870).

QUANTI MINORIS.

The second weapon in the Louisiana consumer's arsenal is the action in *quanti minoris*.[8] This cause of action is available to the consumer for defects which diminish the value of the product. The remedy is a reduction of the purchase price, approximating the loss of value in the product because of the defect. Additionally, the buyer may elect to seek a reduction in price even if the hidden defect would support an action in redhibition. If an action in redhibition is brought by the buyer, the court may decree a reduction in purchase price and not rescind the sale. However, if the purchaser files his action as one in *quanti minoris*, the court may not rescind the sale even if the information justifies this relief.[9]

One problem of note in this area, is that a reduction in purchase price can be substantial and actually place the seller in a worse position than if the court had ordered a complete rescission. In this situation, it would be more fair to allow the seller the choice of rescinding the sale or returning the portion of the purchase price as ordered by the court. Unfortunately, Louisiana has not chosen this approach and as a result, damages in *quanti minoris* have exceeded 50% of the purchase price of the product because of defects which might be described as merely a nuisance.[10]

REDHIBITION: SELLER IN BAD FAITH.

Louisiana Civil Code Articles 2545-2548 relate to the action in redhibition where the seller has knowledge of the defect. In this action, the successful purchaser is entitled not only to the return of the purchase price but also for all damages occasioned by the consumer's use of the product. The jurisprudence is replete with cases in which the incidental damages occasioned by the use of the product has exceeded the value of the product itself. I must add that Louisiana has not shattered the barrier between a tort remedy and an action in warranty, where personal injuries resulted from the use of a defective product. This topic is broad and far ranging and time does not permit a discussion of this interesting and important question.[11]

The seller in bad faith is also accountable for the reasonable attorney's fees incurred by the purchaser in having to bring an action in redhibition for rescission of the sale.[12] It is this rather punitive provision that provides the consumer with a formidable weapon in enforcing his rights against the manufacturers of defective products.

Louisiana has jurisprudentially developed the rule that a consumer may file suit directly against the manufacturer to enforce his warranty rights. Specifically,

---

[8] Louisiana Civil Code, Article 2541 (1870).

[9] Louisiana Civil Code, Article 2543 (1870).

[10] See *Wade* v. *McInnes-Peterson Chevrolet, Inc.*, 307 So. 2d 798 (La. App. 1st Cir. 1975).

[11] See ROBERTSON, *Manufacturers' Liability For Defective Products in Louisiana Law*, 50 Tulane Law Review, 50 (1975).

[12] Louisiana Civil Code, Article 2545 (1870), as amended in 1968.

the Louisiana Supreme Court abolished the requirement of privity in 1972 and as a result most actions in warranty are brought directly against the manufacturer of the product.[13] Additionally, the jurisprudence has developed the principle that a manufacturer is presumed to know of the defective condition in the product.[14] As a result, a manufacturer is in bad faith and answerable to the successful consumer for a return of the purchase price, damages, and reasonable attorney's fees.

The elimination of privity, coupled with the presumption that the manufacturer is in bad faith provides the consumer with the ability to secure the return of his purchase price, all damages and expenses incurred and the cost of bringing the action from the manufacturer of the product. It is in this area that Louisiana has, in my humble opinion, dealt unfairly with the manufacturer of products. The presumption that the manufacturer knows of the defect is an acceptable obligation upon manufacturers, however, the failure of Louisiana to provide a manufacturer with the opportinuty to remedy the defect and the automatic assessment of attorneys' fees against the manufacturer if a defect is found, places the manufacturer in an impossible position in defending warranty claims.

One further anomaly that has developed in the jurisprudence is that the manufacturer is also liable for the seller's (the retailer's) attorneys' fees if the purchaser is successful in an action to rescind the sale. Specifically, the retail dealer of the product, if sued in redhibition, normally relies upon the fact that he was unaware that there was a defect in the product and therefore avoids payment of any damages and attorneys' fees to the plaintiff. Additionally, most sellers, once sued by the purchaser, file a demand against the manufacturer seeking to recover their attorney's fees in the defense of the claim. In a recent case,[15] the court awarded the plaintiff a reduction in the price paid for the product, along with an award of attorney's fees. Additionally, the court rendered a judgment in favor of the seller on a third party demand against the manufacturer, granting the seller full recovery for all awards made to the plaintiff, including the plaintiff's attorney's fees, as well as granting an award of attorney's fees to the seller for having to defend the lawsuit. In effect, the court required the manufacturer to pay the attorneys' fees for both the plaintiff and the seller-defendant, along with all damages awarded the plaintiff.

The net result of this situation is that a seller is discouraged from assisting in the defense of warranty claims because he is able to recover his attorney's expenses only if the plaintiff is successful. Needless to say, this aberration in the law actually serves as a detriment to consumer rights because sellers have no reason to assist the consumer even when threatened with a lawsuit. Hopefully this situation will be corrected in Louisiana in the future.

---

[13] See *Media Production Consultants, Inc.* v. *Mercedes Benz of North America, Inc.*, 262 So. 2d 377 (La. 1972).

[14] See *Rey* v. *Cuccia*, 298 So. 2d 840 (La. 1974).

[15] See *Porsche* v. *Robinson Bros., Inc.*, 349 So. 2d 975 (La. App. 1st Cir. 1977).

PRESCRIPTION.

The applicable prescriptive period in the redhibitory action is one year commencing from the date of sale.[16] However, this limitation does not apply when the seller had knowledge of the vice and neglected to declare it to the purchaser. In the case of a bad faith seller, the action for redhibition may be commenced at anytime, provided a year has not passed since the discovery of the vice.[17] Additionally, in the case of a bad faith seller-manufacturer, the burden of demonstrating the date the defect was discovered is upon the manufacturer and in the absence of specific proof, the action will not be dismissed as prescribed.

There is jurisprudence in Louisiana holding that the prescriptive period of one year does not commence until the date on which the seller last attempted to repair the defect or vice in the product.[18] It has been my experience in redhibition cases that the courts are extremely liberal and generous to consumer-plaintiffs in fixing the date of last repair. Therefore, in most cases the one year prescriptive period does not commence until the seller abandoned all attempts to remedy or repair the product. The result of this jurisprudence is that the prescriptive period against the manufacturer is extended if the seller attempts to remedy the complaints of the consumer. Essentially, an action in redhibition can be made almost imprescriptable, provided the seller is willing to attempt repairs to the product. This represents another area in which the manufacturer is held to a burden which I believe is unfair and should be changed to a more realistic time frame for asserting consumer warranty complaints.

CONCLUSION.

The Louisiana Civil Code and the redhibition principles contained in it offer the consumer an excellent remedy if he purchased a product with serious latent defects. Redhibition is available to the consumer in cases of serious defects or where a combination of minor defects renders the use of the product so inconvenient that the buyer would not have purchased it had he known of them.

The damages available to the consumer include return of the purchase price, reimbursement for all expenses and damages incurred because of the product, and recovery of attorney's fees if forced to file suit to enforce his rights. Additionally, the consumer is given ample time to file suit to enforce his rights judicially. There is little doubt that in Louisiana, the consumer's warranty rights are fully protected by the Louisiana Civil Code provisions.

There are several areas in which Louisiana must improve its Code to provide the manufacturer with the means to properly evaluate its position in warranty cases. Specifically, the manufacturer should be given the opportunity to repair a defect or problem with the vehicle before the consumer is afforded the right to file suit to rescind the sale. Additionally, the punitive provisions that allow the

---

[16] Louisiana Civil Code, Article 2534 (1870).

[17] Louisiana Civil Code, Article 2546 (1870).

[18] See *de la Houssaye* v. *Star Chrysler, Inc.*, 284 So. 2d 63 (La. App. 4th Cir. 1973).

consumer to collect damages and attorney's fees from the manufacturer should be tempered to allow the manufacturer to replace the product without the automatic assessment of attorney's fees in cases of defective products. Also, the requirement that the manufacturer pay the attorney's fees of the seller must be eliminated so that sellers are more responsive to the consumer in warranty matters. Finally, the time frame for filing the suit in redhibition must be made definite and more predictable.

Product warranty is a dynamic and emerging area in today's modern, product-oriented society. In Louisiana, the solution to warranty problems can be found in legal principles written, for the most part, 150 years ago. It is my opinion that Louisiana will solve the few obstacles that exist in its statutory scheme today and the warranty provisions of the Louisiana Civil Code will remain relevant and useful to the solution of consumer claims for many years to come.