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Torts - Statute of Limitations - Claims for Damages for Personal Injury

Irving M. Portnoy

rule enunciated in *Weeks*. And the Pennsylvania Supreme Court indicates that it will also follow the federal law as to the *Walder* exception of the *Weeks* rule, which under *Mapp* it is not required to do.

JOHN W. LATELLA

TORTS — Statute of Limitations — Claims for Damages for Personal Injury — Under Uniform Commercial Code, statute of limitations for personal injury claims now four years, instead of two.

Gardiner v. Philadelphia Gas Works, 413 Pa. 415, 197 A.2d 612.

In the case of *Gardiner v. Philadelphia Gas Works,*[1] the Pennsylvania Supreme Court enunciated a somewhat startling and far-reaching rule of law. It interpreted certain provisions of the Uniform Commercial Code[2] to mean that there is now a four year statute of limitations for all actions for personal injury arising out of a breach of a contract of sale. In so doing, the court departed from a long-standing rule which prescribed a two year statute of limitations for all such actions. The facts of the case which brought about this change now follow.

Due to an allegedly defective underground conduit maintained by the defendant gas works, gas escaped into the home of the plaintiffs, Mr. and Mrs. Gardiner, causing personal injury to them. Thereupon, they instituted an assumpsit action in the Court of Common Pleas of Philadelphia County for an alleged breach of "agreement, warranty, and promise." The plaintiffs maintained that under the contract of sale for gas,[3] the defendant impliedly and expressly warranted that the gas would be transmitted to them in a safe manner.

The injuries complained of were sustained on January 7, 1961. The action was not commenced until January 15, 1963, exactly two years and eight days later. The Gas Works filed a preliminary objection to the complaint averring that plaintiffs' action was barred by the two year statute of limitations on personal injury claims as set forth in

1. 413 Pa. 415, 197 A.2d 612 (1964).

2. Hereinafter referred to as the Code.

3. It is undisputed that the supplying of gas to the Gardiners' home on a month-to-month basis falls within the definition of a "contract for sale" within §2-106 of the Code, 12A P.S. §2-106.

the Act of 1895.[4] The Court of Common Pleas sustained the objection and dismissed the complaint. Plaintiffs appealed from the order of dismissal on the ground that the four year statute of limitations as set forth in section 2-725 of the Uniform Commercial Code[5] was controlling. Plaintiffs also pointed out section 10-103 of the Code which states that ". . . all acts and parts of acts inconsistent with this Act are hereby repealed."[6]

Prior to this case, the general rule in the Commonwealth had imposed a two year statute of limitations on all actions for damages for personal injuries, whether arising out of contract or tort. This rule had been set forth in a series of cases, the leading one being *Jones v. Boggs & Buhl, Inc.*[7] In that case, the court, basing its decision solely on the Act of 1895,[8] denied a claim for damages for personal injury brought three and one-half years after the alleged injury. In stating the issue of this case, the court said:

> Her (plaintiff's) injury, as an element of damage, is squarely within the words of the Act of 1895, so that the question is whether she may avoid the Act of 1895 by declaring as for breach of contract and thereby enlarge the period in which she may sue, notwithstanding the two year limitation.[9]

Its answer to the problem was:

> Statutes of limitation are based on the necessity of ending litigation. As the legislature in the Act of 1895 declared two years a reasonable period in which to bring a suit to recover for personal injuries, the courts should not extend that time by allowing a party to keep alive the right to sue by electing to sue in one form of action instead of another.[10]

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4. Act of June 24, 1895, P. L. 236, §2; 12 P.S. §34 provides "Every suit hereafter brought to recover damages for injury wrongfully done to the person, in case where the injury does not result in death, must be brought within two years from the time when the injury was done and not afterwards."

5. Act of April 6, 1953, P. L. 3, §2-725, as amended; 12A P.S. §2-725 provides. "An action for breach of contract for sale must be commenced within four years after the cause of action has accrued."

6. Act of April 6, 1953, P. L. 3, §10-103; 12A P.S. §10-103.

7. 355 Pa. 242, 49 A.2d 379 (1946). In this case, the purchaser of a coat with a fur collar sued in assumpsit for injuries allegedly arising from a skin disease caused by the fur collar and for the return of the downpayment made on the price of the coat.

8. *Supra* note 4.

9. Jones v. Boggs & Buhl, Inc., *supra* note 7 at 245.

10. *Id.* at 246. It should be noted, however, that the plaintiff was allowed recovery of her downpayment made on the price of the coat.

In the case of *Bradley v. Laubach and Pflieger,*[11] where the plaintiff instituted an action in assumpsit for personal injuries sustained by a druggist's failure to properly compound a prescription, the court felt obliged ". . . to look beneath the form and ascertain the real basis of the claim."[12] The court stated:

> There can be no doubt the basis of the claim is the injury wrongfully done to the plaintiff's person. It is unimportant whether it resulted from a breach of contract or from a tort without a contract. For damages in such case the law requires the suit to be brought within two years, and not afterwards. It is impossible to avoid the effect of this requirement by instituting the action in *assumpsit.* The gist of the action is the test, not the form.[13]

In the case of *Bilk v. Abbotts Dairies, Inc.,*[14] a purchaser of milk sued in assumpsit for injuries sustained when he swallowed glass hidden in a quart of milk manufactured by the defendant. The action was instituted after the two year statute of limitations on tort actions for personal injury had run and the court refused to allow the claim. The basis of this refusal was that even though the action was brought in assumpsit, if the essence of the claim was to recover damages for negligence, it would be considered as a tort action and all defenses valid in such actions would apply.[15] One such defense, of course, was the two year statute of limitations imposed by the Act of 1895.

This was the state of the law in this area at the time the Code was adopted. Basically following the *Jones* case and the earlier decisions in this area, the Pennsylvania courts had refused to be led into applying a contractual statute of limitations to what were essentially tort actions, even though they were labelled assumpsit. Then, with the adoption of the Code, came conflict. The courts were now faced with the statement of the drafters of the Code that its (the Code's) purpose was to simplify and modernize the law relating to commercial transactions and to make more uniform the laws of the various jurisdictions in this area.[16] The drafters of the Code also stated that their purpose was to ". . . introduce a uniform statute of limitations for sales contracts . . ." with four years being ". . . the most appro-

11. 23 Pa. Dist. 151 (1914).

12. *Id.* at 151.

13. *Id.* at 151-52. See also: Henkel v. Beitsch, 22 Pa. Dist. 895 (1912); Boroswitz v. The Union Traction Co., 8 Dist. R. 676 (1899); Birmingham v. Chesapeake & Ohio Ry. Co., 37 S.E. 17 (1900).

14. 147 Pa. S. 39, 23 A.2d 342 (1941).

15. *Id.* at 43. See also: The Practice Act of 1915, P. L. 483.

16. Act of April 6, 1953, P. L. 3, §1-102; 12A P.S. §1-102.

priate to modern business practice. . . ."[17] Above all, the courts were faced with the statement in the Code that it (the Code) repealed all earlier inconsistent legislative acts.[18]

The *Gardiner* case brought the entire situation to a final determination. It forced upon the court the task of deciding whether or not the Act of 1895 was inconsistent with the provisions of the Code, and whether the Code operated as a repeal of the Act of 1895.[19]

The court's solution of this problem was a poor one. Taking into consideration the background and the basic purposes of the Code and various principles of statutory interpretation,[20] it stated that under the "new" law there will be ". . . a four year period of limitation on all actions for breach of contracts for sale, irrespective of whether the damages sought are for personal injuries or otherwise."[21] In so deciding, the court departed from the rule set forth in *Jones* and from a doctrine adhered to by the courts of many states.[22] It undermined the very policy that the Pennsylvania courts over the years had struggled to maintain, and once again paved the way for a lazy or negligent plaintiff, who would be rightfully denied a cause of action under the normal two year statute of limitations for tort actions, to obtain an undeserved second chance by merely suing in assumpsit. While being so overly preoccupied with the basic purposes of the Code, the court completely ignored the basic purposes of the two year statute of limitations as set forth in the case of *Ulakovic v. Metropolitan Life Insurance Co.*[23] The Supreme Court of Pennsylvania in that case stated that the policy of the law was to expedite litigation and to discourage long delays. The court stated that rights must be promptly enforced, lest witnesses disappear, parties be removed to different localities, and human memories fail. Delay, it was stated, would greatly prejudice the defendant and completely change the entire aspect of the case on both sides. Stale claims, the court said, should not be allowed for "when neither party makes any move in the suit for a long time, there is a natural, and

17. *Id.* §2-725.

18. Act of April 6, 1953, *supra* note 6.

19. Gardiner v. Philadelphia Gas Works, *supra* note 1 at 418.

20. The court specifically mentioned section 91 of the Statutory Construction Act which states: ". . . wherever a general law purports to establish a uniform and mandatory system covering a class of subjects, such law shall be construed to repeal pre-existing local or special laws on the same class of subjects."

21. Gardiner v. Philadelphia Gas Works, *supra* note 1 at 420.

22. See: Basler v. Sacramento Electric Co., 166 Cal. 33, 134 Pac. 993; Handtoffski v. Chicago Traction Co., 274 Ill. 282, 113 N.E. 620; McDonald v. Camas P. R. R. Co., 180 Wash. 555, 38 P.2d 515; Griffin v. Woodhead, 30 R. I. 204, 74 Atl. 417; Bodne v. Austin, 156 Tenn. 352, 2 S.W.2d 100.

23. 339 Pa. 571, 16 A.2d 41 (1940).

should be a legal presumption, that the dispute has been settled, and adjusted to the satisfaction of both."[24] Speaking of statutes of limitation, the court said:

> These and similar legislative enactments are expressive of the feeling of mankind that where there are wrongs to be redressed, they should be redressed without unreasonable delay, and where there are rights to be enforced, they should be enforced without unreasonable delay.[25]

Yet, the effect of the decision in *Gardiner* is to encourage just the opposite of the legislative purposes quoted above.

It should be mentioned at this point that the reason for the longer statute of limitations in assumpsit actions is that proof in an assumpsit action can be much more easily preserved than in a tort action based on a personal injury. The claim in a contract action is usually based on some written instrument such as the contract itself or a bill of sale. This instrument can be preserved for many years and the courts, in subsequent litigation, do not have to rely on the memories of the parties involved — memories which become less and less reliable with the passage of time — as they often must in tort litigation. Yet, in the *Gardiner* case, where a personal injury, and not the contract for the sale of gas, was the *true* basis for the claim, the court applied a contractual statute of limitations.

Furthermore, the *Gardiner* case enunciates a rule of law which completely ignores the true basis of the action pending, leaving one free to litigate as an action ex contractu what essentially and for all intent and purposes is an action ex delicto. In the area of personal injury claims, where the courts' dockets are already overcrowded and where expediency in completing litigation is most important, this decision fosters laxity and delay. Finally, the effect of the *Gardiner* decision is to produce two statutes of limitations for personal injury claims. It is fairly plain to see that this is not a healthy situation, for the natural effect of this can be only to produce confusion and delay.

The solution to the problem raised by the decision of the court in the *Gardiner* case is obvious. The Pennsylvania courts must once again apply one uniform statute of limitations to all personal injury claims, whether arising out of contract or tort. Until that time, the true basis of claims for personal injury will be ignored if, by some maneuvering, a skillful attorney is able to inject a contract into the dispute.

IRVING M. PORTNOY

24. *Id.* at 575.
25. *Id.* at 576.