Research Memorandum #80: Consumer Actions

Brauscher v. Hollydick, 284 Maj. 3d 14 (20XX-2): "Hollydick purchased a *20XX-3* Lyon station wagon from Brauscher Auto Deals. Hollydick asserts that the station wagon is a 'lemon' and has not been mechanically operative since he bought it. He claims a breach of warranties.

"Any affirmation of fact or promise will create an express warranty. The statement, 'This car has never been in a wreck,' created an express warranty. A seller does not have to use the term 'warrant' or 'guarantee.'

"An affirmation merely of the value of the goods, seller's opinion, or commendation does not create a warranty. Therefore, terms such as 'A-1,' 'mechanically perfect,' 'good quality,' 'last a lifetime,' or 'perfect condition,' do not give rise to a warranty. They are the seller's opinion or commendation, and are not a warranty. Likewise, laudatory comments about a product can be merely 'puffing.'

"The test to decide if statements are warranties was suggested by the Major Supreme Court in *Warkentine v. Cohen,* 198 Maj. 2d 500 (20XX-27). 'Did the seller assume to assert a fact of which buyer was ignorant, or merely express judgment on something as to which each would have an opinion?'

"In this instance, Brauscher, the seller, stated, 'This car has been driven only 10,000 miles and has been garaged for the past year while the old man was in Hawaii.' The statement created an express warranty, because it became part of the basis of the bargain.

"In addition to an express warranty, plaintiff Hollydick claims that the seller may be liable under an implied warranty of merchantability. We are in accord. The Uniform Major Commercial Code provides in part:

(a) goods must pass without objection under the contract description, and
(b) be fit for the ordinary purpose for which such goods are used.

If Hollydick, the buyer, can show that the goods were not merchantable when sold, he may recover if he can show actual damage.

"A seller may only disclaim the implied warranty of merchantability through specific terms, 'AS IS.' In this case, since the car was not sold, 'AS IS,' the plaintiff, Hollydick, might also have a claim for breach of implied warranty of merchantability."

Aristocratic Foods v. Consumer Action, 284 Maj. 3d 122 (20XX-2): "A nonprofit group, Consumer Action, picketed and leafleted Aristocratic Foods. The consumer group claimed that Aristocratic Foods sells dairy products which are tainted and misrepresents the packaging date on dairy product labels. Aristocratic Foods has requested a preliminary and permanent injunction against the leafleting claiming the leaflets are misleading and interfere with customer access to its store.

"The Supreme Court in the State of Major has recognized that hand billing in front of a business may be the only manner to reach the intended audience. A municipality may, however, impose reasonable time and manner restrictions on the use of sidewalks. A governmental entity may not, however, premise these restrictions on the content of the speech nor may it assess the tastefulness of the handbills, as long as any information is being disseminated. But if the speech is untruthful, that speech, commercial or otherwise, will not be protected. Then a governmental entity may regulate the speech even if it is not provably false, but merely deceptive and misleading.

"We cannot help but comment that in this case such leafleting is protected speech, and not subject to regulation. Leafleting should not interfere with access to the store. It should be restricted to the parking lot and sidewalks and should not block the doors. Likewise, use of a loudspeaker system is protected and only when it is a clear public nuisance is it to be enjoined. An injunction would be issued in the rarest of cases. We are satisfied by the affidavits submitted by Consumer Action that the doors to the store have never been blocked by the leafleters. The movant, Aristocratic Foods, has also failed to prove irreparable harm. The mere assertion that profits declined by 5% per week since the consumer leafleting began can be caused by many factors. Aristocratic must make a more convincing case showing that Consumer Action's leafleting caused a significant loss of sales per week. Application for a preliminary injunction is denied without prejudice."

Random v. Quint, 285 Maj. 3d 130 (20XX-1): "Defamation requires communication to a third person. If communication is only to the injured person, no action for defamation arises.

"The alleged defamation must hold the plaintiff up to hatred, ridicule, or contempt, or cause him to be shunned or avoided. The term 'crook,' as heard by others, has been held to be sufficient grounds to give rise to an action for defamation. Publication can be shown by the report of a rumor, if the other elements of defamation are met. Generally, the plaintiff must show actual damages for slander. One of the major exceptions is imputation of crime, even if it is made clear that plaintiff was not to be prosecuted.

"Mr. Random claims that he was defamed when Ms. Quint said the words, 'I know your kind, anyone prosecuted for murder can't be trusted.' Two months prior to the statement, Random was arrested for murder, but subsequently charges were dropped. Since truth is an absolute defense, and plaintiff has shown *no injury*, we dismiss."

Major Rev. Code §46.37.500 (20XX-2): "It is unlawful for any person to sell, disconnect, turn back or reset the odometer of any motor vehicle with the intent or knowledge that the odometer has been turned back if that person fails to notify the buyer, prior to the time of sale, that the odometer has been turned back or that he has reason to believe that the odometer has been turned back.

"Any person found in violation of this statute is guilty of a misdemeanor and shall, upon conviction, be sentenced to three months in jail and/or a fine of $300.

"In any suit brought by the purchaser of a motor vehicle against the seller of such vehicle, the purchaser shall be entitled to recover three times the amount of actual damages sustained or $1,500, whichever is greater, and in the case of a successful recovery of damages, the costs of the action as well as reasonable attorney fees."