

PLAINTIFF'S REQUESTED CHARGE NUMBER ONE

The Court charges the jury that in every sale of goods by a merchant, there exists an implied warranty of merchantability which runs to all purchasers of the goods who are in privity with the seller unless the seller properly excludes or modifies the warranty.

Given X

Refused       

*W. H. Key*

PLAINTIFF'S REQUESTED CHARGE NUMBER TWO

The Court charges the jury that goods to be merchantible must be at least such as are fit for the ordinary purposes for which such goods are used.

Given

X

Refused

      

W. H. Day

PLAINTIFF'S REQUESTED CHARGE NUMBER THREE

The Court charges the jury that an implied warranty of merchantability is breached by the seller of the goods if the goods are defective when sold, which means that they are not fit for the ordinary purposes for which such goods are normally used. It may be that the defectiveness of the product is not immediately apparent and it does not defeat a claim of breach of implied warranty simply that the purchaser does not discover the defect until a reasonable time after the purchase of the goods.

Given

X  
W. C. Kay

Refused

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PLAINTIFF'S REQUESTED CHARGE NUMBER FOUR

The Court charges the jury that negligence or fault of either the manufacturer or the retail seller of goods is not involved in the question of whether there has been a breach of the implied warranty of merchantability. If the goods are not merchantable and the implied warranty of merchantability has not been excluded, then there has been a breach of this implied warranty by the seller even though the seller may be unaware that the goods are not merchantable.

Given

*Wil Hay*

Refused

PLAINTIFF'S REQUESTED CHARGE NUMBER FIVE

The Court charges the jury that if you are reasonably satisfied from the evidence in this case that W. M. Campbell bought a combine from the Defendant, Baldwin Implement Company, which at the time of sale was defective in that it was not fit for the ordinary purposes to which such a machine is ordinarily used and if you are further reasonably satisfied from the evidence that this fact was discovered by Mr. Campbell and that seasonable notice thereof was given to Baldwin Implement Company by Mr. Campbell of his decision to revoke his acceptance of the purchase of this machine, then I charge you that he would be justified in revoking acceptance of the contract for the purchase of this machine in which event he may return the machine to Baldwin Implement Company and be relieved of the obligation to pay therefor and be entitled to receive a refund of any amounts paid pursuant to the contract.

Given

Refused

*W. H. Hays*

PLAINTIFF'S REQUESTED CHARGE NUMBER SIX

The Court charges the jury that if you are reasonably satisfied from all the evidence in this case that W. M. Campbell's combine and cornheader bought from the Defendant, Baldwin Implement Company, was defective when sold and that these defects substantially impaired the value of the combine and cornheader to W. M. Campbell and that the Plaintiff discovered this and notified the Defendant, Baldwin Implement Company thereof within a reasonable time thereafter, then unless you are reasonably satisfied that the implied warranty of merchantability had been effectively excluded by Baldwin Implement Company you may find that the seller, Baldwin Implement Company, has breached its contract with W. M. Campbell and that he was, therefore, free to revoke his acceptance of the combine and cornheader.

Given

Refused

*W. M. Campbell*

PLAINTIFF'S REQUESTED CHARGE NUMBER SIX-A

The Court charges the jury that if you are reasonably satisfied from all the evidence in this case that the seller, Baldwin Implement Company, breached its contract with W. M. Campbell on the sale of the combine and cornheader to him, that he was, therefore, free to revoke his acceptance of the combine and cornheader and if you are further reasonably satisfied that he notified the seller of his intention to revoke acceptance within a reasonable time after he discovered the defects justifying him in revoking acceptance and that this notification was before a substantial change in the combine and cornheader other than the changes caused by the defects, you may find for the Plaintiff, W. M. Campbell, on his claim demanding that the seller accept a return of the combine and cornheader and refund the purchase price to W. M. Campbell.

Given

Refused

*W. M. Campbell*

PLAINTIFF'S REQUESTED CHARGE NUMBER SEVEN

The Court charges the jury that if you are reasonably satisfied from all the evidence in this case that W. M. Campbell has properly revoked acceptance of the combine and cornheader, then you should award a verdict in favor of the Plaintiff, W. M. Campbell, for the amount of his down payment or other payments on the contract made to any of the Defendants pursuant to this contract.

Given X

Refused \_\_\_\_\_

*W. M. Campbell*



PLAINTIFF'S REQUESTED CHARGE NUMBER EIGHT

The Court charges the jury that if you are reasonably satisfied from all the evidence in this case that the seller has breached an implied warranty of merchantability that existed between the seller and the Plaintiff, W. M. Campbell, and you are further reasonably satisfied from all the evidence in this case that the Plaintiff, W. M. Campbell, has sustained damages in the ordinary course of events caused by the seller's breach of the implied warranty of merchantability, then you may award damages to the Plaintiff against the seller, Baldwin Implement Company, for the amount of all of such damages which you are reasonably satisfied were actually incurred in the ordinary course of events from the seller's breach determined in any manner which is reasonable.

Given

Refused

*W. L. King*

PLAINTIFF'S REQUESTED CHARGE NUMBER NINE

The Court charges the jury that if you are reasonably satisfied from all the evidence in this case that the Defendant, Baldwin Implement Company, breached its contract with Plaintiff, W. M. Campbell, and that such contract has been properly rescinded by the Plaintiff, then I charge you that you are entitled to consider any consequential damages resulting to the Plaintiff from the seller's breach of contract and if you are reasonably satisfied from all the evidence in the case that the Plaintiff was damaged by reason of the seller's breach of the contract, Plaintiff would be entitled to recover an amount to be determined by you, for loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably have been prevented by the Plaintiff.

Given

Refused

*W. H. King*

DEFENDANTS' REQUESTED CHARGE NO. 1

I charge you that if you are reasonably satisfied from the evidence that the alleged defective condition complained of by the Plaintiff was entirely caused by the failure of the Plaintiff to maintain and service the equipment in accordance with the Defendants' recommendations for its equipment then you are not authorized to return a verdict for the Plaintiff and against the Defendants.

*Giver*  
*W. H. Vay*

DEFENDANTS' REQUESTED CHARGE NO. 3.

I charge you that it is a fundamental rule that one who is injured by breach of contract must use reasonable care and diligence to avoid loss or to minimize the damages, and to the extent, if any, that his damages are a result of his active and unreasonable enhancement, or due to his failure to exercise such care and diligence, he cannot recover.

Giver  
Will Hay

DEFENDANTS' REQUESTED CHARGE NO. 2

I charge you that the Plaintiff is not entitled to return the equipment to the defendants and have a refund of the sums paid unless any defective condition substantially impaired the value of the equipment and the Plaintiff gave notice within a reasonable time to the Defendants that he desired to return the equipment for a refund of the purchase price.

*Gruen*  
*Wil Hay*

DEFENDANTS' REQUESTED CHARGE NO. 4

I charge you that unless you are reasonably satisfied from the evidence that the defective condition complained of by the Plaintiff arises from a nonconformity in the condition of the equipment which has substantially impaired the value to the Plaintiff and with respect to which the Plaintiff gave notice of his desire to have a refund of the sums paid and desire to return the equipment within a reasonable time after he discovered the alleged defective condition or should have discovered the alleged defective condition and before any substantial change in the condition of the equipment which was not caused by the alleged defective condition, then you are not to return a verdict in favor of the plaintiff allowing him to return the equipment to the defendant and to receive a refund of any money paid to the defendants.

*Given*  
*Wil Hay*

DEFENDANTS' REQUESTED CHARGE NO. 5

I charge you that the Plaintiff is not entitled to return the combine and the cornheader to the Defendant and receive a refund of the amounts paid by him unless you are reasonably satisfied from the evidence that the defect complained of by the Plaintiff is a nonconformity in the condition of the equipment which has substantially impaired its value to the plaintiff and that he has notified the defendants that he wanted to return the equipment and receive a refund within a reasonable time after the discovered or should have discovered the alleged defective condition of the equipment and before any substantial change in the condition of the equipment has taken place which said change was not caused by the alleged defective condition.

*Given*  
*W. L. Hay*

DEFENDANTS' REQUESTED CHARGE NO. 6

I charge you that unless you are reasonably satisfied from the evidence that the nonconformity in the product alleged by the Plaintiff has substantially impaired the value of the product to the Plaintiff, then you are not authorized to return a verdict in favor of the Plaintiff on his claim of revocation of acceptance.

*Given*

*W. H. King*



DEFENDANTS' REQUESTED CHARGE NO. 7

I charge you that there is no substantial evidence that White Motor Credit Corporation is one and the same entity as White Farm Equipment Company and you are therefore not authorized to reduce the amount claimed by White Motor Credit Corporation by any damages that might arise from any alleged breach of any warranty.

*Grier*

*W. L. Hay*

DEFENDANTS' REQUESTED CHARGE NO. 8

I charge you that if you are reasonably satisfied from the evidence that the Plaintiff received a copy of the delivery report at the time the product was delivered to him, then the plaintiff cannot recover in this case.

*Referred  
W.B. King*

*12*

DEFENDANTS' REQUESTED CHARGE NO. 9

I charge you that if you are reasonably satisfied from the evidence that the Plaintiff received a copy of the delivery report at the time of the delivery of the equipment to him, then you cannot return a verdict against the defendant White Motor Credit Corporation for any damages arising from failure to harvest crops.

*Preferred*  
*W. L. King*

X  
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DEFENDANTS' REQUESTED CHARGE NO. \_\_\_\_\_

I charge you that if you are reasonably satisfied from the evidence that the Plaintiff received a copy of the delivery report at the time of the delivery of the equipment to him, then you cannot return a verdict against the defendant White Farm Equipment Company for any damages arising from failure to harvest crops.

*Refused*  
*W. L. King*

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DEFENDANTS' REQUESTED CHARGE NO. 11

I charge you that if you are reasonably satisfied from the evidence that the Plaintiff received a copy of the delivery report at the time of the delivery of the equipment then you are not authorized to return a verdict against the defendant White Motor Credit Corporation for consequential damages.

*Refused*  
*W. C. Hay*

DEFENDANTS' REQUESTED CHARGE NO. 12

I charge you that if you are reasonably satisfied from the evidence that the Plaintiff received a copy of the delivery report at the time of the delivery of the equipment then you are not authorized to return a verdict against the defendant White Farm Equipment Company for consequential damages.

*Refered*  
*W/L Hay*

X  
?

DEFENDANTS' REQUESTED CHARGE NO. 13

I charge you that you are not authorized to return a verdict for the Plaintiff for any losses on account for failure to harvest crops.

*Refused*  
*W.C. Hy-*

*A*

DEFENDANTS' REQUESTED CHARGE NO. 14

I charge you that consequential damages include any loss resulting from the failure of any crops or the inability to harvest any crops.

*Refused*  
*Wil Hay*

*X*



DEFENDANTS' REQUESTED CHARGE NO. 15

I charge you that you are not authorized to return a verdict for Plaintiff which includes any sum allocable to consequential damages.

*Refered  
Wil Hay*

X

DEFENDANTS' REQUESTED CHARGE NO. 16

I charge you that you are not authorized to award damages to the Plaintiff for any damage to the equipment which said damage was caused by the Plaintiff's failure to properly maintain and service the equipment in accordance with the Defendants' recommendations.

Given  
W. H. Hays

DEFENDANTS' REQUESTED CHARGE NO. 17

I charge you that if you are reasonably satisfied from the evidence that the Plaintiff obtained a copy of the delivery report at the time of the delivery of the equipment to him then you are not authorized to return a verdict for the plaintiff against the defendant Baldwin Implement Company.

*Referred  
W. H. Hay-*

X  
?

~~O. J. White & Co~~ . Charge # 17

Δ 5' additional charge

A. I charge you that if you are reasonably satisfied from the evidence that the Plaintiff was given an opportunity to return the combine by Δ Baldwin Implement Co. and that the Π ~~refused to~~ rejected that offer and thereafter continued to use the combine then you cannot return a verdict in favor of the Π and against the Defendants allowing Π to revoke his acceptance of the combine.

Referenced Key D's charge # 18

B. I charge you that if you are reasonably satisfied from the evidence that the Π met any offer to accept a return of the combine with a counter offer to ~~have~~ return the combine in exchange for another combine, then you are authorized to treat any offer to ~~return~~ accept a return of the combine as rejected by the Π.

Given  
W. L. Day