

plaintiff, injured by an exploding bottle she had placed in her shopping cart, had not yet purchased the product. The court in *Thompson v. Reedman*, supra, expressly stated that it had no doubt that the Supreme Court of Pennsylvania would reach its result so long as there had been some purchase of the goods through which the plaintiff could claim.

While neither of these cases would be binding upon the Supreme Court, they do represent the "developing case law" referred to in the Official Comment to Section 2-318. Because of the notoriety and general approval given to these cases, it is difficult to believe that the court was unaware of them. However, the court blankety stated, "In no case in Pennsylvania has recovery against the manufacturer for breach of an implied warranty been extended beyond a *purchaser* in the distributive chain. In fact, the inescapable conclusion from *Loch v. Confair* . . . is that no warranty will be implied in favor of one who is not in the category of a purchaser." (Emphasis by the court.) This statement perhaps will save the decisions in *Jarnot* and *Duckworth v. Ford Motor Co.*, annotated supra, under Section 2-314, but will cast a long shadow on the *Reedman* decision.

The now eroded privity doctrine was a creature of the courts at a time when distribution of goods had little resemblance to modern practices. This court states, however, that the legislature now has the responsibility for altering that doctrine. The result may be an unfortunate return to the decisions denying recovery to guests of the actual buyers of food in restaurants or drive-ins. After all, these, as well as guests in the home and members of the family, can reasonably be expected to use, consume or be affected by the goods.]

Duckworth v. Ford Motor Co., 211 F. Supp. 888 (E.D. Pa. 1962).

See the Annotation to Section 2-314, supra.

ARTICLE 6: BULK TRANSFERS

SECTION 6-110. Subsequent Transfers.

When the title of a transferee to property is subject to a defect by reason of his non-compliance with the requirements of this Article, then:

(1) a purchaser of any of such property from such transferee who pays no value or who takes with notice of such non-compliance takes subject to such defect, but

(2) a purchaser for value in good faith and without such notice takes free of such defect.

In the Matter of Dee's, Inc., 311 F.2d 619 (3d Cir. 1962).

This litigation was between two trustees in bankruptcy to determine in which bankrupt's estate property should be placed. Lewis

Dion, as an individual, operated a number of discount houses until January 1, 1957. On that date he transferred all of the business assets to a corporation, Dee's, Inc., which he wholly owned. There was no compliance with Article 6 of the Code although it appears that this was a bulk transfer. Dee's, Inc. also assumed all of Dion's individual liabilities.

On March 10, 1958, Dee's, Inc. filed a petition for an arrangement under Chapter XI of the Bankruptcy Act. On April 10, an involuntary petition in bankruptcy was filed against Dion. On June 18, 1958, both Dee's, Inc. and Dion were adjudicated bankrupts. This petition for reclamation was brought by the trustee of Dion against the trustee of Dee's, Inc. for the assets transferred to the corporation. Dion's trustee alleged a right to the property under Sections 70c and 70e of the Bankruptcy Act on the ground that the transfer was voidable under Article 6 of the Code, the Uniform Fraudulent Conveyance Act and the Statute of 13 Elizabeth. The court affirmed a denial of the reclamation petition, holding that the trustee of Dee's, Inc. was a subsequent transferee for value without notice of outstanding equity and that since the transfer was voidable, not void, the trustee of Dee's, Inc. obtained good title to the property.

[Annotator's Comment: A trustee in bankruptcy does not enjoy the position of a bona fide purchaser from the bankrupt under Section 70c of the Bankruptcy Act. Since Section 6-110(2) provides only that a good faith purchaser for value takes free of the defect, the petition should not be denied for the reason given by the court. If this case says, in effect, that the filing of a petition in bankruptcy will cut off rights of the creditor under Article 6, the case is incorrect. However, Section 6-111 provides for a six month statute of limitations for actions brought under Article 6, and it is apparent from the facts that the petitioner's action for reclamation was not brought within that time. There was some discussion in an earlier report of this case about the possibility of an equitable lien existing when the parties to the transfer failed to comply with the Code provisions, but this is completely avoided by the court. See *In the Matter of Dee's, Inc.*, 164 F. Supp. 402 (E.D. Pa. 1958) and *In re Dee's, Inc.*, 193 F. Supp. 550 (E.D. Pa. 1961).]

SECTION 6-111. Limitation of Actions and Levies.

No action under this Article shall be brought nor levy made more than six months after the date on which the transferee took possession of the goods unless the transfer has been concealed. If the transfer has been concealed, actions may be brought or levies made within six months after its discovery.

In the Matter of Dee's, Inc., 311 F.2d 619 (3d Cir. 1962).

See the Annotation to Section 6-110, *supra*.