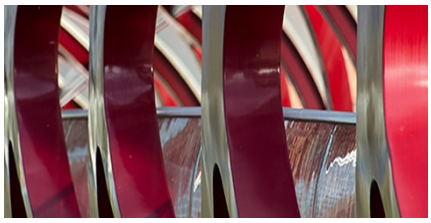
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News & Types: Commercial, Competition & Trade Update

A Seller's Poor Customer Service Results in Pro-Buyer Opinion by Illinois Supreme Court

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Practices: Commercial, Competition & Trade, Litigation

A seller of a recreational vehicle (RV) provided some poor service to one of its customers. The result was an opinion by the Illinois Supreme Court interpreting a provision in the UCC to favor buyers generally. (*Kimberly Accettura et al v. Vacationland, Inc*., 2019 IL 124285, IL Supreme Court, September 19, 2019)

A timeline of the facts is helpful to understand the background.

- April 19, 2014 – Accettura and Adam Wozniak (Buyers) purchased an RV from Vacationland for $26,000. The Buyers took possession on April 25.
- June, 2014 – The Buyers discovered water leaking into the RV from the emergency exit window. They returned the RV to Vacationland for repair, which was performed at no charge.
- July, 2014 – The Buyers took the RV to Michigan. During a rainstorm, the RV leaked heavily into the dinette area, damaging the walls and causing electrical failure. The Buyers towed the RV back to Vacationland for repair on July 14.
- Vacationland was unable to repair the RV. One of Vacationland's employees told the Buyers the RV would need to be returned to the manufacturer for repair. The employee could not estimate how long the repair would take.
- The Buyers called the manufacturer which would not give a time estimate for the repairs and referred the Buyers back to Vacationland.
- August 2, 2014 – Before the manufacturer picked up the RV, the Buyers called Vacationland and verbally revoked acceptance of the RV.
- Around August 4, 2014 – The manufacturer picked up the RV.
- Around September 23, 2014 – The manufacturer returned the RV to Vacationland. Vacationland then called the Buyers to inform them that repairs were completed and they could pick up the RV.
- September 28, 2014 – The Buyers' attorney sent Vacationland a letter confirming the Buyers' revocation of acceptance of the RV.
- October 29, 2014 – Buyers sued Vacationland for return of the purchase price and other damages.

At first, the Buyers were not successful in their lawsuit. The trial court granted summary judgment to Vacationland because the Buyers revoked acceptance without giving Vacationland a reasonable opportunity to

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cure. The lower appellate court affirmed. The Buyers then appealed to the Illinois Supreme Court which reversed the judgment.

The only issue on appeal to the Illinois Supreme Court was the application of Uniform Commercial Code (UCC) Section 2-608 regarding revocation of acceptance.

First, a little background on the law. A buyer of goods can accept, reject, or revoke acceptance of, the goods. A buyer can reject "if the goods or the tender of delivery fail in any respect to confirm to the contract . . ." (UCC 2-601). A buyer that has accepted the goods can revoke acceptance only if the goods' non-conformity "substantially impairs its value to him if he has accepted it

> (a) on the reasonable assumption that its non-conformity would be cured and it has not been seasonably cured; or
>
> (b) without discovery of such non-conformity if his acceptance was reasonably induced either by the difficulty of discovery before acceptance or the seller's assurances." (UCC 2-608(1))

The Buyers were unaware of the non-conformity and defects in the RV when they accepted it, so (1)(a) did not apply – (1)(b) applied. But there is a subtle difference between (1)(a) and (1)(b), which the Illinois Supreme Court found to be a case of first impression in Illinois.

(1)(a) gives the seller an opportunity to cure. In contrast, (1)(b) is silent as to whether the seller gets an opportunity to cure.

Vacationland did not dispute that the defects in the RV "substantially impaired" the RV's value to the Buyers. But Vacationland argued that the Buyers were required to give Vacationland a reasonable time to cure before the Buyers could revoke acceptance.

However, based on the "plain language" of the statute, the Illinois Supreme Court agreed with the Buyers' interpretation of UCC 2-608(1)(b) that a buyer unaware of the non-conformity can revoke acceptance as long as the non-conformity substantially impairs the value of the goods purchased.

There was considerable discussion as to whether the Supreme Court's holding represented the majority or minority view. The Supreme Court acknowledged that there was a split of authority. But the Supreme Court noted that, "Because we find the language plain, we need not look to our sister states' interpretation of this provision." Nevertheless, the Supreme Court reviewed decisions in other states and asserted that its interpretation reflected the majority view. It also asserted that courts in other states that appear to adopt a different view did not do so based on statutory interpretation, but did so reflecting what the courts perceived as the policy in the UCC to encourage parties to work out their differences.

Similarly, the Supreme Court said it did not need to review the comments under UCC 2-608, but then proceeded to do so. It did not find the comments supported Vacationland's argument that Vacationland had a right to cure. Vacationland cited comment 4 to UCC 2-608 that the remedy of revocation of acceptance "will be generally resorted to only after attempts at adjustment have failed . . ." But, according to the Supreme Court, this comment applied to the notice that the buyer must provide to the seller – the seller should know that there

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is a non-conformity in the goods which, in this case, it did because of its unsuccessful attempt to fix the RV and the Buyers' towing of the RV to Vacationland.

Vacationland was not done. UCC 2-608(3) states, "A buyer who so revokes has the same rights and duties with regard to the goods involved as if he had rejected them." Although there is no explicit cross-reference, this language appears to invoke UCC 2-508 regarding a cure by the seller. UCC 2-508 clearly contemplates that the seller will have an opportunity to cure. So this argument would use UCC 2-508 to give the seller an opportunity to cure under UCC 2-608. The Supreme Court even recognized that, "Some of our sister jurisdictions agree."

But the Supreme Court did not agree. The Court emphasized the differences in rejection and revocation of acceptance. It adopted the reasoning of a Michigan court, *Head v. Phillips Camper Sales & Rental, Inc*., 593 N.W.2d 595, 600 (Mich. Ct. App. 1999):

> "A buyer may reject goods if they "fail in any respect to conform to the contract." 810 ILCS 5/2-601 (West 2014). Once the buyer accepts the goods, however, he may only revoke that acceptance if the "non-conformity substantially impairs its value to him." Id. § 2-608(1). When a buyer rejects nonconforming goods, the seller may have a right to cure. Id. § 2-508. In the case of a revocation, however, as aptly stated by the *Head* court, "[t]he seller, in turn, loses the right to cure, but gains the benefit of the higher substantial impairment standard for revocation." 593 N.W.2d at 601. We further agree that the "rights and duties" referred to in section 2-608(3) (810 ILCS 5/2-608(3) (West 2014)) are found in sections 2-602, 2-603, and 2-604 (id. §§ 2-602, 2-603, 2-604), not section 2-508 (id. § 2-508). See *Head*, 593 N.W.2d at 600."

Vacationland's poor customer service has now impacted Illinois sellers or sellers under contracts applying Illinois law. A buyer of a good "whose non-conformity substantially impairs its value to him" would have the right to revoke acceptance and get its money back. A buyer must still act in accordance with "considerations of good faith, prevention of surprise, and reasonable adjustment." (UCC 2-608, Comment 5) But a buyer who revokes acceptance under UCC 2-608(1)(b) is not required to give the seller an opportunity to cure the defect as a condition of revoking acceptance, strengthening a buyer's legal position.

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