

WARRANTIES IN THE LEASING OF GOODS

While leases of goods are not explicitly subject to the provisions of Article 2 of the Uniform Commercial Code,¹ the similarities between such leases and the sale of goods have led many courts to apply pertinent sections of Article 2 to certain types of leases. The provisions which have most often been applied are those dealing with the existence of warranties in the lease agreement. It is the purpose of this article to consider whether and to what extent a court should apply, either directly or by way of analogy, the warranty provisions of the Code to a leasing agreement.

I. THE FUNCTIONS OF A LEASE

At the outset, it is proper to ask why the drafters of the U.C.C. did not explicitly include leases within the provisions of Article 2. An obvious answer to this question is that while in some circumstances a lease can amount to little more than a disguised sale, in other cases it can be a genuine rental instrument or perhaps even a security device. Where a lease amounts to no more than a disguised sale, there could be little objection to the direct application of Article 2 as a whole. On the other hand, if a lease is actually a security device for a loan of money, there are many reasons why the warranty provisions of Article 2 should not apply to the lender, even by analogy. Between these two extremes lies an intermediate position where a lease is intended to be neither a disguised sale of goods nor a security device but a true rental of goods. In this case the lessee only wishes to hire the services of the goods and not to acquire title to them. The application of the Article 2 warranty provisions must in this case rest upon the application of the policies which prompted the drafters to create warranties between buyers and sellers.

This analysis will proceed by examining the three basically different situations in which a lease may be used. It will discuss the relative positions of the lessee and lessor in each situation and in what ways their positions differ from those of buyers and sellers. It will then consider the propriety of applying the warranty sections of Article 2 in each case.

A. Disguised Sale

In the case where a court decides that a lease is the equivalent of a sales contract, there is no difficulty in deciding that Article 2 applies to it. Article 2 broadly states that it "applies to transactions in goods. . ."² and is thus not limited by the form a transaction in goods might take. Article 2 warranties, however, seem to be more narrowly applied in that they exist

¹ UNIFORM COMMERCIAL CODE Article 2 (Official text, 1962). [hereinafter cited as U.C.C.]

² U.C.C. § 2-102.

only between buyers and sellers.³ It would thus seem that in order to directly apply the warranties of Article 2 to a lease, the lease must not only amount to a transaction in goods but must be a sale of goods or a contract to sell goods. The Code definitions of sale are:

'Contract for sale' includes both a present sale of goods and a contract to sell goods at a future time. A 'sale' consists in the passing of title from the seller to the buyer for a price (Section 2-401). A 'present sale' means a sale which is accomplished by the making of the contract.⁴

The major difficulty in applying Article 2 to sales disguised as leases would seem to be making the decision as to when a lease is in fact a sale. The type of lease which is most easily designated a "contract for sale" would be one under which the lessee after making all the rental payments obtains title to the goods.⁵ An example of this type of situation would be an automobile lease under which the lessee obtains title to a car whose cash price is \$2,400 after making twenty-four required rental payments of \$100 each. A slightly different example would be a lease under which the lessee would obtain title to the above car after making twenty-seven required rental payments of \$100 to the lessor. In the latter example the last three payments would approximate an interest charge of 6% on the cash purchase price.

A more complicated version of this last situation occurred in *United Rental Equipment Co. v. Potts and Callahan Co.*⁶ in which the parties entered a one-month leasing agreement which provided that the lessee had the options to continue the lease (subject to certain enumerated exceptions under which the lessor could terminate it) for a period of twenty-one months and to purchase the rented equipment at any time during the lease for a stated retail price.⁷ The lease also provided that 85% of the lessee's paid monthly rentals would be applied to the retail price if he chose to purchase the equipment.⁸ Unlike some leasing agreements,⁹ there was no upper limit on the amount of credit that the lessee could receive on the retail price, and after a period of twenty-one months, 85% of his rental payments would be equal to the retail price.¹⁰

³ U.C.C. §§ 2-313, 2-314, and 2-315. All three of these warranty creating sections are worded in terms of buyer and seller.

⁴ U.C.C. § 2-106(1).

⁵ Such a lease would be a secured sale for two reasons: (1) the transaction fits the definitions of sale and contract for sale contained in U.C.C. § 2-106(1); (2) the lessor's interest is merely a security interest as defined under U.C.C. § 1-201 (37).

⁶ 231 Md. 552, 191 A.2d 570 (1963).

⁷ *Id.* at 555, 191 A.2d at 572.

⁸ *Id.*

⁹ Compare this option to purchase with the one contained in *In re Wheatland Electric Products Co.*, 237 F. Supp. 820 (W.D. Pa. 1964), by which the lessee could credit 75% of his paid rentals for up to but not more than 75% of the cash price.

¹⁰ *United Rental Equip. Co. v. Potts and Callahan Co.*, 231 Md. 552, 559, 191 A.2d 570, 574 (1963).

Based on these facts the court held that the lessor had a security interest as defined by section 1-201(37) U.C.C. because the lessee would at the end of twenty-one months have "the option to become the owner of the property for no additional consideration. . . ."¹¹ The court went on to find that as this security interest was not filed it was invalid as against both a judgment creditor who levied upon the leased equipment and the purchaser who bought it at a sheriff's sale.¹²

Although the court explicitly based its decision on a literal application of 1-201(37) the agreement as stated by the court would fit within the U.C.C. definitions of sale and contract for sale.¹³ The lease, in effect, provided that the lessee was to pay a premium of 15% over the retail price for the privilege of either paying for the equipment over a twenty-one month period or of returning the equipment before that time. The agreement could have just as easily been in the form of a sales contract under which the buyer was to pay the rental price plus interest (8.6% on an annual basis) to the seller in equal installments over a twenty-one month period. During this period the buyer would have the option to cancel the contract upon return of the equipment and to forfeit past payments. Restated in this manner the transaction does provide for "the passing of title from the seller to the buyer for a price."¹⁴ There would seem to be no logical reason to distinguish the above type of transaction from a sale. The policies of the legislatures in adopting Article 2 are just as applicable to the above type of transaction as they are to undisguised sales of goods. To hold otherwise would be to permit the easy evasion of Article 2 by merely stylizing a sale as a lease.

The situation becomes more attenuated where the lessee does not obtain title to the goods at the end of his required payments, but is given an option to purchase them for an additional consideration. While one might contend that any transaction which gives the lessee an option to purchase is within the literal terms of the Code definition of sale, a better view is to consider the definition of sale in the light of other relevant sections of the U.C.C. Of particular import is the portion of section 1-201(37) which deals with the possibility that a lease might be a security interest:

Whether a lease is *intended* as security is to be determined by the facts of each case; however, (a) the inclusion of an option to purchase does not of itself make the lease one *intended* for security, and (b) an agreement that upon compliance with the terms of the lease the lessee shall become or has the option to become the owner of the property for no additional

¹¹ U.C.C. § 1-201(37).

¹² *United Rental Equip. Co. v. Potts and Callahan Co.*, 231 Md. 552, 559, 191 A.2d 570, 574 (1963).

¹³ U.C.C. § 2-106(1).

¹⁴ *Id.*

consideration or for a *nominal consideration* does make the lease one intended for security [emphasis added].¹⁵

Where the lessor's security interest is a section 9-107(a) purchase money security interest,¹⁶ this passage of the Code clearly implies that the drafters considered such a leasing arrangement the equivalent of a conditional sales contract. This section would also seem to indicate that where a lease gives the lessee an option to purchase for more than a nominal consideration, the drafters did not consider it to be a security device for a sales contract. In the interest of consistency between the foregoing definitions, this article will assume that the Code definition of sale includes any lease which under section 1-201(37) gives a security interest to a lessor who is in a position analogous to that of a seller. *In re Wheatland Electric Products Co.*¹⁷ can be used to illustrate the application of this assumption.

In re Wheatland Electric Products Co. concerned a lease by which the Burroughs Corporation leased a Burroughs machine to Wheatland Electric Products Company. The lease was for a term of one year and to continue on a month to month basis until terminated. In that lease, the list price of the machine was established at \$8,025.00 and the monthly rental was set at \$241.00.¹⁸ The lease also contained a purchase clause giving Wheatland the option to buy the machine at any time during the lease or within 30 days after its termination.¹⁹ Wheatland could apply "75% of the rentals paid prior to the purchase date . . . to the list price up to but not exceeding 75% of that price."²⁰

A second lease covering the same equipment was subsequently executed. This lease was substantially the same as the first with the exception that the lessee's option to purchase was to terminate thirty-six months after the first lease commenced.²¹ The parties subsequently executed a lease extension rider. The rider did not extend the purchase option beyond the three year period above stated.²² The purchase option expired before Wheatland entered bankruptcy proceedings.²³

In holding that Burroughs did not hold an unperfected Article 9 security interest in the rented machine, the court took special note of the fact that in order for Wheatland to purchase the machine it would have to pay

¹⁵ *Id.* § 1-201 (37).

¹⁶ U.C.C. § 9-107 (a) provides: "A security interest is a 'purchase money security interest' to the extent that it is (a) taken or retained by the seller of the collateral to secure all or part of its price. . . ."

¹⁷ 237 F. Supp. 820 (W.D. Pa. 1964).

¹⁸ *Id.* at 821.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

at least 25% of the list price in addition to its past paid rentals.²⁴ This the court felt was more than the nominal consideration criterion of section 1-201(37).²⁵ Elaborating upon its decision that the lease was not intended as security the court noted:

With regard to a lease intended as security, the law recognizes that the ultimate intent of the agreement is a *sale*, to take effect and become operative only upon compliance with the provisions of the lease. [Emphasis added].

In a disguised sale case a difficulty that a court may face is defining nominal consideration. While it would be possible at this point to go into an extended exploration of what nominal consideration should be, it is unimportant to do so with regard to the application of warranties. As will be developed below, there is authority for the imposition of the warranty provisions of Article 2 by analogy where the lease is in fact a true rental. It is therefore unimportant to discover at what point additional consideration would cease to be nominal.

B. Rental

Once it is decided that a leasing agreement is not intended to be a secured sale, Article 2 does not expressly apply to it. This does not mean that the warranty provisions of Article 2 should not be applied by analogy. The warranty provisions of Article 2 besides being statutes concerning sales should also be considered statements of public policy that should be applied to transactions in which the two parties involved are in such positions that the equities between them approximate those of a buyer and seller.

Even prior to the Code, courts have recognized the similarities between lessees and buyers, and have, in some cases, extended the doctrines of implied sales warranties to leases. In these cases the courts have recognized that in many respects the lessee relies upon a lessor's representations (express or implied) as to the quality, fitness or merchantability of goods in the same manner as a purchaser would rely upon such warranties made by the seller. The lessee and purchaser should consequently have the same protections as to warranties.

In *Thomas Spot Welder Co. v. Dickelman Manufacturing Co.*²⁷ (a pre-Code case) a written agreement was entered into by which the Thomas Spot Welder Co. leased a spot welder to the Dickelman Manufacturing Co. During the negotiations for the lease Thomas inspected the operations of Dickelman and represented that the machine would be satisfactory for join-

²⁴ *Id.* at 822.

²⁵ *Id.* See text accompanying note 15 *supra*.

²⁶ *Id.*

²⁷ 15 Ohio App. 270 (1921).

ing and assembling the metal corn cribs which the latter manufactured.²⁸ When the machine failed to operate satisfactorily, Dickelman shipped it back to Thomas and discontinued its rental payments.²⁹ Thomas thereupon brought suit for the unpaid rentals. Dickelman based its defense on the theory that Thomas had breached an implied warranty of fitness.³⁰

On trial the court treated the lease as a sale "and applied the law governing implication of warranty of fitness for use, where the particular purpose for which an article is sold is made known to the seller and reliance is placed by the buyer on the skill or judgment of the seller."³¹ In upholding the action of the trial court the court of appeals noted that:

The only basic facts which distinguish a sale from a bailment are the requirement of restoration of the article delivered and the passing or not passing of title from one to the other.

Implication of warranty of fitness of the article sold for a particular purpose existed under special circumstances at common law, and now is statutory in Ohio. The same reasons, namely, considerations of ordinary integrity, upon which the implication existed at common law, manifestly justify a like doctrine in relation to a bailment for hire, at least when attended by parallel facts, because with the exception just pointed out there is no difference between a sale of personal property and a letting of it for hire.³²

In *Cintrone v. Hertz Truck Leasing and Rental Service*³³ (a post-Code case) the defendant leased a truck to plaintiff's employer. While plaintiff was riding in the leased truck, its brakes failed and plaintiff was injured. One of the bases of plaintiff's action was that defendant had breached his warranty that the vehicle was fit and safe for use.³⁴

In holding that warranties exist in bailments for hire the court said:

There is no good reason for restricting such warranties to sales. Warranties of fitness are regarded by law as an incident of a transaction because one party to the relationship is in a better position than the other to know and control the condition of the chattel transferred and to distribute the losses which may occur because of a dangerous condition the chattel possesses. These factors make it likely that the party acquiring possession of the article will assume it is in a safe condition for use and therefore refrain from taking precautionary measures himself.³⁵

As additional reasons for holding that a bailment could create warranties, the court also noted that the very nature of a bailment may cause the bailee

²⁸ *Id.* at 272.

²⁹ *Id.*

³⁰ *Id.* at 273.

³¹ *Id.*

³² *Id.* at 274.

³³ 45 N.J. 434, 212 A.2d 769 (1965).

³⁴ *Id.* at 438, 212 A.2d at 771.

³⁵ *Id.* at 446, 212, A.2d at 775, citing 2 HARPER & JAMES, TORTS § 28.19 (1956).

to place more reliance on the bailor than he would upon a seller in a comparable situation. This could result as the bailee will probably spend less time inspecting the article than he would if he were buying it and because he will also usually be less able to judge its quality.³⁶

In addition to noting the similarities between a lessee and a buyer, it is also necessary to examine the similarities between lessors and sellers. In the aforementioned cases³⁷ in which warranties have been imposed, the lessor has appeared to be in the position of a merchant³⁸ with respect to goods leased rather than being analogous to a casual seller.³⁹

The fact, however, that a lessor was not a merchant should not prevent a court from holding that there are express warranties or implied warranties of fitness where the lessor is still in a position analogous to a seller. The arguments developed in the *Cintrone* case as well as in the other cited cases and authorities⁴⁰ for finding the existence of warranties in leases are all based on the assumption that the lessor, like a seller, is in a position to have superior knowledge of the chattel or is in a better position to distribute losses which might result from a breach of warranty. In the case where a seller is a merchant, either of these assumptions is so likely to be valid that the Code implies a warranty of merchantability upon the seller.⁴¹ In cases where the seller is not a merchant, however, these assumptions are of more doubtful validity and consequently a seller is held only to express warranties or implied warranties of fitness.⁴² In the latter case no hardship is placed upon a seller who is without superior knowledge of the chattel as both of these warranties are under his control and arise from his representations to a buyer.⁴³ The imposition of warranties upon the non-merchant seller are essentially a seller's code of ethics which keep a seller from taking advantage of a trusting buyer.⁴⁴ The application of Article 2 by analogy should also not require the lessor to be a merchant. The lessee who relies upon the affirmations of the lessor as to the ability of the rented goods to perform effectively should have the same protection as a buyer who similarly relies upon the affirmations of a seller.

³⁶ *Id.*, 212 A.2d at 776. See also, Farnsworth, *Implied Warranties of Quality in Non-Sales Cases*, 57 COLUM. L. REV. 653, 673-74 (1957).

³⁷ *E.g.*, *Cintrone v. Hertz Truck Leasing and Rental Service*, 45 N. J. 434, 440, 212 A.2d 769, 772 (1965); *Thomas Spot Welder Co. v. Dickelman Mfg. Co.*, 15 Ohio App. 270, 272 (1921); *Hoisting Engine Sales Co., Inc. v. Hart*, 237 N.Y. 30, 34, 142 N.E. 342, 343 (1923).

³⁸ The word merchant as used herein is defined by U.C.C. § 2-104(1).

³⁹ An example of a non-merchant seller might be a person (not in the automobile sales business) who sells his old car to a neighbor.

⁴⁰ *E.g.*, Farnsworth *supra*.

⁴¹ U.C.C. § 2-314.

⁴² U.C.C. §§ 2-313, 2-315.

⁴³ Either by affirmation of fact, etc. under U.C.C. § 2-313 or by affirmation or acquiescence under U.C.C. § 2-315.

⁴⁴ See text accompanying note 32, *supra*.

C. Debt Financing

There remain situations in which the lessee and lessor do not stand in positions analogous to those of buyers and sellers. These situations would arise when the lessor serves merely as a financier and not a supplier of the chattel which is ultimately leased to the lessee. A lessor in this type of arrangement could be in a position analogous to that of a creditor with either a non-purchase money security interest or a purchase money security interest as defined by section 9-107(b).⁴⁵

An arrangement clearly within this area would be one in which the creditor had a non-purchase money security interest. This could occur when a debtor desirous of borrowing money would sell a chattel (e.g., an automobile) to another person who agreed to lease it back to the debtor. Setting aside problems which might result from an apparent attempt to evade usury laws, the lessor is clearly not in a position analogous to that of a seller. The assumptions developed in the previous section upon which warranties against a lessor are based are completely absent in such a situation.

If a lessor has a section 2-107(b) purchase money security interest, two situations can arise. The simplest one is where the lessor advances money to the lessee who purchases the chattel and conveys it to the lessor who then leases it back to the lessee. In this case the lessor, as in the preceding case, has none of the attributes of a seller. Any warranties that might exist in such a situation would be between the lessee and the seller from whom he purchased the chattel.

A second and more difficult situation occurs when the seller sells the chattel directly to the lessor instead of having the lessee act as a strawman through whom title passes. In all other respects this situation is the same as the former, i.e. the lessee carries on all the negotiations with the seller and chooses the type of chattel he desires. The difficulty in this case arises from the fact that if the courts hold that the lessor cannot warrant the chattel because he is not analogous to a seller, the lessee is remediless under existing law. The lessee is neither a buyer nor a third party beneficiary of a warranty under the U.C.C.⁴⁶

In *Sawyer v. Pioneer Leasing Corporation*,⁴⁷ Sawyer, an independent grocer who was desirous of having an ice machine, was approached by one Barnett, a sales agent for the Tri-State Ice Machine Company. During the

⁴⁵ A § 9-107(b) "purchase money security interest" is defined as one which is ". . . taken by a person who by making advances or incurring an obligation gives value to enable the debtor to acquire rights in or the use of collateral if such value is in fact so used." U.C.C. § 9-107(b). In contrast, a "purchase money security interest" is a security interest ". . . taken or retained by the seller (i.e., the supplier) of the collateral to secure all or part of its price." U.C.C. § 9-107(a). A section 9-107(a) security interest could indicate that the lease is, in fact, a disguised sale. See text accompanying note 16, *supra*.

⁴⁶ U.C.C. § 2-318.

⁴⁷ 244 Ark. 943, 428 S.W.2d 46 (1968).

negotiations, Barnett showed Sawyer pictures of the ice machine ultimately leased and told him that it would produce 400 pounds of ice daily.⁴⁸ Barnett also said the machine could be used inside or out and in fact helped Sawyer to decide that the best place for the machine would be outside. Although during the negotiations Sawyer thought he was buying the machine, Barnett had him sign a "Master Lease Contract." When Sawyer questioned this, he was told, "Well, it was just like buying a car, after you pay so many payments, it is your box."⁴⁹ In fact, the lease did not give Sawyer an option to purchase the machine although The Pioneer Leasing Co. testified that it was quite likely that the machine would ultimately be sold to Sawyer.⁵⁰

After the lease form was completed it was sent to Pioneer which approved it and purchased the ice machine from Tri-State with delivery being made to Sawyer. The machine functioned properly until "the first cold spell came" six months later.⁵¹ Sawyer contacted Barnett who told him to call any refrigeration company to have it repaired. After several unsuccessful attempts to have the machine repaired, Sawyer discontinued his rental payments to Pioneer. Pioneer brought suit against Sawyer for the remaining payments under the lease and was granted a directed verdict.⁵²

Noting that Sawyer had only a sixth grade education and that he did not read the provisions of the contract in detail, the Arkansas Supreme Court reversed, holding that the lease contract ineffectually tried to exclude an implied warranty of fitness existing between Sawyer and Pioneer.⁵³ In reaching this decision the court held that the lease was analogous to a sale and that the mere fact that Barnett presented the contract to Sawyer was sufficient to make the question of agency between Barnett and Pioneer a jury question.⁵⁴

One of the principle difficulties with this decision, as noted in the dissent, is that:

the lease under consideration was nothing more than a financial arrangement whereby appellee, Pioneer Leasing Corporation, was to loan money to Mr. Sawyer for the purchase of the ice-making machine. The record

⁴⁸ 428 S.W.2d at 48.

⁴⁹ *Id.*

⁵⁰ The fact that there was no option to purchase the machine is one of the many facts which distinguish this lease from the disguised sale in the *United Rental Equip. Co.* case discussed earlier.

⁵¹ 428 S.W.2d at 48.

⁵² *Id.*

⁵³ *Id.* at 50. One is unable to say if the majority was swayed by its sympathy for a person like Sawyer. While this article will criticize the majority opinion, it also takes the position that Sawyer should have a remedy. A possible alternative to the majority decision will be suggested.

⁵⁴ *Id.* at 49. This decision would not preclude a jury on remand from finding that there was no agency relationship between Pioneer and Barnett. Because of this, Sawyer's remedy might well be illusory.

conclusively shows that such was the purpose of this arrangement. . . . Pioneer stands in the same position as would the bank if Mr. Sawyer had borrowed the money from the bank—i.e., it is entitled to collect the money it loaned.⁵⁵

The dissent seems to recognize this situation for what it is. While in this case the lessee may be analogous to a buyer, it is doubtful that the lessor is analogous to a seller. The majority in its over-emphasis on the analogy between lessee and buyer almost entirely failed to take into account the possibility that Pioneer's role between the supplier (Tri-State) and Sawyer was not analogous to that of a merchant but in reality was that of a financial institution. This possibility would seem to be particularly strong since it was only by the most strained reasoning that one could call Barnett (in reality a salesman for the supplier) the agent of Pioneer. It appears from the opinion that not only was Pioneer unable to control the representations that Barnett made to Sawyer but it is quite possible that Pioneer first became aware of Barnett's existence and his role in the arrangement only after the ice machine had malfunctioned.

In addition to the foregoing reasons, the decision of *Sawyer v. Pioneer Leasing Corp.* is objectionable from another policy standpoint. The majority was apparently concerned with providing warranty protection to a lessee in Sawyer's position. Its success in this venture, however, may be more apparent than real. Because the majority only ruled that the facts presented were sufficient to make the issue of agency a jury question, it is entirely possible that on remand Sawyer will lose. If it is in the public interest that lessees like Sawyer be given warranty protection, it should be given to them as explicitly as the U.C.C. gives it to buyers.

Another consideration worthy of mention is that the majority opinion will do little to stop the fast-talking all-promising salesman from preying on men of little education who do not read the contracts which they sign. While Pioneer will hereafter probably not accept any lease proposals that do not conspicuously deny the existence of any implied warranties of fitness or merchantability, this will not stop the salesmen of suppliers from making them. To effectively stop this practice, the court should impose the warranty against that party who controls the salesman and reaps the fruits of his activities.

An attractive alternative to the solution of *Sawyer v. Pioneer Leasing Corp.* would be to impose the warranties upon Tri-State whose salesman actually made the representations to Sawyer. This solution would recognize the transaction between Sawyer and Pioneer for what it was (a loan), place the loss upon the party who actually controls the representations which are made to the lessee and, by explicitly recognising the lessee's right to warranty protection, would promote fair dealing and deter future occur-

⁵⁵ *Id.* at 56.

rences of this kind. The only apparent weakness to this solution is (as mentioned above) the lack of privity between the lessee and the supplier. Privity, however, itself being a legal fiction, should not prevent a court from placing the burden of a warranty on the party which justice otherwise dictates. Privity has been disregarded in the interest of justice by the Code in section 2-318 which extends a seller's warranty to "any natural person who is in the family or household of his buyer or who is a guest in his home if it is reasonable to expect that such person may use, consume or be affected by the goods and who is injured in person by breach of the warranty."⁵⁶

II. CONCLUSION

A lease as a transaction involving goods is capable of performing several commercial functions: a secured sale, a rental of goods, security for a debt. As the expectations of the parties justifiably vary with respect to each of these functions, it is difficult if not impossible to make one set of rules with regard to warranties which will always produce a just result. In each case a court should first determine the purpose of the leases. If, in the light of this purpose, the lessee and lessor are in positions analogous to those of buyer and seller respectively, then there is good reason to consider the possible existence of warranties. On the other hand, there appears to be little reason to even consider the application of warranties against a lessor who is not in a position analogous to that of a seller.

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⁵⁶ U.C.C. § 2-318.