

NEWSLETTERS

Buyer Beware When Defects Are Readily Discoverable

December 2, 2013 | [Atlanta](#) | [Chicago](#) | [Columbus](#) | [Delaware](#) | [Elkhart](#) | [Fort Wayne](#) | [Grand Rapids](#) | [Indianapolis](#) | [Los Angeles](#) | [Minneapolis](#) | [South Bend](#)

Note: This article appears in the December 2013 edition of Barnes & Thornburg LLP's [Commercial Litigation Update e-newsletter](#).

Buyers and sellers of goods should take note of a recent Indiana case holding that, under the Uniform Commercial Code (UCC), a buyer could not revoke acceptance of non-conforming goods where the defect could have been discovered before the purchase.

In *Trisler v. Carter*, 996 N.E.2d 354 (Ind. Ct. App. 2013), the Court of Appeals reviewed a small claims court decision giving a refund to a buyer who had returned goods to an antique store. The buyer purchased several items, including a chest of drawers. After taking the chest home, the buyer discovered nails protruding through the back, which made it unsuitable for the buyer's intended use by a relative with Alzheimer's. The seller agreed to accept return of the item for store credit only. After the buyer found nothing in the store that he wanted, he demanded a cash refund. The store did not display any sign nor was there anything on the receipt stating that it would refund the purchase price of a returned item.

The lower court found in favor of the buyer, determining that there was no posted refund policy and that the buyer had returned the chest of drawers within a reasonable amount of time. The Court of Appeals, applying the UCC, reversed. The Court explained that the UCC allows a buyer to revoke acceptance of goods where the goods have a non-conformity that substantially impairs the value to the buyer. This rule applies where the buyer accepted the goods 1) on the reasonable assumption that the non-conformity would be cured and it has not seasonably been cured, or 2) without discovery of the non-conformity if acceptance was reasonably induced by the difficulty of discovery before acceptance or the seller's assurances.

In this case, though the chest of drawers was non-conforming for the buyer's intended use and substantially impaired its value, the buyer did not accept the goods on the understanding that the non-conformity would be cured. The Court also determined that the buyer was able to discover the defect by opening the drawers of the chest while cleaning it, so there was no difficulty of discovering the non-conformity. There was also no allegation that the seller prevented the buyer from inspecting the chest of drawers before completing his purchase. Accordingly, under the UCC the buyer could not revoke his acceptance.

The reasoning of *Trisler* will apply to the purchase of any goods under the UCC. Unless there is another ground for revocation, acceptance of non-conforming goods may not be revoked where the defect could have been discovered prior to purchase.

For more information about the issues discussed in this article, please

RELATED PEOPLE



Jeanine Kerridge

Partner

Indianapolis, Columbus

P 317-231-6480

F 317-231-7433

jeanine.kerridge@btlaw.com

RELATED PRACTICE AREAS

Commercial Litigation

Litigation

contact Jeanine Kerridge, a member of the Firm's Commercial Litigation Practice Group, in our Indianapolis office at (317) 231-6480 or jeanine.kerridge@btlaw.com.

Visit us online at www.btlaw.com/commercial-litigation-litigation-practices.

© 2013 Barnes & Thornburg LLP. All Rights Reserved. This page, and all information on it, is proprietary and the property of Barnes & Thornburg LLP. It may not be reproduced, in any form, without the express written consent of Barnes & Thornburg.

This Barnes & Thornburg LLP publication should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult your own lawyer on any specific legal questions you may have concerning your situation.