

IMPLIED WARRANTY TO REPAIR – WHETHER A CLAIM OF AN IMPLIED WARRANTY TO REPAIR IN A GOOD AND WORKMANLIKE MANNER IS ACTIONABLE UNDER THE COMMON LAW OR ONLY THE DTPA

By Erin Rinehart*

Nghiem v. Sajib, 567 S.W.3d 718 (Tex. 2019).

Summary

In *Nghiem v. Sajib*, plaintiffs Daniel Nghiem (“Nghiem”) and Rupom Sajib (“Sajib”) were passengers on a plane that was piloted by and recently repaired by defendant Global Aviation Services (“Global”).¹ The engine failed, the plane crashed, and both passengers were injured.² Plaintiff, Sajib, was the first to bring suit against Global for negligence within the two-year statute of limitations.³ After the expiration of the two-year statute of limitations, Nghiem filed a petition to intervene as a plaintiff in the suit for negligence and later added a cause of action for breach of the implied warranty of good and workmanlike repair of tangible goods or property.⁴

Global sought to strike Nghiem’s pleading by asserting that both claims were barred by the two-year statute of limitations.⁵ Global not only alleged that the negligence claim had a two-year statute of limitations, but also that the implied warranty cause of action could only fall under the Deceptive Trade Practices Act’s (“DTPA”) two-year statute of limitations.⁶ Nghiem agreed to the two-year statute of limitations for the negligence claim and admitted it was barred; however, Nghiem asserted that the implied warranty claim was asserted under common law, rather than the DTPA, and had a four-year statute of limitations.⁷ The trial court disagreed with Nghiem and its

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¹ *Nghiem v. Sajib*, 567 S.W.3d 718, 720 (Tex. 2019).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

decision was affirmed by the First Court of Appeals in Houston, Texas.⁸ These courts struck Nghiem’s pleading, each holding that a claim for breach of implied warranty of good and workmanlike repairs can only be made under the DTPA and is not actionable under common law.⁹

The Supreme Court of Texas (the Court) disagreed with the prior court rulings and held that a claim for breach of implied warranty to repair can not only be brought under the DTPA, but it can also be brought under common law.¹⁰

Analysis

The Court begins by reviewing its decisions in *Melody Home Mfg. Co. v. Barnes*¹¹ and *La Sara Grain Co. v. First Nat’l Bank*.¹² In *Melody Home*, the Court recognized that the implied warranty to repair or modify existing tangible goods or property in a good and workmanlike manner is available under the DTPA;¹³ however, there was no language in the opinion that made this the sole remedy.¹⁴ Appellate courts have been split on whether a claim for breach of the implied warranty of good and workmanlike repairs can be made under the common law or only under the DTPA.¹⁵ The Court resolves this confusion when it considers whether the DTPA statute of limitations or the residual statute’s limitations apply to Nghiem’s breach of implied warranty claim.¹⁶

Beginning its analysis with *La Sara Grain*, the Court notes that generally, implied warranties are derived primarily from statute, or common law, but the DTPA does not create any

⁸ Nghiem v. Sajib, 567 S.W.3d 718, 720-21 (Tex. 2019).

⁹ *Id.* at 721.

¹⁰ *Id.* at 723.

¹¹ 741 S.W.2d 349 (Tex. 1987).

¹² 673 S.W.2d 558 (Tex. 1984).

¹³ Nghiem at 719, 722; *Melody Home Mfg. Co. v. Barnes*, 741 S.W.2d 349, 354 (Tex. 1987).

¹⁴ Nghiem at 723; *Melody Home* at 354.

¹⁵ Nghiem. at 721.

¹⁶ The “residual” statute is TEX. CIV. PRAC. & REM. CODE § 16.051 (“Every action for which there is no express limitations period, except an action for the recovery of real property, must be brought not later than four years after the day the cause of action accrues.”) Nghiem at 722, n.20.

warranties.¹⁷ Generally, for any breach of warranty, the DTPA is not the exclusive remedy.¹⁸ Further, in *Melody Home*, the Court stated that an implied warranty arises by operation of law when public policy makes it necessary, rather than sole creation under the DTPA.¹⁹ Having previously recognized that the formation of other implied warranties can occur by common law, there is no reason for the Court to hold differently for the implied warranty of good and workmanlike repairs.²⁰

In this case, Nghiem sued on breach of implied warranty under the common law, not the DTPA.²¹ The Court clarified that a breach of implied warranty on repairs is created under common law and therefore, an action can be brought under common law.²² The DTPA simply allows alternative damages and remedies²³ but is limited to its two-year statute of limitation.²⁴ Ultimately, the four-year statute of limitations was held to apply here because Nghiem's claim was brought under the common law rather than the DTPA.²⁵ Depending on what authority an implied warranty claim is asserted under, common law or DTPA, the applicable statute of limitation may vary.²⁶

¹⁷ *Nghiem* at 722.

¹⁸ *Id.*; *La Sara Grain Co. v. First Nat'l Bank*, 673 S.W.2d 558, 565 (Tex. 1984).

¹⁹ *Nghiem* at 722-23.

²⁰ *See generally* *Nghiem v. Sajib*, 567 S.W.3d 718 (Tex. 2019); *Melody Home Mfg. Co. v. Barnes*, 741 S.W.2d 349 (Tex. 1987).

²¹ *Nghiem* at 720.

²² *Id.* at 719-20.

²³ *Id.* at 722, n.24 (citing Tex. Bus. & Com. Code § 17.50(b)).

²⁴ *Id.* at 720.

²⁵ *Id.* at 723.

²⁶ *Nghiem v. Sajib*, 567 S.W.3d 718 *passim* (Tex. 2019).