

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

COURT'S INSTRUCTIONS TO THE JURY:

MEMBERS OF THE JURY:

Now that you have heard all of the evidence and the argument of counsel, it becomes my duty to give you the instructions of the Court concerning the law applicable to this case.

It is your duty as jurors to follow the law as I shall state it to you, and to apply that law to the facts as you find them from the evidence in the case. You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole. Neither are you to be concerned with the wisdom of any rule of law stated by me.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

COURT'S INSTRUCTIONS TO THE JURY:

DUTY TO FOLLOW INSTRUCTIONS

Regardless of any opinion you may have as to what the law is or ought to be, it would be a violation of your sworn duty to base a verdict upon any view of the law other than that given in the instructions of the court, just as it would also be a violation of your sworn duty, as judges of the facts, to base a verdict upon anything other than the evidence in the case.

In deciding the facts of this case you must not be swayed by bias or prejudice or favor as to any party. Our system of law does not permit jurors to be governed by prejudice or sympathy or public opinion. Both the parties and the public expect that you will carefully and impartially consider all of the evidence in the case, follow the law as stated by the Court, and reach a just verdict regardless of the consequences.

This case should be considered and decided by you as an action between persons of equal standing in the community, and holding the same or similar stations in life. A corporation is entitled to the same fair trial at your hands as is a private individual. The law is no respecter of persons, and all persons, including corporations, stand equal before the law and are to be dealt with as equals in a court of justice.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

COURT'S INSTRUCTIONS TO THE JURY:

CONSIDERATION OF THE EVIDENCE, ETC.

When a corporation is involved, of course, it may act only through natural persons as its agents or employees; and, in general, any agent or employee of a corporation may bind the corporation by his acts and declarations made while acting within the scope of his authority delegated to him by the corporation, or within the scope of his duties as an employee of the corporation.

As stated earlier, it is your duty to determine the facts, and in so doing you must consider only the evidence I have admitted in the case. The term "evidence" includes the sworn testimony of the witnesses and the exhibits admitted in the record.

Remember that any statements, objections or arguments made by the lawyers are not evidence in the case. The function of the lawyers is to point out those things that are most significant or most helpful to their side of the case, and in so doing, to call your attention to certain facts or inferences that might otherwise escape your notice.

In the final analysis, however, it is your own recollection and interpretation of the evidence that controls in the case. What the lawyers say is not binding upon you.

So, while you should consider only the evidence in the case, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified in the light of common experience. In other words, you make deductions and reach conclusions which reason and common sense lead you to draw from the facts which have been established by the testimony and evidence in the case.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

COURT'S INSTRUCTIONS TO THE JURY:

CREDIBILITY OF WITNESSES

Now, I have said that you must consider all of the evidence. This does not mean, however, that you must accept all of the evidence as true or accurate.

You are the sole judges of the credibility or "believability" of each witness and the weight to be given to his testimony. In weighing the testimony of a witness you should consider his relationship to the Plaintiff or to the Defendant; his interest, if any, in the outcome of the case; his manner of testifying; his opportunity to observe or acquire knowledge concerning the facts about which he testified; his candor, fairness and intelligence; and the extent to which he has been supported or contradicted by other credible evidence. You may, in short, accept or reject the testimony of any witness in whole or in part.

Also, the weight of the evidence is not necessarily determined by the number of witnesses testifying as to the existence or non-existence of any fact. You may find that the testimony of a smaller number of witnesses as to any fact is more credible than the testimony of a larger number of witnesses to the contrary.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

COURT'S INSTRUCTIONS TO THE JURY:

IMPEACHMENT

A witness may be discredited or "impeached" by contradictory evidence, by a showing that he testified falsely concerning a material matter, or by evidence that at some other time the witness has said or done something, or has failed to say or do something, which is inconsistent with the witness' present testimony.

If you believe that any witness has been so impeached, then it is your exclusive province to give the testimony of that witness such credibility or weight, if any, as you may think it deserves.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

COURT'S INSTRUCTIONS TO THE JURY:

BURDEN OF PROOF

The burden is on the Plaintiff in a civil action such as this to prove every essential element of his claim by a "preponderance of the evidence." A preponderance of the evidence means such evidence as, when considered and compared with that opposed to it, has more convincing force and produces in your minds a belief that what is sought to be proved is more likely true than not true. In other words, to establish a claim by a "preponderance of the evidence" merely means to prove that the claim is more likely so than not so.

In determining whether any fact in issue has been proved by a preponderance of the evidence, the jury may consider the testimony of all the witnesses, regardless of who may have called them, and all the exhibits received in evidence, regardless of who may have produced them. If the proof should fail to establish any essential element of Plaintiff's claim by a preponderance of the evidence, the jury should find for the Defendant as to that claim.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

COURT'S INSTRUCTIONS TO THE JURY:

DUTY TO DELIBERATE

Your verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree thereto. In other words, your verdict must be unanimous.

It is your duty as jurors to consult with one another and to deliberate with a view to reaching an agreement if you can do so without violence to individual judgment. Each of you must decide the case for yourself, but only after an impartial consideration of all the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to re-examine your own views, and change your opinion, if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of the evidence, solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

Remember at all times you are not partisans. You are judges -- judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

COURT'S INSTRUCTIONS TO THE JURY:

VERDICT FORMS

Upon retiring to the jury room you should first select one of your number to act as your foreman or forewoman who will preside over your deliberations and will be your spokesman here in court. A form of verdict has been prepared for your convenience.

You will take the verdict form to the jury room and when you have reached unanimous agreement as to your verdict, you will have your foreman or forewoman fill it in, date and sign it, and then return to the courtroom.

If, during your deliberations, you should desire to communicate with the Court, please reduce your message or question to writing signed by the foreman or forewoman, and pass the note to the marshal who will bring it to my attention. I will then respond as promptly as possible, either in writing or by having you returned to the courtroom so that I can address you orally. I caution you, however, with regard to any message or question you might send, that you should never state or specify your numerical division at the time.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

THE COURT'S INSTRUCTIONS TO THE JURY:

INSTRUCTION NO. _____

It was the duty of the plaintiff to furnish to the defendant the trailer in accordance with the terms of the contract.

If the plaintiff substantially complied with the terms of the contract and the defendant failed to comply therewith the plaintiff is entitled to recover the amounts due and unpaid in accordance with the terms of the contract.

If the plaintiff did not furnish a trailer which substantially complied with the contract then the defendant had the right to revoke his acceptance of the trailer.

Revocation of acceptance is possible only where nonconformity substantially impairs the value of the trailer to the buyer. The revocation of acceptance must occur within a reasonable time after the buyer discovers or should have discovered the ground or grounds for revocation and before any substantial change in the condition of the trailer, which is not caused by its own defects.

A revocation isn't effective until the buyer notifies the seller of such revocation.

A buyer which has properly revoked acceptance of nonconforming goods has the duty to hold the goods with reasonable care at the seller's disposition for a time sufficient to permit the seller to remove them.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

COURT'S INSTRUCTIONS TO THE JURY:

CLAIMS OF THE PARTIES

THE PLAINTIFF HEREIN, THE BUDD COMPANY, ASSERTS THAT ON JULY 31, 1981, THE DEFENDANT, LAWRENCE SUMPTER, SIGNED A CONTRACT TO PURCHASE A 1981, 43 FOOT REEFER REFRIGERATED TRAILER FOR THE TOTAL PURCHASE PRICE OF \$29,000.00, AND THAT LAWRENCE SUMPTER PAID A CASH DOWN PAYMENT ON THE TRAILER OF \$5,800.00, AND FINANCED THE BALANCE OF \$23,200.00, WITH INTEREST OF 20.75%, FOR A TOTAL PERIOD OF 48 MONTHS; THAT MR. SUMPTER WAS TO PAY 47 MONTHLY INSTALLMENTS OF \$716.00 AND ONE PAYMENT OF \$692.88, FOR A TOTAL PURCHASE PRICE, INCLUDING INTEREST, OF \$34,344.80.

ON THE OTHER HAND, MR. SUMPTER HAS ASSERTED THAT THE PLAINTIFF BREACHED THE CONTRACT OF SALES IN THAT IT REPRESENTED THAT THE TRAILER WAS A NEW TRAILER AND, IN FACT, ONE (1) YEAR OLD, AT THE TIME IT WAS REPRESENTED AS BEING A NEW TRAILER AND HE DID NOT THEREFORE GET THE MERCHANDISE HE CONTRACTED FOR.

MR. SUMPTER FUTHER ASSERTS THAT, AT THE TIME HE AGREED TO PURCHASE THE REFRIGERATED TRAILER, HE REQUESTED, AND THE PLAINTIFF AGREED, TO LICENSE IT IN THE STATE OF INDIANA. THIS, ACCORDING TO MR. SUMPTER, WAS A CONDITION OF THE AGREEMENT.

MR. SUMPTER CLAIMS THAT AS A RESULT OF THE FAILURE OF THE PLAINTIFF TO FURNISH HIM AN INDIANA TITLE FOR THE TRAILER, HE LOST HIS CONTRACT TO HAUL MERCHANDISE FOR "DAYS EXPRESS" AND THEREBY LOST PROFITS IN THE AMOUNT AS SHOWN BY THE EVIDENCE. IN ADDITION, MR. SUMPTER CLAIMS THAT BY REASON OF THE BREACH OF CONTRACT, HE COULD NOT EARN A SUFFICIENT AMOUNT OF MONEY TO MEET THE PAYMENTS ON THE TRACTOR-TRUCK AND HAD TO RETURN THE TRACTOR AND WAS DAMAGED THEREBY.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

THE COURT'S INSTRUCTIONS TO THE JURY:

CLAIMS INSTRUCTION

IT WAS THE DUTY OF THE PLAINTIFF TO FURNISH TO THE DEFENDANT THE TRAILER IN ACCORDANCE WITH THE TERMS OF THE CONTRACT.

GOODS OR CONDUCT INCLUDING ANY PART OF A PERFORMANCE ARE "CONFORMING" OR CONFORM TO THE CONTRACT WHEN THEY ARE IN ACCORDANCE WITH THE OBLIGATIONS UNDER THE CONTRACT.

THE TERM "SUBSTANTIAL PERFORMANCE" MEANS THAT DEGREE OF THE PERFORMANCE OF THE CONTRACT WHICH, WHILE NOT IN FULL AND COMPLETE PERFORMANCE IS SO NEARLY EQUIVALENT TO WHAT WAS BARGAINED FOR THAT IT WOULD BE UNREASONABLE TO DENY THE SELLER THE PAYMENT AGREED UPON.

IF THE PLAINTIFF DID NOT FURNISH A TRAILER WHICH SUBSTANTIALLY COMPLIED WITH THE CONTRACT THEN THE DEFENDANT HAD THE RIGHT TO REVOKE HIS ACCEPTANCE OF THE TRAILER.

REVOCATION OF ACCEPTANCE IS POSSIBLE ONLY WHERE THE NONCONFORMITY SUBSTANTIALLY IMPAIRS THE VALUE OF THE TRAILER TO THE BUYER. THE REVOCATION OF ACCEPTANCE MUST OCCUR WITHIN A REASONABLE TIME AFTER THE BUYER DISCOVERS OR SHOULD HAVE DISCOVERED THE GROUND OR GROUNDS FOR REVOCATION AND BEFORE ANY SUBSTANTIAL CHANGE IN THE CONDITION OF THE TRAILER, WHICH IS NOT CAUSED BY ITS OWN DEFECTS.

A REVOCATION ISN'T EFFECTIVE UNTIL THE BUYER NOTIFIES THE SELLER OF SUCH REVOCATION.

WHERE ANY DELIVERY IS REJECTED OR ACCEPTANCE OF THE GOODS IS PROPERLY REVOKED BECAUSE THE GOODS ARE NONCONFORMING AND THE TIME FOR PERFORMANCE HAS NOT EXPIRED, THE SELLER MAY SEASONABLY NOTIFY THE BUYER OF HIS INTENTIONS TO CURE AND MAY THEN, WITHIN THE CONTRACT TIME, MAKE A CONFORMING DELIVERY.

A BUYER, WHO BY CONDUCT PREVENTS THE CURING OF A DEFECT AFTER A PROPER TENDER MAY BE DENIED THE RIGHT TO CANCEL THE CONTRACT BUT MAY NOT BE DENIED THE RIGHT TO DAMAGES FOR THE DIFFERENCE BETWEEN THAT WHICH THE SELLER ACTUALLY DELIVERED AND THAT WHICH THE SELLER CONTRACTED TO DELIVER.

A BUYER WHICH HAS PROPERLY REVOKED ACCEPTANCE OF CONFORMING GOODS HAS THE DUTY TO HOLD THE GOODS WITH REASONABLE CARE AT THE SELLER'S DISPOSITION FOR A TIME SUFFICIENT TO PERMIT THE SELLER TO REMOVE THEM.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

THE COURT'S INSTRUCTION TO THE JURY:

DAMAGE INSTRUCTION

A SELLER WHO HAS RENDERED A FULL AND COMPLETE PERFORMANCE IN ACCORDANCE WITH THE TERMS OF THE SALES CONTRACT IS ENTITLED TO RECOVER THE AMOUNT DUE AND UNPAID IN ACCORDANCE WITH THE TERMS OF THE CONTRACT.

A SELLER WHO HAS RENDERED LESS THAN A FULL AND COMPLETE PERFORMANCE BUT ONE THAT IS SUBSTANTIALLY SO NEAR A FULL AND COMPLETE PERFORMANCE THAT IT WOULD BE UNREASONABLE TO DENY THE SELLER A RIGHT TO RECOVER IS ENTITLED TO RECOVER PAYMENT IN ACCORDANCE WITH THE CONTRACT LESS THE DAMAGES SUFFERED BY REASON OF THE FAILURE TO RENDER THE FULL AND COMPLETE PERFORMANCE.

A BUYER WHO HAS RECEIVED A LESS THAN FULL AND COMPLETE PERFORMANCE AND LESS THAN A SUBSTANTIAL PERFORMANCE IS ENTITLED TO CANCEL THE CONTRACT AND RECOVER SO MUCH OF THE PRICE AS HAS BEEN PAID.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

INTERROGATORY NO. _____

DOES THE JURY FIND BY A PREPONDERANCE OF THE EVIDENCE THAT THE PLAINTIFF, SELLER, THE BUDD COMPANY, ENTERED INTO A SALES CONTRACT WHEREIN THE SELLER WAS TO DELIVER TO THE DEFENDANT, BUYER, LAWRENCE SUMPTER, A DESCRIBED TRAILER FOR THE SUM OF \$29,000. THE BUYER PAID A DOWN PAYMENT OF \$5,800 THEREON AND PROMISED TO PAY THE BALANCE OF \$23,200 IN MONTHLY PAYMENTS?

YES _____ NO _____

DOES THE JURY FIND BY A PREPONDERANCE OF THE EVIDENCE THAT THE BUYER, LAWRENCE SUMPTER, FAILED TO MAKE ANY MONTHLY PAYMENTS REQUIRED BY THE SALES CONTRACT?

YES _____ NO _____

DOES THE JURY FIND BY A PREPONDERANCE OF THE EVIDENCE THAT THE SELLER, THE BUDD COMPANY, OBTAINED POSSESSION OF THE TRAILER AND REALIZED THE SUM OF \$13,206.90 FROM A SALE THEREOF LEAVING A SUM IN THE AMOUNT OF \$10,000 DUE AND OWING ACCORDING TO THE TERMS OF THE CONTRACT OF SALE?

YES _____ NO _____

FOREMAN

DATE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

INTERROGATORY NO. _____

DOES THE JURY FIND BY A PREPONDERANCE OF THE EVIDENCE
THAT THE PLAINTIFF, SELLER, THE BUDD COMPANY, MADE A FULL AND
COMPLETE PERFORMANCE OF ITS DUTIES REQUIRED BY THE SALES CONTRACT?

YES _____ NO _____

DOES THE JURY FIND BY A PREPONDERANCE OF THE EVIDENCE
THAT ALTHOUGH THE PLAINTIFF FAILED TO MAKE A FULL AND COMPLETE
PERFORMANCE IT MADE A SUBSTANTIAL PERFORMANCE OF THE DUTIES
REQUIRED OF IT BY THE SALES CONTRACT?

YES _____ NO _____

FOREPERSON

DATE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

INTERROGATORY No. _____

Does the jury find by a preponderance of the evidence, because the plaintiff, seller, made a full and complete performance of the contract that the buyer, defendant, Lawrence Sumpter, owes the sum of \$ 10,000.00 upon the contract of sale?

YES _____ NO _____

Does the jury find by a preponderance of the evidence, because the plaintiff, seller, made a substantial performance of the contract that the buyer, defendant, Lawrence Sumpter, owes the sum of \$ 10,000.00, less the difference in the fair market value of the trailer as it was represented and the fair market value of the trailer actually delivered by the seller?

YES _____ NO _____

Does the jury find by a preponderance of the evidence, that the difference in the fair market value of the trailer represented and the trailer actually delivered is a sum in an amount contained in the evidence not to exceed \$ 8,000.00 and not less than the sum of \$ 3,000.00?

YES _____ NO _____

\$ _____

Date _____

Foreperson

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

INTERROGATORY NO. _____

DOES THE JURY FIND BY A PREPONDERANCE OF THE EVIDENCE
THAT THE PLAINTIFF, SELLER, THE BUDD COMPANY, FAILED TO COMPLY
WITH THE TERMS OF ITS SALES CONTRACT AND THAT THE DEFENDANT,
BUYER, LAWRENCE SUMPTER, PROPERLY REVOKED ACCEPTANCE OF NONCONFORMING
GOODS AND IS ENTITLED TO RETURN OF HIS DOWN PAYMENT IN THE SUM
OF \$5,800?

YES _____

NO _____

FOREPERSON

DATE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

INTERROGATORY NO. _____

DOES THE JURY FIND BY A PREPONDERANCE OF THE EVIDENCE THAT THE PLAINTIFF, SELLER, THE BUDD COMPANY, REPRESENTED TO THE DEFENDANT, BUYER, LAWRENCE SUMPTER, THE MODEL (YEAR) OF THE TRAILER SOLD AND DELIVERED?

YES _____ NO _____

DOES THE JURY FIND BY A PREPONDERANCE OF THE EVIDENCE THAT THE PLAINTIFF, SELLER, THE BUDD COMPANY, REPRESENTED TO THE DEFENDANT, BUYER, LAWRENCE SUMPTER, THAT IT WOULD TITLE THE TRAILER IN THE STATE OF INDIANA?

YES _____ NO _____

DOES THE JURY FIND BY A PREPONDERANCE OF THE EVIDENCE THAT THE PLAINTIFF, SELLER, THE BUDD COMPANY, MISREPRESENTED THE FACTS IN THAT IT FAILED TO DO THAT WHICH IT REPRESENTED. THAT THE BUYER, DEFENDANT, LAWRENCE SUMPTER, IN RELIANCE OF SUCH REPRESENTATIONS ENTERED INTO THE SALES CONTRACT AND BUT FOR SUCH REPRESENTATIONS WOULD NOT HAVE MADE SUCH CONTRACT AND AGREEMENT?

YES _____ NO _____

FOREPERSON

DATE

RE: 82-432
The Budd Company v. Lawrence Sumpter

PTC, Wed., 4-18-84, at 3:00

Synopsis: Per Mr. Reed's letter of 3-1-84, it appears that plff has picked up the trailer in question. I guess the next step would be to sell it and obtain a deficiency judgment.

Pending Motions:

1. Plff has moved for default judgment & expenses, due to the failure of Jim Craft to attend the PTC back in January. He alleges expenses of \$855.15, and wants Craft to be ordered to pay half of the expenses.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

CIVIL ACTION NO. 82-432

THE BUDD COMPANY

PLAINTIFF,

VS:

FINAL JUDGMENT

LAWRENCE SUMPTER,

DEFENDANT.

* * * * *

This action came on for trial before the court and a jury. Pursuant to FRCP 49, the jury returned a special verdict upon the issues of fact in the form of special findings of fact. The court accepted the findings and directed a judgment on the special verdict in favor of the defendant upon his counterclaim in the sum of Five Thousand Eight Hundred (\$5,800) Dollars and that the plaintiff take nothing by reason of its complaint.

IT IS ORDERED AND ADJUDGED THAT:

Judgment be entered against the plaintiff; that it take nothing by reason of its complaint. It is further ORDERED and ADJUDGED that judgment be entered in favor of the defendant, Lawrence Sumpter, and against the plaintiff, the Budd Company, for the sum of Five Thousand Eight Hundred (\$5,800) Dollars.

The sum of Thirteen Thousand Two Hundred Six and 90/100 (\$13,206.90) Dollars was deposited in the registry of this court by the plaintiff from the sale of the personal property obtained by way of the Writ of Possession issued herein. It is ORDERED, pursuant to the agreement of the parties, that the sum of Five Thousand Eight Hundred (\$5,800) Dollars be taken from said sum and paid to the defendant in satisfaction of the judgment herein rendered. The remaining sum in the amount of Seven Thousand Four Hundred Six and 90/100 (\$7,406.90) Dollars will be paid to the plaintiff.

This is an action between two parties upon multiple issues. It is a **FINAL JUDGMENT** upon all the issues between all the parties.

This action is **STRICKEN** from the court's active docket.

This 11th day of March, 1985.

G. Wix Unthank
G. WIX UNTHANK, JUDGE

*Budd Co v. Lawrence
Junyter*

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

THE COURT'S INSTRUCTIONS TO THE JURY:

CLAIMS INSTRUCTION

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

INTERROGATORY NO. _____

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YES _____ NO _____

DOES THE JURY FIND BY A PREPONDERANCE OF THE EVIDENCE THAT THE BUYER, LAWRENCE SUMPTER, FAILED TO MAKE ANY MONTHLY PAYMENTS REQUIRED BY THE SALES CONTRACT?

YES _____ NO _____

DOES THE JURY FIND BY A PREPONDERANCE OF THE EVIDENCE THAT THE SELLER, THE BUDD COMPANY, OBTAINED POSSESSION OF THE TRAILER AND REALIZED THE SUM OF \$13,206.90 FROM A SALE THEREOF LEAVING A SUM IN THE AMOUNT OF \$10,000 DUE AND OWING ACCORDING TO THE TERMS OF THE CONTRACT OF SALE?

YES _____ NO _____

FOREMAN

DATE

Turner box of base - 1977

✓ ✓ Engine
Cycles



Office File

Budd v. Lawrence Sumpter

Bold Co - makes trailers

Trailer

29,000.00
5,800.00 down payment
23,200.00 over 1 year

July - Aug 81

15 Sept - 1st monthly payment
wasnt made

Wint of possession

trailer sold
\$13,850.00

expense of sale
\$13,206.90.

\$10,000.00 deficiency

K to buy
failed to pay

Sampter - insurance -

Purchase
order

Condia new - 1987 (1 1/2 yrs old)
license - end.

TJ

#1

William H. Sahr.
Flatrock Mich
Semi-trailer salesman

Previously Budd Co
Rochester, Mich
Salesman - Semi-trailer

15⁺
time

July 1981

Why are you so cheap?
Trailer held after several
price increases

were built in 200 trailer lot
6x6 vehicle ident. tag
looked at serial tag - was
manufactured previous
when bill of sale - on date
of delivery.

Titled when delivered not
when manufactured.

License in Indiana
No Sales Tax

mentioned Maine
decision on state was deferred
Purchase order written
up for Indiana but had
options.

Telephone Conversation

Extra lights
delivery date

go ahead on hearing in
Maine.

30 day temp this Tag
paper work forwarded to Maine
TRIBE picked up July 21/
documents

III - Exp - 1

(a)

original document had
mathematical error -
this exhibit sent by mail and
returned several weeks later

\$ 29,000 - Pardon Price
5,800 - down payment

\$ 23,200 - owed

(b) - Exp - 2

Title application to
Supter trader for State
of Maine.

delivered Maine license
plate at restaurant in
Methuen - 3-4 weeks after
trailer delivered.

no objections as to trailer
no objections as to Maine
no objections as to Ohio temporary
tag.

O - Title to Finance Co
Reg Certificate + license for
State of Maine.

Complaint about scratches
a week later - by telephone
described someone.

burglar office to examine

Scratched at factory +
touch up paint
To be either touched up or
paint entire trailer.

Several months later

Bad called - No payments
witness called Sumpter
(1) Blown tires

(2) Scratches -

(3) manufactured 1979. 1981

(4) Problem of licensing in
Indiana

Had been arrested in California because of
Maine license plate

End of
August
1981

next person you will
talk to will be my lawyer.

Sell - 150-400 trailers per
year.

Almost all business goes
through financing.

these complaints were not
helpful to his standing w/ credit
companies.

Cross - (Craft)

32,000 - new trailers

\$3,000 difference

Ohio \$400
Maine \$15

purchase order
In Ohio - hadn't
made a complete decision

In Maine - Finance
Company has title until
trailer paid for

Sent - new K - which
was dated the same date
as original

~~T. G. 2~~

Application for license

Lawrence Fungler's signature
same as on Conditional Sales
K

Thru Finance Co but
may go thru his local Bank

Don't remember Drye

not Canada.

TT
#2.

Wayne D.

Zimmerman

Co Credit Manager for Budd

down payment - no further
payment

later got possession - 2 or 3 years

\$13,750

upside
\$13,200?

sale in Spring of 1974.

balance of \$10,000⁰⁰

Credit application



Lawrence Sumpter
Works on Corby Highway
Dyot

1981 - Trucking - Coast to
Coast
profits that in Coal Mines
moved to Indiana
Owner of Days Express

Coast to Coast Hauler - Columbus
Indiana

Peterbilt - Tractor -

paid down \$17,000

Budd. Company

went to field met Mr. Sahr.
made deal

\$29,000.00

5800.00

\$30,171.30
lost tractor

81 Budd →

did not make any statement
Sahr said he made.

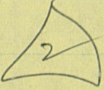

August
1981 -


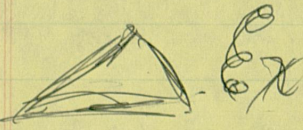
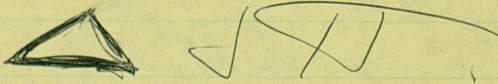
15th discovered Non Conformity
when Sahr gave him license
plates went to California -
found him \$521⁰⁰ for temporary
tag.

When he discovered - Called
Sahr - he said what he would
do but didn't do anything
Went to Law firm wrote
letter - Budd answered said his fault

make \$1,000 per week on
trip — went to utility trailer
to trade
because of lack of paperwork
: trade-in \$9,000

Couldn't lease because he
didn't have money but did get
terms of lease — Couldn't afford

 —  — 2 — letter of attorney
Mpn

 —  — 1 — Agreement
Npm
between 

Cross- Reed

Date of letter 12 Nov 81

1st payment 15 Sept 81

2nd payment 15 Oct 81

Looked at trailer on date
of purchase
Small Plate
real hard to see
manufactured 4-79.

design in trailer 79
81 - no difference - but
there is a difference in
age -

Plaintiff said \$3,000 difference

operated on Ohio Tag
but paid several fines.
He got hot loads but
days required Indiana Tag

Sahr never gone him
maine + z -

He got this log from
his mail boy

He lived w/ his brother in
Indiana.

TT Ex 1 = his address

Whitensburg, Ky

did not go by any offices
in Indiana

never went to Budd Hdq.
because they moved out

only man talked to
was Bill Sahr.

Lease.

12 or 14 %

② #

Mitchell Wright

53 yrs age
Esom, Ky

Truck - 35 years

produce - Coal

produce by refrigerator trailers

Fla - Detroit

Fla - N.Y.

Familiar Reefer trailers
thermo-king unit

Always had 1 or two
bought & sold trailers and

Familiar w/ fair market value

July 1981 - 30-32,000 ←

Sold in 81 - 2 yrs 75⁰⁰ 8,00

manufactured in 79 21-23,000

never saw trailers

Rebuttal
Zimmerman

Letter to Budd Co
Nov 1981.

Response
by Budd Law Co.

TT
NPM^①

————— 63

\$23,200 doesn't
include interest

Non conformity
Substantially
impairs the value.

\$7,000⁰⁰

29
2

① If person make Contract

They have

duty to Comply w/K.

96 ALK 3299

②

\$2717.
355-271.5

Did the transfer Comply?

Sub Compe w/K
Yes

Demoged
m = Cornick
Sec. 20, 164-06.

3
578 SW 244
v. Harry-Berry.
low income

A Seller who substantially complies with the terms of a sales contract is entitled to recover the amount due and unpaid in accordance with the terms of the contract.

A buyer who has received a substantial performance, ~~which~~ which may be less than a full and complete performance, is entitled to receive the contract price agreed upon less the damage suffered by reason of the failure to render full and complete performance.

A buyer who has received non conforming goods and has properly revoked acceptance ~~they~~ ~~may be~~ is entitled to ~~cancel~~ cancel and recover so much of the price as has been paid.

breach is perpendic case

W/o trailer ~~he was unable~~
being burned in end he lost (K.W.)
trans. Co & he failed to make enough money
to pay for Tractor.

W/o tractor he lost his ~~contract~~
~~state~~ ability to work.

In this case the TT stated
~~it attempted~~

has presented evidence that
it attempted to contact Δ and
tender conforming goods or to
make allowance - or to attempt
to see what could be done to make
it right - but that Δ had
left them preventing them from
from doing any thing -

loss K -

No evidence that he had K
only statement of promise -
no certainty of K only promise -

Consequential damages must
be a direct and proximate cause
of the breach as distinguished
from ~~the~~ the remote cause of the injury
mere statement of Plaintiff alone

Plaintiff proposed instructions
and interrogatories

36 -

- 1.
- 2.
- ~~3.~~
- ~~4.~~
- 5.
- 6.

TO: Judge
FROM: Donald
DATE: 6-16-83
RE: 82-432
The Budd Company v. Lawrence Sumpter

*Continued
Trial date
from 1-17-84*

PC, Friday, 6-17-83, at 9:00

Synopsis: Plff brings this action alleging defendant's breach of an installment sales contract. plff seeks money damages, repossession of the property contracted for, and a deficiency judgment, if appropriate.

Def. has counterclaimed alleging that he thought he was buying a new Thermo King Refrigeration Unit, when the unit in question was used. Def. alleges that he was unable to obtain a license for this unit in all the states desired, and that as a result thereof, he lost business and profits.

Pending Motions:

1. Def. has moved for an extension of time in which to file his PC memo, tendering a memo with his motion. His memo was 4 days late.

Substantive Issues:

1. Apparently def. made no payments on the installment sales contract.

Did defendant properly revoke acceptance according to the Code (KRS 355.2-602, 606 and 607?)

2. Did plff represent the product as a new unit, when it was in fact a used one? If so, did plff's behavior amount to a material breach of contract?

Procedural Issues: NONE.

Comments:

1. My money's on the plaintiff.

gam
Pre-trial - 1/3/84
Trial - 1/17/84
gam

ASSIGNED FOR HEARING ON MOTION FOR WRIT OF POSSESSION AT PIKEVILLE JUDGE UNTHANK

DATE OCTOBER 31, 1983 AT 3:30 P.M.

DIST.	OFF.	DOCKET YR. NUMBER	FILING DATE MO DAY YEAR	J	N/S	O	D	F	S DEMAND	JUDGE/MAG. NO.	COUNTY	JURY DEM.	DOCKET YR. NUMBER
0643	7	82 432	11 24 82	4	190	1	3	1	23	Nearest \$1,000 J 4308 M	21133		82 432

PLAINTIFFS

DEFENDANTS

THE BUDD COMPANY

LAWRENCE SUMPTER

COUNTERCLAIM - Filed 1/24/83

CAUSE

(CITE THE U.S. CIVIL STATUTE UNDER WHICH THE CASE IS FILED AND WRITE A BRIEF STATEMENT OF CAUSE)

28 USC §1332, §1391 - Diversity - Alleged breach of contract.

GS

ATTORNEYS

(LETCHER)

WILLIAM M. REED
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Lexington, KY 40508
606/233-7763

JAMES W. CRAFT
P. O. Box 786
Whitesburg, KY 41858
606/633-4469

S. O. - 11/29/82

S. O. - 1/18/83

9/14/83

#14

MOTION, of plff for writ of possession

#15

MEMORANDUM, of plff n/suppt of mot for writ of possession

13,206.90
5,800.50
7,406.90
13,206.90