

**IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO**

<b>LEE INTERNATIONAL</b>	)	<b>CASE NO. CV 10 724122</b>
<b>TRADING SERVICES, INC.</b>	)	
	)	
<b>Plaintiff,</b>	)	<b>JUDGE JOHN P. O'DONNELL</b>
	)	
<b>vs.</b>	)	<b><u>JOURNAL ENTRY</u></b>
	)	
<b>HARD KNOX ENERGY, INC.</b>	)	
	)	
<b>Defendants.</b>	)	

***John P. O'Donnell, J.:***

Plaintiff Lee International Trading Services, Inc. on April 14, 2010, filed its complaint alleging a breach by the defendant Hard Knox Energy, Inc., of a contract to buy two custom-manufactured gas well pumps. The case was tried to the court on February 16, 2011, and this entry follows.

Trial testimony was given by Yong Lee, the owner of the plaintiff corporation, Edward Bonk, a commission salesman for the plaintiff, and Randy Hall, the owner and president of Hard Knox.

The plaintiff is a manufacturer of mechanical and electrical components. The items it makes are ordinarily manufactured to customers' specifications. Hard Knox contracted with Lee to build a number of gas well pump jacks. The pump jacks are steel structures that look like large grasshoppers and are often seen, usually alone or in small groups, at random locations near many rural roads.

The first purchase order was for two prototypes. Those prototypes were built, delivered and paid for. Hard Knox then ordered six more pump jacks, but with some modifications intended to improve on the prototypes. These next six were built and delivered by Lee. Five of them had the correct amount and type of counterweights. The counterweights consist of several separate steel plates that are bolted at the tail end of the grasshopper. However, that shipment did not include enough weights for the sixth pump. Therefore, Hard Knox paid for only five of those jacks, and when the defendant placed a third order, for six more pump jacks, Lee agreed to include with that order a set of replacement weights so that the sixth jack from the second order could be made functional.

When the third shipment – of six pump jacks and the new weights for the sixth jack of the second shipment – arrived at the port in Cleveland, Hall was unable to inspect it until it was delivered to Hard Knox’s yard in Canton, and was unable to know whether the pumps would work until they were installed. When Hard Knox’s workers tried to use the replacement weights they found the weights were incompatible with the sixth unit from the second shipment. They also found that the sixth unit of the third shipment incorporated a new design of the counterweights that made that pump unworkable.

Because of these non-conformities, Hall ultimately withheld payment for two units at \$11,500 each.

Lee denies that the pump jacks were non-conforming. The plaintiff also argues that Hard Knox’s revocation of acceptance of the units claimed to be non-conforming was not timely. The third shipment, which included the replacement weights for the unit delivered with the second shipment, was delivered April 28, 2008. It was not until January 27, 2009, that Hall wrote a detailed letter to Lee complaining about the alleged non-conformities.

As to whether the two pumps didn't work as claimed, Hall's version of events is credible. Hall paid in full for twelve of the fourteen jacks shipped. If he were simply trying to avoid his obligation, he likely would not have paid for the large majority of the total purchase orders. Indeed, as of his January, 2009, letter he remained willing to pay for the pump jacks if Lee International corrected the defects.

It is also apparent that the defendant notified the plaintiff of the deficiencies within a reasonable time after acceptance of the deficiencies. These are contracts for the sale of goods and Chapter 1302 of the Ohio Revised Code is applicable.<sup>1</sup> R.C. section 1302.66 provides that a buyer may revoke acceptance of non-conforming goods if his initial acceptance was induced by the difficulty of discovering the non-conformity before acceptance, but he must notify the seller of the revocation within a reasonable time after discovering it. Although Hall did not write to the plaintiff until January, 2009, Lee admitted in his testimony that Hall verbally notified him of problems with the pump jacks as early as about two months after delivery. That amount of time to discover and notify of the defects is reasonable because it takes into consideration that Hall had to locate a buyer for the pump jacks and then ship the jacks for installation at the well sites. It was not until the installation crew began to put the pump jacks together in the field that the non-conformities – the inadaptability of the new weights for the sixth unit of the second shipment and the faulty design of the sixth unit of the third shipment – were discovered.

Because of that, the court finds: 1) that the two pump jacks that were not paid for did not conform to the defendant's specifications; 2) that the defects were not discoverable until the time the pumps were installed; and 3) that Hard Knox revoked its acceptance and communicated that revocation to the plaintiff within a reasonable time.

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<sup>1</sup> See R.C. 1302.02.

The court, therefore, finds in favor of the defendant on the plaintiff's complaint, and court costs are assessed to the plaintiff.

**IT IS SO ORDERED:**

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JUDGE JOHN P. O'DONNELL

Date: \_\_\_\_\_

**SERVICE**

A copy of this Journal Entry was sent by e-mail, this 8th day of March, 2011, to the following:

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JUDGE JOHN P. O'DONNELL