

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

<b>J.D. PRODUCTS CO., INC,</b>	<b>: No. 00-00241</b>
<b>Plaintiff</b>	<b>:</b>
	<b>: Civil Action - Law</b>
<b>vs.</b>	<b>:</b>
	<b>:</b>
<b>RENOLD, INC.,</b>	<b>: Non-Jury Trial</b>
<b>Defendant</b>	<b>:</b>

**OPINION AND VERDICT**

This matter came before the Court for a non-jury trial on May 14-15, 2001.

The trial was to resolve a complaint filed by Plaintiff against Defendant seeking damages for breach of contract, breach of implied warranty of merchantability, and breach of implied warranty of fitness for a particular purpose.

**Findings of Fact**

After review of the evidence presented, the Court makes the following findings of fact:

1. Taylor By-Products is a company that, among other things, processes the bones of slaughtered cattle into a by-product and sells it to customers who use it to make pet food.
2. The bones are ground and/or hammered into a bone meal called crax and passed through a screening machine.
3. Taylor By-Products wanted to modernize its grinding department to double its output capacity.
4. Taylor By-Products hired J.D. Products and its President, Jack Wall, to modernize the grinding department.

5. To increase the output capacity as requested, J.D. Products and Mr. Wall decided to purchase two (2) new vibratory screening machines.

6. The machines were supposed to process five (5) tons of crax with a moisture content of approximately 2% per hour.

7. The specifications for the machines were that 90% of the crax would pass through a twelve inch screen with .65 inch openings and 10% would pass over the screen and need to be re-hammered/re-ground.

8. Prior to manufacture of the machines, J. D. Products had Taylor By Products send Renold a sample of the crax, so Renold could test it and confirm the feasibility of the specifications which Mr. Wall contemplated using in the machines.<sup>1</sup>

9. Mr. Zarycki testified that he tested the sample with a 12 inch Tyler sieve and 75-80% of the crax did not pass through.<sup>2</sup>

10. Renold indicated to J.D. Products that they could manufacture such a machine.

11. J.D. Products contracted with Renold to purchase two (2) vibrating screening machines with the flow and specifications listed in paragraphs 6 and 7 for a total

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<sup>1</sup>In a fax transmission to Mr. Zarycki of October 27, 1995, Mr. Wall asked if Renold completed their tests on the sample sent by Taylor By Products. He also asked Mr. Zarycki to confirm that the equipment quoted was correct for size and use. See Plaintiff Exhibit 2.

<sup>2</sup>Dennis Mullane of Taylor By Products testified that he visited the Renold plant on February 23, 1996 after sending a sample of the crax to Renold. During this visit, Mr. Zarycki told Mr. Mullane he tested the sample. Despite test results to the contrary, Mr. Zarycki represented that Renold could achieve the specification of 90% of the product going through the screen. Based on this representation, Mr. Mullane and Mr. Wall chose Renold to manufacture the screening machines in question.

purchase price of \$32,013.

12. The machines manufactured by Renold for J.D. Products were delivered to and tested at Taylor By-Products.

13. Crax with a moisture content of approximately 2% was utilized during testing of the Renold machines.

14. Only about 5% of the crax would pass through the screening machines manufactured by Renold.<sup>3</sup>

15. Renold sent Morris Follett, their design engineer to the Taylor By-Products plant to attempt to correct the problem with the machines. Mr. Follett worked with officers and employees of J.D. Products and Taylor By-Products for approximately two (2) days, but achieved minimal success.

16. After Mr. Follett left the Taylor plant, there was not much further contact between the parties.

17. Mr. Wall asked Renold how long it would take to manufacture new machines and Renold told him fourteen weeks.

18. J.D. Products felt this time frame was too long, so they ordered two screening machines from Kason Company.

19. J.D. Products then sought to return the Renold machines and obtain a refund of the full purchase price, but Renold refused J.D. Products request.

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<sup>3</sup>This result was consistent with Renold's testing of the product in 1995, but obviously inconsistent with the specifications agreed upon for the machines.

## **Conclusions of Law**

1. The machines supplied by Renold did not meet J.D. Products' specifications.
2. Renold breached its contract with J.D. Products by furnishing machines which did not meet J.D. Products' specifications.
3. J.D. Products is entitled to a refund of the full purchase price.

## **Discussion**

The Court's decision in this case revolved around two credibility issues - one regarding the percentage of material which was supposed to pass through the screening machines and the other regarding the moisture content of the crax. The Court resolved both these credibility determinations in favor of Plaintiff.

The Court found the specifications for the machines was 90% pass through. Jack Wall testified for Plaintiff that he ordered machines whereby 90% of the crax would pass through the mesh screen and 10% would pass over the screen. On direct examination, Mr. Zarycki of Renold testified he manufactured machines with specifications for 90% of the crax to be retained and only 10% of the crax would pass through the screen. He also asserted he did not cross out the word "retained" on the agreement and write the word "thru" over top of it. However, on cross-examination after being shown additional documents, Mr. Zarycki acknowledged he agreed to provide machines that would allow 90% of the product to pass through and only 10% would be retained. Mr. Zarycki also testified that he tested a sample of crax from Taylor By Products in 1995 and 70-80% of the crax did not pass through the screen. These facts are particularly important because

Mr. Zarycki's representation and agreement on behalf of Renold that Renold would manufacture a machine with a 90% pass through specification, despite his pre-manufacturing testing showing only 20-25% of the Taylor product would pass through the screen, induced Mr. Wall and Mr. Mullane to contract with Renold for the purchase of the screening machines.

Based on Mr. Wall's testimony and the cross-examination of Mr. Zarycki, the Court finds the specifications for the screening machines were that 90% of the crax would pass through the screen.

The other area of contention between the parties was the moisture content of the crax used to test the machines at Taylor By-Products' plant. Mr. Follett complained the crax was very moisture, rancid and putrid. Although he did not test it, Mr. Follett did not believe the product was dry bone meal with a moist content of 2%. He claimed the crax clumped together and, hence, could not go through the screen as desired. He also noted that a cooler was on-line for the testing of the Renold machines, nor was a demagnetizer on-line. Mr. Follett felt this might have some effect on the product since these devices would be on-line in a regular grinding operation. He also noted the product did not go through the hammermill, which it would if it was in a completely set-up grinding operation. Mr. Follett, however, did not opine that these things would have cured or corrected the problem of getting 90% of the crax to go through the screen. Mr. Follett also acknowledged that when he did the sample runs on the machines in Renold's plant, he did not use the sample product sent by Taylor, but used "fake" sample. In hindsight, he admitted it would have been better if he had used a Taylor sample during the in-house

testing of the machine prior to delivery to Taylor By-Products.

Testimony from Taylor By-Products' witnesses indicated the product being used on the in their plant on the dates of testing the Renold machines averaged about 2% moisture content. Although the product used in testing had been stored in silo 3, a sealed enclosure, and its moisture content had not been tested by any of the parties, Taylor's Quality and Operations Coordinator testified that storage in silo 3 would not create additional moisture in the product. Instead, it would tend to dry it out. This Coordinator also testified that the moisture content of Taylor's crax has been consistently around 2% since 1996.

The testimony of Jack Wall of J.D. Products and Dennis Mullane of Taylor By-Products also disagreed with Mr. Follett's description of the crax used in testing. Both claimed the crax looked similar to the other crax in the Taylor plant which averaged 2% moisture content. Mr. Mullane further testified that the crax used in the testing appeared no different than the crax he sent to Renold for testing at Renold's facilities.

The Court found the testimony of Plaintiff's witnesses credible. Moreover, even if the alleged problems described by Mr. Follett were obviated, he did not opine that such would have corrected the problem with the machine so that 90% of the crax would pass through the screen. In fact, it is unlikely that the correction of these alleged problems would have achieved different results given the results of Mr. Zarycki's tests in 1995, which utilized a sample of crax from Taylor

The Court is not awarding incidental damages, such as storage fees, because of the limited efforts of the parties to address the problems before ordering new

machines. Without trying to be too critical of the entities involved, the Court finds that they all bear some fault. The communication between all the parties was insufficient. Testing of the machines after manufacture but before delivery with a sample of Taylor's product would have been immensely helpful. It also appears to the Court that the parties should have made greater efforts to work out the problems with the machines after they were delivered to Taylor. Perhaps if a different size screen or different size holes in the screen were tried, the problem could have been resolved. The parties also could have tested the Renold machines by using crax taken from the existing Taylor grinding operation. Unfortunately, when the Renold representative walked out of the Taylor plant, the parties did not communicate and no one from Renold ever returned to Taylor to try to rectify the problem.

**VERDICT**

**AND NOW**, this \_\_\_\_ day of May 2001, the Court enters a VERDICT in favor of Plaintiff J.D. Products, Inc and against Defendant Renold, Inc., in the amount of \$32,013.11.

If the defendant fails to file Post-Verdict Motions or if the motions are filed and denied, the plaintiff may file a praecipe with the Prothonotary to enter a judgment against the defendant in the amount of this Verdict.

By The Court,

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Kenneth D. Brown, J.

cc: David Wilk, Esquire  
William Carlucci, Esquire  
Gary Weber, Esquire (Lycoming Reporter)  
Honorable William S. Kieser  
Work file