

64, 1932

84 OF 1932

In the Privy Council

No. /32

ON APPEAL FROM THE SECOND DIVISIONAL COURT OF
THE APPELLATE DIVISION OF THE SUPREME COURT OF
ONTARIO

BETWEEN :

J. P. STEEDMAN

(Defendant) Appellant,

and

FRIGIDAIRE CORPORATION

(Plaintiff) Respondent.

Record of Proceedings

MESSRS. BLAKE AND REDDEN,

17 Victoria Street, London S. W. I.,

Solicitors for the Appellant.

MESSRS. LAWRENCE JONES AND COMPANY,

Lloyds Building, Leadenhall Street, London E.C. 3,

Solicitors for the Respondent.

HAMILTON:
DAVIS-LISSON LIMITED
1932

i.

RECORD OF PROCEEDINGS.

In the Privy Council

No. /32

ON APPEAL FROM THE SECOND DIVISIONAL COURT OF
THE APPELLATE DIVISION OF THE SUPREME COURT OF
ONTARIO

BETWEEN :

J. P. STEEDMAN,

(Defendant) Appellant,

and

FRIGIDAIRE CORPORATION,

(Plaintiff) Respondent,

Statement of Case

This is an appeal from the judgment of the Second Divisional Court of the Appellate Division of the Supreme Court of Ontario pronounced on the 17th day of April, A.D. 1931, allowing an appeal from and directing certain variations in the judgment pronounced by The Honourable Mr. Justice Raney at the trial in the Supreme Court of Ontario on the 14th day of April, 1930, dismissing the action of the plaintiff as against the defendant and adjudging that the defendant do recover from the plaintiff on the counterclaim of the defendant the sum of Two thousand six hundred and thirty dollars (\$2,630.00) and further providing for the removal by the plaintiff of certain refrigerators and equipment in question in this action.

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STATEMENT OF CLAIM

In the Supreme Court of Ontario

B E T W E E N :

FRIGIDAIRE CORPORATION

Plaintiff

and

J. P. STEEDMAN

Defendant

STATEMENT OF CLAIM

- 10 1.— The plaintiff is a corporation lawfully carrying on business in the Province of Ontario with its principal place of business at the City of Toronto in the Province of Ontario.
- 2.— The defendant is a resident of the City of Hamilton in the County of Wentworth and is the owner of lands situate in the said City of Hamilton on which is constructed a market known as the East End Market, and also known as the B. & O. Market.
- 3.— On or about the 3rd day of May, 1928 the plaintiff submitted to the defendant a tender for the refrigerators, counters and other refrigeration equipment necessary to properly equip the said market, which tender
20 was accepted in writing by the defendant on the 3rd day of May, 1928 and to which tender and contract the plaintiff craves leave to refer at the trial of this action.
- 4.— On or about the 11th day of July, 1928, certain changes and additions were made in the said tender and the contract was finally accepted by the defendant on that day—the total price for all the said equipment being \$32,436.51.
- 5.— In or about the month of May, 1928, the defendant paid the sum of \$2,400 on account leaving a balance due of \$30,036.51.
- 6.— The said refrigeration equipment was delivered to the said
30 premises and installed in accordance with instructions received from the defendant or his agents. During the course of the installation numerous changes and alterations were made by the defendant or his agents in the said plans and specifications, which greatly delayed the plaintiff in the completion of its work. The said equipment was all completely installed on or about the 31st day of July, 1928.

RECORD

In the Supreme
Court of Ontario

No. 1

Statement of
Claim

June 12, 1929.

RECORD
In the Supreme
Court of Ontario
No. 1

Statement of
Claim
June 12, 1929

7.— The said refrigeration equipment has been in the said East End Market since July of 1928 completely installed and ready for use, and the only moneys which the plaintiff has received from the defendant is the sum of \$2,400.

8.— The said refrigeration equipment was sold to the defendant and delivered to the said premises upon the condition that the title thereto should remain in the plaintiff until the said equipment was paid for in full.

9.— Under the terms of the contract herein the defendant agreed to give to the plaintiff notes of the tenants of the said market payable according to the usual terms and conditions of the paper discounted by the General Motors Acceptance Corporation. 10

10.— The plaintiff says that the usual terms and conditions of the paper discounted by the General Motors Acceptance Corporation provide for the payment of twenty per cent. (20%) of the purchase price on final delivery, and the balance in eighteen equal monthly instalments with six per cent. (6%) true interest payable monthly together with the Standard "G.M.A.C." carrying charges secured by conditional sale agreements or notes made between the said tenants and the defendant and endorsed by the defendant to the plaintiff. 20

11.— At the trial of this action the plaintiff craves leave to refer to the usual terms and conditions of the paper discounted by General Motors Acceptance Corporation.

12.— The plaintiff further says that under the terms of the said contract herein the defendant was obligated to deliver to the plaintiff on or about the 31st day of July, 1928 conditional sale contracts or notes of the tenants of the said market endorsed by the defendant, and which notes and contracts when discounted with General Motors Acceptance Corporation would yield to the plaintiff, together with the said payment of \$2,400 the sum of \$32,436.51. 30

13.— The plaintiff says that it has made repeated demands on the defendant to carry out the terms of the said contract and the defendant has neglected and refused and still neglects and refuses to carry out the said contract and the said balance of \$30,036.51 is still due and owing to the plaintiff, and has been so due and owing since the 31st day of July, 1928.

14.— Alternatively the plaintiff says that if it is now impossible for the defendant to carry out the said contract in all its terms the failure to carry out the same is entirely due to the acts of the defendant. The plaintiff has completely and entirely performed its part of the contract and says that it is, therefore, entitled to recover the sum of \$30,036.51 as

damages for breach of the said contract or on a quantum meruit basis for the work done and goods sold and delivered to the defendant.

15.— The plaintiff therefore claims:

(1) Specific performance of the agreement herein and for payment to the plaintiff of the sum of \$30,036.51 in cash or conditional sale notes or contracts.

(2) Interest on the said sum of \$30,036.51 at 5% per annum from the date of delivery of the said refrigeration equipment.

10

(3) A declaration that the plaintiff is entitled to a lien on all the said refrigeration equipment installed in the said East End Market.

(4) In the alternative the plaintiff asks for \$30,036.51 as damages for breach of the said contract or on a quantum meruit basis for the price of goods sold and delivered to the defendant.

(5) A reference, if necessary, to ascertain the damages to which the plaintiff is entitled.

(6) The costs of this action.

(7) Such further and other relief as to this Honourable Court may seem meet.

20 The plaintiff proposes that this action be tried at the City of Hamilton in the County of Wentworth.

DELIVERED this 12th day of June, 1929, by Beaton & Ross, 330 Bay Street, Toronto, Solicitors for the plaintiff.

RECORD
 In the Supreme
 Court of Ontario
No. 1
 Statement of
 Claim
 June 12, 1929

STATEMENT OF DEFENCE

In the Supreme Court of Ontario

B E T W E E N :

FRIGIDAIRE CORPORATION

Plaintiff

and

J. P. STEEDMAN

Defendant

STATEMENT OF DEFENCE

10

- 1.— The defendant admits paragraphs one and two of the plaintiff's Statement of Claim but denies the other allegations contained therein.
- 2.— The defendant claims that there was undue delay in the performance of the contract.
- 3.— Under the terms of the contract herein the defendant agreed to give to the plaintiff notes of the tenants of the said market to cover the balance of the contract over and above the ten per cent.
- 4.— Owing to the fact that the market was altogether too large for the neighborhood which it was intended to serve it was found impossible to obtain tenants. 20
- 5.— An opportunity having presented itself of leasing one-third of the market space to Metropolitan Stores Limited, a merchandise chain store selling dry goods and notions, the plaintiff and defendant agreed, without prejudice to the rights of either party, to lease the said premises to the Metropolitan Stores Limited. The premises are now in the possession of Metropolitan Stores Limited, and are to be opened for business on the 15th of October, 1929. The balance of the market will be readily leased and paper of the tenants will be available for the plaintiff pursuant to the contract.
- 6.— The plaintiff well knew the fact that there were no tenants in the 30 premises in which they had installed their refrigeration equipment and that until there were tenants the notes of such tenants could not be handed to the plaintiff.
- 7.— The defendant alleges that the plaintiff's action is premature and should be dismissed with costs.

RECORDIn the Supreme
Court of OntarioNo. 2Statement of
Defence

Sept. 7, 1929

8.— The plaintiff promised before the execution of the contract upon which the plaintiff is suing that it would pay to one W. J. Lord, an agent, employee and servant of the defendant, known by the plaintiff to be such, a secret commission on the sale of the refrigeration by the plaintiff to the defendant. The defendant pleads the provisions of The Criminal Code, Revised Statutes of Canada, 1927, Chapter 36, Section 504, subsection 2, clause B. The said secret commission was not disclosed to the defendant and the contract upon which the plaintiff is suing is therefore illegal and void or alternatively is voidable at the option of the defendant and the defendant is entitled to have the said contract declared void or alternatively to have the same rescinded and to have the sum of \$2,400 paid by the defendant to the plaintiff returned by the plaintiff to the defendant and in the alternative the plaintiff counterclaims for the sum of \$75,000 damages suffered by the defendant in consequence of the promise of the plaintiff to pay the secret commission aforesaid.

10

FILED AND DELIVERED this seventh day of September, A.D. 1929, by Messrs. Bruce, Counsell & Boyde, Pigott Building, Hamilton, Ontario, Solicitors for the defendant.

RECORD
 In the Supreme
 Court of Ontario
 No. 2
 Statement of
 Defence
 Sept. 7, 1929

RECORD

In the Supreme
Court of Ontario

No. 3

Joinder of Issue
and Reply

Sept. 12, 1929

NO. 3

JOINDER OF ISSUE AND REPLY

In the Supreme Court of Ontario

B E T W E E N :

FRIGIDAIRE CORPORATION

Plaintiff

and

J. P. STEEDMAN

Defendant

JOINDER OF ISSUE AND REPLY

1.— The plaintiff says by way of reply to the allegations in the Statement of Defence contained that the contract, in all its terms, was performed by the plaintiff at the time agreed under the terms of the said contract, and that any delay which occurred in the completion of the work was due to changes and alterations made by the defendant, or his duly authorized agents, in the plans and specifications for the refrigerators, counters and other refrigeration equipment. 10

2.— The plaintiff says that if there was any delay, which is not admitted but denied, the said delay did not in any way inconvenience the defendant, or cause him any damage whatever. The fact is, as the defendant well knew, that the plaintiff's equipment was all completely installed in the said East End Market on or before the 31st day of July, 1928, and the defendant has not, up to the present time, obtained any tenants for the said market. 20

3.— The plaintiff says by way of reply to paragraphs (6) and (7) of the defendant's Statement of Defence that it was not a term of the agreement, nor in the contemplation of the parties, that it should wait an indefinite period of time until the defendant should obtain tenants for the said market and says that the fact is that it was a term of the contract that tenants should be obtained for the said market as soon as the market had been completely equipped; and that by reason of the delay of the defendant in obtaining tenants the plaintiff has suffered damages to the extent of \$30,036.51, or is entitled to recover the same amount on a quantum meruit basis for work done and goods sold and delivered to the defendant on or about the 31st day of July, 1928. 30

4.— The plaintiff says by way of reply to paragraph (8) of the defendant's Statement of Defence that it did not agree to pay a secret

commission to one, W. J. Lord, and that the agreement in respect of any commission payable to the said Lord was made before the defendant became the owner of the lands herein, and while the said Lord was the owner, and, in any event, the plaintiff says that the defendant is not entitled to rescission of the contract by reason of the delay on the part of the defendant in repudiating the contract, and in particular in leasing the said refrigerating equipment to tenants and using the same for many months, and it is now impossible to restore the parties to their original position.

RECORD
In the Supreme
Court of Ontario
No. 3
Joinder of Issue
and Reply
Sept. 12, 1929

- 10 5.— The plaintiff also says that it is physically impossible to remove any of the counters, boxes and refrigerating equipment in the defendant's market without wrecking or very seriously damaging the said market; and also, that the property in the said equipment passed to the defendant on or about the 31st of July, 1928. The plaintiff denies that the defendant has suffered damages in an amount of \$75,000. and says that the measure of the defendant's damages, if any, cannot exceed the sum of \$900.00.

The plaintiff joins issue upon the defendant's Statement of Defence herein.

- 20 DELIVERED this 12th day of September, 1929, by Beaton & Ross, 330 Bay Street, Toronto, Solicitors for the plaintiff.

RECORDIn the Supreme
Court of OntarioNo. 4Opening of
Proceedings
at Trial

Nov. 26, 1929

NO. 4

OPENING OF PROCEEDINGS AT TRIAL

In the Supreme Court of Ontario

BEFORE THE HONOURABLE MR. JUSTICE RANEY

FRIGIDAIRE v. STEEDMAN

Tried at Hamilton, November 26th, 1929, without a Jury.

W. J. BEATON

Counsel for plaintiff

H. A. F. BOYDE

Counsel for defendant

HIS LORDSHIP: What is the case about, Mr. Beaton?

MR. BEATON: This is an action, my Lord, by the Frigidaire Corporation to recover from the defendant Steedman the sum of thirty thousand and some odd dollars, a balance due on the purchase price of the Frigidaire Equipment installed by Frigidaire Corporation in a Market in this City known as the B. and O. Markets, East End Market, situated at the corner of Barton and Ottawa Streets in this City. The total amount of the contract is some thirty-three thousand dollars odd, of which \$2,400 have been paid by the defendant Steedman. 10

Now this equipment, my Lord, was—in the first place the Frigidaire Corporation submitted a tender for equipment which was accepted by Mr. Steedman, the defendant, on the 3rd of May, 1928, and this provided for the installation in this market which Mr. Steedman owns, of 20 counters, plate glass, brackets and other frigidaire equipment. In July of the same year the order was supplemented, as we say, by additional equipment being ordered, and altogether some thirty-three thousand dollars worth of equipment was installed in this Market, and this installation, we say was completed by the end of July, 1928.

Now the controversy between the parties arises from this, under the terms of the contract Mr. Steedman agreed to give notes of tenants who were to occupy the different booths in this Market. There were a number of booths in the Market. He was to give notes of tenants, on the paper discounted by the General Motors Acceptance Corporation. The General 30 Motors Acceptance Corporation, I may say, my Lord, is the finance company of General Motors engaged in financing the paper of motor car purchasers and also frigidaire equipment. Now we say that under the terms of this contract it is not on the face, my Lord, absolutely clear, that

under the terms of the contract of the 3rd of May, we say that the defendant was to give us these notes, conditional sale contracts of the General Motors Corporation as soon as we had completed our installation, which was the end of July, 1928, and the defendant Steedman said he was to give these notes as and when he obtained tenants for this market, if that was three months after the installation of the equipment was completed or six months, or a year or two years—whenever he got them.

RECORD
In the Supreme
Court of Ontario
No. 4
Opening of
Proceedings
at Trial
Nov. 26, 1929

HIS LORDSHIP: When was the installation completed?

MR. BEATON: We say the installation was completed on or before
10 the 3rd of July, 1928, eighteen months ago.

HIS LORDSHIP: When were the stalls rented?

MR. BEATON: The stalls were opened on the 15th of this month, and the defendant Steedman says, I have rented a number of these stalls now, and when I get them all rented, I will give you these initial sales contracts and notes.

HIS LORDSHIP: Has he given any?

MR. BEATON: He has offered none, my Lord.

Now, we are asking in the first place for specific performance of the agreement, we are asking that the defendant should be compelled by the
20 Court to carry out the bargain which he made, and alternatively we say, my Lord—

HIS LORDSHIP: He bargained to give you other people's notes—you cannot get specific performance of that. He cannot compel other people to give you notes.

MR. BEATON: What we say is, alternatively, my Lord, that we are entitled to the thirty thousand dollars as damages for breach of this contract, or we are entitled to a quantum meruit basis, there can be no question about that. They have been there for fifteen months in the defendant's market, every opportunity that we agreed to give them has
30 been given them.

HIS LORDSHIP: I suppose there is a document.

MR. BEATON: Yes, there is a document, and I will produce it with the first witness.

MR. BEATON: I will call Mr. Howard.

MR. BOYDE: Before the first witness is proceeded with, my Lord, there is a matter I should like to mention to your Lordship: The Examination for Discovery of the Manager of the plaintiff company took place last week and it was there discovered that commission had been paid to an agent of the defendant, and although we were submitting we had a
40 defence apart from that—

HIS LORDSHIP: By the plaintiff to an agent of the defendant?

MR. BEATON: It had not been paid.

MR. BOYDE: It has been promised, and we are submitting that we be given permission to set that up. It might not be necessary for your Lordship to pass upon it.

RECORD

In the Supreme
Court of Ontario

Plaintiff's
Evidence

No. 5

Charles R.
Howard,
Examination

HIS LORDSHIP: You may amend, of course.

MR. BEATON: That is quite right, my Lord. I have no objection. What is the nature of the amendment my friend proposes.

HIS LORDSHIP: You will draw it up and present it.

MR. BOYDE: Yes, my Lord.

CHARLES R. HOWARD, Sworn

EXAMINED BY MR. BEATON:

Q. Mr. Howard, you were the Manager of the Hamilton Branch of the Frigidaire Corporation in 1928 when this contract was made with Mr. Steedman? A. Yes sir. 10

Q. Now this installation was made where? A. At what was known as the East End Market, the B. & O. Market at the corner of Barton and Ottawa Streets.

Q. In this City? A. In this city, yes.

Q. And how long had you been carrying on negotiations in respect to the order? A. Oh, I should say that the first time we started on this order, from the time we started until the order was definitely given it would be a matter of between two and three years, possibly a little longer.

Q. And who had you been dealing with? A. I had been dealing with Mr. W. J. Lord. 20

Q. What was his relationship to the market? A. At the time I first started negotiations, Mr. Lord was the owner of the market.

Q. He was the owner of the market? A. Yes sir.

Q. And you say you had been dealing with him for two or three years? A. Yes.

Q. And when did you change from Mr. Lord to Mr. Steedman? A. I understood from Mr. Lord that Mr. Steedman had acquired the Market.

Q. That he owned it? A. That he owned the Market.

Q. That Mr. Lord did not any longer own it? A. That he no longer owned the market. 30

Q. Now coming up to the signing of the contract, was Mr. Lord in any way interested or did he continue to be interested in the negotiations? A. Oh, yes.

Q. What was his interest in it? A. His interest in it was, I do not know that I can answer your question directly—At the time negotiations were under way, Mr. Lord told me that Mr. Steedman was the owner of the Market. I therefore wrote Mr. Steedman. I got in touch with Mr. Steedman in the first place, and later wrote a letter confirming a conversation which we had, and offered to take Mr. Steedman or his representative to Knoxville, Tennessee, to view a market which had been completely equipped with Frigidaire. I talked with Mr. Counsell— 40

Q. Mr. Counsell, that is Mr.—? A. Mr. Steedman's solicitor. I talked with Mr. Counsell and he told me that the man who knew all about the

market, and the man who would eventually be taking it over was Mr. Lord, and he was the only man who was qualified to go to Knoxville and see this equipment, pass judgment on it.

Q. Who had built the market? A. That I cannot answer you, sir.

Q. Then, did you take Mr. Lord? A. I took Mr. Lord down to Knoxville.

Q. To look at a market that had been equipped with Frigidaire equipment? A. Yes sir.

10 Q. And then what—did Mr. Lord continue to take an interest in the negotiations? A. Yes, he continued right up to the time, and was present when the contract was signed.

Q. Now then, you prepared a tender, dated the 3rd of May, 1928. A. Yes.

Q. Is this the original copy?

MR. BEATON: I will put them in together, my Lord, the tender and the acceptance.

WITNESS: Yes, I think that is it, sir.

EXHIBIT No. 1—Specifications and quotations by Frigidaire Corporation dated May 3rd, 1928.

20 Q. That is signed by the Frigidaire Corporation with you as Manager, C. R. Howard? A. Yes sir.

Q. Is this the acceptance, Mr. Howard? A. Yes.

Q. When was that signed? A. On the 3rd day of May, 1928.

Q. Where? A. In my office, 98 King Street East.

HIS LORDSHIP: You call the first document a tender?

MR. BEATON: I call the first a tender, and this is the acceptance, my Lord.

HIS LORDSHIP: The tender is a lengthy document?

MR. BEATON: Yes, my Lord.

30 HIS LORDSHIP: Let the Counsel summarize it.

MR. BEATON: I can give your Lordship a summary of it.

HIS LORDSHIP: Read the portions which you think are material.

MR. BEATON: "The refrigerators and counters are being supplied by the Sterling Refrigerator Company of Toronto and are of the insulation and construction acceptable to Mr. Lord.

"These refrigerators and counters are guaranteed to be satisfactory by the said Company."

Then the specifications of the counters are not of great importance.

"The Frigidaire Equipment to be supplied is as shown in this tender.

40 "Additional refrigerators, counters and Frigidaire equipment will be supplied as required at the same rate of discount as applies in this tender.

"It is understood and agreed that should Mr. Lord require a brine coil installed in the counters, this coil will be supplied and installed in place of the present coils within ninety days.

RECORD
In the Supreme
Court of Ontario

Plaintiff's
Evidence

No. 5

Charles B.
Howard,
Examination

RECORD

In the Supreme
Court of Ontario

Plaintiff's
Evidence

No. 5

Charles R.
Howard,
Examination

"It is understood and agreed that the equipment specified in this tender is to be installed and operation on or before June 1st, 1928, and failing this, we accept the penalty clause as specified by you of \$300 per day after that date."

Then the rest of the tender, my Lord, is merely the itemized particulars of the various counters and refrigerators.

HIS LORDSHIP: What does it say about payment. There is no question, I take it, of the acceptance of these appliances?

MR. BEATON: No, there is nothing said about it. The total amount of this tender is \$24,563. 10

HIS LORDSHIP: Of the tender?

MR. BEATON: Yes, my Lord. On the face of the tender that would call for cash on the completion of the work.

HIS LORDSHIP: What does the acceptance say.

MR. BEATON: The acceptance was—the parties discussed the matter and agreed on \$24,000.

"I accept your contract as per your tender of this date for \$24,000 payable \$2,400 cash."

HIS LORDSHIP: Was that paid? A. That was paid by Mr. Steedman. 20

"And for the balance I agree to furnish notes of the tenants payable according to the usual terms and conditions of the paper discounted by the General Motors Acceptance Corporation"—

HIS LORDSHIP: It does not say when the notes are to be dated.

MR. BEATON: No, it does not say that.

HIS LORDSHIP: Are the tenants enumerated in the tender.

MR. BEATON: The stalls are enumerated with the tender.

HIS LORDSHIP: Repeat that from the acceptance.

MR. BEATON: "I agree to furnish notes of the tenants payable according to the usual terms and conditions of the paper discounted by 30 the General Motors Acceptance Corporation, fifty per cent. of the cash payment made by the tenants of the stalls enumerated in the tender are to be repaid to me until I have been reimbursed the \$2,400.

HIS LORDSHIP: But there was not to be paid anything in cash. The whole thing was to be paid for by the tenants—how many stalls were there?

A. Twenty-two or twenty-three stalls.

HIS LORDSHIP: So each tenant was to pay something over one hundred dollars cash?

MR. BEATON: Yes, that is about the arrangement, my Lord. 40

HIS LORDSHIP: Well, go on.

MR. BEATON: A. Now you say, Mr. Lord and Mr. Steedman came in to your office on the 3rd of May, and the acceptance was signed?

A. Yes.

Q. Who prepared that? A. The acceptance was prepared by Mr. Counsell.

Q. He brought it in, and was Mr. Steedman there when he signed it? A. Yes.

Q. What was said, was there any discussion? A. Yes, he asked me if I was willing to reduce the amount at all, on account of commission, and he turned to Mr. Lord, and said, "What about this Mr. Lord, shall I sign it?" So, Mr. Lord, he said "Yes", so he signed it.

Q. What about the \$2,400, was that paid? A. Yes, that was paid 10 later.

HIS LORDSHIP: What are these?

MR. BEATON: These are the letters sending the payments my Lord, I will just read them. They are very short. The letter dated the 15th of May, 1928, from Mr. Counsell, "We enclose herewith cheque for \$2,400 initial payment under contract of J. P. Steedman. Kindly acknowledge receipt."

Q. That is the 15th of May, 1928? A. Yes.

MR. BEATON: Then the acknowledgment dated May 16th, 1928. "Bruce & Counsell, attention Mr. J. L. Counsell. This will acknowledge 20 with thanks, your cheque in the amount of \$2,400 being the initial payment re East End Market, under contracts of J. P. Steedman.

Those two letters will go in as Exhibit 3.

. . . EXHIBIT 3. Letter dated May 15th, Counsell to Frigidaire Corporation, and reply dated May 16th, 1928.

MR. BEATON: Q. Now, this was the 3rd of May, Mr. Howard, what did you do then? Did you proceed?

A. Immediately proceeded with the work at the Market.

Q. Did you have it completed by the 1st of June?

A. No sir, we did not, there were changes set up in the Market that 30 it prevented us, due to the changes by tenants coming in to the building with a view of renting the different stalls requiring a different layout than what was originally specified in the tender.

MR. BEATON: Q. Now, let me understand you—

HIS LORDSHIP: I understand that.

MR. BEATON: I was going to ask him—I should have put it this way.

Q. Were there tenants coming in at that time? A. Yes, or prospective tenants.

Q. Prospective tenants, and they were making changes?

40 A. Yes.

Q. And did you make any changes? A. Yes.

Q. Under whose instructions? A. Mr. Lord.

Q. Mr. Lord's instructions? A. Yes.

Q. Did these changes involve any additional equipment?

RECORD

In the Supreme
Court of Ontario

Plaintiff's
Evidence

No. 5

Charles R.
Howard,
Examination

RECORD
In the Supreme
Court of Ontario
—
Plaintiff's
Evidence

No. 5

Charles R.
Howard,
Examination

A. Quite a lot. In the original tender we did not specify the counters that were in the south section of the market building, which would be covered by stalls, "A", "B", "C" and "D", the reason that no work was—rather the reason, that they were not embodied in the original tender was owing to the fact that no tenant had been yet found who would take that particular amount of space available.

Q. And that was left open to be equipped later when they got the tenants? A. Tenants who would be enough to cover that interior space.

Q. Then Mr. Lord wanted certain additional equipment, did you supply it? A. Yes, they did not wish the matter to appear new. 10

Q. Did you discuss the matter with Mr. Counsell or Mr. Steedman? A. We got our instructions.

Q. Is this usual, or common thing with any plant, it should be delayed. Mr. Boyde says "no."

MR. BOYDE: I do not say there was delay. We say it was in the interest of all parties these changes should be made.

MR. BEATON: Q. Anyway, you had specifications—in July you had discussion of additional equipment? A. Yes.

HIS LORDSHIP: I suppose there is an additional charge

MR. BEATON: Of eight thousand dollars, my Lord. 20

HIS LORDSHIP: Is there any difficulty about the additional charge?

MR. BOYDE: No, my Lord.

HIS LORDSHIP: The only question is as to the contract? What are you putting in? Correspondence.

MR. BEATON: No, my Lord, additional, further tender and order, further contract.

HIS LORDSHIP: That will be exhibit 4.

MR. BEATON: I do not want to misstate the facts. What happened was, Mr. Howard prepared what they call a complete set-up, and 30 I might ask the witness—

Q. Then was that discussed with Mr. Steedman and Mr. Counsell? A. Yes, that was discussed.

HIS LORDSHIP: The defendants say there is no controversy about anything except the—

MR. BEATON: I do not want to waste one moment of your Lordship's time. I want to get it consecutively, if I may, My Lord.

Q. You say it was discussed the day before? A. Yes.

Q. You submitted to them the revised tender? A. Yes.

Q. And the next, did you receive this letter from Mr. Counsell? A. 40 Yes.

Q. "I am in receipt of revised schedule of the complete set-up of the B. and O. Market, showing a total of the expenditures of the new work of eight thousand and forty-two dollars and sixty-nine cents (\$8,042.69) with credits of \$614.26. Total additional expenditure, \$7,428.43. I instruct you

to go ahead with this work, and I will endeavor to get Mr. Steedman's o.k. tomorrow—that is a letter of July 11th of Mr. Counsell to the Frigidaire Corporation.

HIS LORDSHIP: That is all right. That is Exhibit 4.

MR. BEATON: Now, you went ahead with the work, and when did you complete it all? A. Well, on or about the end of July.

Q. 1928? A. Yes sir.

Q. Did you prepare invoices and send them to the defendant? A. Yes sir.

10 Q. And are these the invoices?

HIS LORDSHIP: Copies of the invoices? A. I would say that they were, yes sir.

HIS LORDSHIP: Copies of invoices will be Exhibit 5.

MR. BEATON: These show a total balance due of \$30,036.51.

HIS LORDSHIP: What is the date?

MR. BEATON: 31st July, 1928. .

. . . EXHIBIT NO 4: Letter dated 11th July, 1928, Counsell to Frigidaire Corporation with revised schedule of complete set-up.

20 . . . EXHIBIT NO. 5: Statement dated 31st July, 1928, Frigidaire Sales Corporation to J. P. Steedman. \$30,036.51 with copies of separate particulars for individual stalls.

HIS LORDSHIP: That is not in controversy? Counsel agree that amount is not in controversy.

MR. BEATON: Q. Now then, what about settlement in this matter, Mr. Howard. What was said when you completed your work? A. Well, we asked for payment, and there had been some dispute apparently among the parties, I believe that Mr. Lord had been replaced.

30 Q. Mr. What? A. Mr. Lord, I believe had been replaced, and the Market was unoccupied, and there were a number of promises made as to when settlement could be made, and we kept asking, from time to time, as time went on.

Q. What were you told, as time went on? A. There were settlements coming, and as quickly as they came in, they expected to have it done periodically, that is, I would talk to them today, and would expect they would have it done in the next couple of weeks, and that kept on indefinitely.

HIS LORDSHIP: What you say is, you were put off from time to time.

40 MR. BEATON: What I wanted to say, my Lord, there is a letter here, I wanted to put in, if my friend has it—I cannot find it.

HIS LORDSHIP: Yes.

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C. R. Howard,
Examination

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C. R. Howard,
Examination
(concluded) and
Cross-
Examination
(commenced)

MR. BEATON: Q. Have you ever been offered any notes or contracts? A. No sir.

Q. For any of these stalls—and have you written any letters demanding payment? A. Oh yes.

CROSS EXAMINED:

By Mr. Boyde:

Q. The letter my friend is referring to is dated March 2, 1928.

MR. BEATON: March 22—we will be very glad to give it to you.

MR. BOYDE: It is the letter that Mr. Howard, I think, referred to in his evidence—the letter that he wrote to Mr. Steedman, March 21st, 1928. 10

MR. BEATON: It is a copy.

MR. BOYDE: Copy of the letter.

HIS LORDSHIP: Have you a copy of it, Mr. Boyde.

MR. BOYDE: I have not a copy of it. I did not see it until today. No doubt my client once had it, but I have not got it.

HIS LORDSHIP: Have you a copy?

MR. BOYDE: I have not a copy. My friend showed it to me today. I did not see it until today.

MR. BEATON: It is a copy of the letter—my friend should have.

MR. BOYDE: I should have it, but I have not in fact. March 21st, 20 1928.

While my friend is looking for it I will proceed.

Q. Do you know when Mr. Lord ceased to be the owner of this property? A. No sir, I do not know, definitely.

Q. But you knew at the time you were negotiating with Mr. Steedman he was not the owner? A. Yes sir.

Q. Mr. Steedman was the owner? A. Yes sir.

Q. And that was why you had Mr. Steedman sign the contract and no one else? A. Yes sir.

Q. And you knew that Mr. Lord had the option? A. Yes. 30

Q. And ultimately that option lapsed? A. I did not know that.

Q. Did you find that out afterwards? A. I found out afterwards, the probabilities were that it had lapsed. But at the last meeting I had at Mr. Steedman's house, there was an agreement entered into that that option could be extended.

HIS LORDSHIP: What have we to do with that? A. I do not know. I was just answering his question.

MR. BOYDE: I was just dealing with the question of authority of Mr. Lord.

Q. And you knew that Mr. Lord was an employee of Mr. Steedman's? 40 A. I understood it, yes.

Q. You did not know he was an employee of Mr. Steedman, paid by Mr. Steedman? A. No, I did not know he was paid by him.

Q. Did you know that he was an employee of Mr. Steedman? A. I heard that he was being paid by Mr. Steedman.

HIS LORDSHIP: How does that happen to be construed with this contract.

MR. BOYDE: I was just dealing with the commission, My Lord.

Q. And did you promise to pay Mr. Lord a commission?

A. I can answer your question just, Sir, by explaining to you, as I stated previously, that these negotiations had been going on for a period of several years.

Q. Yes? A. At the time that the arrangement was made, an undertaking was entered into with Mr. Lord, that he would receive from us
10 a certain consideration.

HIS LORDSHIP: Who? A. Mr. Lord.

Q. What for? A. For the procuring of the order. And this happened prior to this arrangement where Mr. Steedman entered into the picture at all.

HIS LORDSHIP: Did you know then that Lord was a servant of Steedman? A. Well, the understanding, your Lordship.

HIS LORDSHIP: Answer the question. Did you know then that Lord was the servant of Steedman? A. I cannot answer that directly for
20 the reason the understanding was that they were to take over the operation of the Market, that they were under option, and my understanding was that this agreement was in effect and would become effective immediately, that after the Market was open, Mr. Lord would then return to the control of the Market and to me that seemed to be quite all right.

HIS LORDSHIP: You had an understanding with Lord?

A. With Mr. Lord and his associates.

Q. That he would be paid a commission? A. Yes.

Q. What commission? A. Ten per cent. on the net value of the Frigidaire equipment installed.

HIS LORDSHIP: On the contract price?

A. No, on the net value of the equipment installed, that would be the
30 Frigidaire equipment.

Q. How would that differ from the net? A. Because we did not pay any commission on the boxes, or the counters. I did not supply them.

HIS LORDSHIP: On the Frigidaire Equipment—what would that be approximately? A. I would say roughly \$800 or \$900.

HIS LORDSHIP: The commission would be \$800 or \$900.

A. Yes sir. I am not definite on that.

MR. BOYDE: Shall I proceed, my Lord?

HIS LORDSHIP: Yes.

MR. BOYDE: You were getting some of your equipment from the
40 Sterling Refrigerator Company, were you not? A. Yes.

Q. Was Mr. Lord to get a commission on any of the Sterling equipment? A. I cannot answer, we had nothing to do with that. It was simply included in our contract for billing purposes.

Q. Did you pay the Sterling Company?

A. We did, yes.

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No. 5

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Cross-
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Q. And you were getting some of your equipment from the Sterling Company? A. Yes.

Q. And you do not know what agreement they had made with Mr. Lord? A. I did not.

Q. Well, did Mr. Lord ask you to confirm your agreement with him at the time you were negotiating with Mr. Steedman?

A. To confirm—how do you mean?

Q. Did he ask you if your bargain still held good?

A. Oh, yes, prior to that, our bargain held good.

Q. Did Mr. Lord ask you that? A. I believe so, yes. 10

Q. And did you tell him that it did? A. I did.

HIS LORDSHIP: When was this arrangement with Lord made?
 A. This was made away back, I should say in 1926.

Q. Did Steedman then own the market? A. No, Mr. Lord then owned the Market.

Q. Now let me see. You say that Lord then owned the market?
 A. Yes sir.

Q. As you understood? A. Yes sir.

Q. And when did Steedman come in, as owner of the Market?

A. I cannot give you the dates of that, Sir. But from the begin- 20
 ning of our negotiations, that is in the early part of 1928.

Q. You think early in 1928, Lord sold to Steedman?

A. I do not know what the negotiations were, but Mr. Steedman was in possession of the Market.

Q. You understood that Lord had turned the Market over to Steedman early in 1928—is that right? A. Yes, I understood that he had control of it at that time.

MR. BOYD: Q. As a matter of fact, you knew that the Canada Permanent Mortgage Corporation sold out the property in December to Mr. Steedman? A. I did not know anything about it, other than Mr. Lord 30
 was not in possession of the market. I had no interest in it.

HIS LORDSHIP: Do I understand that the arrangement with Lord was that he was to have a discount of ten per cent. when you understood him to be the purchaser?

A. Yes sir.

Q. He was to have a discount of ten per cent.? A. There was a larger discount than that in the total contract, but ten per cent. was to be paid for Mr. Lord.

Q. You say that afterwards when the new contract was under discussion with Mr. Steedman? A. Yes. 40

Q. That Lord raised this question, and that you told him? A. We confirmed him.

Q. That he would still have his ten per cent.? A. Yes sir.

Q. Though you knew then that Steedman was to be the purchaser?

A. My understanding, my Lord, was this, that Mr. Lord, and his associates would be taking over the market, that Mr. Steedman was not

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anxious to take the property, but for a consideration that he was turning the market back to Mr. Lord.

Q. And though you were making your contract with Steedman, that Lord would be getting this ten per cent. commission, amounting to \$800 or \$900? A. Yes sir.

Q. And Steedman would be paying the contract money, or making himself liable for it? A. Yes.

Q. And Steedman knew nothing about these arrangements with Lord? A. That is correct.

10 MR. BOYDE: Q. Did you know another company, the Kelvinator, was negotiating with Mr. Steedman? A. Yes.

Q. And you knew Mr. Counsell, Mr. Steedman's solicitor. A. I did.

Q. And did Mr. Counsell come to you and tell you what the Kelvinator's figures were? A. No he did not come to me.

Q. He did not come to you? A. No.

Q. He at no time told you? A. He telephoned to me and asked if it were possible, if they could get it for an amount of money—I do not recall the figures he said, and I think my reply was, it could not be done for that amount of money—I do not recall the figures he said, and I think
20 my reply was, it could not be done for that amount of money with the right equipment.

Q. It could not be done—did he tell you they were willing to do it for \$18,000? A. Something like that, yes sir.

Q. And did you see Mr. Lord and impress upon him the necessity of getting the contract through? A. Yes.

A. No, because Mr. Steedman and Mr. Counsell and Mr. Sterling and myself had a meeting in Mr. Steedman's home, and we reached an agreement of \$24,000 that afternoon, and that same evening Mr. Steedman came in with Mr. Lord and closed the contract.

30 Q. And before that contract was closed, did you tell Mr. Steedman it would not cost Mr. Steedman a cent, the tenants would pay it all?

A. If he took advantage of that particular basis of settlement, but Mr. Steedman told me he could pay the amount up, and take that extra profit which would accrue, due to the charges.

Q. But the actual equipment, Mr. Steedman was not to pay the actual equipment, but the tenants were.

MR. BOYDE: The tenants notes, your Lordship.

HIS LORDSHIP: The acceptances.

40 MR. BOYDE: Q. The contract provides that Mr. Steedman is to furnish notes of the tenants on certain terms? A. Yes.

Q. And these notes provided that the property is to remain in the seller until payment is made in full?

A. I do not quite understand you.

Q. The notes provided for what are called the General Motors Acceptance Corporation notes? A. Yes.

Q. And are you familiar with the terms in these notes? A. Yes sir.

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Q. Is the usual term a term providing that the ownership of the goods does not pass to the buyer until payment is made in full?

A. The usual term of a G. M. A.C. note is that the purchaser signs a note first—

Q. Now, just answer this one question? A. I am trying to answer it—and the wholesaler, or the man through whom the contract would be arranged would sign second.

Q. I am not asking who signs it. I am asking what the clauses are.

HIS LORDSHIP: Is there a clause in these notes which retains the ownership of the property in the vendor? 10

A. Until the amount is paid?

Q. Yes? A. Yes sir.

MR. BOYDE: Q. And that is what you contemplated these notes would contain.

MR. BEATON: We have a witness here from the General Motors Acceptance Corporation.

MR. BOYDE: If that is so, we need not pursue it further, my Lord.

Q. Then, at this meeting at Mr. Steedman's house did you make any reduction in your tender price? A. Yes. 20

Q. How much? A. About \$500—it was the odd figures above \$24,000.

Q. I think you told me further, Mr. Steedman asked for a reduction and you refused? A. No, he asked for a reduction—when he actually came in to sign the contract, he asked for a further reduction, and I refused.

Q. And he turned to Mr. Lord and asked him if it was all right to sign, and he said “yes,” did he? A. And he signed it.

Q. Mr. Lord, you knew, was the employee? A. Yes at that time, yes.

Q. And a man in whom he trusted? A. I assumed he did.

Q. And he signed it on Mr. Lord's advice? A. Yes.

Q. And you knew you were going to pay Mr. Lord ten per cent. on the 30 contract price? A. Yes.

Q. That was not suggested to Mr. Steedman? A. No.

Q. Then, did you know whether Mr. Lord had been making efforts to rent these stalls? A. Yes, he seemed to be using every effort he could to place them, and my understanding was that he would have them all rented by the time the market was completed.

Q. Do you know whether or not he did? A. I cannot answer you that, no.

Q. And I suppose when the contract provides for the furnishing of further equipment, you contemplated that further equipment would be 40 needed? A. I knew it would be needed if they were to complete the Market.

Q. You knew it would be completed, and you provided for that? A. Yes.

Q. And you provided for the same rate of discount to apply to Mr. Steedman? A. Yes.

Q. And did you contemplate some of the tenants might want changes? A. In the equipment?

Q. Yes? A. I knew they would, not in the equipment.

Q. And the fact they did? A. Yes.

Q. And the matter was delayed for some considerable time—we are not suggesting you are to blame, but due to the delay, you had negotiations, different conversations with Mr. Steedman? A. One or two.

Q. And Mr. Counsell, acting? A. With Mr. Counsell several times.

Q. And discussing the best way of getting the tenants in there? A. 10 No, we had nothing to do with getting the tenants in.

Q. Did you discuss what changes would have to be made?

A. No, we took our instructions from Mr. Lord as to what changes were required in the various stalls.

HIS LORDSHIP: What has this to do with the case?

MR. BOYDE: I am just pointing out we made reasonable efforts to get leases from our tenants.

HIS LORDSHIP: “And for the balance I agree to furnish notes of the tenants payable according to the usual terms and conditions of the paper discounted by the General Motors Acceptance Corporation.”

20 MR. BOYDE: Q. Did you ask Mr. Lord to put a time limit on the contract? A. I did.

Q. And he refused? A. Yes.

Q. A time limit when the notes were to be signed.

HIS LORDSHIP: Was this before the contract was signed?

A. A day or two after I went to Mr. Steedman, and asked him to put an expiry date on that.

HIS LORDSHIP: What do you mean by that? A. When these notes were to be started, and Mr. Steedman refused inasmuch as there was a penalty clause in, the work had to be completed within a specified time,

30 we did not insist upon a date.

MR. BOYD: Q. And Mr. Steedman refused, at any rate?

A. Yes, refused to change the contract.

HIS LORDSHIP: This is what you say, “I asked Steedman, after the 3rd of May?”

A. I think it was the next day, my Lord.

Q. “To put a limit on the time within which the notes would be given?” A. Yes.

Q. By the tenants? A. The tenants. He would not give me a date, but he said it would certainly be by the end of the year.

40 MR. BOYDE: Q. As a matter of fact, did Mr. Steedman tell you rather than consent to another change in the agreement he had signed, he would tear up the agreement and make the bargain with the Kelvinator? A. I do not know, he might.

HIS LORDSHIP: What difference does it make? Here is a contract,

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and we are to construe it as it is, Mr. Boyde, you may argue you are not to furnish a note until ten years, or within twenty years.

MR. BOYDE: We think we should take reasonable steps to have the notes, we have to furnish them within reasonable time.

Q. Then the terms of these notes that were contemplated—what were the terms as to joint payment, do you know? A. They could be renewed, the General Motors Acceptance Corporation will look after it.

Q. They could vary? A. Yes

Q. And they do vary? A. Yes.

Q. On arrangements with the tenants? A. Yes. 10

Q. And you would have to negotiate with them and settle the terms?
 A. My understanding at the time was, that would be through Mr. Steedman.

Q. A matter of arrangement, and the terms of the notes? A. Yes.

Q. Then Chamber & Company, a firm of real estate agents looked after the property for Mr. Steedman, did they not? A. Yes.

Q. And they wrote you a letter, did they, regarding certain changes the tenants wanted? A. I do not recall.

Q. You do not recall that letter? A. I do not recall the letter, no.

Q. You do not recall the letter? A. No, I know we talked with Mr. 20

Chambers a number of times.

Q. And did you write a letter back to Chambers & Company in October, October 25th, 1928? A. I may have, I do not recall it.

MR. BOYDE: I just produce it to you (look at it) You recall it now?
 A. I do, now.

EXHIBIT 6: Letter dated 25th October, 1928, Frigidaire Corporation by C. R. Howard, Manager to Chambers & Company.

HIS LORDSHIP: What does the letter say?

MR. BOYDE: It is discussion on the changes in equipment?

A. In one particular stall. 30

HIS LORDSHIP: From whom to whom?

MR. BOYDE: From the plaintiff corporation to Chambers and Company, Hamilton.

HIS LORDSHIP: Are they one of the tenants?

MR. BOYDE: They are the rental agents for the defendant Steedman.

Q. And I suppose that Chambers and Company as rental agents for Mr. Steedman, did their best to get it rented?

A. I cannot tell you what they did.

Q. Didn't you say that they did, on your examination for discovery. 40

HIS LORDSHIP: That may be assumed.

MR. BOYDE: Q. When did you have any doubt as to the authority of Mr. Lord to bind Mr. Steedman in any way? A. No, when he was in my office, and Mr. Steedman turned to him and asked him if it was all right to sign the contract—certainly not.

Q. I am not asking if Mr. Steedman relied on his advice, but what position, if any, Mr. Lord occupied under Mr. Steedman, did Mr. Steedman ever tell you?

A. No, but Mr. Counsell did.

Q. What did Mr. Counsell say? A. Whatever Lord said was the thing to go ahead on.

Q. There is a letter of August 8th, 1928, that my friend has of Mr. Howard from the Company.

HIS LORDSHIP: You appreciated apparently before you put in
10 this equipment that there was the uncertainty in the contract as to the date when you would receive these notes? A. Well, there is a penalty clause incorporated in the original contract, Sir.

HIS LORDSHIP: The penalty would be a penalty to be paid by your Company? A. Yes.

Q. But apart from that? A. Our understanding was that all the stalls would be completed at that time, otherwise there would not have been a penalty clause incorporated.

HIS LORDSHIP: The stalls completed? A. Yes, the stalls all
20 rented at that time, otherwise there would not be the necessity for a penalty clause to go in.

HIS LORDSHIP: I do not understand that? A. It was put up to us they were ready to open the market immediately on its completion, and for that reason they introduced the penalty clause so we would be sure to have the market done by that time, so the tenants would not be held up.

HIS LORDSHIP: Delayed? A. Yes sir.

MR. BOYDE: Q. As a matter of fact, there was discussion about the penalty clause, and Mr. Counsell asked you to pay it, and you said you were not to blame in any way for the delay, and it has never been
30 insisted on.

HIS LORDSHIP: What has never been insisted on?

MR. BOYDE: The penalty clause, my Lord.

HIS LORDSHIP: There would be no penalty clause if there were delays by changes in the work.

MR. BOYDE: That is what I am meaning, my Lord.

HIS LORDSHIP: There were no claims for penalties under it?

WITNESS: My Lord, we received a letter asking us to pay a
penalty.

MR. BOYDE: There were changes, and that matter was dropped.

Q. Did you receive this letter, dated June 28th, 1928? A. Yes.

40 Q. Now, I draw your attention to one sentence from it. "During the next two months, it will be much harder to find tenants for the stalls."

MR. BEATON: This letter was written without prejudice.

HIS LORDSHIP: It should not be read, without prejudice.

MR. BOYDE: As I understand it, you do not lose any rights by writing without prejudice, but the recipient cannot use it.

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HIS LORDSHIP: Surely you cannot read it—you cannot write a letter without prejudice and then use it.

MR. BOYDE: I think it is done all the time.

HIS LORDSHIP: I do not think so.

MR. BOYDE: It may be improper practice.

HIS LORDSHIP: We do not do it now.

MR. BOYDE: I would read part—

HIS LORDSHIP: No, do not read it.

MR. BOYDE: Q. Did you or did you not know before the end of June it would be difficult to fill the stalls for sometime to come? A. Well, I would have no way of knowing that definitely, no, because I am not in the market running business.

Q. You did not know? A. No.

Q. Did you know Mr. Lord had been trying for seven years to do it and could not do it? A. The market was not equipped.

Q. He had been trying to get tenants in, and was not able to get them.

A. I did not know anything about that.

Q. You did not know anything about that? A. No sir.

Q. Did you take part in the negotiations with Mr. Counsell regarding the cutting down the size of the market? A. Recently? 20

Q. Yes? A. No, I did not understand you.

Q. You know something of it.

MR. BEATON: That was also an arrangement made without prejudice.

MR. BOYDE: Oh yes, it was done without prejudice.

HIS LORDSHIP: What has it to do with the case?

MR. BOYDE: It was an arrangement made without prejudice.

HIS LORDSHIP: Then you cannot talk about it. It is no use.

MR. BOYD: Although done without prejudice, it might have—

HIS LORDSHIP: It does not come in here if it was done without prejudice. It should not be mentioned here. 30

MR. BOYDE: Very well, my Lord, I won't press that.

C. R. Howard,
Re-Examination

RE-EXAMINED:

BY MR. BEATON:

Q. This equipment that you supplied, Mr. Howard, the great part of it came from what Company? A. The Sterling Refrigerator Company.

Q. And as a matter of fact, how much money did you pay the Sterling Refrigerator Company for this equipment installed in this market?

A. I cannot answer you that.

Q. Mr. Lowden could give that? A. Mr. Lowden would have those figures. 40

HUGHES ROBBINS: Sworn

Examined by Mr. Beaton.

Q. Mr. Robbins, you are in the employ of the General Motors Acceptance Corporation Corporation? A. Yes.

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Hughes Robbins,
Examination

Q. Where? A. At Oshawa.

Q. Is their head office there? A. Yes.

Q. And what has your position been with that Corporation?

A. Handling Frigidaire accounts.

Q. What department are you in? A. The Credit Department.

Q. And what is the business of General Motors Acceptance Corporation—just very briefly? A. Well, a contract is submitted, you investigate the purchaser.

Q. What concerns do you do financing for—I may put it that way?

10 A. Distributors and purchasers, selling General Motors makes of cars and Frigidaire equipment, Delco light, etc.

Q. Do you do any financing of concerns outside of General Motors?

A. Unless they are in the case of used cars, traded in on new General Motors makes.

HIS LORDSHIP: Does the General Motors Corporation make the Frigidaire? A. The Frigidaire Corporation is a subsidiary of General Motors.

MR. BEATON: Q. And do the Frigidaire Corporation make this Frigidaire equipment? A. They do.

20 Q. And your company I understand does the financing for all General Motors Company? A. That is right.

Q. Now you say that you have been in the Credit Department of this Company or Frigidaire—I ask you to produce the usual contract or note you require when financing in the Frigidaire equipment—have you got it there? A. There are the forms of contract.

Q. Hold that in your hand—

HIS LORDSHIP: It is usual to furnish notes payable according to the usual terms and conditions of paper discounted by General Motors Acceptance Corporation?

30 MR. BEATON: Yes.

HIS LORDSHIP: Does the General Motors Acceptance Corporation require the paper that it discounts to be in a certain form?

A. Yes sir.

Q. And the usual terms and conditions—do you say that this paper you produce embodies the usual forms and conditions of notes that are taken from purchasers?

A. Yes.

MR. BEATON: Q. That is the paper that you discount then, Mr. Robbins? A. It is.

40 MR. BEATON: I will put that in then, my Lord, as an Exhibit.

. . . EXHIBIT NO. 7 Blank form conditional sale contract General Motors Acceptance Corporation.

See if I understand you right, Mr. Robbins, if you are going to finance paper of Frigidaire Equipment, you require that it should be in your form? A. Yes.

RECORD

In the Supreme
Court of Ontario

Plaintiff's
Evidence

No. 6

Hughes Robbins,
Examination

RECORD
 In the Supreme
 Court of Ontario
 Plaintiff's
 Evidence
 No. 6
 Hughes Robbins,
 Examination

Q. Which you have now produced to the Court, that is right?

A. That is right.

Q. And that is the conditional sale Contract, and the promissory note? A. Yes.

HIS LORDSHIP: There is nothing said here about the conditional sale contract.

MR. BEATON: It says on the usual form.

HIS LORDSHIP: I agree to furnish notes in accordance with the usual terms and conditions of the General Motors Acceptance Corporation.

10

HIS LORDSHIP: The thing they discount is the note.

MR. BEATON: Both, my Lord, both the conditional sale contract and the note.

Q. Is there any other kind of paper you discount? A. No.

Q. So far as Frigidaire is concerned? A. No.

Q. This is the paper discounted? A. Yes.

Q. What about the time, twenty-four monthly payments or less, from the date of the contract—

That would not be indicated on the form? A. It is on the form.

Q. The form of contract would specify the number of notes?

20

A. The number of monthly payments.

Q. Is there a note for every monthly payments? A. One note, and the number of payments may be anything up to two years, twenty-four months—your Lordship will see on this Exhibit 7.

HIS LORDSHIP: That is, to the option of the purchaser.

A. The number of months there is a blanket extending over twenty-four months, and also on the promissory notes.

Q. Now when must this contract be signed, Mr. Robbins, by a purchaser? A. At or before delivery or at installation of the equipment.

Q. At or before delivery or the installation of the equipment, so that when you are about to finance Frigidaire paper, the purchaser must sign a contract with the Frigidaire Corporation on your order, that is right?

30

A. On an order, yes.

Q. Then if he is going to take advantage of your financing arrangement, he must also sign your usual paper?

Q. Conditional sale contract.

Q. And note? A. Yes.

Q. And you say that must be signed by the purchaser at or before delivery? A. That is right.

Q. And is this the contract that is signed by any purchaser?

40

MR. BOYDE: That is leading.

WITNESS: That same contract.

HIS LORDSHIP: When he is paying cash, he would not, of course.

MR. BEATON: Q. Is there any difference in the contract signed by myself, if I am buying Frigidaire Equipment, or buying it direct from

a dealer? A. For a dealer operating under a distributor, there is a whole-sale plan, but this is in connection with retail purchasing.

HIS LORDSHIP: I do not see what you have to do with that, Mr. Beaton.

MR. BEATON: Quite right, my Lord, I have not.

Q. Now, Mr. Robbins, your business is to pass on the credit of these contracts that are submitted to you. Now that is in the case that is occupying the attention of this Court, this equipment was delivered in July of 1928 if the usual paper of General Motors Acceptance Corporation is offered to you now, will you accept it?

HIS LORDSHIP: Well, hold on.

MR. BEATON: I do not want to exceed—but I submit, my Lord, that is a fair question to ask this witness.

HIS LORDSHIP: You what?

MR. BEATON: I submit it is a fair question to ask the witness, or give his reason why they cannot be accepted by them.

HIS LORDSHIP: What cannot be accepted?

MR. BEATON: Paper of this equipment.

HIS LORDSHIP: What have I to do with that. When he agrees to furnish notes of the tenants according to the usual terms of the General Motors Acceptance Corporation.

MR. BEATON: The statement as to it is, to furnish notes of the Frigidaire Corporation and insure they get them discounted with the General Motors—

HIS LORDSHIP: Where?

MR. BEATON: I submit it is, with great respect.

HIS LORDSHIP: Where?

MR. BEATON: He must discount them. It is most extraordinary he should give us something that is no good.

HIS LORDSHIP: He is to give you what he is called upon to give you by this contract.

MR. BEATON: He gives us paper to be discounted?

HIS LORDSHIP: He does not contract that General Motors will discount them.

MR. BEATON: He says he will give them paper that will be discounted.

HIS LORDSHIP: No, "I agree to furnish notes of the tenants payable according to the usual terms and conditions of the paper discounted by the General Motors Acceptance Corporation.

MR. BEATON: What I am trying to show by this witness what the usual terms and conditions are under which they will discount paper.

HIS LORDSHIP: You have shown that.

MR. BEATON: Surely that question is pertinent to the inquiry.

RECORD

In the Supreme
Court of Ontario

Plaintiff's
Evidence

No. 6

Hughes Robbins,
Examination

RECORD
In the Supreme
Court of Ontario

Plaintiff's
Evidence

No. 6

Hughes Robbins,
Examination

Hughes Robbins,
Cross-
Examination

HIS LORDSHIP: Steedman did not guarantee that the General Motors Acceptance Corporation would discount this paper.

MR. BEATON: No, my Lord, I appreciate that, but what I say is, he was obligated under that contract to give us paper that we could discount with General Motors Acceptance Corporation, so that we could get our money, otherwise he was not agreeing to do anything.

HIS LORDSHIP: He agreed to do all this document calls for. He did not say, I will give you notes, or I will give you paper which the General Motors will discount.

MR. BEATON: He did, in fact, I say, my Lord, according to the 10 usual terms and conditions of the paper discounted by the General Motors Acceptance Corporation.

HIS LORDSHIP: I differ from you.

MR. BEATON: It is unfortunate for us that your Lordship should.

CROSS-EXAMINED:

BY MR. BOYDE:

Q. This Exhibit 7—who are the people who sign that? Who are the persons who execute that document?

A. This—this is signed by the dealer or seller, would be the Frigidaire Corporation. 20

Q. That would be the local representative the dealer? A. In this instance it would be the Frigidaire would sign.

HIS LORDSHIP: Did you not get notes from any tenants?

MR. BEATON: The market was only opened last week.

HIS LORDSHIP: Before you would let any tenants in, you would surely get a note from him.

MR. BEATON: We will call the agent.

Q. The Frigidaire Corporation would sign the first line?

A. The seller, that would be the signature of the purchaser. 30

Q. Yes? A. And this is the guarantee, signed by the seller, also the Frigidaire Corporation, and this note would be signed by the purchaser, and on the reverse is the statement the purchaser would sign here, and the dealer would sign there.

Q. Yes? A. And the note would be also endorsed by the dealer.

Q. Your dealer is your local representative? A. That is right, they are not our representatives.

HIS LORDSHIP: I think, Mr. Beaton, that these notes might be drawn by the defendant in favor of Steedman.

MR. BEATON: Mr. Steedman says no. 40

HIS LORDSHIP: By the contract these notes might be made in favor of Steedman, and Steedman could discount them with this Corporation, that would be one view, if not, he could hold them.

MR. BEATON: That is as I understood it, my Lord, and it was quite acceptable to us.

HIS LORDSHIP: That is what you are entitled to, I think.

MR. BOYDE: Q. Did you ever see the contract between Steedman and Frigidaire Corporation? A. No.

Q. Was the contract, Exhibit 2, by which Mr. Steedman agreed to furnish these notes, ever submitted to you?

A. No.

Q. It has never been through your hands? A. No.

Q. You know nothing about it? A. I know nothing about it.

MR. BOYDE: Q. Where you employed by this company at the 10 middle of May, 1928? A. I was.

Q. Where you in the credit department? A. No, I was not in the credit department on this particular business, that was on July 28th, 1928.

Q. Who was in charge? A. Mr. Buchneer.

Q. Is he here now? A. No, he is still with the Corporation.

Q. Would it pass through his hands? A. Beg pardon?

Q. Would the contract between the Frigidaire Corporation and Mr. Steedman pass through his hands? A. At that time it would.

MR. BEATON: That is the case for the plaintiff, my Lord.

MR. BOYDE: Just one question—I would like to ask Mr. Robbins, 20 with your Lordship's permission.

RE CROSS-EXAMINED:

By Mr. Boyde:

Q. I notice that on this conditional sales contract, Exhibit No. 7, there is what is called a schedule of payments referring to one month hereafter? A. Yes.

Q. That is a matter of arrangement between the purchaser and the seller who makes that arrangement—the one who should approach your company, who are the parties to that arrangement? A. Our terms are so arranged that the statement calls for terms as the purchaser wishes to pay 30 one, two, three or the number of months he is supposed to pay? Q. Yes?

A. Yes, that is in that, each payment.

Q. You find out how the purchaser wants to pay, if it is twelve times, or sixteen times, or fifteen times—then the interest is computed and you divide by six or twelve, or fifteen as the case may be and there you are? A. The charges are distributed evenly over the monthly payments.

MR. BOYDE: Q. It might run for the twenty four month period?

HIS LORDSHIP: That is for the convenience of the tenant. If the tenant decides on how many months he wants it to be? A. Our plan calls for twenty-four monthly payments or less.

40 Q. He may make it twenty-four or twelve or six or three?

A. Yes, sir.

MR. BOYDE: Depending largely upon the size of the contract and the purchaser's wishes in the matter—is that not so? A. Yes, the amount he can pay is generally depending on the number of months.

RECORD

In the Supreme
Court of Ontario

Plaintiff's
Evidence

No. 6

Hughes Robbins,
Cross-
Examination

RECORD

in the Supreme
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Plaintiff's
Evidence

No. 6

Hughes Robbins,
Cross-
Examination

Re-Examination

MR. BOYDE: But it is the tenant who makes the choice, he can make it run for twenty-four months, or twelve months whichever he desires.

MR. BEATON: Q. What are the terms, supposing it is twenty-four months, have you any standard charge as to that? A. Yes.

Q. What is it?

HIS LORDSHIP: What difference does it make—what do you mean, the standard charge? A. A contract covering twenty-four months would be one- and one-half overcharge on the amount fixed, plus six per cent. per annum. 10

MR. BEATON: And that is spread over twenty-four months?

A. That is right.

MR. BOYDE: I fancy it would be just as well if we called our defence. I submit there is not any evidence. There are no tenants actually in existence and therefore the plan fails.

HIS LORDSHIP: You say, you decide whether you want to call your evidence or not.

MR. BOYDE: I will call Mr. Steedman.

JAMES P. STEEDMAN: Sworn

Examined by Mr. Boyde. 20

Q. Well, Mr. Steedman, you are the defendant in this action?

A. Yes sir.

Q. And who is the owner of what is called the Barton and Ottawa Market, formerly the East End Markets?

A. I was.

HIS LORDSHIP: Q. And you still are? A. I am, yes.

MR. BOYDE: And approximately when did you become the owner?

A. I do not recall the exact date.

Q. Were you the owner in the Spring of 1928?

A. I was. 30

Q. The date is December 15th, 1927, as a matter of fact.

HIS LORDSHIP: How long had you been the owner before that time?

A. How long which Sir?

HIS LORDSHIP: How long had you been owner before May of 1928?

A. I think it was the end of the year we bought it at auction under that mortgage, December, 1927.

MR. BOYDE: December 15th, 1927.

HIS LORDSHIP: You bought in December, 1927? 40

A. Yes sir.

MR. BOYDE: Q. From whom did you buy? A. We bought a mortgage by the Canada Permanent, I think the name was.

Q. A first mortgage? A. They put up the property for sale.

Q. And you bought the property? A. Yes.

Defendant's
Evidence

No. 7

J. P. Steedman,
Examination

Q. And did you or did you not go into possession of the property?

A. We went into possession of the property when I bought it.

HIS LORDSHIP: And you have been in possession ever since?

A. Yes sir.

MR. BOYDE: Q. What position if any, did Mr. W. J. Lord hold under you? A. He as an employee at a fixed salary per week.

HIS LORDSHIP: What was his business? A. Butcher.

Q. Were you a butcher? A. No sir.

Q. Well, what did he do for you? A. Beg pardon.

10 Q. What did he do for you? A. He was to work under my instructions and look after the fitting up of the market and to procure tenants if possible.

Q. When did you employ him? Some time after the contract was signed by you? A. No, I guess before the Refrigerator contract. I cannot tell you the exact month, maybe January, or February following the year I bought it.

MR. BOYDE: Q. And at the time you signed the Frigidaire contract was Mr. Lord an employee of yours then? A. He was.

20 Q. And did he tell you, or did any person on behalf of the Frigidaire Corporation tell you anything about a commission to be paid to Mr. Lord? A. I did not hear about it.

Q. You did not hear about it? A. Not from Lord, nor from the Frigidaire.

HIS LORDSHIP: Nor from anybody else? A. Nor from anybody else, or I would not have signed the contract.

MR. BOYDE: Q. And after the contract was signed, did you see Mr. Howard? A. Yes, Mr. Howard called at my office, the office of the Gurney Scales Company.

Q. You are not in the butcher business? A. No.

30 Q. You never have been, Mr. Steedman? A. No.

Q. And what took place between you and Mr. Howard?

A. Mr. Howard intimated he had received a letter, I think he said, from the Head Office, objecting to the contract, they would not accept it in that shape because under the contract there was no fixed time when the contract was to be made.

HIS LORDSHIP: That was after it was signed?

A. Yes, after it was signed, he wanted the contract changed and time put in there when these tenants would give notes.

MR. BOYDE: Q. What did you say to that?

40 A. Beg pardon?

Q. What was your answer to that, Mr. Steedman?

A. My answer to that was we would tear up the contract if they wished it, but there was no change.

Q. Was that the end of that? A. That was the end of that. He went along then with the contract as it had been made.

RECORD

In the Supreme
Court of Ontario

Defendant's
Evidence

No. 7

J. P. Steedman,
Examination

RECORD
 In the Supreme
 Court of Ontario
 Defendant's
 Evidence
 No. 7
 J. P. Steedman,
 Examination
 (concluded)

Q. Then before the contract was signed, did Mr. Howard say anything to you about you having to put up any money? A. That \$2,400 was all I was ever going to put up, and under the contract that \$2,400 was going to be returned to me.

Q. Yes? A. My position was that I was signing this contract in the interest of the tenants, that is, that they would not be charged by the Frigidaire Corporation a larger amount for the use of this refrigeration than they should.

Q. And you took steps to get tenants for these stalls? A. Yes sir.

Q. And did you put the matter in the hands of anyone? 10

A. Yes, Chambers & Company were going to look after that, as Mr. Lord was looking after it, and when he proved a failure, I got Mr. Chambers to take on the job.

HIS LORDSHIP: The stalls stood idle from July 1928, until the other day? A. Yes sir.

MR. BOYDE: Q. And did you make any changes in the size of the market in order to attract tenants? A. Yes, it was reduced in size.

Q. What was the reason for that, Mr. Steedman?

A. Because we found out there were too many stalls, too many butchers—some butchers objected to the number of butchers that came in there, if all the stalls were rented as originally planned, so we reduced the market about one-third, and rented it to the Metropolitan Stores. 20

HIS LORDSHIP: Did you take out the Frigidaire equipment of the one-third? A. Of those particular stalls.

Q. You took it out? A. Yes, by an arrangement by Mr. Counsell with the Frigidaire Corporation, for the taking out, he went down to Toronto and saw them.

HIS LORDSHIP: That does not enter into this case.

MR. BOYDE: That was entered into without prejudice.

HIS LORDSHIP: It does not affect the amount? 30

MR. BOYDE: No, we paid the amount of taking out.

MR. BEATON: It may make some difference because these were some of the stalls that could not be rented now, it was not our fault.

MR. BOYDE: We do not say it is, it was done with our request, and done without prejudice to the rest of the other purchase.

HIS LORDSHIP: It won't affect this claim.

MR. BOYDE: I do not see how it does.

MR. BEATON: It might, my Lord, if your Lordship decides what Mr. Steedman has to do is to give us contracts on these twenty-one stalls, he cannot do it. 40.

HIS LORDSHIP: Did the equipment of these stalls go back to the Frigidaire Corporation?

MR. BEATON: They are storing it for the defendant, my Lord.

HIS LORDSHIP: Just storing it?

MR. BEATON: Yes, my Lord.

CROSS EXAMINED:

BY MR. BEATON:

RECORD

Q. You were first interested in this market, Mr. Steedman, by your acquiring an assignment of the third mortgage? A. What is that again?

In the Supreme
Court of Ontario

Q. You acquired a third mortgage on this market—that is how you first became interested? A. Yes, I cannot tell you whether we first secured the first or the second, but at the time we bought the first mortgage—

Defendant's
Evidence

No. 7

Q. That is why Mr. Counsell and you are both interested in this enterprise? A. Not originally.

J. P. Steedman,
Cross-
Examination

10 Q. But you are now? A. Yes sir.

Q. And you acquired a second and third mortgage?

A. Yes sir.

Q. Before you bought the first mortgage from the Canada Permanent? A. Yes sir.

Q. Mr. Lord and his other friends had originally built this market? A. Yes sir.

HIS LORDSHIP: Two or three years ago—is that right? A. I do not know whether it was two or three years, or seven or eight years, it was there as a dead horse for many years.

20 MR. BEATON:

Q. You know it was built some few years ago?

A. Yes, some years ago.

Q. And Mr. Lord who was the man who built it?

A. Yes.

Q. And you acquired it under this mortgage sale?

A. Yes sir.

Q. And Mr. Lord and his friends had an option?

A. I do not think Mr. Lord had an option, a Mr. Rook.

Q. Some associates of Mr. Lord? A. Some associates of Mr. Lord.

30 Q. Had an option from you and Mr. Counsell to take the market back. A. Yes sir.

HIS LORDSHIP: What has this all to do with the case?

MR. BEATON: It has not very much, but they were the people who were going to operate it? A. If they carried out their option.

Q. Mr. Steedman had no intention of running it.

HIS LORDSHIP: He was going to run it by a real estate operation?

MR. BEATON: Not even that. He was going to get his money out?

40 A. Don't you say what I expected to do. What I expected to do was just the same as I am today. I expected Mr. Lord would arrange the money, or Mr. Rook, either.

HIS LORDSHIP: He could do as he pleased, it was his property?

A. It was my property.

RECORD
 In the Supreme
 Court of Ontario
 Defendant's
 Evidence
 No. 7
 J. P. Steedman,
 Cross-
 Examination

MR. BEATON: Q. Now this contract that you signed, I think you told me in your examination for discovery what you proposed to do was have the tenants sign the notes? A. Yes sir.

Q. You were to sign nothing? A. No sir.

HIS LORDSHIP: Do you want this gentleman's interpretation of this contract?

MR. BOYDE: He said that is what he was going to do?

A. I was going to carry out the contract just as it was drawn and read there.

Q. You have done everything, no tenants notes. 10

A. I have not been furnished with any blank notes.

Q. And the notes you are offering now are the notes signed by the tenants and not by you? A. Yes sir.

Q. And all this equipment has been in your Market since 1928, sometime? A. Sometime, yes.

HIS LORDSHIP: You have not taken any notes from tenants? A. No sir. We have asked for blank notes, and up to date, so far as I know, they have not been furnished.

MR. BEATON: Q. Have you written any letters?

A. Mr. Chambers, who are our agents, I believe, have written 20 letters.

Q. To whom? A. I do not know, you had better ask Mr. Chambers, I do not know.

Defendant's
 Evidence

STUART CHAMBERS: Sworn

Examined by Mr. Boyde:

Q. Mr. Chambers, what is your occupation? A. Realtor, property manager.

Q. Do you belong to any firm? A. Yes sir.

Q. Do you manage various properties in Hamilton?

A. Yes, I manage the Pigott Building. 30

Q. What is that?

HIS LORDSHIP: We are not troubled with the Pigott Building. He is in real estate—he has called himself a realtor.

MR. BOYDE: The only point, Mr. Steedman went to the most prominent man he could get.

HIS LORDSHIP: All right, we assume he did the best he could to rent these stalls.

Q. Is that right? A. Yes sir.

Q. You did the best you could? A. Yes sir.

Q. And we will assume nobody could have done better, possibly, 40 than he did.

MR. BOYDE: Q. When did you finally succeed in renting the stalls in such a manner as to open the Market?

A. We have rented a number of the stalls so that we were able to open a week ago last Friday.

No. 8
 Stuart
 Chambers,
 Examination

Q. A week ago last Friday? A. We are just in our initial stages now for opening.

Q. Did you have any tenants before that for these stalls? A. Yes.

Q. When did you get the tenants? A. I had tenants fully a year before that time. Could I give his Lordship a better understanding of it, Mr. Boyde, if I explained it.

Q. Yes, explain it? A. Your Lordship, I acted for Mr. Lord and his associates, over a year before Mr. Steedman, or over months at least before Mr. Steedman took possession of the property through mortgage sale—

HIS LORDSHIP: Yes? A. And we made additional efforts to open that market and complete it. The reason the market was not able, the reason we were not able to complete the market and open it was because after operating for months and investigating, and interviewing tenants of various classes, we found the Market was much too large, and the size of the market had to be reduced.

Q. And the size of the market had to be reduced.

A. The south end of the market was supposed to be open by the Groceteria, or some such store. We interviewed the leading chain stores, or most of the leading chain stores, throughout Ontario, during that period, and found that it was wrongly designed to permit a chain store to carry on. The problem then confronted us, to find an answer, and most of it, or all of it meant a considerable change in the construction of the property. Well, eventually this was carried out, and just some weeks ago it was finally completed and opened by the Metropolitan Stores. We then proceeded to finish the balance of the Market, and in opening the Market itself with stalls of creameries and butchers and dairy supplies and food and vegetables, we were up against a problem Sir, of opening the Market that had received a very considerable black eye through the years from the fact that it was not efficient and could not be handled as its original intention was. It may have been nobody's fault, it was probably an error in judgment, but it could not be opened as originally intended, so we have today a number of these stalls rented, but not all.

HIS LORDSHIP: How many are? A. There are seven rented, and twelve in the Market, we have Exhibits in the stalls.

Q. I thought the original number was twenty-two.

A. It originally was twenty-two.

Q. And you closed seven or absorbed them? A. There are now twelve, so we closed ten. We are busy today and negotiating with other firms for the balance of these stalls, and we have some of the wholesale houses interested to the extent of having exhibits. These negotiations are under way, and I am going at this, but because of the delays in opening, and all the disappointments, and the fact that some tenants we originally had moved in a year ago, it is exceedingly difficult to convince them that this

RECORD

In the Supreme
Court of OntarioDefendant's
Evidence

No. 8

Stuart
Chambers,
Examination

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Evidence

No. 8

Stuart
Chambers,
Examination

matter is now going over successfully. For that reason it has been necessary to put certain tenants in there on probation, that is, they are in on a temporary lease.

HIS LORDSHIP: They have you on probation you mean?

A. Yes, rather Sir, we are co-operating with them, and they with us, and so far it is very successful, and we expect that within the next few weeks all these leases will be signed for a long term, that is, at the present time some of them are on probation. I received last week, at a meeting in Mr. Counsell's office instructions in writing from Mr. Counsell to write to the General Motors Corporation for notes to carry out Mr. Steedman's original agreements. These instructions are in my desk. I have not yet written for those notes pending the approval of some of these tenants of their equipment in the stalls. 10

HIS LORDSHIP: All right.

MR. BOYDE: Q. Then you have to satisfy the tenants, I suppose, before you can get them in? A. Absolutely.

Q. And you were with Mr. Lord last Spring endeavouring to do that?

A. O Yes, I worked with Mr. Lord and his associates for many months, endeavouring to do this. The idea being right straight through, that Mr. Rook, who was then Mr. Lord's adviser, and for whom I originally acted, had an agreement with Mr. Steedman, that on payment of certain monies, reimbursed, certain monies, reimbursing Mr. Steedman for his outlay, they had agreement for securing this market, and I saw their agent then. 20

Q. Was Mr. Lord himself to go in and take certain stalls? A. Yes.

HIS LORDSHIP: What has this to do with the case. Surely you are following it too far. What has this to do with the case?

MR. BOYDE: My only point was to explain how it was that we could not fill the stalls.

HIS LORDSHIP: These defendants did not take on any responsibility for furnishing these stalls. 30

WITNESS: I have seen it from the standpoint of a purchasing concern, and the idea in consideration with the refrigeration. Mr. Steedman never expected to run to the expense of the money he has spent on the scheme.

HIS LORDSHIP: That has nothing to do with it.

MR. BEATON: Except this, in July of 1928 you opened—in July of 1928 you had practically all stalls opened then—

HIS LORDSHIP: If you wish to put it on that ground you may be put in an embarrassing position for your client. 40

JOHN L. COUNSELL: Sworn

Examined by Mr. Boyde:

Q. You are one of His Majesty's Counsel?

HIS LORDSHIP: What difference does that make?

MR. BEATON: It qualifies him for an expert witness.

Defendant's
Evidence

No. 9

John L. Counsell,
Examination

MR. BOYDE: Q. You are a member of the firm of solicitors for the defendant? A. Yes.

Q. And do you know when the defendant obtained possession of the property? A. December, 1927.

Q. How did he obtain possession? A. By mortgage sale.

Q. He bought at a mortgage sale? A. Bought at a mortgage sale.

Q. Who owned the property before that? A. W. J. Lord.

Q. Had he conveyed it to anyone previously?

A. It had been conveyed to the East End Market Company Limited
10 but the conveyance had not been registered.

Q. Had it been delivered? A. I cannot be sure of that. I think it had

Q. Then what position did Mr Lord have under Mr. Steedman after the sale by the first mortgage, and by the acquisition by Mr. Steedman of the East End Market property? A. Well, up to that time, Mr. Lord had been a moving spirit in the building of these East End Markets, and in developing it.

Q. Yes? A. And after the sale by the Canada Permanent Mr. Steedman purchased, he gave Mr. Lord an option, and Mr. Lord agreed to stay and go ahead and complete the building, the building had not been completed at that time, and see that everything was completed according to—
20 Mr. Lord knew more about what a market should be, as he was in the Hamilton market, in the centre of the Town. He had built those and installed them, and he was familiar with markets, and he went on. He obtained an option at a price for Mr. Steedman, and was his employee for fifty dollars a week? A. Yes.

Q. Fifty dollars a week? A. Yes.

Q. Was he such an employee at such a rate of remuneration at the time the contract was executed with the plaintiff company? A. Yes.

Q. And you were at most of the conferences? A. I think so, I
30 think so, I would not be sure.

HIS LORDSHIP: Here is the contract? A. That is so.

MR. BOYDE: Q. Was it ever brought to your attention that Mr. Lord as receiving a commission? A. No.

HIS LORDSHIP: He has not got it yet, has he?

MR. BOYDE: He was promised it, he has not got it.

A. He has got his ten per cent. of the first cash payment, I think.

HIS LORDSHIP: Mr. Howard says more than that. He says ten per cent. would amount to \$800 to \$900—ten per cent. of the amount of the goods that were being furnished by the Frigidaire Company, which
40 would be, I suppose \$8,000 or \$9,000.

MR. BOYDE: Q. Did you have a conversation with Mr. Howard in which you mentioned anything about the Kelvinator? A. I do not think I personally had any conversation with Mr. Howard.

HIS LORDSHIP: What difference does it make if you had.

RECORD

In the Supreme
Court of Ontario

Defendant's
Evidence

No. 9

John L. Counsell,
Examination

RECORD

In the Supreme
Court of OntarioDefendant's
Evidence

No. 9

John I. Counsell,
Examination

MR. BOYDE: It throws a side light on the promise to pay Mr. Lord a commission if they were paying Mr. Lord a commission.

HIS LORDSHIP: It is practically admitted there was a promise of commission. It is of course an element in the case. I am not quite sure what the legal effect of it is.

MR. BOYDE: Then did you yourself, on Mr. Steedman's behalf, make any attempt to rent the stalls at the East End Market? A. I must confess I did everything possible, both myself and Mr. Steedman, I interviewed several times the heads of the Eaton Company.

HIS LORDSHIP: I suppose Mr. Beaton will not deny he has— 10
Mr. Steedman has made every effort.

WITNESS: It was costing Mr. Steedman more than it was the Frigidaire to have it vacant, and we finally got the Metropolitan Stores of London to come and take the south end of the Market.

HIS LORDSHIP: And took out ten of the stalls in an effort to accommodate them.

A. It cost close up to ten thousand dollars for the necessary changes.

MR. BOYDE: Q. Did you do that by arrangement?

HIS LORDSHIP: That is without prejudice.

WITNESS: That was all without prejudice. I assume if we are 20
liable on the contract we are liable for the whole thing.

HIS LORDSHIP: Mr. Beaton has no questions?

MR. BEATON: No, my Lord.

HIS LORDSHIP: Anything else, Mr. Boyde?

MR. BOYDE: No, my Lord.

HIS LORDSHIP: Any reply?

MR. BEATON: Just a moment, my Lord—no.

HIS LORDSHIP: Now, I should think that the parties to this case could get together without much difficulty and settle it. I do not know why it was not done before. 30

MR. BEATON: We have been endeavouring, my Lord.

HIS LORDSHIP: Perhaps if you will let me tell you what I think about it, it may help you to a settlement.

MR. BEATON: It probably would, my Lord.

HIS LORDSHIP: I think the effect of this acceptance is virtually the same as it would have been if the document had read, "I accept your contract as per your tender of this date for \$24,000 payable \$2,400 cash and for the balance I agree to give my mortgage, and so on."

Now, if that had been the contract, the mortgage would have been deliverable when the contract of the Frigidaire Corporation was com- 40
pleted, which was the end of July.

If the case is to go on, if Mr. Boyde can convince me that I am wrong in that interpretation of the document I will be quite open to be convinced. Perhaps he has some authorities.

MR. BOYDE: I have some authorities.

No. 10

Discussion,
Nov. 26, 1929

HIS LORDSHIP: That is my present view, and if the parties want to try to get together on adjournment to a settlement now, very good, if not, I will hear argument, and I will hear from you first, Mr. Boyde—except, of course, there is the other item, the fact of this other contract, and I think I may designate it that way, Mr. Beaton, and I would like to hear from you on that point with regard to the commission. I had occasion to consider authorities having to do with clandestine commissions in a Windsor case a month or two ago, and I think it is in the weekly notes.

MR. BOYDE: Plant v Wells.

10 HIS LORDSHIP: Does that case enumerate the authorities? They are very strong, much stronger than I thought they were.

My present impression is that at the very least, I must deduct from any balance that may be due to the Frigidaire people, the amount of the commission which they undertook to pay to Lord.

MR. BEATON: That is quite all right.

HIS LORDSHIP: Now, if Mr. Boyde is not content with that, and goes on to argue—there is any greater penalty involved, I will hear him. On the evidence I would deduct \$900 from the amount that would be owing to the plaintiff company in respect of this contract.

20 MR. BOYDE: I do not know whether there was any basis upon which my friend and I might come to an agreement, if your Lordship would give us five minutes, we might arrive at something.

HIS LORDSHIP: Having expressed myself on these two points perhaps the Frigidaire people may be willing to abate something in the way of interest.

MR. BOYDE: My client seems to be very doubtful if an agreement could be reached in five minutes. I was somewhat optimistic. It has been suggested, tomorrow, but my learned friend wants to go to Toronto.

30 MR. BEATON: I have a case in Toronto, whatever your Lordship says.

HIS LORDSHIP: Suppose I give you half an hour, that is not too much for a transaction of this size—take until a quarter to five, and if you do not reach a settlement, I will hear argument.

.....
 . . . Judgment reserved.

.....
 Certified to be a correct transcript.

“J. E. Henderson”

C.S.R.

OFFICIAL REPORTER S.C.O.

RECORD
 In the Supreme
 Court of Ontario
 No. 10
 Discussion,
 Nov. 26, 1929.

RECORD

In the Supreme
Court of Ontario

No. 11

Reasons for
judgment on
motion by
plaintiff for
leave to adduce
further evidence.

Dec. 6, 1929.

NO. 11

REASONS FOR JUDGMENT ON MOTION BY PLAINTIFF FOR
LEAVE TO ADDUCE FURTHER EVIDENCE
IN THE SUPREME COURT OF ONTARIO
BEFORE THE HONOURABLE MR. JUSTICE RANEY
FRIGIDAIRE V STEEDMAN

At Hamilton, 6th December 1929, Continued.

W. J. BEATON

Counsel for plaintiff

H. A. F. BOYDE

Counsel for defendant

HIS LORDSHIP: I suppose you have both said all you desire to say? At the opening of the trial on the 26th November, as I recall it, I have no note in my book, the Counsel for the defendant asked leave to amend his defence by pleading that one Lord, acting as agent for the defendant, he being at that time an employee and servant of the defendant, was paid a secret commssion by the plaintiff company for bringing about the transaction in question. I gave leave to amend and the trial proceeded on the basis of the added issue raised by the new defence and on the other issues raised on the pleadings. 10

At the close of the evidence the case was argued on the footing that the amendment had been allowed and judgment was reserved on the understanding that the parties would endeavour to arrange a settlement and that if they failed in arriving at a settlement counsel would submit memoranda of authorities bearing on the question raised by the amendment. It now transpires the amendment was not made during the trial. Afterwards Counsel for the defendant submitted his draft paragraph to Counsel for the plaintiff. Counsel for the plaintiff now objects that the amendment is broader than he expected it would be, and asks for leave to call further evidence bearing on the point raised by the amendment. 20

I think the amendment is not broader than was in contemplation of Counsel at the trial, and the case having been concluded without Counsel for the plaintiff having asked to have the amendment submitted to him, and it having been argued on that footing, I think the plaintiff is now too late in asking to have the case re-opened. 30

MR. BEATON: I might say, my Lord, my friend and I are still negotiating, so we will let your Lordship know.

HIS LORDSHIP: If you are both wise.

MR. BOYDE: I think the Counsel are nearer together than the clients, as often happens.

HIS LORDSHIP: You will see that the amendment is now made. When the parties now see that the tree must lie where it fell they may be more reasonable.

Certified a correct transcript.

J. E. HENDERSON,
C.S.R.
Official Reporter S.C.O.

40

NO. 12

REASONS FOR JUDGMENT OF THE HONOURABLE MR.
JUSTICE RANEY AFTER TRIAL

S. C. O.
FRIGIDAIRE CORPORATION
v.
STEEDMAN

Copy of reasons for Judgment
of Raney J. delivered 14th April,
1930.
W. J. BEATON for the plaintiff
H. A. F. BOYDE for the defend-
ant.

RECORD
In the Supreme
Court of Ontario
No. 12
Reasons for
Judgment of the
Honourable Mr.
Justice Raney
after trial.
Dated April 14,
1930.

10 (Action tried at Hamilton)

This action is on an agreement for the purchase by the defendant from the plaintiff of a refrigeration equipment for stalls for a market in the City of Hamilton owned by the defendant.

20 On the 3rd of May, 1928, the plaintiff company tendered for the installation of refrigerators and counters for the defendant's market. The tender for the "insulation and construction" of the plant was to be "acceptable to Mr. Lord", and the installation was to be completed on the 1st June, 1928, under a penalty of \$300 per day after that date. On the same date, that is the 3rd May, 1928, the defendant accepted the tender with a modification of price to which the plaintiff company agreed. By

30 the terms of the acceptance the plaintiff was to pay, and in fact did pay \$2,400 cash, and for the balance of the contract price of \$24,000 he agreed "to furnish notes of the tenants payable according to the usual terms and conditions of the paper discounted by the General Motors Acceptance Corporation, fifty per cent., of the cash payment made by the tenants of the stalls enumerated in the tender to be repaid to me until I have been reimbursed the \$2,400." There were changes in the specifications, and in the result the work was not finished until the end of July, 1928.

The stalls were not rented, and notes of the tenants not having been furnished to the plaintiff company as agreed, the action was brought in June, 1929, for the balance of the contract price, plus \$8,436.51 for extras: in all, the sum of \$30,036.51.

40 The defendant pleaded that "owing to the fact that the market was altogether too large for the neighborhood which it was intended to serve, it was found impossible to obtain tenants," and that "the plaintiff well knew the fact that there were no tenants in the premises in which they had installed their refrigeration equipment, and that until there were tenants the notes of such tenants could not be handed to the plaintiff," and consequently that the plaintiff's action was premature.

As the pleadings stood when the case was entered for trial, it was virtually an undefended action. But on the eve of the trial, the defendant examined Howard, the plaintiff company's sales manager at its Hamilton branch, for discovery, and what was apparently a chance question elicited

RECORD
In the Supreme
Court of Ontario

No. 12

Reasons for
Judgment of the
Honourable Mr.
Justice Raney

Dated April 14,
1930.

from Howard the information that he had agreed to pay Lord, to whom the insulation and construction of the plant were, according to the terms of the contract, to be acceptable, a commission out of the contract price.

At the opening of the trial I gave leave to the defendant to amend his defence by alleging the agreement to pay a commission to Lord, and the pleading was accordingly amended by the addition of the following paragraph:

“The plaintiff promised before the execution of the contract upon which the plaintiff is suing that it would pay to one W. J. Lord, an agent, employee and servant of the defendant, known by the plaintiff to be such, a secret commission on the sale of the refrigeration by the plaintiff to the defendant. The said secret commission was not disclosed to the defendant and the contract upon which the plaintiff is suing is therefore illegal and void or alternatively is voidable at the option of the defendant and the defendant is entitled to have the said contract declared void or alternatively to have the same rescinded. The defendant pleads the provisions of The Criminal Code, Revised Statutes of Canada, 1927, Chapter 36, Section 504, Subsection 2, Clause B.”

Lord was the defendant's employee; he was the practical man, and the defendant relied upon his advice. These facts were known to Howard 20 who also knew that the defendant did not know that the plaintiff company was paying him a commission on the transaction. It must be assumed, as against the plaintiff company, that it intended the commission which Lord was to receive to influence him in their favour. In other words, it must be assumed as against the plaintiff company that the promised commission was a bribe.

It is not necessary to cite authorities to establish the proposition that a plaintiff who comes into court admitting facts from which the only possible inference is that the contract was induced by the bribery of a servant of the defendant will not have the assistance of the court. He 30 who comes into a court of law, —as well as he who comes into a Court of Equity,—who must come prepared to shew a clean pair of hands.

The action fails and must be dismissed with costs, limited, however, to the costs of the issue on which the defendant succeeds.

The defendant will have leave to counterclaim for a refund of the \$2,400 down payment with interest, and there will be judgment rescinding the contract and directing repayment, with interest. The defendant by his counsel consenting, the plaintiff will have leave to enter upon the defendant's premises and to remove its refrigerators and equipment upon an undertaking to restore the premises to the condition in which they were 40 before the installation.

NO. 13**JUDGMENT OF THE HONOURABLE MR. JUSTICE RANEY
AT TRIAL****IN THE SUPREME COURT OF ONTARIO
THE HONOURABLE MR. JUSTICE RANEY**

Monday the 14th day of April, A.D. 1930

BETWEEN:

FRIGIDAIRE CORPORATION

Plaintiff

10

and

J. P. STEEDMAN

Defendant

THIS ACTION COMING ON FOR TRIAL on Tuesday, the 26th day of November, 1929, and again on Friday, the 6th day of December, 1929, at the sittings holden at Hamilton for the trial of actions without a jury in presence of Counsel for all parties, upon hearing read the pleadings and hearing the evidence adduced and what was alleged by Counsel aforesaid, this Court was pleased to direct this action to stand over for judgment, and the same coming on this day for judgment

20 1— THIS COURT DOTH ORDER AND ADJUDGE that this action as against the defendant be and the same is hereby dismissed.

2— AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the defendant do recover from the plaintiff on the counter-claim the sum of \$2,630.00.

3— AND the defendant by his Counsel consenting hereto THIS COURT DOTH FURTHER ORDER that the plaintiff be at liberty to enter upon the defendant's premises and remove the refrigerators and equipment in question in this action; upon the plaintiff undertaking to restore the premises to the condition in which they were before the said
30 refrigerator was installed.

4— AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the defendant do recover from the plaintiff his costs of this action limited to the costs of the issues herein in which the defendant is successful forthwith after taxation thereof.

JUDGMENT SIGNED this 16th day of July, 1930.

Entered Judgment Book 43, pages 176-7, July 16, 1930, "E. B."

E. HARLEY
Senior Registrar, S.C.O.

RECORDIn the Supreme
Court of Ontario**No. 13**Judgment of the
Honourable Mr.
Justice Raney
at trial.Dated April 14,
1930.

RECORD

In the Supreme
Court of Ontario

No. 14

Notice of Appeal
by the plaintiff
to the Appellate
Division, dated
April 22, 1930.

NO. 14

NOTICE OF APPEAL BY THE PLAINTIFF TO THE
APPELLATE DIVISION
IN THE SUPREME COURT OF ONTARIO

B E T W E E N :

FRIGIDAIRE CORPORATION

Plaintiff (Appellant)

and

J. P. STEEDMAN

Defendant (Respondent)

TAKE NOTICE that the plaintiff appeals to a Divisional Court 10
from the judgment pronounced by the Honourable Mr. Justice Raney on
the 14th day of April, 1930, and asks that the said judgment may be re-
vised, and that judgment should be entered for the plaintiff for \$30,036.51,
and interest from July 31st, 1928, and costs, or alternatively, for a new
trial, upon the following grounds:

1— THAT the said judgment is made against the evidence and the
weight of evidence.

2— The learned Judge erred in finding that the plaintiff had agreed
to pay a secret commission to one, W. J. Lord, and, consequently, that
the defendant was entitled to rescind the contract, dated May 3rd, 1928, 20
and to repayment of the sum of \$2,400 and interest.

3— The learned Judge erred in the finding referred to in paragraph
(2) hereof for the reasons that there was no evidence to show:

- (a) That the plaintiff that Lord was an agent or employee of the
defendant, or occupied any fiduciary position in relation to the
defendant.
- (b) That the defendant promptly repudiated the transaction on
learning of the alleged secret commission.
- (c) That Lord was, in fact, a paid employee or agent of the defend-
ant on the 3rd day of May, 1928. 30

4— The learned Judge erred in not finding that it was now impos-
sible to restore the parties to their original positions, and consequently
recissions of the contract could not now be decreed for the following
reasons:

- (a) By reason of the delay on the part of the defendant in
repudiating the contract.
- (b) The said equipment has been leased by the defendant to tenants
of the said market and has been used by the tenants for many
months.

(c) There is no evidence to show that it was physically possible to remove any of the counters, boxes and refrigerating equipment from the defendant's market without wrecking or very seriously damaging the said market.

(d) The property in all the said equipment passed to the defendant on or about the 31st July, 1928.

5— The learned Judge erred in not finding that the measure of the damages (if any) to which the defendant was entitled was the amount of the alleged commission of \$900.

10 6— Alternatively, the plaintiff asks for a new trial on the ground that the defendant was permitted to amend his statement of defence after the trial herein was concluded, by setting up the following:

“8— The plaintiff promised before the execution of the contract upon which the plaintiff is suing that it would pay to one, W. J. Lord, an agent, employee and servant of the defendant, known by the plaintiff to be such, a secret commission on the sale of the refrigerators by the plaintiff to the defendant. The said secret commission was not disclosed to the defendant, and the contract upon which the plaintiff is suing is, therefore, illegal and void, or alternatively is voidable at the option of the defendant, and the defendant is entitled to have the said contract declared void, or alternatively to have the same rescinded. The defendant pleads the provisions of the Criminal Code, Revised Statutes of Canada (1927) Chapter 36, Section 104, Subsection 2 clause (b).

20 The plaintiff says that it had no notice of this amendment, and further says that this amendment was not reduced to writing until after the trial, and that as soon as the plaintiff was aware of the nature of the amendment it made application to the learned trial Judge, through its
30 counsel, and in the presence of counsel for the defendant, for leave to adduce evidence to meet the allegations contained in the said amendment, which leave was refused, and consequently the plaintiff has not had an opportunity of placing all the facts before the Court.

DATED at Toronto this 22nd day of April, 1930.

BEATON & ROSS
330 Bay Street, Toronto
Solicitors for the
Appellant

40 TO—

Bruce, Counsell & Boyde
Pigott Building, Hamilton,
Ontario, Solicitors for
the Respondent.

RECORDED
In the Supreme
Court of Ontario

No. 14

Notice of Appeal
by the plaintiff
to the Appellate
Division, dated
April 22, 1930.

RECORD

In the Supreme
Court of Ontario

No. 15

Reasons for
Judgment of the
Second Division-
al Court, dated
April 17, 1931.

NO. 15

REASONS FOR JUDGMENT OF THE SECOND
DIVISIONAL COURT

APP. DIV.
FRIGIDAIRE CORPORATION
v.
STEEDMAN

Copy of Reasons for Judgment
of Second Divisional Court
(Latchford, C.J., Magee, Riddell,
and Fisher, J.J.A.), delivered 17th
April, 1931.
Mason, K.C., for the appeal.
McCARTHY, K.C., and BOYDE, 10
contra.

RIDDELL, J.A.:—The plaintiff is a company which manufacture refrigerators, &c., and sues the defendant for a refrigerating plant furnished him, and subsequently used by him. Several defences are set up and at the trial, by reason of facts come to the knowledge of the defendant on the examination for discovery of an officer of the plaintiff, an amendment was allowed, setting up that the contract was brought about by one Lord, an agent of the defendant being paid a secret commission.

Mr. Justice Raney, the Trial Judge, on the ground of the contract being brought about by the payment of this secret commission, dismissed 20 the action, and gave judgment for the repayment to the defendant for the amount already paid; the plaintiff appeals.

The facts sufficiently appear from the plaintiff's own witnesses— Lord, the owner with his associates of a market had negotiations with the plaintiff looking to the instalment of their plant in this market; but during the course of the negotiations, the defendant became the owner of the market, and the negotiations continued with him; a tender was submitted and accepted by the defendant, May 3rd, 1928, for \$24,563. That this was brought about by Lord is not and cannot be disputed, nor can the fact that the manager of the plaintiff company knew when he was getting 30 the contract through the efforts of Lord, that Lord was in the employ of the defendant and receiving wages from him. While the negotiations were going on with Lord, who with his associates owned the market, there had been an arrangement that Lord should be paid ten per cent. of the purchase price as a commission; when the defendant took over the property, he relied upon Lord as his agent to see that the contract was a proper one for him to enter into, Lord insisted with the plaintiff's manager that the arrangement should continue and it was continued, the manager knowing that Lord was employed and paid by the defendant. The defendant, admittedly, knew nothing of this commission, until the 40 fact was frankly disclosed on the examination for discovery of the plaintiff's officer. Apparently, the manager saw no impropriety in so paying a secret commission to the servant of the defendant through whose advice the defendant, as he knew, entered into the contract.

RECORD
 In the Supreme
 Court of Ontario
 —
 No. 15
 —
 Reasons for
 Judgment of the
 Second Division-
 al Court, dated
 April 17, 1931.

This is a species of fraud which would enable the defendant to rescind the contract; but rescission cannot be the remedy unless restitution is possible and the parties can be remitted to their former position; *Western Bank of Scotland v. Addie* (1867) L. R. 1 Sc. Ap. 145, 164; *Chynoweth's Case* (1880) 15 Ch. Div. 13, 20; *Plant v. Wells* (1930) O. W. N. 407, affirming the decision of Mr. Justice Raney; and a still more recent case in this Court. Whether as is suggested in certain cases the rule only applies if the inability arises from the conduct of the party complaining, we need not consider, as here the conduct of the defendant in
 10 operating the refrigerating apparatus renders it impossible to reinstate the parties, if nothing else did. The result is that the original contract cannot be rescinded, and the judgment delivered must be set aside.

The defendant, however, is not without some relief; in such a case, no effect is given to a claim of good faith, the presumption of fraud is irrebuttable; *Shipway v. Broadwood* (1899) 1 Q. B. 369; *Hovenden v. Millhoff* (1900), 83 L.T.R. 41; not only can the master sue the servant for the money; *Grant v. Gold Exploration and Development Syndicate Ltd.* (1900) 1 Q. B. 233; *Panama and South Pacific Telegraph Co. v. India Rubber etc. Co.* (1875), 10 Ch. 515; but he can sue the agent and the
 20 offending contractor for damages.

In the action against the contractor, the amount of the commission is undoubtedly recoverable; *Mayor etc. of Salford v. Lever* (1890), 25 Q. B. D. 363, (1891) 1 Q. B. 168, C. A. But this does not prevent a proceeding for damages *dehors*.

The proper judgment would be to declare the contract binding in its terms with such relief as the plaintiff is entitled to under such a judgment; allow proper pleadings to be filed as in counterclaim declaring the defendant entitled to such damages as he may prove, referring it to the Master at Hamilton to determine these damages, with the costs of the reference
 30 in his discretion; order that there should be no costs of action or of appeal as success is divided, further costs and directions to be determined on motion for further directions after the Master shall have made his report.

If the parties cannot agree in the form of the judgment, one of us may be spoken to.

LATCHFORD, C.J. MAGEE, J.A. FISHER, J.A.	}	I agree
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RECORD

In the Supreme Court of Ontario

No. 16

Judgment of the Second Divisional Court, dated April 17, 1931.

NO. 16

JUDGMENT OF THE SECOND DIVISIONAL COURT
IN THE SUPREME COURT OF ONTARIO

The Honourable the Chief Justice
of the Second Divisional Court
The Honourable Mr. Justice Magee
The Honourable Mr. Justice Riddell
The Honourable Mr. Justice Fisher

} Friday, the 17th day of
April, A.D. 1931

B E T W E E N :

10

FRIGIDAIRE CORPORATION

Plaintiff

and

J. P. STEEDMAN

Defendant

UPON MOTION made unto this Court on the 15th day of December, 1930, by Counsel for the plaintiff by way of appeal from the judgment of the Honourable Mr. Justice Raney, dated the 14th day of April, 1930, in the presence of Counsel for the defendant; upon reading the pleadings and hearing read the evidence adduced at the trial and the said judgment; and upon hearing what was alleged by Counsel aforesaid, this Court was pleased to direct the said motion should stand over for judgment, and the same coming on this day for judgment. 20

1. THIS COURT DOTH ORDER that this appeal be and the same is hereby allowed, and that the said judgment be varied and, as varied, be as follows:

(1) THIS COURT DOTH DECLARE that the contract in the pleadings mentioned, and made between the plaintiff and the defendant, dated the 3rd day of May, 1928, and the 11th day of July, 1928, is binding upon the defendant, and that the plaintiff is entitled to recover from the defendant the sum of \$34,109.06, less the amount, if any, to which the defendant may be entitled as damages, to be determined in the manner hereinafter provided, and doth order and adjudge the same accordingly. 30

(2) AND THIS COURT DOTH FURTHER DECLARE that the defendant is entitled to such damages as he may be able to prove that he has suffered by reason of the promise of payment by the plaintiff to one, Lord, an employee of the defendant, of a commission in the event of the making of the said contract, and doth order and adjudge the same accordingly. 40

- (3) **AND THIS COURT DOTH FURTHER ORDER AND AD-
JUDGE** that it be referred to the Local Master of this Court at Hamilton to enquire and report what amount the defendant is entitled to recover from the plaintiff for damages, and that he do so determine the question of costs of the said reference.
- (4) **AND THIS COURT DOTH FURTHER ORDER AND AD-
JUDGE** that further directions and the question of further costs be reserved until the said Master shall have made his report.
- 10 (5) **AND THIS COURT DOTH FURTHER ORDER** that save as aforesaid there be no costs of this action to either party.
2. **AND THIS COURT DOTH FURTHER ORDER** that there be no costs of this appeal to either party.

sd. E. HARLEY,
Senior Registrar
S. C. O.

SEAL
E. S.
16. 9. 31

RECORD
In the Supreme
Court of Ontario
No. 16

Judgment of the
Second Division-
al Court, dated
April 17, 1931.

RECORD

In the Supreme Court of Ontario

No. 17

Order of the Honourable Mr. Justice Riddell admitting the Appeal, dated Sept. 16, 1931

NO. 17

**ORDER OF THE HONOURABLE MR. JUSTICE RIDDELL
ADMITTING THE APPEAL
IN THE SUPREME COURT OF ONTARIO**

The Honourable
Mr. Justice Riddell
in Chambers

}

Wednesday, the 16th day
of September,
1931.

B E T W E E N :

FRIGIDAIRE CORPORATION

Plaintiff 10

and

J. P. STEEDMAN

Defendant

Upon the application of the defendant and upon hearing what was alleged by counsel for the plaintiff and the defendant and it appearing that the cause is one in which the appellant J. P. Steedman has under the provisions of the statute the right to appeal to His Majesty in His Privy Council:

1. IT IS ORDERED that the Bond entered into on the 8th day of August, A.D. 1931, in which James Pringle Steedman, John Gordon Gauld and Arthur William White are Obligors and Frigidaire Corporation is Obligee, duly filed as security that the appellant J. P. Steedman will effectually prosecute his appeal to His Majesty in His Privy Council from the judgment of the Second Divisional Court of the Appellate Division of the Supreme Court of Ontario, dated the 17th day of April, A.D. 1931, and will pay such costs and damages as may be awarded in case the judgment appealed from be confirmed, be and the same is hereby allowed as good and sufficient security.

2. AND IT IS FURTHER ORDERED that the said appeal be and the same is hereby admitted.

30

3. AND IT IS FURTHER ORDERED that the costs of this application be costs in the cause.

sd. E. HARLEY,
SENIOR REGISTRAR S.C.O.

O.K.

W. J. Beaton

Entered OB 121 page 142

Sept. 16, 1931

E.B.

PART II.—EXHIBITS

EXHIBIT 1.

Specifications and Quotations by plaintiff.

No. 1

IN THE SUPREME COURT OF ONTARIO

FRIGIDAIRE v. STEEDMAN

This Exhibit, the Property of Plaintiff is produced by the Pltff. Sol. this
26 day of Nov., A.D. 1929.

“S. G. Sims, Deputy.”

10 Local Registrar at Hamilton.

FRIGIDAIRE
Electric Refrigeration

Specifications and Price Quotations:

Prepared for:

East End Market Company,
Ottawa and Barton Sts.,
Hamilton, Ontario.

Submitted by:

20 Frigidaire Corporation,
Hamilton, Ontario.
and
Sterling Refrigerator Company,
Toronto, Ontario.

Date: May 3rd, 1928.

The Refrigerators and Counters are being supplied by the Sterling
Refrigerator Company of Toronto, and are of the Insulation and Con-
struction acceptable to Mr. Lord.

These Refrigerators and Counters are guaranteed to be satisfactory
by the said Company.

30 The specifications of the Counters are as follows:

Sloping Top Counter,
7" Plate Glass in Bottom,
13" Plate Glass at Angle, mitred,
1/2" Plate Glass on Top, 12" wide,
Porcelain Brackets throughout.
Sani-Onyx 1" for Floor of Counter.
Sani-Onyx 3/4" for Coil Box.

The dimensions of the Refrigerators are 8'x6'6"x10'. The List Price
of the Refrigerators is \$615.00. The List Price of the Counters is \$40.00
40 per foot. Very liberal discounts have been given from this list bringing
the price of the Boxes to \$538.89, and the Counters to \$31.80 per foot.

RECORD

Exhibits

No. 1

Plaintiff's
Exhibit

Specifications
and quotations
by Plaintiff,
Dated May 3,
1928

RECORD

Exhibits

No. 1

Plaintiff's
ExhibitSpecifications
and quotations
by Plaintiff,
Dated May 3,
1928

The Frigidaire Equipment to be supplied is as shown in this tender. Additional Refrigerators, Counters, and Frigidaire Equipment will be supplied as required at the same rate of discount as applies in this tender.

It is understood and agreed that should Mr. Lord require a Brinc Coil installed in the Counters, this Coil will be supplied and installed in place of the present Coils, within Ninety (90) Days.

It is understood and agreed that the Equipment specified in this tender is to be installed and operating on or before June 1st, 1928, and failing this, we accept the Penalty Clause as specified by you, of Three Hundred Dollars (\$300) per day after that date.

10

FRIGIDAIRE CORPORATION

"C. R. Howard"

Manager,

Hamilton Sales Branch.

Stall "E"

Counter 14'3 $\frac{1}{2}$ "

Refrigerator 8'x6'6"x10'

Frigidaire Equipment,

Two 76-F Coils,

One 96-F Coil,

One 95-F Coil,

One "C" Compressor,

20

Freight,

Installation,

1,908.99

Stall "F"

Counter 14'4 $\frac{5}{8}$ "

Refrigerator 8'x6'6"x10'

Frigidaire Equipment,

Same as "E"

Freight,

Installation,

1,911.97

30

Stall "G"

Counter 14'4 $\frac{1}{2}$ "

Refrigerator 8'6'6"x10'

Frigidaire Equipment,

Same as "E"

Freight,

Installation,

1,911.64

Stall "H"

Counter 14'7 $\frac{3}{4}$ "

Refrigerator 8'x6'6"x10'

Frigidaire Equipment

Same as "E"

Freight,

Installation,

1,920.25

40

	Stall "I"	RECORD
		Exhibits
		No. 1
		Plaintiff's Exhibit
		Specifications and quotations by Plaintiff, Dated May 3, 1928
	Counter 14'6 $\frac{1}{4}$ "	
	Refrigerator 8'x6'6"x10'	
	Frigidaire Equipment,	
	Same as "E"	
	Freight,	
	Installation,	1,916.28
	Stall "J"	
	Counter 14'6 $\frac{1}{2}$ "	
10	Refrigerator 8'x6'6"x10'	
	Frigidaire Equipment,	
	Same as "E"	
	Freight,	
	Installation,	1,916.94
	Stall "K"	
	Counter @ \$31.80 per foot,	
	Refrigerator 8'x6'6"x10'	
	Frigidaire Equipment,	
	Two 88-F Coils,	
20	Two 76-F Coils,	
	One "C" Compressor,	
	Freight,	
	Installation,	892.24
	Stalls "P" & "Q"	
	Counter 33'7 $\frac{1}{2}$ "	
	Refrigerator 12'x6'6"x10'	
	Frigidaire Equipment,	
	Two 96-F Coils,	
	One 95-F Coil,	
30	Two 75-F Coils,	
	Three 76-F Coils,	
	Two "C" Compressors,	
	Freight,	
	Installation,	3,990.59
	Stalls "O" & "N"	
	Counter 32'17 $\frac{8}{8}$ "	
	Frigidaire Equipment,	
	Four 76-F Coils,	
	One "C" Compressors,	
40	Freight,	
	Installation,	1,909.05

<p>RECORD</p> <hr/> <p>Exhibits</p> <hr/> <p>No. 1</p> <hr/> <p>Plaintiff's Exhibit</p> <hr/> <p>Specifications and quotations by Plaintiff, Dated May 3, 1928</p>	<p style="text-align: center;">Stalls "R", "S", & "T"</p> <p>Counter 45'4$\frac{1}{2}$"</p> <p>Counter 13'6$\frac{1}{4}$"</p> <p>Counter 9'8-1/6"</p> <p>Refrigerator, 8'x6'6"x10'</p> <p style="padding-left: 2em;">Frigidaire Equipment,</p> <p style="padding-left: 2em;">One 96-F Coil,</p> <p style="padding-left: 2em;">One 95-F Coil,</p> <p style="padding-left: 2em;">Six 76-F Coils,</p> <p style="padding-left: 2em;">One 75-F Coil,</p> <p style="padding-left: 2em;">Two "C" Compressors,</p> <p>Freight</p> <p>Installation,</p>	<p>10</p> <p>4,619.43</p>
	<p style="text-align: center;">Stall "U"</p> <p>Counter 52'4$\frac{1}{2}$"</p>	<p>1,665.53</p>
	<p>TOTAL</p>	<p>24,562.91</p>

EXHIBIT 2.
Acceptance of Plaintiff's Tender by Defendant
No. 2

IN THE SUPREME COURT OF ONTARIO
FRIGIDAIRE v. STEEDMAN

This Exhibit, the Property of Plaintiff is produced by the Pltff. Sol. this
26 day of Nov., A.D. 1929.

"S. G. Sims Dept."
Local Registrar at Hamilton
Hamilton, Ont., May 3rd, 1928.

RECORD
Exhibits
No. 2
Plaintiff's
Exhibit

Acceptance of
plaintiff's
tender by
defendant,
Dated May 3,
1928

10 Frigidaire Corporation,
Dear Sirs:—

I accept your contract as per your tender of this date for \$24,000.00,
payable \$2,400.00 cash and for the balance I agree to furnish notes of the
tenants payable according to the usual terms and conditions of the paper
discounted by The General Motors Acceptance Corporation, fifty per
cent. of the cash payment made by the tenants of the stalls enumerated in
the tender to be repaid to me until I have been reimbursed the \$2,400.00.

Yours very truly,
"J. P. Steedman"

20 C/P
Accepted
May 3/28

Frigidaire Corporation
"C. R. Howard"

EXHIBIT 3.

Letter J. L. Counsell to Plaintiff

No. 3 (part of)

IN THE SUPREME COURT OF ONTARIO
FRIGIDAIRE v. STEEDMAN

30 This Exhibit, the Property of Plaintiff is produced by the Pltffs. Sol. this
26 day of Nov., A.D. 1929.

"S. G. Sims, Deputy."
Local Registrar at Hamilton.

Exhibits
No. 3
(Part)
Plaintiff's
Exhibit

Letter J. L.
Counsell to
plaintiff,
Dated May, 15,
1928

Bank of Montreal Chambers
Hamilton, Ontario,
May 15th, 1928.

The Frigidaire Corporation,
92 King St. E.,
City.

Dear Sirs:—

Re EAST END MARKETS

40 We enclose herewith cheque for \$2,400.00, initial payment under con-
tract of J. P. Steedman. Kindly acknowledge receipt.

Yours very truly,
"J. L. Counsell"

C/P Enc.

RECORD

Exhibits

No. 3
(Part)

Plaintiff's
Exhibit

Copy letter
plaintiff to
Bruce and
Counsell, dated
May 16, 1928

Copy-of Letter Plaintiff to Bruce and Counsell

Frigidaire Corporation
Subsidiary General Motors Corporation,
Dayton, Ohio, U.S.A.

COPY

May 16, 1928.

Messrs. Bruce & Counsell,
Barristers &c.,
Bank of Montreal Chambers,
Hamilton, Ontario.

ATTENTION: Mr. J. L. Counsell

10

Dear Sir:—

This will acknowledge, with thanks, your check, in the amount of \$2,400.00, being the initial payment re East End Markets, under contract of J. P. Steedman.

Again thanking you, we are,

Yours very truly,

Frigidaire Corporation,
Office Manager
Hamilton Sales Branch.

L.H.W./MGM.

20

EXHIBIT 4.

Letter J. L. Counsell to Plaintiff

No. 4

IN THE SUPREME COURT OF ONTARIO
FRIGIDAIRE v. STEEDMAN

Exhibits

No. 4
(Part)

Plaintiff's
Exhibit

Letter J. L.
Counsell to
plaintiff, dated
July 11, 1928

This Exhibit, the Property of Plaintiff is produced by the Pltff. Sol. this
26 day of Nov., A.D. 1929.

“S. G. Sims”

Local Registrar at Hamilton
Bank of Montreal Chambers,
Hamilton, Ontario.

30

July 11, 1928.

Frigidaire Corporation,
City.

Dear Sirs:—

ATTENTION MR. C. R. HOWARD

I am in receipt of revise schedule of the complete set up the B. & O. Markets showing a total of the expenditures of the new work of \$8,042.69 with credits of \$614.26. Total additional expenditures \$7,428.43. I instruct you to go ahead with this work and I will endeavour to get Mr. Steedman's 40 O.K. to-morrow.

Yours very truly,

“J. L. Counsell”

C/C

REVISED SCHEDULE OF REFRIGERATION

Prepared for:

East End Markets Company,
Barton and Ottawa Streets,
Hamilton, Ontario.

Submitted by:

Frigidaire Corporation,
98 King Street East,
Hamilton, Ontario.

RECORD

Exhibits

No. 4
(Part)Plaintiff's
ExhibitRevised schedule
of Refrigeration
(Undated)

- 10 Attached hereto is a schedule of the complete set-up of the B. & O. Market as we now have it. There will probably be a number of changes which you will desire to make from this present set-up, and these can be dealt with at that time. This gives the correct quotations as far as the Counters, Boxes, and Frigidaire Equipment are concerned as specified.

This whole contract is based on a price of \$9.00 per square foot for insulation and Sani-Onyx. Counter "K" was to be supplied at the rate of \$31.80 per running foot with the Coil Boxes and Glass Top.

- 20 The Screening for joining the Refrigerators according to the sketch approved by Mr. Lord, will be \$3.50 per square foot. With the measurements which we now have we believe that this price will be approximately \$2,741.62. We are prepared to proceed immediately with the completion of this installation upon receipt of definite instructions from you.

	Stall "A"	
	Counter 10'5"x38"	\$296.82
	Stall "B"	
	Counter 21'4½"x38"	609.21
	Stall "C"	
	Counter 21'4½"x38"	609.21
	Stall "D"	
30	Counter 8'6"x38"	242.28
	Refrigerator 8'x6'6"x10'	538.89
	Frigidaire Equipment	
	To be supplied as required at the regular rate of discount as obtains in the original tender.	781.17

		Stall "H"	RECORD
	Counter 14'7 ³ / ₄ "	465.74	<u>Exhibits</u>
	Refrigerator 8'x6'6"x10'	538.89	No. 4
	Frigidaire Equipment,		(Part)
	Two 76-F. Coils,		—
	One 95-F. Coil,		Plaintiff's
	One 96-F. Coil,	813.88	Exhibit
	One "C" Compressor,	11.00	<u>Revised schedule</u>
	Freight,	90.74	of Refrigeration
10	Installation,	90.74	(Undated)
		<hr/>	
			1,920.25
		Stall "I"	
	Counter 14'6 ¹ / ₄ "	461.77	
	Refrigerator 8'6'6"x10'	538.89	
	Frigidaire Equipment,		
	Two 76-F Coils,		
	One 95-F Coil,		
	One 96-F Coil,	813.88	
20	One "C" Compressor,	11.00	
	Freight,	90.74	
	Installation,	90.74	
		<hr/>	
			1,916.28
		Stall "J"	
	Counter 14' 6 ¹ / ₂ "	462.43	
	Refrigerator 8'x6' 6"x10'	538.89	
	Frigidaire Equipment,		
	Two 76-F Coils,		
30	One 95-F Coil,	813.88	
	One 96-F Coil,	11.00	
	One "C" Compressor,	90.74	
	Freight,	90.74	
	Installation,	90.74	
		<hr/>	
			1,916.94

<p>RECORD</p> <hr/> <p>Exhibits</p> <hr/> <p>No. 4. (Part)</p> <hr/> <p>Plaintiff's Exhibit</p> <hr/> <p>Revised schedule of Refrigeration (Undated)</p>	<p>Stall "K"</p> <p>Counter, May be changed. Refrigerator, In place. Frigidaire Equipment, Two 88-F Coils, One 74-F Coil, One 75-F Coil, One 76-F Coil, One "C" Compressor,</p> <p>Freight, Installation,</p>	<p>838.95</p> <p>12.00</p> <p>90.74</p> <hr/> <p>941.69</p>	<p>10</p>
	<p>Stall "L"</p> <p>Counter 16'11/2"x38"</p>	<p>459.54</p>	
	<p>Stall "M"</p> <p>Counter. Already covered by contract with Gerrie's Drug Store.</p>	<p>460.00</p>	
	<p>Stall "N"</p> <p>Counter 17'x38"</p>	<p>484.47</p>	<p>20</p>
	<p>Stall "O" and "P"</p> <p>Counter 34'9" Refrigerator 12'x6'6"x10' Frigidaire Equipment, Three 96-F Coils, Two 74-F Coils, Two 75-F Coils, Two 76-F Coils, Two "C" Compressors,</p> <p>Freight, Installation,</p>	<p>1,092.95</p> <p>1,077.78</p> <p>1,711.05</p> <p>26.00</p> <p>201.00</p> <hr/> <p>4,108.78</p>	<p>30</p>
	<p>Stall "Q"</p> <p>Counter 14'4 1/2" @ \$31.80 per ft. Refrigerator 8'x6'6"x10' Frigidaire Equipment, Two 76-F Coils, One 95-F Coil, One 96-F Coil, One "C" Compressor,</p> <p>Freight, Installation,</p>	<p>455.80</p> <p>538.89</p> <p>797.73</p> <p>12.00</p> <p>90.74</p> <hr/> <p>1,895.16</p>	<p>40</p>

	Stall "R" and "S"		<u>RECORD</u>
Counter 35'31/2" @ \$31.80 per ft.		1,123.60	<u>Exhibits</u>
Special Refrigerator,		538.89	No. 4. (Part)
Frigidaire Equipment,			<u>Plaintiff's</u>
Five 76-F Coils,			<u>Exhibit</u>
Two 88-F Coils,		1,452.65	Revised schedule
Two "C" Compressors,		21.00	of Refrigeration
Freight,		215.00	(Undated)
Installation,		<hr/>	
10			3,351.14
	Stall "T"		
Counter 10'1"x38"			287.37
	Stall "U"		
Counter 45'21/2" @ \$32.50 per ft.		1,469.28	
With Special Glass Top.			
	Stall "V"		
Counter 42'51/2"x30"			1,446.90

RECORD

Exhibits

No. 5. (Part)

Plaintiff's
ExhibitStatement
Plaintiff to
Defendant
Dated July 31,
1928

EXHIBIT 5.

Statement Plaintiff to Defendant

No. 5.

IN THE SUPREME COURT OF ONTARIO
FRIGIDAIRE v. STEEDMANThis Exhibit, the Property of Plaintiff is produced by the Pltff's. Sol.
this 26 day of Nov., A.D. 1929."S. G. Sims," Deputy
Local Registrar, Hamilton.

FRIGIDAIRE SALES CORPORATION

10

Statement

No. 108	London	721	Richmond St. N.
	Branch	Street	address
London	Ontario		
City	State		
Mr. J. P. Steedman,			
41 Charlton Ave. W.			
Hamilton, Ont.			

Terms: Strictly Net Cash

Date	Explanation	Debits	Credits	Balance	
1928					
July 31	M — 107 — 934	\$ 391.32			
		935	676.71		
		936	744.21		
		937	1,197.41		
		938	2,157.71		
		939	2,160.69		
		940	2,160.36		
		941	2,168.97		
		942	2,165.00		30
		943	2,165.66		
		944	1,505.40		
		945	500.04		
		946	500.50		
		947	524.97		
		948	4,399.59		
		949	2,091.47		
		950	3,574.45		
		951	354.87		
		952	1,509.78		40
		953	1,487.40		
	By Cash	32,436.51			
	Balance due		2,400.00		30,036.51

INVOICE FOR EQUIPMENT FOR ONE INDIVIDUAL STALL

FRIGIDAIRE SALES CORPORATION

FOR CUSTOMER'S USE

Register No. _____ Voucher No. _____

London, Ont. COPY

Customer's Refer to
 Order No. and Date May 3, 1929 Invoice No. M. 107-934
 Requisition No. Invoice Date July 31, 1928 Price Approved
 Contract No. Vendors No.

SOLD Mr. J. P. Steedman
TO 41 Charlton Ave. W.
 Hamilton, Ont.

Shipped to East End Market,
 and Stall "A"
 Destination Hamilton, Ont.

Date shipped From Hamilton

Car initials and No. F.O.B.

How shipped and route Transport

Terms: 20% Cash
 Balance GMAC 18 Months \$343.00

F.O.B. Checked

Terms approved Price Approved

Calculations Checked

Transportation

Freight Bill No. _____ Amount _____

Material Received

. . . . 19 Date _____ Signature _____ Title _____

Satisfactory and approved

Adjustments

Accounting Distribution

Audited _____ Final Approval _____

Quantity	Ordered	Shipped	Description	UNIT PRICE	AMOUNT
1	1		Counter 10'5"x38"		
7	7		Lights (The invoices for other stalls are not printed).		\$391.32

RECORD
 Exhibits
 No. 5
 (Part)
 Plaintiff's
 Exhibit
 Invoice for
 equipment for
 one individual
 Stall
 Dated July 31,
 1928

RECORD

Exhibits

No. 6.

Defendant's
ExhibitLetter Plaintiff
to Chambers
& Co.Dated Oct. 25,
1928

EXHIBIT 6.
Letter Plaintiff to Chambers & Co.
FRIGIDAIRE CORPORATION
Subsidiary of General Motors Corporation

Cable Address
"Delcolight"
All Codes Used

No. 6.

IN THE SUPREME COURT OF ONTARIO

FRIGIDAIRE v. STEEDMAN

This Exhibit, the Property of Defts. is produced by the Defts. this 26 day
of Nov., A.D. 1928.
"G. T. Inch" 10

Local Registrar, Hamilton.
Hamilton Sales Branch
98 King Street East
Hamilton, Ontario.

Dayton, Ohio, U.S.A.
October 25th, 1928

Messrs. Chambers & Co.,
Spectator Building,
James Street South,
Hamilton, Ontario.

ATTENTION: MR. CHAMBERS, Jr.

Dear Sirs: 20

Following our 'phone conversation of this morning I looked into the matter of a quotation, and we are hereby recording the quotation for supplying the equipment for Stall "D". This will constitute standard equipment for Box only, being, One (1) "C" Compressor, One (1) 96-F. Coil. The cost of making this installation would be Seven Hundred and Ninety Dollars (\$790.)

The price quoted us by the Sterling Refrigerator Company for the change-over of the Refrigerator is as follows: The Sterling Refrigerator Company agrees to remove the present Refrigerator and install in its place a Refrigerator of the dimensions agreed upon between 30 Messrs. Duff and Sterling, which is to say that the Refrigerator is to be Two (2) Feet longer, and Three (3) Feet deeper than the one now installed. Mr. Sterling agrees to take back the present Refrigerator and completely install the other one for a difference of Six Hundred Dollars (\$600.) We will take back the Two (2) Coils in the present Box and install in their stead in the new Refrigerator Three (3) 96-F. Coils for the sum of Three Hundred Dollars (\$300.), making a total cost of the change-over Nine Hundred Dollars (\$900.)

We trust this information is what you desired.

Yours very truly,

FRIGIDAIRE CORPORATION
"C. R. Howard" 40

CRH/AMD.

Hamilton Sales Branch, Manager

EXHIBIT 7.

Blank Form of Conditional Sales Contract of General Motors Acceptance Corporation.
No. 7.

IN THE SUPREME COURT OF ONTARIO
FRIGIDAIRE v. STEEDMAN

This Exhibit, the Property of Pltf. is produced by the Pltf. this 26 day of
Nov., A.D. 1929.

“G. T. Inch”

10 Local Registrar, Hamilton.

GMAC Form T-200 D CONDITIONAL SALE CONTRACT

Original—To be sent to General
Motors Acceptance Corporation,
Oshawa, Canada.

Frigidaire and Ice Cream Cabinets (ICE CREAM MANUFACTURERS
AND APARTMENT HOUSE OWNERS ONLY)

The undersigned Seller hereby sells and the undersigned Purchaser
hereby purchases and agrees to pay for, subject to the terms and condi-
tions hereinafter set forth, the following property complete with standard
20 attachments and equipment, delivery and acceptance of which is hereby
acknowledged by the Purchaser in good condition and as ordered.

Frigidaire and Model Serial One Gas, Gasoline or Storage Battery,
Ice Cream No. No. Kerosene En- Glass or Rubber
Cabinets and Switchboard Ampere Hour

RECORD
Exhibits
No. 7. (Part)
Plaintiff's
Exhibit
Blank Form
of Conditional
Sales Contract
of General
Motors
Acceptance
Corporation

RECORD
Exhibits

Schedule of Payments (Need not be filled in if payments are to be made each month as indicated below).

No. 7. (Part) Plaintiff's Exhibit Blank Form of Conditional Sales Contract of General Motors Acceptance Corporation	\$ 1 mo. hereafter \$ 2 mo. hereafter \$ 3 mo. hereafter \$ 4 mo. hereafter \$ 5 mo. hereafter \$ 6 mo. hereafter \$ 7 mo. hereafter \$ 8 mo. hereafter \$ 9 mo. hereafter \$ 10 mo. hereafter \$ 11 mo. hereafter \$ 12 mo. hereafter \$ 13 mo. hereafter \$ 14 mo. hereafter \$ 15 mo. hereafter \$ 16 mo. hereafter \$ 17 mo. hereafter \$ 18 mo. hereafter \$ 19 mo. hereafter \$ 20 mo. hereafter \$ 21 mo. hereafter \$ 22 mo. hereafter \$ 23 mo. hereafter \$ 24 mo. hereafter	For the total Time Price of \$ (First fill in below . . . then add 1 and 4 for total time price). (1) Cash Price\$ (2) Less cash on or before delivery \$ (3) Cash Balance\$ (4) Differential\$ Leaving a (5) Deferred Balance of\$ Payable at the	10 20
---	---	--	----------

Office of General Motors Acceptance Corporation at Oshawa, in . . . instalments of \$ each, followed by instalments of \$ each on the same date of each successive month commencing one month from the date hereof or as indicated in the Schedule of 30 Payments, with interest thereon from the date hereof at Six per cent. (6%) per annum on each instalment before maturity and 10% per annum on each instalment after maturity until paid. If any instalment is not paid at the time and place specified the entire amount unpaid shall be due and payable forthwith. And if this contract is placed with a Solicitor for collection, 15% of the amount due hereunder as Solicitors' fees, or if prohibited, the amount prescribed by law (it being understood that the Purchaser agrees to pay all costs, charges, expenses and disbursements including the Solicitor and Client costs of the Sellers' Solicitor and shall pay the ordinary collection charges of Solicitors and shall not be 40 limited to any tariff provided by law to apply as between party and party).

- 1.— Title to said property shall not pass to the Purchaser until the entire purchase price and interest (and all costs and expenses) are fully paid in cash, that is to include the payment of any notes given and any judgments secured.
- 2.— No transfer, renewal, extension or assignment of this contract or any interest therein or loss, injury, confiscation or destruction of said property shall release the Purchaser from his obligation hereunder; the assignee shall be entitled to all the rights of the Seller.
- 3.— The said Deferred Balance is to be evidenced by a certain Promissory note of even date herewith and it to bear interest before maturity of each instalment at Six per cent. (6%) per annum, and after maturity of each instalment until paid, at ten per cent. (10%) per annum. Said note is given by Purchaser and received by Seller, not as payment of the said purchase money, but as evidence of the amount to become due hereunder. The Purchaser hereby consents that the Seller may discount or negotiate said note without changing its character, without being subject to the equities as between the parties thereto, and hereby waives notice of any assignment of this contract if such assignment is made. The said note shall be as well an independant obligation to pay the amount thereof.
- 4.— In the event the Purchaser defaults on any payment or fails to comply with any condition of this contract or a proceeding in bankruptcy, receivership or insolvency be instituted against the Purchaser or his property, or the property is confiscated or misused or the Seller deems the property in danger of misuse or confiscation, the full amount shall at the election of the Seller (notice of which election is hereby waived by the Purchaser) be immediately due and payable.
- 5.— The term property wherever used in this contract shall include any equipment, attachments, accessories and repairs placed on said property by the Purchaser. The Seller guarantees said property against defective material or workmanship for one year from date of delivery and except as aforesaid no guaranty or warranty of any kind has been made. The property covered hereby shall remain strictly personal property and retain its character as such no matter whether the same be placed upon a permanent foundation or in what manner it may be affixed or attached to the building or structure in which it may be contained, or what may be the consequences of its being disturbed on such foundation, building or structure.
- 6.— Purchaser agrees to pay for all repairs and work done and materials supplied upon or in connection with and all expenses incurred on account of said property forthwith from time to time as the same are made, done, supplied or incurred and that Purchaser shall not at any time suffer or permit any charge or lien whether possessory or otherwise to exist against said property.
- 7.— Purchaser shall pay and keep said property free and clear of any and all taxes, assessments, liens and encumbrances of any nature whatso-

RECORD

Exhibits

No. 7. (Part)

Plaintiff's
ExhibitBlank Form
of Conditional
Sales Contract
of General
Motors
Acceptance
Corporation

RECORD

Exhibits

No. 7. (Part)

Plaintiff's
ExhibitBlank Form
of Conditional
Sales Contract
of General
Motors
Acceptance
Corporation

ever, shall not transfer any interest in this property or contract, shall not remove the said property from the original place of installation without the written consent of the Seller, shall keep same insured against loss by fire and shall give immediate written notice to Seller of any and all loss of or damage to said property. Any policy effected by the Purchaser is hereby assigned to the Seller. The proceeds of any insurance paid by reason of any loss or injury to the property or any return premium becoming due on the cancellation of any Insurance Policy on the property shall become subject to the terms hereof, to be applied towards the repair and replacement of the property or protanto payment of the above obligation as the Seller may elect (notice of such election is hereby waived by Purchaser). Seller may insure said property to properly protect Purchaser and Seller up to the amount of Seller's equity. The Purchaser agrees to pay the premium upon demand and that on failure to do so, payment of said premium shall be secured by this contract and shall be payable forthwith on demand. 10

8.— Time is of the essence of this contract and if the Purchaser default in complying with the terms hereof the Seller may take immediate possession of said property without demand, wherever found, without process of law (possession after default being unlawful) and for the purpose of taking possession may break and enter any premises in which the same or any part thereof shall be contained and shall not be liable for such seizure, breaking or entry and shall not be required to restore or repair the premises. Upon repossession all rights of Purchaser hereunder in said property shall terminate absolutely and the payments theretofore made shall be retained by Seller as liquidated damages, and not as a penalty. 20

9.— The Seller may resell the said property so retaken at public or private sale without demand for performance with or without notice to the Purchaser (if given notice by mail to address below being sufficient) with or without having said property at place of sale and upon such terms and in such manner as the Seller may determine, and to that end may make such repairs as Seller deems necessary: the Seller may bid at any public sale. From the proceeds of such sale Seller shall deduct all expenses for retaking, repairing and selling said property, including the costs of Seller's Solicitor as between Solicitor and Client, and balance thereof shall be applied to the amount due, any surplus shall be paid to the Purchaser. In case of deficiency the Purchaser covenants to pay the same forthwith with interest at the rate of Ten Per cent. (10%) per annum. 30 40

10. It is agreed that the repossession and retention, sale, or right thereto shall not affect the Purchaser's liability until full payment has been made in cash or the Seller's right to sue the Purchaser at any time for any moneys due and payable whether due by the terms of payment as set forth in this contract or which have become due and payable by

reason of failure or default on the part of the Purchaser in fulfillment of any of the terms, conditions, covenants or provisions of this agreement. Seller shall have the right to enforce one or more remedies hereunder, successively or concurrently and such action shall not operate to estop or prevent the Seller from pursuing any further remedy which he may have hereunder. Any provision of this contract prohibited by law of any Province shall as to that Province be ineffective to the extent of such prohibition without invalidating the remaining provisions of the contract.

RECORD
Exhibits
No. 7. (Part)
Plaintiff's Exhibit
Blank Form of Conditional Sales Contract of General Motors Acceptance Corporation

10 11.— This Agreement shall apply to and bind the heirs, executors, administrators and assigns of the Purchaser and shall enure to the benefit of and be enforceable by the Seller, the Seller's heirs, executors, administrators, successors and assigns.

Executed in triplicate, one copy of which was delivered to and retained by the Purchaser, this day of 192

WITNESSES:

.....
As to Seller's Signature (Seller's Signature) Seller Signs

Dealer should register contract if

20 Provincial law so requires. By.....

Has this Conditional Sales Contract (Official title, if Company)

been Registered?

Date 192..... Sign
(Where registered) Ink (Seller's Post Office address)

WITNESS:

30 (Do not sign here unless you have actually received the said property and have actually made the cash payment shown above, since by doing so you might place yourself in the position of being a party to a fraud.)
As to Purchaser's Signature

.....
(Purchaser's Signature)
Purchaser Signs

By
(Official Title, if Company)

.....
(Purchaser's Post Office address)

RECORD

Exhibit

No. 7. (Part)

Plaintiff's Exhibit

Blank Form of Conditional Sales Contract of General Motors Acceptance Corporation

DEALER'S RECOMMENDATION, ASSIGNMENT AND AGREEMENT TO GENERAL MOTORS

ACCEPTANCE CORPORATION:

To induce you to purchase the Note signed by the above-named Purchaser and indorsed by the undersigned, the undersigned submits the foregoing statement which the undersigned believes to be substantially true unless otherwise hereinafter stated and certifies that the declaration and certificate are true statements; that said Note arose from the sale of the within described property and that the amount of said Note is not more than Seventy-five per cent. (75%) of the value of said property as and where delivered, warranting to you that at the time of the transaction of which this is a part, the title of the aforesaid property was vested in the undersigned free and clear of all liens and encumbrances and that the undersigned has the right to assign such title.

The undersigned for value received does hereby sell, assign and transfer to General Motors Acceptance Corporation, Oshawa, his, its or their right, title and interest in and to the within contract and the property covered thereby and authorizes said General Motors Acceptance Corporation to do every act and thing necessary to collect and discharge the same.

In consideration of your purchase of the within contract the undersigned hereby guarantees the performance thereof and agrees to pay to General Motors Acceptance Corporation on demand the entire amount unpaid. The liability of the undersigned shall not be affected by any settlement, extension of credit or variation of terms of the within contract effected with the Purchaser or any other person.

This Agreement shall apply to and bind the heirs, executors, administrators, successors and assigns of the undersigned, and shall enure to the benefit of and be enforceable by General Motors Acceptance Corporation, its successors and assigns.

IN WITNESS WHEREOF said undersigned has hereunto subscribed his, its or their name this day of 192 Make sure there is a signature on every black line.

Stub No. Schedule of Payments

- \$..... 1 mo. after date
\$..... 2 mo. after date
\$..... 3 mo. after date
\$..... 4 mo. after date
\$..... 5 mo. after date
\$..... 6 mo. after date
\$..... 7 mo. after date
\$..... 8 mo. after date

..... Seller Signs
(Seller's Signature)
By
(Official Title, if Company)

\$ 192
(City and Province) (Date)

10

20

30

40

\$..... 9 mo. after date
 \$.....10 mo. after date
 \$.....11 mo. after date
 \$.....12 mo. after date
 \$.....13 mo. after date
 \$.....14 mo. after date
 \$.....15 mo. after date
 \$.....16 mo. after date
 \$.....17 mo. after date
 10 \$.....18 mo. after date
 \$.....19 mo. after date
 \$.....20 mo. after date
 \$.....21 mo. after date
 \$.....22 mo. after date
 \$.....23 mo. after date
 \$.....24 mo. after date

For value received I (we)
 promise to pay to the order of

.....
 (Seller's Name)

RECORD
 Exhibits
 No. 7. (Part)
 Plaintiff's
 Exhibit
 Blank Form
 of Conditional
 Sales Contract
 of General
 Motors
 Acceptance
 Corporation

.....
 (Total Balance Due)

Dollars

at the time or times stated in the Schedule of Payments hereon, at the
 20 office of General Motors Acceptance Corporation, Oshawa, Canada, with
 interest at six per cent. (6%) per annum before maturity and ten per
 cent. (10%) per annum on each instalment after maturity until paid.

If any instalment of this note is not paid at the time and place
 specified the entire amount unpaid shall be due and payable forthwith.
 Revenue stamps to be placed on the
 reverse side of note.

.....
 (Purchaser's Signature)

By
 (Official title, if Company)

30 Back

For value received we and each and all of the Indorsers hereon
 jointly and severally guarantee payment of the within obligation, as and
 when the same shall become due and of any extension thereof in whole or
 in part accepting all its provisions, authorizing the maker, without
 notice to us or either of us, to obtain an extension or extensions in whole
 or in part waiving presentment for payment, demand, protest and notice
 of protest and non-payment; also agreeing that in case of non-payment
 of the within obligation when due, suit may be brought by the holder of

RECORD
Exhibits
No. 7. (Part)
Plaintiff's
Exhibit

Blank Form
of Conditional
Sales Contract
of General
Motors
Acceptance
Corporation

this note against any one or all of us at the option of said holder whether such suit has been commenced against the maker or not and that in any such suit, the maker may be joined with one or more or all of us at the option of the holder.

By

.....
(Seller's Signature)

.....
(Official Title, if Company)

..... 10
(Additional Indorser)

(The blank form for the Purchaser's statement of his assets, etc., contained on the back of the contract Exhibit 7. is not printed)