

(4)

J. B. Colt Company, a Corporation,
Plaintiff.

In Circuit Court Baldwin County.

Vs.
Wessie Lipscomb and A. R. Lipscomb,
Defendants.

The plaintiff replying to the pleas of defendants in the above entitled cause alleges and states as follows, to-wit:--

1st.-- Plaintiff joins issue on plea number one.

2nd.-- Plaintiff replying to pleas two, three and four separately and severally alleges and states:--

Plaintiff admits that the consideration of the notes sued on was the purchase price of a lighting plant; that the order for the plant was in writing; that by virtue of the terms contained in the order, upon its acceptance by plaintiff it was to become and did become a contract of purchase of said lighting plant; that plaintiff accepted said order and delivered the plant at the place and according to the terms thereof; that as a part of the order or contract of purchase of said lighting plant, plaintiff warranted the generator to be of automatic-in-action type and of good material and workmanship, and listed Underwriters Laboratories (Established and maintained by the National Board of Fire Underwriters), as in accordance with its standard of construction, and this was the only guaranty or warranty that plaintiff made to defendants; that in said order and as a part thereof, defendants represented to plaintiff that the said order or instrument ordering said lighting outfit, upon the acceptance of same by plaintiff covered all the agreements between defendants and plaintiff, and that in said order and contract, defendants represented that no agent or representative of plaintiff had made any statement or verbal agreement adding to or modifying the terms and conditions set forth in said order, and on this account and on such representations that plaintiff accepted and filled such order, and on this account defendants are estopped from setting up warranties and representations other than those contained in said order.


Third-- And plaintiff further replying to said pleas two, three and four separately and severally alleges and states that plaintiff adopts the allegations and statements of replication number two, and in addition thereto alleges that said plant was received by defendants, installed and used and no complaint was made by defendants to plaintiff until Oct. 20, 1931, more

than a year since said lighting plant had been installed and in use by defendants, and defendants had therefore waived any rights they may have had to claim any defects in warranty or false representations on the part of plaintiff's agent.

Fourth- Further replying to said pleas two, three and four, separately and severally, plaintiff alleges that defendants failed to rescind the contract in a reasonable time.

Plaintiff attaches a copy of said contract to these replications.

Fifth-- Plaintiff alleges that it has performed all of the terms of said contract to be performed by plaintiff, but the defendants have not performed and complied with all the terms of said contract, and plaintiff alleges that said signed written purchase contract was the only contract between it and the defendants.



Attorney for Plaintiff.

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Plaintiff attaches a copy of said contract to these replications.

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Attorney for Plaintiff.

Copy.

J. B. COLT COMPANY

(Hereinafter called "Company")

205 East 42nd Street
New York, N. Y.



19

Ship to A. R. Lipscomb

(Print Full Name to Avoid Error)

(Shipping Destination) (County) (State)
the generator and supplies designated below as Schedule _____ (hereinafter called "Merchandise") which the undersigned (hereinafter called "Purchaser") hereby agree to purchase from Company, and hereby jointly and severally as principals agree to pay for, and which Merchandise the Company, by its acceptance noted hereon by its Branch Manager or Credit Manager, hereby agrees to sell to Purchaser, upon the terms and conditions herein set forth:

Schedule A { One Colt Lighting and Cooking Outfit, Catalog No. 7484 Colt Special
Additional supplies, if any, listed on reverse side (Name) _____

Schedule B { One Colt Carbide Generator, Model S, Carbide Capacity 200 Pounds
Supplies, if any, listed on reverse side

1. The price of the Merchandise, f.o.b. place of shipment, is (\$ 379.50)

Three Hundred and Seventy Nine and

50

100 Dollars

and payment thereof shall be made only by promissory note, check or money order drawn to the order of Company. Upon shipment of the Merchandise, Purchaser shall, at the option of Purchaser, either pay the said price or sign and deliver to Company promissory note or notes, in form prescribed by Company and providing for the immediate maturity of all such notes upon default in the payment of any thereof, for the said price and payable

3/4 Nov. 1st 1931

4 Nov. 1st 1932

with interest

with interest

2. **WARRANTY:** Company warrants the generator to be of automatic-in-action type, and of good material and workmanship, and listed by Underwriters' Laboratories (established and maintained by the National Board of Fire Underwriters) as in accordance with its standards of construction.

3. Company agrees to repair said generator, or ship another generator, without charge to Purchaser, if said generator shall not conform to said warranty, provided Purchaser has used exclusively in said generator $\frac{1}{4}$ by $\frac{1}{2}$ Union Carbide, and provided Purchaser shall, within 60 days after ascertaining that said generator does not conform to such warranty, notify Company thereof and also deliver said generator to Company's factory, transportation charges prepaid, and such repairing or replacing shall be the Company's sole obligation under said warranty.

4. Purchaser understands that Company is not to install the Merchandise, and will not permit trial use thereof. No implied warranty accompanies this sale. No notice or communication shall be binding on Company unless sent by registered mail and addressed to Company at above address.

5. This instrument contains all agreements and warranties, either express or implied, with respect to the Merchandise and the terms and conditions of the sale thereof, and cannot be cancelled, amended or varied except by a further agreement in writing signed by Purchaser and a Branch Manager of Company. If this agreement shall be cancelled by Purchaser before shipment of the Merchandise, or by agreement, Purchaser shall pay to Company an amount equal to one-third of the price of the Merchandise as liquidated damages, which amount is hereby agreed upon as the damages Company will suffer by reason of such cancellation; and in addition Purchaser shall pay all transportation charges, if any.

6. No representative of Company has authority to make, and Purchaser hereby warrants to Company that Purchaser is not relying upon, any statement, representation, warranty or agreement, oral or written, other than such as are herein set forth, leading up to or inducing the entering into of this agreement or the purchase of the Merchandise.

ACCEPTED: Sept. 9, 1930, 19____
at New York, N. Y. Birmingham, Ala.

Wessie Lipscomb (Seal)
(Signature of Wife)

A. R. Lipscomb (Seal)
(Signature of Husband)

Purchaser

J. B. COLT COMPANY

By B. C. Matthews
Branch Manager or Credit Manager

Foley, Ala.
(P. O. Address)

ORDER DETAILS

		PRICE EXTENSION
Schedule "A" Order	ONE Colt Lighting and Cooking Outfit No. <u>7464</u>	<u>379.50</u>
Schedule "B" Order	ONE COLT Carbide Generator	
Schedule "B" Order	ONE Pipe and Fittings Schedule No. _____	
Extra Order	$\frac{3}{4}$ in. Galv. Pipe feet at \$.11 per foot	
Extra Order	$\frac{3}{8}$ in. Black Pipe feet at \$.06 per foot	

APPLIANCES AND SUPPLIES

Any merchandise listed below WITH NO PRICE SPECIFIED is included
in the Colt Lighting and Cooking Outfit Specified in Schedule "A"

NAME OF ROOM FOR WHICH FIXTURE IS DESIRED	QUANTITY	CATALOG NO.	HEIGHT OF CEILING	PRICE EACH	
1 Living Room					
2 Dining Room					
3 Kitchen					
4 Bedroom					
5 Porch					
6 Pantry					
7 Barn		Colt advanced special.			
8 Iron					
9 Hot Plate.					
10					
11					
12*					
13					
14					
15					
16					
17					
18					
19					
20					
21					
22					
23					
24					
25					
TOTAL AMOUNT OF ORDER					379.50

J. B. Colt Co. Received
Sep. 5 1930
Birmingham, Alabama.

Handwritten:
J. B. Colt Co.
Birmingham, Ala.
Sept 5 1930
J. B. Colt Co.

J. B. Colt Company, a Corporation,

Plaintiff.

(In Circuit Court, Baldwin County.

Vs.

Wessie Lipscomb and A. R. Lipscomb,

Defendants.

Comes the plaintiff in the above stated cause and demurs to plea three filed by the defendants in the above cause on the following grounds to-wit:-

1st-- Because it is not shown in said plea in what respects said light plant was worthless and of no value.

2nd-- Because no facts are shown upon which to base the allegations of said plea that the light plant was worthless and of no value.

3rd--Because no facts are shown constituting in what respects said plant was defective.

Plaintiff demurs to plea four on the following grounds, to-wit:-

4th-- Said plea fails to allege the name of said alleged agent of plaintiff or that said agent was acting within the line and scope of his authority.

5th.- Said plea fails to allege that said agent had the authority to make ~~the~~ said representations or that said representations were communicated to plaintiff and ratified by plaintiff before the execution of the contract by defendants and acceptance by plaintiff.

6th.- Because it contains matters which seek to vary, add to, or contradict the written contract upon which the notes sued on in this suit, are based.

7th.- Because said plea tenders an immaterial issue.

8th.- Because said plea does not show the date when it is alleged defendants notified plaintiff to take back said plant.

9th.-Because the statements set up in said plea do not constitute a defense to this action.

10--Because it is not shown how long defendants used said plant before they discovered the excessive cost of same and notified plaintiff of their desire to rescind the contract.

11--Said plea shows on its face that the alleged representations were mere expressions of opinion and not statements of fact.


Attorney for Plaintiff.

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Duck

Filed
February 28 1938
Richard L. Smith
Chen

J. B. COLT COMPANY, A
New Jersey Corporation,

Plaintiff,

-vs-

WESSIE LIPSCOMB and A.
H. LIPSCOMB,

Defendants.

IN THE CIRCUIT COURT-LAW SIDE
STATE OF ALABAMA
BALDWIN COUNTY.

Come the Defendants in the above styled cause and
demure to each and every count of the Complaint, and for grounds
thereof, say:-

FIRST:

That said Complaint does not state a cause of action.

Hyatt Heard & Chason
Attorneys for Defendants.

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ABH
DECEMBER 12 1933
DEMURRER.

J. B. COLT COMPANY, a New
Jersey Corporation,

Plaintiff,

-VS-

WESSIE LIPSCOMB and A.
H. LIPSCOMB,

Defendants.

IN THE CIRCUIT COURT-LAW SIDE
STATE OF ALABAMA
BALDWIN COUNTY.

Filed December 12th, 1933

Wm. A. Starnes
Clerk.

copy to Hon. W. H. Harrison

LAW OFFICES

HYBART, HEARD
& CHASON

BAY MINETTE, ALABAMA

J. B. COLE COMPANY, a Corporation,

Plaintiff,

-VS-

WESSIE LIPSCOMB AND A. H. LIPSCOMB,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY,

ALABAMA.

Now comes the defendants and files this their demurrer separa-

tely and severally to replications Number Two, Three, Four and Five,

and assigns separately and severally the following grounds therefor:

1. That the matters and things therein set out are not proper

replications to said plea.

2. That the matters and things therein set out attempt to

set up an immaterial issue.

3. That the allegations contained therein are no defense to

the fraud alleged to have been practiced by the agent in procuring

the execution of the contract by the defendants.

4. That regardless of the contents of the alleged contract

if the defendants were induced to sign by the fraudulent representa-

tion of the agent, said contract is vitiated and is of no effect.

5. That the copy of said alleged contract is not properly

made a part of the replication.

6. That the matters set up in said replication can be shown

under the general replication.

7. That the matters set up in the replication can be shown

under the general issue.

8. Notwithstanding any provision in the alleged contract,

if the same was procured by fraud, there is nothing in it of a blind-

ing nature.

Attorneys for Defendants.

Original

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7-442

J. B. COLT COMPANY, a Corp.

Plaintiff,

-VS-

WESSIE LIPSCOMB & A. H. LIPSCOMB,

Defendants.

DEMURRER TO REPLICATIONS.

Filed March 30th
1936
Robert S. Heard
Chick

LAW OFFICES

HYBART, HEARD
& CHASON

BAY MINETTE, ALABAMA

J. B. COLT COMPANY,
Plaintiff,

-vs-

WESSIE LIPSCOMB and
A. R. LIPSCOMB,
Defendants.

IN THE CIRCUIT COURT-LAW SIDE
STATE OF ALABAMA
BALDWIN COUNTY.

Now come the Defendants and for plea to the Complaint,
and each count thereof, separately and severally, say:-

FIRST:

That the allegations contained therein are untrue.

SECOND:

That there was no consideration in and for said demands
mentioned therein.

THIRD:

That the basis of the notes mentioned in the Complaint
was for a light plant which was absolutely worthless and of no
value.

FOURTH:

That the Notes sued on in said Complaint were given
by the Defendants to the J. B. Colt Company for a light plant
which was to be used by the Defendants in their home in Baldwin
County, Alabama, which fact was made known to the agent of the
J. B. Colt Company, and that said agent falsely represented to
them that said light plant which he was then and there offering
to sell them would furnish sufficient lights and fuel in said
home at a cost not to exceed the sum of Fifty Cents (\$.50) per
month; that said agent in representing said cost of the operation
of said plant falsely and fraudulently represented said facts as
to the consumption of said fuel, and by said false misrepresen-
tations induced Defendants to execute their said Notes for said
light plant; that instead of said plant's cost in operating the
same being at not more than Fifty Cents (\$.50) per month the
same was in excess of Five Dollars (\$5.00) per month, and the
use of said plant was rendered prohibitive, and had the said
agent truly represented the cost of its operation the Defendants
would not have executed said notes or entered into the contract

(page two)

of purchase of the same with the Plaintiff through its said agent; that as soon as the Defendants ascertained by reasonable trial of said plant that said agent had falsely and fraudulently represented the cost of operation of the same, they immediately notified the Plaintiff of these facts and requested the Plaintiff to take said plant back and surrender to them their said notes, or to give them shipping directions as to where said plant was to be delivered and shipped.

H. H. Hunt, Head & H. H. H. H.
Attorneys for Defendants.

Defendants demand trial
by jury.

H. H. Hunt, Head & H. H. H. H.
Attorneys for Defendants.

*Civil Jury
No 4*

P L E A.

RECORDED

J. B. COLT COMPANY,

Plaintiff,

-vs-

WESSIE LIPSCOMB and A. R.
LIPSCOMB,

Defendants.

IN THE CIRCUIT COURT-LAW SIDE

STATE OF ALABAMA

BALDWIN COUNTY.

Filed February 8th, 1934

W. R. Stone
Clerk.

(14)

(out egoc)

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon

Wessie Lipscomb and A. R. Lipscomb

to appear within thirty days from the service of this writ in the Circuit Court, to be held for said County, at the place of holding the same, then and there to answer the complaint of

J. B. Colt Company, a New Jersey Corporation,

Witness my hand, this 13th day of November 1933.

W. A. Stone
Clerk.

COMPLAINT

J. B. Colt Company, a New Jersey Corporation, Plaintiff. vs. Wessie Lipscomb and A. R. Lipscomb, Defendants.

Count One.

Plaintiff claims of the defendants, the sum of Two Hundred Eighty Five & 50/100 (\$285.50) Dollars, due by promissory note executed by the defendants on to-wit:- September 12, 1930 made payable to plaintiff on to-wit:- 11/1/31, with interest from maturity.

Count Two

Plaintiff claims of the defendant^s the further and additional sum of Ninety Four (\$94.00) Dollars due by promissory note made by defendant on to-wit:- September 12, 1930 payable to plaintiff on to-wit:- 11/1/32, with interest thereon from maturity.

Count Three.

Plaintiff claims of the defendants the further and additional sum of \$65.00, as a reasonable attorney's fee for suit on these notes, and plaintiff avers that in said notes herein sued on, defendants agreed to pay a reasonable attorney's fee, and that the said \$65.00 is a reasonable attorney's fee.

Plaintiff further avers that in said notes sued on in this cause, defendants waived all their rights to claim any exemption as to personalty under the constitution and laws of the State of Alabama.

W. A. Stone
Attorney For Plaintiff.

Received in office 14th day of
Nov. 1933

W R Stuart

Sheriff of Baldwin County, Ala.

Executed by serving copy
of the within Summons and Complaint on
Wessie Lipscomb

and
A R Lipscomb

Defendant

This the 17th day of November 1933

W R Stuart

Sheriff of Baldwin County, Ala.

By _____
Deputy Sheriff.

Doest page 68
Original

RECORDED

No. 4

J. B. Colt Company, a
New Jersey Corporation.
Plaintiff.

VS.

Wessie Lipscomb and A. R.
Lipscomb, Defendants.

IN CIRCUIT COURT OF BALDWIN COUNTY

Term 19

SUMMONS AND COMPLAINT

Filed in office this 13th day of

November 1933 A. D. 19

W. A. Stone Clerk.

W. H. Hawkins. Plaintiff's Attorney.

Moore Printing Co. Day Minette, Ala.

*\$12.00 deposited for
Costs 11/13/33*