

NEW LONDON ENGINEERING CO., *
A CORPORATION *

PLAINTIFF *

VS. *

GULF SHORES ICE CO., INC. *
A CORPORATION *

DEFENDANT *

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

AT LAW

NO. 2995

1. The defendant, for answer to the complaint, saith that he is not guilty of the matters alleged therein.

2. The defendant, for answer to the complaint, saith that the allegations contained in the complaint are untrue.

3. For further plea defendant saith:

The plaintiff, by its officers and by its agent, H.M. Gausted, acting within the line and scope of his authority, so conducted itself as to modify and change the contract heretofore pleaded by the plaintiff, by undertaking to warrant the efficient performance of the ice conveyors after delivery; that the plaintiff has not performed its additional agreements and warranties and as a consequence thereof has not executed the said contract as the same was modified by his conduct, and as the same was relied upon by the defendant.

James A. Brice
Attorney for Defendant

Before me, Frank M. Church, a Notary Public in and for Baldwin County, Alabama, personally appeared James A. Brice, who after being by me duly sworn, deposes and says: that his name is James A. Brice, that he is attorney of record for the defendant in the above-styled cause; that the matters above pleaded are true to the best of his knowledge, information, and belief.

James A. Brice
Sworn to and subscribed before me this 19th day of November, 1956, as witness my hand and official seal.

Frank M. Church
Notary Public
Baldwin County, Alabama

FILED
NOV 20 1956
ALICE L. BUCK, Clerk

NEW LONDON ENGINEERING CO., *
A CORPORATION *

PLAINTIFF *

VS. *

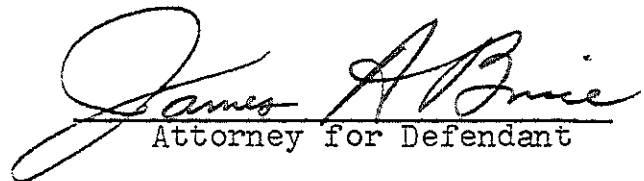
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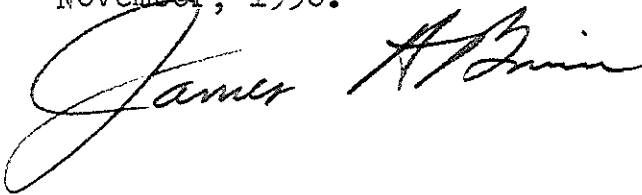
IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW
NO. 2995

MOTION TO REQUIRE SECURITY FOR COSTS

Comes now the Defendant, by his Attorney, and shows unto this Honorable Court that heretofore, on or about the 2nd day of August, 1956, the plaintiff instituted a suit for damages and on account against this defendant; that the plaintiff is a foreign corporation, not domiciled in the State of Alabama, is a non-resident of the State of Alabama, and has not given security for costs in the above styled cause. Wherefore, the premises considered, the Defendant prays this Honorable Court that it will order that plaintiff give security costs within a reasonable time hereafter or cause shall stand dismissed.


Attorney for Defendant

I certify that a copy of
the foregoing motion has
been mailed to Hon. E.G.
Rickarby, Attorney for
Plaintiff this 1st day of
November, 1956.



LAW OFFICES
E. G. RICKARBY
BANK BUILDING
FAIRHOPE, ALABAMA

P. O. BOX 71

July 31, 1956

Mrs. Alice Duck
Clerk of the Circuit Court
Bay Minette, Alabama

Dear Mrs. Duck:

Inre: New London Engr. Co.
vs.
Gulf Shores Ice Co., Inc.
Our File: 3631

With this we are handing you Summons and Complaint, itemized and verified statement of account, and deposit for costs in the sum of \$20.00, in the above styled cause.

Please process and oblige.

Yours very truly,



EGR/fm
Encl.

cc: Dun & Bradstreet, Inc.
dup.
w/Encl. (dupl)

NEW LONDON ENGINEERING CO.,
A Corporation,

PLAINTIFF

VS.

GULF SHORES ICE CO., INC.
A Corporation,

DEFENDANT

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW


C O M P L A I N T

COUNT I

The Plaintiff claims of the Defendant the sum of ONE THOUSAND THREE HUNDRED SEVENTY DOLLARS AND SEVENTY-SIX CENTS (\$1,370.76), with interest from the 20th day of December, 1954, which sum of money, with the interest thereon, is still unpaid.

COUNT II

The Plaintiff claims of the Defendant the sum of ONE THOUSAND THREE HUNDRED SEVENTY DOLLARS AND SEVENTY-SIX CENTS (\$1,370.76) damages for breach of an agreement entered into by it on the 25th day of October, 1954, copy of which agreement is hereto attached and marked "Exhibit A", and made a part hereof, and the Plaintiff says that, although it has complied with all of the provisions on its part, the Defendant has failed to comply with the following provisions thereof, namely, has failed to pay ONE THOUSAND THREE HUNDRED SEVENTY DOLLARS AND SEVENTY-SIX CENTS (\$1,370.76) of the purchase price thereof; therefore, Plaintiff sues.



E. G. RICKARBY
Attorney for the Plaintiff

Note: The account sued on is evidenced by itemized and verified statement of account filed herewith.



E. G. RICKARBY
Attorney for the Plaintiff

T E S T I M O N Y

NEW LONDON ENGINEERING CO.,
A Corporation,

PLAINTIFF

-VS-

GULF SHORES ICE CO., INC.
A Corporation

DEFENDANT

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW

TESTIMONY

Testimony taken in the case of NEW LONDON ENGINEERING CO., a corporation, Plaintiff -VS- GULF SHORES ICE CO., INC., a corporation, Defendant, on the 15th day of November, 1956.

Direct examination of MR. H. M. GAUSTAD by JAMES A. BRICE, Attorney for GULF SHORES ICE CO.

- Q. Mr. Gaustad, will you state your name and occupation, please?
- A. H. M. Gaustad, Manufacturers representative, sales engineer.
- Q. And where is your residence, please sir?
- A. Mobile, Alabama.
- Q. And what is your age?
- A. Sixty-five, day after tomorrow.
- Q. I believe you said you were a manufacturers representative and a sales engineer?
- A. That's right.
- Q. Now what has been your practical engineering experience?
- A. A graduate of a military school with a commission in the United States Navy qualifies me under a Bachelor of Science degree. I have worked on engineering projects for the government over a period of twenty-one years in active military service. Since then I have been in construction work. I was employed by one of the major oil companies as the designer and construction engineer of bulk plant installations, oil terminal installations, and service stations.
- Q. What has been the extent of your experience with materials handling equipment?
- A. I had five and a half years actual experience.
- Q. Is that military and civilian?
- A. No, that's all civilian, the five and a half year actual experience.
- Q. Then how much military experience with material handling equipment?
- A. Well, I told you military installation, if that's what you mean.
- Q. What was your military experience with materials handling equipment, sir?
- A. None, in the military service.

- Q. How long have you been associated with the New London Engineering Company?
- A. Approximately four and a half years.
- Q. In what capacity did you work for them?
- A. In sales capacity, entirely.
- Q. As a sales agent?
- A. Sales Agent.
- Q. What has been the extent of your authority to bind the New London Engineering Company as to price, whenever you sell an item?
- A. That is controlled by their price list and as well as the prices they give me.
- Q. Suppose there were a special piece of equipment that had to be constructed, would you submit that proposal to them for their price quotation?
- A. That's correct.
- Q. Well what has been the extent of your authority as far as recommendation for design of equipment to be built by them?
- A. My observation of the problem and my recommendation is submitted to the manufacturer.
- Q. Is it usually followed by the manufacturer?
- A. Yes, unless they see marked disadvantages in them, they do.
- Q. In other words, they are relying on your first hand observation and recommendation?
- A. That's right.
- Q. Were you a sales agent for the New London Engineering Company the latter half of 1954?
- A. Yes.
- Q. In October?
- A. That's right.
- Q. Do you know Mr. Cliff Shelkofsky?
- A. Yes.
- Q. What was the occasion of your initial meeting with him?
- A. I called on him with the purpose of presenting and selling, if possible, the conveying equipment that he needed in the ice business.
- Q. And you were employed by New London at that time?
- A. Probably employed, is not the right word to use there, since I represent 14 manufacturers altogether.

- Q. Then let me say this. Are you a sales agent for them and authorized?
- A. And authorized sales agent.
- Q. I ask you Mr. Gaustad, if you have ever seen this three page sketch before?
- A. Yes.
- Q. Did you see it at the office of the Gulf Shores Ice Company at Gulf Shores?
- A. That's right.
- Q. Would you briefly tell us what that sketch consists of?
- A. It consist of an outline of the building structure, giving only one elevation showing also the bin for storage of ice with the divisions of the bin and the suggested method of elevating the ice after it comes from the storage bin to the automatic weighing devise.
- Q. On page three of that sketch, Mr. Gaustad, which happens to be the top of page, the first page you would come to, under the words "outside measurement," would you read the next words appearing thereon?
- A. "Screw or chain type conveyor, cost considered".
- Q. Do you recall that appearing on that sketch at the time that you first saw it?
- A. I don't have any recollection of it, it probably was there.
- Q. Do you recall a discussion with Mr. Shelkofsky as to that particular sketch and his desire for a screw or chain type conveyor?
- A. No, I recall his questioning me about a screw type conveyor.
- Q. You recall no conversation with him as to a chain type conveyor?
- A. Not at that time, no.
- Q. And you understand that this is and will probably be used at the trial of this?
- A. Yes, I understand this.
- Q. And you have no recollection of any chain type conveyor discussion?
- A. No.
- Q. But you do recall discussing that particular sketch with Mr. Shelkofsky?
- A. I don't remember that we discussed the sketch at all. The sketch was handed to me and that's all I recall about it.
- Q. Did you read the sketch and observe it and study it?

- A. There wasn't any need for it.
- Q. What did you do with it?
- A. What we needed it for was to get the dimensions of the bin, that was all I wanted.
- Q. Well, why did you say that there was no need to discuss the sketch or study the sketch?
- A. Because I was to make my own recommendations.
- Q. And you stated that you didn't need the guidance of that sketch in order to make your recommendation?
- A. No. I don't mean that. I mean that I used the dimensions of the sketch to get the size of the ice bins.
- Q. And that's the only purpose you needed the sketch for?
- A. That's correct.
- Q. Now how many pages are there on that sketch?
- A. Two.
- Q. And how many pages contained the dimensions of the ice bins?
- A. Two.
- Q. Did you then ignore the third page, the one not containing any reference or mention of the ice bin?
- A. There are two pages representing the dimensions of the bins. The third page does not have anything on it with reference to the storage bin.
- Q. Mr. Gaustad, going on to your discussion with Mr. Shelkofsky concerning the construction of this conveyor, did you try to obtain from him, his desires and his needs as an ultimate purpose that any conveyor can fill?
- A. He merely told me what his problem was, to move ice out of storage bins and to eventually get them on the boats, where the ice was destined.
- Q. I'll ask you again, Mr. Gaustad, in your conversation with Mr. Shelkofsky concerning his problem of moving ice through a conveyor and by means of a conveyor to a boat or a truck, did he discuss with you the use of a screw type conveyor?
- A. Yes.
- Q. Did he discuss with you the use of a chain type conveyor?
- A. At that time, I do not recall if that was discussed at all.

- Q. But he did discuss the screw type conveyor with you?
- A. That's correct.
- Q. And what would your recommendation as to a screw type conveyor have been?
- A. That it would be entirely unsatisfactory.
- Q. Did he also at the time he discussed his problem with you and at the time he outlined his problem, mention to you the type ice that would be moved by the conveyor?
- A. That's right.
- Q. What type ice did he say would be moved by the conveyor?
- A. A wafer type ice which would have a high degree of fluidity.
- Q. Is that commonly known in the ice trade as flake ice?
- A. No Sir.
- Q. What is flake ice?
- A. Flake ice is something which is cut off the large chunks of ice, which have been frozen in blocks, or shaved off or it is manufactured, by a different process, the process which is different from that which is in the Gulf Shores Ice Company plant.
- Q. But he did clearly explain to you the type ice that would be used and as you say it is wafer ice?
- A. Wafer ice is what it is called.
- Q. Referring back to this three page sketch that Mr. Shelkofsky originally handed you in your first discussion concerning the problem, I ask you, if, on each page thereof appear the words- "chain or screw type" and if on two of the three pages appear the words- "cost considered" ?
- A. Yes.
- Q. And did you read every page of that sketch?
- A. Yes, to get the information that I needed.
- Q. Buy you did read everything in the sketch?
- A. Yes.
- Q. Colonel, did you use that sketch as a basis for drawing your sketch?
- A. Yes.
- Q. Then you must have studied the sketch, mustn't you have?
- A. So far as the dimensions were concerned, yes.
- Q. But you studied the entire sketch and examined the entire sketch?

- A. I don't know that I read every bit of it but I got the dimensions from the sketches that were handed me and that was all I needed was the dimensions.
- Q. Well then, in other words, would you say that you had the same opportunity to read every word on that sketch that Mr. Shelkofsky had to read the fine print on the back of that contract?
- A. Yes.
- Q. Mr. Gaustad, would you mind initialing the back of each page of that three page sketch for identification purposes?
- A. No, I'll be glad to.
- Q. Now, Colonel, I'll ask you if you have initialed the backs of any other sketches prior to this time, which sketches contained the words, or the stamp, or imprint of Gulf Shores Ice Company?
- A. Not to my knowledge or recollection.
- Q. In other words, this is the only one you have initialed at this point?
- A. So far as I can recall.
- Q. You could pretty well recall it, couldn't you?
- A. I think so.
- Q. Mr. Gaustad, I will now show you a letter with the heading " Inner office correspondence " and underneath that the letterhead- "H. M. Gaustad, 100 North Water Street, Mobile, Alabama, Phone Hemlock 8-4697 " and under that is typed " 18 June, 1955 ". It's purportedly a copy of a letter that was written by you. I will hand you the letter and ask you if you did write such a letter and if your initials appear above the signature block on the second page of said letter?
- A. Yes.
- Q. I will ask you if this statement appears in the letter- " However, maximum belt capacity cannot be maintained with a conveyor in its original condition. Therefore it is necessary that a modification be effected in order to secure the results which were expected when the equipment was purchased." ?
- A. That's correct.
- Q. Did you send the original of that letter to the New London Engineering Company, Mr. Gaustad?
- A. Yes.
- Q. In that letter, did you recommend to the New London Company that they bear the cost of adding additional rollers to the conveyor belt, after installation?
- A. Yes.

- Q. Was the addition of lagging to the pulleys of the conveyors discussed between you and Mr. Shelkofsky after the installation in an effort to make the conveyor belt work?
- A. Yes.
- Q. Did you have a number of conferences and conversations with Mr. Shelkofsky in an effort to make the conveyor work?
- A. Almost without number.
- Q. In other words, Mr. Gaustad, everything that could possibly be done was done in a spirit of co-operation between you as sales agent for the New London Engineering Company and Mr. Shelkofsky, in his position, as an officer of the Gulf Shores Ice Company?
- A. No.
- Q. Everything wasn't done this way?
- A. No, it was not done.
- Q. Now what else could have been done?
- A. We shipped him a number of rollers which were to have been installed at Mr. Shelkofsky's request, in the bottom of the trough of that conveyor. They were shipped at no cost, to the Gulf Shores Ice Company, but when they arrived, they were not used.
- Q. That is entirely academic as to whether or not it would have made the machine work, is that not true?
- A. No, it isn't, because the addition of rollers in the bottom of that trough would have eliminated friction, which was occurring at that time, without the rollers.
- Q. Is that your opinion or is that a fact?
- A. That's my _____, well, that's a fact, that's a manifest fact.
- Q. It was actually done?
- A. Nothing was done.
- Q. Then it is only your opinion, isn't it?
- A. Yes, you might say so.
- Q. Were these additional rollers, Mr. Gaustad, recommended at the time of purchase or the purchase contract was executed by you and by Mr. Shelkofsky?
- A. No.
- Q. Was the additional three horse power motor the stepped up horse power of an electric motor recommended at the time of purchase?
- A. No.
- Q. Were not all these efforts, the lagging,

the electric motor, the additional rollers, weren't they all efforts, joint efforts, by you and Mr. Shelkofsky to get the conveyor to work?

- A. The conveyor was working, but it wasn't working up to the point where it was desired to work.
- Q. In other words, it wasn't doing the job that they expected it to do, isn't that true?
- A. No, I won't agree to that. Had the condition been as were originally represented, it would have worked satisfactorily.
- Q. How much time did you spend observing the operation of the Gulf Shores Ice Company, before you made your recommendation as to the type conveyor necessary.
- A. That was no time, because the plant hadn't been built then.
- Q. How much time did you spend in the discussion with Mr. Shelkofsky before making your recommendation?
- A. Several hours on about three different occasions.
- Q. Did you recommend to the New London Company that they bear the cost of adding the cost of the additional rollers to the conveyor belt, after installation?
- A. That they bear the cost of the rollers and the brackets to support the rollers.
- Q. And you would say then that you did recommend and made a number of efforts to make the conveyors work?
- A. To work satisfactorily, under the conditions that were experienced.
- Q. Are you associated with the New London Company as one of their authorized sales agents?
- A. Yes.
- Q. At the present time?
- A. At the present time.
- Q. Mr. Gaustad, were these machines standard production models, or were they specifically built for this particular job?
- A. Specifically built for this job?
- Q. Did you make the recommendation for the type, that is, screw or chain, or belt conveyor, was the recommendation that the belt conveyor your recommendation?
- A. Yes.
- Q. And that was the recommendation that Mr. Shelkofsky relied on?
- A. That's correct.

- Q. At the time he gave you the order, did he say that he was relying on your best judgment?
- A. I believe, in words to that effect, anyhow. At that same time Mr. Shelkofsky was influenced by the much lower cost of the belt conveyor as compared with the screw conveyor.
- Q. But was he willing to follow your recommendations as to the type conveyor to be used?
- A. Yes.
- Q. And did he initially request or speak and ask for a chain type or screw type conveyor?
- A. He did not ask for it. We discussed the matter of a screw type conveyor, which I told him would not be satisfactory.
- Q. Have you had any experience with chain type conveyors?
- A. Certainly I have.
- Q. With all three types of conveyors.
- A. All types of conveyors.
- Q. Did you ever at any time prior to the installation of the roller type conveyor or belt type conveyor, discuss the chain type conveyor with him?
- A. No.
- Q. Why not?
- A. It was never brought up. I had no reason to discuss it because it never even entered my mind, at that time.
- Q. In other words, the chain type conveyor never entered your mind?
- A. At that time, I did not consider it.
- Q. You didn't consider it?
- A. No.
- Q. You didn't eliminate it, you simply didn't consider it?
- A. I didn't consider it. I didn't eliminate it because I didn't have any reason to eliminate it.
- Q. It never reached the point of your mind where it was a positive possibility?
- A. That's right.
- Q. And you say then, that Mr. Skelkofsky never mentioned the chain type conveyor to you, prior to the installation of the belt type?
- A. To the best of my recollection, No.

- Q. Well then, did you strongly suggest to Mr. Shelkofsky that the belt conveyor was better than any other type conveyor?
- A. Yes.
- Q. And were you fully informed as to the purpose for which the conveyor was needed?
- A. For the purpose, Yes.
- Q. Now this conveyor we are discussing, Mr. Gaustad, have you personally observed it after its installation at the Gulf Shores Ice Company?
- A. Yes, many times.
- Q. Do you know its location in the building?
- A. Perfectly.
- Q. Where is it in the building?
- A. It is in the bottom of the storage bin.
- Q. Is it easily accessible?
- A. No.
- Q. In other words, its very difficult to get to at any time, isn't it?
- A. Yes.
- Q. Colonel, did you, subsequent to the installation of the roller type conveyor, or the belt type conveyor, discuss with Mr. Shelkofsky a chain type conveyor?
- A. Yes we did.
- Q. At whose suggestion was the discussion made?
- A. At Mr. Shelkofsky's.
- Q. And what was your opinion at that time?
- A. That it would not be satisfactory.
- Q. And that is still your opinion, that it would not be satisfactory?
- A. I am forced to change my opinion, having seen it in operation.
- Q. Then you do admit that you are not infallible?
- A. I'm sorry, I have to admit that.
- Q. And you could have been wrong to begin with, in this operation?
- A. In my 65 years of experience I find that I have been wrong quite a few times.
- Q. Well, no disrespect is intended.

CROSS EXAMINATION BY E. G. RICKABY, ATTORNEY FOR PLAINTIFF.

Q. Did you sell these goods to the defendant, in this case?

A. Yes.

Q. Before you sold them, did Mr. Shelkofsky tell you what his problem was?

A. Yes.

Q. Did you recommend devices to fit his problem? In other words, you recommended a device, which in your opinion would fit the problem he told you about, did you not?

A. Yes.

Q. Did he buy them?

A. Yes.

Q. Did you see him using the equipment that you sold him?

A. Frequently, yes.

Q. Did it work satisfactorily?

A. At times, when I observed it, yes. At other times it was not fully satisfactory.

Q. Was the equipment that it was working or the problem the machine had to take care of, the identical problem that Mr. Shelkofsky explained to you?

A. No, it wasn't.

Q. Could you explain to the Court, the variance in what the problem you designed for and what the problem was, or rather, the changes between the two problems?

A. The only difference was in the nature of the ice which was to be moved and which had been represented in one way and actually it turned out to be somewhat different.

Q. How was the ice represented to you?

A. To be of certain size, a certain thickness and to have a fluidity which would permit it to flow onto the belt.

Q. How was the ice, as manufactured, and used by your machine shaped?

A. It was in flakes, however, the flakes came out in chunks, that is, the flakes adhered to each other through consistent moisture and they had to be broken up manually inside the bin in order to get them to flow at all.

Q. When you say that the materials you recommended did not exactly fit the problem, as it turned out to be, did you make any subsequent recommendations?

A.

- A. Yes, I made recommendations to the company as to certain modifications which might be made to meet the conditions as they had come up.
- Q. Were some of these recommendations in the letter of June 18th, about which Mr. Brice had ask you?
- A. That was to cover a condition which I observed at that time, Yes.
- Q. Did the company meet your suggestion?
- A. Yes.
- Q. Did the defendant use the things the company furnished him without charge, to correct the defect?
- A. No.
- Q. In your opinion, do you think that it would have corrected the defect?
- A. I believe it would have.
- Q. There was a discussion about a belt or chain conveyor. According to the problem, as Mr. Shelkofsky had outlined for you, was a chain conveyor indicated?
- A. Not in my opinion.
- Q. As representative for the New London Company, are you authorized to sell in accordance with the standard order blank, as was signed by Mr. Shelkofsky, in this case?
- A. Yes.
- Q. When you vary from those terms, is it not noted on the face of the order, and then submitted to the company for approval?
- A. It must be.
- Q. No further questions.



H. M. GAUSTAD

Subscribed and sworn to before me, the undersigned Commissioner
on this the ____ day of December, 1956.

Commissioner

Testimony taken in the case of NEW LONDON ENGINEERING CO., a Corporation, Plaintiff vs. GULF SHORES ICE CO., INC., a Corporation, Defendant, on the 15th day of November, 1956.

Direct examination of MR. C. I. SHELKOFISKY, by E. G. RICKARBY, Attorney for NEW LONDON ENGINEERING COMPANY:

Q. Mr. Shelkofsky, will you please state your name and occupation?

A. My name is C. I. Shelkofsky and at the present time I am manager of Gulf Shores Ice Company, and one-third owner.

Q. On or about the 25th day of October, 1954 did you sign an agreement with the New London Engineering Company?

A. I did sign an agreement with the New London Engineering Company, as to the exact date, I don't recall. That would be stated on the original contract.

Q. Is the paper that I hand you a photostatic copy of that agreement that you signed?

A. It has my signature on it. Apparently it is.

Q. I ask that this be marked Exhibit "A" for identification. Were the goods ordered under that agreement shipped to you?

A. They were.

Q. Was there any defects in the workmanship or material of the goods that were shipped to you under that agreement that you signed?

A. Under initial inspection, there were no defects.

Q. Were there any defects in the workmanship of the goods?

A. The workmanship of the equipment seemed to be O. K.

Q. Were there any defects in the materials?

A. No. No defects in the materials.

Q. And the goods that you ordered were received by your Company?

A. That's correct.

Q. Have the goods been paid for?

A. All but the portion which fail to work under actual operating conditions.

Q. Is that the amount that we are suing for?

A. No Sir, I don't think so, for the simple reason that we have some equipment that was shipped to us and charged to us, which was to replace some equipment which did not work so well and we were supposed to have gotten credit, when we returned the equipment that didn't work so well, namely the motors, and we still have those motors

at the present time, and of course, on the initial agreement when we returned those motors, we would get credit for them.

Q. Is there an agreement that gives you credit for those motors when they are returned?

A. There is.

Q. Is it in writing?

A. Yes, it is.

Q. Have you a copy of that?

A. We have.

Q. When did the Plaintiff agree to give credit for your motors?

A. On invoice dated December 29, 1954, there is a statement typed by a company, "when the two, two horse power motors are returned, we will issue a credit of \$62.79 each or \$125.58."

Q. You have returned those motors?

A. We have not.

Q. Are you ready to return them?

A. Upon settlement of this suit we are going to return the motors. In other words, we are just holding the motors to be sure some sort of a settlement is arrived at, and I might add that one of the new motors that was shipped us at that time has never been taken out of its packing crate.

Q. When you executed this contract, did you notice the Warranty clause on the back of it?

A. I read the statements on the back of the contract, generally speaking, but I did not analyze them word for word, and I was going solely on the statements of ^{Colonel} Gaustad as to what would and would not be done and I might add this, that as far as ^{Colonel} Gaustad is concerned, he has done every thing in his power personally, to see that this contract was full-filled.

Q. What statement by Col. Gaustad did you rely on, which were not carried out by the company?

A. Well, the whole contract revolved about the substitution of the belt conveyors for a screw type or chain type conveyor. Originally I requested consideration of a screw type and a chain conveyor and I think Col. Gaustad will agree with me, when I make the following statement. That he told me that the screw conveyor and the chain conveyor would not be the best to install in this particular application, that the belt conveyor would be the best, and I went accordingly and we ordered what Col. Gaustad suggested.

Q. Before Col. Gaustad made his recommendation, did you explain to him exactly what those goods were to be used for?

A. I did.

Q. Did you explain to him that the ice would come out in flakes?

A. I did.

Q. Didn't the ice come out lumpy at times?

A. Initially, when we first started, it did, but when we reduced the temperature in the ice bin later on, the ice was essentially flakes, and we would be delighted to have you come over and look at it if you wish.

Q. In other words, the fault of the equipment that you bought was that the conveyor would not carry the load?

A. The equipment that we purchased for use in the ice bin would not carry the load in either type of ice that we manufactured at that particular time and we have a conveyor that we are using externally on the loading dock at this particular time that carries the ice and it will still load up and stop. The only difference ~~being~~ between the use and continual use of that conveyor over the one we initially had in the bin is this. We can get to the conveyor on the dock, but we could not get to a conveyor in the ice bin and when it's hung up, we were in a very bad predicament. The one we have on the dock is identical, except it is longer, we can get to it, and we have made no complaint about that particular conveyor, because we can use it.

Q. Mr. Shelkofsky, prior to order, approximately at the time of signing the contract, or shortly thereafter, weren't you and Colonel Gaustad present when you put in a phone call to the New London Engineering Company and discussed this machine?

A. That's correct.

Q. At that time, didn't you ask some question about the efficiency of the machine and didn't Mr. Nash tell you that you would have to assume some of the risk of the operation of the machine?

A. We have assumed some of the risk of the operation of the machine, that is, if we had not, we would have returned all of the equipment.

Q. But he did tell you that you would have to assume some of the risk?

A. I told him that we would not assume all responsibility of the equipment and he told me that we would have to sort of share and share alike. Well, I told him that we would go along and he would have to give me his word that he would do everything he could to get the machine to work and he said he would, and Colonel Gaustad backed him up later on too, and they made attempts from time to time to get this equipment to work satisfactorily, that's the reason why they shipped us the other motors, belt lagging, some rollers and several other minor things that they did, and I must say that they did everything in their power to get the equipment to work.

Q. Do you still have this equipment?

A. Yes, Sir.

Q. And what part of it are you using?

A. Well, we are using all the equipment, with the exception of one of the conveyors that we had in the ice bend at the time. ~~That conveyor~~, the other conveyor that we are using at this particular time is one that we re-built to our own designs and it is working satisfactorily and has been working satisfactorily for about a year.

Q. Well, now, this conveyor that you re-built to your own satisfaction- are you using the materials of the New London Engineering Company?

A. Yes Sir, and it is paid for.

Q. What equipment are you not using?

A. We are not using one belt type conveyor that we originally had in the ~~bend~~. We have since removed it. We ~~disbanded~~ *disassembled* it and we have put it up on blocks and we would like very much to have the New London Engineering Company to come get it.

Q. And you are not using two of the electric motors?

A. Well, we have three motors at this particular time that we would like to return.

Q. At the time that you ordered this machine, had anybody had any experience with handling the type of ice that you were making by conveyors?

A. Not to my knowledge, in this particular end of of the country.

Q. Wasn't it explained by the New London that you were pioneering in this type of conveyor?

A. No, they didn't say that we were pioneering in this type of conveyor.

Q. I withdraw that question. Did you explain to the Colonel what type of ice, in relation to the flow and the fluidity when you ordered this equipment?

A. I did.

Q. Was the type of ice that you turned out when you found this machine did not give you satisfaction, the same type that you predicted or explained to the Colonel that you needed the conveyor to convey?

A. Essentially, yes. We did have some lumps in the conveyor at the start, but we eliminated that by lowering the temperature in the ice bend and this eliminated it completely.

C. I. Shelkofsky
C. I. SHELKOFSKY

Subscribed and sworn to before me the undersigned
Commissioner on this the ____ day of December, 1956.

Commissioner

NEW LONDON ENGINEERING CO.,
A Corporation,

PLAINTIFF

-VS-

GULF SHORES ICE CO., INC.,
A Corporation

DEFENDANT

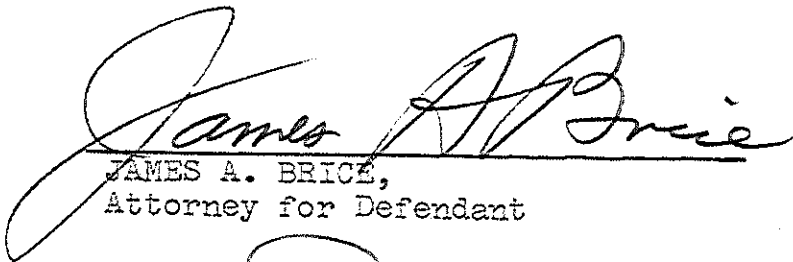
IN THE CIRCUIT COURT OF

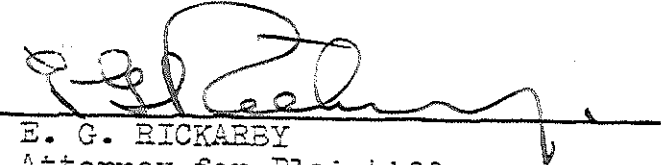
BALDWIN COUNTY, ALABAMA

AT LAW

It is stipulated by and between JAMES A. BRICE, ESQ., Attorney for GULF SHORES ICE CO., INC., a corporation, defendant, and E. G. RICKARBY, Attorney for NEW LONDON ENGINEERING CO., A Corporation, plaintiff, that the testimony of H. M. GAUSTED and C. I. SHELKOFISKY may be taken before Mrs. Rachel Lieb on this the 15th day of November, 1956.

Said testimony is to be taken in accordance with Sections 474 (1) through Section 474 (18) of the 1940 Code of Alabama, as amended by the 1955 Acts, and said testimony is to be transcribed by Mrs. Rachel Lieb, and the parties hereby agree that said testimony will be mailed to the attorney's in the cause, who will allow the witnesses to sign and swear to same, together with any corrections thereof that said witnesses desire made to his testimony conformed to his oral statements, and that said testimony, together with the commissioners certificate shall be used in Court in accordance with Code Sections above cited.


JAMES A. BRICE,
Attorney for Defendant


E. G. RICKARBY
Attorney for Plaintiff

COMMISSIONER'S CERTIFICATE

I, RACHEL B. LIEB, the Commissioner named in the attached commission issued by the Circuit Court of Baldwin County, Alabama, at Law, do hereby certify that in a case pending in said Court, wherein NEW LONDON ENGINEERING CO., a corporation, is Plaintiff and GULF SHORES ICE CO., Inc., a corporation, is Defendant, under and by virtue of the power conferred upon me by said commission, I caused the witnesses named in the commission, namely, H. M. GAUSTAD and C. I. SHELKOFISKY, who were made known to me and known by me to be the identical witnesses named in the commission, to come to my office in the Bank Building in the City of Fairhope, Alabama, where the said witnesses, after being first duly sworn, upon examination of E. G. RICKABBY, attorney for Complainant, and JAMES A. BRICE, Attorney for the Defendant, testified as hereinbefore written.

Said testimony was taken in accordance with Sections 474 (1) through Section 474 (18) of the 1940 Code of Alabama, as amended by the 1955 Acts, and transcribed by RACHEL B. LIEB, as given by the said witnesses, as near as might be in their identical language and after being so reduced to writing, was mailed to said witnesses and read over by them, and they assented to and signed the same, after the transcription. Said testimony is to be used in Court in accordance with Code Sections above cited.

I further certify that I am not of counsel or of kin to either of the parties to the cause, or anywise interested in the results thereof.

IN WITNESS WHEREOF, I hereunto set my hand and seal as Commissioner, this the 15th day of November, 1956.

Rachel B. Lieb
Commissioner