

TOYOMENKA (AMERICA), INC. v. COMBINED METALS CORPORATION
139 Ill. App. 3d 654; 487 N.E.2d 1172 (1985)

LORENZ, J: Counterdefendant Toyomenka (America), Inc., appeals from a \$7,589.65 judgment entered against it following a trial on the counterclaim of counterplaintiff Combined Metals Corporation alleging Toyomenka's breach of certain express and implied warranties concerning steel sold to Combined. On appeal Toyomenka contends: (1) Combined failed to establish that it had properly revoked its acceptance of the steel; (2) Combined failed to establish that Toyomenka breached any express or implied warranties concerning the steel; (3) even assuming such a breach, Combined was not entitled to recover the price of the steel. We affirm.

At trial the following pertinent testimony was adduced. Walter Hauk, president of Combined, testified that Combined was in the business of processing and distributing stainless steel. He had purchased over 1,000 tons of stainless steel from Toyomenka since 1972, dealing primarily with Casey Yawata, the manager of Toyomenka's stainless steel department. In February 1979, the steel at issue was ordered from Toyomenka at a price of \$5,589.65. Confirmation of sale was received in March, and delivery was accepted in September 1979. At a cost of \$2,000, Combined had a processor cut the steel into sheets and then shear it into narrow strips, all according to the specifications of its customer, Teletype Corporation.

In October 1979 the processed steel was shipped to Teletype. Subsequently a letter was received from Teletype and Combined notified Casey Yawata that the steel was too soft. Teletype subsequently rejected the steel in a letter sent in February 1980. Walter Hauk testified that it was the custom in the industry for general application commercial quality 409 stainless steel (the type at issue here) to have a hardness rating of 70 to 80 on a Rockwell B scale. Hauk also testified that Casey Yawata knew of these requirements. ... John Kitson, manager of a physical testing laboratory, testified that he tested samples of the steel in March 1982, and found hardness values from 61 to 62.5 on a Rockwell B scale.

Walter Hauk had also testified that Toyomenka rejected Combined's demand that they accept the material back and credit Combined for its cost. The steel remained in a Combined warehouse at the time of trial. Toyomenka has conceded on appeal that this steel, as processed, was worthless if not suited to the needs of Combined's customer. ... At the conclusion of the trial, the court entered judgment for Combined in the amount of \$7,589.65 (\$5,589.65 for the purchase price and \$2,000 for the cost of processing the steel).

Opinion

1 Toyomenka first contends that Combined did not effectively revoke its initial acceptance of the steel because Combined's attempted revocation came after Combined had substantially changed the condition of the steel. Section 2-608(2) of the Uniform Commercial Code provides that revocation of acceptance must occur "before any substantial change in the condition of the goods which is not caused by their own defects." It is undisputed that in this cause Combined made no attempt to revoke its acceptance of the steel until after a processor had cut the steel into sheets and then sheared it into narrow strips, all in accordance with the specifications of the

ultimate customer. It is undisputed that, assuming the steel was too soft for that customer's use, the processing had rendered the steel worthless. Accordingly, we agree with Toyomenka that Combined, after having substantially changed the condition of the steel, could not subsequently revoke its acceptance.

This conclusion does not, however, preclude Combined from recovering damages. As Toyomenka notes in its initial brief before this court, § 2-607 of the U.C.C. governs this situation. That section provides in pertinent part that although acceptance of goods precludes their rejection and may preclude revocation of acceptance, such acceptance does not impair any other remedy provided for nonconforming goods. The section further provides that the burden is on the buyer to establish any breach. In this cause, Combined alleged that Toyomenka had breached express and implied warranties concerning the hardness of the steel.

We first consider Combined's contention that Toyomenka breached an implied warranty concerning the hardness of the steel. § 2-314 of the U.C.C. provides that in addition to the implied warranty of merchantability which may arise from the sale of goods by a merchant, other implied warranties may arise from course of dealing or usage of trade. In this cause Combined's president, Walter Hauk, testified that it was the custom in the industry for the type of steel at issue here to have a hardness range of 70 to 80 on a Rockwell B scale. It is undisputed that samples of the steel at issue, when measured by Rockwell scale instruments, were found to have hardness values which were all below this range, varying from 58 to 67 Rockwell B. ...

Finally, Toyomenka contends that, even assuming a breach, Combined was only entitled to the difference in value of the goods as accepted (before being processed) and their value had they been as warranted, citing § 2-714(2) of the U.C.C. That section states: "The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount."

These remedies provided by the Code are to be liberally administered, with the goal of placing the aggrieved party in as good a circumstance as if the other party had fully performed. [§ 1-106.]

Combined presented evidence tending to establish that when it received steel warranted by the seller to have a hardness rating sufficient to meet the custom in the industry, it had that steel processed to its customer's specifications, at a cost of \$2,000. After the customer received this steel, it notified Combined that it was too soft. It is undisputed that the processed steel was now worthless if not fit for the customer's use. Combined had purchased the steel for \$5,589.65. Based on this evidence we find that the trial court did not err in determining that Combined's damages were the sum of the contract price and the processing fee, or \$7,589.65.

The judgment of the trial court is affirmed.