

DOCKET NO. 175

Number Term Year

399 September 1961

Heating Acceptance Corporation

Versus

Leo J. Shadreck

25 0599

250

PROMISSORY NOTE

(PENN.)

\$ 1480.20 DuBois, Pennsylvania, August 23 1960
 (City or Town)

For value received, the undersigned (and if more than one, each of them jointly and severally) promise to pay to the order of HOLLAND FURNACE COMPANY, at its office in Holland, Michigan, the sum of One Thousand Four Hundred Eighty and 100 Dollars (\$ 1480.20 67) payable in 60 equal consecutive monthly installments of Twenty Four and 100 Dollars (\$ 24.67) each (except the final installment, which shall be the balance then due on this note), beginning on the 15th day of October, 19 60, and continuing on the same day of each month thereafter until paid in full.

If any installment is not paid within fifteen days after its due date, the undersigned will pay a late charge at the rate of five cents for each dollar of such installment, but not to exceed \$5.00 in respect to any one installment or such lesser maximum amount as may be allowed by law.

If any installment is not paid when due, or if a judgment is entered against any of the undersigned, or if any proceeding is commenced to attach, execute or foreclose on any property of the undersigned, the holder hereof may at his election declare the full unpaid balance immediately due and payable without demand or notice, with interest after maturity at the highest legal rate. If this note is not paid at maturity or at its accelerated maturity as agreed herein, the undersigned and each of them do hereby jointly and severally authorize and empower any attorney, Prothonotary or Clerk of any court of record within the Commonwealth of Pennsylvania or any other State or Territory of the United States to appear for the undersigned in such court and, where required by law, to waive the issuing and service of summons against the undersigned or any of them, and confess judgment against the undersigned or any of them in favor of the holder of this note for the sum due and payable thereon, with costs of suit, and with an attorney's fee of 18% for collection, with or without declaration, with release of errors and without stay of execution. The undersigned also waive the right of inquisition on any real estate levied on, voluntarily condemn the same, authorize the Prothonotary or Clerk to enter such condemnation upon the Fi. Fa., agree that any such real estate may be sold on a Fi. Fa., and waive and release all relief from any and all appraisal, stay, exemption and homestead laws of any State now in effect or hereafter adopted.

The undersigned and all endorsers hereby waive protest of this note and agree that the holder hereof may grant any extension or extensions of the time or times of payment of the within note, without discharging them or any of them from liability hereon.

Address of Customer

None
 (Number and Street or R.F.D.)
 (Witness)

Karthaus, Pennsylvania
 (City) (Zone) (State)
 (SEAL)

5M, 1-59, SVH1264OHAC

William J. Tamm x *Lee J. Shadet* (SEAL)

399 Sept 1961

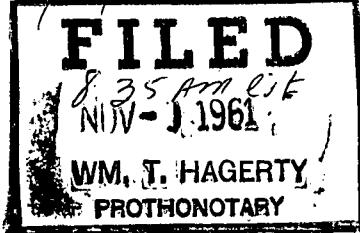
Without Recourse
Pay to the Order of
HEATING ACCEPTANCE CORP.
HOLLAND FURNACE COMPANY

BY *Laurine Chisnell*
Authorized Signature

WITHOUT RE COURSE
Pay to the Order of
HEATING ACCEPTANCE CORP.
HOLLAND FURNACE COMPANY

BY *Laurine Chisnell*
Authorized Signature

Statement to
Hausknecht Inv. Corp
1105-13 St.
Attn: Mr. Re



AUG 24 1961
M. - VILLE, PA

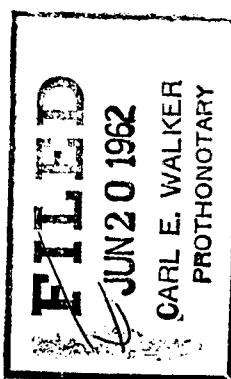
IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.
No. 399 Sept. Term, 1961

HEATING ACCEPTANCE CORP.

VS.

LEO J. SHADECK

PETITION TO OPEN JUDGMENT



BELL, SILBERBLATT & SWOOP
ATTORNEYS AT LAW
CLEARFIELD TRUST CO. BLDG.
CLEARFIELD, PENNA.

COMMERCIAL PRINTING CO., CLEARFIELD, PA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HEATING ACCEPTANCE CORP. :

VS. :

LEO J. SHADECK :

No. 399 Sept. Term, 1961

PETITION TO OPEN JUDGMENT
AND MOTION TO STRIKE

TO THE HONORABLE JOHN J. PENTZ, PRESIDENT JUDGE:

The Petition of Leo J. Shadeck respectfully represents:

1. That he is a life-long resident of Karthaus Township, Clearfield County, Pennsylvania and the owner of a property located in Karthaus Township, Clearfield County, Pennsylvania.
2. That in June of 1959 the defendant installed a hot air Holland Furnace in his residence in Karthaus Township, Clearfield County, Pennsylvania. The said furnace was installed by Ed Neidrich and Thomas Coughlin of the Holland Furnace Company.
3. That as of the date of the installation of the Holland Furnace there was executed by your petitioner a note dated June 15, 1959 in the amount of \$1872, which note required sixty monthly payments of \$31.20 a month and on which note Thomas Coughlin signed as a witness.
4. That following the installation of said furnace in 1959 and the execution of the note referred to in the amount of \$1872, said note was discounted by the Holland Furnace Company with the Heating Acceptance Corp. of Holland, Michigan.
5. Later the Heating Acceptance Corp. advised your

petitioner that they had purchased a note of his in the amount of \$2688 dated January 8, 1960 and your petitioner has no recollection of ever having signed such a note. The monthly payments on the said note were \$44.80 and your petitioner avers that he notified the Heating Acceptance Corp. that he did not sign that note.

6. In April of 1960 Thomas Coughlin and Edward Neidrich called at the residence of the defendant and advised him that he had been cheated by the Holland Furnace Company and the Heating Acceptance Corp. and succeeded in having your petitioner agree to install an Armstrong Furnace, the said Thomas Coughlin giving to your petitioner a paper agreeing to install such furnace, the name of the persons supplying the furnace to be the DuBois Plumbing and Heating Company and Thomas Coughlin signing as Office Assistant.

7. There was also executed on a printed form of the DuBois Plumbing and Heating Company a written contract under which the DuBois Plumbing and Heating Company agreed to supply a coal heater, stating that all Holland Equipment was to be a trade-in and belong to the DuBois Plumbing and Heating Company, the sale price of the new furnace to be \$1200 according to the contract, but no credit is marked thereon for the Holland equipment which was to be removed. The contract provides that the present heating plant was to be removed and was to belong to the DuBois Plumbing and Heating and the said Edward Neidrich and Thomas Coughlin advised your petitioner that the Armstrong Furnace which they wanted to install would run around \$1,000, but the bill as consummated ran close to \$1700.00. A copy of the contract between your petitioner and the DuBois Plumbing and Heating Corporation

is attached hereto marked "Defendant's Exhibit A" and made a part hereof. At that time, the said Ed Neidrich and Thomas Coughlin assured your petitioner that they would pay off the Heating Acceptance Corporation from the equipment that they removed and he need bother no more about it. Subsequently there was received by your petitioner the original note executed by him on June 18, 1959 and shown to have been paid to the Heating Acceptance Corporation on February 15, 1960.

8. In July of 1960 other representatives of the Holland Furnace Company succeeded in getting your petitioner to agree to install a 198 A furnace, which contract called for 60 monthly payments of \$24.78 each, and apparently succeeded in getting your petitioner to sign a note dated August 23, 1960 in the total amount of \$1480.20, being 60 monthly payments of \$24.67 each.

9. That no furnace was ever installed by the Holland Furnace Company subsequent to the original installation in 1959 and the contract which gave rise to the note dated August 23, 1960 to William Fauls, Assistant Manager of the Holland Furnace Company in DuBois was never installed so the note would be void for a failure of consideration.

10. The Armstrong Furnace installed by the DuBois Plumbing and Heating was financed by them with the Thrift Plan Financing Corporation, 217 West Mahoning Street, Punxsutawney, Pennsylvania, and your petitioner has been making payments regularly to the said corporation.

11. That in December of 1960 your petitioner sought

legal counsel who advised the DuBois Plumbing and Heating Company at their address at 230 West Long Avenue in DuBois, Pennsylvania of the fact that the Holland Acceptance Company was pressing Mr. Shadeck on the \$2688 note and advised the DuBois Plumbing and Heating of the promise of their employees to take care of any obligation with the Holland Furnace Company in consideration of their taking the equipment of that company, which letter was never delivered and returned to the office of the defendant's counsel.

12. Defendant's counsel had no knowledge of the note alleged to have been executed August 23, 1960 in the amount of \$1480.20 and was attempting to arrange for an adjustment of the said obligation, the Holland Furnace Company having advised Mr. Shadeck that the amount of his obligation was \$572 in December of 1959 and also advising him that there was a financing charge of \$1300 on another notice and the Heating Acceptance Corp. having advised Mr. Shadeck that the balance due was \$1455 and the Heating Acceptance Corp. having then made the claim for \$148 and the contract number of the various obligations being different, it was impossible for any settlement to be worked out.

13. There was mailed to defendant's counsel a letter from the Heating Acceptance Corp. in response to a letter from the defendant that the Heating Acceptance Corp. would accept less than the face amount of the bill and by letter dated the 29th day of June, 1961 the Heating Acceptance Corp. advised petitioner's counsel that they had purchased this note for \$1005 but that, if it was not paid, they would confess judgment

in the amount of \$1726.02, said letter being the letter of the Collection Manager of Heating Acceptance Corp. dated the 29th day of June 1961 and should be in the file of said corporation.

14. That the contract of July 7, 1960 with the Holland Furnace Company to take out the Armstrong Furnace and replace it with another which was never carried out and for which a note was given to the Holland Furnace Company in the amount of \$1480 and by the Holland Furnace discounted with the Heating Acceptance Corp., said contract was never performed and no value ever received by your petitioner.

15. That judgment was entered by the Heating Acceptance Corp. on November 1, 1961 on said note after considerable correspondence about the same with petitioner's counsel, and your petitioner avers that the Heating Acceptance Corporation was fully aware of the conditions and manner in which the Holland Acceptance Corp. out of the DuBois office was conducting its business and that the first note executed in 1959 was cancelled and, while your petitioner admits that the signature on the note on which judgment was entered is his signature, he avers that he has been defrauded by the employees of the Holland Furnace Company and the Heating Acceptance Corp. and that the Heating Acceptance Corp. is not a holder in due faith but that it purchases obligations from the Holland Furnace Company only and that the agents of the Holland Furnace Company are authorized and do receive back from the Heating Acceptance Corp. various notes as necessary to conduct this practice. It is also averred that there was no

consideration for the note upon which judgment was entered.

16. The said judgment was confessed without local counsel being employed and there is no address of the Heating Acceptance Corporation given on said judgment. The last known address of the Heating Acceptance Corp. is 489 Columbia Avenue, Holland, Michigan.

17. Under date of June 4, 1963 the Heating Acceptance Corp. had counsel in Philadelphia write your petitioner with respect to the amount due on another note dated November 15, 1960 which note your petitioner denies any knowledge whatsoever.

18. That your petitioner requests that said judgment be stricken from the record or that a rule be issued to permit the said judgment to be opened and he let into a defense.

And he will ever pray.

BELL, SILBERBLATT & SWOOP
By


F. Cortez Bell
Attorneys for Leo J. Shadreck

STATE OF PENNSYLVANIA

:

COUNTY OF CLEARFIELD

:

SS:

:

LEO J. SHADECK, being duly sworn according to law,
deposes and says that the facts set forth in the within Petition
are true and correct to the best of his knowledge, information
and belief.

Leo J. Shadec

Sworn and subscribed to before
me this 20th day of June, 1963.

Carl E. Walker

PROTHONOTARY

My Commission Expires
1st Monday Jan. 1966

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HEATING ACCEPTANCE CORP. :

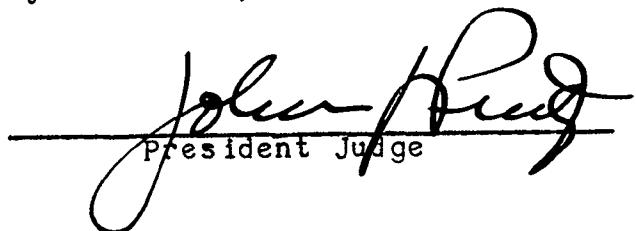
VS. :

LEO J. SHADECK :

ORDER

NOW, this 20 day of June, 1963, Rule to Show Cause why said judgment should not be stricken or opened and the Defendant left into a defense is awarded, notice of such hearing to be given to the Plaintiff by registered mail with return card at their office in Holland, Michigan. After the taking of ~~argument~~ testimony, this case to be placed on the ~~Trial~~ List and disposed of by the court in such manner as deemed to be fit, right and proper.

By the Court,



John Reed
President Judge

ALL BLANKS IN THIS INSTRUMENT MUST BE COMPLETED

THIS IS A RETAIL INSTALMENT OBLIGATION (HEATING)

SELLER: Dubois Plumbing and Heating Co., Dubois, Pa.

Date April - 1960

Branch Office Dubois, Pa. Census Zone No.

BUYER: Mr. and Mrs. Leo Shadick Phone No.

BUYER'S ADDRESS: 34 Main St, Rutherford Number and Street—Road and Route City or Post Office Zone State

OWNER OF PREMISES: 34 Main St, Rutherford Number and Street—Road and Route City or Post office Zone State of One No. 34" Coal Size

Heating System, consisting of: Heating plant with oil burner — gas burner

34" Square Package Coal, accessories, piping in basement, air-e-u-well — filter-blower — stoker-controls

registers, grilles, wall stacks, register boxes, regulator, and all other fittings and materials, with connections to the following rooms:

| NAME OF ROOM FIRST FLOOR | NAME OF ROOM SECOND FLOOR | NAME OF ROOM THIRD FLOOR |
|--|---------------------------|--------------------------|
| Reconnect to present pipe. as to be and to belong to Seller's Plumbing & Heating Co. | all Holland boys | |

The Seller sells, and the Buyer buys the Heating System for \$ the Time Sale Price thereof, i.e. the total of the Cash Sale Price and the Credit Service Charge, if any.

| | | | |
|--------------------------|-------------|--------------------------|------------|
| 1. Cash Sale Price | \$1300.00 | 5. Total | \$1348.00 |
| 2. Trade in: Description | Holland 84 | 6. Cash Down Payment | \$ 149.00 |
| Allowance | \$ | 7. Principal Balance | \$ |
| 3. Net Price | \$ 49.00 30 | 8. Credit Service Charge | \$ |
| 4. Sales Tax | \$ | 9. Time Balance | \$ 1200.00 |

Buyer will pay the Time Balance in monthly instalments of \$

beginning June 1960. All instalments are payable at the Seller's General Office

or at June 1960. If any instalment is in default for a period of not less than

ten (10) days, the Buyer shall pay a delinquency charge of 5% of the instalment or \$5.00, whichever is less.

TERMS AND CONDITIONS

1. All warm air registers furnished by Seller to be black japanned unless otherwise specified. Return air grilles to be of construction and oak-grain finish. On replace work Seller may use all materials now on present installation which Seller considers in good condition. All new material used shall be of the best quality used for such work; and shall be made up and placed in a thorough and workmanlike manner. BUYER AGREES TO PROVIDE FOR THE HEATING PLANT A GOOD AND SUFFICIENT CHIMNEY FOR RECEIVING SMOKE PIPE, AND IF THE SAID CHIMNEY DOES NOT PROVE EFFICIENT, BUYER TO ADJUST THE SAME PROPERLY AT BUYER'S OWN EXPENSE, TO INSURE A PERFECT DRAFT FOR THE HEATING PLANT.

2. All necessary excavating and plumbing shall be done by Buyer; cutting through cellar walls by Seller; all cutting and carpenter work by Seller; return air ducts by Seller.

34" Square Package Coal heating plant now installed to be dismantled by Seller's Plumbing & Heating Co. and to belong to Seller's Plumbing & Heating Co.

3. Heating plants used in unfinished buildings and those used before the installation is completed are used at Buyer's risk. Any extras not included in this obligation shall be charged for at reasonable rates. Loss or damage to or destruction of the property covered hereby shall not release the Buyer from his obligations hereunder.

4. If Buyer defaults in any payment, or in the performance of any of the agreements herein, or upon the initiation of a proceeding under the Bankruptcy Act by or against the Buyer or the death of the Buyer or the making by the Buyer of an assignment for the benefit of his creditors, the entire amount unpaid shall, at the option of Seller, become due and payable. Buyer shall also pay an attorney's fee of 20% of the amount due and payable, provided such attorney's fee is permitted by law.

5. This obligation may be assigned by Seller. If so assigned, the Buyer agrees not to assert any claim or defense arising out of the sale, provided, the assignee acquired said obligation for value and in good faith, and, provided, further, that within 10 days after mailing a notice of said assignment to Buyer at the address shown in this obligation the assignee did not receive of the facts giving rise to such claim or defense. At the request of the Seller or the assignee, the Buyer will execute a note evidencing his obligation to pay the Time Balance due under this obligation, which may be similarly assignable.

6. The Buyer and Seller hereby waive the right to jury trial in any action, proceeding or counterclaim arising directly or indirectly out of this obligation and brought or asserted by one party against the other.

7. Seller shall not be liable for its failure to deliver, or any delay in delivery when such failure or delay is due to strikes, fires accidents or other causes beyond the control of the Seller.

8. This obligation with attached riders, and note if any, contains the entire agreement between the parties. Oral understandings and agreements with representatives shall not be binding upon the Seller. There are no warranties, express or implied, other than those set forth herein. The failure or omission of Seller to demand or enforce prompt or full compliance with the terms or conditions hereof shall not constitute a waiver of any of its rights hereunder.

9. This obligation is subject to cancellation by the Seller within (15) days of the date hereof if, in the Seller's judgment, the Buyer's credit is insufficient to support this obligation.

10. Delivery of goods called for hereunder will not be made at the time of execution hereof. Identifying marks or numbers of such goods, if any, and the due date of the first instalment due hereunder may be left blank and inserted by the seller in the seller's counterpart of this obligation and in any note executed hereunder after signature by the buyer.

GUARANTEE

After compliance with the terms of this obligation on Buyer's part, Seller guarantees that the heating plant will warm all rooms to which complete runs of pipe have been installed by Seller, provided proper fuel is furnished and Seller's instructions obeyed. Seller reserves the right to locate the heating plant, the piping, registers and grilles. In replacement installations, heating service is not guaranteed in rooms where pipes or heat stacks are already installed in the premises, unless by a special notation attached to this obligation and made a part of the same. If an Air-Conditioning Unit is included in this obligation, Seller does not guarantee to lower the room temperature. Seller does not guarantee to remove smoke or odors. All new electrical apparatus, controls, motors, fans, thermostats, gas burners, oil burners installed hereunder, are guaranteed against all defects in materials or workmanship for a term of one year from date of this obligation. Seller further guarantees free service on all new equipment installed hereunder for a term of 15 years from the date hereof. The Buyer must notify Seller in writing within a period of 15 years from date of installation of the equipment specified hereunder, if the said heating plant fails to deliver the heating service guaranteed under this obligation, or of any other violations of the Seller's guarantees.

The Buyer acknowledges receipt of an executed copy of this RETAIL INSTALMENT OBLIGATION.

x Leo Shadick
Buyer's Signature

Accepted: DUBOIS PLUMBING AND HEATING CO.

Buyer's Signature

By

Elmer G. Shadick

Defendant's Exhibit A