

[Cite as *Perkins v. Lebanon Correctional Inst.*, 2006-Ohio-7183.]

IN THE COURT OF CLAIMS OF OHIO

HENRY PERKINS :  
 :  
 Plaintiff :

v. :

CASE NO. 2005-11051-AD

LEBANON CORRECTIONAL :  
 INSTITUTION :  
 :  
 Defendant

MEMORANDUM DECISION

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FINDINGS OF FACT

{¶ 1} 1) On June 6, 2005, plaintiff, Henry Perkins, an inmate incarcerated at defendant, Lebanon Correctional Institution ("LeCI"), went to the LeCI commissary to receive a CD player he had purchased from an approved vendor, Union Supply Company. Funds had been withdrawn from plaintiff's inmate account on June 2, 2005, to purchase the CD player. Plaintiff related that after receiving the CD player he discovered the device was malfunctioning. Therefore, according to plaintiff, he returned the electronic device to LeCI commissary personnel who in turn were supposed to send the item to the manufacturer for repairs. Plaintiff maintained he returned the CD player on or about June 20, 2005, and received the item back on July 26, 2005. Instead of sending the returned CD player to the manufacturer, LeCI staff sent the device to the vendor, Union Supply Company. Apparently, the CD player was sent back from the Union Supply Company to the LeCI commissary. Plaintiff asserted the CD player was still malfunctioning after being sent back to the vendor.

{¶2} 2) Consequently, plaintiff filed this complaint seeking to recover \$70.50, the purchase price of the CD player, plus \$25.00 for filing fee reimbursement. Plaintiff contended defendant sold him a defective product and he is therefore entitled to a refund of the purchase price of that product. Plaintiff recorded the problems with the CD player included: 1) "[e]ating up new batteries right away. 2) [h]eadphones player lower on one side, it's the CD player earphone jack."

{¶3} 3) Defendant acknowledged plaintiff purchased a CD player and received it from the LeCI commissary and returned the item claiming it was defective. Also, defendant admitted the returned CD player was forwarded to Union Supply Company, the distributor of the device, and subsequently returned. Defendant denied the CD player was sold in a defective condition. Defendant noted the device was returned from the Union Supply Company and, "[t]he manufacturer concluded that the CD player was not defective." Defendant suggested plaintiff waived any right to pursue an action for a refund of the purchase price of the CD player. Defendant observed the LeCI commissary sales receipt for the purchase of the CD player contains the writing, "All Sales Are Final." Defendant proposed this writing prevents plaintiff from prevailing in an action to recover a refund for purchasing a proven defective product. Defendant contended plaintiff failed to prove LeCI personnel were responsible for any perceived damage to the purchased product. It is uncertain whether or not Union Supply Company forwarded the CD player to the manufacturer, jWIN Electrics Corporation for examination.

{¶4} 4) In his response to defendant's investigation report,

plaintiff asserted the CD player was not sent to the manufacturer to examine for defects, but was sent to Union Supply Company, the approved vendor of the electronic device. Plaintiff explained the CD player should have been sent to jWIN Electronics Corporation, the actual manufacturer of the device. Plaintiff argued defendant, by sending the CD player to the vendor rather than the manufacturer for a service evaluation, "caused the 90-Day Limited Warranty for Labor to expire." Therefore, plaintiff reasoned, without an effective repair warranty he is forced to pursue a claim against defendant for recovery of the purchase price of his perceived defective product. Plaintiff maintained defendant breached a, "duty to sell goods and products which are not defective." Plaintiff contended, defendant, by sending the CD player to the wrong place for evaluation, relied on an unqualified opinion from an unknowledgeable source that the product was not defective.<sup>1</sup>

{¶ 5} 5) Plaintiff submitted a copy of the written warranty and instructions he received with the purchase of the CD player.<sup>2</sup>

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<sup>1</sup> Plaintiff in his response requested the court and defendant's legal representative appear at defendant's institution and examine the electronic device for defects. Plaintiff's request is denied.

<sup>2</sup> "jWin. Limited Warranty  
"90 Days Labor One Year Parts  
"jWIN Electronics Corp ("jWIN") warrants the product to be free from 'Defects' in materials under normal use for a period of 'One Year' from the date of original purchase. The Warrant is 'Not' transferable. jWIN agrees, that within the initial '90 Day' period to repair the product if it is determined to be defective at 'No Charge.'" It is further agreed that jWIN will cover the cost to repair or replace damaged 'PARTS' only for a total period of 'One Year' from the date of original purchase. The warrant does not cover cosmetic damage, antennas, AC cords, cabinets, headband, ear-pads, or damage due to line power surges, connection to improper voltage supply or settings, misuse, mishandling, improper application, accident, acts of God,

This warranty included specific instructions for product purchasers to follow in event of a noticed defect in the CD player. Plaintiff did not pursue any remedy offered in the warrant. Plaintiff never contacted jWIN Electronics Corporation concerning any problem regarding the operation of his CD player. Despite being given specific instructions regarding the process to be initiated in returning his CD player, plaintiff did not follow these instructions. Plaintiff's CD player was returned to his possession on July 26, 2005, and he was told no defects were discovered in the product. Plaintiff's "90 Days Labor" warranty with the manufacturer remained in effect for

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or attempted repair by an unauthorized service agent.

"To obtain factory service please contact jWIN Electronics for Merchandise Return Authorization (MRA) number by sending a self addressed stamped envelope to the address below. The original purchaser MUST present a sales receipt/proof of purchase indicating date of purchase, amount paid, and place of purchase. Send the unit pre-paid to the address below in the original packaging or reasonable substitute to prevent damage. You 'Must' include your full name shipping address and telephone number and Merchandise Return Authorization (MRA) for our reference. No return will be shipped back to a PO Box. Please include your check or money order in the amount of \$12.00, payable to jWIN Electronics Corp., to cover handling and return shipping charges. jWIN will not be responsible for delays or unprocessed claims resulting from a purchaser's failure

to provide any or all of the necessary information. Send all inquiries or returns to:

"Customer Service Dept. jWIN Electronics Corp., 51-41 59<sup>th</sup> Place, Woodside, N.Y. 11377.

"There are no express warranties except as listed above.

"REPAIR OR REPLACEMENT AS PROVIDED UNDER THIS WARRANTY IS THE EXCLUSIVE REMEDY OF THE CONSUMER. jWIN SHALL NOT BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES FOR BREACH OF ANY EXPRESS OR IMPLIED WARRANTY ON THIS PRODUCT EXCEPT TO THE EXTENT PROHIBITED BY APPLICABLE LAW. ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE ON THIS PRODUCT IS LIMITED IN DURATION TO THE DURATION OF THIS WARRANTY.

"Some states do not allow the exclusion or limitation of incidental or consequential damages, or limitations on how long an implied warranty lasts, so the above exclusions or limitations may not apply to you. This warranty gives you specific legal rights and you may also have other rights, which vary from state to state."

approximately forty days past July 26, 2005. Plaintiff did not choose to contact the manufacturer concerning any problems he encountered with his returned CD player.

#### CONCLUSIONS OF LAW

{¶6} Plaintiff has failed to produce sufficient evidence to establish defendant sold him a defective product. Plaintiff has failed to establish the product was defective at the time of purchase. Plaintiff has failed to prove defendant breached any duty of care owed to him. Plaintiff has failed to prove defendant prevented him from pursuing his own service remedies with the manufacturer of the CD player. Plaintiff has not offered any authority to support his entitlement to a refund of the product's purchase price from defendant. Plaintiff's claim rests with the manufacturer of the device or vendor. Furthermore, plaintiff has failed to prove defendant was the actual seller of the CD player. Evidence tends to support the conclusion Union Supply Company, not LeCI, was the seller of the CD player. Any cause of action plaintiff may have regarding a refund of the purchase price or replacement of this product lies against the seller, Union Supply Company, or manufacturer, jWIN. This court, under R.C. 2743 et al. does not have jurisdiction to decide claims against non state entities.

{¶7} The Ohio Administrative Code 5120-9-33 (E) and (F) governing inmate property restrictions state:

{¶8} "(E) Inmates may possess only personal property items received through an institutional commissary, and/or from a non-institutional source approved by the director or designee. Non-institutional sources may include approved visitors and/or

vendors identified by the director or designee.

{¶ 9} "(F) Information on approved vendors, product availability and making purchases will be appropriately provided to inmates."

{¶ 10} Plaintiff purchased his CD player from an approved vendor, Union Supply Company. Any action he may claim against the vendor, Union Supply Company, or manufacturer, jWIN, under R.C. 1302 cannot be pursued in this court.

{¶ 11} Plaintiff has the burden of proving, by a preponderance of the evidence, that he suffered a loss and that this loss was proximately caused by defendant's acts. *Barnum v. Ohio State University* (1977), 76-0368-AD. Plaintiff must produce evidence which affords a reasonable basis for the conclusion defendant's conduct is more likely than not a substantial factor in bringing about the harm. *Parks v. Department of Rehabilitation and Correction* (1985), 85-01546-AD. Plaintiff has failed to prove defendant is responsible for any loss he may have suffered.

IN THE COURT OF CLAIMS OF OHIO

HENRY PERKINS :

Plaintiff :

v. :

CASE NO. 2005-11051-AD

LEBANON CORRECTIONAL :  
INSTITUTION :

ENTRY OF ADMINISTRATIVE  
DETERMINATION

Defendant :

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Having considered all the evidence in the claim file and, for the reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

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DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

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Plaintiff, Pro se

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