

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

HIGHLAND TANK AND
MANUFACTURING COMPANY,

Appellant

v.

INDUSTRIAL LABOR & EQUIPMENT
SERVICES, LLC, a LA Limited Liability
Company; TRI STATE TRUCKING CO., a
PA Corporation; AND ROYAL OILFIELD
SERVICES, LLC, a PA Limited Liability
Company,

Appellees

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 2058 MDA 2013

Appeal from the Judgment entered on November 15, 2013
in the Court of Common Pleas of Tioga County,
Civil Division, No. 293 CV 2012

BEFORE: LAZARUS, STABILE and MUSMANNO, JJ.

MEMORANDUM BY MUSMANNO, J.:

FILED JULY 07, 2014

In this contract dispute, Highland Tank and Manufacturing Company ("Highland" or "Plaintiff") appeals from the Judgment entered against it and in favor of Industrial Labor & Equipment Services, LLC ("ILES"), Tri State Trucking Co. ("Tri State"),¹ and Royal Oilfield Services, LLC ("Royal") (collectively referred to as "Defendants"). Additionally, ILES has filed a Motion to Quash Highland's appeal. We deny the Motion to Quash and affirm the Judgment.

¹ Tri State is not a party to this appeal.

The trial court set forth the relevant facts and procedural history underlying this appeal in its Opinion, and we incorporate the court's recitation herein by reference. **See** Trial Court Opinion, 7/19/13, at 1-10.²

Following the conclusion of a non-jury trial, the trial court filed an Order on July 19, 2013, dismissing Highland's Complaint and directing the entry of judgment against Highland.³ Highland timely filed a Notice of Appeal.

Highland presents the following issues for our review:

1. Whether the trial court committed an error of law and/or abused its discretion when it ruled that the signed [P]urchase [O]rder from [ILES] to [Highland] was not proof of a valid contract between the parties?
2. Whether the trial court committed an error of law and/or abused its discretion when it ruled that delivery of certain tanks was never made [] pursuant to the delivery instructions on the signed Purchase Order[,], when the former [Chief Executive Officer ("CEO")] of ILES (and another witness) testified that delivery was[,], in fact[,], made in accordance with the signed Purchase Order?
3. Whether the trial court committed an error of law and/or abused its discretion when it ruled [that] ILES was not liable to Highland [] because certain invoices attached to the Complaint of [Highland] were directed to Royal ...[,], but did not apply the same line of reasoning to hold Royal liable to Highland []?

² For the purpose of this appeal, the purchase order dated October 4, 2011 (hereinafter, the "Purchase Order") is the crux of Highland's claims. Accordingly, we have appended a copy of the Purchase Order to the trial court's July 19, 2013 Opinion.

³ Upon Praecipe by Highland, the prothonotary entered Judgment in favor of Defendants on November 15, 2013.

Brief for Appellant at 5.

Initially, we must address ILES's Motion to Quash, wherein it urges us to quash Highland's appeal, pursuant to Pa.R.A.P. 2101,⁴ based upon its filing of a substantially defective appellate brief and reproduced record. Specifically, ILES objects to these documents because, *inter alia* (1) Highland's brief is missing three pages;⁵ (2) Highland failed to include in its reproduced record several documents, including portions of the Notes of Testimony from trial, a trial exhibit, and Highland's Praeceptum for Judgment, all of which Highland had designated for reproduction; (3) Highland's brief contains only four citations to the reproduced record; and (4) Highland failed to indicate in its brief that the trial court did not order the filing of a Pa.R.A.P. 1925(b) Concise Statement of Errors Complained of on Appeal. **See** Motion to Quash, 2/24/14, at 4-5. We conclude that these defects are not so substantial as to warrant quashal of the appeal pursuant to Pa.R.A.P.

⁴ Rule 2101 provides that "[b]riefs and reproduced records shall conform in all material respects with the requirements of these rules as nearly as the circumstances of the particular case will admit, otherwise they may be suppressed, and, if the defects are in the brief or reproduced record of the appellant and are substantial, the appeal or other matter may be quashed or dismissed." Pa.R.A.P. 2101.

⁵ Pages 17, 18 and 19 are omitted from Highland's brief. Highland's Argument section abruptly terminates on page 16, and the next page, page 20, sets forth Highland's Conclusion.

2101, and thus deny ILES's Motion to Quash.⁶ Accordingly, we proceed to address the merits of Highland's issues.

Our standard of review is as follows:

Our appellate role in cases arising from non-jury trial verdicts is to determine whether the findings of the trial court are supported by competent evidence and whether the trial court committed error in any application of the law. The findings of fact of the trial judge must be given the same weight and effect on appeal as the verdict of a jury. We consider the evidence in a light most favorable to the verdict winner. We will reverse the trial court only if its findings of fact are not supported by competent evidence in the record or if its findings are premised on an error of law. The court's findings are especially binding on appeal, where they are based upon the credibility of the witnesses, unless it appears that the court abused its discretion or that the court's findings lack evidentiary support or that the court capriciously disbelieved the evidence. ... To the extent that the trial court's findings are predicated on errors of law, we review the court's findings *de novo*.

McEwing v. Lititz Mut. Ins. Co., 77 A.3d 639, 646 (Pa. Super. 2013)

(citations, quotation marks and paragraph breaks omitted).

Initially, Highland concedes that the sole cause of action pled in its Complaint was for breach of contract based upon an alleged *oral* contract. Brief for Appellant at 10. However, Highland argues that "the Purchase Order attached to the [C]omplaint is clearly a written instrument, and that written instrument should be the prevailing document used to determine if a

⁶ The Motion to Quash requests, in the alternative, that this Court order Highland to file a complete appellate brief and reproduced record that complies with the Pennsylvania Rules of Appellate Procedure, and grant ILES an enlargement of time to file its responsive brief. **See** Motion to Quash, 2/24/14, at 6-8. We likewise deny this request and will consider the briefs that are presently before us.

contract existed between Highland [] and ILES.” **Id.** at 11.⁷ Highland points out that the Purchase Order (1) was signed by Jack Mauer, the CEO of ILES at the relevant time; (2) named ILES as the customer/buyer; (3) named Highland as the “Vendor”; and (4) set forth the quantity of storage tanks to be purchased (60)⁸ and the price of those tanks. **Id.** at 9-10. Moreover, according to Highland, the signed Purchase Order constitutes sufficient written evidence of the alleged contract between it and ILES to satisfy the Statute of Frauds. **Id.** at 11; **see also** 13 Pa.C.S.A. § 2201(a).

“To show a breach of contract, a party must establish: (1) the existence of a contract, including its essential terms, (2) a breach of a duty imposed by the contract, and (3) resultant damages.” **McCausland v. Wagner**, 78 A.3d 1093, 1101 (Pa. Super. 2013) (citation and quotation marks omitted). An essential element to any contract is the identity of the parties thereto. **Ludwinska v. John Hancock Mut. Life Ins. Co.**, 178 A. 28, 30 (Pa. 1935).

In support of its determination that no enforceable contract existed between Highland and any of the Defendants, the trial court stated that

[Highland] cannot prove the identity of its counterpart in the [alleged] transaction at issue; specifically, [Highland] cannot show by a preponderance of the evidence the person/entity to whom it intended to sell its tanks, or by whom the tanks were to

⁷ Highland does not advance any claim against Royal.

⁸ Royal paid Highland \$422,643.60 for 16 of the 60 tanks, and Highland’s Complaint sought payment for the remaining 44 tanks. **See** Complaint, 4/2/12, at ¶ 11; **see also** N.T., 4/23/13, at 21, 59.

be purchased. No enforceable agreement, oral or otherwise, was reached between Highland and any [D]efendant to purchase the tanks.

* * *

This matter can best be described as a bad business deal. The parties were attempting to manufacture, sell, buy and lease well over one million dollars['] worth of tanks without the benefit of a written contract. Instead, the parties chose to engage in a costly transaction based upon nebulous activities. The bottom line is that [Highland] believes that someone owes it money[,] but it does not know who or what entity is responsible for the debt.

Trial Court Opinion, 7/19/13, at 10, 12 (paragraph breaks and numbering omitted). The trial court's foregoing analysis is supported by the record.

Even assuming, *arguendo*, that the Purchase Order constituted an enforceable contract between Highland and ILES, Highland's breach of contract claim would fail, since there is no evidence of record that Highland tendered delivery of any tanks to ILES.⁹ In its Opinion, the trial court found that (1) Tri State had picked up the tanks at Highland's facility, Trial Court Opinion, 7/19/13, at 7; (2) "Highland did not hire Tri State to deliver the tanks to ILES[,] "*id.*" at 6; (3) "Highland did not and does not know the identity of the buyer of the tanks[,] "*id.*" at 8; (4) "Highland does not know if the tanks were ever delivered to ILES after Tri State picked them up[,] "*id.*" at 7; and (5) "ILES has never taken possession of any of the tanks, nor has it ever been compensated for use or rental of the tanks." *Id.* Based upon

⁹ This matter implicates Highland's second issue on appeal. **See** Brief for Appellant at 14-16.

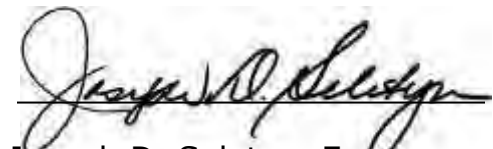
these findings, the trial court concluded that “[Highland] failed to perform its obligations under the alleged contract with ILES because it failed to deliver the tanks to ILES or make arrangements to ensure their delivery to ILES. Therefore, no payment is due to [Highland] by ILES.” *Id.* at 12. Our review discloses that the trial court’s factual findings are supported by competent evidence of record, and we agree with its conclusion.

Finally, we will not address Highland’s third issue, as its brief contains no argument pertaining to this issue. ***See Commonwealth v. Renchenski***, 988 A.2d 699, 703 (Pa. Super. 2010) (finding waiver where the appellant did not present any argument, citation, or legal authority in support of an issue on appeal); ***see also*** Pa.R.A.P. 2119(a).

Based upon the foregoing, we discern no abuse of discretion or error of law in the trial court’s entry of Judgment against Highland and dismissal of its Complaint. Accordingly, we deny ILES’s Motion to Quash, and affirm the Judgment.

Motion to Quash denied; Judgment affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 7/7/2014

J-251054/14
J-537034-14

HIGHLAND TANK AND
MANUFACTURING COMPANY,
A PENNSYLVANIA CORPORATION,
Plaintiff

: IN THE COURT OF COMMON PLEAS
: OF TIOGA COUNTY, PENNSYLVANIA
/ : NO. 293 CV 2012

VS.

INDUSTRIAL LABOR AND EQUIPMENT
SERVICES, LLC, and
TRI STATE TRUCKING COMPANY, and
ROYAL OILFIELD SERVICES, LLC,
Defendants

PROthonotary &
CLERK OF COURTS
2013 JUL 19 PM 3:36
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TIOGA COUNTY, PA

OPINION

The court heard testimony at a bench trial in this matter on April 23, 2013 regarding an alleged oral contract entered into between Plaintiff and Defendants regarding the manufacture and sale of certain storage tanks. Following trial, the court directed the parties to submit proposed findings of fact and conclusions of law. The trial transcript was prepared and copies were provided to counsel for the parties. All parties have filed their respective findings and conclusions and the court is now ready to render a verdict with the assistance of counsels' submissions.

Findings of Fact

1. Plaintiff Highland Tank and Manufacturing Company ("Highland") is a Pennsylvania corporation.
2. Industrial Labor and Equipment Services, LLC is a Louisiana limited liability company.
3. Defendant Tri-State Trucking Company ("Tri-State") is a Pennsylvania corporation.

4. Defendant Royal Oilfield Services, LLC (“Royal”) is a Pennsylvania limited liability company formed on October 11, 2011. (N.T. p.69, line 3)
5. Industrial Labor and Equipment Services LLC of PA (“ILES-PA”) holds a 51% membership/ownership interest in Royal, while Tri-State holds 49%, according to the Royal Operating Agreement. (N.T. p.89, line 14)
6. Defendant ILES has neither an ownership nor membership interest in Royal.
7. ILES-PA is not a party to this litigation.
8. Dana Keith is the general manager of the Stoystown location of Plaintiff. (N.T. p.2, line 11-17, while Chris Myers is the credit manager at Highland. (N.T. p.32, line 15-21).
9. Joseph David “J.D.” Futch is the sole member of ILES. (N.T. p.55, line 12; p.56, line 7)
10. Jack Mauer was briefly the CEO of ILES (May, 2011 to December 2011) (N.T. p.71 line 12-25) and was asked to testify at these proceedings by Tri-State. (N.T. p.77, line 16.)
11. Bradley Robinson is president of Tri-State and manager of Royal. (N.T. p.88, line 10-17). He does not report to anyone, he is the only person operating Royal, and this has been the case for the past year. (N.T. p.97, line 9-19).
12. In July and August, 2011, a number of meetings took place between representatives of Plaintiff, representatives of Defendant ILES, and Brad Robinson, to discuss the potential manufacture and sale of certain storage tanks to be used in the gas industry.
13. In August and September, 2011, various “quotes” were issued by Plaintiff for the proposed manufacture of certain storage tanks, with each “quote” showing a different customer/buyer. (See Plaintiff’s Exhibit 1)
14. The final “quote”, dated September 21, 2011, contained a notation from Plaintiff that “We

will start delivery within 4-5 weeks of signed approved drawings and P.O.”

15. In September 2011, various drawings and designs of the proposed tanks were submitted to Jack Mauer, CEO of Defendant ILES. (N.T. page 74, lines 7-9)

16. On September 22, 2011, Jack Mauer, CEO of Defendant ILES, signed a final drawing showing the final design of the tanks to be manufactured.

17. On September 20, 2011 and October 4, 2011, Jack Mauer, CEO of Defendant ILES, signed Purchase Orders for 60 tanks, and the customer/buyer of said tanks was listed as Defendant ILES. (Plaintiff’s Exhibit 2)

18. Plaintiff’s designated representative testified at trial that all of the “quotes” identified in Plaintiff’s Exhibit 1 were superseded by the Purchase Order identified in Plaintiff’s Exhibit 2. (N.T. p. 28, lines 16-18)

19. All of the written documentation submitted by Plaintiff, other than the “quotes” that Plaintiff has admitted were rendered moot by the signed Purchase Order, show that the customer/purchaser of the tanks was either Defendant ILES or Defendant Royal, and not Defendant Tri-State. (Plaintiff’s Ex. 2, 3,4,5)

20. Plaintiff’s complaint alleges a single count or cause of action, and that single count is for a verbal contract only, not for *quantum meruit* or unjust enrichment or any other remedy.

21. Neither of Plaintiff’s witnesses could pinpoint with any clarity or precision when the alleged verbal contract was formed, with whom it was formed, or what the terms of the verbal contract were. Specifically:

a) When asked when the verbal contract was formed, Plaintiff’s General Manager, Dan Keith, replied “I’m not sure I can answer that question.” (N.T. p. 27, lines 10-12).

b) When asked whether the signed Purchase Order superseded all of the prior quotes that were given, Plaintiff's General Manager, Dana Keith, replied "Yes." (N.T. p. 28, lines 16-18).

c) When asked how he would characterize the verbal contract, Plaintiff's General Manager, Dana Keith, replied, "That's a really good question because I really don't know if I ever really knew." (N.T. p. 31, lines 11-16)

d) When asked if he was familiar with the Purchase Order and the quotes in this case, Plaintiff's Credit Manager, Chris Myers, testified "More so the Purchase Order. I don't deal with quoting and the nuts and bolts of things but more the PO." (N.T. p. 33, lines 10-14).

22. Both of Plaintiff's witnesses placed far greater weight and importance on the signed purchase order than on any prior quote or on any verbal discussions.
23. Plaintiff never submitted an Invoice in the name of Defendant Tri State.
24. Plaintiff never received a purchase order from Defendant Tri State.
25. Plaintiff never requested that Defendant Tri State sign any documentation as guarantor or obligor for the purchase of the tanks at issue.
26. Plaintiff never conducted a credit check of Defendant Tri State. (N.T. p. 33, lines 22-24)
27. Highland's Complaint alleges an oral contract existed between Highland and the defendants for the sale of sixty (60) tanks. (N.T. p.26, line 20)
28. Dana Keith, Jack Mauer and Brad Robinson all testified that they could not attest to formation of a verbal contract and were not present when it was allegedly formed. (N.T. p. 27, line 10-12; p.73, line 4; p.91, line 13)
29. Mr. Keith was personally involved with the transaction at issue in this trial on behalf of

Plaintiff, and at all times material hereto, acted within the scope of his employment with and authority from Plaintiff. (N.T. p.4, line 4).

30. Mr. Keith initially negotiated a proposed transaction with Mr. Robinson and Mr. Mauer. However, he ultimately ceased dealing with Mr. Mauer and dealt exclusively with Mr. Robinson and other Tri-State employees. (N.T. p. 17, line 13-17.)

31. Highland's contact person during the course of this transaction was Mr. Robinson, president of Tri-State Trucking, and Manager of Royal. (N.T. p. 25, line 5).

32. Mr. Robinson was the representative of Tri-State and personally handled the negotiations with respect to the transaction. (N.T. p.79, line 6; p. 91, line 17).

33. At the time that Mr. Robinson was negotiating with Highland, Royal had not yet been formed, but he was expecting that it would be formed. (N.T. 95, line 16-22).

34. Mr. Robinson expected that Tri-State and ILES would form a new company, and that new company would conduct business with Highland. (N.T. p. 95, line 23-26 to p. 96, line 4).

35. Mr. Keith never visited the offices of ILES during the course of this transaction. (N.T. p.22, line 13).

36. Mr. Futch has not had any contact with anyone from Highland regarding the transaction in question. (N.T. p. 56, line 23-25).

37. Highland first produced a quote to Tri-State on August 22, 2011 for the manufacture of 60 tanks, and followed up on this quote with a visit to a Tri-State representative. (N.T. p. 5, line 16-20; p. 4, line 16).

38. A subsequent quote was issued by Highland to Crown Oilfield Services, LLC ("Crown") for 60 tanks, dated August 24, 2011. (N.T. p. 6, lines 6-12).

39. Highland was going to accept an order from Crown, but the entity had no credit, so Highland processed the order through Tri-State. (N.T. p. 6, lines 14-20).
40. The next quote issued by Highland was for 60 tanks to Tri-State on August 25, 2011. (N.T. p. 6, line 23 - p. 7, line 2).
41. ILES issued a purchase order on September 20, 2011. (N.T. p. 10, line 15-21).
- The final quote by Highland is dated September 21, 2011, and was issued to ILES for 60 tanks. (N.T. p.7, lines 10-14)
42. The final quote specified that delivery would be based upon an agreement between Highland and Tri-State, and that various financing and interest charges would apply to the purchase of the tanks. (N.T. p. 8, line 1)
43. No agreement, written or otherwise, between Highland and Tri-State regarding delivery to ILES exists. Highland did not hire Tri-State to deliver the tanks to ILES. (N.T. p. 19, line 24-p. 20, line 5).
44. ILES issued a second and final purchase order for 60 tanks on October 4, 2011, which called for delivery at "Shell Oil job sites in Pennsylvania as designated by purchaser (ILES)." (N.T. p. 13, line 3-10)
45. The October 4, 2011 purchase order also differed in payment terms from the final quote issued by Highland in that no provision was made for interest or financing charges. (Complaint, Ex. 1) This purchase order of October 4, 2011 superseded all of the quotes given in the ordering process. (N.T. p. 28, line 18).
46. Aside from the purchase order, there was no written document among the parties to the transaction. (N.T. p. 30, lines 1-5)

47. Highland produced the tanks based upon the October 4 purchase order issued by ILES.
(N.T. p. 21, line 13).
48. Highland delivered one or two tanks to an unknown location. The remaining tanks were picked up by Tri-State, and Highland permitted Tri-State to take full possession and control of the tanks. Tri-State hauled the tanks as a general carrier or common carrier, thus avoiding incurring additional shipping charges. (N.T. p. 8, line 8; p. 23, line 13; p. 16, lines 12-15)
49. All of the invoices sued upon and attached as Plaintiff's Exhibit 4 or 5 have a notation stating "No Freight, Picked up by Tri-State Trucking." None of the Invoices state "No Freight, Picked up by Buyer."
50. A Tri-State representative signed bills of lading and/or delivery receipts accepting the tanks. (N.T. p. 16, lines 17-22, p. 24, line 18)
51. Bradley Robinson directed the Tri-State truck to go to Highland to pick up the tanks.
(N.T. p. 101, line 9)
52. ILES was never provided an opportunity to take delivery of the tanks, never received and never accepted any tanks from Highland. (N.T. p. 23, line 15, p. 59, line 15)
53. ILES has never taken possession of any of the tanks, nor has it ever been compensated for use or rental of the tanks. (N.T. p. 60, line 20 - p. 61, line 1)
54. Highland never called ILES to tell them that the tanks were ready for pickup. (N.T. p. 23, line 18; p. 59, line 24 - p. 60, line 3)
55. Highland does not know if the tanks were ever delivered to ILES after Tri-State picked them up. (N.T. p. 23, line 21)
56. Highland believed that it was dealing with two separate and distinct companies in this

transaction, Tri-State and ILES. (N.T. p. 17, line 20)

57. Highland did not and does not know the identity of the buyer of the tanks. (N.T. p.31, lines 15-21)

58. Highland does not know who owes it money - all it believes is that it is owed money by someone. (N.T. p. 49, line 20)

60. Highland issued 22 invoices to various parties, including ILES and Royal, for the 60 tanks in this transaction. (N.T. p. 34, line 16 - p. 35, line 3)

61. After invoices were issued to ILES, Mr. Mauer emailed Mr. Myers and requested that all future invoices be sent to Royal. (N.T. p. 38, line 6)

62. Mr. Mauer instructed Mr. Myers to send the bills for the tanks to Royal because Mr. Mauer understood that Royal was to pay for the tanks. (N.T. p. 85, lines 7-11)

63. Sixteen tanks out of the 60 that were ordered have been paid for by Royal. (N.T. p. 21, line 24).

64. The only payment checks introduced at trial were issued by Royal, on a Royal account, that they specifically referenced Highland invoice numbers in the memo line. (N.T. p. 49, line 4; Tri-State Trial ex. 4)

65. Mr. Robinson, as manager of Royal, drafted the two checks to Highland in payment of the invoices for the tanks. (N.T. p. 90, lines 10-14)

66. The invoices on which Highland has sued were issued to Royal; it is not suing upon any invoices issued to ILES. (N.T. p. 24, line 14-20; p. 46, line 7)

67. The arrangement to lease the tanks to Shell was developed by Tri-State through its representative, Mr. Robinson. (N.T. p. 87, lines 17-21)

68. Mr. Robinson authorized various people, including Tri-State employees, to move the tanks to various locations without ILES' knowledge or consent. (N.T. p. 103, lines 9-17)
69. Mr. Robinson considers the tanks to be the property of Royal, and no witness disputed this assertion. (N.T. p. 104, line 3)
70. Royal is currently using or leasing some of the tanks. (N.T. p. 104, line 6)
71. Royal is leasing some of the tanks to various clients pursuant to both written and unwritten lease agreements. (N.T. p. 104, lines 18-26)
72. Royal has received payments under these various lease agreements, which payments are controlled and managed exclusively by Mr. Robinson. (N.T. p. 104, lines 4-9)
73. Mr. Robinson is the only one who has exercised dominion and control over the tanks, or received payment for their use since they left the Highland facility. Royal has made payments to Highland for the tanks, in addition to the two payments by check that have been proven in this litigation. (N.T. p. 104-105)
74. Highland has received \$422,643.60 in payments from Royal for the tanks. (Complaint at paragraph 11).
75. The tanks that are the subject of this legal action and manufactured by Plaintiff qualify as "goods" within Pennsylvania's version of Article 2 of the Uniform Commercial Code. (See 13 Pa.C.S.A. §2105.
76. Plaintiff's Exhibit number 2, which is attached to the Complaint, is a set of invoices issued only to Royal Oilfield Services and are the only invoices upon which Plaintiff has brought suit.
77. Royal Oilfield Services received the tanks, and Brad Robinson considers the tanks to be the property of Royal. Royal receives rental payments from at least some of the tanks.

76. Royal did not present any evidence in defense of Highland's claims.

CONCLUSIONS OF LAW

1. To successfully maintain a cause of action for breach of contract, a plaintiff must establish:(1) the existence of a contract, including its essential terms, (2) a breach of duty imposed by the contract, and (3) resultant damages. Hart v Arnold, 2005 Pa.Super. 328, 884 A.3d 316, 332. A Plaintiff must prove these elements by a preponderance of the evidence. Empire Props v Equireal Inc., 449 Pa.Super. 476, 491-492, 674 A.2d 297, 305 (1996).
2. An essential element of any contract is the identity of the parties thereto. Ludwinska v John Hanconck Mut. Life Ins. Co, 317 Pa. 577, 580, 178 A. 28, 30 (1935).
3. The Plaintiff cannot prove the identity of its counterpart in the transaction at issue; specifically, Plaintiff cannot show by a preponderance of the evidence the person/entity to whom it intended to sell its tanks, or by whom the tanks were to be purchased.
4. No enforceable agreement, oral or otherwise, was reached between Highland and any defendant to purchase the tanks.
5. This matter is governed by Article 2 of the Pennsylvania Uniform Commercial Code (Sales) because it arises out of a transaction for sale of goods between merchants.
6. The purported contract between Plaintiff and Defendants ILES, Tri-State Trucking

Company and Royal Oilfield Services, LLC is unenforceable because it fails to comply with the Pennsylvania Statute of Frauds, 13 Pa.C.S.A. §2201, in that Plaintiff alleged in its Complaint and testified at trial that it reached an oral agreement for the sale of goods for a price in excess of \$500.

7. Plaintiff cannot avail itself of any of the exceptions to the writing requirement set forth in 13 Pa.C.S.A. §2201 (c).

8. Because there is no clear agreement as to delivery, the circumstances surrounding the transaction as well as the course of performance of the transaction govern the terms of delivery. 13 Pa.C.S.A. §2308 at Comment 4; see also Laufen Int'l, Inc. v Larry J. Lint Floor & Wall Covering Co., 2012 U.S. Dist. LEXIS 58068, 22-23, citing Pavilch v Ambrosia Coal Co., 441 Pa. 210, 273 A.2d 343 (1971); In re Fessman's Estate, 386 Pa. 447, 126 A.2d 676 (1956).

9. Based on the language contained in Plaintiff's offer and ILES's acceptance, as well as the negotiations surrounding the transaction, the parties intended that the tanks be shipped to ILES by carrier but did not require delivery to a particular destination. Therefore, under 13 Pa.C.S.A. §2504, Plaintiff was required to do the following with respect to delivery of the tanks:

- 1.) Put the goods in the possession of such a carrier and make such a contract for their transportation as may be reasonable having regard to the nature of the goods and other circumstances of the case.
- 2.) Obtain and promptly deliver or tender in due form any document necessary to enable the buyer to obtain possession of the goods or otherwise required by the agreement or by usage of trade; and
- 3.) Promptly notify the buyer of the shipment.

Failure to notify the buyer under paragraph (3) or to make a proper contract under

paragraph (1) is a ground for rejection only if material delay or loss ensues.

10. Plaintiff failed to perform its obligations under the alleged contract with ILES because it failed to deliver the tanks to ILES or make arrangements to ensure their delivery to ILES.

Therefore, no payment is due to Plaintiff by ILES.

11. Pa.R.Civ.P. 1019(h) requires that, if a party makes a claim based upon a writing, the writing must be attached to that party's complaint. The only invoices attached to Plaintiff's Complaint, upon which Plaintiff has sued, are not directed to ILES; therefore, ILES is not liable for payment of the same.

12. ILES is not liable for the claims of Plaintiff.

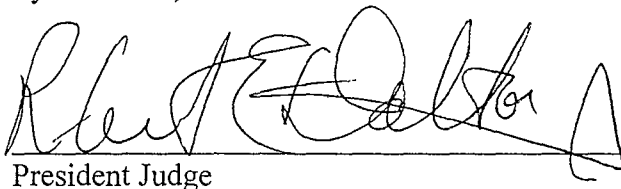
13. Plaintiff failed to meet its burden of proof that an oral contract was formed between Plaintiff and Defendant Tri-State. Plaintiff failed to establish that there was ever a meeting of the minds regarding terms and conditions of an alleged oral contract. The issuance of a price quote by Plaintiff to Defendant Tri-State does not rise to the level of creating a contract.

14. Tri-State Trucking Company is not liable for the claims of Plaintiff.

This matter can best be described as a bad business deal. The parties were attempting to manufacture, sell, buy and lease well over one million dollars worth of tanks without the benefit of a written contract. Instead, the parties chose to engage in a costly transaction based upon nebulous activities. The bottom line is that Plaintiff believes that someone owes it money but it does not know who or what entity is responsible for the debt. Plaintiff did not prove the existence of a valid contract which meets the requirements of the Statute of Frauds. Plaintiff sued on the existence of one set of invoices for which it has already been paid by Bradley Robinson on behalf

of Royal Oilfield Services. Therefore, the court will enter an order dismissing the complaint and entering judgment against the Plaintiff and in favor of all Defendants.

By the Court,



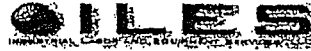
A handwritten signature in black ink, appearing to read "Robert E. Alster", written over a horizontal line. The signature is stylized and cursive.

President Judge

July 19, 2013

cc: John P. Liekar, Jr., Esq.
Brian Duff, Esq.
File

PURCHASE ORDER



Date: October 4, 2011
PO # PA1001 Rev1

Industrial Labor and
Equipment Services, LLC
8019 Barataria Blvd.
Marrero, LA 70072
504-813-7689
jack.mauer@ilesilc.com

VENDOR Highland Tank
One Highland Road
Stoystown, Pa, 15563
814-893-5701

SHIP As Designated by Purchaser -
TO Shell Oil Job Site in PA

DESCRIPTION	PAYMENT TERMS	DELIVERY DATE
TBD / FOB Destination	2%10 Net 30 - Billable Weekly on Completed Tanks	Nov 18, 2011 Final Delv

QTY	UNIT	DESCRIPTION	UNIT PRICE	LINE TOTAL
60 each	400 Barrel Vertical Storage Tank (Built Per UL-142 Constr (STD) API Certified)	App: Aboveground Type: Single Wall Mat'l: A-36 Carbon Steel Constr Dia: 12' Inner Height: 19'10" OAH Height: 269 1/2" = 22.47' Additional details ref Highland Tank Quote # 278273 (Attached) And Drawing # 75289 dated 7/13/11	Designated Shell Oil site in Pa. \$24,660.00	\$1,479,600.00

SUBTOTAL	\$1,479,600.00
FRT COST	73,500.00
6% SALES TAX	93,186.00
TOTAL	\$1,646,286.00

- Please send two copies of your invoice.
- Enter this order in accordance with the prices, terms, delivery method, specifications listed and attached.
- Please notify us immediately if you are unable to ship as specified.
- Send all correspondence to:

Jack Mauer
Industrial Labor and Equipment Services, LLC
8019 Barataria Blvd
Marrero, LA 70072

Jack Mauer
Authorized by _____ Date 10/04/11



Exhibit 'I'