

PRIME COMMODITIES, INC. v. J. V. CAMPISI, INC.
PACA Docket No. R-00-0050.
Decision and Order filed April 20, 2000.

Jurisdiction - timeliness of complaint - accrual of cause of action - accountings

A cause of action accrues when suit may first be brought upon it. In the case of an accounting this usually occurs when the accounting is rendered. However, when the accounting is not timely rendered a Complainant knows that an action may be brought for an accounting. In such cases the cause of action accrues when the Complainant could first bring an action, that is, at the time the accounting was due but not rendered. In this case the Respondent actually paid Complainant without rendering an accounting, and Complainant was put on notice at that point that something was amiss under the consignment contract, and could have brought an action for an accounting at that point.

George S. Whitten, Presiding Officer.
Byron E. White, Arlington, Texas, for Complainant.
Respondent, Pro se.
Decision and Order issued by William G. Jenson, Judicial Officer.

Preliminary Statement

This is a reparation proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a *et seq.*). A timely complaint was filed in which Complainant seeks an award of reparation in the amount of \$2,893.78 in connection with a transaction in interstate commerce involving watermelons.

Copies of the Report of Investigation prepared by the Department were served upon the parties. A copy of the formal complaint was served upon Respondent which filed an answer thereto denying liability to Complainant.

The amount claimed in the formal complaint does not exceed \$30,000.00, and therefore the documentary procedure provided in the Rules of Practice (7 C.F.R. § 47.20) is applicable. Pursuant to this procedure, the verified pleadings of the parties are considered a part of the evidence in the case as is the Department's Report of Investigation. In addition, the parties were given an opportunity to file evidence in the form of sworn statements. However, neither party did so. Complainant filed a brief.

Findings of Fact

1. Complainant, Prime Commodities, Inc., is a corporation whose address is 8933 East Esperanza, Suite C, McAllen, Texas.
2. Respondent, J. V. Campisi, Inc., is a corporation whose address is 2801 East Hillsborough Avenue, Tampa, Florida. At the time of the transaction involved herein Respondent was licensed under the Act.
3. On or about August 14, 1998, Complainant sold to Respondent one truck load containing 40,280 pounds of red seedless watermelons in 60 bins on a price after sale basis. The melons were originally shipped on August 13, 1998, by Texas

West Melon Co. from the state of Texas to a receiver in Plant City, Florida. Complainant purchased the melons after shipment and diverted them to Respondent in Tampa, Florida.

4. The melons arrived at the place of business of Respondent in Tampa, Florida, and on August 17, 1998, a portion of the melons was federally inspected with the following results in relevant part:

LOT: No ID
 TEMPERATURES: 56 to 57°F
 PRODUCT: Watermelons
 BRAND/MARKINGS: "No Brand"
 ORIGINS: TX
 LOT ID.:
 NUMBER OF CONTAINERS: 54 Bulk Bins
 INSP. COUNT: Y

LOT	AVERAGE DEFECTS	including SER. DAM.	Including V. S. DAM.	OFFSIZE/DEFECT	OTHER
A	25 %	14 %	00 %	Bruising (20 to 30%)	Bruising scattered throughout Bin Generally affecting side Wall of Melon
	00 %	00 %	00 %	Decay	
	25 %	14 %	00 %	Checksum	

5. On September 8, 1998, Respondent sent Complainant a check for \$1,800.00 for the melons. The check was received and negotiated by Complainant on or before September 14, 1998. On February 28, 1999, in response to a request from Complainant, Respondent rendered an accounting as follows:

Sold:

5 - Bins	@	\$75	\$375.00
6 "	@	60.00	360.00
38	@	50	1900.00
2 Singles	@	4.00	8.00
101 "	@	2.00	202.00
232 "	@	1.50	348.00
7	Lost		—
			<u>3193.00</u>
	Less 49 Bins @ \$20.00		<u>980.00</u>
			2213
	Less 342 Singles @ \$1.00	342	
			1871
	Less Inspection		<u>72</u>
			\$1799

6. An informal complaint was filed on June 17, 1999, which was more than nine months after the cause of action alleged herein accrued.

Conclusions

Complainant alleges that the original "price after sale" contract between the parties was changed to a consignment contract, and Respondent denies that this occurred. Complainant submitted a copy of an invoice dated August 19, 1998 which does show "CONSIGNED" under a listing of the product, and an extension showing "0.00" as the price. For the purpose of the following discussion we will assume that the change from "price after sale" to consignment terms was effected on August 19, 1998.

The crucial question which must be answered is whether the complaint filed herein is timely. A complaint, either informal or formal, must be filed within nine months of when the cause of action arose.¹ Furthermore, the statutory provision is jurisdictional in nature. As we stated in *Cadenasso v. California-Mexico Distributing Co.*: "...the time allowed for filing of claims is a limitation upon jurisdiction and, therefore, being of more consequence than a statute of limitations, cannot be altered by the parties."²

A cause of action accrues when a judicial proceeding may first be legally instituted upon it.³ We have held that a suit may be instituted on an accounting

¹7 U.S.C. 499f(a). *Sanders & Drake v. Gardner Brothers*, 31 Agric. Dec. 128 (1972); *Freshpict Foods v. Consumers Produce*, 29 Agric. Dec. 163 (1970); *Immokalee Vegetable v. Rosenthal*, 29 Agric. Dec. 483 (1970); *Pelletier Fruit Co. v. Koutroulares*, 19 Agric. Dec. 1232 (1960).

²*Cadenasso v. California-Mexico Distributing Co.*, 2 Agric. Dec. 751 (1943); - citing *Louisville Cement Co. v. I.C.C.*, 246 U.S. 638 (1918), where Justice Clark, writing for a unanimous Court, stated:

We agree with this conclusion of the Commission, that the two-year provision of the act is not a mere statute of limitation, but is jurisdictional, — is a limit set to the power of the commission, as distinguished from a rule of law for the guidance of it in reaching its conclusions.

The statute in question read:

All complaints for the recovering of damages shall be filed with the Commission within two years from the time the cause of action accrues, and not after.

³In *Louisville Cement Co. v. I.C.C.* the court stated

. . . [W]hen the statute was enacted the time when a cause of action accrues had been settled by repeated decisions of this court to be when a suit may first be legally instituted upon it (citing cases); and, since no clearly controlling language to the contrary is used, it must be assumed that Congress intended that this familiar expression should be given the well understood meaning which had been given to it by this court. . . . *Id.* at 644.

when the accounting is rendered, and that the cause of action as to an accounting accrues at that time.⁴ The accounting in this case was not rendered until February 28, 1999. Thus it might seem that the informal complaint filed on June 17, 1999, was filed well within the allowable time. However, an examination of the case law will show that the cause of action on an accounting is said to accrue when the accounting is rendered precisely because that is usually the first opportunity a Complainant has to know that anything is amiss. Where, however, the accounting is not timely rendered a Complainant knows that an action may be brought for an accounting. Thus, in such cases the cause of action accrues when the Complainant could first bring such an action. Here, where the Respondent actually paid Complainant instead of rendering an accounting, Complainant was put on notice at that point that something was amiss under the consignment contract, and could have brought an action for an accounting at that point. Complainant's action herein is based on the alleged inadequacy of Respondent's accounting. The accounting was not even requested by Complainant until long after Respondent paid Complainant for the transaction. It is clear that the cause of action upon which Complainant bases its case accrued on or before September 14, 1998, when Complainant cashed Respondent's check. The informal complaint was not filed until June 17, 1999, or more than nine months after the cause of action accrued. The complainant should be dismissed for want of jurisdiction.

Order

The complaint is dismissed.
Copies of this order shall be served upon the parties.

The same conclusion applies to the identical phrase used in the Perishable Agricultural Commodities Act. See *Calavo Growers of California v. International Food Marketing, Inc.*, 40 Agric. Dec. 972 (1981).

⁴*George Wuszke v. Fruit Pak, Inc.*, 42 Agric. Dec. 1207 (1983); *Tatum v. Harrisburg Daily Mkt. et al.*, 23 Agric. Dec. 1272 (1964).