

IN THE CIRCUIT COURT OF COOK COUNTY COUNTY, ILLINOIS
LAW DIVISION

AMERICAN BUILDERS AND
CONTRACTORS SUPPLY CO., INC.

Plaintiff,

-vs-

SINGLES ROOFING COMPANY and
ROBERT DURCHSLAG

Defendant(s).

20091003731
CLERK/ROOM 2
COURT HOUSE
No.
Return Date: ~~10/30~~ 2009
Amount Claimed: \$132,752.99,
plus lost profit, Costs and Fees

VERIFIED COMPLAINT

Plaintiff, AMERICAN BUILDERS & CONTRACTORS SUPPLY, CO., INC., by its attorney, Adam Whiteman, complains against SINGLES ROOFING COMPANY, INC. and ROBERT DURCHSLAG as follows:

BACKGROUND FACTS COMMON TO ALL COUNTS

1. AMERICAN BUILDERS & CONTRACTORS SUPPLY, CO., INC., ("ABC") is a Delaware corporation involved in supplying materials for use in commercial and residential construction projects. Its corporate offices are located at One ABC Parkway, Beloit, Wisconsin, 53511, and it maintains a branch office at 29W581 North Ave., West Chicago, IL, 60185, in DuPage County. ABC is registered as a foreign corporation qualified to do business in the state of Illinois.
2. SINGLES ROOFING COMPANY, INC. ("SINGLES") is an Illinois corporation with offices at 345 Willard Avenue, Elgin, Illinois 60121 in Cook County, and which maintains a registered agent in Cook County who is identified as James McGurk, 140 South Dearborn, Suite 404, Chicago, Illinois 60603.
3. ROBERT DURCHSLAG ("DURCHSLAG") is an individual who resides at 345 Willard,

Elgin Illinois 60121, Cook County, and who is the president of SINGLES.

4. On or about July 26, 1993, SINGLES entered into an agreement with ABC SUPPLY for the acquisition of construction supplies and building materials on a credit basis (hereinafter referred to as "Credit Agreement"). A true, correct, and genuine copy of said Credit Agreement is attached hereto and incorporated herein as **Exhibit 1**.
5. On or about May 1, 2007, Fred Scott submitted the document attached as **Exhibit 2** to Mike Brake at the West Chicago Branch of ABC SUPPLY.
6. The document attached as **Exhibit 2** requests, on behalf of SINGLES, a quote for shingles and other building materials which were purportedly to be used in connection with four projects taking place in Louisiana.
7. Attached as **Exhibit 3** is a copy of a quote provided by ABC SUPPLY to SINGLES.
8. The document attached as **Exhibit 3** was provided by ABC SUPPLY to SINGLES in response to the quote request attached as **Exhibit 2**.
9. On or about May 9, 2007, SINGLES submitted a purchase order to ABC SUPPLY.
10. Attached as **Exhibit 4** is a copy of a purchase order submitted by SINGLES to ABC SUPPLY.
11. The document attached as **Exhibit 4** was submitted by SINGLES to ABC SUPPLY on or around May 9, 2007.
12. The document attached as **Exhibit 4** contains a true, accurate and genuine signature of Fred Scott.
13. The document attached as **Exhibit 4** was tendered to ABC at the direction of DURCHSLAG.
14. **Exhibit 5** is a copy of the electronic facsimile transmission cover sheet which accompanied

the purchase order attached as **Exhibit 4** when said purchase order was sent by electronic facsimile to ABC SUPPLY on or around May 9, 2007.

15. **Exhibit 4**, the purchase order submitted by SINGLES to ABC SUPPLY, requests tentative delivery dates of June 19, 20 and 21 of 2007.
16. The order placed by SINGLES with ABC SUPPLY required that ABC SUPPLY obtain a large amount of plywood that met certain specifications.
17. In reliance on the purchase order placed by SINGLES on May 9, 2007, ABC SUPPLY placed a substantial order for plywood with a supplier operating under the name of BlueLinx Corporation. Due to the size and specifications of this order, it was not subject to cancellation.
18. ABC SUPPLY paid BlueLinx \$912,445.02 in order to purchase the materials necessary to fill the order placed by SINGLES.
19. **Exhibit 6** is a true, accurate and genuine copy of an e-mail sent by DURCHSLAG to Mike Brake at ABC SUPPLY on or about June 20, 2007.
20. **Exhibit 7** is a true, accurate and genuine copy of an e-mail sent by DURCHSLAG to Mike Brake at ABC SUPPLY on or about June 29, 2007.
21. **Exhibit 8** is a true, accurate and genuine copy of an e-mail sent by DURCHSLAG to ralfschindlerlaw@aol.com and which was copied to Mike Brake at ABC SUPPLY on or about July 24, 2007.
22. **Exhibit 9** is a true, accurate and genuine copy of an e-mail sent by DURCHSLAG to Mike Brake at ABC SUPPLY on or about August 10, 2007.
23. **Exhibit 10** is a true, accurate and genuine copy of a DHL Express form which was

completed by DURCHSLAG.

24. The form attached as **Exhibit 10** was sent by DURCHSLAG to Mike Brake at ABC SUPPLY in order to lead Mike Brake ABC SUPPLY to believe that payment had been sent to ABC SUPPLY by way of DHL Express.
25. DURCHSLAG never sent a payment to ABC SUPPLY by way of DHL Express.
26. **Exhibit 11** is a true, correct and genuine copy of an e-mail sent by DURCHSLAG to Mike Brake at ABC SUPPLY on or about August 28, 2007.
27. **Exhibit 12** is a true, correct and genuine copy of an e-mail sent by DURCHSLAG to Mike Brake at ABC SUPPLY on or about August 28, 2007.
28. On August 28, 2007, SINGLES cancelled the order it had placed as set forth in **Exhibit 4**.
29. ABC SUPPLY was able to return the materials to BlueLinx but incurred a restocking fee of \$132,752.99.
30. Due to the special order nature of the materials ordered from SINGLES, ABC SUPPLY was not able to resell the materials in the general market.
31. ABC SUPPLY fully performed its obligations under the Purchase Agreement between the parties by standing ready, willing and able to fill the order according to the delivery schedule requested by SINGLES in its purchase order attached as **Exhibit 4**.

COUNT I
Detrimental Reliance against SINGLES

- 1-31. ABC SUPPLY re-alleges paragraphs 1-31 above as paragraphs 1-31 of this Count I.
32. In reasonable reliance upon the order placed by SINGLES, as well as the assurances regarding delivery dates and payments contained in e-mails sent by DURCHSLAG, ABC

SUPPLY ordered materials from its supplier in quantities sufficient to fill the order placed by SINGLES.

33. Without just cause or right, and through no fault of ABC SUPPLY, SINGLES cancelled its order with ABC SUPPLY and ABC SUPPLY thereby incurred damage by being charged a restocking fee by its supplier in the amount of \$132,752.99.

WHEREFORE, ABC SUPPLY prays that judgment be entered against SINGLES ROOFING COMPANY in the amount of \$132,752.99.

COUNT II
Breach of Contract against SINGLES

- 1-31. ABC SUPPLY re-alleges paragraphs 1-31 above as paragraphs 1-31 of this Count II.
32. SINGLES placed a purchase order with ABC SUPPLY, and ABC SUPPLY accepted said order thereby forming a contract between the parties.
33. In fulfillment of that which was required by the contract, ABC SUPPLY obtained all materials that were required and was, at all relevant times, ready willing and able to deliver said materials to SINGLES.
34. In breach of the contract existing between the parties, SINGLES wrongfully rejected and revoked acceptance and failed and refused to accept delivery of the materials obtained by ABC SUPPLY.
35. The transaction between the parties constituted a transaction involving goods regulated in part under the Uniform Commercial Code (810 ILCS 5/2-101 et. seq.)
36. As a direct and proximate result and consequence of said breach ABC SUPPLY sustained damage in the following respects:

- A. Incurred a restocking fee of \$132,752.99 from its supplier,
 - B. Lost profits as per 810 ILCS 5/2-708
37. At all times relevant, there was existing between the parties a Purchase Agreement which supplied the terms and conditions of the contractual relationship between the parties.
38. SINGLES did not comply with the terms of the Purchase Agreement between the parties and failed to pay for said materials and thereby accumulated a balance due on its account in the amount of \$132,752.99.
39. According to the terms of the Purchase Agreement between the parties, interest shall accrue at the rate of 1.5% per month for all overdue invoices.
40. According to the terms of the Purchase Agreement, SINGLES agreed to “pay all costs of collection by ABC of any amounts due hereunder, including actual attorney’s fees...and other costs incurred as a result of or in connection with such action.”
41. SINGLES has breached the Purchase Agreement identified above by failing to pay for the goods and services provided by ABC SUPPLY.
42. As a result of said breach, ABC SUPPLY has sustained damages in the amount of \$132,752.99, plus interest, costs and attorney fees.

WHEREFORE, ABC SUPPLY requests that this court enter a judgment in its favor and against SINGLES ROOFING COMPANY, INC. in the amount of \$132,752.99 plus lost profits, plus costs, interest and attorneys fees.

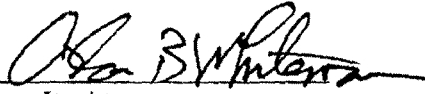
COUNT III
Fraud Against ROBERT DURCHSLAG

1-31. ABC SUPPLY re-alleges paragraphs 1-31 above as paragraphs 1-31 of this Count III.

32. The order placed by SINGLES as detailed in **Exhibit 4**, purports to be an order for materials which were to be used to construct roof replacements for Tom Benson & Associates with respect to properties used as the "Saint's Training Center" at Wood Ridge Apartments, Star Hill Apartments, Oak Camp Apartments and Rouge Apartments.
33. Tom Benson & Associates never placed an order with SINGLES to perform work at the Saint's training center, or at Wood Ridge Apartments, Star Hill Apartments, Oak Camp Apartment, or Rouge Apartments.
34. The purchase order attached as **Exhibit 4** was created by or at the direction of DURCHSLAG.
35. **Exhibit 6** and **Exhibit 9** are faxes sent by DURCHSLAG to ABC SUPPLY which purport to contain e-mails that DURCHSLAG received from Tom Benson, owner of the New Orleans Saints.
36. Tom Benson never sent DURCHSLAG any of the e-mails included in **Exhibit 6** and **Exhibit 9**.
37. The purchase order created by or at the direction of DURCHSLAG and the e-mails attached as **Exhibit 6** and **Exhibit 9** contain misrepresentations of material facts that were made with the intention that ABC SUPPLY rely on said misrepresentations, and upon which ABC SUPPLY did reasonably rely causing it to sustain economic damages in the amount of \$132,752.99 plus lost profit.

WHEREFORE, ABC SUPPLY prays that this court enter judgment against ROBERT DURCHSLAG in the amount of \$132,752.99 plus lost profit.

Respectfully Submitted,
American Contractors & Builders Supply Co., Inc.

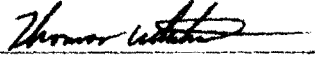
By: 
Its Attorneys

Adam Whiteman
Whiteman Law Offices, Inc.
118 N. Clinton Street, Ste. 100-17
Chicago, IL 60661
Attorney Code: 39289

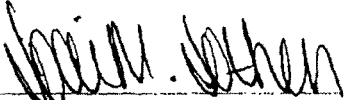
VERIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this Verified Complaint are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

American Builders & Contractors Supply Co., Inc.

By:  3-2-2009, Its CFS MANAGER ABC SUPPLY
Date

SUBSCRIBED and SWORN TO
Before Me This 2nd day of March
2009.


Notary Public
My commission expires OCT. 3, 2010.