

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
ALABAMA, SOUTHERN DIVISION

TEXTILE BANKING COMPANY, INC.,

Plaintiff

- vs -

JOE S. HANSON and TOM UNDERWOOD,
Ind. and as partners d/b/a
CUSTOMART PRODUCTS CORP.,

Defendants

CIVIL ACTION NO. 69-212

FILED IN CLERK'S OFFICE
NORTHERN DISTRICT OF ALABAMA

JUN 17 1970

ORDER
AND JUDGMENT

WILLIAM E. DAVIS
CLERK, U.S. DISTRICT COURT,
BY: Margaret M. Hoehn
DEPUTY CLERK

The above-entitled action came on for trial before the Court without a jury on Thursday, April 16, 1970. All parties were present in person or represented by counsel. In conformity with the findings of fact and conclusions of law filed contemporaneously herewith,

It is ORDERED, ADJUDGED and DECREED that the plaintiff, Textile Banking Company, Inc., have judgment against the defendants Joe S. Hanson and Tom Underwood, and each of them, individually, in the sum of Ten Thousand Five Hundred Eighty-three and 05/100 Dollars (\$10,583.05).

It is further ORDERED, ADJUDGED and DECREED that the plaintiff, Textile Banking Company, Inc., have judgment against the defendant, Customart Products Corporation, in the sum of Eight Thousand Five Hundred Ninety-three and 34/100 Dollars (\$8,593.34).

Costs are taxed against the defendants.

It is further ORDERED that the defendants pay direct to the attorney of record for the plaintiff the proceeds of the judgment and court costs and that upon receipt thereof, the attorney of record for the plaintiff will satisfy said judgment on the records of the Court.

Done this the 16th day of June, 1970.

A TRUE COPY
WILLIAM E. DAVIS, CLERK
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
BY:

Frank H. McFadden
District Judge

DEPUTY CLERK

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CLERK Margaret M. Hooker

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This action seeks recovery for merchandise sold against Joe S. Hanson and Tom Underwood, individually and as partners doing business as Customart Products Corporation, and Customart Products Corporation, and was tried by the Court.

FINDINGS OF FACT

(1) The defendants, Joe S. Hanson and Tom Underwood, both resident citizens of the State of Alabama, entered into an agreement in the early part of 1968 to go into the business of selling package decoration jobs through franchise operations. The business was to be known as Customart Products and the expenses and profits from the operation were to be shared equally between the defendants, Joe S. Hanson and Tom Underwood.

(2) On February 15, 1968, the defendants, Joe S. Hanson and Tom Underwood and Mrs. Joe S. Hart, signed Articles of Incorporation whereby these three intended to form a corporation known as Customart Products Corporation, the third defendant. The Articles of Incorporation provided for Joe S. Hart and Tom Underwood to each own 49-1/2% of the stock and Mrs. Joe S. Hart 1%. The Articles of Incorporation showed that \$10,000.00 worth of stock had been subscribed for and paid for by each. The testimony of the witnesses established

that this stock subscription was not paid for by cash as set out in the subscription affidavit and that the stock was issued for past services without setting forth that fact or the value of such services. The individual debtors began doing business under the style of Customart Products during the early part of March, 1968, but the Articles of Incorporation were not recorded until September 13, 1968.

(3) The plaintiff, Textile Banking Company, Inc., is a New York corporation with its principal place of business in New York and is engaged in the factoring business.

(4) Between the period of June 24, 1968, and September 13, 1968, the defendants purchased from Chatham Carpet Mills, Inc., Aldon Distributors, Inc., and Aldon Area Rugs, Inc. goods and merchandise on open account, the value of which is \$10,583.05. This merchandise has not been paid for and these accounts have been purchased and duly assigned to the plaintiff, Textile Banking Company, Inc., and are the property of the plaintiff and are due and owing.

(5) On September 13, 1968, the Articles of Incorporation of Customart Products Corporation were duly recorded in the Office of the Judge of Probate of Jefferson County, Alabama, the County in which the debtor corporation engaged in business.

(6) Between the dates of September 15, 1968, and the commencement of this action, the defendants purchased from the aforementioned three suppliers additional goods and merchandise of the value of \$8,593.34, which accounts receivable have also been duly assigned to the plaintiff and are the property of the plaintiff and are due and unpaid.

(7) The operation of the business was at all times carried on by the defendants, Joe S. Hanson and Tom Underwood, as the managing officers and/or partners.

(8) The parties have agreed by stipulation that the accounts as stated above are correct in amount and are the property of the plaintiff and are due and unpaid.

CONCLUSIONS OF LAW

(1) This Court has jurisdiction of this cause of action and the parties thereto.

(2) The questions of law arising out of the foregoing findings of facts are:

(a) Whether a de facto corporation came into existence between February 15, 1968, and September 12, 1968, and

(b) Whether the plaintiff would be estopped from denying the existence of a de facto corporation, and

(c) Whether the individual defendants, Joe S. Hanson and Tom Underwood, are individually responsible for the debts incurred prior to the recording of the certificate of Articles of Incorporation in the Judge of Probate's Office on September 13, 1968.

(3) The Court holds that Customart Products did not become a de facto corporation under the laws of the State of Alabama until the Articles of Incorporation were duly executed and recorded in the Office of the Judge of Probate of Jefferson County, the County in which the principal office of the corporation was established. Code of Alabama, Title 10, §§ 21(3), 21(6) and 22(11) (1958); H. J. Hughes Co. v. Farmers Union Products Co., et al., 110 Neb. 736, 194 N.W. 872 (1923).

(4) The plaintiff is not estopped from bringing this cause against the individual defendants as there can be no creation of a de facto corporation by estoppel, and any claim of estoppel must be accompanied by a colorable compliance with the following statute: Harrill v. Davis, et al., 168 Fed. 187. (8th Cir. 1909).

(5) The defendants, Joe S. Hanson and Tom Underwood, are personally liable for the indebtedness created prior to the recording

of the Articles of Incorporation in the Judge of Probate's Office of Jefferson County, Alabama, on September 13, 1968. Harrill v. Davis, supra; Doggrell v. Great Southern Box Co., Inc. of Mississippi, 206 F.2d 671 (6th Cir. 1953).

(6) The individual defendants are not liable for the indebtedness created subsequent to the valid incorporation of Customart Products, but the corporate defendant Customart Products Corporation is.

Frank H. McFadden
District Judge

STATE OF ALA. SHELBY CO.
CERTIFY THIS
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WILLIAM E. DAVIS, CLERK
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA

BY: *Margaret M. Lockman*
DEPUTY CLERK