

CERTIFICATE OF JUDGMENT

Case Number
CV 94 5563
Yr Number

IN THE CIRCUIT COURT OF JEFFERSON COUNTY

Plaintiff: STO CORPORATION

9 7 6 2 / 6 1 9 7

(original) (amended)
Judgment Date 7/11/97; 10/2/97

Judgment \$ 594,664.52

Costs 170.00

Other

TOTAL \$ 594,834.52

vs

Defendant: BUILDING MATERIALS WHOLESALE, INC.
101 CAHABA VALLEY PARKWAY WEST
PELHAM, AL 35124

12.00

9 7 1 2 / 2
Inst # 1997-35554
10/31/1997-35554
09:02 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
16.00
D04 MCD

Plaintiff's Atty. Douglas J. Centeno

Defendant's Atty. Edward P. Meyerson and Jesse P. Evans, III

JUDGMENT RENDERED IN FAVOR OF

X PLAINTIFF

DEFENDANT

JUDGMENT:

☐ Default

☐ Dismissal

☐ Detinue

☒ Other (See below)

☐ Consent

☐ Workman's Comp.

☐ Unlawful Detainer

☐ Non Suit

☐ Pro Ami

JUDGMENT CONDITIONS:

☐ With Exemptions

☐ With Prejudice

☐ Without Exemptions

☐ Without Prejudice

7/11/97 Pursuant to jury verdict, judgment is rendered in favor of the plaintiff and against the defendant in the sum of FIVE HUNDRED EIGHT THOUSAND ONE HUNDRED TEN AND 36/100'S (\$508,110.36).

Judge James

10/2/97 Order is entered wherein attorney's fees in the amount of \$69,432.99 are awarded (paragraph 1 of page 2) and pre-judgment interest in the amount of \$17,121.17 is awarded (top of page 3). These two figures, added to the judgment amount in the 7/11/97 order of \$508,110.36, total FIVE HUNDRED NINETY-FOUR THOUSAND SIX HUNDRED SIXTY-FOUR AND 52/100'S (\$594,664.52). Costs are taxed to the defendant, Building Materials Wholesale, Inc. (Order is attached)

Judge James

Certified as a True Copy

October 15, 1997

CLERK

Gally Conradi
CLERK

IN THE CIRCUIT COURT FOR JEFFERSON COUNTY
FOR THE STATE OF ALABAMA

Filed In Open Court
This 2 day of October 1997
POLLY CONRADI
CLERK OF CIRCUIT COURT
BY *F. Archull*
DEPUTY CLERK

STO CORPORATION,

Plaintiff,

v.

BUILDING MATERIALS WHOLESALE,
INC.

Defendant.

CIVIL ACTION NUMBER

CV-94-5563-DNJ

ORDER

The following matters were presented to the Court for hearing on September 29, 1997:

- (1) Plaintiff's request for taxation of attorney's fees pursuant to the Distributorship Agreement, which was reserved by the Court and not submitted to the jury for determination;
- (2) Plaintiff's Motion to Alter and Amend Judgment to allow for the recovery of prejudgment interest; and
- (3) Defendant's Motion for Judgment Notwithstanding the Verdict, or in the Alternative, for a New Trial.

After considering the arguments of counsel, briefs and submissions of the parties and the evidence taken *ore tenus* at the hearing on September 29, 1997,

It is ORDERED, ADJUDGED and DECREED, as follows:

1. Plaintiff's request for the taxation of attorney's fees is GRANTED.

Considering the twelve factors outlined in Peebles v. Miley, 439 So.2d 137 (Ala. 1983), the Court finds that the reasonable value of the services performed and expenses incurred by Plaintiff's counsel in the prosecution of the breach of contract claim against BMW is \$69,432.99 (which consists of \$29,832.69 for the Schoel, Ogle, Benton and Centeno firm and \$39,600.30 for the Harkleroad and Hermance firm). The Court further finds that all of the above-mentioned fees and expenses were necessary to prosecute Plaintiff's breach of contract claim against Defendant, BMW. The afore mentioned sum is the amount the Defendant's expert testified was reasonable and necessary.

2. Plaintiff's Motion to Alter and Amend the Judgment to allow for the recovery of prejudgment interest is hereby GRANTED. The Court, in its July 11, 1997 Order mistakenly relied upon the Burlington Northern Railroad Co. v. Whitt case, which dealt with an unliquidated and uncertain tort claim. The Court finds that the Plaintiff's claim for the recovery of the price for materials that were delivered in October and November of 1994, which totals \$51,884.00, was a liquidated claim, and therefore the recovery of prejudgment interest is allowed pursuant to Alabama Code Section 8-8-8. The Court further finds that pursuant to Alabama Code Section 8-8-10, the contractual interest rate for this prejudgment interest is eighteen per cent (18%) per annum. United Stated for the use and benefit of Roper, IBG, a division of Roper Corporation v. Reisz, 718 F.2d 1004 (11th Cir. 1983); Carrier Express, Inc. v. The Home Indemnity Company, 860 F.Supp. 1465 (N.D. Ala. 1994); Miller and Company v. McCown, 531 So.2d 888

(Ala. 1988). By mathematical computation, the amount of the prejudgment interest that the Plaintiff is entitled to is \$17,121.17.

3. Defendant's Motion for Judgment Notwithstanding the Verdict, or in the Alternative, for a New Trial, is hereby OVERRULED.

4. So there is no misunderstanding, the judgment, as amended, based upon the jury verdict and this Order, is as follows: Plaintiff shall recover of the Defendant, Building Materials Wholesale, Inc., the sum of \$594,664.52. The Court understands that costs of this action have been previously taxed against the Defendant. If this is incorrect, costs of this action are taxed against the Defendant, Building Materials Wholesale, Inc.

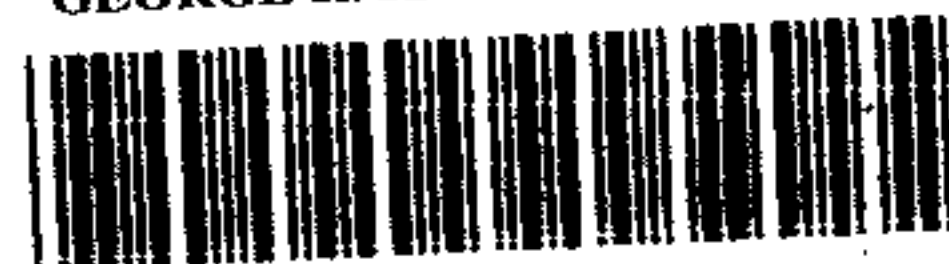
DONE and ORDERED this 2nd day of October, 1997.


DRAYTON N. JAMES, Circuit Judge

Distribution:

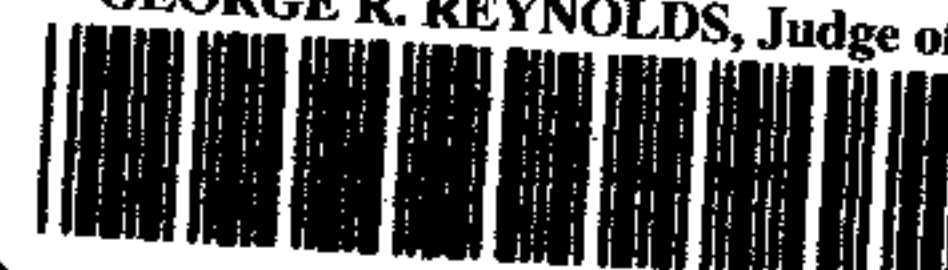
Douglas J. Centeno, Esq.
Timothy J. McGaughey, Esq.
Jesse P. Evans, Esq.

State of Alabama - Jefferson County
I certify this instrument filed on:
1997 OCT 22 A.M. 11:35
Recorded and \$
and \$ 12.00
\$ 12.00
Deed Tax and Fee Amt. 12.00
Total \$ 12.00
GEORGE R. REYNOLDS, Judge of Probate



9762/6197 BESS

State of Alabama - Jefferson County
I certify this instrument filed on:
1997 OCT 17 P.M. 16:13
Recorded and \$
and \$ 12.00
\$ 12.00
Deed Tax and Fee Amt. 12.00
Total \$ 12.00
GEORGE R. REYNOLDS, Judge of Probate



9712/2581

Inst # 1997-35554
10/31/1997-35554
09:02 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
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