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Oct 04 2022

SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

APPEAL FROM SPARTANBURG COUNTY
COURT OF COMMON PLEAS
THE HONORABLE J. DERHAM COLE, CIRCUIT COURT JUDGE
THE HONORABLE SHANNON M. PHILLIPS, MASTER-IN-EQUITY

APPELLATE CASE NO. 2022-000348
CIVIL ACTION NO. 2021-CP-42-01163

Custom Performance Engineering, Inc.,

RESPONDENT-APPELLANT,

versus

AM Industrial Group, LLC,

APPELLANT-RESPONDENT.

RECORD ON APPEAL

Carmen V. Ganjehsani (S.C. Bar No. 73515)
R. Wilder Harte (S.C. Bar No. 101228)
RICHARDSON, PLOWDEN & ROBINSON, PA
1900 Barnwell Street (29201)
Post Office Drawer 7788
Columbia, South Carolina 29202
(803) 771-4400
cganjehsani@richardsonplowden.com
wharte@richardsonplowden.com
**ATTORNEYS FOR
APPELLANT-RESPONDENT
AM INDUSTRIAL GROUP, LLC**

Adam C. Bach (S.C. Bar No. 74885)
Emily R. Godwin (S.C. Bar No. 103708)
ELLER TONNENSON BACH, LLC
1306 South Church Street
Greenville, South Carolina 29605
(864) 236-5013
abach@etblawfirm.com
egodwin@etblawfirm.com
**ATTORNEYS FOR
RESPONDENT-APPELLANT
CUSTOM PERFORMANCE
ENGINEERING, INC.**

CUSTOM PERFORMANCE ENGINEERING, INC. v.
AM INDUSTRIAL GROUP, LLC

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STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 Custom Performance Engineering, Inc.,)
)
 Plaintiff,)
)
 vs.)
)
 AM Industrial Group, LLC,)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

C. A. No. 2021-CP-42-01163

ORDER

RECEIVED

Mar 21 2022

SC Court of Appeals

This matter came before the Master-in-Equity for Spartanburg County for a damages hearing on December 20, 2021 pursuant to an order of reference entered on September 28, 2021. Present at the hearing on behalf of Custom Performance Engineering, Inc. (“Custom Performance”) was Adam C. Bach, of the law firm Eller Tonnsen Bach, LLC. Present at the hearing on behalf of AM Industrial Group, LLC (“AMI”) was R. Wilder Harte of the law firm Richard Plowden & Robinson, P.A.

From the testimony and evidence presented at the hearing, it appears that Custom Performance purchased an Eaton Leonard VB076HT CNC Bender machine (the “Machine”) from AMI on August 10, 2020. The Machine did not perform as warranted. AMI provided assurances to Custom Performance that it could make the Machine work. Over the next several months, Custom Performance expended time and money on repairs or fixes suggested by AMI. Further, AMI also attempted to repair the Machine to make it perform properly. Despite these efforts, the Machine continued to fail to perform properly, and Custom Performance provided written notice of its rejection of the Machine and asked AMI to refund its purchase price. AMI refused to acknowledge Custom Performance’s rejection of the Machine or to refund the purchase price. Because the Machine failed to perform, Custom Performance was forced to purchase a

replacement machine, a YLM CNC-90 MSRSM-6A CNC Bending Machine (the “Replacement Machine”) for \$255,087.00.

Custom Performance filed suit for breach of contract, breach of express warranty, and breach of the implied warranty of merchantability. At the hearing, Custom Performance produced evidence seeking the purchase price, the costs to tool and install the Machine, the cost to “cover,” meaning the difference in price between the Machine and the Replacement Machine, the costs to install and tool the Replacement Machine, and for lost profits caused by the Machine failing to perform as warranted.

Because the Machine was moveable at the time of identification to the contract, this transaction is governed by South Carolina Uniform Commercial Code, S.C. Code § 36-2-101, *et. seq.* Additionally, because AMI is in default, AMI concedes liability. Although AMI is liable to Custom Performance for the actions alleged, Custom Performance is still required to prove its damages by a preponderance of the evidence.

At the hearing, Custom Performance testified that its lost profits were based on three purchase orders it obtained but had to cancel because the Machine could not perform the job. Following the hearing, the court exercised its discretion to leave the record open for Custom Performance to submit the cancelled purchase orders for the court’s review. Custom Performance submitted these records, and the court is satisfied that Custom Performance’s lost profits claim is supported by a preponderance of the evidence. Therefore, based on the testimony and evidence presented, the court finds that Custom Performance proved the following damages by a preponderance of the evidence:

Price of Machine	\$132,000.00
Costs to Install and Tool Machine	\$8,694.00
Lost Profits	\$257,680.00
Total Damages	\$398,374.00

The court declines to award, however, the difference in the cost of the Machine and the cost of the Replacement Machine. During cross-examination, Custom Performance's witness testified that the Replacement Machine is not identical to the Machine and contains more features not available on the Machine. Because of this, the court declines to award the cost of "cover" or the tooling and installation costs for the Replacement Machine.

The court further finds that AMI is entitled to retake possession of the Machine from Custom Performance, as well as any of the tooling AMI provided with the Machine, upon payment of the judgment amount.

THEREFORE, based on the testimony and evidence submitted,

IT IS ORDERED, judgment is entered in favor of Custom Performance and against AMI in the amount of Three Hundred Ninety-Eight Thousand Three Hundred Seventy-Four (\$398,374.00) Dollars, plus costs in the amount of \$293.80, for a total judgment of Three Hundred Ninety-Eight Thousand Six Hundred Sixty-Seven and 80/100ths (\$398,667.80) Dollars. Interest shall accrue on the judgment at the statutory rate upon entry of this Order.

IT IS FURTHER ORDERED that following payment of the judgment to plaintiff, Custom Performance shall coordinate with AMI and make reasonable accommodations for AMI to retake possession of the Machine, and any tooling AMI provided with the Machine, at AMI's expense.

AND IT IS SO ORDERED.

Official Court block on following page



Spartanburg Common Pleas

Case Caption: Custom Performance Engineering, Inc. VS Am Industrial Group, Llc

Case Number: 2021CP4201163

Type: Order/Damages

IT IS SO ORDERED.

s/ Shannon M. Phillips - 3087

Mar 21 2022

SC Court of Appeals

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2021-CP-42-01163

CUSTOM PERFORMANCE ENGINEERING, Inc.,

AM INDUSTRIAL GROUP, LLC.,

PLAINTIFF(S)

DEFENDANT(S)

<p>Submitted by: the COURT</p>	<p>Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant</p>
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DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

This matter is before the Court on motion of the defendant seeking relief from default.

The standard for granting relief from an entry of default is good cause under Rule 55(c), SCRPC. "This standard requires a party seeking relief from an entry of default under Rule 55(c) to provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice." *Sundown Operating Co., Inc. v. Intedqe Industries, Inc.*, 383 SC 601 (2009)

It is incumbent upon the party seeking relief to "provide a satisfactory explanation for the default" otherwise the Court's inquiry ends and the motion for relief denied. *Regions Bank v. Owens*, 402 SC 642 (App 2013)

Once a party has put forth a satisfactory explanation for the default, in deciding whether "good cause" exists, the trial court should consider the following factors: (1) the timing of the defendant's motion

for relief, (2) whether the defendant has a meritorious defense, and (3) the degree of prejudice to the plaintiff if relief is granted. *Wham v. Shearson Lehman Brothers*, 298 SC 462 (App. 1989)

This Court, mindful of the need of adherence to the applicable rules, does not take a party's failure to comply with the applicable rules governing the administration of civil lawsuits in this state lightly, but equity requires that a party who has taken reasonably appropriate measures to comply therewith should not be held to a technical and strict application of the rule where such could give rise to a significant injustice.

In this case it has been made to appear that the defendant upon being served, delivered the summons and complaint to its insurance carrier. The carrier was given an extension of time to respond and failed to take the necessary action to respond to the lawsuit and was therefore negligent in protecting the defendant's interests.

"The courts of this state have consistently held that the negligence of an attorney or insurance company is imputable to a defaulting litigant." *Roberts v. Peterson*, 292 SC 149 (App. 1987)

Assuming the insurance company was at fault for not ensuring the complaint was answered, the defendant has failed to show "good cause". Negligence of the insurance company is imputed to a defaulting litigant and cannot constitute good cause to relieve the defendant from the entry of default absent a reasonable explanation being provided. *Richarson v. P. V., Inc.*, 383 SC 610 (2009)

There being no satisfactory explanation provided the Court excusing the default, there is no need for further consideration being given to the appropriate factors applicable to a decision to vacate a default or grant relief from it.

Based upon a consideration of the applicable law and the circumstances attendant to this case, this Court finds that the defendant's **MOTION to SET ASIDE ENTRY OF DEFAULT** should be and **IS** therefore **DENIED**.

IT IS FURTHER ORDERED and with the consent of the parties that this matter shall be **REFERRED** to the **MASTER-IN-EQUITY** for a hearing on damages pursuant to Rule 53, SCRCP.

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk

:

INFORMATION FOR THE JUDGMENT INDEX Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG)	
	)	C. A. No. 2021-CP-42-01163
Custom Performance Engineering, Inc.,)	
	)	ORDER OF DEFAULT
Plaintiff,)	
)	
vs.)	
)	
AM Industrial Group, LLC,)	
)	
Defendant.)	

This matter came before the Court upon the plaintiff’s motion for entry of default judgment against the defendant pursuant to Rule 55, SCRPC.

It appears to this Court that, upon the Court’s records, service was effectuated on the defendant and that the defendant has failed to plead, appear, or otherwise respond in accordance with the law of South Carolina.

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that the plaintiff’s motion for entry of default is GRANTED and that default is hereby entered against the defendant in the above-captioned matter.

IT IS SO ORDERED.



Spartanburg Common Pleas

Case Caption: Custom Performance Engineering, Inc. VS Am Industrial Group, Llc

Case Number: 2021CP4201163

Type: Order/Entry of Default

IT IS SO ORDERED

s/Amy W Cox, Spartanburg County Clerk of
Court by Maribel M Martinez

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG)	
	)	C.A. No. 2021-CP-42- _____
Custom Performance Engineering, Inc.,)	
)	
Plaintiff,	)	SUMMONS
)	
vs.)	
)	
AM Industrial Group, LLC,)	
)	
Defendant.)	
)	

TO THE DEFENDANT ABOVE NAMED:

You are hereby summoned and required to answer the Complaint, herewith served upon you, and to serve a copy of your answer to same upon the subscriber at 1306 South Church Street, Greenville, South Carolina, 29605, within thirty (30) days after the service hereof, exclusive of the day of such service. If you fail to answer within that time, you will be considered to be in default and the Plaintiff will move before the Court for the relief demanded in the Complaint.

Respectfully submitted,

s/Adam C. Bach
Adam C. Bach (S.C. Bar #74885)
Katie Sieber (S.C. Bar #102826)
ELLER TONNSEN BACH, LLC
1306 South Church Street
Greenville, SC 29605
Telephone: (864) 236-5013
Facsimile: (864) 312-4191
abach@etblawfirm.com
ksieber@etblawfirm.com

Attorneys for Custom Performance Engineering, Inc.

April 13, 2021

Greenville, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG)	
	)	C.A. No. 2021-CP-42- _____
Custom Performance Engineering, Inc.,)	
)	
Plaintiff,)	
)	
vs.	)	COMPLAINT
)	
AM Industrial Group, LLC,)	
)	
Defendant.)	
_____)	

Plaintiff, Custom Performance Engineering, Inc. (“Custom Performance”) complaining of the defendant AM Industrial Group, LLC (“AM Industrial”), would respectfully allege and show unto this court as follows:

PARTIES AND JURISDICTION

1. Plaintiff Custom Performance is a corporation formed and existing under the laws of the State of Maryland with its principal place of business in Spartanburg County, South Carolina.
2. Defendant AM Industrial Group, LLC is a limited liability company formed and existing under the laws of the state of Ohio.
3. This action concerns a contract for the delivery of goods to Spartanburg County, South Carolina.
4. This court has jurisdiction and venue is proper in Spartanburg County, South Carolina.

GENERAL ALLEGATIONS

5. Custom Performance is in the business of engineering and manufacturing parts for the automotive performance industry.

6. AM Industrial is in the business of selling refurbished and used tube machinery.

7. In July 2020, Custom Performance negotiated with AM Industrial about purchasing a bender machine that was capable of bending 3-inch tooling. AM Industrial issued an invoice (the "Invoice") to Custom Performance for an Eaton Leonard VB076HT CNC Bender machine (the "Machine") in the amount of \$132,000.00. A true and accurate copy of the Invoice is attached as **Exhibit A**.

8. Brett Wyman of AM Industrial represented that the Machine would be refurbished and in like new condition.

9. Custom Performance executed a purchase order (the "Purchase Order") on August 10, 2020 for the Machine and additional tooling in the amount of \$132,000.00. Pursuant to the terms of the Purchase Order, the Machine was to be converted to utilize CSM style tooling. The Purchase Order stated that the high torque option on the Machine needed to bend 3-inch tooling and material and would need to be proved prior to Custom Performance's purchase of the Machine. When the Machine was completed, Custom Performance would send 3-inch tooling and material to perform sample bends in aluminum and stainless steel to ensure the machine was operational. A true and accurate copy of the Purchase Order is attached as **Exhibit B**.

10. In August 2020, George Rumore of Custom Performance visited AM Industrial's facility for a demonstration of the Machine's bending of 3-inch tooling. At the demonstration, the Machine did not bend tooling as warranted. Brett Wyman of AM Industrial assured Custom Performance that this was a set up issue that could be corrected by a bender machine operator after the Machine was delivered to the Custom Performance facility. Based on this representation, Custom Performance approved delivery of the Machine to its facility.

11. In September 2020, the Machine was delivered to Custom Performance's facility. The machine was not performing as warranted and would not bend 3-inch tooling and material as required under the contract between the parties.

12. Immediately following delivery, Custom Performance informed AM Industrial that the Machine was still not performing as warranted. AM Industrial sent a representative to inspect the Machine, but was unable to get the Machine to bend 3-inch tooling and material at the Custom Performance facility.

13. In the following months, Custom Performance exhausted time, money, and materials attempting to get the Machine operational. Custom Performance continued to notify AM Industrial of the defects with the Machine during this time. AM Industrial attempted to make the Machine operational, but failed to provide an adequate remedy.

14. After approximately three months of Custom Performance notifying AM Industrial of the defects with the machine, AM Industrial sent a third-party to evaluate and set-up the Machine. The third-party was unable to set up or evaluate the Machine because the runout measured so poorly.

15. In December 2020, George Rumore met with Brett Wyman of AM Industrial, and Wyman agreed that the Machine was not working as warranted and that the bends being produced were unacceptable and could not be sold. Wyman again stated that the Machine was built to bend 3-inch tooling and should be able to do so. Rumore informed Wyman that if the machine operator inspecting the Machine could not resolve the issues with the bends, Custom Performance would reject the goods.

16. On January 6, 2021 and January 26, 2021, after AM Industrial again failed to correct the Machine's defects, Custom Performance sent emails to AM Industrial rejecting the Machine and requesting that AM Industrial pick up the Machine and refund the purchase price.

17. On February 5, 2021, Custom Performance, by and through their counsel, sent a letter rejecting the Machine as it failed to conform with the parties' contract and AM Industrial's warranties and representations.

18. To date, AM Industrial has not refunded the purchase price to Custom Performance.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

19. Custom Performance adopts and realleges the above allegations not inconsistent with this cause of action.

20. The Invoice and Purchase Order form a valid and binding contract between Custom Performance and AM Industrial.

21. The parties' contract is governed by S.C. Code §36-2-101 et. seq.

22. The terms of the Purchase Order are controlling and state that the high torque option on the Machine must be able to bend 3-inch tooling and material.

23. AM Industrial breached its contract with Custom Performance by failing to deliver a Machine that performed as required by the contract. Custom Performance rightfully rejected the Machine.

24. As a direct and proximate result of AM Industrial's breach, Custom Performance has suffered and continues to suffer actual, incidental, and consequential damages. Further, Custom Performance is entitled to a refund of the purchase price for the Machine because it effectively rejected the Machine following a reasonable inspection period.

FOR A SECOND CAUSE OF ACTION
(Breach of Express Warranty)

25. Custom Performance adopts and realleges the above allegations not inconsistent with this cause of action.

26. As alleged above, AM Industrial expressly warranted that the Machine would be refurbished to a like new condition and would bend 3-inch tooling and materials as stated in the contract between the parties.

27. AM Industrial breached its warranty because the Machine did not perform as warranted, causing damage to Custom Performance.

28. Even after Custom Performance repeatedly notified AM Industrial of the defect with the Machine, AM Industrial failed to provide an adequate remedy.

29. As a result of AM Industrial's breach of express warranties, Custom Performance has suffered actual, incidental, and consequential damages.

FOR A THIRD CAUSE OF ACTION
(Breach of Implied Warranty of Merchantability)

30. Custom Performance adopts and realleges all of the above allegations not inconsistent with this cause of action as if fully repeated herein.

31. AM Industrial was and is a merchant with respect to the goods that are the subject of the Agreement and, therefore, the AM Industrial warranted that the goods were merchantable.

32. As AM Industrial expressly warranted that the Machine was refurbished and build like new, the disclaimer of implied warranties for "Used items" stated on the Invoice has no effect or limitation on the contract for the Machine.

33. The Machine was not merchantable in that it did not bend 3-inch tooling, which was the ordinary purpose of its use, and Custom Performance gave AM Industrial timely notice that the Machine was not merchantable.

34. As a result of AM Industrial's breach of the warranty of merchantability, Custom Performance has suffered actual, incidental, and consequential damages in an amount to be determined by the trier of fact.

WHEREFORE, Plaintiff, Custom Performance Engineering, Inc., respectfully requests that the court enter judgment against Defendant AM Industrial Group, LLC, awarding it the following relief:

1. For Judgment against Defendant in the amount of the purchase price, plus incidental and consequential damages in an amount to be determined by the trier of fact,
2. In the alternative, should the court find that Plaintiff accepted the goods, for actual damages pursuant to S.C. Code §36-2-714, incidental, and consequential damages in an amount to be determined by the trier of fact,
3. For the costs of this action,
4. For such other relief as this court deems just and proper.

Signature page to follow

Respectfully submitted,

s/Adam C. Bach

Adam C. Bach (S.C. Bar #74885)

Katie Sieber (S.C. Bar #102826)

ELLER TONNSEN BACH, LLC

1306 South Church Street

Greenville, SC 29605

Telephone: (864) 236-5013

Facsimile: (864) 312-4191

abach@etblawfirm.com

ksieber@etblawfirm.com

Attorneys for Custom Performance
Engineering, Inc.

April 13, 2021

Greenville, South Carolina

Exhibit A

AM INDUSTRIAL

MACHINERY MERCHANTS

A DIVISION OF AMI GROUP

0019 INVOICE

ELECTRONICALLY FILED - 2021 Apr 13 3:54 PM - SPARTANBURG - COMMON PLEAS - CASE#2021CP021163

INVOICE #: 105011

DATE: 7/31/20

PO #: Verbal George

BILL TO:
 Attn: Accounts Payable
 Custom Performance
 280 National Ave
 Spartanburg, SC 29303

SHIP TO:
 Attn: Receiving
 Custom Performance
 280 National Ave
 Spartanburg, SC 29303

TERMS: Payment in full prior to shipment

FOB: Brook Park, OH
unless otherwise specified

SHIPPING INSTRUCTIONS: Customer Arranged

16000 Commerce Park Drive
 Brook Park, Ohio
 44142-2023
 (216) 433-7171
 (216) 433-4008 Fax
 www.amindustrialmachinery.com
 info@amindustrialmachinery.com

QTY	ITEM ID	DESCRIPTION	UNIT PRICE	AMOUNT
1	AM19439	EATON LEONARD Model: VB076HT CNC 3-Axis Horizontal Mandrel Type Tube Bending Machine -refurbished-		
1		INCLUDES:		
1		Used tooling for 3" OD: Used Bend Die + any other available		
1		Used tooling for 1.875" OD: Used Bend Die + any other available		
1		TOTAL DISCOUNTED PRICE	132,000.00	132,000.00
TOTAL INVOICE AMOUNT (USD):			\$	132,000.00

CONDITIONS:

Used items sold hereunder are neither designed nor manufactured by the seller, and this sale of these items is on an as-is and with all faults basis, without any representation or warranties, expressed or implied, of any kind including safety, condition, or quality. Purchaser agrees that upon and after payment of this invoice, in part or full, the above order is not subject to cancellation, exchange, or return. Seller further assumes no responsibility to provide safety device or equipment necessary for the protection of the user or to comply with applicable governmental laws or requirements. It is agreed and understood that purchaser assumes this responsibility and the above is an integral part of this sale. Orders are not subject to cancellation. Deposits received are non-refundable

Thank you for your business!

Exhibit B

CUSTOM PERFORMANCE
e n g i n e e r i n g

280 National Ave.
Spartanburg, SC 29303
Info@cp-e.com

 (864) 764-1646
 (864) 764-8320

PURCHASE ORDER

Date	P.O. #
8/10/2020	6787

Vendor
AM Industrial Group, Llc. 16000 Commerce Park Drive Brook Park, Ohio 44142 USA

Ship To
Custom Performance Engineering, Inc. ATTN: Shipping & Receiving 280 National Ave. Spartanburg, SC 29303 USA

Due Date	Ship Via
8/14/2020	TBD

QTY	P/N	Description	Material	RCVD	Price	Amount
	TOBN00003	Bender / CNC | Eaton Leonard | VB-076HT | 3.000"		0	*****	127002.00
	TOBN00004	Tooling / Bender | Set | 3.000" OD | Mandrel, Stainless & Aluminum | Wiper Die, Stainless & Aluminum | Bend Die | Interlock Die | Clamp Die | Pressure Die | Eaton Leonard Converted To CSM Key Way | Used		0	2,499.00	2,499.00
		Tooling / Bender | Set | 1.875" OD | Mandrel, Stainless & Aluminum | Wiper Die, Stainless & Aluminum | Bend Die | Interlock Die | Clamp Die | Pressure Die | Eaton Leonard Converted To CSM Key Way | Used				2,499.00
<p>TERMS:</p> <p>-CONVERT BENDER TO UTILIZE CSM TOOLING. cp-e CURRENTLY HAS WAY TOO MUCH INVESTED IN CSM STYLE TOOLING. cp-e SENT 5/8" TOOLING ON PO#: 6773, OUTBOUND TRACKING#: 395527537775. WHEN BENDER CONVERSION IS COMPLETE, cp-e WILL SEND 3.000" TOOLING AND MATERIAL TO PREFORM SAMPLE BENDS IN ALUMINUM AND STAINLESS STEEL. THE HIGH TQ OPTION NEEDS TO BE PROVED OUT. NOT MUCH IN THE WAY OF LITERATURE ON THE VB-076 "HT" VERSION. THANK YOU FOR YOUR UNDERSTANDING.</p> <p>-ONCE DELIVERY IS MADE AND EQUIPMENT IS PRODUCING, cp-e AGREES TO SELL AM INDUSTRIAL IT'S BRAND NEW JETLINE ENGINEERING CS3-15Z SEAM WELDER FOR \$20,000.00. cp-e WILL USE THIS TO BUY MORE TOOLING FOR THE VB-076HT.</p>						
Thank you.			TOTAL		\$132,000.00	

ELECTRONICALLY FILED - 2021 Apr 13 3:54 PM - SPARTANBURG - COMMON PLEAS - CASE#2021CP4201163

10

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 Custom Performance Engineering, Inc.,)
)
 Plaintiff,)
)
 vs.)
)
 AM Industrial Group, LLC,)
)
 Defendant.)
)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

C.A. NO. 2021-CP-42-01163

**AFFIDAVIT OF SERVICE
BY MAILING**

The undersigned, Amy M. Price, does hereby certify that a copy of the summons and complaint was served on the following defendant by certified mail, return receipt requested, restricted delivery on April 20, 2021, as will appear by the certified mail return receipt attached hereto and incorporated herein by reference.

AM Industrial Group, LLC
Reminger Service Company, Inc.
101 West Prospect Ave., Ste. 1400
Cleveland, OH 44115
Mailing Accepted: April 20, 2021


Amy M. Price, Paralegal
ELLER TONNSEN BACH, LLC
1306 S. Church Street
Greenville, SC 29602


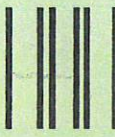
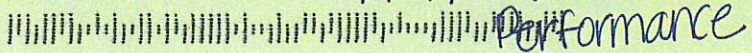
SWORN before me on May 3, 2021

NOTARY PUBLIC FOR SOUTH CAROLINA
 My Commission expires: 9-15-2026



0023

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <input type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) C. Date of Delivery</p>
<p>1. Article Addressed to:</p> <p>AM Industrial Group, LLC Reminger Service Company, Inc. 101 West Prospect Ave. Ste 1400 Cleveland, OH 44115</p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>
 <p>9590 9402 5269 9154 5017 88</p>	<p>3. Service Type</p> <ul style="list-style-type: none"> <input type="checkbox"/> Adult Signature <input type="checkbox"/> Adult Signature Restricted Delivery <input checked="" type="checkbox"/> Certified Mail® <input checked="" type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Insured Mail <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500) <input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Registered Mail Restricted Delivery <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Signature Confirmation Restricted Delivery
<p>2. Article Number (Transfer from service label)</p> <p>7020 1290 0002 2921 1509</p>	
<p>PS Form 3811, July 2015 PSN 7530-02-000-9053 Domestic Return Receipt</p>	

<p>USPS TRACKING#</p>  <p>9590 9402 5269 9154 5017 88</p>	 <div data-bbox="1079 808 1299 924" style="border: 1px solid black; padding: 5px;"> <p>First-Class Mail Postage & Fees Paid USPS Permit No. G-10</p> </div>
<p>United States Postal Service</p>	<p>• Sender: Please print your name, address, and ZIP+4® in this box•</p> <p style="text-align: center;">Eller Tonnsen Bach, LLC 1306 S Church Street Greenville, SC 29605</p> <p style="text-align: right; font-style: italic;">AMP/ custom Performance</p> 

ELECTRONICALLY FILED - 2021 May 03 4:19 PM - SPARTANBURG - COMMON PLEAS - CASE#2021CP4201163

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Tracking Number: 70201290000229211509

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Delivered, Left with Individual

April 20, 2021 at 11:09 am
CLEVELAND, OH 44115

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Feedback

AFFIDAVIT OF SERVICE

State of South Carolina

County of Spartanburg

Common Pleas Court

Case Number: 2021-CP-42-01163

Plaintiff:
Custom Performance Engineering, Inc.
vs.
Defendant:
AM Industrial Group, LLC

For: Adam Bach
Eller Tonnsen Bach LLC Attorneys at Law

Received by Upstate Legal Support Services, LLC to be served on AM Industrial Group, LLC, 101 West Prospect Ave., Suite 1400, Cleveland, OH 44115. I, BENJAMIN PURSER, being duly sworn, depose and say that on the 9 day of JUNE, 2021 at 2:02P .m., executed service by delivering a true copy of the Letter, Summons, Complaint and Exhibits in accordance with state statutes in the manner marked below:

CORPORATE SERVICE: By serving DEE WETULA as RECEPTIONIST a person authorized to accept service.

GOVERNMENT AGENCY: By serving _____ as _____ of the within named agency.

OTHER SERVICE: By serving _____ as _____.

NON SERVICE: Due to reasons detailed in the Comments below.


COMMENTS: SERVICE WAS EFFECTED BY DELIVERING THE LISTED DOCUMENTS TO DEE WETULA, RECEPTIONIST FOR R.A. REMINGER FOR AM INDUSTRIAL GROUP LLC ON 6/9/2021 2:02 PM

DESCRIPTION: 57/WF/5'6/160/LIGHT BRWN HAIR/GLASSES

I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service was made.

Subscribed and Sworn to before me on the 1 day of JULY 2021, X by the affiant who is personally known to me.

CATHRENE M. DRAKE
NOTARY PUBLIC
My Commission Expires: 07/07/2024


BENJAMIN PURSER
PROCESS SERVER # N/A (OHIO)
Appointed in accordance with State Statutes

Upstate Legal Support Services, LLC
P O Box 2144
Greenville, SC 29602
(864) 626-3733

Our Job Serial Number: 2021001408



Cathrone M. Drake
Resident Summit County
Notary Public, State of Ohio
My Commission Expires:
July 7, 2024

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG)	
	)	C. A. No. 2021-CP-42-01163
Custom Performance Engineering, Inc.,)	
)	
Plaintiff,	)	MOTION FOR ENTRY OF DEFAULT
)	
vs.)	
)	
AM Industrial Group, LLC,)	
)	
Defendant.)	

Plaintiff Custom Performance Engineering, Inc., by and through its undersigned counsel, pursuant to Rule 55 of the *South Carolina Rules of Civil Procedure*, hereby moves this Court for the entry of an order holding Defendant AM Industrial Group, LLC in default on Plaintiff's claims. This motion is based upon the following grounds:

1. A summons and complaint in this matter were filed in the Spartanburg County Court of Common Pleas on April 13, 2021.
2. Pursuant to Rule 4, SCRCPP, service of the complaint was perfected upon Defendant on June 9, 2021.
3. Pursuant to Rule 12, SCRCPP, an answer or other appropriate response was due from Defendant on or before July 9, 2021.
4. Defendant's insurance carrier requested an extension of 30 days to respond to the complaint. Plaintiff's counsel agreed to a 30-day extension. Defendant's response was due on or before August 10, 2021.
5. No answer or responsive pleading has been filed by Defendant as indicated by the attached affidavit of default.

6. Defendant is not a minor, has not been found legally incompetent, and is not entitled to the protections of the Service Members Civil Relief Act and Amendments thereto.

7. This Court has subject matter and personal jurisdiction over Defendant.

8. Defendant is in default under Rule 55(b)(2), SCRCF.

9. Plaintiff is entitled to an order entering default against Defendant.

This motion is based on the pleadings, the *South Carolina Rules of Civil Procedure*, the common and statutory law of the State of South Carolina and the attached proposed order for the entry of default in support of this motion.

Respectfully submitted,

s/Adam C. Bach

Adam C. Bach (S.C. Bar #74885)

Katie Sieber (S.C. Bar #102826)

ELLER TONNSEN BACH, LLC

1306 South Church Street

Greenville, SC 29605

Telephone: (864) 236-5013

Facsimile: (864) 312-4191

abach@etblawfirm.com

ksieber@etblawfirm.com

Attorneys for Custom Performance
Engineering, Inc.

August 12, 2021

Greenville, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG)	
	)	C. A. No. 2021-CP-42-01163
Custom Performance Engineering, Inc.,)	
	)	AFFIDAVIT OF DEFAULT
Plaintiff,)	
)	
vs.)	
)	
AM Industrial Group, LLC,)	
)	
Defendant.)	

PERSONALLY APPEARED before me, Adam C. Bach, who being duly sworn, deposes and says as follows:

1. I am counsel for Plaintiff Custom Performance Engineering, Inc. in the foregoing action against Defendant, AM Industrial Group, LLC.
2. Plaintiff filed a summons and complaint against Defendant on April 13, 2021.
3. As indicated by the affidavit of service filed with the Court, Defendant was served said summons and complaint on June 9, 2021 by delivery upon Dee Wetula of R.A. Reminger, the registered agent of Defendant, AM Industrial Group, LLC.
4. Pursuant to Rule 12, SCRCF, an answer or other appropriate response was due from Defendant on or before July 9, 2021.
5. Defendant's insurance carrier requested an extension of 30 days to respond to the complaint. Plaintiff's counsel agreed to a 30-day extension. Defendant's response was due on or before August 10, 2021.
6. Defendant has not responded to the complaint as required by the *South Carolina Rules of Civil Procedure* or in the manner allowed by South Carolina law.
7. Defendant is in default.

8. Defendant is not a minor, has not been found legally incompetent, and is not entitled to the protections of the Service Members Civil Relief Act and Amendments thereto.

9. This Court has subject matter and personal jurisdiction over Defendant.

FURTHER AFFIANT SAYETH NAUGHT

Adam C. Bach
Adam C. Bach

Sworn to and subscribed before
me this 12th day of August, 2021

T. Kolenich
Notary Public, State of South Carolina
My Commission Expires: 9-15-2026



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG)	
	)	C. A. No. 2021-CP-42-01163
Custom Performance Engineering, Inc.,)	
)	
Plaintiff,	)	MOTION FOR DEFAULT JUDGMENT
)	
vs.)	
)	
AM Industrial Group, LLC,)	
)	
Defendant.)	

Plaintiff Custom Performance Engineering, Inc., by and through its undersigned counsel, will move at a date and time to be set by the court, pursuant to Rule 55 of the *South Carolina Rules of Civil Procedure*, for an order entering judgment against Defendant AM Industrial Group, LLC. The court entered default against Defendant on August 18, 2021. This motion is based upon the pleadings filed in this action, upon any future memorandum of law submitted by the movant(s), and upon applicable common and statutory law.

Respectfully submitted,

s/Adam C. Bach

Adam C. Bach (S.C. Bar #74885)

Katie Sieber (S.C. Bar #102826)

ELLER TONNSEN BACH, LLC

1306 South Church Street

Greenville, SC 29605

Telephone: (864) 236-5013

Facsimile: (864) 312-4191

abach@etblawfirm.com

ksieber@etblawfirm.com

Attorneys for Custom Performance
Engineering, Inc.

August 18, 2021

Greenville, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG)	
Custom Performance Engineering, Inc.,	)	Civil Action No. 2021-CP-42-01163
)	
Plaintiff,)	
v.	)	DEFENDANT AM INDUSTRIAL GROUP, LLC'S MOTION TO SET ASIDE ENTRY OF DEFAULT
AM Industrial Group, LLC,)	
)	
Defendant.)	
)	

Defendant AM Industrial Group, LLC, by and through its undersigned counsel, files this Motion to Set Aside Entry of Default (the "Motion") and For Leave to Respond to Plaintiff Custom Performance Engineering, Inc.'s Complaint, made pursuant to Rule 55(c), SCRCP.

LEGAL STANDARD

Rule 55(c), SCRCP, provides that, "[f]or good cause shown the court may set aside an entry of default." A motion for relief pursuant to Rule 55(c) rests solely within the sound discretion of the trial judge. Beckham v. Durant, 300 S.C. 329, 387 S.E.2d 701 (Ct. App. 1989). In determining whether or not to grant relief from entry of default, courts should "exercis[e] a broader, more liberal discretion than otherwise would be exercised under Rule 60(b) . . ." Top Value Homes, Inc. v. Harden, 319 S.C. 302, 460 S.E.2d 427, 429 (Ct. App. 1995).

In determining whether good cause exists, the Court should consider such factors as the promptness with which relief is sought, the reasons for failure to act promptly, the existence of a meritorious defense, and the prejudice to other parties. Harden, 319 S.C. at 305, 460 S.E.2d at 429; New Hampshire Ins. Co. v. The Bey Corp., 312 S.C. 47, 435

S.E.2d 377, 379 (Ct. App. 1993). There is no particular period of time in which a defaulting party must move to set aside an entry of default. However, the time limit applied by most courts is one of “reasonable time.” 10 James Wm. Moore, Moore's Federal Practice § 55.50[1][b] [iv], at 55-62 (3d ed. 1997). Also, courts have consistently set aside entries of default “where the defaulting party has not shown disrespect for the court or attempted to thwart proceedings.” Id. at § 55.50[1] [c], at 55-64 (3d ed. 1997) (footnote omitted); see also Ricks v. Weinrauch, 293 S.C. 372, 360 S.E.2d 535 (Ct. App. 1987) (good cause to set aside default found where defendant forwarded copy of complaint to insurance carrier which had gone bankrupt and took prompt action to respond to complaint upon discovering the bankruptcy).

The South Carolina Court of Appeals has held that the trial court should consider (1) the timing of the defaulting party's motion for relief, (2) whether the defaulting party has a meritorious defense, and (3) the degree of prejudice to the non-defaulting party should relief be granted. Harden, 319 S.C. at 305, 460 S.E.2d at 429.

ARGUMENT

A. Good Cause

Here, according to its Affidavit of Service, Plaintiff perfected service on AM Industrial on June 9, 2021. In a June 25, 2021 email [attached as Exhibit A], AM Industrial's insurer, Liberty Mutual Insurance, confirmed receipt of the Complaint and advised it “had reached out to Plaintiff's counsel requesting an extension to answer the Complaint. I will confirm once I received [sic] the extension.” No subsequent confirmation was ever provided.

Thereafter, on August 3, 2021, Liberty Mutual sent AM Industrial correspondence via email [attached as Exhibit B] denying insurance coverage for the claims raised in Plaintiff's Complaint. At no time after acknowledging receipt of the Plaintiff's Complaint did Liberty Mutual did provide confirmation of the purported extension, nor did Liberty Mutual include in its denial any guidance or explanation as to when a responsive pleading from AM Industrial was due. As a result, AM Industrial has been unduly prejudiced by its insurer's failure to provide it with critical information and defend on AM Industrial's behalf while examining the issue of insurance coverage.

B. Timeliness

Moreover, AM Industrial's Motion is timely made, as an Order for Entry of Default was made on August 18, 2021. When determining whether a defaulting party has established good cause, courts will often examine the length of time between the default and the motion to set aside entry of default. In this case, AM Industrial files this Motion within a reasonable amount of time from the Order for Entry of Default.

C. Meritorious Defense

An additional factor which the trial court should examine is whether the defendant has a meritorious defense to the plaintiff's claims. Defendant need not prove its defense by a preponderance of the evidence. Central Operating Co. v. Utility Workers, 491 F.2d 245, 252 n.8 (4th Cir. 1974). "The underlying concern is . . . whether there is some possibility that the outcome . . . after a full trial will be contrary to the result achieved by the default." Augusta Fiberglass Coatings, Inc. v. Fodor Contracting Corp., 843 F.2d 808, 812 (4th Cir. 1988). The defendant is required to establish only that its defense is meritorious, not that it would prevail on the merits. "[A] meritorious defense need not be

perfect nor one which can be guaranteed to prevail at a trial. It need be only one which is worthy of a hearing or judicial inquiry because it raises a question of law deserving of some investigation and discussion or a real controversy as to real facts arising from conflicting or doubtful evidence.” Thompson v. Hammond, 299 S.C. 116, 382 S.E.2d 900, 903 (1989)

The basis for Plaintiff's Complaint is that AM Industrial breached its contract with Plaintiff by failing to deliver a machine that performed as required by the contract and that Plaintiff rightfully rejected the machine. AM Industrial denies these allegations and asserts it complied with the contract terms in full. Consequently, AM Industrial has a meritorious defense worthy of investigation and should be allowed to file an answer or otherwise respond to the Complaint.

D. Prejudice

Finally, Plaintiff will not be prejudice if the entry of default is set aside. “To establish prejudice, the plaintiff must show that the delay will result in the loss of evidence, increased difficulties in discovery, or greater opportunities for fraud and collusion.” Berthelsen v. Kane, 907 F.2d 617, 621 (6th Cir. 1990) (internal citation omitted). The amount of time between the Plaintiff's service of the Complaint and this Motion is less than four (4) months. Setting aside the entry of default will not result in the loss of any evidence, will not cause any increased difficulty in discovery, and will not adversely affect the ability of Plaintiff to pursue its claims.

CONCLUSION

For the reasons stated herein, Defendant AM Industrial Group, LLC, respectfully requests that this Court grant this Motion, set aside the entry of default, and order such other and further relief, both general and special, legal or equitable, to which it may be justly entitled.

Respectfully submitted,

s/ R. Wilder Harte

Steven J. Pugh (SC Bar #14341)

spugh@richardsonplowden.com

R. Wilder Harte (SC Bar #101228)

wharte@richardsonplowden.com

Richardson Plowden & Robinson, P.A.

Post Office Drawer 7788 (29202)

1900 Barnwell Street

Columbia, South Carolina 29201

(803) 771-4400

September 8, 2021

EXHIBIT A

Charity McQueen

From: Flores, Marcela <Marcela.Flores@LibertyMutual.com>
Sent: Friday, June 25, 2021 4:30 PM
To: Reg Wyman
Cc: duckcommander@ameritech.net
Subject: Summons & Complaint - Custom Performance Engineering v. AM Industrial- ATLCAS000331354

Good Afternoon,

As per our conversation from yesterday. This will acknowledge our receipt of the notice of claim. The claim no. is ATLCAS000331354.

As mentioned yesterday, I had reached out to Plaintiff's attorney requesting an extension to answer the Complaint. I will confirm once I received the extension.

At this time I am in the process of reviewing the claim to evaluate coverage/liability [REDACTED]

[REDACTED]

For future reference, please include our claim number on all of your correspondence.

Thank You,
Marcela Flores
 Claims Specialist II
 Verticals and Programs

Liberty Mutual Insurance | Ironshore
 28 Liberty Street, 4th Floor
 New York, NY 10005
 Office: 212-208-9556
 Fax: 212-365-3511
Marcela.Flores@ironshore.com
 Report Casualty Loss Notices to: USClaims@Ironshore.com



For a copy of our privacy policy, visit www.libertymutual.com/privacy

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EXHIBIT B

Charity McQueen

From: Flores, Marcela <Marcela.Flores@LibertyMutual.com>
Sent: Tuesday, August 3, 2021 5:07 PM
To: Reg Wyman
Cc: duckcommander@ameritech.net; Bradford, Derek
Subject: AM Industrial Group LLC- Coverage Position- ATLCAS000331354 Custom Performance Engineering Inc.pdf
Attachments: AM Industrial Group LLC- Coverage Position- ATLCAS000331354 Custom Performance Engineering Inc.pdf

Good Afternoon,

Please see attached letter regarding Coverage Position.

Thank You,

Marcela Flores
 Claims Specialist II
 Verticals and Programs

Liberty Mutual Insurance | Ironshore
 28 Liberty Street, 4th Floor
 New York, NY 10005
 Office: 212-208-9556
 Fax: 212-365-3511

Marcela.Flores@ironshore.com

Report Casualty Loss Notices to: USClaims@Ironshore.com



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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	C. A. No. 2021-CP-42-01163
)	
Custom Performance Engineering, Inc.,)	
)	
Plaintiff,)	
)	
vs.	)	RESPONSE IN OPPOSITION TO MOTION
	)	TO SET ASIDE DEFAULT
AM Industrial Group, LLC,)	
)	
Defendant.)	
)	

Plaintiff, Custom Performance Engineering, Inc. (“Custom Performance”) respectfully submits this response in opposition to the defendant’s motion to set aside default.

Background

Custom Performance filed this action against the defendant because the defendant sold it a piece of machinery that does not work. Custom Performance engaged in an extensive and months-long effort to resolve its complaints about the machine with the defendants before filing this lawsuit. At the end of its negotiations, Custom Performance was corresponding with an attorney for the defendant named John Patrick, of the law firm Reminger Co., LPA, whose address is 101 W. Prospect Avenue, Suite 1400, Cleveland Ohio. *See* Email from John Patrick to Bach, February 16, 2021, attached as **Exhibit A**.

When negotiation failed, Custom Performance filed its lawsuit and served the summons and complaint via certified mail at the office of the defendant’s registered agent, “Reminger Service Company, Inc.” *See* Affidavit of Service by Mail, attached as **Exhibit B**; *see also* Ohio Articles of Organization for AM Industrial Group, LLC, attached as **Exhibit C**. The certified mailing was restricted delivery and was signed for on April 20, 2021. *Id.* The address for the registered agent, Reminger Service Company, Inc., and the law firm Reminger Co., LPA are

identical: 101 W. Prospect Avenue, Suite 1400, Cleveland, Ohio. *Compare* Email from John Patrick *with* Business Entity Details.

On April 28, 2021, counsel for Custom Performance sent a final demand letter to counsel for the defendant, John Patrick, of the law firm Reminger Co., LPA. *See* April 28, 2021 Letter, attached as **Exhibit D**. In that letter, Custom Performance expressly advised counsel for the defendant that it had filed suit against the defendant. *Id.* at 2 (“Custom Performance has filed suit against AM Industrial...”). Custom Performance received no response to its letter.

More than thirty days passed after delivery of the summons and complaint to Reminger Service Co. via certified mail, restricted delivery and no response to the summons and complaint of any kind was received by Custom Performance. Out of an abundance of caution, Custom Performance elected to deliver the complaint again, this time via process server. On June 9, 2021, the process server delivered the summons and complaint at the exact same address where the complaint was previously served, 101 West Prospect Avenue, Suite 1400. *See* Affidavit of Service, attached as **Exhibit E**.

This time the defendant responded. On June 25, 2021, Marcela Flores of Liberty Mutual Insurance emailed counsel for Custom Performance and “acknowledged” receipt of the summons and complaint. *See* Email from Marcela Flores, attached as **Exhibit F**. Ms. Flores requested a 45-day extension to answer the complaint. On June 28, 2021, counsel for Custom Performance responded that he would consent to a thirty-day extension from the answer due date of July 9, 2021, making the defendant’s answer due by August 9, 2021. *See* Email from Bach to Flores, attached as **Exhibit G**. The August 9th deadline was sixty (60) days from the date of service on June 9th and **One Hundred Eleven (111) days** from the date the complaint was originally served via certified mail. On August 18, 2021, default was entered against the defendant. On September

8, 2021, One Hundred Forty-One (141) days after the complaint was originally served via certified mail and Ninety-One (91) days after the complaint was delivered by process server, the defendant appeared in the case for the first time, filing a motion to set aside default.

Argument

1. The defendant has failed to provide a satisfactory explanation

A party seeking to set aside default must first “provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice.” *Sundown Operating Co. v. Intedge Indus., Inc.*, 383 S.C. 601, 607–08, 681 S.E.2d 885, 888 (2009). Only “once a party has put forth a satisfactory explanation for the default” does the trial court move onto the remaining factors. *Id.* (“Once a party has put forth a satisfactory explanation for the default, the trial court must also consider: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted.”).

The defendant claims that good cause exists because its insurance carrier was negligent when it failed to “confirm” that it had received an extension from Custom Performance’s counsel and because it failed to “include in its denial [of coverage] any guidance or explanation as to when a responsive pleading for AM Industrial was due.” The defendant concludes that it has been “unduly prejudiced” by its insurer’s failure to “provide it with critical information and defend on AM Industrial’s behalf.”

This explanation is not satisfactory as a matter of law. “The courts of this state have consistently held that the negligence of an attorney or insurance company is imputable to a defaulting litigant.” *Roberts v. Peterson*, 292 S.C. 149, 151, 355 S.E.2d 280, 281 (Ct. App. 1987). “[A] defendant may not be relieved from the entry of default solely because it relied to its detriment on a negligent insurance agent.” *Sundown Operating Co. v. Intedge Indus., Inc.*, 383 S.C. 601,

609, 681 S.E.2d 885, 889 (2009) (“Although the presence of other factors, in the totality of the circumstances, may amount to a showing of “good cause,” a defendant may not be relieved from the entry of default solely because it relied to its detriment on a negligent insurance agent.”). Instead, “the law is clear that an attorney or insurance company’s misconduct is imputable to the client.” *Id.* (citing *Williams v. Vanvolkenburg*, 312 S.C. 373, 375, 440 S.E.2d 408, 409 (Ct.App.1994) (observing that an attorney's negligence in failing to answer is imputable to the defendant); *Roberts v. Peterson*, 292 S.C. 149, 151, 355 S.E.2d 280, 281 (Ct.App.1987) (recognizing that negligence of an attorney or insurance company is imputable to a defaulting litigant)).

Here, the defendant offers no explanation for its default other than the negligent conduct of its insurance carrier. There is no explanation for its own conduct or any explanation not dependent on its insurance carrier’s alleged duty to “provide it with critical information and defend” it. This explanation cannot form the basis for “good cause” as a matter of law. *Sundown*, 383 S.C.at 609. The motion should be denied and the other factors need not be considered.

Further, even if the defendant’s explanation were not unsatisfactory as a matter of law, the defendant provides no explanation for its own negligence in failing to timely answer the summons and complaint. The alleged lack of communication from Liberty Mutual regarding an extension to answer makes the defendant more culpable, not less. The summons explains in detail what is required of a defendant – that it must file an answer within thirty (30) days. Based on the defendant’s own filings, it had no reason to believe that its answer was not due on or before the original due date of July 9, 2021. Yet it took no action.

Its culpability for taking no action is compounded by the fact its attorney’s office received notification that a lawsuit was filed against it in South Carolina **three times**: on April 20th when it

was served the first time; on April 28, 2021 when counsel for the plaintiff advised the defendant's attorney that defendant had been sued; and on June 9th, when it was served the second time. Unlike some other cases where a defaulted litigant pleads ignorance of their responsibilities after having turned a matter over to their insurance carrier, the defendant's attorney was certainly aware of the import of a summons and complaint, the necessity of filing a response or securing an extension, or the potential penalties of default.

Defendant's culpability is further compounded by the fact that it received notice that the insurance company would not be providing it with a defense on August 3, 2021, **six days** before its extended deadline of August 9th to file an answer. August 3rd is a Tuesday and August 9th is a Monday. The defendant, therefore, had nearly a week after receiving Liberty Mutual's denial letter to inquire about the lawsuit or determine when an answer was due. According to the defendant's filings, it did nothing.

Further, the defendant's explanation is directed solely to the second service dated June 9th. It provides no explanation as to why the first service, accomplished on April 20th at the exact same address, was insufficient or how its insurance carrier is at fault for its failure to timely respond to the April 20th service. In fact, it appears that the defendant did not forward the summons and complaint to its insurance carrier until June 24, 2021. *See* Email from Marcela Flores to Reg Wyman, attached as Exhibit A to Motion to Set Aside Default, dated June 25, 2021 ("As per our conversation **yesterday**. This will acknowledge our receipt of the notice of claim.")(emphasis added). More than sixty (60) days elapsed from the time the complaint was served on April 20th and Ms. Flores' email acknowledging receipt of the claim from the defendant. The defendant offers no explanation for why its insurance carrier is at fault for failing to timely respond to the April 20th service.

The defendant's conduct evinces a pattern of ignoring the summons and complaint in this matter. Custom Performance served the summons and complaint via certified mail, restricted delivery to the defendant's registered agent, which was in the exact same office, and almost certainly affiliated with, the defendant's attorney. The defendant ignored it. Eight days after serving the summons and complaint, Custom Performance sent a letter in which it specifically advised the defendant's attorney that it had filed suit against it. The defendant ignored it. Custom Performance served the complaint a second time by process server. The defendant ignored it for over three months before appearing in this court and seeking relief from its own neglect. The court should deny the defendants' motion.

2. The remaining factors do not favor setting aside default

Even though the court need not consider the remaining factors because the defendant's excuse is unsatisfactory and fails to explain its own neglect, the remaining factors do not favor granting the defendant's motion

a. Timeliness

The defendant states summarily that it acted within a reasonable amount of time following the entry of default. First, accepting its excuse for default as true, the date from which to measure the timeliness of its actions should be from August 3, 2021, when it first learned that the insurance company would not be providing it a defense. According to the defendant's own filings, by August 3, 2021, it knew that a) it had been sued in South Carolina court; b) it was served no later than June 9, 2021; and c) that Liberty Mutual was not providing it with a defense and that it would need to take some action to respond to the complaint. Despite knowing all of this, the defendant did not take any action with respect to the complaint until filing its motion to be relieved from default more than a month later. Given that the defendant could have still filed a timely answer before the

extended deadline, and then waited more than a month after learning the insurance company would not provide it with a defense before appearing, its motion for relief from default is not timely.

b. Meritorious Defense

To establish a meritorious defense, a defendant must present or proffer evidence or testimony which, if believed, establishes facts constituting a meritorious defense. *Cent. Operating Co. v. Util. Workers of Am., AFL-CIO*, 491 F.2d 245, 253 (4th Cir. 1974) (“Therefore, we are of the view that a party satisfies his burden of demonstrating a meritorious defense when he introduces uncontradicted testimony which, if believed, establishes facts constituting a meritorious defense.”); *United States v. Moradi*, 673 F.2d 725, 727 (4th Cir. 1982) (“all that is necessary to establish the existence of a “meritorious defense” is a presentation or proffer of evidence, which, if believed, would permit either the Court or the jury to find for the defaulting party.”).

Here, the defendant has not presented or proffered any evidence showing that he has a meritorious defense. Instead, defendant summarily states that “AM Industrial denies [the plaintiff’s] allegations...” A statement in a motion is not evidence. The defendant has failed to show that it has a meritorious defense.

c. Prejudice

The defendant states that there is no prejudice to the non-moving party. This is incorrect. Custom Performance’s issues with this machine, and its efforts to fix it or reject it, have been going on for more than a year. The claims and disputes between the parties depend in large part on communications between the plaintiff and the defendant. As time passes, evidence and memories fade and discovery becomes more difficult. Further, Custom Performance has continued to suffer damages as it houses a machine that does not work and spends money and resources on workarounds. Custom Performance should be four months into discovery into these facts. Instead,

if the motion for relief from default is granted, it will be six months or more before discovery begins after it filed its complaint and likely a year or more from the time it can expect a trial.

Custom Performance has been prejudiced.

Respectfully submitted,

s/Adam C. Bach

Adam C. Bach (S.C. Bar #74885)

ELLER TONNSEN BACH, LLC

1306 South Church Street

Greenville, SC 29605

Telephone: (864) 236-5013

Facsimile: (864) 312-4191

abach@etblawfirm.com

Attorneys for Custom Performance
Engineering, Inc.

September 24, 2021

Greenville, South Carolina

Exhibit A

Subject: AM Industrial Group, LLC

Date: Tuesday, February 16, 2021 at 3:41:02 PM Eastern Standard Time



From: John Patrick

To: Adam Bach

Mr. Bach:

I understand that you represent Custom Performance Engineering. We represent AM Industrial Group, LLC and I am in receipt of your letter dated February 5, 2021 to my client. I am conferring with my client to get the background in play and will respond to you shortly. In the meantime, please feel free to contact me if you wish to discuss the matter. Thank you

Best regards,
JP

My Bio | Website | vCard	
T 216-430-2207 F 216-687-1841 M 216-287-5431 www.reminger.com	John Patrick, Esq. Reminger Co., LPA JPatrick@reminger.com 101 West Prospect Avenue, Suite 1400 Cleveland, OH 44115
	

Disclaimer

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Exhibit B

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)
)
Custom Performance Engineering, Inc.,)
)
Plaintiff,)
)
vs.)
)
AM Industrial Group, LLC,)
)
Defendant.)
)
_____)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

C.A. NO. 2021-CP-42-01163

**AFFIDAVIT OF SERVICE
BY MAILING**

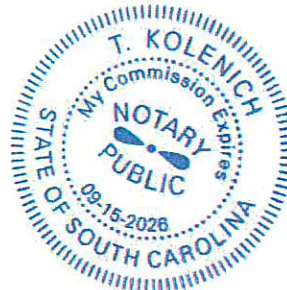
The undersigned, Amy M. Price, does hereby certify that a copy of the summons and complaint was served on the following defendant by certified mail, return receipt requested, restricted delivery on April 20, 2021, as will appear by the certified mail return receipt attached hereto and incorporated herein by reference.

AM Industrial Group, LLC
Reminger Service Company, Inc.
101 West Prospect Ave., Ste. 1400
Cleveland, OH 44115
Mailing Accepted: April 20, 2021


Amy M. Price, Paralegal
ELLER TONNSEN BACH, LLC
1306 S. Church Street
Greenville, SC 29602

SWORN before me on May 3, 2021


NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission expires: 9-15-2026



0053

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <input type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) C. Date of Delivery</p>
<p>1. Article Addressed to:</p> <p>AM Industrial Group, LLC Reminger Service Company, Inc. 101 West Prospect Ave. Ste 1400 Cleveland, OH 44115</p>  <p>9590 9402 5269 9154 5017 88</p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>
<p>2. Article Number (Transfer from service label)</p> <p>7020 1290 0002 2921 1509</p>	<p>3. Service Type <input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Registered Mail Restricted Delivery <input checked="" type="checkbox"/> Certified Mail® <input checked="" type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Insured Mail <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</p> <p><input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Signature Confirmation Restricted Delivery</p>
<p>PS Form 3811, July 2015 PSN 7530-02-000-9053 Domestic Return Receipt</p>	

USPS TRACKING#



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

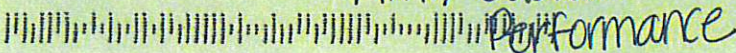
9590 9402 5269 9154 5017 88

**United States
Postal Service**

• Sender: Please print your name, address, and ZIP+4® in this box•

Eller Tonnsen Bach, LLC
1306 S Church Street
Greenville, SC 29605

AMP/ custom
Performance



ELECTRONICALLY FILED - 2021 Sep 24 12:33 PM - SPARTANBURG - COMMON PLEAS - CASE#2021CP4201163
 ELECTRONICALLY FILED - 2021 May 03 4:19 PM - SPARTANBURG - COMMON PLEAS - CASE#2021CP4201163



FAQs >

Track Another Package +

Tracking Number: 70201290000229211509

Remove X

Your item was delivered to an individual at the address at 11:09 am on April 20, 2021 in CLEVELAND, OH 44115.

Delivered, Left with Individual

April 20, 2021 at 11:09 am
CLEVELAND, OH 44115

Get Updates v

Text & Email Updates >

Tracking History >

Product Information >

See Less ^

Can't find what you're looking for?

Go to our FAQs section to find answers to your tracking questions.

ELECTRONICALLY FILED - 2021 Sep 24 12:33 PM - SPARTANBURG - COMMON PLEAS - CASE#2021CP4201163
ELECTRONICALLY FILED - 2021 May 03 4:19 PM - SPARTANBURG - COMMON PLEAS - CASE#2021CP4201163

Feedback

Exhibit C



DATE	DOCUMENT ID	DESCRIPTION	FILING	EXPED	PENALTY	CERT	COPY
12/20/2012	201235500309	DOMESTIC FOR PROFIT LLC - ARTICLES OF ORG (LCP)	125.00	100.00		.00	.00

Receipt

This is not a bill. Please do not remit payment.

REMINGER SERVICE COMPANY INC
SHARON E. / JOHN PATRICK, ESQ.
101 W PROSPECT, STE 1400
CLEVELAND, OH 44115-1093

**STATE OF OHIO
CERTIFICATE**

Ohio Secretary of State, Jon Husted

2159662

It is hereby certified that the Secretary of State of Ohio has custody of the business records for

AM INDUSTRIAL GROUP, LLC

and, that said business records show the filing and recording of:

Document(s):

DOMESTIC FOR PROFIT LLC - ARTICLES OF ORG

Document No(s):

201235500309



United States of America
State of Ohio
Office of the Secretary of State

Witness my hand and the seal of the
Secretary of State at Columbus,
Ohio this 19th day of December,
A.D. 2012.

Ohio Secretary of State



Form 533A Prescribed by the:
Ohio Secretary of State

Central Ohio: (614) 466-3910
Toll Free: (877) SOS-FILE (767-3453)

www.OhioSecretaryofState.gov
Busserv@OhioSecretaryofState.gov

Mail this form to one of the following:

Regular Filing (non expedite)
P.O. Box 670
Columbus, OH 43216

Expedite Filing (Two-business day processing
time requires an additional \$100.00).
P.O. Box 1390
Columbus, OH 43216

ARTICLES OF ORGANIZATION FOR A DOMESTIC LIMITED LIABILITY COMPANY

Filing Fee: \$125

CHECK ONLY ONE (1) BOX

(1) Articles of Organization for Domestic
For-Profit Limited Liability Company
(115-LCA)

(2) Articles of Organization for Domestic
Nonprofit Limited Liability Company
(115-LCA)

Name of Limited Liability Company

Name must include one of the following words or abbreviations: "limited liability company," "limited," "LLC," "L.L.C.," "ltd.," or "ltd"

Effective Date (Optional) (The legal existence of the limited liability company begins upon the filing of the articles or on a later date specified that is not more than ninety days after filing)

This limited liability company shall exist for (Optional) Period of Existence

Purpose (Optional)

****Note for Nonprofit LLCs**
The Secretary of State does not grant tax exempt status. Filing with our office is not sufficient to obtain state or federal tax exemptions. Contact the Ohio Department of Taxation and the Internal Revenue Service to ensure that the nonprofit limited liability company secures the proper state and federal tax exemptions. These agencies may require that a purpose clause be provided.

2012 DEC 19 PM 1:51
CLIENT SERVICE CENTER

ORIGINAL APPOINTMENT OF AGENT

The undersigned authorized member(s), manager(s) or representative(s) of

AM INDUSTRIAL GROUP, LLC

Name of Limited Liability Company

hereby appoint the following to be Statutory Agent upon whom any process, notice or demand required or permitted by statute to be served upon the limited liability company may be served. The name and address of the agent is

Reminger Service Company, Inc.

Name of Agent

101 West Prospect Avenue, Ste. 1400

Mailing Address

Cleveland

City

Ohio

State

44115-1093

ZIP Code

ACCEPTANCE OF APPOINTMENT

The undersigned, named herein as the statutory agent for

AM INDUSTRIAL GROUP, LLC

Name of Limited Liability Company

hereby acknowledges and accepts the appointment of agent for said limited liability company



Individual Agent's Signature / Signature on Behalf of Corporate Agent

REMINGER SERVICE COMPANY, INC.

JOHN PATRICK, PRESIDENT

If the agent is an individual and using a P.O. Box, check this box to confirm that the agent is an Ohio resident.

By signing and submitting this form to the Ohio Secretary of State, the undersigned hereby certifies that he or she has the requisite authority to execute this document.

Required

Articles and original appointment of agent must be authenticated (**signed**) by a member, manager or other representative.

If authorized representative is an individual, then they must sign in the "signature" box and print their name in the "Print Name" box.

If authorized representative is a business entity, not an individual, then please print the business name in the "signature" box, an authorized representative of the business entity must sign in the "By" box and print their name in the "Print Name" box.


Signature

12/19/12
Date

By

John Patrick, Esq.
Print Name

Signature

Date

By

Print Name

Signature

Date

By

Print Name

Exhibit D



ELLER TONNSEN BACH
Attorneys at Law

Adam C. Bach
Licensed in South Carolina and North Carolina
abach@etblawfirm.com

1306 South Church Street
Greenville, SC 29605
Telephone (864) 236-5013
Facsimile (864) 312-4191

April 28, 2021

VIA U. S. MAIL AND EMAIL (jpatrick@reminger.com)

John Patrick, Esq.
Reminger Co., LPA
101 W Prospect Ave, Ste 1400
Cleveland, OH 44115

Re: Purchase Order 6787
Bender/CNC/Eaton Leonard
My Client: Custom Performance Engineering

Dear Mr. Patrick:

We are in receipt of your letter dated March 9, 2021. This letter serves as our client, Custom Performance Engineering's ("Custom Performance") final demand and request for mediation with respect to its claims against AM Industrial Group, LLC ("AM Industrial"). As we have discussed, Custom Performance has rejected the Machine with respect to the above referenced purchase order on multiple occasions. The Machine fails to conform with the parties' agreement as evidenced by the purchase order 6787 dated August 10, 2020.

AM Industrial did not satisfy the terms of the agreement between the parties. Custom Performance's purchase order clearly states that the Machine was to be converted to utilize CSM style tooling and that the high torque option on the Machine needed to bend 3-inch tooling and material. This was to be proved prior to Custom Performance's purchase of the Machine. When George Rumore visited AM Industrial's facility for a demonstration of the Machine's bending of 3-inch tubing, the Machine did not bend tubing as warranted. However, Brett Wyman assured Custom Performance that this was a set up issue that could be corrected by a bender machine operator after the Machine was delivered to the Custom Performance facility. Based on this representation, Custom Performance approved delivery of the Machine to its facility.

Immediately following delivery of the Machine, Custom Performance informed AM Industrial that the Machine was still not performing as warranted. AM Industrial understood that the Machine was not functioning according to the terms of the parties' agreement, which is evidenced by AM Industrial's repeated attempts to correct the issues with the Machine. AM Industrial sent out its representative who was unable to fix the issues. AM Industrial then sent out a third-party to evaluate and set-up the Machine, but because the runout measured so poorly, the third-party was unable to correct any of the problems. Custom Performance made AM Industrial

aware of each of these issues, and AM Industrial continued to assure Custom Performance that it would correct the problem.

In December 2020, George Rumore again met with Brett Wyman, and Wyman agreed that the Machine was not working as warranted and that the bends being produced were unacceptable and could not be sold. This further demonstrates AM Industrial's understanding that the Machine did not meet the terms of the parties' agreement.

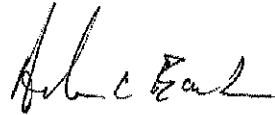
Custom Performance has exhausted time, money, and materials attempting to get the Machine operational. Despite repeated promises, AM Industrial has failed to meet the terms of the parties' agreement.

Accordingly, Custom Performance has filed suit against AM Industrial for its claims of breach of contract, breach of express warranty, and breach of the implied warranty of merchantability. Custom Performance wishes to attempt to resolve these claims through mediation. Please contact us within ten (10) days to discuss setting up mediation, or, in the alternative, to arrange for pickup of the Machine and refund of the purchase price. If we do not hear from you within the next ten (10) days, our client will move forward serving this action against AM Industrial.

With kindest regards,

Sincerely,

ELLER TONNSEN BACH, LLC



Adam C. Bach

ACB/kms

Exhibit E

AFFIDAVIT OF SERVICE

State of South Carolina

County of Spartanburg

Common Pleas Court

Case Number: 2021-CP-42-01163

Plaintiff:
Custom Performance Engineering, Inc.
vs.
Defendant:
AM Industrial Group, LLC

For: Adam Bach
Eller Tonnsen Bach LLC Attorneys at Law

Received by Upstate Legal Support Services, LLC to be served on AM Industrial Group, LLC, 101 West Prospect Ave., Suite 1400, Cleveland, OH 44115. I, BENJAMIN PURSER, being duly sworn, depose and say that on the 9 day of JUNE, 2021 at 2:02P .m., executed service by delivering a true copy of the Letter, Summons, Complaint and Exhibits in accordance with state statutes in the manner marked below:

CORPORATE SERVICE: By serving DEE WETULA as RECEPTIONIST a person authorized to accept service.

GOVERNMENT AGENCY: By serving _____ as _____ of the within named agency.

OTHER SERVICE: By serving _____ as _____

NON SERVICE: Due to reasons detailed in the Comments below.


COMMENTS: SERVICE WAS EFFECTED BY DELIVERING THE LISTED DOCUMENTS TO DEE WETULA, RECEPTIONIST FOR R.A. . REMINGER FOR AM INDUSTRIAL GROUP LLC ON 6/9/2021 2:02 PM

DESCRIPTION: 57/WF/5'6/160/LIGHT BRWN HAIR/GLASSES

I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service was made.

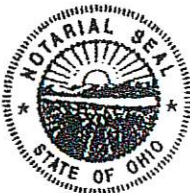
Subscribed and Sworn to before me on the 1 day of JULY 2021, X by the affiant who is personally known to me.

CATHRENE M. DRAKE
NOTARY PUBLIC
My Commission Expires: 07/07/2024


BENJAMIN PURSER
PROCESS SERVER # N/A (OHIO)
Appointed in accordance with State Statutes

Upstate Legal Support Services, LLC
P O Box 2144
Greenville, SC 29602
(864) 626-3733

Our Job Serial Number: 2021001408



Cathrone M. Drake
Resident Summit County
Notary Public, State of Ohio
My Commission Expires:
July 7, 2024

Exhibit F

Subject: AM Industrial Corp- Custom Performance Engineering Inc-
Date: Friday, June 25, 2021 at 3:35:16 PM Eastern Daylight Time
From: Flores, Marcela
To: Adam Bach
Attachments: image003.png, 642021%20Summons%20&%20Complaint%20Custom%20Performance.pdf

Company, I am the claim adjuster assigned to the above mentioned claim for our insured AM Industrial Group LLC. The claim no. is **ATLCAS000331354.**

I left a message yesterday in regards to the claim. I respectfully would like to request a 45 days extension in order to Answer to the Suit. If granted, please confirm by email.

At this time, I'm in the process of reviewing the claim and gathering information from our Insured.

For future reference, please include our claim number on all of your correspondence.

Thank You,
Marcela Flores
Claims Specialist II
Verticals and Programs
Liberty Mutual Insurance | Ironshore



For a copy of our privacy policy, visit www.libertymutual.com/privacy.

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Exhibit G

From: "Flores, Marcela" <Marcela.Flores@LibertyMutual.com>
Date: Monday, June 28, 2021 at 6:02 PM
To: Adam Bach <abach@etblawfirm.com>
Subject: RE: AM Industrial Corp- Custom Performance Engineering Inc- ATLCAS000331354

Good Afternoon,

Thanks for providing me with 30 day extension, making my answer due on August 9th.

Thank You,

Marcela Flores
Claims Specialist II
Verticals and Programs

Liberty Mutual Insurance | Ironshore
28 Liberty Street, 4th Floor
New York, NY 10005
Office: 212-208-9556
Fax: 212-365-3511

Marcela.Flores@ironshore.com

Report Casualty Loss Notices to: USClaims@Ironshore.com



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From: Adam Bach <abach@etblawfirm.com>
Sent: Monday, June 28, 2021 10:35 AM
To: Flores, Marcela <Marcela.Flores@LibertyMutual.com>
Subject: {EXTERNAL} Re: AM Industrial Corp- Custom Performance Engineering Inc-

Ms. Flores,

Are you asking for 45 days from today or 45 days from the current answer deadline of July 9th? I am happy to extend a 30 day extension from the current deadline of July 9th, making your answer due on or before August 9th.

Thank you,

Adam

Adam C. Bach
ELLER TONNSEN BACH
Attorneys at Law
1306 South Church Street
Greenville, SC 29605
(o) (864) 236-5013
(f) (864) 312-4191

www.etblawfirm.com

CONFIDENTIALITY NOTICE: This message may be protected by the attorney/client privilege, attorney work product or other privileges. If you received this message in error, please send a reply notifying the sender of such error, delete the message immediately and do not forward this message to any other person.

From: "Flores, Marcela" <Marcela.Flores@LibertyMutual.com>
Date: Friday, June 25, 2021 at 3:35 PM
To: Adam Bach <abach@etblawfirm.com>
Subject: AM Industrial Corp- Custom Performance Engineering Inc-

Good Afternoon Mr. Bach

This will acknowledge our receipt of the attached Summons. We are the General Liability Insurance Company, I am the claim adjuster assigned to the above mentioned claim for our insured AM Industrial Group LLC. The claim no. is **ATLCAS000331354**.

I left a message yesterday in regards to the claim. I respectfully would like to request a 45 days extension in order to Answer to the Suit. If granted, please confirm by email.

At this time, I'm in the process of reviewing the claim and gathering information from our Insured.

For future reference, please include our claim number on all of your correspondence.

Thank You,
Marcela Flores
Claims Specialist II
Verticals and Programs

Liberty Mutual Insurance | Ironshore
28 Liberty Street, 4th Floor
New York, NY 10005
Office: 212-208-9556
Fax: 212-365-3511
Marcela.Flores@ironshore.com
Report Casualty Loss Notices to: USClaims@Ironshore.com

For a copy of our privacy policy, visit www.libertymutual.com/privacy

The information contained in this email message and any attachments to this message are confidential and may be privileged or constitute attorney work product. If you are not the intended recipient, please (1) notify me immediately by replying to this message or calling (212)208-9556, (2) do not use, disseminate, distribute or reproduce any part of the message or any attachment, and (3) destroy all copies of this message and attachments.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG)	
	)	C. A. No. 2021-CP-42-01163
Custom Performance Engineering, Inc.,)	
	)	PLAINTIFF'S MEMORANDUM IN
Plaintiff,	)	SUPPORT OF DAMAGES CLAIM
)	
vs.)	
)	
AM Industrial Group, LLC,)	
)	
Defendant.)	

This matter is before the court for a damages hearing after entry of default against the defendant. After default was entered, the defendant moved for relief from default. That motion was denied on September 28, 2021, and this case was referred to the Master-in-Equity for entry of damages pursuant to Rule 53, SCRCF.

This matter concerns the sale of an Eaton Leonard VB076HT CNC Bender Machine (the "Machine"). Because the Machine was moveable at the time of identification to the contract, this transaction is governed by the South Carolina Commercial Code, S.C. Code § 36-2-101, *et. seq.* Custom Performance paid the defendant \$132,000.00 for the Machine pursuant to the parties' contract. The Machine did not work as represented. In an effort to make the Machine work, Custom Performance spent money in tooling and repair costs for the Machine, as well as sums on equipment for the Machine. Once it became apparent that the Machine would not work, Custom Performance purchased a new machine at a significantly higher cost (\$255,087.00) than the contract price of the Machine. In the interim, Custom Performance lost revenue it would have otherwise earned had the Machine worked as represented.

As a result, Custom Performance suffered and will present evidence and testimony of the following damages:

Price of Machine	\$132,000.00	S.C. Code § 36-2-711
Difference in price of replacement machine	\$123,087.00	S.C. Code § 36-2-712
Tooling for Machine	\$8,694.00	S.C. Code § 36-2-715
Tooling for replacement machine	\$7,628.00	S.C. Code § 36-2-715
Costs for Installation of Machine	\$6,950.00	S.C. Code § 36-2-715
Lost Revenue due to Machine not functioning as represented	\$226,482.00	S.C. Code § 36-2-715
Total:	\$504,481.00	

In addition, Custom Performance seeks its costs in the amount of \$293.80 for a total judgment of **Five Hundred Four Thousand Seven Hundred Seventy-Four and 80/100ths (\$504,774.80) Dollars**, plus post-judgment interest at the legal rate.

Respectfully submitted,

s/Adam C. Bach

Adam C. Bach (S.C. Bar #74885)
 ELLER TONNSEN BACH, LLC
 1306 South Church Street
 Greenville, SC 29605
 Telephone: (864) 236-5013
 Facsimile: (864) 312-4191
 abach@etblawfirm.com

Attorneys for Custom Performance
 Engineering, Inc.

December 17, 2021

Greenville, South Carolina

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

APPEAL FROM SPARTANBURG COUNTY
COURT OF COMMON PLEAS
THE HONORABLE J. DURHAM COLE, CIRCUIT COURT JUDGE
THE HONORABLE SHANNON M. PHILLIPS, MASTER-IN-EQUITY

CIVIL ACTION NO. 2021-CP-42-01163

Custom Performance Engineering, Inc.,

RESPONDENT,

versus

AM Industrial Group, LLC,

APPELLANT.

NOTICE OF APPEAL

The Defendant, AM Industrial Group, LLC, appeals from the Form 4 Order of The Honorable J. Durham Cole, filed September 28, 2021, denying the Defendant AM Industrial Group, LLC's Motion to Set Aside Entry of Default, and from the Order of The Honorable Shannon M. Phillips, filed February 21, 2022, entering judgment in favor of Custom Performance Engineering, Inc. The Defendant, AM Industrial Group, LLC, received written notice of the entry of this Order on February 21, 2022.

(signature on following page)

Respectfully submitted,

/s Carmen V. Ganjehsani

Carmen V. Ganjehsani (S.C. Bar No. 73515)

R. Wilder Harte (S.C. Bar No. 101228)

RICHARDSON, PLOWDEN & ROBINSON, PA

Post Office Drawer 7788

Columbia, South Carolina 29202

(803) 771-4400

cganjehsani@richardsonplowden.com

wharte@richardsonplowden.com

**ATTORNEYS FOR APPELLANT
AM INDUSTRIAL GROUP, LLC**

March 21, 2022.

Other Counsel of Record:

Adam C. Bach (S.C. Bar #74885)

ELLER TONNSEN BACH, LLC

1306 South Church Street

Greenville, SC 29605

(864) 236-5013

abach@etblawfirm.com

**ATTORNEYS FOR RESPONDENT
CUSTOM PERFORMANCE ENGINEERING, INC.**

Mar 21 2022

SC Court of Appeals

CERTIFICATE OF SERVICE

I, the undersigned, an employee of Richardson Plowden & Robinson, P.A., for Defendant, AM Industrial Group, LLC, do hereby certify that I have this date served the foregoing Notice of Appeal, dated March 21, 2022, and attached Orders, by personally: (1) filing a copy of the same with The Honorable Amy W. Cox, Spartanburg County Clerk of Court, using the South Carolina Courts E-Filing System; and (2) pursuant to Section (d)(1) of the Supreme Court's Order dated August 25, 2021 on the following counsel of record using the primary email addresses listed in the Attorney Information System (if applicable):

Adam C. Bach (S.C. Bar #74885)
ELLER TONNSEN BACH, LLC
1306 South Church Street
Greenville, SC 29605
abach@etblawfirm.com
ATTORNEYS FOR RESPONDENT
CUSTOM PERFORMANCE ENGINEERING, INC.

A copy of the sent email is enclosed with this Certificate of Service.

/s Carmen V. Ganjehsani
Carmen V. Ganjehsani
S.C. Bar No. 73515
RICHARDSON, PLOWDEN & ROBINSON, PA
Post Office Drawer 7788
Columbia, South Carolina 29202
(803) 771-4400
ATTORNEYS FOR APPELLANT
AM INDUSTRIAL GROUP, LLC

Date: March 21, 2022.

Carmen Ganjehsani

From: Carmen Ganjehsani
Sent: Monday, March 21, 2022 9:38 AM
To: abach@etblawfirm.com
Cc: Wilder Harte
Subject: 2021-CP-42-01163 Custom Performance Eng's v. AM Industrial Group
Attachments: 2021-CP-42-01163 Custom Performance Eng'g v. AM Industrial (Notice of Appeal).pdf

Pursuant to the Supreme Court's Order dated August 25, 2021, please find served upon you the Notice of Appeal on behalf of Appellant AM Industrial Group, LLC.

Thank you,
 Carmen Ganjehsani

HOME	VCARD	LOCATION
		<p>Carmen V. Ganjehsani Shareholder Cganjehsani@RichardsonPlowden.com</p> <p>Richardson Plowden & Robinson, P.A. 1900 Barnwell Street Columbia, SC 29201 Tel: 803.253.8692 Fax: 803.779.0016 www.RichardsonPlowden.com</p>

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Durham Cole, Jr., Circuit Court Judge
Shannon M. Phillips, Master-in-Equity

Case No. 2021-CP-42-01163
Appellate Case No. 2022-000348

Custom Performance Engineering, Inc., Respondent-Appellant

v.

AM Industrial Group, LLC, Appellant-Respondent

NOTICE OF CROSS-APPEAL

Custom Performance Engineering, Inc. cross-appeals from the Order of the Honorable Shannon M. Phillips, filed on February 21, 2022. Custom Performance Engineering, Inc. received a notice of appeal from Appellant-Respondent on March 21, 2022.

March 25, 2022

s/Adam C. Bach
Adam C. Bach (SC Bar # 74885)
Emily R. Godwin (SC Bar #103708)
ELLER TONNSEN BACH, LLC
1306 South Church Street
Greenville, SC 29605
Telephone: (864) 236-5013
Facsimile: (864) 312-4191
abach@etblawfirm.com
egodwin@etblawfirm.com

Attorneys for Respondent-Appellant

Other Counsel of Record:

Carmen V. Ganjehsani (SC Bar # 73515)
R. Wilder Harte (SC Bar # 101228)
RICHARDSON, PLOWDEN & ROBINSON, PA
P.O. Box 7788
Columbia, SC 29202
Telephone: (803) 771-4400
Facsimile: (803) 779-0016
cganjehsani@richardsonplowden.com
wharte@richardsonplowden.com

Attorneys for Appellant-Respondent

RECEIVED

Mar 25 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Durham Cole, Jr., Circuit Court Judge
Shannon M. Phillips, Master-in-Equity

Case No. 2021-CP-42-01163
Appellate Case No. 2022-000348

Custom Performance Engineering, Inc., Respondent-Appellant

v.

AM Industrial Group, LLC, Appellant-Respondent

PROOF OF SERVICE

The undersigned certifies that a copy of the Notice of Cross-Appeal and Notice of Substitution of Counsel within Firm was served upon counsel of record in the above-entitled action by electronic mail on March 25, 2022, as follows:

cganjehsani@richardsonplowden.com

wharte@richardsonplowden.com

Carmen V. Ganjehsani

R. Wilder Harte

RICHARDSON, PLOWDEN & ROBINSON, PA

P.O. Box 7788

Columbia, SC 29202

[Signature to follow]

March 25, 2022

s/Adam C. Bach

Adam C. Bach (SC Bar # 74885)
Emily R. Godwin (SC Bar #103708)
ELLER TONNSEN BACH, LLC
1306 South Church Street
Greenville, SC 29605
Telephone: (864) 236-5013
Facsimile: (864) 312-4191
abach@etblawfirm.com
egodwin@etblawfirm.com

Attorneys for Respondent-Appellant

REPLY TO: Columbia
E-Mail: cganjehsani@richardsonplowden.com
Direct Dial: (803) 253-8692

April 22, 2022

Via Fed Ex

The Honorable Amy W. Cox
Clerk of Court, Spartanburg County
180 Magnolia St
2nd Floor, Suite 500
Spartanburg, SC 29306

Re: Custom Performance Engineering, Inc. v. AM Industrial Group, LLC
Civil Action No. 2021-CP-42-01163
RPR File No.: 9933-00001

Dear Ms. Cox:

Please find enclosed AM Industrial Group LLC check number [REDACTED] in the amount of \$398,667.80 made payable to the Clerk of Court for Spartanburg County to be deposited with the Clerk in accordance with the Order of The Honorable Shannon Metz Phillips filed on April 13, 2022 in the above-referenced case, a copy of which is enclosed for your reference.

If you have any questions, please do not hesitate contact me. Thank you for your assistance in this matter.

Sincerely,



Carmen V. Ganjehsani

Encs.

cc: Adam C. Bach (abach@etblawfirm.com)
Emily R. Godwin (egodwin@etblawfirm.com)
R. Wilder Harte (wharte@richardsonplowden.com)

FILED
2022 APR 26 AM 10:55
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

AM INDUSTRIAL GROUP LLC

Date 4/21/2022 Invoice Number 04/21/2022 Comment

Amount 398,667.80 Discount Amount 0.00 Net Amount 398,667.80

Clerk of Court for Spartanburg Check Total: 398,667.80



AM INDUSTRIAL GROUP LLC 16000 COMMERCE PARK DR BROOK PARK, OH 44142 (216) 433-7171

DATE 4/21/2022

AMOUNT

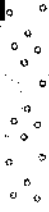
*THREE HUNDRED NINETY-EIGHT THOUSAND SIX HUNDRED SIXTY-SEVEN AND 80 / 100 \$ *****398,667.80*

PAY TO THE ORDER OF

Clerk of Court for Spartanburg County

Handwritten signature

AUTHORIZED SIGNATURE



1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COMMON PLEAS COURT

3
4 Custom Performance Engineering,)
Inc.,) TRANSCRIPT OF RECORD
5) 2021-CP-42-01163
6 Plaintiff,)
7 vs.)
AM Industrial Group, LLC,)
8 Defendant.) September 28, 2021
Spartanburg, SC

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B E F O R E:

HONORABLE J. DERHAM COLE, JUDGE

A P P E A R A N C E S:

ADAM CRITTENDEN BACH, ESQUIRE
KATHERINE MARGUERITE SIEBER, ESQUIRE
Attorneys for the Plaintiff

ROBERT WILDER HARTE, ESQUIRE
Attorney for the Defendant

Linda D. Moffitt
Circuit Court Reporter

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INDEX

Motion -- page 3.

No sworn testimony; no exhibits entered into evidence.

1 THE COURT: Good morning. This is AM Industrial's
2 motion to set aside an entry of default?

3 MR. HARTE: That's correct, Your Honor.

4 THE COURT: Okay.

5 MR. HARTE: My name is Wilder Harte. I'm here today
6 on behalf of AM Industrial. As you said, this is our
7 motion to set aside a default.

8 Any time -- the very few times I've had to make this
9 motion, Your Honor, I would start by saying this is not my
10 fault.

11 An entry of default was made against AM Industrial on
12 August 18th of 2021. I was retained soon thereafter.

13 By way of background, on June 9th of 2021, according
14 to its affidavits of service, the plaintiff, Custom
15 Performance, perfected service on AM Industrial, and then
16 on June 25, 2021, AM Industrial's insurer acknowledged
17 receipt of the complaint and said, quote, "It had reached
18 out to plaintiff's counsel requesting an extension to
19 answer the complaint. I will confirm once I receive the
20 extension." No subsequent confirmation of an extension was
21 ever provided to AM.

22 Then on August 3rd of 2021 Liberty Mutual, AM's
23 insurer, denied coverage for the claims raised in Custom's
24 complaint, and at no point between the first email and the
25 second email did Custom -- I'm sorry -- did Liberty Mutual

1 provide confirmation of this reported extension, nor did it
2 include in its denial any guidance about when a responsive
3 pleading would be due or what AM Industrial should do.

4 So from their perspective they believed that they had
5 turned this over to their insurer properly who has a duty
6 to defend. And then the insurer denies coverage right up
7 against -- after what they believed the deadline to file a
8 responsive pleading would be.

9 I can go into some of the other factors, Your Honor,
10 but the good-cause standard in Rule 55(c) is pretty
11 straightforward. You know, timelessness, meritorious
12 defense. We believe both of those --

13 THE COURT: We don't get there until you have a good
14 reason.

15 MR. HARTE: Yes, sir. I understand that.

16 THE COURT: And the reason is that they turned it over
17 to the insurance company and the insurance company failed
18 to protect them?

19 MR. HARTE: We would argue that the insurance company
20 failed to protect and did not abide by its duty to defend
21 in not securing an extension, or if it did secure an
22 extension, advising of what the deadline to file a
23 responsive pleading would be.

24 THE COURT: Well, has it ever been decided by our
25 Supreme Court that that's not good cause?

1 MR. HARTE: I think Mr. Bach cited some very good case
2 law, and I told him as much this morning when I -- when we
3 met for the first time. I can nitpick some of the facts in
4 each of the cases that Mr. Bach cites to but I think the --

5 THE COURT: I tell you what. Let me hear from him,
6 and then I'll let you nitpick all you want.

7 MR. HARTE: Thank you, sir.

8 MR. BACH: Thank you, Your Honor.

9 And I won't belabor the point. Adam Bach here on
10 behalf of Custom Performance.

11 Your Honor, I think the Sundown case, 383, S.C. 601,
12 which we've cited in our brief, is directly on point.

13 The key holding in that case was that although the
14 presence of other factors and the totality of the
15 circumstances may amount to a showing of good cause, the
16 defendant may not be relieved from the entry of default
17 solely because it relied to its detriment on negligent
18 insurance agent.

19 Your Honor, they haven't -- their brief and their
20 explanation and their submissions are completely devoid of
21 any explanation for their own conduct, and so there are no
22 other circumstances to consider.

23 Their explanation is we gave it to our insurance
24 company, the insurance company asked for an extension,
25 which I granted to the insurance company. The insurance

1 company failed to confirm the extension, whatever that
2 means, and that they've been harmed by their insurance
3 company's negligence.

4 Your Honor, our Supreme Court has found that as a
5 matter of law that cannot be good cause.

6 I would just speak briefly to a couple of other
7 factors if the Court wants to hear this. It is set out in
8 my brief as well. But prior to filing suit we were
9 corresponding with an attorney in Ohio named John Patrick
10 of Reminger Co., LPA.

11 When those negotiations broke down, we filed suit and
12 we served the complaint initially via registered mail,
13 certified mail, return restricted delivery to a Reminger
14 Service Company, which is the service -- which is the
15 registered agent for AM Industrial.

16 Reminger, the attorney's office, and Reminger, the
17 service company, both have an identical address of 101 West
18 Prospect Avenue, Suite 1400. So that was on April 20th.

19 There's been no explanation as to why that service
20 wasn't valid. We sent a letter shortly after serving it to
21 Mr. Patrick advising him we had filed suit and asking one
22 more time to negotiate our claim. We received no response
23 to that. That was on April 28th of 2020 -- 2021. We
24 received no response to that.

25 We didn't -- after 30 days passed we were a little bit

1 concerned, but maybe we were mistaken and there was
2 something wrong with the post office's delivery, so we had
3 it delivered again, this time via a process server on
4 June 9th.

5 That's when we got the response from Liberty Mutual.
6 Liberty Mutual asked for 30 days. We confirmed an
7 extension of 30 days with Liberty Mutual to August the 9th.

8 Liberty Mutual, according to their own filings,
9 advised the defendant that they would not be providing them
10 with a defense and that they needed to take action on their
11 own on August 3rd.

12 The deadline, the extended deadline, was on August
13 9th. That's six days later, August 3rd to Tuesday, August
14 9th. It's a Monday. They had, basically, an entire week
15 to take some action, call and seek a further extension,
16 file something with the Court, file an answer. They failed
17 to do so.

18 So, Your Honor, there's certainly no -- the reason
19 advance is insufficient on its face, the defendant's
20 conduct in my opinion is even more culpable given that they
21 say that they never received any response about whether or
22 not they got an extension.

23 If that's the case, then this attorney who received
24 notice three times in Ohio should have known that his
25 answer was due July 9th. So the fact that the original --

1 their second due date, if you go by the second service, was
2 July 9th. You know, the fact the insurance company never
3 confirmed an extension makes them more culpable, not less.

4 They should have done something prior to that date,
5 but, Your Honor, as I believe my colleague has
6 acknowledged, our court has already spoken to this exact
7 situation. They're bound by the negligence of their
8 insurance carrier. And even if that is the reason they've
9 advanced, it cannot be enough to show good cause.

10 THE COURT: Mr. Harte.

11 MR. HARTE: I don't have enough nitpicking to overturn
12 any of that. That's all very good argument, Your Honor.

13 THE COURT: All right. I'll look at the briefs and
14 issue an order. Thank you.

15 MR. BACH: Thank you, Your Honor. We have our motion
16 for default judgment scheduled next. I'm happy to proceed
17 to that. We can refer it to a special referee after the
18 order is entered.

19 THE COURT: Well, what do you prefer?

20 MR. BACH: I mean, I'm happy to proceed now. I don't
21 know.

22 MR. HARTE: Yeah. I think we kinda talked about
23 referring this.

24 MR. BACH: Okay. If you would prefer, I'm happy to do
25 that as well.

1 THE COURT: You'd prefer to refer it?

2 MR. HARTE: Your Honor, my preference would be that it
3 be referred to a special --

4 THE COURT: Are you in agreement with that?

5 MR. BACH: Yeah. We're fine.

6 THE COURT: Assuming I don't let them out.

7 Okay. I'll issue an order. It will be this week.

8 END OF REQUESTED TRANSCRIPT OF RECORD

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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Common Pleas Court for Spartanburg County, South Carolina, on the 28th day of September 2021.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

March 31, 2022

s/Linda D. Moffitt

Linda D. Moffitt
Circuit Court Reporter

1 STATE OF SOUTH CAROLINA)

2 COUNTY OF SPARTANBURG)

COURT OF COMMON PLEAS
2021-CP-42-01163

3 Custom Performance Engineering, Inc.,)

4 Plaintiff,)

5 vs.)

6 AM Industrial Group, LLC,)

7 Defendant).)

TRANSCRIPT OF RECORD

December 20, 2021
Spartanburg, South Carolina

8 BEFORE:

9 **HONORABLE SHANNON M. PHILLIPS, MASTER-IN-EQUITY**

10 APPEARANCES:

11 **Adam C. Bach, Esquire**
12 ELLER TONNSEN BACH, LLC
13 1306 South Church Street
14 Greenville, South Carolina 29605

15 Attorneys for Plaintiff

16 **R. Wilder Harte, Esquire**
17 **RICHARDSON PLOWDEN & ROBINSON, P.A.**
18 Post Office Drawer 7788
19 Columbia, South Carolina 29201

20 Attorneys for Defendant

21
22 **DOROTHY HUNTSINGER**
23 Court Reporter
24
25

INDEX TO WITNESSES

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
JOSEPH ADAMS	3	9	29	

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PLA. 4	PURCHASE ORDER	29/30
DEF. 1	AM INDUSTRIAL INVOICE #105011	11
DEF. 2	IES INNOVATIVE INVOICE #7227	21
DEF. 3	BEND TOOLING INVOICE #105975	21
DEF. 4	IES INNOVATIVE INVOICE #6974	21

1 THE COURT: Alright. This is case number 2021-CP-42-01163, Custom
2 Performance Engineering, Incorporated versus AM Industrial Group, LLC. Mr. Bach,
3 when you are ready.

4 MR. BACH: I am. Thank you. Your Honor, we are here for a damages hearing
5 and I've brought Mr. Adams with the Plaintiff to testify on behalf of the Plaintiff so I'd
6 like to invite him to the stand.

7 THE COURT: Alright. Mr. Adams, if you will step up here and have a seat.

8 MR. ADAMS: Thank you.

9 THE COURT: Please raise your right hand for me.

10 (WHEREUPON, JOSEPH ADAMS IS DULY SWORN.)

11 THE COURT: Thank you.

12 **JOSEPH ADAMS,**

13 **HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:**

14 **DIRECT EXAMINATION BY MR. BACH:**

15 Q. Mr. Adams, thank you for being here today. Please introduce yourself to the Court.

16 A. Joseph Adams, one of the owners of Custom Performance Engineering, the CFO,
17 treasurer. It's an engineering firm that deals with metal products manufacturing,
18 mass manufacturing.

19 Q. Okay. Did you purchase--- Did your company purchase a machine from AM
20 Industrial?

21 A. Yes, we did, sir.

22 Q. What did y'all purchase?

23 A. We purchased a VB76 high torque Eaton Leonard that was as new condition.

24 Q. What is that machine supposed to do?

25 A. It's a mandrel bender that bends thin wall stainless steel all the way up to 3 inch.

1 Q. Okay.

2 MR. BACH: I'd like to mark this as Exhibit 1.

3 THE COURT: Alright. Any objections?

4 MR. HARTE: No, Your Honor.

5 THE COURT: Alright. Without objection it is admitted.

6 (AM INDUSTRIAL INVOICE #105011 IS MARKED AS PLAINTIFF'S
7 EXHIBIT 1 AND RECEIVED INTO EVIDENCE.)

8 **EXAMINATION RESUMED BY MR. BACH:**

9 Q. Is that an invoice--- Or tell me what Exhibit 1 is.

10 A. Exhibit 1 was an invoice for the VB75, or 76, sorry, high torque. And yes, it is
11 exactly what we received from AM Industrial for the new machine.

12 Q. What was the price that Custom Performance, the Plaintiff, paid for the machine?

13 A. That would be One Hundred and Thirty-Two Thousand (\$132,000.00) Dollars, sir.

14 Q. Were there other costs associated with receipt and installation of the machine?

15 A. Yes, sir. There was rigging cost, shipping cost, airline cost, electrical cost. There
16 were modifications needing to be done to the machine upon arrival. There was
17 shipping damages from lack of rigging prior to leaving.

18 Q. Alright. Let's just talk specifically What is collet tooling cost?

19 A. Collet tooling costs are the collets that actually hold the pipe while the machine---
20 It actually holds the piece of tubing while the machine is bending it.

21 Q. What was the--- What did Custom Performance spend for that for the machine?

22 A. Approximately Twenty-Five Hundred (\$2,500.00) Dollars.

23 Q. Okay. What is a mandrel 3 inch, 18 gauge?

24 A. The mandrel is what--- It's chromium and it goes inside the stainless steel to keep
25 the same diameter throughout the entire cavity.

- 1 Q. What did Custom Performance spend for that for the machine?
- 2 A. Even though we had our own 3 inch, it was suggested that we do get that. It was
3 Twelve Hundred and Fifty (\$1,250.00) Dollars. I'm sorry. Yes, One Thousand,
4 Two Hundred and Fifty (\$1,250.00) Dollars.
- 5 Q. And what is bender oil fill? What was that for the machine?
- 6 A. That is the hydraulic oil, so that's something that the machine needs to -- in order
7 to operate. Even though a lot of it is numerically controlled, several accesses, you
8 need that mandrel oil to make the machine run. It's just a function. It's like you
9 filling up your car with oil, regular engine oil.
- 10 Q. What did Custom Performance spend for that?
- 11 A. It would have been Forty-Nine Hundred (4,900). Approximately Four Thousand,
12 Nine Hundred and Forty-Four (\$4,944) Dollars.
- 13 Q. And then we talked -- you described generally about the rigging cost for
14 installation and machine and transportation of it. What was the rigging cost that
15 Custom Performance spent for the machine?
- 16 A. Three Thousand, Nine Hundred and Twenty (\$3,920.00) Dollars.
- 17 Q. Okay. What other installation costs were there?
- 18 A. You have the electricity as well as the air lines. Once on location you also had the
19 Versa Lift, which was a forklift, in order to pick up that heavy piece of equipment.
- 20 Q. Tell me specifically, for example, the wiper die. What was that cost?
- 21 A. Okay. So, the wiper die for that was not associated with the rigging. That should
22 have been up one line. I apologize. That was One Thousand, Two Hundred and
23 Fifty (\$1,250.00) Dollars. That is more of the tooling for the 275, as we were told
24 that our tooling wasn't, was not good enough.
- 25 Q. Okay. What was the cost of the electrical installation?

1 A. The electrical installation is approximately One Thousand, Three Hundred
2 (\$1,300.00) Dollars.

3 Q. How about the air line installation?

4 A. That was Four Hundred and Eighty (\$480.00) Dollars.

5 Q. And the rigging cost, what was that?

6 A. The rigging cost was Three Thousand, Nine Hundred and Twenty (\$3,920.00)
7 Dollars.

8 Q. At some point did you realize that the machine didn't work?

9 A. Yes, sir.

10 Q. Okay. Did you buy a replacement machine to do what the original machine should
11 have done?

12 A. Yes, sir.

13 MR. BACH: I will mark this as Exhibit 2.

14 THE COURT: Any objection to this one being entered?

15 MR. HARTE: No, Your Honor.

16 THE COURT: Alright. This will be Exhibit 2.

17 (EQUIPMENT FINANCE AGREEMENT IS MARKED AS PLAINTIFF'S
18 EXHIBIT 2 AND RECEIVED INTO EVIDENCE.)

19 **EXAMINATION RESUMED BY MR. BACH:**

20 Q. What did Custom Performance spend to purchase a machine that would do what
21 the original machine was supposed to do?

22 A. Two Thousand--- Two Hundred and Fifty Thousand (\$250,000.00) Dollars.

23 Q. Okay. What was the--- I think on the Exhibit I just handed you, what was the
24 number?

25 A. The exact number is Two Hundred and Fifty-Five Thousand and Eighty-Seven

1 (\$255,087.00) Dollars, sir.

2 Q. And then did you have to spend money in order to adapt that machine similar to
3 what you did for the original machine?

4 A. We used our same tools, but yes. I mean, we did.

5 Q. What was that number? How much did you spend?

6 A. The exact number I will have to get back to you. That would be different than the
7 vendor adapted tooling. Sorry. Seven Thousand, Six Hundred and Twenty-Eight
8 (\$7,628.00) Dollars.

9 Q. So, that's the amount you spent to tool and adapt the machine---

10 A. Yes.

11 Q ---to replace it?

12 Q. Okay. Did Custom Performance lose any jobs or revenue as a result of the
13 machine it purchased from the Defendant not working?

14 A. Yes, sir. We got that machine in September of 2020 and it took us until just last
15 week to start bending. We finally got our new machine up and running. That was
16 just delays from---

17 Q. Tell me about the jobs and the revenue loss.

18 A. Okay. The revenue loss, we have Goldmine Racing which was a contract turbo
19 kept for the Mustangs. Would have had fifty of them, potential of doing two
20 hundred a year. Fifty initially. Each cost to the end user was Two Thousand, One
21 Hundred and Thirty-One (\$2,131.00) Dollars. That would be a total revenue of
22 One Hundred and Six Thousand (\$106,000.00) Dollars -- One Hundred Six
23 Thousand, Five Hundred Fifty (\$106,550.00) Dollars. So, we are contracted by
24 Manza for discovery from Street Outlaws which was similar to the turbo kits.
25 That's not on the official document. We were with Saleen Corporation known for

1 making Mustangs. Taking factory Mustangs and converting them on the S550
2 platform. Two Hundred kits with the potential of six hundred a year and that
3 would have been Two Hundred Eighty-Four (\$284.00) Dollars a kit. That is Fifty-
4 Six Thousand, Eight Hundred (\$56,800.00) Dollars. We also had informed a lot
5 of our clients that we were doing contract manufacturing for, as well as our own
6 product line, that we would be able to increase capacity and support them better
7 due to the new mandrel bending equipment that we were getting. Estimated Forty-
8 Five Thousand (\$4,500.00) Dollars over a ten month period with the machine that
9 was not functioning currently over ten months. The biggest contract that we lost
10 due to tolerances and not being able to do with a new piece of equipment that we
11 had purchased from AM that we were trying to utilize our other machine, was the
12 BMW Eschbacher (phonetic) who is right behind us. We actually had a--- The
13 initial contract alone, month over month, Two Hundred Thirty-Five Thousand
14 (\$235,000.00) Dollars. I have that PO and we were turned down due to tolerances
15 on that contract.

16 Q. Was that a contract that you had?

17 A. It was an initial purchase order that, yes, we had. We had not done work for them
18 before. We had just engaged them. We were a certified vendor. We had provided
19 samples.

20 Q. And then they actually issued a purchase order to you for Two Hundred and Thirty-
21 Five Thousand (\$235,000.00) Dollars?

22 A. Yes. Correct. Yes.

23 Q. Okay. By my calculation and the amounts you just ran through, your lost revenue
24 number was Four Hundred and Sixty-One Thousand, Four Hundred Eighty-Two
25 (\$461,482.00) Dollars; does that sound correct?

1 A. Correct, sir.

2 Q. Okay.

3 MR. BACH: Your Honor, I believe that is all I have.

4 THE COURT: Alright. Thank you. You are Mr. Harte?

5 MR. HARTE: Yes, Your Honor.

6 THE COURT: Alright. Do you have any questions of this witness?

7 MR. HARTE: I do, Your Honor.

8 THE COURT: Please proceed.

9 MR. HARTE: I will try and be as brief as possible.

10 THE COURT: Take your time.

11 MR. HARTE: Thank you.

12 **CROSS EXAMINATION BY MR. HARTE:**

13 Q. Mr. Adams?

14 A. Yes, sir.

15 Q. Good morning.

16 A. Good morning.

17 Q. My name is Wilder Harte. I represent AM Industrial. I think you and I met once
18 before, maybe at the last hearing back in September.

19 A. Yes, sir.

20 Q. What I would like to do is go through some background information.

21 A. Sure.

22 Q. And then ---

23 THE COURT: Excuse me just one moment. Mr. Adams, if you would let him
24 finish his question before you respond, that will help us keep the Record straight as to who
25 is speaking; okay?

1 MR. ADAMS: Yes, ma'am.

2 THE COURT: Thank you.

3 **EXAMINATION RESUMED BY MR. HARTE:**

4 Q. Thank you for that. What I would like to do is go through some background
5 information, and then on this past Friday your attorney filed a Memorandum or
6 Brief in support of the damages that we are claiming. I would like to walk through
7 that line by line.

8 A. Sure.

9 Q. I will try and be as brief as possible and be respectful of your time, but I also want
10 to go through this step. Okay. First off, a preliminary question. Would you be
11 agreeable to AM Industrial retaking possession of the machine that you purchased
12 from them?

13 A. I'd like to consult--- I'm not the only party involved.

14 Q. Sure.

15 A. I would need to consult other owners.

16 Q. Let me ask that question a different way. You don't think that you are entitled to
17 the machine itself and the purchase price of the machine; correct?

18 A. I would--- If it was just myself to answer, sir, I would let the machine depart our
19 facility.

20 Q. Absolutely, I can fully understand that, but you are testifying right now on behalf
21 of Custom Performance Engineering.

22 A. Yes, sir.

23 Q. So, as the witness presenting damages on behalf of CPE, you either get One
24 Hundred and Thirty-Two Thousand (\$132,000.00) Dollars or the machine itself.
25 Do you understand that you can't have both?

1 A. Correct, sir.

2 Q. Okay. So, assuming that the Court orders you to return possession of the machine
3 to AM Industrial, that would be agreeable?

4 A. Oh, one hundred percent.

5 Q. Alright. You don't think you get to keep the machine.

6 A. No, sir.

7 Q. Okay.

8 A. I just have other parties that would have the---

9 Q. Absolutely. Just wanted to make sure that was clear.

10 A. Yes, sir.

11 Q. Let's run through some dates real quick---

12 A. Yes, sir.

13 Q. ---that kind of go back to your negotiations of the purchase of the machine with
14 AM Industrial. July 6, 2020 CPE reaches out to AM Industrial by purchasing a
15 bender machine; is that correct?

16 A. Yes, sir.

17 Q. July 31, 2020, the deal to purchase the machine is finalized; correct?

18 A. I would have to check to see when I sent the purchase order, sir.

19 Q. Okay. Let me show you a document we are going to mark as Defendant's 1. Give
20 me just a second.

21 THE COURT: Any objection to this document being admitted?

22 MR. BACH: No, ma'am.

23 THE COURT: Alright. Without objection this will be Defendant's Exhibit 1.

24 (AM INDUSTRIAL INVOICE 10511 IS MARKED AS DEFENDANT'S

25 EXHIBIT 1 AND RECEIVED INTO EVIDENCE.)

1 **EXAMINATION RESUMED BY MR. HARTE:**

2 Q. So looking at Defendant's 1, the date of the Invoice is July 31, 2020; correct?

3 A. Correct.

4 Q. And then the machine, Eaton Leonard, and it's the model number you quoted
5 earlier.

6 A. Correct.

7 Q. And then under the description of the machine it says refurbished; correct?

8 A. Correct.

9 Q. Okay. I think you testified earlier you were purchasing a like-new machine, but
10 this invoice obviously says refurbished. It does mean the same two things in your
11 industry?

12 A. Correct. It was a fully machined -- it was a fully capable new machine that was
13 being sold to us as new.

14 Q. Sure. What's the difference between a refurbished machine and a remanufactured
15 machine?

16 A. A refurbished machine I would call a machine that is, you know, they change it,
17 they check out some oil, they replace some parts. This machine was brought up to
18 current standards and completely stripped down and put together as a new
19 machine.

20 Q. Okay. Just so the record is clear and so that I understand your testimony, let's refer
21 to--- Because you've got two machines in play here.

22 A. Yes.

23 Q. When we talk about the one you purchased from AM Industrial, let's call it the
24 Eaton Leonard machine; okay?

25 A. Sure.

- 1 Q. And then the YLM machine---
- 2 A. Correct.
- 3 Q. ---that CP purchased later.
- 4 A. Correct.
- 5 Q. Let's call that the YLM machine.
- 6 A. Both were refurbished, like new machines.
- 7 Q. Okay. This one is described as refurbished on this invoice and the purchase price
8 is One Hundred and Twelve Thousand (112,000); correct?
- 9 A. No. The purchase price is One Hundred Thirty-Two Thousand (132,000).
- 10 Q. Not--- Look at the bottom of this invoice, One Hundred Twelve Thousand
11 (112,000). Do you see that?
- 12 A. Correct, your invoice states One Hundred Twelve (112).
- 13 Q. So, why was there a price increase from One Hundred Twelve Thousand (112,000)
14 to One Hundred Thirty-Two Thousand (132,000)?
- 15 A. The One Hundred Thirty-Two (132) was also because they took a piece of our
16 equipment. It's a seam welder, Jetline. They purchased a piece of equipment
17 from us.
- 18 Q. So, part of the transaction was that a seam welder went from CPE to AM
19 Industrial?
- 20 A. Brand new seam welder; correct. Yes, sir.
- 21 Q. Right.
- 22 A. Yes, sir.
- 23 Q. And then in exchange -- or part of the transaction, AM Industrial sold CPE a One
24 Hundred Twelve Thousand (\$112,000.00) Dollar machine?
- 25 A. Correct. However -- however the math---

1 Q. It makes a difference, right, if there's two pieces of machinery exchanging hands,
2 then the purchase price for the Eaton Leonard machine was One Hundred Twelve
3 Thousand (112,000), not One Hundred Thirty-Two Thousand (132,000); right?

4 A. I would have to consult -- consult both Anthony as well as my attorney on that.

5 Q. Well, respectfully, sir, you are the only witness that is testifying for CPE today and
6 you can't talk to your attorney right now.

7 A. Okay.

8 Q. But the transaction as you've described it is CPE sent a seam welder to AM
9 Industrial valued at Twenty Thousand (\$20,000.00) Dollars. AM Industrial sent
10 CPE a One Hundred and Twelve Thousand (\$112,000.00) Dollar Eaton Leonard
11 machine; right?

12 A. Correct.

13 Q. Okay. So the purchase price of the machine was One Hundred Twelve Thousand
14 (112,000), not One Hundred Thirty-Two Thousand (132,000).

15 A. The initial purchase price was -- that we agreed upon was One Hundred Thirty-
16 Two Thousand (132,000); correct. According to your Invoice, it's One Hundred
17 Twelve (112).

18 Q. Okay. I think I have a copy of the seam welder Invoice which shows that it was
19 a Twenty Thousand (\$20,000.00) Dollar exchange there as well.

20 A. Okay.

21 Q. So, we can take a look at that if you want. I'm not trying to trick you and I'm not
22 trying to be difficult.

23 A. Again, this was a topic that I brought up previous, too, so I'm not exactly sure how
24 to answer this.

25 Q. Okay, that is fine. We can move on. September 1, 2020, that's the date the

1 machine, the Eaton Leonard machine is shipped from Ohio, where AM Industrial
2 is based, to South Carolina; correct?

3 A. Correct.

4 Q. It was damaged in transit; right?

5 A. Correct. From lack of rigging.

6 Q. What does that mean?

7 A. Meaning they didn't support the bend head, they didn't block it up. They didn't do
8 anything of appropriate measures coming from their rigger. They do this all day
9 everyday. They have to ship machines and it was -- it was very poorly put together
10 before it departed.

11 Q. When you say they, you are referring the AM Industrial?

12 A. Yes, yes. Yes, sir.

13 Q. Okay. Who arranged the shipping?

14 A. They did.

15 Q. Who paid for the shipping?

16 A. I believe we did, sir.

17 Q. Okay.

18 A. I would have to check.

19 Q. You paid for shipping, but didn't arrange who it was going to be through and who
20 was going to be responsible for it?

21 A. I mean, AM needed--- Yeah. They needed to rig it. They needed to put it on the
22 shipping. I mean, that's -- for the LTL they needed to put it on the flatbed.

23 Q. What is LTL?

24 A. It's a term for loose freight. That's the way that they -- how they get the flatbed
25 down to South Carolina. That's the load that they're carrying.

1 Q. How is the load insured?

2 A. I mean, most of the time the truckers always are insured up to a certain amount of
3 money and we took the pictures upon it getting there, made sure that AM had that
4 information for them to submit a claim. We provided that information to them to
5 submit the claim.

6 Q. So, it's your testimony that AM Industrial was responsible for filing a claim with---

7 A. Their insurance.

8 Q ---insurance that you purchased?

9 A. No, no, no. The insurance is--- I mean, those truck drivers are automatically
10 insured per load for I believe half a million dollars when they are carrying a load
11 of that nature. There was no additional insurance purchased with the loan.

12 Q. Why would AM Industrial file a claim on a damaged piece of equipment that you
13 were in possession of?

14 A. Because it has to be done with the carrier and I'm -- I can -- I'll be more than
15 happy to get the documentation and get back to you, sir, but I believe that they
16 arranged the truck. They arranged the loading of it. When it is their truck, the
17 party that arranges everything has to do the submittal of insurance. I can't--- In
18 my industry in nineteen years I can't submit an insurance claim. I can only provide
19 the documentation, note the Bill of Lading, and state that this, this, this and this is
20 damaged and provide that to the person that can submit the claim. I can't submit
21 the claim if I'm not the one arranging the freight.

22 Q. Okay. So you never submitted a claim for damage that occurred to the machine in
23 transit?

24 A. No. No. Because it was their responsibility to submit the claim.

25 Q. Okay. The replacement machine that you purchased was a remanufactured YLM

1 CNC; is that correct?

2 A. Correct. Yes, sir.

3 Q. Who did you decide to purchase it from? Who did you purchase it from?

4 A. J&S, YLM.

5 Q. YLM?

6 A. YLM is---

7 Q. Purchased directly from the manufacturer?

8 A. It is in Michigan. The person that is in charge of YLM America is J&S, correct.

9 They are in charge of all US distribution for YLM.

10 Q. When did you first contact YLM or J&S about purchasing this machine?

11 A. I would not be able to--- I would need to check my records. I don't---

12 Q. You didn't bring that information with you today?

13 A. No, sir.

14 THE COURT: Mr. Harte, if you don't mind letting him finish answering before
15 you begin your next question.

16 MR. HARTE: Sorry, Your Honor.

17 THE COURT: Thank you.

18 **EXAMINATION RESUMED BY MR. HARTE:**

19 Q. Did you contact anyone else besides J&S slash YLM looking for a replacement to
20 the Eaton Leonard machine?

21 A. Actually, Eaton--- Actually, AM contacted a company to come inspect the
22 machine, who also sells machines and we were trying to do the best we could to
23 alleviate having to be here today. I'm blanking on his name and actually was
24 recommended by Brett from AM Industrial and he actually came to our facility and
25 actually inspected the machine and, you know, came to the same conclusion that

1 it was refurbished incorrectly. So, yes, we did. And at that time I reached out and
2 said do you know how to fix this and you want to fix this and we can figure out
3 how to get into another bender and we can avoid all this dispute, be more than
4 happy to. Yes. So, we did. The short answer is yes, we were in contact with them.
5 I believe he is out of Tennessee or Kentucky.

6 Q. Okay. When did you have contact with this Tennessee or Kentucky individual?

7 A. When Brett finally gave up and sent him down to the facility, and I would have to
8 check. I don't remember the time. It has been over a year now we've been trying
9 to juggle this and get production going.

10 Q. Sure. I appreciate it has been a frustrating process for you. I'm just trying to nail
11 down when you had this discussion about having the Eaton Leonard machine---

12 A. It was over many months that we were talking to the gentleman.

13 Q. January 2021? February 2021?

14 A. Again, I would--- Time flies when you are an owner.

15 Q. That's fine.

16 THE COURT: Again, I am going to ask you both if you will let the other finish
17 before you speak; okay? Thank you.

18 MR. HARTE: Sorry, Your Honor.

19 **EXAMINATION RESUMED BY MR. HARTE:**

20 Q. Other than the third party from Tennessee or Kentucky and J&S slash YLM, did
21 you contact any other company, party, individual about purchasing a replacement
22 machine?

23 A. Prior to purchasing from AM Industrial we were looking at a competitor, Horn,
24 Kent Horn out of California, but that was while we were having issues, sir. Before
25 we were having issues. That was prior to -- was determining which way we were

1 going to go.

2 Q. Let me jump to the chase because I don't want to dance around the issue. The
3 machine that you purchased from AM Industrial was initially advertised for sale
4 as about One Hundred and Fifty Thousand (\$150,000.00) Dollars; correct?

5 A. I believe it was. Yes, it was more than what we negotiated. I don't know the exact
6 price.

7 Q. Well, let's just say it's One Hundred and Fifty Thousand (\$150,000.00) Dollars for
8 a round number. The machine that you ended up purchasing was more than One
9 Hundred Thousand (\$100,000.00) Dollars more expensive.

10 A. Yes, sir.

11 Q. Are there things that the YLM machine does that the Eaton Leonard machine was
12 never going to do?

13 A. Yes, sir, but it doesn't--- It has still got to bend 3 inch pipe, stainless, 18 gauge,
14 so whether we did better in revenue and castings and decided to up our ante and be
15 more automated and more efficient, that's, you know. I don't see what you're
16 getting at, sir. It's still--- It was a great refurbished machine for a good value.

17 Q. Let's drill down on some of the specifics between the two machines. The YLM
18 machine has a 90 millimeter diameter capacity; correct?

19 A. They call it a CNC 90. With mandrel benders to be able to bend thin wall stainless
20 steel 18 gauge 3 inch is the capacity that both of these machines are advertised and
21 should bend. Just because it has a 90 millimeter doesn't mean it's going to bend
22 over 3 inch stainless steel. And YLM will tell you that as well as Eaton Leonard.

23 Q. What is the advertised Eaton Leonard diameter capacity?

24 A. Three inch. It says it right on the VB 76 high torque machine. Right on the
25 Invoice.

1 Q. It's not 76 millimeters?

2 A. Sir, I would have to--- I would have to consult Anthony, my other partner, the
3 engineer.

4 Q. Okay. That's fine. The multi stack versus single stack. The YLM is a multi stack.

5 A. Correct.

6 Q. Correct? The Eaton Leonard machine is only a single stack.

7 A. Correct.

8 Q. Okay. If the Eaton Leonard is a Chevy, it sounds to me like the YLM is a Ferrari;
9 is that accurate?

10 A. That's inaccurate.

11 Q. Okay.

12 A. We're running in a single stack mode right now before we triple stack it.

13 Q. But it has the capacity to run triple stack?

14 A. It has the capacity to do a lot of other things and a lot of things change in a year
15 and a half, as well as the, you know, Eaton Leonards were an American made
16 machine. This is Taiwan made, you know. I mean, there are--- We are not--- The
17 bottom premise is that it could bend 3 inch stainless steel. We were told it could
18 bend 3 inch stainless steel. The purchase order that I handed to AM Industrial as
19 a contractual agreement was that we weren't going to get in a rat race. That if it
20 did not bend 3 inch stainless steel, then it was to go back. We could not afford to
21 be making payments on a machine that couldn't output revenue. That's the bottom
22 line was that the purchase order we were told until we were blue in the face that
23 this was the perfect bender for you and that it would bend 3 inch stainless steel.

24 MR. HARTE: I am going to ask the Court to mark these next three documents as
25 exhibits. I believe they are Defendants 2, 3 and 4.

1 THE COURT: Any objection, Mr. Bach?

2 MR. BACH: No, Judge.

3 THE COURT: Alright. They will be admitted. Do you want them admitted in this
4 order 2, 3 and 4?

5 MR. HARTE: Your Honor, the order is irrelevant.

6 THE COURT: Okay.

7 MR. HARTE: Yes, that is fine, 2, 3 and 4.

8 THE COURT: Alright. Give me just a moment.

9 MR. HARTE: Thank you.

10 THE COURT: Okay. They will be admitted without objection.

11 MR. HARTE: Thank you, Your Honor.

12 (IES INNOVATIVE INVOICE 7227 IS MARKED AS DEFENDANT'S EXHIBIT
13 2 AND RECEIVED INTO EVIDENCE.)

14 (BEND TOOLING INCORPORATED INVOICE 105975 IS MARKED AS
15 DEFENDANT'S EXHIBIT 3 AND RECEIVED INTO EVIDENCE.)

16 (IES INNOVATIVE INVOICE 6974 IS MARKED AS DEFENDANT'S EXHIBIT
17 4 AND RECEIVED INTO EVIDENCE.)

18 **EXAMINATION RESUMED BY MR. HARTE:**

19 Q. Mr. Adams, Defendants Exhibit 2 is an invoice from IES; correct?

20 A. Yes.

21 Q. It is PO number 7227; is that correct?

22 A. Yes.

23 Q. And the total balance is Fifteen Hundred and Fourteen (\$1,514.00) Dollars?

24 A. Yes.

25 Q. Dated February 18, 2021; correct?

1 A. Yes.

2 Q. Okay. The next exhibit is an Invoice from Bend Tooling, Invoice number 105975;
3 correct?

4 A. Correct.

5 Q. And the invoice is for Twelve Hundred and Ninety (\$1,290.00) Dollars; correct?

6 A. Correct.

7 Q. And then finally the IES -- Defendants 4 is IES PO 6974 for Two Thousand, Seven
8 Hundred Eighty (\$2,780.00) Dollars; correct?

9 A. Correct.

10 Q. The total from all three of those invoices is Five Thousand, Five Hundred and
11 Eighty-Four (\$5,584.00) Dollars; correct?

12 A. Correct.

13 Q. Do those--- Does that amount reflect tooling for the Eaton Leonard machine or
14 tooling for the YLM machine?

15 A. This is all tooling for the Eaton Leonard.

16 Q. Okay.

17 A. We were told that--- We were blamed that our tooling wasn't -- doesn't suffice,
18 yet I have a CMS metric Horn bender to the left of that machine bending our
19 tooling all day everyday without any problems. So, this was the final straw to go
20 and spend money we didn't need to spend to try and prove out the AM VB76
21 because it was pointing fingers. At that point it had come down to pointing
22 fingers.

23 Q. Sure. Mr. Adams, let me see if I can save you a little bit of breath here. You've
24 already won on the issue of liability. We're only here to figure out how much you
25 are owed; okay?

1 A. Yes, sir.

2 Q. Alright. Looking at the brief that your attorney filed on Friday, the amount of
3 tooling for the Eaton Leonard machine was purported to be Eight Thousand, Six
4 Hundred and Ninety-Four (\$8,694.00) Dollars. Is that correct? Here you go. This
5 is what your attorney filed on Friday.

6 A. Thank you.

7 Q. So, we've already talked about the first line item, price of the machine, One
8 Hundred Thirty-Two Thousand (132,000).

9 A. Correct.

10 Q. We've talked about the difference in price of the replacement machine; correct?

11 A. Correct.

12 Q. Looking at the tooling for the Eaton Leonard machine, you're purported to be owed
13 Eight Thousand, Six Hundred Ninety-Four (\$8,694.00) Dollars; correct?

14 A. Right. But the next line item is for the new machine -- for the replacement. For
15 the replacement machine. There was adaptors, tooling for the main machine. The
16 difference will come into play with the pieces that Anthony needed on the machine,
17 on our CNC machine. We have six CNC milling machines. The difference of the
18 price between these three invoices and this Eight Thousand, Six Hundred and
19 Ninety-Four (\$8,694.00) Dollars is the aluminum and the programming that
20 Anthony needed to create in order to make the machine work. Set the carriage
21 height, the pressure die set up as well. So there is other tooling that we have not
22 provided invoices for.

23 Q. That was my next question.

24 A. Yes, sir.

25 Q. Are there any invoices or documentation that show where this remaining Three

- 1 Thousand, Three Hundred and Eighty (\$3,380.00) Dollars would be?
- 2 A. Yes, sir. I could provide them, but I did not. I apologize.
- 3 Q. You don't have them here with you?
- 4 A. I do not have them here with me.
- 5 Q. Alright. That's fine. The next line item, tooling for the replacement machine,
6 Seven thousand, Six Hundred and Twenty-Eight (\$7,628.00) Dollars.
- 7 A. Yes, sir.
- 8 Q. Same situation you have invoices and purchase orders for---
- 9 A. Yes, sir.
- 10 Q. --- But you've not brought here today.
- 11 A. Yes, sir. I believe that--- I need to triple check, but I believe that that number
12 is rolled into the finance document which you originally exhibited. It would be the
13 machinery finance document.
- 14 Q. Looking at Plaintiff's Exhibit 2, can you tell me where in this document it is?
- 15 A. No, sir. That's the final. I can give you a breakdown of that document. They did
16 not provide the invoices to support the finance document.
- 17 Q. So, some of the Seven Thousand, Six Hundred Twenty-Eight (\$7,628.00) Dollars
18 is included in the Two Hundred and Fifty-Five Thousand (\$255,000.00) Dollar
19 purchase of the YLM machine?
- 20 A. Correct, to get it running. Yes, sir.
- 21 Q. Okay. Looking at the next item, costs for installation of the Eaton Leonard
22 machine.
- 23 A. Yes, sir.
- 24 Q. On this document, on the brief that your attorney filed, Six Thousand, Nine
25 Hundred and Fifty (\$6,950.00) Dollars.

- 1 A. Yes, sir.
- 2 Q. And I believe you've already testified that included electricity reconfiguration, air
3 lines, wiper die, etcetera.
- 4 A. It just did it for--- The other document is times one. You still have to install all
5 of that, deinstall that, get the rigging equipment again and then redo it all again, so
6 you're looking at like four times the cost which comes -- should come up to that
7 number, cost of installation of the machine, Six Thousand, Nine Hundred and Fifty
8 (\$6,950.00) Dollars.
- 9 Q. Any invoices, purchase orders, documentation to show the Six Thousand, Nine
10 Hundred and Fifty (6,950)?
- 11 A. No, sir. I can get that from J&J Forklift as well as the rigging outfit and then I'd
12 have to get you all of the air line invoices and the contract labor to do the electric
13 as well as the air lines, sir.
- 14 Q. Let's talk about the last line item which is obviously the biggest on this
15 spreadsheet. I believe you testified a few minutes ago that the total from what's
16 on the spreadsheet in addition to a separate order with BMW---
- 17 A. Yes.
- 18 Q. --- totals Four Hundred and Sixty-one Thousand (461,000)?
- 19 A. Yes, sir.
- 20 Q. Okay. It is described on Page 1 of your attorney's brief and in this line item it has
21 lost revenue. Can you explain to me the difference between revenue and a profit?
- 22 A. Yes, sir. This would have been gross sales. This would not have been gross
23 profit. So, the difference is you've got material cost, you've got labor, you've got
24 other factors that are incorporated into the process of manufacturing that good and
25 then whatever is left over is considered your profit.

- 1 Q. Okay. Can you reduce the Four Hundred Sixty-One Thousand (\$461,000.00)
2 Dollars in revenue to profit? That is, how much money---
- 3 A. Sure.
- 4 Q. ---would CP have made on the purchase orders that you purport to have lost?
- 5 A. Correct. Off the fly, that would be a difficult task without the spreadsheets in
6 front of me.
- 7 Q. You don't have that information in front of you today?
- 8 A. No, because each one -- each contract holds -- each contract holds a different
9 profit margin.
- 10 Q. Of course. Alright. So, the--- As I heard you testify, I heard four different
11 specific contracts. Is that correct?
- 12 A. One, two, three, four, five if you count Sixth Element, but approximately four.
13 Yes, sir.
- 14 Q. So you've got Blow-By Racing.
- 15 A. Yes, sir.
- 16 Q. There was Manza.
- 17 A. Yes, sir.
- 18 Q. Saleen Corp.
- 19 A. Yes, sir.
- 20 Q. And then I heard BMW.
- 21 A. Correct.
- 22 Q. Did I miss one in there?
- 23 A. There are several clients that we already mass manufacture for, so Sixth Element.
24 You've got RallySport Direct. You've got Edge Auto Sport, Whoosh Motor
25 Sports, you've got all of our main WDs that have been sitting on back orders for

1 months and months and months and months and months that are promised an
2 increased efficiency to get those. So, yes, we've had several lost revenue where
3 they have gone to other vendors because they stop waiting and they end up filling
4 the orders with another manufacturer. So, they are WDs, they are warehouse
5 distribution people.

6 Q. In order to keep it clean, let's divide it up into four categories. I'm sorry, two
7 categories. There were the four new clients, Blow-By, Manza, Saleen Corp. and
8 BMW.

9 A. Yes.

10 Q. And we will just lump all of the other existing clients.

11 A. Yes, sir.

12 Q. With the four new clients, or new business opportunities, was that ever reduced to
13 writing in the form of a purchase order that was sent to you?

14 A. Yes. BMW was as well as Blow-By for sure.

15 Q. When was the BMW purchase order sent to you?

16 A. I have to go back to my email, sir, to achieve that.

17 Q. What about---

18 A. All of these, I have an ordering and processing department that handles that, sir.

19 Q. And you didn't bring that documentation with you today?

20 A. I did not bring that documentation.

21 Q. Okay. What about the existing clients in that second category?

22 A. That started from September 2020. I mean, that second category would be the
23 S550, that has been going on for -- that has been going on for a long time. Saleen
24 Corporation since right around--- That was one of the major pushes to get the
25 new bender. That was around September 2020.

- 1 Q. But you haven't reduced to, you know, numbers what your profit would have been
2 with these new orders that came in from your existing clients.
- 3 A. Oh, we have. We've chopped all that up halfway 'til Sunday, but that's not--- I
4 don't have that on me.
- 5 Q. You don't have that with you today?
- 6 A. No, sir.
- 7 Q. Okay. Did CPE make any changes to its business operations to attempt to fill any
8 existing orders or any new orders?
- 9 A. Absolutely. I mean from hiring staff to trying to run--- You know, that bender,
10 just compared to the 76, that bender runs three times as slow, so trying to do more
11 shifts, Saturdays, Sundays, evenings, whatever we could to--- But yes, we hired
12 a plant manager. We've automated our ERP system. We've done a lot of other
13 great things to try and get around the work around of not being able to output
14 enough.
- 15 Q. Have you received reimbursement from any other source for the damages that you
16 are seeking today?
- 17 A. They weren't directly related to the bending output, no.
- 18 Q. Okay. What reimbursement from other sources have you received?
- 19 A. For lost revenue? Zero.
- 20 Q. Just across the board.
- 21 A. I've received zero lost revenue -- reimbursements for lost revenue.
- 22 Q. Okay. But across the board you are seeking, I believe it is north of Seven Hundred
23 and -- it's at least Seven Hundred Thousand (\$700,000.00) Dollars you are
24 seeking; correct?
- 25 A. Yes, sir.

1 Q. Have you received any reimbursement or any proceeds or any funds from any other
2 source?

3 A. This is the first time we've been in this type of situation, sir, where we were
4 promised a machine that would increase our capacity and then didn't just fall a
5 little short, it fell way short and they are dragging their feet. So, no. This is the first
6 time I've ever been in this situation to where I've had to press charges.

7 Q. Okay. I think we're missing each other. I'm not sure you're understanding my
8 question.

9 A. No, I have not received any compensation for any lost revenue before.

10 Q. Okay. Since this transaction fell apart, have you gotten any proceeds or any
11 reimbursement from any third party besides this proceeding right here?

12 A. No, sir.

13 Q. Okay. I think that is all the questions I have. Thank you.

14 A. Okay.

15 THE COURT: Thank you.

16 MR. BACH: Briefly. I'll mark this as Plaintiff's three.

17 (EQUIPMENT FINANCE AGREEMENT IS MARKED AS PLAINTIFF'S

18 EXHIBIT 3.)

19 MR. BACH: Two exhibits, two different ones.

20 (PURCHASE ORDER IS MARKED AS PLAINTIFF'S EXHIBIT 4.)

21 MR. BACH: Do you mind if he looks at those? I'm sorry, I didn't have an extra
22 one.

23 THE COURT: No, give me just a moment.

24 MR. BACH: Okay.

25 **REDIRECT EXAMINATION BY MR. BACH:**

1 Q. As it relates to the price that Custom Performance paid for the machine, the invoice
2 that AM Industrial provided this morning is from July 31, 2020 with a One
3 Hundred Twelve Thousand (\$112,000.00) Dollar value; is that correct?

4 A. Yes, sir.

5 Q. How much was the actual purchase order that you issued?

6 A. One Hundred Thirty-Two Thousand (\$132,000.00) Dollars.

7 Q. And then Exhibit 4, is that ---

8 MR. BACH: And Your Honor, I'd enter these into evidence as well.

9 THE COURT: Any objection?

10 MR. HARTE: No, Your Honor.

11 THE COURT: Alright, they are admitted.

12 (EQUIPMENT FINANCE AGREEMENT WHICH HAS BEEN MARKED AS
13 PLAINTIFF'S EXHIBIT 3 IS RECEIVED INTO EVIDENCE.)

14 (PURCHASE ORDER WHICH HAS BEEN MARKED AS PLAINTIFF'S
15 EXHIBIT 4 IS RECEIVED INTO EVIDENCE.)

16 **EXAMINATION RESUMED BY MR. BACH:**

17 Q. Exhibit 4, is that a financing document similar to the one we saw for the
18 replacement machine?

19 A. Yes, sir. Oh, sorry. For the replacement machine?

20 Q. No, similar to the one.

21 A. Same document but different values.

22 Q. And is this financing document for the machine---

23 A. Yes.

24 Q. --- that you purchased from AM Industrial?

25 A. Yes.

1 Q. How much did Custom Performance finance to purchase that machine from AM?

2 A. One Hundred Thirty-Two Thousand (\$132,000.00) Dollars.

3 THE COURT: Give me just one moment. You've go--- Just to make sure that
4 we've marked these correctly. You've got the Machinery Finance Resources Equipment
5 Finance Agreement as Plaintiff's Exhibit 4?

6 MR. BACH: I didn't write it down. I'm sorry. Just whichever. The Purchase
7 Order is 4 and---

8 THE COURT: The Equipment Finance Agreement is 3.

9 MR. BACH: Okay. Yes, that is right. I'm sorry. So, yes.

10 **EXAMINATION RESUMED BY MR. BACH:**

11 Q. The Equipment Finance Agreement, Exhibit 3, is that actually how much Custom
12 Performance financed to purchase the machine from AM Industrial?

13 A. Yes, sir.

14 Q. So whatever that earlier invoice said, the amount that you actually borrowed to
15 purchase the machine was One Hundred Thirty-Two Thousand (\$132,000.00)
16 Dollars. Is that correct?

17 A. Yes, sir.

18 Q. And did all that money, to your knowledge, go to AM Industrial?

19 A. Yes, sir.

20 Q. With regard to lost revenue, when you were testifying about that, are you testifying
21 about the value of each contract you lost?

22 A. Value as in the total. Not the profit, sir. I'm testifying to the total job. The total
23 of revenue.

24 Q. How much you should have received on each contract; is that correct?

25 A. Correct. Yes, sir. Total at the end of the day. Say BMW submitted a purchase

1 order for Two Hundred and Thirty-Five Thousand (\$235,000.00) Dollars for this
2 month, we would have received Two Hundred and Thirty-five Thousand
3 (\$235,000.00) Dollars. We would have had costs associated with manufacturing
4 that product.

5 Q. Okay. Can you estimate what your profit margin is on a contract? What is the
6 general profit margin that your company makes?

7 MR. HARTE: Your Honor, I am going to object. He's already testified he can't
8 do that as to these contracts.

9 THE COURT: I am going to allow him to answer.

10 MR. HARTE: I understand.

11 THE COURT: Go ahead. You can repeat the question, Mr. Bach.

12 **EXAMINATION RESUMED BY MR. BACH:**

13 Q. What is the profit margin your company makes in general on these contracts?

14 A. We strive to get, you know, 4.0, four times the overhead and material cost as well
15 as labor. We try and achieve a 4, 4.2 profit margin. You know, we're not talking
16 percentage points. We are looking on the lower volume side of things. We are at
17 a--- Something the nature of BMW, probably 2.5 if I had to guess, 2.5 times the
18 cost.

19 Q. So, what would that translate to in instance to that contract?

20 A. It would be well north of One Hundred and Twenty-Five Thousand (\$125,000.00)
21 Dollars if I had to just off the back of my hand---

22 Q. Can you do that for the other contracts?

23 A. I'd like to take--- Yes, I could. I'd like to take some time to---

24 MR. BACH: Can the witness have a moment to make that calculation?

25 THE COURT: Yes, that is fine.

1 WITNESS: Your Honor, am I allowed to use the calculator on my phone, or no?

2 THE COURT: Do you have any objection to him using the calculator on his phone?

3 MR. HARTE: Judge, I don't have an objection in a practical sense. You know, he
4 can do the calculation. But this is their opportunity to present damages as to the lost
5 profits. This never should have been presented as lost revenue. This hearing has been
6 noticed for several months. They could have reduced this figure to profit for each contract
7 that they are purporting to be owed damages for.

8 MR. BACH: He is permitted to come and testify. He says he can do the
9 calculation and there is nothing improper about asking the witness to do a calculation on
10 the stand.

11 THE COURT: Okay. I am going to allow it.

12 MR. HARTE: I understand. Thank you.

13 **EXAMINATION RESUMED BY MR. BACH:**

14 A. Sir, with rough estimates on just the three without any of the Sixth Element or any
15 of our current vendors for efficiency and lost revenue or cancelled purchase orders,
16 I would come up with an estimate of Two Hundred Fifty-Seven Thousand, Six
17 Hundred Eighty (\$257,680.00) Dollars. That would be BMW, just the Blow-By
18 contract, not even Manza and the Saleen. So that would be putting the turbo kits
19 at 3.5 and 3.5 and then BMW at 2.5 margin because it's a contract, high volume,
20 mass manufacturing.

21 Q. So the lost profit number would be Two Hundred Fifty-Seven Thousand, Six
22 Hundred Eighty (\$257,680.00) Dollars.

23 A. Yes, sir, approximately, without getting into more spreadsheets.

24 MR. BACH: Your Honor, I believe that is all the questions I have.

25 THE COURT: Okay. Mr. Harte, anything further?

1 MR. HARTE: No, Your Honor.

2 THE COURT: Mr. Bach, anything further from you?

3 MR. BACH: Your Honor, I know we've got some scratch through numbers at this
4 point. You know, I think that if it's acceptable to the Court it might be helpful if we
5 submitted opposing orders on the measure of damages to you, or I am happy to tally it up
6 here if you will just give me a second.

7 THE COURT: I am going to go ahead while it's fresh on everyone's mind. Okay.
8 And I am going to allow the price of the machine at One Hundred Thirty-Two Thousand
9 (132,000). I am not allowing the difference in the price of the replacement machine. It
10 appears that it is a machine that performs additional functions. I am allowing the tooling
11 for the machine at the price of Eight Thousand, Six Hundred Ninety-Four (\$8,694.00)
12 Dollars. I'm not allowing the tooling for the replacement machine. I'm allowing the cost
13 for the installation of the machine in the amount of Six Thousand, Nine Hundred Fifty
14 (\$6,950.00) Dollars. Then I will allow lost profits due to the machine not functioning as
15 represented in the amount the witness has testified to, Two Hundred Fifty-Seven
16 Thousand, Six Hundred Eighty (\$257,680.00) Dollars. I'm allowing costs in the amount
17 of Two Hundred Ninety-Three Dollars and Eighty Cents (\$293.80) and post-judgment
18 interest. And Mr. Bach, if you will submit that Order and if you will send it to Mr. Harte
19 for review before you electronically file it for my signature, I would appreciate that.

20 MR. BACH: Yes, ma'am.

21 THE COURT: If you have any objections, Mr. Harte, if you would send those to
22 me in an email as soon as you receive notice that the Order has been filed.

23 MR. HARTE: That is the proposed Order?

24 THE COURT: Yes.

25 MR. HARTE: Okay. Thank you.

1 THE COURT: Or if you would note those simultaneously with the filing. I sign
2 electronically filed Orders pretty quickly and so if you will let me know as soon or before
3 that Order is e-filed. Anything further? Anything that the Court needs to clarify?

4 MR. BACH: I don't believe so. Thank you.

5 MR. HARTE: Your Honor, I guess just for purposes of the record, had I been
6 permitted the opportunity as to the lost profits issue, I would have handed up a case from
7 the South Carolina Supreme Court, Drews Co., Inc. versus Ledwith-Wolfe Associates,
8 296 SC 207. It deals with the speculative nature of lost profits in existing contracts versus
9 the new business rule. Your Honor has already ruled and I don't think there is any need
10 to ask you to rehash that issue, but for purposes of the record, that is what I would have
11 handed up had I been given the opportunity.

12 THE COURT: Well, let's address that. He said that there were two purchase
13 orders, I think you said, from BMW and is it Blow-By?

14 MR. HARTE: It's Eschbacher (phonetic), who is a tier one for BMW. Yes, ma'am.

15 THE COURT: Okay. And so, what is your argument on that?

16 MR. HARTE: He has failed--- The Plaintiff has not produced copies of those
17 purchase orders. There is, at least to me, it was not clear when those purchase orders were
18 submitted from the potential buyer or the potential client to CPE and so I think there's
19 some issue of fact there with regard to when this transaction ultimately fell apart and the
20 machine that they were using was not able to be used in the way they wanted it to. I think
21 you also have to get into some mitigation of damages issues. You know, what effort was
22 made by CPE to purchase a replacement machine once it became clear that the Eaton
23 Leonard machine was not going to function as properly -- or as it was agreed upon. The
24 purpose of contract damages are to put the parties in the place that they would have been
25 had both sides performed the contract as it was bargained for and I don't think there is

1 enough evidence that has been presented and it's too speculative for CPE to say that we've
2 lost out on these profits without some more clarification about when these profits would
3 have been generated relative to when the transaction fell apart.

4 THE COURT: Okay. Well, how about we do this? Mr. Bach, when you submit
5 this Order, beforehand or with the Order, just clarify. I'm going to allow him to get lost
6 profit at the profit margins that he said, this 2.5 on BMW, 3.5 on Blow-By and Saleen, I
7 believe it was. But if you will attach those purchase orders as exhibits. Make sure that
8 you have a purchase order supporting any argument as to lost profits on those three
9 companies alone. Does that resolve the issue?

10 MR. HARTE: Thank you, Your Honor. I think that is more than fair.

11 THE COURT: Alright. Anything else?

12 MR. BACH: I mean, if we are going to do that, then I should pull out the other
13 vendors too, Your Honor.

14 MR. HARTE: I am opposed to that, Your Honor.

15 THE COURT: Well, we are going to focus on these three. Mr. Bach or Mr. Harte,
16 anything further from you?

17 MR. HARTE: Nothing from the defense, Your Honor.

18 MR. BACH: No, ma'am.

19 THE COURT: Thank you. I will be looking for that Order, Mr. Bach and make
20 sure that Mr. Harte sees it beforehand.

21 MR. BACH: I will.

22 MR. HARTE: Thank you, Your Honor.

23 THE COURT: Alright. Thank you all. Have a good day.

24 --- END OF RECORD ---

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STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG) **C E R T I F I C A T E**

I, the undersigned **Dorothy Huntsinger**, Court Reporter for the Office of the Master-in-Equity for the County of Spartanburg, State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of testimony of the proceedings had and evidence introduced at the virtual hearing of the captioned case, before **Honorable Shannon M. Phillips, Master-in-Equity** for Spartanburg County, South Carolina, on the **20** day of **December, 2021**.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.


DOROTHY HUNTSINGER
COURT REPORTER

April 6, 2022



0130



INVOICE

ELECTRONICALLY FILED - 2021 Dec 22 10:35 AM - SPARTANBURG - COMMON PLEAS - CASE#2021CP4201163

INVOICE #: 105011

DATE: 7/31/20

PO #: Verbal George

BILL TO:
 Attn: Accounts Payable
 Custom Performance
 280 National Ave
 Spartanburg, SC 29303

SHIP TO:
 Attn: Receiving
 Custom Performance
 280 National Ave
 Spartanburg, SC 29303

TERMS: Payment in full prior to shipment

FOB: Brook Park, OH
unless otherwise specified

SHIPPING INSTRUCTIONS: Customer Arranged

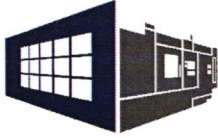
16000 Commerce Park Drive
 Brook Park, Ohio
 44142-2023
 (216) 433-7171
 (216) 433-4008 Fax
 www.amindustrialmachinery.com
 info@amindustrialmachinery.com

QTY	ITEM ID	DESCRIPTION	UNIT PRICE	AMOUNT
1	AM19439	EATON LEONARD Model: VB076HT CNC 3-Axis Horizontal Mandrel Type Tube Bending Machine -refurbished-		
1		INCLUDES:		
1		Used tooling for 3" OD: Used Bend Die + any other available		
1		Used tooling for 1.875" OD: Used Bend Die + any other available		
1		TOTAL DISCOUNTED PRICE	132,000.00	132,000.00
TOTAL INVOICE AMOUNT (USD):			\$	132,000.00

CONDITIONS:

Used items sold hereunder are neither designed nor manufactured by the seller, and this sale of these items is on an as-is and with all faults basis, without any representation or warranties, expressed or implied, of any kind including safety, condition, or quality. Purchaser agrees that upon and after payment of this invoice, in part or full, the above order is not subject to cancellation, exchange, or return. Seller further assumes no responsibility to provide safety device: or equipment necessary for the protection of the user or to comply with applicable governmental laws or requirements. It is agreed and understood that purchaser assumes this responsibility and the above is an integral part of this sale. Orders are not subject to cancelation. Deposits received are non-refundable

Thank you for your business!

**MACHINERY
FINANCE RESOURCES****0131**
THIS IS A COPY
This is a copy view of the Authoritative Copy held
by the designated custodian**EQUIPMENT FINANCE AGREEMENT**651 Day Hill Road, Windsor, CT 06095
With Questions Call: (860) 687-3375 FAX To: (860) 687-3376

Equipment Finance Agreement "EFA" Number 212115 dated September 21, 2021

DEBTOR INFORMATION**Custom Performance Engineering, Incorporated**

FULL LEGAL NAME

MD

STATE OF ORG.

280 National Avenue

STREET ADDRESS

Spartanburg

CITY

SC

STATE

29303

ZIP

BILLING ADDRESS (if different from Debtor address above)

cgallina@cp-e.com

E-MAIL

864-764-1646

PHONE

DESCRIPTION AND LOCATION OF EQUIPMENT, PERSONAL PROPERTY, SERVICES AND/OR SOFTWARE**1 - Remanufactured YLM CNC-90 MSRSM-6A CNC Bending Machine**

together with all replacements, parts, repairs, additions, and accessions incorporated therein or attached thereto and any and all proceeds of the foregoing, including, without limitation, insurance recoveries.

Location (if different from Debtor address above):

SUMMARY OF TERM AND PAYMENTS

Acceptance Date: _____ (FOR OFFICE USE ONLY)

Financed Amount: **\$255,087.00**Number of Payments (Months): **Eighty-Four (84)**Payment Amount: **\$3,564.76**Documentation Fee: **\$400.00**

The payment ("Payment") period is monthly unless otherwise indicated. If no Advance Payment is required, the first payment is due 30 days after the Acceptance/Term Commencement Date.

Advance Payment Due: **\$3,564.76**Advance Payment(s): **FIRST (1ST) PAYMENT DUE IN ADVANCE.****TERMS AND CONDITIONS**

1. ACKNOWLEDGEMENT. By signing below, Debtor acknowledges and agrees that: it has read and understands the TERMS AND CONDITIONS OF THIS AGREEMENT; this Agreement becomes effective only upon written acceptance by an authorized employee of Creditor; Debtor has an UNCONDITIONAL OBLIGATION to make all payments due under this Agreement; it cannot withhold, set off or reduce such payments for any reason; it will use the Equipment only for business purposes; the person signing this Agreement has the authority to do so and to grant the POWER OF ATTORNEY set forth in paragraph 8 herein. If any provision of this Agreement is declared unenforceable, the other provisions herein shall remain in full force and effect to the fullest extent permitted by law. THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF CONNECTICUT; AND TO THE JURISDICTION OF ANY COURT LOCATED IN THE STATE OF CONNECTICUT. DEBTOR EXPRESSLY WAIVES ANY RIGHT TO A TRIAL BY JURY.

DEBTOR ACKNOWLEDGEMENT

By signing below, Debtor acknowledges and agrees to all the Terms and Conditions of this Agreement on this page and on pages 2-4 attached hereto.

Custom Performance Engineering, Incorporated

DEBTOR (AS REFERENCED ABOVE)

20-0168457

FEDERAL TAX IDENTIFICATION NUMBER

Anthony Joseph Messina

PRINT NAME

Anthony Joseph Messina

SIGNATURE

President

TITLE

Nov 1, 2021

DATED

CREDITOR ACKNOWLEDGEMENT**Machinery Finance Resources, LLC**

CREDITOR

Machinery Finance Resources, LLC

SIGNATURE

Authorized Signer

TITLE

Nov 1, 2021

DATED

2. FINANCING. Debtor has requested that Creditor provide financing to enable Debtor to purchase the equipment, personal property, services and/or software described above and/or on any exhibit hereto (together with all accessories, attachments, parts, replacements, repairs and additions thereto and all proceeds of the foregoing, collectively the "Collateral"). Upon Creditor's acceptance and execution of this EFA, receipt of any amounts due upon signing of this EFA, receipt of other documentation required by Creditor and confirmation that the Collateral has been delivered to and accepted by Debtor, Creditor agrees to finance the purchase of the Collateral on the terms set forth in this EFA, including all of Debtor's obligations, covenants and agreements hereunder. Upon satisfaction of all conditions to funding, Creditor will pay the Financed Amount, as adjusted in accordance with Section 3 below, directly to the vendor(s) of the Collateral. Debtor authorizes Creditor to complete the Acceptance Date set forth above based on the date of the Certificate of Acceptance or the Delivery & Acceptance Certificate.

3. PAYMENTS. In consideration of the financing provided by Creditor, Debtor agrees to pay to Creditor the Financed Amount, together with interest thereon, by paying to Creditor each of the following amounts when specified: (a) the amount of any Advance Payment(s) set forth above, due and payable on the date Debtor delivers this EFA, and (b) consecutive monthly installments each equal to the Payment Amount set forth above for the Number of Payments set forth above less the number of Advance Payments made upon delivery of this EFA, with such consecutive monthly Payments beginning on the date that is one month after the Acceptance Date and then on the same day of each calendar month thereafter. Debtor authorizes Creditor to adjust the Payment Amount if there has been a change in Creditor's internal cost of funds (the "Base Rate") from the date of approval to the Monday (or next business day if such Monday is not a business day) of the week in which the Acceptance Date occurs. The Acceptance Date for purposes hereof shall be defined as the date Debtor accepts the Equipment and furnishes Creditor with a fully executed Certificate of Acceptance or Delivery and Acceptance Certificate, and all other items required for funding. The amount of any such adjustment shall be determined by changing the implicit rate of the EFA by one (1) basis point for every basis point increase in the Base Rate. No change will be reflected in any Payments collected in advance of the adjustment. If any amount payable hereunder is not paid within ten (10) days of its due date, Creditor may impose a late fee of up to 5% of the amount of the past due payment and may, in addition, charge interest on the unpaid amount at eighteen percent (18%) per annum or, if less, the maximum rate permitted by applicable law. Creditor may apply payments hereunder and any Security Deposit to Debtor's Obligations hereunder in such order as it deems appropriate and will return any unapplied balance to Debtor, without interest, when all Obligations are satisfied. Debtor will pay Creditor a fee, in an amount determined by Creditor, not to exceed the maximum amount from time to time permitted by applicable law on demand for any check or automatic payment request returned due to insufficient funds or stop payment. This EFA shall be construed so that interest, the applicable interest rate, fees and other charges shall not exceed the maximum time price differential, rate, interest or amount allowed by applicable law, and any excess payment will be applied first to prepay principal hereunder and then as a refund to Debtor.

4. PREPAYMENT. Debtor may voluntarily prepay this EFA at any time, provided no default has occurred and is then continuing under the EFA, by paying to Creditor the following "Aggregate Termination Payment" in immediately available funds: (i) all amounts then due and payable under the EFA, plus (ii) all payments for the remaining term of the EFA, discounted to present value to the effective date of such termination, using the implicit contract rate (the "Termination Value"), plus (iii) a termination fee equal to 1% for each year or partial year thereof that remains under the EFA at the time of such prepayment. All calculations made by Creditor hereunder shall be conclusive absent manifest error.

5. SECURITY INTEREST. Debtor grants Creditor a security interest in the Collateral (the "Security Interest") to secure all its obligations under this EFA and all other indebtedness and obligations of Debtor to Creditor, of whatever type or description, now or hereafter arising (together, the "Obligations"). Debtor authorizes Creditor to file such financing statements, title certificates and instruments as Creditor deems necessary to perfect and protect the Security Interest, without Debtor's signature, and, if such signature is needed, Debtor appoints Creditor as Debtor's attorney-in-fact to sign such items in Debtor's name. Debtor further authorizes Creditor to add to or change the Collateral description for the purpose of completing or correcting any serial numbers or other specific identification when known.

6. REPRESENTATIONS AND WARRANTIES. Debtor represents and warrants that (a) Debtor is the type of entity set forth above and, if a legal entity, is duly organized, validly existing and in good standing under the laws of the state set forth above; (b) Debtor's exact legal name is as shown above, and: (i) if Debtor is an individual, such legal name is exactly as stated on Debtor's valid and unexpired state driver's license, or alternative state identification, issued by Debtor's primary state of residence ("Debtor State ID"); or (ii) if Debtor is a legal entity, such legal name is as stated on Debtor's applicable organizational documents; (c) its execution, delivery and performance of this EFA will not violate or create a default under any law, regulation, order, agreement or charter document binding on Debtor or its property; (d) this EFA has been duly authorized, executed, and delivered by Debtor; (e) Debtor's signatory of this EFA has the authority to bind Debtor to this EFA; (f) Debtor, if an individual, is a citizen or lawful permanent resident of the United States; (g) the Collateral will be used solely for business purposes and not for personal, family or household purposes; (h) the Collateral is and shall remain located (or, in the case of titled motor vehicles, garaged) at the Location set forth above which Location is owned or leased by Debtor; (i) at the time that Debtor requests Creditor to fund any portion of the Financed Amount, the Collateral shall have been delivered to the Location and shall have been fully installed, if applicable, shall be in good working order, Debtor shall have irrevocably accepted the Collateral and Debtor shall have good and marketable title to the Collateral, free and clear of any liens, claims, security interests or rights, other than the Security Interest; and (j) if Debtor is a legal entity, Debtor shall not allow any Blocked Person(s) to have an ownership interest in or control of Debtor. "Blocked Person" means any person or entity (A) that is now or at any time on a list of Specially Designated Nationals issued by the Office of Foreign Assets Control ("OFAC") of the United States Department of the Treasury or any sectoral sanctions identification list; (B) whose property or interests in property are blocked by OFAC or who is subject to sanctions imposed by law, including any executive order of any branch or department of the United States government, or (C) otherwise designated by the United States or any regulator having jurisdiction or regulatory oversight over Creditor, to be a person with whom Creditor is not permitted to extend credit to or with regard to whom, a debtor-creditor relationship may result in penalties against Creditor or limitations on Creditor's ability to enforce a transaction.

7. COVENANTS. Debtor shall maintain the Collateral in good repair, condition and working order, ordinary wear and tear excepted. Debtor shall, at its expense, make all modifications and improvements to the Collateral required by law, and shall not make other modifications or improvements to the Collateral without the prior written consent of Creditor. All parts, modifications and improvements to the Collateral shall, when installed or made, immediately become part of the Collateral for all purposes and subject to Creditor's security interest under the Agreement. The Collateral shall be operated in a safe and reasonable manner so as to prevent loss or damage to the Collateral or other property and injury to third parties. Debtor shall be responsible for the cost of delivery, installation, operation and maintenance of the Collateral. Debtor also is responsible for any loss, theft or destruction of, or damage to, the Collateral from any cause at all (collectively "Loss"), whether or not insured, and no Loss shall relieve Debtor of its Obligations hereunder. Debtor shall promptly notify Creditor in writing of any Loss to the Collateral and shall, at Debtor's cost, promptly (i) repair or replace any Collateral after a Loss; or (ii) promptly pay to Creditor the unpaid balance of this Agreement, including any future Payments to the end of the term plus the anticipated residual value of the Collateral, both discounted to present value at 3%. Debtor shall comply with all applicable laws and regulations related to the Collateral and its use. Creditor is financing Debtor's purchase of the Collateral and, notwithstanding anything contained in this EFA to the contrary, Debtor and Creditor hereby agree and acknowledge that Debtor owns and holds legal title to the Collateral and, pursuant to Section 5 of this EFA, Debtor grants to Creditor the Security Interest in the Collateral. Debtor represents, warrants and agrees with and to Creditor that Debtor shall not sell, transfer, lease, grant a security interest in, or otherwise encumber the Collateral, and will at all times own and hold good legal title to the Collateral. Debtor shall not permit or suffer the Collateral to have imposed, and shall bear the cost of keeping the Collateral free from or removing, any lien, claim or encumbrance, except for the valid, perfected and enforceable first priority Security Interest in the Collateral and proceeds thereof, that Creditor will at all times hold, subject to no other security interest, mortgage, lien or encumbrance. Debtor shall permit Creditor to inspect the Collateral and Debtor's records related thereto at any time during business hours. Debtor shall pay when due all property, sales, use, excise and other taxes now or hereafter levied on or assessed against the Collateral or this transaction. Debtor shall not

change its legal name or state of organization (if a legal entity) or legal name or principal residence (if an individual), and will not permit its Debtor State ID to expire, become invalid, or fail to be properly renewed, (if an individual) without, in each case, at least 30 days' prior written notice to Creditor of any such event. During this EFA, upon the request of Creditor, Debtor will provide copies of its Debtor State ID (if an individual) or applicable organizational documents (if a legal entity), and will provide such information, including information identifying the owners of Debtor and its affiliates and their respective ownership interests, as Creditor may reasonably request to comply with laws or regulations applicable to Debtor or Creditor.

8. INSURANCE. Debtor will obtain and maintain an "All-Risk" physical damage property insurance policy issued by responsible insurance companies acceptable to Creditor, insuring the Collateral as required by Creditor, in such amounts and payable in such manner as Creditor shall request (including naming Creditor and assigns as loss payee), and in an amount no less than the full replacement value of the Collateral, and will furnish evidence of such insurance to Creditor upon request. Each such policy shall contain a clause requiring the insurer to give Creditor at least 30 days' prior written notice of any alteration in the terms of the policy or the cancellation thereof, and a clause specifying that no act or misrepresentation by Debtor shall invalidate such policy against Creditor. Creditor may apply the proceeds of such insurance toward payment of the Obligations, whether or not due, in such order as Creditor shall determine. If Debtor defaults, Debtor hereby appoints Creditor as Debtor's attorney-in-fact to make claim for, receive payment of, and execute and endorse all documents, checks or drafts for loss or damage under any such insurance policy. In the event Debtor fails to procure, maintain, pay for or provide Creditor with evidence of the insurance required hereby, Creditor shall have the right, but not be obligated, to obtain insurance covering Creditor's interest in the Collateral from an insurer of Creditor's choice. In that event, Debtor shall reimburse Creditor on demand for the cost thereof, including Creditor's fees for services in placing and maintaining such insurance, together with interest until paid at the implicit interest rate for this EFA, as conclusively determined pursuant to the books and records of Creditor and calculated on the basis of a year of twelve 30-day months, and the amount thereof shall be secured by the Security Interest. At Creditor's discretion, Creditor may add all costs of acquiring and maintaining any insurance provided for herein, including without limitation all premiums therefor and all premium finance charges, documentation fees, tracking fees and all other fees and charges incurred by Creditor in connection therewith, plus fees for Creditor's services in placing and maintaining such insurance (all such premiums, costs, fees and charges are referred to herein, collectively, as the "Insurance Charge"), to the amounts due hereunder. Debtor will pay the Insurance Charge, together with interest thereon as set forth above, in equal installments allocated to the remaining payments due hereunder. NOTHING IN THIS AGREEMENT WILL CREATE AN INSURANCE RELATIONSHIP OF ANY TYPE BETWEEN CREDITOR AND ANY OTHER PERSON.

9. INDEMNITY. Debtor shall indemnify and hold harmless Creditor, its successors and assigns, employees, officers, directors and agents from and against any and all claims or suits for any loss, damage or injury sustained by any person whatsoever by reason of the sale, financing, use, possession or disposition of the Collateral and, in this connection, Debtor shall pay the costs of all reasonable legal fees and all other reasonable expenses incurred by Creditor, its successors and assigns.

10. FINANCIAL STATEMENTS. All financial statements that Debtor has delivered to Creditor fairly present the financial condition of Debtor as of the date thereof and the results of Debtor's operations and cash flows for the periods then ended, all in accordance with generally accepted accounting principles consistently applied. Since the end of the latest fiscal quarter of Debtor, there has been no material adverse change in Debtor's financial condition, operations or cash flows. If required by Creditor, Debtor shall furnish Creditor, as soon as available, but in any event no later than the date required by Creditor after the end of each fiscal year of Debtor, a copy of the balance sheet of Debtor as at the end of such year and the related statements of operations and cash flows, and such other financial information as Creditor may from time to time request. Debtor warrants and represents that all such financial statements shall be complete and correct in all material respects and be prepared in reasonable detail and in accordance with generally accepted accounting principles applied consistently throughout the periods reflected therein.

11. EVENTS OF DEFAULT. Each of the following is an "Event of Default" hereunder:

(a) Debtor fails to pay any Payment or other amount due hereunder within 10 days of its due date; (b) Debtor fails to comply with any other covenant or agreement hereunder; (c) any representation or warranty by Debtor set forth in or made in connection with this EFA shall prove materially false or misleading or the condition of Debtor's affairs shall change so as in the opinion of Creditor to materially impair Creditor's interest or increase materially Creditor's credit risk; (d) Debtor defaults under any other Obligation to Creditor; (e) Debtor or any guarantor of this EFA ("Guarantor"), or any partner of Debtor ("Partner") if Debtor is a partnership, ceases doing business as a going concern or makes an assignment for the benefit of creditors; (f) Debtor or any Guarantor or Partner admits in writing an inability to pay debts as they come due, voluntarily files or has filed against it involuntarily a petition under the federal Bankruptcy Code or any other present or future federal or state bankruptcy or insolvency law, or a trustee, receiver or liquidator is appointed for it or for all or a substantial part of its assets; (g) any individual Debtor, Guarantor or Partner dies; (h) any material indebtedness of Debtor or any Guarantor is accelerated or payment in full thereof is demanded; (i) Debtor or any Guarantor consolidates with, merges into or transfers all or substantially all its assets to another entity or individual or there occurs a change of control or ownership of Debtor; or (j) Debtor fails to occupy the premises where any Collateral (other than titled motor vehicles) is located, or the mortgagee or owner of such premises asserts the right to take possession thereof or exercise eviction or other remedies under the mortgage or lease of such premises.

12. REMEDIES. Upon the occurrence of an Event of Default, and at any time thereafter until the same is cured or waived to the written satisfaction of Creditor, Creditor may, in its sole discretion, exercise any one or more of the following rights and remedies: (a) declare immediately due and payable and recover from Debtor, as liquidated damages and not as a penalty, the entire outstanding unamortized Financed Amount, plus all accrued and unpaid interest and any late charges, fees and other unpaid amounts owing under this EFA, as conclusively determined pursuant to the books and records of Creditor, and the same shall thereupon be and become immediately due and payable in full without presentment, notice of dishonor, or protest, all of which Debtor hereby waives; (b) charge interest on the unpaid amount of liquidated damages due hereunder at eighteen percent (18%) per annum, but in no event greater than the maximum rate permitted under applicable law, and all interest accrued hereunder shall be due and payable on demand by Creditor; (c) exercise any and all of the rights and remedies available to a secured creditor under the Uniform Commercial Code as in effect in the State of Connecticut, and in connection therewith, Debtor agrees at its expense to assemble the Collateral and make it available to Creditor at a place or places to be designated by Creditor in the continental United States, and agrees that any notice of intended disposition of the Collateral required by law shall be deemed reasonable if such notice is given to Debtor in the manner provided in this EFA before the date of such disposition; (d) recover from Debtor, and Debtor agrees to pay, all costs and expenses incurred by Creditor in the exercise of any right or remedy available to it under this EFA, including expenses of repossession, repair, storage, transportation, and disposition of the Collateral, costs of obtaining money damages and attorneys' fees and expenses for any purpose related to this EFA, including consultation, drafting documents, sending notices or instituting, prosecuting or defending litigation or arbitration; (e) exercise any and all other rights and remedies available to it by law or in equity or by any other agreement. Debtor grants to Creditor the right to enter into or on any premises where Collateral may be located for the purpose of repossessing Collateral upon the occurrence of an Event of Default hereunder. Creditor has no obligation to clean up or otherwise prepare or process the Collateral for sale or other disposition. Creditor may do any of the following in connection with a disposition of the Collateral without adversely affecting the commercial reasonableness thereof: (i) comply with any applicable state or federal law requirements; and (ii) refrain from giving and specifically disclaim any and all warranties, including without limitation warranties of title, quality, condition, merchantability, fitness or otherwise. If Creditor sells any of the Collateral on credit, or leases any of the Collateral, Debtor will be credited only with payments actually received by Creditor and applied to the indebtedness of such purchaser or lessee and in the event such purchaser or lessee defaults in its obligation to pay for the Collateral, Creditor may resell or otherwise dispose of the Collateral and Debtor shall be credited with the proceeds of that sale or other disposition. CREDITOR SHALL NOT BE RESPONSIBLE TO PAY DEBTOR ANY CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES FOR ANY DEFAULT, ACT OR OMISSION BY ANYONE. No remedy permitted hereunder shall be exclusive and all remedies shall be cumulative but only to the extent necessary to recover amounts for which Debtor is liable hereunder.

13. ASSIGNMENT. Debtor will not sell, assign, sublet, pledge or otherwise encumber or permit a lien arising through Debtor to exist against any interest in this EFA or the Collateral. Creditor may assign or grant a security interest in its interest in this EFA and in all or any part of the Collateral without notice to or consent of Debtor, and Debtor agrees not to assert against any assignee any claim or defense Debtor may have against Creditor or any other party. Any assignee of Creditor shall have all the rights, but none of the obligations, of Creditor under this EFA.

14. NON-CANCELABLE, UNCONDITIONAL OBLIGATION, DISCLAIMER. This EFA cannot be canceled or terminated except as expressly provided herein. All representations, warranties and indemnities of Debtor made or agreed to in or in connection with this EFA shall survive expiration or termination of this EFA. Debtor agrees that its obligations to pay amounts due under this EFA are absolute and unconditional and shall not be subject to any defenses, setoffs, abatement, reduction or counterclaims of any kind regardless of whether or not (a) any vendor or manufacturer (including Creditor) has breached any of its warranties or other covenants relating to the Collateral, or (b) any maintenance, support or other services provided in connection with the Collateral has been breached, revoked or otherwise terminated for any reason whatsoever. CREDITOR MAKES NO WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE COLLATERAL INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR OF MERCHANTABILITY. ANY WARRANTY OR RELATED CLAIM THAT DEBTOR MAY ASSERT AGAINST CREDITOR IN ITS CAPACITY AS MANUFACTURER OR VENDOR OF ANY OF THE COLLATERAL SHALL BE SEPARATE AND DISTINCT FROM DEBTOR'S OBLIGATIONS UNDER THIS AGREEMENT, AND DEBTOR MAY NOT ASSERT ANY SUCH CLAIM AS A DEFENSE TO THE ENFORCEMENT OF CREDITOR'S RIGHTS UNDER THIS AGREEMENT.

15. GOVERNING LAW; JURY TRIAL WAIVER. THIS EFA, AND ALL MATTERS ARISING FROM THIS EFA, INCLUDING ALL INTEREST AND FINANCE CHARGES HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH FEDERAL LAW AND, TO THE EXTENT NOT PREEMPTED BY FEDERAL LAW, BY THE LAWS OF THE STATE OF CONNECTICUT (EXCLUDING CONFLICTS LAWS). DEBTOR HEREBY CONSENTS TO JURISDICTION AND VENUE OF THE FEDERAL OR STATE COURTS SITTING IN THE STATE OF CONNECTICUT FOR RESOLUTION OF ALL DISPUTES OF ANY NATURE WHATSOEVER REGARDING THIS EFA OR ANY TRANSACTION CONTEMPLATED HEREBY. DEBTOR AGREES THAT, AT CREDITOR'S SOLE ELECTION AND DETERMINATION, CREDITOR MAY SELECT AN ALTERNATIVE FORUM, INCLUDING ARBITRATION OR MEDIATION, TO ADJUDICATE ANY DISPUTE ARISING OUT OF THIS EFA. THE PARTIES HERETO, AFTER CONSULTING (OR HAVING HAD AN OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR CHOICE, KNOWINGLY AND VOLUNTARILY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT, INCLUDING ANY ACTION TO ENFORCE THIS AGREEMENT OR ANY RELATED AGREEMENTS.

16. MISCELLANEOUS. This EFA constitutes the entire agreement between Debtor and Creditor with respect to the subject matter hereof, and there is no other oral or written agreement or understanding. This EFA may not be amended or modified except by a writing signed by the parties. In Creditor's sole discretion, this EFA and certain documents related to or required in connection with this EFA may be electronically copied and/or delivered by telecopier or other electronic means of transmission ("e-copy") and the e-copy of any such document shall be deemed an original and admissible as such in any court or other proceeding. Without limiting the foregoing, Debtor will send Creditor, on request, any document bearing Debtor's original "wet ink" signature; provided that neither delivery nor failure to deliver the document bearing Debtor's original signature shall limit or modify the agreements set forth above. There shall be only one original of this EFA, and it shall bear the original "wet ink" signature of Creditor. If applicable to this EFA, Creditor and Debtor agree that the electronic version of this Agreement which has been authenticated by Creditor and Debtor in accordance with applicable law and controlled by Creditor (or any assignee identified pursuant to Section 12 hereof) shall (pursuant to the rules and regulations of eOriginal, Inc.) constitute the original authoritative version of this Agreement; provided that if the "Paper Out" process shall have occurred pursuant to the eOriginal Product Reference Guide, and there shall simultaneously exist both the "Paper Out" printed version and an electronic version of this Agreement, then the "Paper Out" printed version of this Agreement as identified in the eOriginal audit record and the corresponding affidavit shall constitute the sole authoritative version. Both Creditor and Debtor hereby agree that this Agreement and any document entered into in connection herewith may be authenticated by electronic means, and expressly consent to the use of the electronic version of this Agreement to embody the entire agreement and the understanding between Creditor and Debtor. Any reference to "signing" this Agreement or any other document shall be deemed to include authenticating an electronic record of such document. Reference herein to eOriginal shall mean eOriginal, Inc., Baltimore, MD or any successor electronic custodian appointed by Debtor and Creditor. To the extent this EFA is "chattel paper", a security or ownership interest may only be created herein by transfer of such originally signed counterpart. No delay or omission on the part of Creditor in exercising any right hereunder shall operate as a waiver of such right or of any other right under this EFA or under any other document or instrument executed or delivered in connection with this EFA. Debtor shall pay, on demand, Creditor's costs, fees and expenses incurred in connection with this EFA, any amendment, waiver, release or termination of this EFA or any related document, financing statement, title certificate or instrument, including but not limited to filing and recording fees. This EFA is binding on and inures to the benefit of the parties hereto, their permitted successors and assigns. Any written notice hereunder shall be deemed given when delivered personally, deposited with a nationally recognized overnight courier (with all fees pre-paid), delivered via facsimile or e-mail (with confirmation of transmission), or deposited in the United States mail, certified or registered mail, addressed to recipient at its address set forth above or such other address as may be substituted therefor by notice given pursuant to the terms hereof. Debtor hereby agrees that Creditor, including its vendors, service providers, partners, affiliates successors and assigns, may contact Debtor at any telephone number provided to Creditor, by placing voice telephone calls (including use of automatic telephone dialing systems or prerecorded voice messaging) or, in the case of wireless telephones or other wireless devices, by sending e-mail or automated (SMS) text messages. If more than one Debtor is named herein, the obligations of each shall be joint and several. Debtor authorizes, and represents that all Debtor's principals have authorized Creditor to obtain such credit bureau reports and make such other credit inquiries with respect to Debtor and such principals as Creditor deems appropriate throughout the term of this EFA; on written request, Creditor will identify any reporting agency used for such reports. Creditor complies with Section 326 of the USA PATRIOT Act, which mandates the verification of certain information about Debtor while processing the account application. DEBTOR FURTHER AGREES TO PAY CREDITOR A DOCUMENTATION FEE ON THE DATE THE AGREEMENT IS SIGNED TO COVER THE EXPENSES OF ORIGINATING THIS AGREEMENT. DEBTOR SHALL REIMBURSE CREDITOR FOR ALL OTHER COSTS INCURRED BY CREDITOR TO PERFECT CREDITOR'S SECURITY INTEREST IN THE EQUIPMENT, INCLUDING BUT NOT LIMITED TO, UCC SEARCHES AND SITE INSPECTIONS.



**MACHINERY
FINANCE RESOURCES**

651 Day Hill Road, Windsor, CT 06095
With Questions Call: (860) 687-3375 FAX To: (860) 687-3376

PERSONAL GUARANTY

EQUIPMENT FINANCE AGREEMENT NUMBER: 212115

DEBTOR: Custom Performance Engineering, Incorporated
280 National Avenue
Spartanburg, SC 29303

THIS PERSONAL GUARANTY CREATES SPECIFIC LEGAL OBLIGATIONS.

In consideration of Machinery Finance Resources, LLC ("Creditor") entering into the Equipment Finance Agreement identified above ("Agreement"), the undersigned Personal Guarantor (hereinafter "You") unconditionally and irrevocably guarantees to Creditor, its successors and assigns, the prompt payment and performance of all obligations of the Debtor identified in this Agreement. You agree that this is a guaranty of payment and not of collection, and that Creditor can proceed directly against you without first proceeding against the Debtor or against the equipment covered by the Agreement. You waive all notices and defenses, based upon suretyship or impairment of collateral, including but not limited to release of collateral or failure to perfect a security interest. You agree that Creditor can renew, extend or otherwise modify the terms of the Agreement and you will be bound by such changes. If the Debtor defaults under the Agreement, you will immediately perform all obligations of the Debtor under the Agreement including, but not limited to, paying all amounts due under the Agreement. You will pay to Creditor all expenses INCLUDING ATTORNEYS' FEES incurred in enforcing Creditor's rights against you or the Debtor. This is a continuing guaranty that will not be discharged or affected by your death and will bind your heirs and personal representatives. Without Creditor's prior written consent, you will not transfer your obligations under this Guaranty or all or substantially all of your assets to any person or entity. You waive any rights to seek repayment from the Debtor in the event you must pay Creditor. If more than one guarantor has signed this Personal Guaranty, each of you agree that your liability is joint and several. You authorize Creditor or any of Creditor's agents to obtain credit bureau reports regarding your personal credit and to make other credit inquiries that Creditor determines are necessary.

You are not and never have been a Blocked Person (defined below) nor do you have any ownership interest in any Blocked Person. You shall not become a Blocked Person or own or hold, directly or indirectly, any ownership interest in any Blocked Person. "Blocked Person" means any person or entity that is now or at any time (A) on a list of Specially Designated Nationals issued by the Office of Foreign Assets Control ("OFAC") of the United States Department of the Treasury or any sectoral sanctions identification list, or (B) whose property or interests in property are blocked by OFAC or who is subject to sanctions imposed by law, including any executive order of any branch or department of the United States government or (C) otherwise designated by the United States or any regulator having jurisdiction or regulatory oversight over Creditor, to be a person to whom Creditor is not permitted to extend credit or with regard to whom a guarantor relationship may result in penalties against Creditor or limitations on a Creditor's ability to enforce a transaction.

THIS PERSONAL GUARANTY IS GOVERNED BY THE LAWS OF THE STATE OF CONNECTICUT. YOU CONSENT (AND THE DEBTOR HAS CONSENTED) TO THE JURISDICTION OF ANY COURT LOCATED WITHIN CONNECTICUT. YOU EXPRESSLY WAIVE (AS HAS THE DEBTOR) ANY RIGHT TO A TRIAL BY JURY. You agree that this Personal Guaranty and any document entered into in connection herewith may be authenticated by electronic means, and expressly consent to the use of the electronic version of the Personal Guaranty to embody the entire agreement and the understanding between You and Creditor.

GUARANTOR: Anthony Joseph Messina
Signature: Anthony Joseph Messina
Home Address: 404 Kensrowe Drive
Boiling Springs, SC 29316
Home Phone: (301)693-7531
Cell Phone: (301)693-7531
Date: Nov 1, 2021

GUARANTOR: Joseph Anthony Adams
Signature: Joseph Anthony Adams
Home Address: 8 Ruffian Way
Greenville, SC 29615
Home Phone: 4107039365
Cell Phone: 4107039365
Date: Nov 1, 2021



INSURANCE REQUIREMENTS

651 Day Hill Road, Windsor, CT 06095
 With Questions Call: (860) 687-3375 FAX To: (860) 687-3376

September 21, 2021

INSURANCE AGENCY	Countybanc Insurance
INSURANCE AGENT CONTACT NAME	Steve Pardue
INSURANCE AGENT PHONE NUMBER	(864) 335-2465
INSURANCE AGENT E-MAIL ADDRESS	SPardue@ecountybanc.com

To Insurance Agent/Agency:

We have entered into an Agreement with Machinery Finance Resources, LLC whereby they have an insurable interest in the following described property:

RE: Custom Performance Engineering, Incorporated - Agreement No. 212115

EQUIPMENT 1 Remanufactured YLM CNC-90 MSRSM-6A CNC Bending Machine

INSURABLE VALUE \$255,087.00

In compliance with Section 8 of the Agreement, we are required to meet the following minimum requirements for insurance coverage:

- A.) All Risk or Special Form coverage in an amount no less than the insurable value stated above.
- B.) Policy Number, Inception and Expiration Dates.
- C.) Deductible amounts to be noted on the Certificate.
- D.) Agreement No., or Equipment, as above to be referenced on the Certificate.
- E.) Certificate to reflect our physical address/location of equipment as **280 National Avenue, Spartanburg, SC 29303**
- F.) Loss Payable Endorsement in favor of:
Machinery Finance Resources, LLC and their Assigns, 651 Day Hill Road, Windsor, CT, 06095
- G.) A provision that the insurance cannot be canceled, reduced, or altered without thirty days prior written notice to Machinery Finance Resources, LLC.

Please place the necessary coverage and provide Machinery Finance Resources, LLC with a Certificate of Insurance at your earliest convenience. Please contact bnorman@mfresources.com or 860-687-3375 with any questions.

By signature below, we authorize Machinery Finance Resources, LLC and its representatives to directly request and receive evidence of insurance for Agreement No. stated above.

Agreed & Acknowledged:

Custom Performance Engineering, Incorporated

By: Anthony Joseph Messina
 Title: President



INVOICE

651 Day Hill Road, Windsor, CT 06095
 With Questions Call: (860) 687-3375 FAX To: (860) 687-3376

DATE: 09/21/2021
 INVOICE #: 212115
 TAX PAYER I.D. #: 56-2499785

BILL TO:
 Custom Performance Engineering, Incorporated ("CUSTOMER")
 280 National Avenue
 Spartanburg, SC 29303

REMIT TO:
 Machinery Finance Resources, LLC ("MFR")
 651 Day Hill Road
 Windsor, CT 06095

DESCRIPTION	AMOUNT
DOCUMENTATION FEE	\$400.00
1ST PAYMENT	\$3,564.76
TOTAL DUE	\$3,964.76

(Please note, MFR's payments to equipment suppliers cannot be made prior to our receipt of this payment.)

OPTION #1 _____
 Pursuant to the attached Authorization for Automatic Payments form, Customer authorizes MFR, its successors and assigns, to electronically withdraw one of the following:

ONE-TIME PAYMENT FOR THE TOTAL DUE ABOVE

THE TOTAL DUE ABOVE, AND ALL FUTURE MONTHLY PAYMENTS

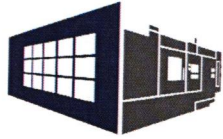
OPTION #2 X
 Customer will send a payment for the total due above via:

WIRE Wells Fargo Bank, 1000 Lakes Dr., Ste. 250, West Covina, CA 91790, Tel: 626-919-3221 ABA # 121000248, Account # 410-0151208, for the account of: Machinery Finance Resources, LLC

CHECK Please make check payable to Machinery Finance Resources and mail to 651 Day Hill Rd., Windsor, CT 06095

The undersigned (hereinafter "Customer") hereby authorizes Machinery Finance Resources, LLC (hereinafter "MFR") to initiate the above-indicated debit (withdrawal) entry to Customer's bank account at the depository/bank (hereinafter "BANK") as indicated on the attached Authorization for Automatic Payments form and enclosed copy of VOIDED check. Customer authorizes the BANK to debit the same to such account. Customer understands and agrees that if the item is returned unpaid (insufficient or uncollected funds) on the debit entry date, MFR will charge Customer a return fee in accordance with MFR's policy then in effect. Customer agrees to be bound by the National Automated Clearing House Association's (NACHA) Operating Rules.

Authorized Signature: _____



MACHINERY
FINANCE RESOURCES

0138

THIS IS A COPY
This is a copy view of the Authoritative Copy held
by the designated custodian

**AUTHORIZATION FOR
AUTOMATIC PAYMENTS**

ELECTRONICALLY FILED - 2021 Dec 22 10:42 AM - SPARTANBURG - COMMON PLEAS - CASE#2021CP4201163

By signing and completing this Authorization and returning it to Machinery Finance Resources, LLC (together with its successors and assigns, "Creditor"), you authorize all payments due to Creditor under all existing and future agreements with Creditor (as amended or otherwise modified from time to time, the "Contracts") to be made from the designated account on the terms and conditions set forth herein.

Please make your regular payment until your invoice indicates that automatic electronic payment will be made.

Please complete the following (if any account information is not completed, you authorize Creditor to rely on the attached check or deposit slip to obtain the relevant information).

The withdrawals shall be made from:		Please indicate type of account:	
<input type="checkbox"/> Checking	<input type="checkbox"/> Savings	<input type="checkbox"/> Business	<input type="checkbox"/> Personal
Bank Name:			
City:		State:	Zip:
Account Number:			
Bank Routing Number (usually found next to account number):			

ON A SEPARATE PAGE, PLEASE PROVIDE A VOIDED CHECK COPY FOR ACCOUNT VERIFICATION.

(A DEPOSIT SLIP MAY BE ATTACHED IF ACCOUNT DOES NOT HAVE CHECKS)

Terms and Conditions: You authorize Creditor to initiate debit entries to your designated account for making your payments due to Creditor, including your regularly scheduled payment amount plus any past due amounts and any other outstanding fees and charges due and owing under your Contracts. Creditor typically will initiate such debit entries on your regularly scheduled due dates. If a due date falls on a weekend or holiday, Creditor may initiate the debit entries on either (i) the last business day prior to the due date or (ii) the first business day after the due date. If an attempted debit entry is returned for any reason, including insufficient funds, Creditor may assess a fee for each failed debit entry and may, but is not required to, attempt the debit entry up to two (2) more times. Creditor also may make credit entries to your designated account for purposes of adjusting debit entries made in error.

This authorization will remain in full force and effect until Creditor has received written notice of your intent to cancel this authorization in such time and in such manner as to afford Creditor a reasonable opportunity to act on such notice. Creditor may cancel or suspend your automatic payment at any time and require non-automatic payments. If Creditor suspends automatic payment at its discretion, it may subsequently resume automatic payment.

Automatic electronic payments are **REQUIRED** (if this box is NOT checked, automatic electronic payments are optional). If the "Required" box is checked, you will be in default under your Contracts if you cancel automatic payment. This additional default provision is hereby added to your Contracts as if stated therein. If the "REQUIRED" box is checked, please initial:

Initial: _____

You represent that the designated account is used primarily for business and commercial purposes. You should immediately notify Creditor of any automatic payment error. If you desire to change the account from which automatic payments are made, you must timely notify Creditor and execute a new Authorization for Automatic Electronic Payment. If you receive notice that Creditor has assigned a Contract, the assignee of Creditor shall have all rights of Creditor under this Authorization and any notices by you should be sent to the assignee.

Payments under this Authorization will be made using the automated clearing house ("ACH") funds transfer system and will be made in accordance with this authorization, the ACH Rules and other applicable law in effect from time to time. This authorization does not alter or lessen your obligations under your Contracts including but not limited to those provisions regarding the amount of the monthly payments, when payments are due, the application of payments, the assessment of late charges or the determination of delinquencies.

Dated this 21st day of September, 2021.

Custom Performance Engineering, Incorporated

Name of Account Holder

Authorized Signature

Anthony Joseph Messina

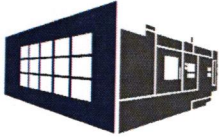
President

Print Name

Title

For Office Use Only (DO NOT COMPLETE)

Contract No(s). _____ First ACH Date: _____



**MACHINERY
FINANCE RESOURCES**

MASTER CERTIFICATE OF INCUMBENCY

651 Day Hill Road, Windsor, CT 06095
With Questions Call: (860) 687-3375 FAX To: (860) 687-3376

The undersigned being duly elected and acting as **Secretary/Treasurer** of Custom Performance Engineering, Incorporated (the "Debtor") does hereby certify that the person or persons listed below are authorized representatives of the Debtor in the capacity set forth opposite their names and that their signatures are true and correct and, as of the date hereof, have proper corporate power and authority to execute and deliver any financing documents and other documents related to entering into an Equipment Finance Agreement with Machinery Finance Resources, LLC, and all documents required thereunder.

<u>Name (Print)</u>	<u>Title</u>	<u>Sample Signature</u>
Anthony Joseph Messina	President	<i>Anthony Joseph Messina</i>

I hereby attest that this information is true and correct as of Nov 1, 2021
(insert date)

Custom Performance Engineering, Incorporated

Joseph Anthony Adams
Joseph Anthony Adams, Secretary/Treasurer

ELECTRONICALLY FILED - 2021 Dec 22 10:42 AM - SPARTANBURG - COMMON PLEAS - CASE#2021CP4201163

THIS IS A COPY

This is a copy view of the Authoritative Copy held by the original sender

PROGRESS PAYMENT AGREEMENT

ELECTRONICALLY FILED - 2021 Dec 22 10:42 AM - SPARTANBURG - COMMON PLEAS - CASE#2021CP4201163

MACHINERY FINANCE RESOURCES, LLC
651 Day Hill Road
Windsor, CT 06095

RE: Agreement Number 212115 ("Agreement") dated as of September 21, 2021 between Machinery Finance Resources, LLC ("MFR") and Custom Performance Engineering, Incorporated ("Obligor") (the "Agreement") and in connection with the equipment being supplied by J&S Machine, Inc. ("Vendor") located at W6009 490th Avenue, Ellsworth, WI 54011 (the "Equipment").

To Whom It May Concern:

In connection with the above referenced Agreement, the undersigned Obligor confirms its request that MFR advance on Obligor's behalf, certain progress payments (the "Prepayment(s)") required by the Vendor in order to process the order for the above referenced Equipment. The Prepayment(s) is to be made as follows: \$76,526.10 of the Total Purchase Price at time of order. To induce MFR to execute such Agreement and pay such Prepayment(s), and in consideration thereof, the undersigned further acknowledges:

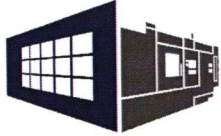
- 1.) In the event that it does not execute the Certificate of Acceptance on the Equipment for any reason including, but not limited to, any non-performance or breach on the part of Vendor, it will upon demand immediately pay to MFR any and all Prepayment amounts that have been paid to Vendor on Obligor's behalf.
- 2.) Obligor will not assert against any assignee of the agreement any defense, set-off, claim, or counterclaim it may have against MFR.
- 3.) Obligor agrees to pay interest on the amount of the Prepayments from the date of Prepayment by MFR to Vendor until the Acceptance Date. Obligor further agrees that if for any reason, Obligor does not accept the Equipment (including, but not limited to any non-performance or breach on the part of Vendor), Obligor will pay such interest in addition to the refund stipulated in item 1. For purposes of this calculation, the Acceptance Date is deemed to be the first calendar day of the month immediately following the month in which written notice of non-acceptance is given to MFR by Obligor.

Acknowledged and Agreed:
Custom Performance Engineering, Incorporated
(Obligor)

By: Anthony Joseph Messina
Title: **President**
Date: September 21, 2021

Acknowledged and Agreed:
Machinery Finance Resources, LLC
(MFR)

By: Anthony No
Title: **Authorized Signer**
Date: Nov 1, 2021



**MACHINERY
FINANCE RESOURCES**

PLAINTIFF'S
EXHIBIT
3
12/20/21

THIS IS A COPY **0141**
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by the designated custodian

EQUIPMENT FINANCE AGREEMENT

651 Day Hill Road, Windsor, CT 06095
With Questions Call: (860) 687-3375 FAX To: (860) 687-3376

Equipment Finance Agreement "EFA" Number 203725 dated August 17, 2020

DEBTOR INFORMATION

Custom Performance Engineering, Incorporated

FULL LEGAL NAME

280 National Avenue

STREET ADDRESS

BILLING ADDRESS (if different from Debtor address above)

Spartanburg

CITY

cgallina@cp-e.com

E-MAIL

SC

STATE

29303

ZIP

MD

STATE OF ORG.

864-764-1646

PHONE

DESCRIPTION AND LOCATION OF EQUIPMENT, PERSONAL PROPERTY, SERVICES AND/OR SOFTWARE

1 - Remanufactured Eaton Leonard VB076HT CNC Tube Bender

together with all replacements, parts, repairs, additions, and accessions incorporated therein or attached thereto and any and all proceeds of the foregoing, including, without limitation, insurance recoveries.

Location (if different from Debtor address above):

SUMMARY OF TERM AND PAYMENTS

Acceptance Date: _____ (FOR OFFICE USE ONLY)

Number of Payments (Months): **Seventy-Two (72)**

Documentation Fee: **\$400.00**

Advance Payment Due: **\$2,077.82**

Financed Amount: **\$132,000.00**

Payment Amount: **\$2,077.82**

The payment ("Payment") period is monthly unless otherwise indicated. If no Advance Payment is required, the first payment is due 30 days after the Acceptance/Term Commencement Date.

Advance Payment(s): **FIRST (1ST) PAYMENT DUE IN ADVANCE.**

TERMS AND CONDITIONS

1. ACKNOWLEDGEMENT. By signing below, Debtor acknowledges and agrees that: it has read and understands the TERMS AND CONDITIONS OF THIS AGREEMENT; this Agreement becomes effective only upon written acceptance by an authorized employee of Creditor; Debtor has an UNCONDITIONAL OBLIGATION to make all payments due under this Agreement; it cannot withhold, set off or reduce such payments for any reason; it will use the Equipment only for business purposes; the person signing this Agreement has the authority to do so and to grant the POWER OF ATTORNEY set forth in paragraph 8 herein. If any provision of this Agreement is declared unenforceable, the other provisions herein shall remain in full force and effect to the fullest extent permitted by law. THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF CONNECTICUT; AND TO THE JURISDICTION OF ANY COURT LOCATED IN THE STATE OF CONNECTICUT. DEBTOR EXPRESSLY WAIVES ANY RIGHT TO A TRIAL BY JURY.

DEBTOR ACKNOWLEDGEMENT

By signing below, Debtor acknowledges and agrees to all the Terms and Conditions of this agreement on this page and on pages 2-4 attached hereto.

Custom Performance Engineering, Incorporated

DEBTOR (AS REFERENCED ABOVE)

20-0168457

FEDERAL TAX IDENTIFICATION NUMBER

Anthony Joseph Messina

PRINT NAME

Anthony Joseph Messina
SIGNATURE

President

TITLE

Aug 19, 2020

DATED

CREDITOR ACKNOWLEDGEMENT

Machinery Finance Resources, LLC

CREDITOR

Anthony No
SIGNATURE

Authorized Signer

TITLE

Aug 19, 2020

DATED

shall pay when due all property, sales, use, excise and other taxes now or hereafter levied on or assessed against the Collateral or this transaction. Debtor shall not change its legal name or state of organization (if a legal entity) or legal name or principal residence (if an individual), and will not permit its Debtor State ID to expire, become invalid, or fail to be properly renewed, (if an individual) without, in each case, at least 30 days' prior written notice to Creditor of any such event. During this EFA, upon the request of Creditor, Debtor will provide copies of its Debtor State ID (if an individual) or applicable organizational documents (if a legal entity), and will provide such information, including information identifying the owners of Debtor and its affiliates and their respective ownership interests, as Creditor may reasonably request to comply with laws or regulations applicable to Debtor or Creditor.

8. INSURANCE. Debtor will obtain and maintain an "All-Risk" physical damage property insurance policy issued by responsible insurance companies acceptable to Creditor, insuring the Collateral as required by Creditor, in such amounts and payable in such manner as Creditor shall request (including naming Creditor and assigns as loss payee), and in an amount no less than the full replacement value of the Collateral, and will furnish evidence of such insurance to Creditor upon request. Each such policy shall contain a clause requiring the insurer to give Creditor at least 30 days' prior written notice of any alteration in the terms of the policy or the cancellation thereof, and a clause specifying that no act or misrepresentation by Debtor shall invalidate such policy against Creditor. Creditor may apply the proceeds of such insurance toward payment of the Obligations, whether or not due, in such order as Creditor shall determine. If Debtor defaults, Debtor hereby appoints Creditor as Debtor's attorney-in-fact to make claim for, receive payment of, and execute and endorse all documents, checks or drafts for loss or damage under any such insurance policy. In the event Debtor fails to procure, maintain, pay for or provide Creditor with evidence of the insurance required hereby, Creditor shall have the right, but not be obligated, to obtain insurance covering Creditor's interest in the Collateral from an insurer of Creditor's choice. In that event, Debtor shall reimburse Creditor on demand for the cost thereof, including Creditor's fees for services in placing and maintaining such insurance, together with interest until paid at the implicit interest rate for this EFA, as conclusively determined pursuant to the books and records of Creditor and calculated on the basis of a year of twelve 30-day months, and the amount thereof shall be secured by the Security Interest. At Creditor's discretion, Creditor may add all costs of acquiring and maintaining any insurance provided for herein, including without limitation all premiums therefor and all premium finance charges, documentation fees, tracking fees and all other fees and charges incurred by Creditor in connection therewith, plus fees for Creditor's services in placing and maintaining such insurance (all such premiums, costs, fees and charges are referred to herein, collectively, as the "Insurance Charge"), to the amounts due hereunder. Debtor will pay the Insurance Charge, together with interest thereon as set forth above, in equal installments allocated to the remaining Payments due hereunder. NOTHING IN THIS AGREEMENT WILL CREATE AN INSURANCE RELATIONSHIP OF ANY TYPE BETWEEN CREDITOR AND ANY OTHER PERSON.

9. INDEMNITY. Debtor shall indemnify and hold harmless Creditor, its successors and assigns, employees, officers, directors and agents from and against any and all claims or suits for any loss, damage or injury sustained by any person whatsoever by reason of the sale, financing, use, possession or disposition of the Collateral and, in this connection, Debtor shall pay the costs of all reasonable legal fees and all other reasonable expenses incurred by Creditor, its successors and assigns.

10. FINANCIAL STATEMENTS. All financial statements that Debtor has delivered to Creditor fairly present the financial condition of Debtor as of the date thereof and the results of Debtor's operations and cash flows for the periods then ended, all in accordance with generally accepted accounting principles consistently applied. Since the end of the latest fiscal quarter of Debtor, there has been no material adverse change in Debtor's financial condition, operations or cash flows. If required by Creditor, Debtor shall furnish Creditor, as soon as available, but in any event no later than the date required by Creditor after the end of each fiscal year of Debtor, a copy of the balance sheet of Debtor as at the end of such year and the related statements of operations and cash flows, and such other financial information as Creditor may from time to time request. Debtor warrants and represents that all such financial statements shall be complete and correct in all material respects and be prepared in reasonable detail and in accordance with generally accepted accounting principles applied consistently throughout the periods reflected therein.

11. EVENTS OF DEFAULT. Each of the following is an "Event of Default" hereunder:

(a) Debtor fails to pay any Payment or other amount due hereunder within 10 days of its due date; (b) Debtor fails to comply with any other covenant or agreement hereunder; (c) any representation or warranty by Debtor set forth in or made in connection with this EFA shall prove materially false or misleading or the condition of Debtor's affairs shall change so as in the opinion of Creditor to materially impair Creditor's interest or increase materially Creditor's credit risk; (d) Debtor defaults under any other Obligation to Creditor; (e) Debtor or any guarantor of this EFA ("Guarantor"), or any partner of Debtor ("Partner") if Debtor is a partnership, ceases doing business as a going concern or makes an assignment for the benefit of creditors; (f) Debtor or any Guarantor or Partner admits in writing an inability to pay debts as they come due, voluntarily files or has filed against it involuntarily a petition under the federal Bankruptcy Code or any other present or future federal or state bankruptcy or insolvency law, or a trustee, receiver or liquidator is appointed for it or for all or a substantial part of its assets; (g) any individual Debtor, Guarantor or Partner dies; (h) any material indebtedness of Debtor or any Guarantor is accelerated or payment in full thereof is demanded; (i) Debtor or any Guarantor consolidates with, merges into or transfers all or substantially all its assets to another entity or individual or there occurs a change of control or ownership of Debtor; or (j) Debtor fails to occupy the premises where any Collateral (other than titled motor vehicles) is located, or the mortgagee or owner of such premises asserts the right to take possession thereof or exercise eviction or other remedies under the mortgage or lease of such premises.

12. REMEDIES. Upon the occurrence of an Event of Default, and at any time thereafter until the same is cured or waived to the written satisfaction of Creditor, Creditor may, in its sole discretion, exercise any one or more of the following rights and remedies: (a) declare immediately due and payable and recover from Debtor, as liquidated damages and not as a penalty, the entire outstanding unamortized Financed Amount, plus all accrued and unpaid interest and any late charges, fees and other unpaid amounts owing under this EFA, as conclusively determined pursuant to the books and records of Creditor, and the same shall thereupon be and become immediately due and payable in full without presentment, notice of dishonor, or protest, all of which Debtor hereby waives; (b) charge interest on the unpaid amount of liquidated damages due hereunder at eighteen percent (18%) per annum, but in no event greater than the maximum rate permitted under applicable law, and all interest accrued hereunder shall be due and payable on demand by Creditor; (c) exercise any and all of the rights and remedies available to a secured creditor under the Uniform Commercial Code as in effect in the State of Connecticut, and in connection therewith, Debtor agrees at its expense to assemble the Collateral and make it available to Creditor at a place or places to be designated by Creditor in the continental United States, and agrees that any notice of intended disposition of the Collateral required by law shall be deemed reasonable if such notice is given to Debtor in the manner provided in this EFA before the date of such disposition; (d) recover from Debtor, and Debtor agrees to pay, all costs and expenses incurred by Creditor in the exercise of any right or remedy available to it under this EFA, including expenses of repossession, repair, storage, transportation, and disposition of the Collateral, costs of obtaining money damages and attorneys' fees and expenses for any purpose related to this EFA, including consultation, drafting documents, sending notices or instituting, prosecuting or defending litigation or arbitration; (e) exercise any and all other rights and remedies available to it by law or in equity or by any other agreement. Debtor grants to Creditor the right to enter into or on any premises where Collateral may be located for the purpose of repossessing Collateral upon the occurrence of an Event of Default hereunder. Creditor has no obligation to clean up or otherwise prepare or process the Collateral for sale or other disposition. Creditor may do any of the following in connection with a disposition of the Collateral without adversely affecting the commercial reasonableness thereof: (i) comply with any applicable state or federal law requirements; and (ii) refrain from giving and specifically disclaim any and all warranties, including without limitation warranties of title, quality, condition, merchantability, fitness or otherwise. If Creditor sells any of the Collateral on credit, or leases any of the Collateral, Debtor will be credited only with payments actually received by Creditor and applied to the indebtedness of such purchaser or lessee and in the event such purchaser or lessee defaults in its obligation to pay for the Collateral, Creditor may resell or otherwise dispose of the Collateral and Debtor shall be credited with the proceeds of that sale or other disposition. CREDITOR SHALL NOT BE RESPONSIBLE TO PAY DEBTOR ANY CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES FOR ANY DEFAULT, ACT OR OMISSION BY ANYONE. No remedy permitted hereunder shall be exclusive and all remedies shall be cumulative but only to the extent necessary to recover amounts for which Debtor is liable hereunder.

13. ASSIGNMENT. Debtor will not sell, assign, sublet, pledge or otherwise encumber or permit a lien arising through Debtor to exist against any interest in this EFA or the Collateral. Creditor may assign or grant a security interest in its interest in this EFA and in all or any part of the Collateral without notice to or consent of Debtor, and Debtor agrees not to assert against any assignee any claim or defense Debtor may have against Creditor or any other party. Any assignee of Creditor shall have all the rights, but none of the obligations, of Creditor under this EFA.

14. NON-CANCELABLE, UNCONDITIONAL OBLIGATION, DISCLAIMER. This EFA cannot be canceled or terminated except as expressly provided herein. All

representations, warranties and indemnities of Debtor made or agreed to in or in connection with this EFA shall survive expiration or termination of this EFA. Debtor agrees that its obligations to pay amounts due under this EFA are absolute and unconditional and shall not be subject to any defenses, setoffs, abatement, reduction or counterclaims of any kind regardless of whether or not (a) any vendor or manufacturer (including Creditor) has breached any of its warranties or other covenants relating to the Collateral, or (b) any maintenance, support or other services provided in connection with the Collateral has been breached, revoked or otherwise terminated for any reason whatsoever. CREDITOR MAKES NO WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE COLLATERAL INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR OF MERCHANTABILITY. ANY WARRANTY OR RELATED CLAIM THAT DEBTOR MAY ASSERT AGAINST CREDITOR IN ITS CAPACITY AS MANUFACTURER OR VENDOR OF ANY OF THE COLLATERAL SHALL BE SEPARATE AND DISTINCT FROM DEBTOR'S OBLIGATIONS UNDER THIS AGREEMENT, AND DEBTOR MAY NOT ASSERT ANY SUCH CLAIM AS A DEFENSE TO THE ENFORCEMENT OF CREDITOR'S RIGHTS UNDER THIS AGREEMENT.

15. GOVERNING LAW; JURY TRIAL WAIVER. THIS EFA, AND ALL MATTERS ARISING FROM THIS EFA, INCLUDING ALL INTEREST AND FINANCE CHARGES HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH FEDERAL LAW AND, TO THE EXTENT NOT PREEMPTED BY FEDERAL LAW, BY THE LAWS OF THE STATE OF CONNECTICUT (EXCLUDING CONFLICTS LAWS). DEBTOR HEREBY CONSENTS TO JURISDICTION AND VENUE OF THE FEDERAL OR STATE COURTS SITTING IN THE STATE OF CONNECTICUT FOR RESOLUTION OF ALL DISPUTES OF ANY NATURE WHATSOEVER REGARDING THIS EFA OR ANY TRANSACTION CONTEMPLATED HEREBY. DEBTOR AGREES THAT, AT CREDITOR'S SOLE ELECTION AND DETERMINATION, CREDITOR MAY SELECT AN ALTERNATIVE FORUM, INCLUDING ARBITRATION OR MEDIATION, TO ADJUDICATE ANY DISPUTE ARISING OUT OF THIS EFA. THE PARTIES HERETO, AFTER CONSULTING (OR HAVING HAD AN OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR CHOICE, KNOWINGLY AND VOLUNTARILY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT, INCLUDING ANY ACTION TO ENFORCE THIS AGREEMENT OR ANY RELATED AGREEMENTS.

16. MISCELLANEOUS. This EFA constitutes the entire agreement between Debtor and Creditor with respect to the subject matter hereof, and there is no other oral or written agreement or understanding. This EFA may not be amended or modified except by a writing signed by the parties. In Creditor's sole discretion, this EFA and certain documents related to or required in connection with this EFA may be electronically copied and/or delivered by telecopier or other electronic means of transmission ("e-copy") and the e-copy of any such document shall be deemed an original and admissible as such in any court or other proceeding. Without limiting the foregoing, Debtor will send Creditor, on request, any document bearing Debtor's original "wet ink" signature; provided that neither delivery nor failure to deliver the document bearing Debtor's original signature shall limit or modify the agreements set forth above. There shall be only one original of this EFA, and it shall bear the original "wet ink" signature of Creditor. If applicable to this EFA, Creditor and Debtor agree that the electronic version of this Agreement which has been authenticated by Creditor and Debtor in accordance with applicable law and controlled by Creditor (or any assignee identified pursuant to Section 12 hereof) shall (pursuant to the rules and regulations of eOriginal, Inc.) constitute the original authoritative version of this Agreement; provided that if the "Paper Out" process shall have occurred pursuant to the eOriginal Product Reference Guide, and there shall simultaneously exist both the "Paper Out" printed version and an electronic version of this Agreement, then the "Paper Out" printed version of this Agreement as identified in the eOriginal audit record and the corresponding affidavit shall constitute the sole authoritative version. Both Creditor and Debtor hereby agree that this Agreement and any document entered into in connection herewith may be authenticated by electronic means, and expressly consent to the use of the electronic version of this Agreement to embody the entire agreement and the understanding between Creditor and Debtor. Any reference to "signing" this Agreement or any other document shall be deemed to include authenticating an electronic record of such document. Reference herein to eOriginal shall mean eOriginal, Inc., Baltimore, MD or any successor electronic custodian appointed by Debtor and Creditor. To the extent this EFA is "chattel paper", a security or ownership interest may only be created herein by transfer of such originally signed counterpart. No delay or omission on the part of Creditor in exercising any right hereunder shall operate as a waiver of such right or of any other right under this EFA or under any other document or instrument executed or delivered in connection with this EFA. Debtor shall pay, on demand, Creditor's costs, fees and expenses incurred in connection with this EFA, any amendment, waiver, release or termination of this EFA or any related document, financing statement, title certificate or instrument, including but not limited to filing and recording fees. This EFA is binding on and inures to the benefit of the parties hereto, their permitted successors and assigns. Any written notice hereunder shall be deemed given when delivered personally, deposited with a nationally recognized overnight courier (with all fees pre-paid), delivered via facsimile or e-mail (with confirmation of transmission), or deposited in the United States mail, certified or registered mail, addressed to recipient at its address set forth above or such other address as may be substituted therefor by notice given pursuant to the terms hereof. Debtor hereby agrees that Creditor, including its vendors, service providers, partners, affiliates successors and assigns, may contact Debtor at any telephone number provided to Creditor, by placing voice telephone calls (including use of automatic telephone dialing systems or prerecorded voice messaging) or, in the case of wireless telephones or other wireless devices, by sending e-mail or automated (SMS) text messages. If more than one Debtor is named herein, the obligations of each shall be joint and several. Debtor authorizes, and represents that all Debtor's principals have authorized Creditor to obtain such credit bureau reports and make such other credit inquiries with respect to Debtor and such principals as Creditor deems appropriate throughout the term of this EFA; on written request, Creditor will identify any reporting agency used for such reports. Creditor complies with Section 326 of the USA PATRIOT Act, which mandates the verification of certain information about Debtor while processing the account application. DEBTOR FURTHER AGREES TO PAY CREDITOR A DOCUMENTATION FEE ON THE DATE THE AGREEMENT IS SIGNED TO COVER THE EXPENSES OF ORIGINATING THIS AGREEMENT. DEBTOR SHALL REIMBURSE CREDITOR FOR ALL OTHER COSTS INCURRED BY CREDITOR TO PERFECT CREDITOR'S SECURITY INTEREST IN THE EQUIPMENT, INCLUDING BUT NOT LIMITED TO, UCC SEARCHES AND SITE INSPECTIONS.



**MACHINERY
FINANCE RESOURCES**

651 Day Hill Road, Windsor, CT 06095
With Questions Call: (860) 687-3375 FAX To: (860) 687-3376

PERSONAL GUARANTY

EQUIPMENT FINANCE AGREEMENT NUMBER: 203725

DEBTOR: Custom Performance Engineering, Incorporated
280 National Avenue
Spartanburg, SC 29303

THIS PERSONAL GUARANTY CREATES SPECIFIC LEGAL OBLIGATIONS.

In consideration of Machinery Finance Resources, LLC ("Creditor") entering into the Equipment Finance Agreement identified above ("Agreement"), the undersigned Personal Guarantor (hereinafter "You") unconditionally and irrevocably guarantees to Creditor, its successors and assigns, the prompt payment and performance of all obligations of the Debtor identified in this Agreement. You agree that this is a guaranty of payment and not of collection, and that Creditor can proceed directly against you without first proceeding against the Debtor or against the equipment covered by the Agreement. You waive all notices and defenses, based upon suretyship or impairment of collateral, including but not limited to release of collateral or failure to perfect a security interest. You agree that Creditor can renew, extend or otherwise modify the terms of the Agreement and you will be bound by such changes. If the Debtor defaults under the Agreement, you will immediately perform all obligations of the Debtor under the Agreement including, but not limited to, paying all amounts due under the Agreement. You will pay to Creditor all expenses INCLUDING ATTORNEYS' FEES incurred in enforcing Creditor's rights against you or the Debtor. This is a continuing guaranty that will not be discharged or affected by your death and will bind your heirs and personal representatives. Without Creditor's prior written consent, you will not transfer your obligations under this Guaranty or all or substantially all of your assets to any person or entity. You waive any rights to seek repayment from the Debtor in the event you must pay Creditor. If more than one guarantor has signed this Personal Guaranty, each of you agree that your liability is joint and several. You authorize Creditor or any of Creditor's agents to obtain credit bureau reports regarding your personal credit and to make other credit inquiries that Creditor determines are necessary.

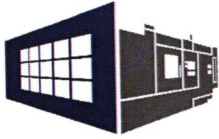
You are not and never have been a Blocked Person (defined below) nor do you have any ownership interest in any Blocked Person. You shall not become a Blocked Person or own or hold, directly or indirectly, any ownership interest in any Blocked Person. "Blocked Person" means any person or entity that is now or at any time (A) on a list of Specially Designated Nationals issued by the Office of Foreign Assets Control ("OFAC") of the United States Department of the Treasury or any sectoral sanctions identification list, or (B) whose property or interests in property are blocked by OFAC or who is subject to sanctions imposed by law, including any executive order of any branch or department of the United States government or (C) otherwise designated by the United States or any regulator having jurisdiction or regulatory oversight over Creditor, to be a person to whom Creditor is not permitted to extend credit or with regard to whom a guarantor relationship may result in penalties against Creditor or limitations on a Creditor's ability to enforce a transaction.

THIS PERSONAL GUARANTY IS GOVERNED BY THE LAWS OF THE STATE OF CONNECTICUT. YOU CONSENT (AND THE DEBTOR HAS CONSENTED) TO THE JURISDICTION OF ANY COURT LOCATED WITHIN CONNECTICUT. YOU EXPRESSLY WAIVE (AS HAS THE DEBTOR) ANY RIGHT TO A TRIAL BY JURY. You agree that this Personal Guaranty and any document entered into in connection herewith may be authenticated by electronic means, and expressly consent to the use of the electronic version of the Personal Guaranty to embody the entire agreement and the understanding between You and Creditor.

GUARANTOR: Joseph Anthony Adams
Signature: Joseph Anthony Adams
Home Address: 8 Ruffian Way
Greenville, SC 29615
Home Phone: N/A
Cell Phone: 4107039365
Date: Aug 19, 2020

GUARANTOR: Anthony Joseph Messina
Signature: Anthony Joseph Messina
Home Address: 404 Kensfow Dr
Boiling Springs, SC 29316
Home Phone: N/A
Cell Phone: 3016937531
Date: Aug 19, 2020

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**MACHINERY
FINANCE RESOURCES**

INSURANCE CERTIFICATE AUTHORIZATION

651 Day Hill Road, Windsor, CT 06095
With Questions Call: (860) 687-3375 FAX To: (860) 687-3376

Please note upon completion and return of this form, we will request a Certificate of Insurance on your behalf.

INSURANCE AGENCY	County Banc Insurance
INSURANCE AGENT CONTACT NAME	Steve Pardue
INSURANCE AGENT PHONE NUMBER	(864) 201-4521
INSURANCE AGENT E-MAIL ADDRESS	SPardue@ecountybanc.com

In compliance with the terms and conditions in section 8 of the EFA, we acknowledge the following with respect to insurance coverage:

Proof of insurance coverage on the equipment is required. Minimum requirements are:

- A.) All Risk or Special Form coverage in an amount equal to the full equipment value.
- B.) Property damage coverage naming Machinery Finance Resources, LLC and their Assigns as Loss Payee.
- C.) A provision that the insurance cannot be canceled, reduced or altered without thirty days prior written notice to Machinery Finance Resources.
- D.) Deductible amounts will be noted on the certificate.

By your signature below, you authorize Machinery Finance Resources, LLC and its representatives to request evidence of insurance for EFA # 203725.

If you should have any questions in this regard please contact Machinery Finance Resources, LLC at 860-687-3375.

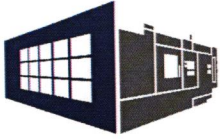
Agreed & Acknowledged:

Custom Performance Engineering, Incorporated

By: Anthony Joseph Messina

Title: President

Date: 08/17/2020



**MACHINERY
 FINANCE RESOURCES**

INVOICE

651 Day Hill Road, Windsor, CT 06095
 With Questions Call: (860) 687-3375 FAX To: (860) 687-3376

DATE: 08/17/2020
 INVOICE #: 203725
 TAX PAYER I.D. #: 56-2499785

BILL TO:
 Custom Performance Engineering, Incorporated
 280 National Avenue
 Spartanburg, SC 29303

REMIT TO:
 Machinery Finance Resources, LLC
 651 Day Hill Road
 Windsor, CT 06095

DESCRIPTION	AMOUNT
DOCUMENTATION FEE	\$400.00
1ST PAYMENT	\$2,077.82
TOTAL DUE	\$2,477.82

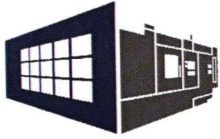
- Option #1 I authorize Machinery Finance Resources, LLC ("MFR"), its successors and assigns, to electronically debit a **ONE-TIME PAYMENT FOR THE TOTAL AMOUNT DUE ON THIS INVOICE ONLY**, pursuant to the attached Authorization for Automatic Electronic Payments form and copy of voided check.
- Option #2 I authorize MFR, its successor and assigns, to electronically debit **THE TOTAL DUE ON THIS INVOICE, AND ALL FUTURE PAYMENTS** due under the contract, pursuant to the attached Authorization for Automatic Electronic Payments form and copy of voided check.
- Option #3 **I WILL INITIATE A WIRE/ACH** payment for the amount due on this invoice to the following account:
 Wells Fargo Bank, 1000 Lakes Drive, Suite 250, West Covina, CA 91790, Tel: 626-919-3221
 ABA # 121000248, Account # 410-0151208, for the account of: Machinery Finance Resources, LLC

(Please note, MFR's payments to equipment suppliers cannot be made prior to our receipt of this payment.)

The undersigned (hereinafter "Customer") hereby authorizes Machinery Finance Resources, LLC (hereinafter "MFR") to initiate the above-indicated debit (withdrawal) entry to Customer's bank account at the depository/bank (hereinafter "BANK") as indicated on the attached Authorization for Automatic Electronic Payments form and enclosed copy of VOIDED check. Customer authorizes the BANK to debit the same to such account. Customer understands and agrees that if the item is returned unpaid (insufficient or uncollected funds) on the debit entry date, MFR will charge Customer a return fee in accordance with MFR's policy then in effect. Customer agrees to be bound by the National Automated Clearing House Association's (NACHA) Operating Rules.

Authorized Signature: Anthony Joseph Messina
 (Authorized Signer for the bank account to be debited)

ELECTRONICALLY FILED - 2021 Dec 22 10:42 AM - SPARTANBURG - COMMON PLEAS - CASE#2021CP4201163



MACHINERY
FINANCE RESOURCES

**AUTHORIZATION FOR AUTOMATIC
ELECTRONIC PAYMENT**

651 Day Hill Road, Windsor, CT 06095
With Questions Call: (860) 687-3375 FAX To: (860) 687-3376

By signing and completing this Authorization and returning it to Machinery Finance Resources, LLC (together with its successors and assigns, "Creditor"), you authorize all payments due to Creditor under all existing and future agreements with Creditor (as amended or otherwise modified from time to time, the "Contracts") to be made from the designated account on the terms and conditions set forth herein.

Please make your regular payment until your invoice indicates that automatic electronic payment will be made.

Please complete the following (if any account information is not completed, you authorize Creditor to rely on the attached check or deposit slip to obtain the relevant information).

Name of Account Holder: Custom Performance Engineering, Incorporated

Authorized Signature: _____

Date: August 17, 2020

Title of Signor (if Account Holder is NOT an individual): President

Name of Financial Institution: _____

Account is a : Checking Account

Account Number: _____

Savings Account

Bank Routing Number: _____

(usually found next to account number)

PLEASE ATTACH A VOIDED CHECK

(a deposit slip may be attached if account does not have checks)

Terms and Conditions: You authorize Creditor to initiate debit entries to your designated account for making your payments due to Creditor, including your regularly scheduled payment amount plus any past due amounts and any other outstanding fees and charges due and owing under your Contracts. Creditor typically will initiate such debit entries on your regularly scheduled due dates. If a due date falls on a weekend or holiday, Creditor may initiate the debit entries on either (i) the last business day prior to the due date or (ii) the first business day after the due date. If an attempted debit entry is returned for any reason, including insufficient funds, Creditor may assess a fee for each failed debit entry and may, but is not required to, attempt the debit entry up to two (2) more times. Creditor also may make credit entries to your designated account for purposes of adjusting debit entries made in error.

This authorization will remain in full force and effect until Creditor has received written notice of your intent to cancel this authorization in such time and in such manner as to afford Creditor a reasonable opportunity to act on such notice. Creditor may cancel or suspend your automatic payment at any time and require non-automatic payments. If Creditor suspends automatic payment at its discretion, it may subsequently resume automatic payment.

Automatic electronic payments are **REQUIRED** (if this box is NOT checked, automatic electronic payments are optional). If the "Required" box is checked, you will be in default under your Contracts if you cancel automatic payment. This additional default provision is hereby added to your Contracts as if stated therein. If the "REQUIRED" box is checked, please initial:

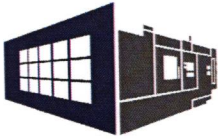
Initial: _____

You represent that the designated account is used primarily for business and commercial purposes. You should immediately notify Creditor of any automatic payment error. If you desire to change the account from which automatic payments are made, you must timely notify Creditor and execute a new Authorization for Automatic Electronic Payment. If you receive notice that Creditor has assigned a Contract, the assignee of Creditor shall have all rights of Creditor under this Authorization and any notices by you should be sent to the assignee.

Payments under this Authorization will be made using the automated clearing house ("ACH") funds transfer system and will be made in accordance with this authorization, the ACH Rules and other applicable law in effect from time to time. This authorization does not alter or lessen your obligations under your Contracts including but not limited to those provisions regarding the amount of the monthly payments, when payments are due, the application of payments, the assessment of late charges or the determination of delinquencies.

For Office Use Only (do not complete)

Contract No(s). _____ First ACH Date: _____



MACHINERY
FINANCE RESOURCES

DELIVERY & ACCEPTANCE CERTIFICATE
Accepted at Vendor Site – no inspection

651 Day Hill Road, Windsor, CT 06095
With Questions Call: (860) 687-3375 FAX To: (860) 687-3376

Re: Supplement No. 1 to Equipment Finance Agreement Number 203725 dated as of August 17, 2020 (collectively and individually the "Agreement") between Machinery Finance Resources, LLC ("Creditor") and Custom Performance Engineering, Incorporated ("Debtor")

Debtor, by its signature below, acknowledges that (i) Debtor has accepted delivery of all or a portion of the equipment financed pursuant to the Agreement (such units of equipment are hereinafter referred to as the "Equipment") at the vendor's premises in Brook Park, OH without inspecting the equipment; (ii) Debtor shall bear all risk of loss or damage to the Equipment and has or will insure the Equipment in accordance with the terms of the Agreement; and (iii) Debtor's obligations under the Agreement are absolute and unconditional as further described therein even though Debtor may not have inspected the Equipment or have physical possession of the Equipment.

Debtor hereby: (a) irrevocably authorizes and directs Creditor to commence the term of the Agreement and pay the full purchase price of the Equipment (as defined in the Agreement) to the vendor(s) thereof. The above authorization and direction is made notwithstanding that there are some items of the Equipment that have not been delivered, installed and/or inspected by Debtor as of the date hereof. If for any reason, the delivery, installation and/or operation of the Equipment is delayed or not acceptable to Debtor, Debtor shall address such issues directly with the vendor(s) providing such items and/or services, shall hold Creditor harmless from such responsibility and shall pay all amounts due and to become due under the Agreement as provided for therein.

Custom Performance Engineering, Incorporated

By: Anthony Joseph Messina

Title: President

Acceptance Date: Aug 19, 2020

0150



CUSTOMPERFORMANCE
engineering

PURCHASE ORDER

280 National Ave.
Spartanburg, SC 29303
Info@cp-e.com

(864) 764-1646
(864) 764-8320

Date	P.O. #
8/10/2020	6787

Vendor
AM Industrial Group, Llc. 16000 Commerce Park Drive Brook Park, Ohio 44142 USA

Ship To
Custom Performance Engineering, Inc. ATTN: Shipping & Receiving 280 National Ave. Spartanburg, SC 29303 USA

Due Date	Ship Via
8/14/2020	TBD

QTY	P/N	Description	Material	RCVD	Price	Amount
	TOBN00003	Bender / CNC | Eaton Leonard | VB-076HT | 3.000" Tooling / Bender | Set | 3.000" OD | Mandrel, Stainless & Aluminum | Wiper Die, Stainless & Aluminum | Bend Die | Interlock Die | Clamp Die | Pressure Die | Eaton Leonard Converted To CSM Key Way | Used		0	*****	127002.00
	TOBN00004	Tooling / Bender | Set | 1.875" OD | Mandrel, Stainless & Aluminum | Wiper Die, Stainless & Aluminum | Bend Die | Interlock Die | Clamp Die | Pressure Die | Eaton Leonard Converted To CSM Key Way | Used		0	2,499.00	2,499.00
<p>TERMS:</p> <p>-CONVERT BENDER TO UTILIZE CSM TOOLING. cp-e CURRENTLY HAS WAY TOO MUCH INVESTED IN CSM STYLE TOOLING. cp-e SENT 5/8" TOOLING ON PO#: 6773, OUTBOUND TRACKING#: 395527537775. WHEN BENDER CONVERSION IS COMPLETE, cp-e WILL SEND 3.000" TOOLING AND MATERIAL TO PREFORM SAMPLE BENDS IN ALUMINUM AND STAINLESS STEEL. THE HIGH TQ OPTION NEEDS TO BE PROVED OUT. NOT MUCH IN THE WAY OF LITERATURE ON THE VB-076 "HT" VERSION. THANK YOU FOR YOUR UNDERSTANDING.</p> <p>-ONCE DELIVERY IS MADE AND EQUIPMENT IS PRODUCING, cp-e AGREES TO SELL AM INDUSTRIAL IT'S BRAND NEW JETLINE ENGINEERING CS3-15Z SEAM WELDER FOR \$20,000.00. cp-e WILL USE THIS TO BUY MORE TOOLING FOR THE VB-076HT.</p>						
Thank you.			TOTAL		\$132,000.00	

ELECTRONICALLY FILED - 2021 Dec 22 10:51 AM - SPARTANBURG - COMMON PLEAS - CASE#2021CP4201163

AM INDUSTRIAL

MACHINERY MERCHANTS

A DIVISION OF AMI GROUP

PENGAD 800-831-6989
DEFENDANT'S EXHIBIT
 12/20/21

0151

INVOICE

INVOICE #: 105011

DATE: 7/31/20

PO #: Verbal George

BILL TO:
 Attn: Account Payable
 Custom Performance
 280 National Ave
 Spartanburg, SC 29303

SHIP TO:
 Attn: Receiving
 Custom Performance
 280 National Ave
 Spartanburg, SC 29303

TERMS: Payment in full prior to shipment

FOB: Brook Park, OH
unless otherwise specified

SHIPPING INSTRUCTIONS: Customer Arranged

16000 Commerce Park Drive
 Brook Park, Ohio
 44142-2023
 (216) 433-7171
 (216) 433-4008 Fax
 www.amindustrialmachinery.com
 info@amindustrialmachinery.com

QTY	ITEM ID	DESCRIPTION	UNIT PRICE	AMOUNT
1	AM19439	EATON LEONARD Model: VB076HT CNC 3-Axis Horizontal Mandrel Type Tube Bending Machine -refurbished-		
1		INCLUDES:		
1		Used tooling for 3" OD: Used Bend Die + any other available		
1		Used tooling for 1.875" OD: Used Bend Die + any other available		
1		TOTAL DISCOUNTED PRICE WITH SEAM WELDER TRADE IN	112,000.00	112,000.00
TOTAL INVOICE AMOUNT (USD):			\$	112,000.00

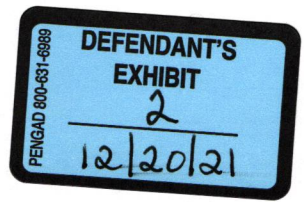
CONDITIONS:
 Used items sold hereunder are neither designed nor manufactured by the seller, and this sale of these items is on an as-is and with all faults basis, without any representation or warranties, expressed or implied, of any kind including safety, condition, or quality. Purchaser agrees that upon and after payment of this invoice, in part or full, the above order is not subject to cancellation, exchange, or return.
 Seller further assumes no responsibility to provide safety devices or equipment necessary for the protection of the user or to comply with applicable governmental laws or requirements. It is agreed and understood that purchaser assumes this responsibility and the above is an integral part of this sale. Orders are not subject to cancelation. Deposits received are non-refundable.

Thank you for your business!

ELECTRONICALLY FILED - 2021 Dec 22 10:34 AM - SPARTANBURG - COMMON PLEAS - CASE#2021CP4201163



iES
2695 Progress Way
Wilmington, OH 45177
Phone: 937-382-6710
Fax: 937-382-6727



ELECTRONICALLY FILED - 2021 Dec 22 10:34 AM - SPARTANBURG - COMMON PLEAS - CASE#2021CP4201163

Invoice

Sold Custom Performance Engineerin
To:
6802 Mid Cities Ave
Beltsville, MD 20705
United States

Ship Custom Performance Engineerin
To: ATTN: SHIPPING / RECEIVING
280 National Ave.
Spartanburg, SC 29303
United States

Invoice Number:	20005	Salesman:	Sam Pinkerton
Invoice Date:	02/18/21	Terms:	Cash in Advance
Customer:	1369	Packing List:	20005
Order No:	14194	PO Number:	7227

<u>Item</u>	<u>Quantity</u>	<u>Description</u>	<u>Revision</u>	<u>Unit Price</u>	<u>Amount</u>
1	1	S10513690001N - 4 BALL MANDREL ASSEMBLY 3.000" OD X .049" WT X 4.00" CLR, CLOSE PITCH LINK ASSEMBLY (BTI STYLE POPPIT LINKS) WITH MANDREL NOSE. MANDREL SHANK WITH NOSE TO BE 8.50" LG, 1"-8 MOUNTING THREADS; AMPCO MATERIAL FOR SHANK, NOSE AND BALLS		\$1,514.00 / EA	\$1,514.00

Sub-total:	\$1,514.00
Sales Tax:	\$0.00
Shipped Via FedEx Ground Collect-303935886:	
	\$0.00
Invoice Total:	\$1,514.00
Paid To Date:	\$0.00
Balance Due:	\$1,514.00

Please see attached invoice.

For questions please contact AR@iEngineeredSolutions.com

For ACH or Wire Transfer:
Bank: First Financial Bank
Routing: 042200910
Account: 7018642

0153

INVOICE

Invoice # 105975

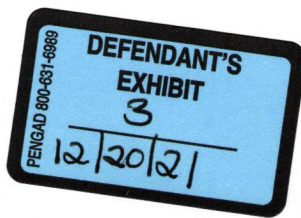
Sales Order #: 80961
 Invoice Date: Jan 5, 2021
 Page: 1

Send Invoice To:
 accounting@cpe.com



1009 Ottawa Ave. NW
 Grand Rapids, MI 49503
 U.S.A.

Voice: 616-454-9965
 Fax: 616-454-9958



ELECTRONICALLY FILED - 2021 Dec 22 10:34 AM - SPARTANBURG - COMMON PLEAS - CASE#2021CP4201163

Bill To:	Ship To:
Custom Performance Engineering 280 National Ave Spartanburg, SC 29303 U.S.A.	Custom Performance Engineering 280 National Ave SPARTANBURG, SC 29303 U.S.A.

Customer ID	Customer PO	Payment Terms	
11862	7090	Net 30 Days	Check
Sales Rep ID	Shipping Method	Ship Date	Due Date
Steve Parrow	Express	1/4/21	2/4/21

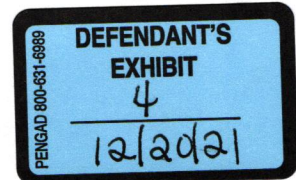
Qty.	Item	Description	Unit Price	Amount
1.00	1-6874	Shipped on: 01/04/2021 Tracking#: 772527452934 Packing Slip#: 126421 End Shipment(s) WS/Q/252/AL1000-3000A-04000: 3 x 4 sq-bk solid-body wiper die, alum-bronze, 10-in lg	1,290.00	1,290.00

Subtotal	1,290.00
Freight Charges	
Total Invoice Amount	1,290.00
Payment/Credit Applied	
TOTAL (USD)	1,290.00

The sale represented in full or in part by this invoice is subject to the general terms and conditions of Bend Tooling Inc. (BTI)'s Sales Order Confirmation form. Buyer agrees to pay BTI a monthly service charge of 1.5% (18% annual rate) of all past due amounts of this invoice and to pay BTI all costs to collect past amounts of this invoice, including but not limited to collection service fees, attorney fees, and court costs. Furthermore, the Buyer gives and BTI holds a purchase-money security interest in the goods delivered to the buyer. All invoices are to be paid in U.S. dollars only.



iES
2695 Progress Way
Wilmington, OH 45177
Phone: 937-382-6710
Fax: 937-382-6727



ELECTRONICALLY FILED - 2021 Dec 22 10:34 AM - SPARTANBURG - COMMON PLEAS - CASE#2021CP4201163

Invoice

Sold Custom Performance Engineerin

Ship Custom Performance Engineerin

To:
6802 Mid Cities Ave
Beltsville, MD 20705
United States

To: ATTN: SHIPPING/RECEIVING
280 National Ave.
Spartanburg, SC 29303
United States

Invoice Number:	19351	Salesman:	Sam Pinkerton
Invoice Date:	11/23/20	Terms:	Cash in Advance
Customer:	1369	Packing List:	19351
Order No:	13647	PO Number:	6974

Item	Quantity	Description	Revision	Unit Price	Amount
1	1	S10813690002N - QUICK CHANGE COLLET PADS 1.875" OD X .065/.049" WT WITH TUBE STOPS		\$695.00 / EA	\$695.00
2	1	S10813690003N - QUICK CHANGE COLLET PADS 2.000" OD X .065/.049" WT WITH TUBE STOPS		\$695.00 / EA	\$695.00
3	1	S10813690004N - QUICK CHANGE COLLET PADS 2.500" OD X .065/.049" WT WITH TUBE STOPS		\$695.00 / EA	\$695.00
4	1	S10813690005N - QUICK CHANGE COLLET PADS 2.750" OD X .065/.049" WT WITH TUBE STOPS		\$695.00 / EA	\$695.00

Sub-total:	\$2,780.00
Sales Tax:	\$0.00
Shipped Via FedEx Ground Collect-303935886:	\$0.00
Invoice Total:	\$2,780.00
Paid To Date:	\$0.00
Balance Due:	\$2,780.00

Please see attached invoice.

For questions please contact AR@iEngineeredSolutions.com

For ACH or Wire Transfer:
Bank: First Financial Bank
Routing: 042200910
Account: 7018642

From: [Adam Bach](#)
To: [Gibson, Jennifer](#)
Cc: [Wilder Harte](#)
Subject: Custom Performance v. AM Industrial, CA 2021-CP-42-1163
Date: Friday, February 18, 2022 3:30:51 PM
Attachments: [2022-02-18 Order Final - Custom Performance copy.docx](#)
[AM Industrial Dispute Summary MSRP & Profit.xlsx](#)
[Eberspacher PO Confirmation\[1\].pdf](#)
[Eberspacher PO Confirmation of Cancellation\[1\].pdf](#)
[Blow By Racing PO# 7874.pdf](#)
[Saleen PO# 10184.pdf](#)

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Jennifer,

Judge Phillips heard this case in December and asked me to prepare a proposed order and to submit three purchase orders to the court that were referenced at the hearing. The proposed order and purchase orders, with a spreadsheet summary, are attached. We are also e-filing this order.

I have worked with Mr. Harte on the order and he and his client have had an opportunity to review. He is also copied to this email.

Thank you and please let me know if you need anything else.

Adam

Adam C. Bach
ELLER TONNSEN BACH
Attorneys at Law
1306 South Church Street
Greenville, SC 29605
(o) (864) 236-5013
(f) (864) 312-4191

www.etblawfirm.com

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG)	
	)	C. A. No. 2021-CP-42-01163
Custom Performance Engineering, Inc.,)	
	)	ORDER
Plaintiff,)	
)	
vs.)	
)	
AM Industrial Group, LLC,)	
)	
Defendant.)	

This matter came before the Master-in-Equity for Spartanburg County for a damages hearing on December 20, 2021 pursuant to an order of reference entered on September 28, 2021. Present at the hearing on behalf of Custom Performance Engineering, Inc. (“Custom Performance”) was Adam C. Bach, of the law firm Eller Tonnsen Bach, LLC. Present at the hearing on behalf of AM Industrial Group, LLC (“AMI”) was R. Wilder Harte of the law firm Richard Plowden & Robinson, P.A.

From the testimony and evidence presented at the hearing, it appears that Custom Performance purchased an Eaton Leonard VB076HT CNC Bender machine (the “Machine”) from AMI on August 10, 2020. The Machine did not perform as warranted. AMI provided assurances to Custom Performance that it could make the Machine work. Over the next several months, Custom Performance expended time and money on repairs or fixes suggested by AMI. Further, AMI also attempted to repair the Machine to make it perform properly. Despite these efforts, the Machine continued to fail to perform properly, and Custom Performance provided written notice of its rejection of the Machine and asked AMI to refund its purchase price. AMI refused to acknowledge Custom Performance’s rejection of the Machine or to refund the purchase price. Because the Machine failed to perform, Custom Performance was forced to purchase a

replacement machine, a YLM CNC-90 MSRSM-6A CNC Bending Machine (the “Replacement Machine”) for \$255,087.00.

Custom Performance filed suit for breach of contract, breach of express warranty, and breach of the implied warranty of merchantability. At the hearing, Custom Performance produced evidence seeking the purchase price, the costs to tool and install the Machine, the cost to “cover,” meaning the difference in price between the Machine and the Replacement Machine, the costs to install and tool the Replacement Machine, and for lost profits caused by the Machine failing to perform as warranted.

Because the Machine was moveable at the time of identification to the contract, this transaction is governed by South Carolina Uniform Commercial Code, S.C. Code § 36-2-101, *et. seq.* Additionally, because AMI is in default, AMI concedes liability. Although AMI is liable to Custom Performance for the actions alleged, Custom Performance is still required to prove its damages by a preponderance of the evidence.

At the hearing, Custom Performance testified that its lost profits were based on three purchase orders it obtained but had to cancel because the Machine could not perform the job. Following the hearing, the court exercised its discretion to leave the record open for Custom Performance to submit the cancelled purchase orders for the court’s review. Custom Performance submitted these records, and the court is satisfied that Custom Performance’s lost profits claim is supported by a preponderance of the evidence. Therefore, based on the testimony and evidence presented, the court finds that Custom Performance proved the following damages by a preponderance of the evidence:

Price of Machine	\$132,000.00
Costs to Install and Tool Machine	\$8,694.00
Lost Profits	\$257,680.00
Total Damages	\$398,374.00

The court declines to award, however, the difference in the cost of the Machine and the cost of the Replacement Machine. During cross-examination, Custom Performance's witness testified that the Replacement Machine is not identical to the Machine and contains more features not available on the Machine. Because of this, the court declines to award the cost of "cover" or the tooling and installation costs for the Replacement Machine.

The court further finds that AMI is entitled to retake possession of the Machine from Custom Performance, as well as any of the tooling AMI provided with the Machine, upon payment of the judgment amount.

THEREFORE, based on the testimony and evidence submitted,

IT IS ORDERED, judgment is entered in favor of Custom Performance and against AMI in the amount of Three Hundred Ninety-Eight Thousand Three Hundred Seventy-Four (\$398,374.00) Dollars, plus costs in the amount of \$293.80, for a total judgment of Three Hundred Ninety-Eight Thousand Six Hundred Sixty-Seven and 80/100ths (\$398,667.80) Dollars. Interest shall accrue on the judgment at the statutory rate upon entry of this Order.

IT IS FURTHER ORDERED that following payment of the judgment to plaintiff, Custom Performance shall coordinate with AMI and make reasonable accommodations for AMI to retake possession of the Machine, and any tooling AMI provided with the Machine, at AMI's expense.

AND IT IS SO ORDERED.

Official Court block on following page

0160

Purchase Order



Saleen Automotive Inc
 2735 Wardlow Rd
 Corona CA 92882
 (714) 400-2121

Date	P.O. No.
10/9/2020	10184

Supplier

Custom Performance Engineering, Inc.
 280 National Ave.
 Spartanburg, SC 29303

Ship To

Saleen Automotive, Inc.
 2735 Wardlow Road
 Corona, CA 92882

Payment Terms:

Delivery Date: 12/31/2020

Ship Via:

FOB:

MPN	Item	Description	Qty	U/M	Rate	Rcv'd	Amount
	White Lab...	White Label Mustang exhaust systems for 2020 mustangs total of 500 & 50 units to release ASAP	500	ea	286.6812	0	143,340.60
	15-19 Must...	18-20 mustang exhaust system Fixture set one time fee Terms blanket order of 500 sets over 12 months from date of invoice COD Saleen DOC Minimum release of 50 sets per month			1,250.00	0	1,250.00

Total \$144,590.60

Questions pertaining to this order should be directed to:
 Phone: 714-400-2121 Fax: 888-729-4827

Please furnish the above items promptly as directed, subject to the conditions attached.

Authorized By: _____

Correct purchase order numbers must appear on all invoices.

0161

Purchase Order

Blow-By Racing

199 NW 28th Street, #1
Boca Raton, FL 33431

Date	P.O. No.
4/2/2021	7874

Vendor
Custom Performance Engineering, Inc. 280 National Ave. Spartanburg, SC 29303

Ship To
Blow-By Racing 199 NW 28th Street, #1 Boca Raton, FL 33431

Item	Description	Qty	Rate	Amount
FM4V5011TC1	2011-14 Mustang BBR Turbo kit - Pipe 1 - (aluminum Intercooler w/ BOV flange)-cold side	110	83.50	9,185.00
PXWV5011TC4	2011-14 Mustang BBR Turbo kit - Pipe 3 - (aluminum Intercooler pipe w/ MAF Flange)-cold side	110	170.00	18,700.00
FM4V5011TC2	2011-14 Mustang BBR Turbo kit - Pipe 2 - (aluminum Intercooler pipe)-cold side	110	84.00	9,240.00
FM4V5011TH1	2011-14 Mustang BBR Turbo kit - Pipe 1 - (SS Hot Side manifold pipe)	110	267.00	29,370.00
FM4V5011TH2	2011-14 Mustang BBR Turbo kit - Pipe 2 - (SS Hot Side Turbo Flange pipe)	110	267.00	29,370.00
FM4V5011TH3	2011-14 Mustang BBR Turbo kit - Pipe 3 - (SS Hot Side downpipe pipe) *** really would like Down pipe in 3.5" ***	110	267.00	29,370.00

	Total	\$125,235.00
--	--------------	--------------



Date: August 26, 2021

Custom Performance Engineering, Inc.
280 National Ave.
Spartanburg, SC, 29303

Confirmation Purchase Order No. EMAIL82521

Dear Mr. Adams.

I hereby confirm our discussions that the work requested via various on-site visits is acknowledged and approved for production. See e-mail dated 8/25/2021.

Should dimensional specifications and deadlines not met our requirements, cancellation to meet BMW factory deadlines will be issued.

PRODUCTION ITEMS:

QTY.	SKU	EACH	TOTAL
1000 pcs	11.21.029.706.004	\$51.49	\$51,490.00
1000 pcs	11.21.029.706.006	\$45.50	\$45,500.00
1500 pcs	11.21.623.708.003	\$67.23	\$100,845.00
Total:			\$197,835.00

Thank you for your quick response in this matter. Eberspächer looks forward to reoccurring business between our two companies. Above are monthly quantities.

Yours sincerely,

Bobby Fulton
Production Control and Logistics Manager
Purem by Eberspächer – Spartanburg
864 504 9458

Eberspächer
North America, Inc.
29101 Haggerty Road
Novi, Michigan 48377-2913

Telephone: (248) 994-7010
Facsimile: (248) 489-1930
www.eberspaecher.com



Date: September 22, 2021

Custom Performance Engineering, Inc.
280 National Ave.
Spartanburg, SC, 29303

Confirmation of Purchas Order Cancellation

Dear Mr. Adams.

I hereby confirm our discussions that the work requested via various on-site visits and by email dated 8/25/2021, needs to unfortunately be canceled as the dimensional specifications can not met with your current process nor can it be produced within the time-frame required.

The details of the order (now canceled) are:

PRODUCTION ITEMS:

QTY.	SKU	EACH	TOTAL
1000 pcs	11.21.029.706.004	\$51.49	\$51,490.00
1000 pcs	11.21.029.706.006	\$45.50	\$45,500.00
1500 pcs	11.21.623.708.003	\$67.23	\$100,845.00
Total:			\$197,835.00

We have managed to source the material from an alternative vendor that is able to meet both specification and timing.

I appreciate your quick responses and help but unfortunately it did yield the required results.

Yours sincerely,

Bobby Fulton
Production Control and Logistics Manager
Purem by Eberspaecher – Spartanburg
864 504 9458

Eberspächer
North America, Inc.
29101 Haggerty Road
Novi, Michigan 48377-2913

Telephone: (248) 994-7010
Facsimile: (248) 489-1930
www.eberspaecher.com

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	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P
1	Summary Lost Work															
2																
3																
4			Qty.	Price Per	MSRP	Profit Per	Total									
5		Ebersphacher 004	1000	\$ 51.49	\$ 51,490.00	\$ 30.53	\$ 30,530.00			\$ 34.53						
6		Ebersphacher 006	1000	\$ 45.50	\$ 45,500.00	\$ 26.84	\$ 26,840.00			\$ 30.84						
7		Ebersphacher 003	1500	\$ 67.23	\$ 100,845.00	\$ 40.03	\$ 60,045.00			\$ 44.03						
8		Saleen	500	\$ 286.6812	\$ 143,340.60	\$ 141.08	\$ 70,540.00			\$ 166.08						
9		Blow By Turbo Kit	110	\$ 1,138.50	\$ 125,235.00	\$ 633.75	\$ 69,712.50			\$ 721.45						
10																
11			Total		\$ 466,410.60		\$ 257,667.50									
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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled “Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings.”

RECEIVED
Oct 04 2022
SC Court of Appeals

s/ Carmen V. Ganjehsani
Carmen V. Ganjehsani (S.C. Bar No. 73515)
R. Wilder Harte (S.C. Bar No. 101228)
RICHARDSON, PLOWDEN & ROBINSON, PA
Post Office Drawer 7788
Columbia, South Carolina 29202
(803) 771-4400
cganjehsani@richardsonplowden.com
wharte@richardsonplowden.com
ATTORNEYS FOR
APPELLANT-RESPONDENT
AM INDUSTRIAL GROUP, LLC

September 14, 2022.

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

RECEIVED

Oct 04 2022

SC Court of Appeals

**APPEAL FROM SPARTANBURG COUNTY
COURT OF COMMON PLEAS
THE HONORABLE J. DERHAM COLE, CIRCUIT COURT JUDGE
THE HONORABLE SHANNON M. PHILLIPS, MASTER-IN-EQUITY**

**APPELLATE CASE NO. 2022-000348
CIVIL ACTION NO. 2021-CP-42-01163**

Custom Performance Engineering, Inc.,

RESPONDENT-APPELLANT,

versus

AM Industrial Group, LLC,

APPELLANT-RESPONDENT.

CERTIFICATE OF SERVICE

I, the undersigned, an employee of Richardson Plowden & Robinson, P.A., for Appellant-Respondent, AM Industrial Group, LLC, do hereby certify that I have this date served the foregoing Record on Appeal by personally depositing a copy of the same in a United States Postal Service mailbox, postage prepaid, addressed to the parties indicated below:

Adam C. Bach (S.C. Bar No. 74885)
Emily R. Godwin (S.C. Bar No. 103708)
ELLER TONNENSON BACH, LLC
1306 South Church Street
Greenville, South Carolina 29605
abach@etblawfirm.com
egodwin@etblawfirm.com
**ATTORNEYS FOR RESPONDENT-APPELLANT
CUSTOM PERFORMANCE ENGINEERING, INC.**

s/ Carmen V. Ganjehsani
Carmen V. Ganjehsani
S.C. Bar No. 73515
RICHARDSON, PLOWDEN & ROBINSON, PA
Post Office Drawer 7788
Columbia, South Carolina 29202
**ATTORNEYS FOR
APPELLANT-RESPONDENT
AM INDUSTRIAL GROUP, LLC**

Date: September 14, 2022.