

Maverick Equipment Mfg., Inc.

CERTIFIED COPY

Cadeci International Corp.

2014 FEB -6 PM 3: 31

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	<i>Christy Williams</i> CLERK OF COURT DORCHESTER COUNTY	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
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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
- 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 case came before the Court on December 13, 2013, for a Non-Jury Trial. The Court hereby enters judgment in favor of the Plaintiff Maverick in the amount of One Hundred Forty Thousand One Hundred Seventy-Six and 24/100 (\$140,176.24) Dollars. See attached Order.

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)
Maverick Equipment Mfg., Inc.	Cadeci International Corp.	\$140,176.24
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

[Signature] _____ 2151 _____ 1/9/14
 Circuit Court Judge Judge Code Date

For Clerk of Court Office Use Only

This judgment was entered on 2/6/2014, and a copy mailed first class or placed in the appropriate attorney's box on 2/6/2014, to attorneys of record or to parties (when appearing pro se) as follows:

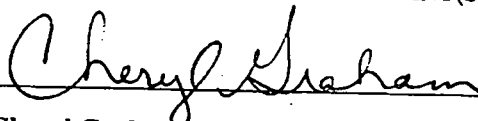
Brendan P. Langendorfer PO Box 68 Mount Pleasant, SC
29465-0068

M. Lavan Green Jr. PO Box 51112 Summerville, SC 29485-
1112

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Ruth Mott



Court Reporter

Cheryl Graham - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
 COUNTY OF DORCHESTER)
)
 Maverick Equipment Mfg., Inc.,)
)
 Plaintiff,)
 v.)
)
 Cadeci International Corp.,)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 Civil Action No.: 2013-CP-18-0259

ORDER OF JUDGMENT

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 CLERK OF COURT
 DORCHESTER COUNTY

THIS MATTER having come before the Court for Non-Jury trial on December 13, 2013. The Court having heard testimony and reviewed the evidence presented finds as follows:

FINDINGS OF FACT

1. On February 15, 2013, Maverick Equipment Mfg., Inc. ("Plaintiff") filed a Summons, Complaint and Affidavit of Sean Raimbeault seeking to recover \$81,754.47 allegedly due and owing by Cadeci International Corp. ("Defendant").
2. Plaintiff asserted two causes of action in its Complaint. The first cause of action alleged breaches of contracts regarding Invoice No. 2027 dated August 3, 2010,¹ in the amount of \$50,998.01; Invoice No. 2036 dated August 12, 2010, in the amount of \$22,076.46; and Sales Order No. 1642 in the amount of \$8,680.00. As reflected on the two (2) invoices, interest accrued at the rate of 1.95% per month.
3. Plaintiff alleges that Defendant is indebted to Plaintiff in the total amount of \$140,176.24, which sum is composed of as follows:

a.	Invoice No. 2027 dated August 3, 2010	\$50,998.01
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¹ Other than an e-mail dated April 5, 2010, between Sean Raimbeault and Dory Matiz, all documents referenced in this Order were admitted into evidence without objection. Defendant's objection to the referenced e-mail was overruled and the document was admitted into evidence upon motion of the Plaintiff.

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	Accrued Interest from September 2010 to January 2014 (41 months)	\$40,772.90
b.	Invoice No. 2036 dated August 12, 2010	\$22,076.46
	Accrued Interest from September 2010 to January 2014 (41 months)	\$17,649.76
c.	Sales Order No. 1642	\$8,680.00

4. Plaintiff's second cause of action was an equitable claim for unjust enrichment pursuant to which Plaintiff sought to recover the value of goods delivered to and retained by Defendant during the parties' relationship.

5. On May 16, 2013, Defendant filed an answer and asserted various affirmative defenses. In its answer, Defendant denied, among other things, having ever entered into a contractual relationship with the Plaintiff.

6. On August 2, 2013, Plaintiff served Defendant with Interrogatories and Requests for Production.

7. On November 2, 2013, Defendant served responses to Plaintiff's Interrogatories and Requests for Production.

8. A non-jury trial was conducted on December 13, 2013. Sean M. Raimbeault, President of Plaintiff, and Ron Curry, owner of Partner Transport, Inc., testified on behalf of the Plaintiff.

9. Ungria Scell, an employee of the Defendant, testified on its behalf. Ms. Scell testified that her current position concerns the review and payment of invoices issued by Defendant's vendors. Although Ms. Scell currently performs those duties for the Defendant, she did not do so during the time period in issue and does not

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have any personal knowledge regarding the course of dealing between Plaintiff and Defendant.

10. Dori Matiz was Defendant's employee responsible for the review and payment of Plaintiff's invoices during the relevant period.

11. Ms. Scell testified that it is the standard practice to review an invoice presented by a vendor to determine its accuracy and confirm that the goods identified by the invoice had been received by Defendant. After confirming the accuracy of the invoice and receipt of the items, the invoice is approved and payment processed.

12. Mr. Curry testified that in August 2010, Plaintiff hired his company to deliver goods sold by Plaintiff to Defendant. Mr. Curry testified crates were picked up by his company at Plaintiff's facility and delivered to *Express Interacional*. *Express Interacional* is a company owned, operated or otherwise controlled by Jose Vicente, the President of Defendant. Mr. Curry further testified that Plaintiff paid Partner Transport, Inc., for its services and that he was unaware of any issues concerning delivery. Mr. Curry did not receive any complaints from anyone disputing actual delivery.

13. Bills of lading evidencing delivery of the goods sold by Plaintiff were admitted into evidence.

14. Mr. Raimbeault testified that Plaintiff and Defendant had a substantial business relationship resulting in the sale of "hundreds of thousands of dollars worth" of equipment. Although the relationship resulted in significant sales, Mr. Raimbeault testified that Defendant's payments were inconsistent, often in irregular

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amounts and delinquent. In particular, Mr. Raimbeault testified that Defendant tendered payments without referencing a corresponding invoice.

15. Mr. Raimbeault further testified that all goods for which Plaintiff seeks payment in this action were delivered to Defendant and retained by it.

16. Defendant maintained a financial relationship with the Export-Import Bank of the United States ("Ex-im"). According to Mr. Raimbeault's testimony, Defendant's business relationship with the Ex-im would be jeopardized due to the age of Plaintiff's unpaid invoices. In order to prevent the Ex-im from placing the Defendant in default on its account that Defendant had with the Ex-im, it was the agreement of Plaintiff and Defendant that payments would be applied to the oldest invoices first. Moreover, because of the peculiar amounts frequently tendered by Defendant and absent reference to a corresponding invoice, Mr. Raimbeault testified that applying the payment to Defendant's outstanding balance was the most appropriate manner to ensure that Defendant received consistent credit for its payments.

17. The agreement regarding the application of payments is summarized in an April 5, 2010, email from Sean Raimbeault to Dory Matiz. Ms. Matiz was Defendant's employee responsible for reviewing Plaintiff's invoices and issuing payment for the time period in issue.

18. Plaintiff's statement of account dated December 5, 2011, reflecting the account history between the parties was admitted into evidence. Although Ms. Scell testified that she believes additional payments of insubstantial amounts were made after September 30, 2010 (the last payment reflected on the statement of account),

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she was unable to identify any of those alleged payments by either date or amount. Ms. Scell further testified that the balance due Plaintiff by Defendant was otherwise accurate. Ms. Scell could not identify any improper charges reflected on the account history. In its Answers to Plaintiff's Interrogatories, Defendant did not identify any payments except for certain "charge-backs" from American Express. Ms. Scell testified that the "charge-backs" are actually refunds issued by American Express to the account holder (*i.e.*, the Defendant) and not payments made by the Defendant to Plaintiff. No evidence of payments other than those set forth on the statement of account was otherwise introduced.

19. Mr. Raimbeault testified that account history was an accurate reflection of the charges and payments. Mr. Raimbeault further testified the charges set forth on the account history reflected the true value of the products delivered by Plaintiff and retained by the Defendant.

20. Defendant asserted that Invoice Nos. 2027 and 2036 were paid by a wire transfer made on August 3, 2010. Defendant introduced written confirmation of the wire transfer into evidence without objection. The wire was sent prior to the issuance of Invoice No. 2036. The amount of the wire transfer (\$75,291.93) does not correspond to the total amount due under Invoice Nos. 2027 and 2036 (\$73,074.47).

21. Mr. Raimbeault testified that Plaintiff received the wire from Defendant on August 3, 2010. The wire is also reflected on the statement of account, which shows that Defendant's outstanding balance of \$145,084.96 owed as of August 3, 2010, was reduced by the wire transfer of \$75,291.93. The parties do not dispute that the

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amount of the wire was credited against the outstanding balance owed by Defendant at the time that the funds were received.

22. In accordance with the parties' course of dealing as reflected on the statement of account and the April 5, 2010, email, payments made by the Defendant and received by the Plaintiff (including the wire transfer) were credited against the oldest invoices first and the outstanding balance owed by the Defendant reduced by the same amount.

23. The testimony and other evidence admitted at trial demonstrate that Defendant was credited with all of the payments that it made. Irrespective of the application of the payments to specific invoices, the account history reflects a balance owed by Defendant in excess of \$81,000.00 for the goods shipped by Plaintiff and retained by Defendant.

CONCLUSIONS OF LAW

Plaintiff's First Cause of Action (Breach of Contract)

A. The invoices and sales order are valid and binding contracts between Plaintiff and Defendant. They are written documents which contain the material terms of the parties' agreement. Plaintiff performed its obligations due and owing under those agreements by delivering the goods reflected therein based upon Defendant's corresponding promise to tender payment.

B. Plaintiff met its burden of proof demonstrating that Defendant is in material breach of the terms of its agreements due to its failure to pay Plaintiff the amounts due and owing.

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C. Defendant is liable to Plaintiff, as of January 3, 2014, in the amount of One Hundred Forty Thousand One Hundred Seventy-Six and 24/100 (\$140,176.24) Dollars, which sum is composed of as follows:

a.	Invoice No. 2027 dated August 3, 2010	\$50,998.01
	Accrued Interest from September 2010 to January 2014 (41 months)	\$40,772.90
b.	Invoice No. 2036 dated August 12, 2010	\$22,076.46
	Accrued Interest from September 2010 to January 2014 (41 months)	\$17,649.76
c.	Sales Order No. 1642	\$8,680.00

Plaintiff's Second Cause of Action (Unjust Enrichment)

A. Unjust enrichment is an equitable doctrine which permits the recovery of that amount the defendant has been unjustly enriched at the expense of the plaintiff. Ellis v. Smith Grading and Paving, Inc., 294 S.C. 470, 473, 366 S.E.2d 12, 14 (Ct.App.1988). The South Carolina Supreme Court "has recognized *quantum meruit* as an equitable doctrine to allow recovery for unjust enrichment." Columbia Wholesale Co. v. Scudder May N.V., 312 S.C. 259, 261, 440 S.E.2d 129, 130 (1994). "Absent an express contract, recovery under quantum meruit is based on quasi-contract, the elements of which are: (1) a benefit conferred upon the defendant by the plaintiff; (2) realization of that benefit by the defendant; and (3) retention by the defendant of the benefit under conditions that make it unjust for him to retain it without paying its value." Id.

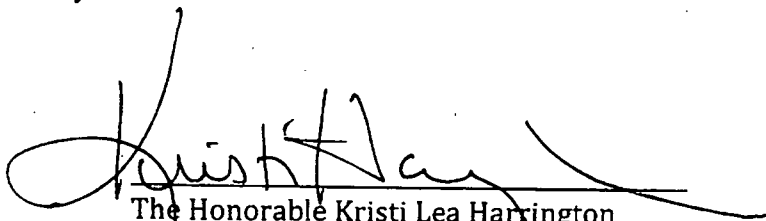
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B. During the course of trial, Mr. Raimbeault testified that the total value of the goods delivered by Plaintiff and retained by Defendant without payment was \$81,754.47. No evidence was introduced at trial disputing the value of the goods retained by Defendant. Defendant failed to pay Plaintiff for the goods that it received and retained. Plaintiff has met its burden of proof establishing that Defendant would obtain an unjust enrichment to the detriment of Plaintiff as a result of such conduct in the amount of \$81,754.47.

C. Although Plaintiff has met its burden of proof with respect to both causes of action, it is not entitled to cumulative recovery on both counts.

THEREFORE, IT IS ORDERED that Judgment in the amount of One Hundred Forty Thousand One Hundred Seventy-Six and 24/100 (\$140,176.24) Dollars as of January 3, 2014 is hereby entered against the Defendant.

IT IS FURTHER ORDERED that interest on the Judgment Amount shall accrue at the statutory rate of 7.25% compounded annually.


The Honorable Kristi Lea Harrington
Presiding Judge, First Judicial Circuit

January 9, 2014.
St. George, South Carolina.