

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

ABB, INC., and BFP, LP, a/k/a)
BULLINGTON FAMILY PARTNERSHIP,)

Plaintiffs,)

vs.)

INTEGRATED RECYCLING GROUP)
OF SC, LLC, JOHN MURPHY)
ARMSTRONG, JR., and MICHAEL T.)
ARMSTRONG,)

Defendants.)

**FINAL ORDER
AND JUDGMENT**

Case No. 2016-CP-42-04147

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SC Court of Appeals

THIS MATTER comes before the Court upon motions of Plaintiffs ABB, Inc. (“ABB”) and BFP, LP, a/k/a Bullington Family Partnership (“BFP”) (collectively, “Plaintiffs”) for summary judgment and to strike the answer of Defendant Integrated Recycling Group of SC, LLC (“IRG”), which is not represented by counsel. A hearing was held on July 31, 2017, at which counsel for Plaintiffs and Defendants John Murphy Armstrong, Jr. and Michael T. Armstrong (the “Individual Defendants”) appeared. After considering the arguments of counsel, the affidavits and submittals by the parties and the other matters of record, the Court finds and concludes that there are no genuine issues of material fact, that Plaintiffs are entitled to judgment as a matter of law against Defendant IRG in the amount of \$1,221,984.06, and therefore that Plaintiffs motions should be and hereby are **GRANTED**.

Specifically, at the hearing, the Individual Defendants requested additional time to have their accountant calculate the amount IRG owes Plaintiffs. The undisputed facts are that IRG’s Indebtedness that is the subject of this lawsuit initially totaled \$1,400,000, which was fixed by

that certain Debt Settlement Agreement dated October 27, 2011, and which was approved and given an Effective Date of November 10, 2011, by the United States Bankruptcy Court for the District of South Carolina in Bankruptcy Case No. 11-03117-jw (the "Loan Agreement").

Pursuant to the Loan Agreement, IRG gave ABB and BFP Promissory Note #1 in the principal amount of \$1,400,000.00, including \$898,472.00 to ABB and \$501,528.00 to BFP, and which required principal and interest payments at the rate of four percent (4.00%) per annum amortized over 20 years, with all remaining principal and interest being due and fully payable as a balloon on or before November 9, 2016 ("Promissory Note #1"). Defendants made payments over the course of five years, from December 2011 through November 2016, but have not made a payment since then. Therefore, IRG is in default of the Loan Agreement and Promissory Note #1.

Plaintiffs calculated that the principal balance of \$1,146,923.12 remains due and unpaid since November 2016. Defendants' accountant calculated that the principal note balance was \$1,146,717.06 due November 9, 2016, a difference of \$206. Plaintiffs stipulated to the principal note balance as calculated by Defendant IRG's accountant. Therefore, the Court finds and concludes that Defendant IRG owed Plaintiffs \$1,146,717.06 as of November 9, 2016.

Because Promissory Note #1 was fully due and payable on November 9, 2016, and no payments have been made since then, pursuant to S.C. Code Ann. § 34-31-20(A), prejudgment interest at the legal rate of 8.75% is appropriately applied to the principal. Plaintiffs stipulate to the prejudgment interest balance as calculated by Defendant IRG's accountant of \$75,267 due August 9, 2017.

Therefore, the Court finds and concludes that judgment should be entered in favor of Plaintiffs against IRG in the amount of \$1,221,984.06 as of August 9, 2017 (collectively, the “Indebtedness”), divided between Plaintiffs as follows:

| | |
|-----------------------|---|
| \$ 735,923.69 | Principal on Promissory Note #1 due from IRG to ABB |
| 48,303.78 | Prejudgment Interest to BFP through August 9, 2017 |
| \$ 410,793.37 | Principal on Promissory Note #1 due from IRG to BFP |
| 26,963.22 | Prejudgment Interest to BFP through August 9, 2017 |
| \$1,221,984.06 | Total Indebtedness through August 9, 2017 |

To secure the Indebtedness, on or about October 27, 2011, IRG signed a Blanket Continuing Security Agreement granting Plaintiffs a security interest (the “Security Agreement”) in IRG’s inventory, general intangibles, accounts, chattel paper, instruments and documents, equipment, commercial tort claims, letter-of-credit rights, and all parts, replacements, substitutions, profits, products, accessions and cash and non-cash proceeds and supporting obligations of any of the foregoing (collectively, the “Collateral”). To further secure the Indebtedness, on or about October 27, 2011, IRG, J. Murphy Armstrong, Jr., and Michael T. Armstrong signed a Continuing Pellitizer Security Agreement granting Plaintiffs a security interest (the “Pellitizer Agreement”) in that certain 60 Ton Air Cooled Pelletizing Machine/Cooler, Model #NGR105VSP, Series #Q02028 (the “Pellitizer,” which shall hereinafter be included in the definition of the “Collateral”).

Plaintiffs provided the purchase money for all Collateral and the Pelletizer. The Indebtedness includes the purchase money for all Collateral and the Pelletizer. Therefore, in seeking to recover the Indebtedness, Plaintiffs seek to recover purchase money that is past due for all Collateral and the Pelletizer.

Plaintiffs hold duly perfected first security interests in the Collateral and Pellitizer pursuant to UCC-1 Financing Statements filed with the South Carolina Secretary of State naming Integrated Recycling Group of SC, LLC, J. Murphy Armstrong, Jr., and Michael T. Armstrong as the Debtor.

The Individual Defendants argue that IRG's landlord gave a mortgage that covers fixtures and improvements. The Court finds and concludes, however, that the Collateral and Pellitizer are not fixtures or improvements, but rather are personal property that can be removed from the real property without damaging it. Therefore, Plaintiffs are entitled to possession of the Collateral and the Pelletizer and to sell the Collateral and the Pelletizer and apply the sales proceeds to the judgment granted herein.

The Court further notes that IRG's counsel was relieved of record. IRG is a limited liability company that may not appear in court without an attorney. *Renaissance Enter. v. Summit Teleservices*, 515 S.E.2d 257, 334 S.C. 649 (S.C. 1999) ("a non-lawyer cannot represent a corporation in circuit or appellate courts."). Therefore, IRG's answer should be stricken and Plaintiffs are entitled to judgment for the relief sought against IRG in their complaint.

For the foregoing reasons, the Court grants Plaintiffs' motions for summary judgment and to strike the answer of IRG and grants judgment to Plaintiffs against Defendant IRG in the amount of \$1,221,984.06. Defendants are ordered to assemble the Collateral and the Pelletizer, and Plaintiffs are authorized to sell the Collateral and the Pelletizer at IRG's premises.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. Plaintiffs shall have judgment against Defendant IRG in the amount of \$1,221,984.06 (the "Indebtedness").

2. Defendants shall immediately give Plaintiffs possession of the Collateral, wherever located, including but not limited to that set forth on Exhibit A and the Pellitizer, and assemble the Collateral and Pellitizer at their place of business located at 5899 N. Main Street, Cowpens, Spartanburg County, South Carolina (the "Premises"). Pursuant to S.C. Code Ann. § 15-69-90, Defendants are hereby restrained from damaging, concealing, or removing the Collateral and Pellitizer from the Premises, and any individual or entity violating this Order shall be subject to a fine not to exceed one thousand dollars or imprisonment for not more than six (6) months, or both.

3. Defendants shall permit the Collateral and Pellitizer to be stored at the Premises for a reasonable period of time until a sale of the Collateral and Pellitizer can be held. During this period, Plaintiffs shall have sole access to and control of said Collateral and Pellitizer. Defendants will cooperate with Plaintiffs and not impede or obstruct Plaintiffs in any way in connection with the sale.

4. Plaintiffs may sell, lease, license or otherwise dispose of any or all of the Collateral and Pellitizer in their present condition or following any commercially reasonable preparation or processing. If commercially reasonable, Plaintiffs may dispose of the Collateral and Pellitizer by public or private proceedings, by one or more contracts, as a unit or in parcels, and at any time and place and on any terms. Plaintiffs may credit bid the Indebtedness and purchase any Collateral and Pellitizer at a public disposition. Plaintiffs may disclaim any and all warranties relating to title, possession, quiet enjoyment, or the like.

5. Plaintiffs shall give notification of disposition of the Collateral in accordance with Sections 36-9-611 through 613 of the South Carolina Code as amended. The bailiffs and

courthouse staff shall allow Plaintiffs to post notice of any public sale on a bulletin board provided for the posting of legal notices in the Spartanburg County Courthouse.

6. The application of the proceeds of any disposition of the Collateral and Pellitizer shall be subject to the provisions of Sections 36-9-615 and 616 of the South Carolina Code as amended. IRG shall remain liable for any amount of Indebtedness remaining unpaid after such application. Plaintiffs may apply to this Court for a judgment reduced by the proceeds and increased by the costs of sale plus attorneys' fees and costs for this action.

IT IS SO ORDERED.

EXHIBIT A

CERTAIN EQUIPMENT COLLATERAL

- 1. Margasa TN 1500 (Tearing Line 2) and all pieces of equipment on invoice 197/06, manufactured by Margasa, with serial number 603.803, including 5 motors**
- 2. Pierret Cutter and metal detector, serial number X0707645160 (Cutter No. 1)**
- 3. Pierret Cutter with transfer conveyor, serial number x0703638160 (Cutter No. 2)**
- 4. Tex-Mach, Inc. Continental Horizontal Bale Press, 575 Volts, Serial No. 2876 and 6" Hump Magnet (Horizontal Press)**
- 5. Hauser QLA 3100 Panel Cutter manufactured by Parker Hannifin Gmbh, serial number 20050410**
- 6. Milling Machine**
- 7. Lift Truck**
- 8. Replacement Barrel and Screw for the NGR manufactured by Next Generation Pelletizer**
- 9. Antec Computer with gigabyte board, serial number GA-81945P-G**
- 10. Acer computer monitor, serial number X10-60273**
- 11. Bridgeport Sander, serial number j-82355 and all associated bits and milling tools**
- 12. Sunby surface grinder, serial number 13453**
- 13. Ball and Jewell grinder and all screens, serial number 32789 (Grinder 1)**
- 14. Rapid granulator grinder and all screens, serial number 601410 (Grinder 2)**
- 15. Herboldt Grinder #55830, Blower and Conveyor from Syncot Plastics, Inc.**
- 16. 60 Ton Air Cooled Pelletizing Machine/Cooler, Model #NGR105VSP, Series #Q02028**



Spartanburg Common Pleas

Case Caption: Abb, Inc , plaintiff, et al VS Integrated Recycling Group Of Sc, Llc ,
defendant, et al
Case Number: 2016CP4204147
Type: Order/Other

IT IS SO ORDERED !

s/ J. Derham Cole