

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**APPEAL FROM RICHLAND COUNTY
Court of Common Pleas**

G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2013-002806

Emser Tile, LLC, Respondent

v.

John D. Cattano, Appellant

AMENDED RECORD ON APPEAL

John D. Cattano, *pro se*
P.O. Box 106
Columbia, SC 29202
803-381-5850

Anthony D. Hoefer, Esq.
Levi, Wittenberg, Harritt, Hoefer & Davis, PA
P.O. Box 730
Sumter, SC 29151
803-773-8431
Attorney for Respondent

RECEIVED

APR 28 2014

SC Court of Appeals

INDEX

<u>Matter</u>	<u>Page</u>
Order Granting Plaintiff's Motion for Summary Judgment	2
Summons & Complaint	6
Answer of John D. Cattano	17
Third Party Complaint	19
Plaintiff's Reply to Defendant's Affirmative Defense	41
Plaintiff's Request for Admissions	42
Defendant's Answer to Plaintiff's Request for Admissions	44
Motion for Summary Judgment	45
Affidavit of Patrick Lytle	46
Defendant's Affidavit in Opposition to Plaintiff's Motion for Summary Judgment	53
Plaintiff's Affidavit for Attorney's Fees	55
Notice of Appeal	57
Certificate of Counsel	58
Certificate of Service	59

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2012-CP-40-05587

Emser Tile, LLC

John D. Cattano

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

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.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: Dismissed without prejudice
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ 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:

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DEC 19 2013

ORDER INFORMATION

SC Court of Appeals

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC 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
Emser Tile, LLC	John D. Cattano	\$ 77,965.24
		\$
		\$

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.

Circuit Court Judge

Judge Code 2126

Date 11-20-13

For Clerk of Court Office Use Only

This judgment was entered on the 22 day of Nov, 20 13 and a copy mailed first class or placed in the appropriate attorney's box on this 20 day of Nov, 20 13 to attorneys of record or to parties (when appearing pro se) as follows:

Anthony D. Hoefer

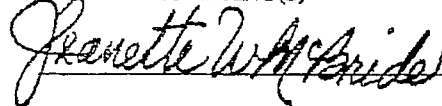
ATTORNEY(S) FOR THE PLAINTIFF(S)

Pro Se

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Clerk of Court



STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Emser Tile, LLC,

Plaintiff,

v.

John D. Cattano,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

C/A No.: 2012-CP-40-05587

**ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT**

NOV 20 PM 4:48

This matter can before me for a hearing on October 8, 2013, on Plaintiff's Motion for Summary Judgment. Present before me was Plaintiff, by and through its attorney, Anthony D. Hoefer, Esq., of Messrs. Levi, Wittenberg, Harritt, Hoefer & Davis, P.A., and Defendant John D. Cattano, appearing *pro se*. Based upon the pleadings and record in the case, including Plaintiff's Complaint, Defendant's Answer and Third-Party Complaint, Plaintiff's Request for Admissions and Defendant's Answers to Request for Admissions, the Affidavit of Plaintiff's Employee in Support of the Motion for Summary Judgment, the Affidavit of John D. Cattano in Opposition to the Motion, Plaintiff's Affidavit in Support of Attorney's Fees, and the arguments presented, I find and conclude as follows.

Plaintiff's Complaint alleges that Defendant is indebted to Plaintiff under an unconditional guaranty of payment of any and all indebtedness of Congaree Triton Acquisitions, LLC to Emser Tile, Inc., with interest at the rate of 18% per annum, as well as attorney's fees. Defendant's Answer generally denies the allegations of the Complaint and asserts set-off as a defense. Plaintiff submitted specific Requests for Admission to which the Defendant responded, admitting the Application for Credit, personal guaranty, and the Statement of Account, which reflected the invoices and prices of merchandise sold and delivered to Congaree Triton Acquisitions, LLC. Defendant denied Plaintiff's

+

(3)

GTZ

Request for Admission as to the balance due and contended that Defendant was entitled to an off-set of Fifty-Four Thousand Nine Hundred Ninety-Six and 62/100 (\$54,996.62) Dollars for credit erroneously applied to pre-acquisition debt.

The Affidavit of Plaintiff's employee, Patrick Lyle, in support of Plaintiff's Motion for Summary Judgment sets forth the e-mail and fax authorization for employees of Triton Stone Group of Charlotte, Inc., a business acquired by Congaree Triton Acquisitions, LLC, to apply credits to specific invoices. Under the law of this State, a creditor must apply payments as instructed by the debtor, but absent a written designation or instructions from the debtor, the creditor may apply payments in its own discretion. See Wardlaw v. Troy, 74 S.C. 368 (1906).

Defendant's Affidavit asserts that pre-acquisition liabilities were responsibilities of the Sellers in its Asset Purchase Agreement and that no employee of Congaree Triton Acquisitions, LLC, could authorize payment of pre-acquisition debt. However, in his Third-Party Complaint, Defendant alleges that he was pressured by the Sellers to make payments of pre-existing debt to vendors and did so despite not being obligated to do so under the Asset Purchase Agreement.

"The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." George v. Fabri, 345 S.C. 440, 452 (2001) (internal citation omitted). Rule 56 of the South Carolina Rules of Civil Procedure provides that summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. While the Court is required to review the record in the light most favorable to the non-movant, "a Court cannot ignore facts unfavorable to the party and [it] must determine whether a verdict for the party opposing the Motion would be reasonably possible under the facts." Bloom v. Revoira, 339 S.C. 417, 423 (2000) (internal citation omitted). Where a party makes no factual showing in

opposition to a motion for summary judgment, the Court is required to grant summary judgment under Rule 56 if, under the facts presented, the movant is entitled to judgment as a matter of law. Once the moving party meets the initial burden of showing an absence of evidentiary support for the opponent's case, "the nonmoving party must come forward with specific facts showing there is a genuine issue for trial and cannot simply rest on mere allegations or denials contained in the pleadings". Roland v. Heritage Litchfield, Inc., 372 S.C. 161, 165 (Ct. App. 2007).

The Defendant, having failed to provide any evidence to refute the actual or apparent authority of employees of Congaree Triton Acquisitions, LLC to apply credits to pre-acquisition debt or to provide evidence establishing any specific directions from Defendant as to how those credits should have been applied, has not shown that there remains a genuine issue as to any material fact. Accordingly, Plaintiff's Motion for Summary Judgment is hereby **GRANTED** for the following amounts: those claimed due in the Complaint in the amount of Fifty-Five Thousand Two Hundred Sixty-Four and 24/100 (\$55,264.24) Dollars; interest of 18% per annum from the date of the last invoice of October 22, 2011 to October 8, 2013 totaling Nineteen Thousand Five Hundred Eleven and 00/100 (\$19,511.00) Dollars; court costs of One Hundred Ninety and 00/100 (\$190.00) Dollars; and attorney's fees of Three Thousand and 00/100 (\$3,000) Dollars. The amounts come to a total judgment of Seventy-Seven Thousand Nine Hundred Sixty-Five and 24/100 (\$77,965.24) Dollars.

IT IS SO ORDERED.

Columbia, South Carolina
November 20, 2013



G. Thomas Cooper, Jr., Judge
Fifth Judicial Circuit

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Emser Tile, LLC

Plaintiff(s)

vs.

John D. Cattano

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

SC Bar #: 2547
Telephone #: 803-773-8431
Fax #: 803-775-9011
Other:
E-mail: lwahd@fct-i.net

Submitted By: Anthony D. Hoefer

Address: 207 N. Washington St.
P.O. Drawer 730 Sumter, S.C. 29151

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☒ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|--|---|---|
| ☐ Contracts
☒ Constructions (100)
☒ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199) | ☐ Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20 -CP-
☐ Notice/ File Med Mal (230)
☐ Other (299) | ☐ Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399) | ☐ Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| ☐ Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | ☐ Administrative Law/Relief
☐ Reinstate Drv. License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | ☐ Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760) | ☐ Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm. (990) |
| ☐ Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Sexual Predator (510) | ☐ Confession of Judgment (770)
☐ Petition for Workers Compensation Settlement Approval (780)
☐ Other (799) | ☐ Employment Security Comm (991)
☐ Other (999) |

Submitting Party Signature:

Date: August 13, 2012

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Emser Tile, LLC

Plaintiff,

vs

John D. Cattano

Defendant.

SUMMONS

2012 AUG 16 AM 10:35
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C.C.P. & G.S.

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the subscribers at their office at P. O. Drawer 730 (207 N. Washington Street) in the City of Sumter, South Carolina, 29151, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to Answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint, by way of judgment by default.

LEVI, WITTENBERG, HARRITT, HOEFER & DAVIS

By


Attorneys for Plaintiff
207 N. Washington Street
P. O. Drawer 730
Sumter, South Carolina
803-773-8431

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August 13, 2012.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Emser Tile, LLC

Plaintiff,

vs

John D. Cattano

Defendant.

Non-Jury
Suit on Guaranty

COMPLAINT

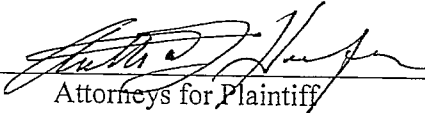
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2012 AUG 16 AM 10:35
CLERK OF COURT
C.C.P. & G.S.

Plaintiff, complaining of the Defendant above named, alleges:

1. That, on information and belief, Defendant, John D. Cattano, is a resident of the County and State aforesaid and that the parties hereto are subject to the venue and jurisdiction of this Court.
2. That based upon the signed personal guarantee of Defendant, John D. Cattano, without which guarantee Plaintiff would not have extended credit and/or any other consideration, Plaintiff established an open account for Triton Stone Group of Charlotte a/k/a Congaree Triton Acquisitions, LLC, whereby the Corporation would be allowed to purchase on credit certain of its goods, wares and merchandise; a copy of said Guarantee being attached hereto and made a part hereof as if set forth herein in full.
3. That Triton Stone Group of Charlotte a/k/a Congaree Triton Acquisitions, LLC has filed for protection under Chapter 11 of the United States Bankruptcy Code, and is not a party to this action.
4. That, according to Plaintiff's books and records, the Defendant, John D. Cattano, is now indebted to Plaintiff in the amount of Fifty Five Thousand Two Hundred Sixty-Three and 24/100 (\$55,263.24) Dollars, all as appears by reference to the statement of account, a copy of which is attached hereto and made a part hereof as if set forth herein in full.
5. That said indebtedness is an account stated for a sum certain, that although duly demanded, no part of said account has been paid by cash, discount or otherwise, except that for which credit, if any due, has been given; and that said sum is now due and owing to the Plaintiff by the Defendant, John D. Cattano, plus interest at 18% on this indebtedness and attorneys' fees as provided in the said attached Guarantee.

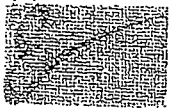
WHEREFORE, Plaintiff prays for judgment against Defendant, John D. Cattano, for the sums due as aforesaid, plus the costs and disbursements of this action.

LEVI, WITTENBERG, HARRITT, HOEFER & DAVIS

By 
Attorneys for Plaintiff
207 N. Washington Street
P. O. Drawer 730
Sumter, South Carolina
803 773 8431

June 27, 2012.

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EMSER TILE, LLC

8431 Santa Monica Blvd. • Los Angeles, CA 90069-4294
Phone: (323) 650-2000 • Fax: (775) 522-7927

Application for Credit

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RCB

Which Emser branch do you wish to do business with?

To purchase on credit from Emser Tile, LLC, the following true and correct statement is submitted:

Firm Name Triton Stone Phone No. (704) 583-1328 Fax No. (704) 583-1329
Date Established 2011 Corporation ☒ Partnership ☐ Limited Partnership ☐ Individual ☐
Number of Branches/stores 2 Please list addresses on a separate sheet (including Parent Co.)
Number of Employees 21 Office Address 11415 Granite St. Suite B City Charlotte State NC Zip 28223
Billing Address SAME City State Zip Code

Type of Business: Department Store ☐ Dealer/Distributor ☐ General Contractor ☐ Sub-Contractor ☐

Other Annual Gross Sales \$ Co Net Worth \$ Monthly Credit Requirements \$

Contractor's License No. License in what Name

Pay Tax at Source: Yes ☐ No ☒ (if no, please indicate resale # and attach signed copy of resale card)

Federal ID #

Owner/Officers	Title	Residence Address	Telephone
1. John Cattano	CEO	136 Lincoln St, Columbia, SC	29201
2. Carroll Campbell	CEO		
3. <u></u>	<u></u>	<u></u>	<u></u>

SS# 1. SS# 2. SS# 3.

Bank References

Name	Complete Address	Checking Acct #	Telephone
1. See attachment			
2. <u></u>	<u></u>	<u></u>	<u></u>

Credit References (Please list 4 major Suppliers with whom you have an open account)

Name	Complete Address	Telephone No.	Facsimile No.
1. See attachment			
2. <u></u>	<u></u>	<u></u>	<u></u>
3. <u></u>	<u></u>	<u></u>	<u></u>
4. <u></u>	<u></u>	<u></u>	<u></u>

Have you applied for credit with us before? No When? Under what name?

Your Account's Name Triton Stone

Does your Accountant supply you with periodic Financial Statements? yes How Often? Quarterly

Will you make available current Financial Statements? If yes, please attach most current Financial Statement

Loan History

Do you have any outstanding loans? Yes Name of Lending Co. Greenfield Commercial Credit
Loan Officers Name Stefania Odolean Loan No. _____ Phone No. 248-723-8001
List any other loans on reverse side. Ever had a business failure? No If yes, list on a separate sheet. X-244

Personal References

Applicant's Driver's License SC Make & Year of Car 2006 Ford Expedition License Plate No. _____
List any Assets that are in your name: _____
Nearest relative not living with you Jesus Christ, Son of God Phone No. heaven
Address _____ City _____ State _____ Zip Code _____
Applicant's Spouse _____ SS# _____
Spouse Employment _____ Phone No. _____

The undersigned certifies that the above information is true and correct and agrees to pay for all goods purchased in compliance with the terms of the seller. Unless otherwise agreed to in writing, said terms are that all goods to be paid in full within 30 days from invoice date. Should default be made in payment when due, the balance plus 18% per annum on all unpaid sums together with actual attorney's fees and all costs as the seller may reasonably incur in the enforcement of the obligation is guaranteed by the undersigned. Both seller and buyer agree that Los Angeles County has proper jurisdiction over any and all litigation.

Congree Triton Acquisitions LLC
Full Name of Company

John D. Cattano
Print Name/Position

Signature X [Signature] Date _____

Personal Guaranty

(Personal guarantee must be handwritten and signed not typed or printed)

For and in consideration of any goods or materials provided to the above applicant on open account or otherwise by Emser Tile, I.L.C. (of which is hereby acknowledged), we personally guarantee unconditional at all times unto you the payment of any and all indebtedness incurred with respect to Emser Tile, I.L.C. together with interest thereon, actual attorney's fees and all costs.

John D. Cattano
Print Name

Signature X [Signature] Date 5/5/11
Guarantor

Print Name

Signature X _____ Date _____
Guarantor

(Individual and Partnership must sign this Guaranty)

Authorization

To whom it may concern: This is to authorize your company to release any information regarding our (my) application for open account with Emser Tile, I.L.C.

Applicant's Name Congree Triton Acquisitions, LLC Signature X [Signature] Date 5/5/11

FOR OFFICE USE ONLY: PC: I W C N Other _____

Information verified by _____ Date _____ Maximum Credit Recommended \$ _____

Approved _____ Disapproved By _____ Date _____ Approved Credit Line \$ _____

Reason for disapproval _____ Credit No. _____

Remarks _____

STATE OF CALIFORNIA)

COUNTY LOS ANGELES)

AFFIDAVIT AND VERIFICATION

Personally appeared before me Judy Weinberg, who first being duly sworn on oath, states that he/she is the Corp CR mgr of Emser Tile, LLC,

(X) a corporation organized and doing business under the laws of the State of CALIFORNIA

() a partnership composed of _____

() a sole proprietor and/or trader doing business as _____

and that, as such she/he is duly authorized to make this Affidavit; that she/he has read the foregoing

Complaint and that the allegations contained therein are true and correct; that she/he is familiar with the

books and records of Emser Tile, LLC; that the attached documentation of indebtedness against, John D.

Cattano, is true and correct; that credit has been duly given for all payments and just and lawful offsets to

which said account is entitled, as stated thereon, and the balance now due and owing is Fifty Five

Thousand Two Hundred Sixty-Three and 24/100 (\$55,263.24) Dollars, with interest from September 22,

2011, until paid and that no part of said indebtedness has been paid by cash, discount or otherwise.

Sworn to before me this _____
day of _____, _____

Notary Public for _____

My Commission Expires: _____

Judy Weinberg

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CALIFORNIA JURAT

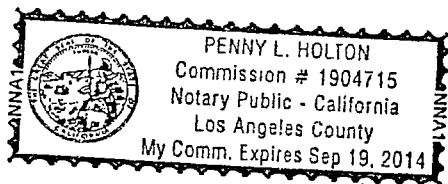
State of California }
County of Los Angeles } ss.

Subscribed and sworn to (or affirmed) before me on

this 9 th day of August, 2012 by

Judy Weinberg

proved to me on the basis of satisfactory evidence
to be the person who appeared before me.



Penny L. Holton

OPTIONAL

Description of Attached Document

Title or Type of Document: Affidavit and Verification

Document Date: no date Number of pages: 1

Signer (s) Other Than Named Above:

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ET0001

Emser Tile, LLC
A/R Details with Aging

Page - 2

Aging Date 01/05/12

.....Document.....

Document			Invoice			Due Date								
Ty	Number	Customer PO	Branch	Item	Date	Check Date	Original Amount	Open Amount	Current	1 - 30	31 - 60	61 - 90	91 - 999	
Branch	CLT													
Customer:	375520	TRITON STONE - CHARLOTTE	Phone Number: ()					Credit Manager		J	Credit Limit			
RU	397236		CLT	001	12/05/11	12/05/11	140.56	140.56			140.56			
RI	2957417	FRITZ	CLT	001	06/16/11	07/16/11	2,286.00	2,286.00						
RI	2965615	3193	CLT	001	06/20/11	07/20/11	2,436.20	2,436.20					2,286.00	
RI	2971894	3203	CLT	001	06/22/11	07/22/11	308.99	308.99					2,436.20	
RI	2976665	3265	CLT	001	06/23/11	07/23/11	925.16	925.16					308.99	
RI	2985404	STOCK	CLT	001	06/27/11	07/27/11	4,601.59	4,601.59					925.16	
RI	2985418	3274	CLT	001	06/27/11	07/27/11	224.17	224.17					4,601.59	
RI	2987918	3242	CLT	001	06/28/11	07/28/11	573.08	573.08					224.17	
RI	2988298	3277	CLT	001	06/28/11	07/28/11	30.80	30.80					573.08	
RI	2992240	3287	CLT	001	06/29/11	07/29/11	74.26	74.26					30.80	
RI	2992650	3285	CLT	001	06/29/11	07/29/11	11.94	11.94					74.26	
RI	2992931	3290	CLT	001	06/29/11	07/29/11	4,220.99	4,220.99					11.94	
RI	2995814	3128	CLT	001	06/30/11	07/30/11	155.07	155.07					4,220.99	
RI	2995818	3140	CLT	001	06/30/11	07/30/11	56.20	56.20					155.07	
RI	2995871	3231	CLT	001	06/30/11	07/30/11	755.81	755.81					56.20	
RI	2995892	3252	CLT	001	06/30/11	07/30/11	439.76	439.76					755.81	
RI	3005479	3295	CLT	001	07/05/11	08/04/11	143.88	143.88					439.76	
RI	3013709	3246	CLT	001	07/07/11	08/06/11	459.10	459.10					143.88	
RI	3017023	3315	CLT	001	07/08/11	08/07/11	10.95	10.95					459.10	
RI	3020568	3281	CLT	001	07/11/11	08/10/11	123.11	123.11					10.95	
RI	3023997	3208	CLT	001	07/12/11	08/11/11	178.71	178.71					123.11	
RI	3024038	3289	CLT	001	07/12/11	08/11/11	104.50	104.50					178.71	
RI	3033843	3341	CLT	001	07/14/11	08/13/11	1,053.01	1,053.01					104.50	
RI	3039960	3294	CLT	001	07/18/11	08/17/11	1,502.82	1,502.82					1,053.01	
RI	3040626	3314	CLT	001	07/18/11	08/17/11	100.00	100.00					1,502.82	
RI	3040643	3318	CLT	001	07/18/11	08/17/11	233.65	233.65					100.00	
RI	3040656	3325	CLT	001	07/18/11	08/17/11	328.54	328.54					233.65	
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RI	3062888	3294	CLT	001	07/26/11	08/25/11	342.00	342.00					189.19	
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													279.33	

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Enser Tile, LLC
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Page - 3

Aging Date 01/05/12

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RI	3098799	3500	CLT	001	08/08/11	09/07/11		100.20	100.20					116.60
RI	3099924	3421	CLT	001	08/08/11	09/07/11		2,401.20	2,401.20					100.20
RI	3102603	3502	CLT	001	08/09/11	09/08/11		194.91	194.91					2,401.20
RI	3102605	3503	CLT	001	08/09/11	09/08/11		11.88	11.88					194.91
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RI	3117845	3507	CLT	001	08/15/11	09/14/11		5,002.00	5,002.00					178.30
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RI	3129630	3554	CLT	001	08/18/11	09/17/11		11.88	11.88					264.53
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Company: 00001 Enser Tile, L.L.C.

Enser Tile, L.L.C.
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Page - 4

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Customer: 375520 TRITON STONE GROUP							Phone Number: ()		Credit Manager J		Credit Limit		

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

EMSER TILE, LLC,

Plaintiff,

v.

JOHN D. CATTANO,

Defendant.)

IN THE COURT OF COMMON PLEAS

Suit on Guaranty

2012 OCT 10 AM 11:21
JEANETTE W. McBRIDE
C.C.P. & G.S.

RICHLAND COUNTY
FILED

ANSWER, DEFENSES, AND DEMAND FOR JURY

Defendant John D. Cattano, pro se at this time, answers the Complaint filed herein and states as follows:

1. The allegations contained in paragraph 1 of the Complaint are admitted.
2. The allegations contained in paragraph 2 of the Complaint are denied.
3. The allegations contained in paragraph 3 of the Complaint are denied, except that it is admitted that Congaree Triton Acquisitions, LLC is not a party hereto.
4. The allegations contained in paragraph 4 of the Complaint are denied, except that the defendant is without knowledge as to what the plaintiff's "book and records" may indicate.
5. The allegations contained in paragraph 5 of the plaintiff are denied.
6. The Defendant asserts that he is not indebted to Emser Tile, LLC for any amount.

AFFIRMATIVE DEFENSES

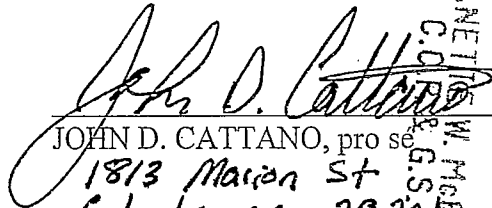
7. The Defendant affirmatively asserts the defense of OFFSET as he, or others on his behalf, has paid the plaintiff in excess of the amount sued for herein for services and materials provided to another entity and for which the defendant did not owe. As such, the defendant demands a set off for all amounts paid to the plaintiff for accounts which predated the defendant's purchase of Triton Stone Group of Charlotte, and otherwise demands a full refund for all amounts paid as such.

8. The Defendant further asserts that the indebtedness alleged and the Complaint is therefore owed by others and not the Defendant who will be brought in as third-party defendants in this case.

9. The Defendant reserves the right to assert all other applicable defenses including unclean hands, fraud, misrepresentation, statute of limitations, and any other defenses which may be shown by discovery or evidence.

10. THE DEFENDANT DEMANDS A TRIAL BY JURY IN THIS CASE.

Respectfully submitted,


JOHN D. CATTANO, pro se
1813 Marion St
Columbia, SC 29206
803-254-4500

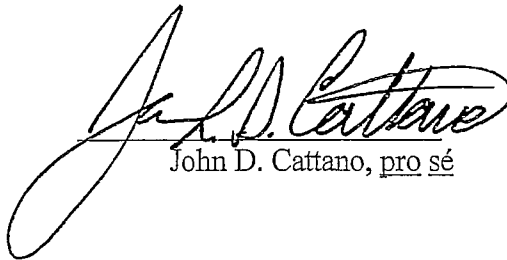
JEANETTE W. McBRIDE
C.C.B. & G.S.

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RICHLAND COUNTY
FILED

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was mailed this 10 day of October 2012, to: Anthony D. Hoefer, Levi, Wittenberg, Harritt, Hoefer & Davis, 207 N. Washington Street, Sumter, SC 29150.


John D. Cattano, pro se

rw/03

STATE OF SOUTH CAROLINA

COUNT OF RICHLAND

IN THE COURT OF COMMON PLEAS

EMSER TILE, LLC,

Plaintiff,

v.

Suit of Guaranty

JOHN D. CATTANO

Defendant/Third Party Complaint

v.

Triton Stone Group, LLC; Triton Partners Management
Group; Joshua Kessler; Randy Mathis;
Christian Jensen; Triton Stone Group New Orleans, LLC;
Jack Jensen; Katie Peralta, Triton Stone Southaven, LLC;
Transportation Consultants, Inc., and Frederico Gildemeister,

Suit for Indemnity, Fraud, Etc.

Third Party Defendants.

RICHLAND COUNTY
FILED
2012 OCT 22 PM 4:52
JEANETTE W. McBRIDE
C.C.P. & G.S.

INTRODUCTION

1. This case arises from extensive fraud, conspiracy, and abusive business practices. The management of two asset-selling corporations aggressively defrauded asset purchasers and others out of millions of dollars. Not stopping there, the fraudsters exploited their newfound business leverage over the purchasers to force, or try to force, the purchasers to pay millions of dollars of debts the purchasers did not owe, all for the benefit of the fraudsters.

2. The asset-purchaser third party plaintiff brings this action to establish these facts and seek appropriate restitution and other damages. Third Party plaintiff submits that the asset-seller defendants and the fraud defendants are liable for these debts and are liable to indemnify the asset-purchaser third party plaintiff for debts he was wrongly forced to pay.

PARTIES, VENUE, AND JURISDICTION

3. Congaree Triton Acquisitions, LLC (“Congaree”) is a South Carolina limited liability company.
4. Carroll A. Campbell III was the CEO of Congaree and had a substantial ownership interest in Congaree both personally and by virtue of his relationship with the Carroll A. Campbell Jr. Trust. Campbell was one of two managing members of Congaree and is a South Carolina resident.
5. Third Party Plaintiff John D. Cattano was the CFO of Congaree and had a substantial ownership interest in Congaree. Cattano was the second of two managing members of Congaree and is a South Carolina resident.
6. Congaree, Campbell, and Cattano are sometimes collectively referred to herein as “Asset-Purchaser Plaintiffs.”
7. Congaree purchased all alienable claims of Defendants Triton Stone of Myrtle Beach, Inc. and Triton Stone of Charlotte, Inc. and is therefore a successor in interest to these two Defendants to such claims.
8. Defendant Triton Stone of Myrtle Beach, Inc. was a South Carolina corporation with a principal place of business—to whatever extent the entity still does business—in Horry County.
9. Defendant Triton Stone of Charlotte, Inc. was a North Carolina corporation with a principal place of business—to whatever extent the entity still does business—in Mecklenburg County, North Carolina.
10. The Third Party Defendants are certain individuals and entities associated with the national Triton Stone franchise. Ostensibly, the Triton Stone franchise imports and sells natural stone products and associated items and provide associated services. Each of the individuals and entities listed above is connected with the fraud scheme and is a willing participant in that

FACTUAL ALLEGATIONS

11. In late 2010, Defendant Christian Jensen approached Third Party Plaintiff John Cattano about a business opportunity Cattano might be interested in.

12. Jensen and his family were—and remain—associated with the Triton Stone franchise, a collection of individuals and businesses that import and sell natural stone products and associated items and provide associated services.

13. Specifically, Jensen had connections with three Triton Stone distributorships, New Orleans, Charlotte, and Myrtle Beach.

14. Jensen explained to Cattano that his family owned the New Orleans distributorship, but that he was helping to manage two other distributorships in Charlotte and Myrtle Beach.

15. Jensen indicated to Cattano that Charlotte and Myrtle Beach had been run poorly by their owners, and so Jensen and two other individuals associated with the national Triton Stone franchisor, Joshua Kessler and Randy Mathis, were managing Charlotte and Myrtle Beach through an entity called the Triton Partners Management Group.

16. Kessler and Mathis were and remain intimately connected with various Triton Stone operations and entities, including Triton Stone Group LLC, the national franchisor. It is fair to say that Joshua Kessler is the “face” of Triton Stone nationally.

17. Jensen indicated to Cattano that the Triton Stone business model was highly profitable and sound and suggested Cattano purchase the Charlotte and Myrtle Beach operations.

18. Cattano was interested and contacted a friend, Plaintiff Carroll Campbell, who was also interested in being involved.

19. Cattano and Campbell began negotiating with Kessler, Mathis, Jensen, and others associated with the corporations that owned the Charlotte and Myrtle Beach operations, Triton Stone of Charlotte, Inc. and Triton Stone of Myrtle Beach, Inc.

with information about Triton Stone of Charlotte, Inc. and Triton Stone of Myrtle Beach, Inc.

21. Some of this information was financial information showing a healthy, profitable business operation. Based upon this financial information, the parties to the negotiation agreed upon a purchase price.

22. All involved in the negotiation eventually agreed upon an asset-purchase agreement (“APA”), which was executed on or about March 11, 2011. The APA is attached hereto as the only exhibit and is incorporated herein by reference.

23. The APA provides for an asset purchase whereby Congaree would purchase all of the assets of Triton Stone of Charlotte, Inc. and Triton Stone of Myrtle Beach, Inc. (with a few irrelevant, specific exceptions) and assume practically none of those corporations’ liabilities (also with a few irrelevant, specific exceptions). See APA at 1-4, Sections 1.01 and 1.02. The only liabilities assumed were a lease payment and insurance on an automobile, cell phone service for certain individuals, and healthcare insurance for those same individuals. See APA at 3-4, Section 1.02(b)(i – iv).

24. Every single vendor and supplier debt remained with Triton Stone of Charlotte, Inc. and Triton Stone of Myrtle Beach, Inc. At no point in time was Congaree legally obligated to pay any debt connected with the Triton Stone operations in Charlotte and Myrtle Beach which arose prior to March 11, 2011, the closing of the asset sale.

25. The parties contemplated that creditors of the sellers might present demands for payment of debts to Congaree—a perfectly reasonable expectation and a regular occurrence in asset sale transactions. Accordingly, the APA contained provisions for handling such situations, requiring the sellers to indemnify Congaree in the event Congaree was forced to make any payments on old debt and other pre-closing liabilities. See APA at 16-18, Section 6.02.

26. Further, the APA could not have been clearer that the sellers would indemnify Congaree in such circumstances. The sellers promised to do so in Section 6.02(a) of the APA. See AOA at

27. The APA called for a purchase price of approximately \$3 million, and according to the balance sheet provided by Kessler, Mathis, and Jensen, the value of the purchased assets on March 11, 2011, was \$3,028,086.75.

28. This was clearly a market-reasonable price for the assets purchased, and as the APA indicates, various methods of financing the purchase were employed, and another financier not listed in the APA is Greenfield Commercial Credit.

29. Congaree Triton Acquisitions, LLC then became a distributor under the Triton Stone franchise, as the parties had agreed, covering the territories of Charlotte and Myrtle Beach.

30. Not long after closing the asset purchase, faint warning signs began to emerge that something was wrong.

31. Unbeknownst to Cattano or Campbell, days before the asset purchase was closed, Joshua Kessler wrote approximately \$600,000 in checks to vendors owed funds by Triton Stone of Charlotte, Inc. on the corporate account. This action was absolutely forbidden by the APA and Kessler failed to disclose what he was doing, also despite a clear requirement to do so under multiple sections of the APA.

31. However, by the time vendors received the checks, Cattano and Campbell had opened a new bank account for Congaree Triton Acquisitions LLC.

32. Vendors began depositing the checks written by Kessler on the old corporate account, which was essentially empty, and the checks bounced. Cattano and Campbell confronted Kessler about what had happened, but Kessler demanded that Congaree write new checks or wire to the vendors. Cattano and Campbell explained to Kessler that Congaree was not obligated to do so because they had not assumed any liability on unpaid vendor invoices under the APA.

33. Kessler would not take no for an answer and demanded that Congaree make the payments to vendors. Kessler made clear to Cattano and Campbell that they would be put out of business if they did not make the payments. Kessler was in a position to make good on that, as he was and remains the national "face" of the Triton Stone franchise.

34. Cattano and Campbell, having no realistic alternatives, made a substantial portion of the \$600,000 payments despite not being obligated to do so under the APA.

35. This pattern repeated itself time and again. Sometimes Kessler would make the demand, sometimes Mathis or Jensen, often a combination of them. Time after time, Cattano and Campbell were forced through outright business extortion to pay debts they did not owe.

36. Even worse, because the Asset-Seller Defendants were managed and controlled by Kessler, Mathis, and Jensen (acting in concert, upon information and belief, with the other Third Defendants) at the time of sale, Kessler, Mathis, and Jensen had an obligation to disclose these unpaid debts to Plaintiffs. They did not.

37. Kessler, Mathis, and Jensen, along with the other Fraud Defendants, control practically the entire supply chain Congaree Triton Acquisitions depended upon to obtain products for sale.

38. Cattano and Campbell simply had no choice but to accede to their demands. Though the payments continued to drain Congaree of funds, it was a choice between a damaged business and a destroyed business. And Kessler and the other Third Party Defendants made it increasingly clear to Cattano and Campbell that any resistance would be met with even more abusive tactics.

39. In fact, Randy Mathis informed Campbell in July of 2011 that Congaree needed to obtain a capital infusion from outside sources so as to continue to pay these debts, debts that all involved knew Congaree did not owe. Mathis indicated that if Campbell could not find more investors, Triton Stone Group LLC—the national franchisor that Kessler and Mathis controlled—would swoop in under the franchise agreement and take control of all the assets of Congaree Triton Acquisitions LLC.

40. Kessler, Mathis, and Jensen, along with the other Fraud Defendants, were obsessed with forcing Congaree to pay these supplier debts because the suppliers in question would refuse to deal with the entire Triton supply chain unless the debts were paid, even if the debts were not technically owed by other members of the Triton supply chain.

41. The Third Party Defendants therefore benefitted greatly from their strong-arm tactics. Their supply chain was uninterrupted for materials they sold out of their own distributorships. Meanwhile, Congaree was saddled with paying old debt to the suppliers that Congaree did not owe.

42. In late July and early August of 2011, Cattano and Campbell saw how serious the Fraud Defendants were about carrying out their threats. First, a bit of background. From when it began operations in March of 2011, Congaree utilized the Port of New Orleans for international shipments of stone. The entire Triton network did, because the Jensen Family owns several logistics businesses in New Orleans in addition to owning Triton Stone New Orleans. The Jensen Family owns Transportation Consultants, Inc., which hauls stone over land, and Nola Yard, where the stone was stored.

43. By late July of 2011, the Third p Defendants' forced draining of Congaree's assets was beginning to take a serious toll on Congaree's ability to continue to do business. Congaree was unable to make several payments on debts (debts it did not owe) as demanded by the Third Party Defendants.

44. To prove the seriousness of their threats, as a result of Congaree's failure to make these extorted payments, Jensen and others associated with Triton Stone New Orleans sequestered a shipment of four containers of stone bound for Congaree in Charlotte. The shipment is worth about \$60,000 and remains held by Jensen and the Third Defendants in New Orleans.

45. The Third Party Defendants made clear by their conduct that this practice would continue until Congaree came up with funds to pay these debts.

46. Congaree would have failed then, however Campbell and Cattano were able to switch port operations to the Port of Charleston where Jensen and the other Third Defendants could not interfere with the transport of goods bound for Congaree.

47. Around this same time period, as Cattano and Campbell continued to be inundated with old debt from Triton Stone of Charlotte, Inc. and Triton Stone of Myrtle Beach, Inc., they discovered that the financial materials provided to them to induce them into purchasing the business were horrendously inaccurate.

48. In trying to get an idea of how much old debt was out there for Triton Stone of Charlotte, Inc. and Triton Stone of Myrtle Beach, Inc., Cattano and Campbell found that a tremendous number of invoices and expenses had been left out of the accounting system and the materials that were used to induce the asset purchase.

49. In fact, the parties had agreed that the asset sale price would be 3.8 times figure as the EBIDTA⁵ for the 12 months immediately preceding the sale. Jensen, Mathis and Kessler provided financial materials indicating the profit margins for the preceding 12 months was approximately \$800,00, leading to a sale price of approximately \$3 million.

50. However, Cattano and Campbell, with their accountant Randy May, discovered that the \$800,000 was completely false and fabricated.

⁵ EBIDTA means "Earnings Before Interest, Taxes, Depreciation, and Amortization" and is a similar concept to "net profit."

51. The way Jensen, Mathis, and Kessler fabricated the figure was to simply not enter a large number of invoices and other expenses into the accounting system used by Triton Stone of Charlotte, Inc. and Triton Stone of Myrtle Beach, Inc.

52. Jensen, Mathis, and Kessler simply did not pay a number of invoices or enter them into the system so as to artificially inflate the EBIDTA figure. This, in turn, artificially inflated the sale price by a factor of 3.8 times the net effect of the fraud.

53. Based upon the invoices and other expenses not input into the system, or at least those that have been discovered by Cattano and Campbell thus far, the actual profit margin figure was not \$800,000 but about \$350,000.

54. Under the sale price calculation the parties had agreed to, the sale price should have actually been about \$1.3 million, not \$3 million.

55. After these issues were raised to Kessler and various other Fraud Defendants, none offered any sort of help or compensation. The same attitude of "pay what we tell you to pay or else" prevailed and prevails to this day.

56. Finally, in late October and into November of 2011, Congaree simply could not afford to make its legitimate debt service, pay its operating expenses, and continue to pay debts it did not owe.

57. It appears that from March of 2011 until November of 2011, Congaree paid somewhere in the neighborhood of \$1.8 million on debts it did not owe because of the strong-arm tactics of Kessler, Mathis, Jensen, and the remaining Third Party Defendants.

58. At present, Congaree faced demands for approximately \$2.6 million in pre-acquisition debt that it does not owe but which Kessler, Mathis, Jensen, and the remaining Third Defendants expected Congaree to pay.

59. The basic result is this. Third Party Plaintiff believed he was buying \$3 million of assets for \$3 million and were not assuming any old debts. Instead, as a result of the horrendously improper conduct of Kessler, Mathis, Jensen, and their co-conspirators, the reality is that Third Party Plaintiff also became saddled with claims of approximately \$4.4 million in illegitimate debt.

60. Needless to say, Third Party Plaintiff did not intend to pay \$3 million for a business whose net worth is *negative* \$3.1 million. (Assets worth \$1.3 million less debt claims of \$4.4 million.)

61. Third Party Defendants' entire plan was to lure Cattano (and others, including proposed creditor plaintiffs) into the Triton operation so that Third Party Defendants could extract funds from them to pay debts either directly incurred by or at their direction or to pay debts that stood in the way of Third Party Defendants other business interests with other Triton distributorships.

62. Despite the likelihood of severe retaliation by Third Party Defendants, Third Party Plaintiff had no option but to bring suit and seek all available remedies, including restitution and other damages and a declaration by this Court that Cattano is simply not responsible for debts predating the APA, as the APA clearly indicates.

63. As a result of the above-referenced conduct of Third Party Defendant, Congaree was forced into Chapter 11 Bankruptcy, which was later converted to Chapter 7. Cattano has lost all assets invested, and potential earnings.

64. The foregoing narrative details substantial wrongdoing by the Third Party Defendants. However, the Defendants, acting in concert, have damaged the Plaintiffs in a number of other ways.

65. The remainder of the factual allegations mostly detail smaller issues than the multi-million dollar fraud claims explained above. In that regard, Plaintiffs are mindful of the twin commands by the Rules of Civil Procedure to plead concisely and to give Defendants fair notice

requirement without bogging down this pleading with inordinate detail.

66. In the APA, the sellers made a number of false representations. In fact, just about every significant portion of the APA that requires the sellers to warrant the condition of the assets or make some other statement of fact as to the business is simply false.

67. In the APA, the sellers warranted that the assets sold were unencumbered. Upon information and belief, at least one creditor of the sellers claims that material from that creditor was encumbered. To the extent that creditor is correct, the sellers' warranty to the contrary is false.

68. The sellers represented that a crane at the North Carolina location was an asset of this business sold to Congaree. However, Josh Kessler later claimed that the crane in his personal property and demanded and received a number of rent payments on that crane. If the crane was Kessler's then the sellers lied when they represented that the crane belong to the business. If the crane was owned by the businesses, then Kessler lied to obtain rent payments. Either way, Plaintiff's take the position that the crane was an unencumbered asset identified as part of this asset sale transaction and title passed to Congaree when the purchase closed. Even if Kessler was the rightful owner, he know or should have known the crane was an asset identified as part of the assets sold and had an obligation to speak up and explain the crane was his. He did not, and he is now stopped from arguing the point.

69. Kessler has personally claimed that Congaree Triton Acquisitions LLC owes him debts as a result of expenses he incurred working for the sellers. He has forced Congaree to make some payments on these alleged debts. These debts are wholly invalid per the APA and, upon information and belief, many if not all of them do not reflect legitimate reimbursable business expenses.

70. Upon information and belief, Kessler and his co-conspirators, including but not limited to Gary Sena, have actively encouraged employees of Congaree to behave in a disloyal fashion and to breach their fiduciary duties to Congaree. In some cases, it appears certain now-former employees of Congaree did behave in a disloyal fashion and breach their fiduciary duties to Congaree at the instance of Kessler and his coconspirators.

71. Upon information and belief, these breaches include but are not limited to sharing confidential information with Kessler and his co-conspirators, stealing inventory, selling inventory at below-market value to straw buyers working with Kessler, and various other tactics aimed at undermining Congaree's business to enable Kessler and his conspirators to take it over.

72. Circumstantial evidence strongly suggests Kessler and his co-conspirators were working with allies previously employed by Congaree to steal inventory, presumably for sale in Triton Stone Virginia or perhaps elsewhere.

73. Triton Stone Group LLC signed an inventory buyback agreement with Congaree as part of the asset sale transaction to induce Congaree and Greenfield Commercial Credit, LLC into the transaction. The agreement provided that Triton Stone Group LLC would, upon demand, purchase inventory from Congaree at 80% cost. Congaree relied upon this agreement and as financial problems mounted, attempted to exercise their rights under the agreement and requested that Triton Stone Group LLC purchase \$1.5 million in inventory under the buyback agreement. Triton Stone Group LLC ignored Congaree's request entirely and breached the buyback agreement, causing a severe chain reaction of fiscal problems which tremendously damaged Congaree's business.

73. Triton Stone Group LLC attempted to purchase materials from a Congaree Triton Acquisition LLC's Receiver at 40 cents on the dollar, well below the 80% cost contractual floor that had already been agreed to. Upon information and belief, some of the Defendants made similar attempts to raid Congaree by using straw buyers to make purchases at well below market

74. Upon information and belief, Josh Kessler and his co-conspirators planned to extract as much wealth as possible from Plaintiffs to pay their old debts. As the financial condition of Congaree worsened, Kessler and his co-conspirators planned to use takeover provision in the franchise agreement to take Congaree over. Kessler and his co-conspirators took steps to do this, including attempting to obtain possession of Congaree property.

75. Triton Stone Group LLC is a franchisor and as such owed various duties to its franchisees. Fundamentally, Triton Stone Group LLC should help its franchisees succeed. However, in this case, and upon information and belief in others, Triton Stone Group LLC actually operated to do serious harm to its franchisees by fraudulently and extortionately extracting wealth from them for the benefit of Josh Kessler and his coconspirators.

76. Triton Stone Group LLC is a franchisor and as such owes various duties to its franchisees. Fundamentally, Triton Stone Group LLC should help its franchisees succeed. However, in this case, and upon information and belief in others, Triton Stone Group LLC actually operates to do serious harm to its franchisees by fraudulently and extortionately extracting wealth from them for the benefit of Josh Kessler and his coconspirators.

77. Kessler et al. have done just about everything conceivable to disrupt the business operations of Congaree since it became clear Congaree's ownership group was not going to roll over for Kessler's scheme. This has included tortuously interfering with Congaree's relationship with vendors, suppliers, customers, employees, etc. Kessler et al. have engaged in an enormous number of communications with vendors, suppliers customers, employees, etc. which were designed to damage Congaree's ability to function in the marketplace and either continue contacting with these entities or obtain contracts with them in the future.

78. Kessler et al. routinely disregard formalities with regard to operating their business entities. The complexity of the Triton system is apparently designed to shield its principals from

extremely murky. Many of the various legal entities—LLCs, Incs., etc. are all run or owned by the same cast of characters: some combination of Kessler, Mathis, and Jensen. Under these circumstances, Plaintiffs seek to pierce the veil. Even if Kessler et al. observed all formalities and did not operate entities in a sham fashion, the corporate veil protects American commerce, not fraud, and should not be applied in this case.

79. Gary Sena and Triton Stone of Virginia LLC, operating at the direction of Josh Kessler upon information and belief, have pursued baseless criminal charges in Virginia against Plaintiffs Cattano and Campbell as a result of Cattano and Campbell stopping payment on post-dated checks to Fraud Defendants after their fraud became apparent. Stopping payment on a post-dated check is not a crime in Virginia, and even if it could be normally prosecuted as a crime, a victim of fraud has an absolute right to stop payment on checks procured with fraud.

FOR A FIRST CAUSE OF ACTION
FRAUD

80.

The foregoing actions constitute outright, aggressive, fraud committed by the Fraud Defendants.

81.

Representations made by the Third Party Defendants as to the finances of such Defendants were both false and material as described above.

82.

The Third Party Defendants knew these representations were false, or they acted with a reckless disregard as to their truth or falsity. The recipients of the representations had no idea they were false and had the right to rely on them and did so rely. Serious injury resulted.

83.

Third Party Plaintiff seeks all remedies available under the law, including punitive damages.

FOR A SECOND CAUSE OF ACTION

CONSTRUCTIVE FRAUD

84. In the event all elements of fraud are proven but for intent, Third Party Plaintiff seeks to assert a claim for constructive fraud and seek all remedies available under law, including punitive damages.

FOR A THIRD CAUSE OF ACTION
FRAUDULENT CONCEALMENT

85. The APA discloses the sort of relationship between Third Party Plaintiff and Third Party Defendants such that Third Defendants had a duty to disclose the unpaid invoices and other concealed expenses of the Defendants.

86. Third Party Defendants concealed and failed to disclose these facts in a fraudulent manner, constituting fraudulent concealment.

87. Third Party Plaintiff seeks all remedies available under the law, including punitive damages.

**FOR A FOURTH CAUSE OF ACTION
NEGLIGENT MISREPRESENTATION**

88. The Third Party Defendants made false representations, described above, to Third Plaintiff and had pecuniary interests in doing so. These defendants owed a duty of care to Third Party Plaintiff to ensure the communication of truthful information. These defendants violated that duty by failing to exercise due care.
89. Third Party Plaintiff justifiably relied on these representations and suffered pecuniary losses as the proximate result of reliance on the representations.

90. Third Party Plaintiff seeks all remedies available under the law, including punitive damages.

FOR A FIFTH CAUSE OF ACTION

BREACH OF CONTRACT

91. The actions and omissions of Third Party Defendants, as described above, constitutes breach of contract and breach of the duty of good faith and fair dealing.
92. Third Party Plaintiff seeks all remedies available under the law

FOR A SIXTH CAUSE OF ACTION

BREACH OF CONTRACT ACCOMPANIED BY A FRAUDULENT ACT

93. The breach of contract and breach of the duty of good faith and fair dealing complained of in the prior cause of action were accompanied by fraudulent, dishonest acts as described herein.

94. The Third Party Plaintiff seeks all remedies available under the law, including punitive damages

**FOR A SEVENTH CAUSE OF ACTION
UNFAIR TRADE PRACTICES**

95. The conduct complained of herein is a complex scheme of fraud and business extortion obviously constituting unfair trade practice. If the activities in this case are not an unfair trade practice, then it is difficult to see what could be an unfair trade practices.

96. Not only has it caused serious pecuniary damage to Third Party Plaintiff, it directly affects the public interest because the Third Party Defendants, as explained above, are actively seeking further investors who will sink money into some aspect of the Triton operation only to have that money be used to pay unrelated debts.

97. Third Party Defendants' conduct is completely intentional and predatory.

98. Third Party Plaintiff seeks all remedies available under the law, including but not limited to treble damages, payment of attorney's fees, and punitive damages.

**FOR EIGHT CAUSE OF ACTION
INDEMNIFICATION**

99. Third Party Defendants owe a contractual and equitable indemnification to Third Party Plaintiff as a result of the matters described herein.
- Third Party Plaintiff seeks all remedies available under the law.

**FOR A NINTH CAUSE OF ACTION
CONVERSION**

100. By detaining the four containers described above in New Orleans, Defendants have committed conversion as to the property within those containers.
101. Third Party Plaintiff seeks all remedies available under the law.

**FOR A TENTH CAUSE OF ACTION
UNJUST ENRICHMENT**

102. Some or all of the Third Party Defendants have been unjustly enriched as a result of their conduct herein, including but not limited to forcing Third Party Plaintiff to pay on debts that arose under the Asset-Seller rather than Congaree.
103. Plaintiff seeks all remedies available under law.

**FOR AN ELEVENTH CAUSE OF ACTION
INTENTIONAL INTERFERENCE WITH CONTRACTUAL
RELATIONS**

104. Third Party Defendants have intentionally interfered with Plaintiffs' ability to make debt service payments to legitimate creditors.

105. In addition to the above-described matters, Third Party Defendants have caused serious damage to the contractual and business relationships of Third Party Plaintiff, including but not limited to the relationship with Greenfield Commercial Credit, a relationship that was in excellent shape until Third Party Defendants successfully strong-armed Plaintiffs out of enough money that Plaintiffs could no longer comply with their obligations to Greenfield.

106. Plaintiffs seek all remedies available under the law, including punitive damages.

FOR A TWELFTH CAUSE OF ACTION

CIVIL CONSPIRACY

107. In the event that Plaintiff is unable to state a claim for relief or survive summary judgment on the foregoing causes of action, Third Party Plaintiff asserts each of the facts above as facts in support of a cause of action for civil conspiracy. Special damages are all those damages pled above, including but not necessarily limited to \$1.7 million in overpayment for the assets, \$1.8 million in forced payments on debts not owed, and all damages to the business caused by this matter.

108. Some Third Party Defendants engaged in activities that are not in and of themselves tortious acts, but all were in furtherance of a conspiracy to defraud led by Josh Kessler. Plaintiff is not so interested in the name of the cause of action under which they recover as they are in a recovery, but to the extent the acts complained of herein do not legally relate to another theory of recovery, Plaintiffs submit them in support of their civil conspiracy claim.

**FOR A THIRTEENTH CAUSE OF ACTION
BREACH OF DUTY OF LOYALTY**

109. Certain of the Third Party Defendants owed duties of loyalty to the Third Party Plaintiff during the time they engaged in the improper acts described herein.

Plaintiff seeks all remedies available under the law, including punitive damages.

**FOR A FOURTEENTH CAUSE OF ACTION
BREACH OF FIDUCIARY DUTY**

110. Certain of the Third Party Defendants owed fiduciary duties to the Plaintiff during the time they engaged in the improper acts described herein.

111. Plaintiff seeks all remedies available under the law, including punitive damages.

FOR A FIFTEENTH CAUSE OF ACTION

ABUSE OF PROCESS

112. Third Party Defendants Gary Sena and Triton Stone of Virginia LLC have willfully pursued baseless criminal charge against Plaintiffs as described above. The pursuit of these baseless charges was an improper act for which there was an improper motive: smearing Plaintiffs for collateral advantage in the marketplace.

113. Plaintiff seeks all recoveries available under law, including punitive damages.

SIXTEENTH CAUSE OF ACTION

MALICIOUS PROSECUTION

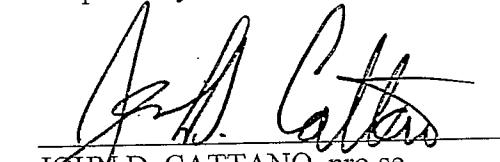
114. Defendants Gary Sena and Triton Stone of Virginia LLC have willfully pursued baseless criminal charge against Plaintiffs as described above. A matter before the Portsmouth police department was terminated in Third Party Plaintiff's favor. Third Party Defendants pursued this matter maliciously, knowing that the Third Party Plaintiff had committed no crime but seeking to smear Plaintiffs for collateral advantage in the marketplace.

115. Third Party Plaintiff seek all recoveries available under law, including punitive damages.

PRAYER FOR RELIEF

Wherefore, having fully pled the causes of action within the Third Party Complaint, the Third Party Plaintiff demand a jury trial on all issues triable by jury and pray for a judgment awarding all relief requested above or otherwise available under the causes of action pled.

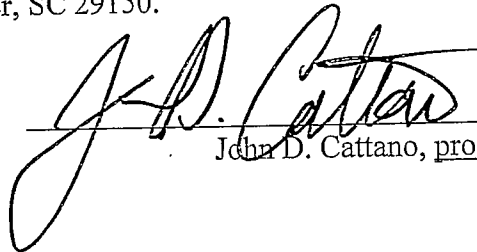
Respectfully submitted,



JOHN D. CATTANO, pro se
1813 Marion Street
Columbia, SC 29201
(803)254-4500

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was mailed this ²² day of October, 2012, to: Anthony D. Hoefer, Esquire, Levi, Wittenberg, Harritt, Hoefer & Davis, 207 N. Washington Street, Sumter, SC 29150.



John D. Cattano, pro se

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Emser Tile, LLC

Plaintiff,

-vs-

John D. Cattano,

Defendant.

C. A. 2012-CP-40-05587

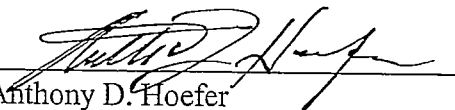
R E P L Y

Plaintiff in Reply to the Defendant's Affirmative Defense of Off-Set, as contained in his Answer, alleges as follows.

1. That it denies each and every allegation of the Affirmative Defenses and specifically denies that the Defendant is entitled to any Off-Set or Recoupment or any Affirmative Relief whatsoever.

LEVI, WITTENBERG, HARRITT,
HOEFER & DAVIS, P. A.

By



Anthony D. Hoefer
Attorney for Plaintiff

P. O. Drawer 730
Sumter, S C 209151-0730
803-773-8431

October 26, 2012.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMONPLEAS
	)	
COUNTY OF RICHLAND	)	CA #2012-CP-40-05587
Emser Tile, LLC	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	PLAINTIFF'S REQUEST FOR
	)	ADMISSIONS TO DEFENDANT
John D. Cattano	)	
	)	
Defendant.	)	
	)	

TO: JOHN D. CATTANO, THE DEFENDANT APPEARING PRO SE:

YOU WILL PLEASE TAKE NOTICE that, pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, the Plaintiff, by its undersigned attorneys, requests that Defendant make the following admissions of fact within the time provided by law after service hereof, such admissions being for the purpose of this action only.

YOU ARE REQUESTED TO ADMIT:

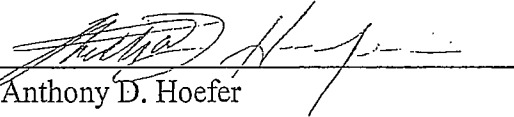
1. That, with reference with the Application for Credit, a copy of which is attached to Plaintiff's Complaint and also attached hereto as Exhibit I, the true signature of John D. Cattano is contained thereon. If you deny any or all of this paragraph, please specify in detail in what respect.
2. That, with reference to the itemized Statement of Account attached to Plaintiff's Complaint, a copy of which is attached hereto as Exhibit II, someone who was duly authorized to act on behalf of Triton Stone Group of Charlotte, a/k/a Congaree Triton Acquisitions LLC, did order and receive the certain goods and merchandise as designated on the Statement of Account at the agreed upon prices shown on said Statement of Account. If you deny any or all of this paragraph, please specify in detail in what respect.
3. That, after giving all credit due, the balance due from Triton Stone Group of Charlotte, a/k/a Congaree-Triton Acquisitions, LLC, at the time it filed it's Petition in Bankruptcy was in the principal sum

of Fifty-Five Thousand Two Hundred Sixty-Three and 24/100. If you deny any or all of this paragraph, please specify in detail in what respect.

SHOULD A SWORN DENIAL OF THE REQUEST BE RECEIVED AND PLAINTIFF HEREAFTER PROVE THE GENUINENESS OF THE TRUTH OF THE MATTERS OF FACT SET FORTH ABOVE, PLAINTIFF WILL APPLY TO THE COURT FOR AN ORDER REQUIRING THE DEFENDANT TO PAY THE REASONABLE EXPENSES, INCLUDING COSTS OF DEPOSITIONS, TRAVEL EXPENSES, AND WITNESS FEES AND ATTORNEY FEES INCURRED IN MAKING SUCH PROOF AS SET FORTH UNDER RULES 36 AND 37, SOUTH CAROLINA RULES OF CIVIL PROCEDURE.

This request is made in good faith; the subject hereof is genuinely relevant to this case, and evidence of the subject hereof is necessary to the establishment of my client's cause of action or defense.

LEVI, WITTENBERG, HARRITT,
HOEFER & DAVIS, P. A.

By 
Anthony D. Hoefer
Attorney for Plaintiff
Post Office Drawer 730
Sumter, South Carolina 29151-0730
803-773-8431 Phone
803-775-9011 Fax

January 22, 2013.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Emser Tile

PLANTIFF

VS.

John D. Cattano

DEFENDANT

CIVIL CASE NUMBER 2012-CP-40-05587

IN THE COURT OF COMMON PLEAS

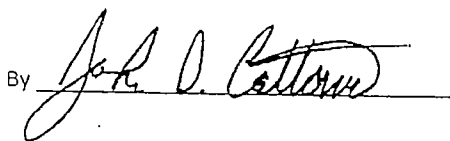
DEFENDANT'S ANSWERS TO PLAINTIFF'S
REQUEST FOR ADMISSIONS

John D. Cattano, the Defendant appearing PRO SE', and given notice on March 7, 2013, to Plaintiff's Request for Admissions, does hereby make the following answers:

1. Admitted
2. Admitted
3. Denied. Congaree Triton Acquisitions, LLC made two payments to Plaintiff on April 12, 2012 and August 2, 2012, that totaled \$54,996.62 and were wrongfully applied towards pre-acquisition invoices that Congaree Triton Acquisitions, LLC was not responsible for paying. Therefore, the Plaintiff's demand of \$55,263.24 was set-off by the above pre-acquisition debt payments.

Defendant asserts that the amount owed to Plaintiff is \$266.62.

By



John D. Cattano, Pro Se'
1813 Marion Street
Columbia, SC 29201
803-381-5850

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Emser Tile)

Plaintiff,)

-vs-)

John D. Cattano)

Defendant.)
_____)

Case #2012-CP-40-05587

NOTICE OF MOTION

AND MOTION FOR

SUMMARY JUDGMENT

TO: JOHN D. CATTANO, THE DEFENDANT ABOVE NAMED:

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, by its undersigned attorneys, will move before the Honorable Resident or Presiding Judge of the Fifth Judicial Circuit at the Richland County Courthouse, no sooner than ten (10) days from the date of service hereof, for an Order for Summary Judgment under Rule 56 of the South Carolina Rules of Civil Procedure, in favor of the Plaintiff and against the said Defendant for the relief prayed for in Plaintiff's Complaint, said Motion to be made from the Pleadings in this case, and Affidavit filed simultaneously herewith under Rule 36 of the South Carolina Rules of Civil Procedure, the ground and basis of said Motion being that, in light of the aforesaid and otherwise, there is no remaining genuine issue as to any material fact raised by the Pleadings, and that the Plaintiff is entitled to Judgment as a matter of law.

LEVI, WITTENBERG, HARRITT,
HOEFER & DAVIS, P.A.

By


Anthony D. Hofer
Attorney for Plaintiff

P.O. Drawer 730
Sumter, SC 29151-0730
(803) 773-8431

August 23, 2013.

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND)

Emser Tile) C. A. #2012-CP-40-05587
)

Plaintiff,)

-vs-)

AFFIDAVIT
)

John D. Cattano,)

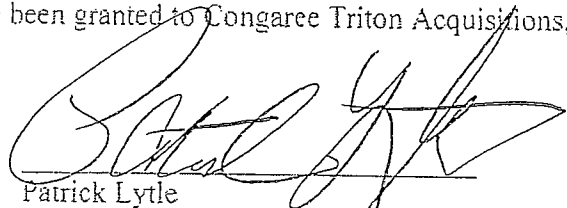
Defendant.)

PERSONALLY appeared before me, Patrick Lytle, who on oath states that he is a Senior Credit/Collections Analyst and is presently employed in the Accounts Receivable Credit Department, and at all times pertinent to the above captioned action was employed by Emser Tile in this capacity; that as part of his ordinary and customary duties, he handles the Accounts Receivable for Emser Tile; that he was in charge of the account for Triton Stone of Charlotte and Triton Stone of Myrtle Beach, the assets of which were purchased by Congaree Triton Acquisitions, LLC on March 11, 2011; that on March 11, 2011, there was a balance due from Triton Stone of Charlotte and Triton Stone of Myrtle Beach in the amount of fifty six thousand Eight Hundred and 90/100 \$(56,822.90) Dollars; that, after March 11, 2011, the employees of Triton Stone of Charlotte and Triton Stone of Myrtle Beach acted on behalf of Congaree Triton Acquisitions LLC, and ordered additional merchandise on open account;

That by email dated April 8, 2011, a copy of which is attached hereto, I advised Annie Jones the Accounting Manager of Triton Stone Charlotte, Triton Stone of Myrtle Beach and Congaree Triton Acquisitions LLC. that additional orders could not be released without payment being made against past due accounts; that by check dated April 12, 2011, in the sum of Twenty Two Thousand Seventy-One and 45/100 (\$22,071.45) Dollars, Annie Jones specified the invoices that were to be paid. copies of which are attached hereto; that by email of April 18, 2011, I confirmed to Annie Jones that invoices that were paid, and that by email dated April 21, 2011, a copy of which is attached, she advised how the remainder was to be applied; that by email dated June 27, 2011, copy of which is enclosed, I confirmed to Nick Borg the

Office Manager/Sales Manager/Controller of Triton Stone Group that the credit of Forty Seven Thousand Five Hundred and 00/100 (\$47,500.00) Dollars for goods and merchandise purchased by Emser Tile from Triton Stone Charlotte was to be applied against the designated invoices, copy of which is attached; that by email dated June 28, 2011, copy of which is attached, I forwarded the Statement reflecting the open invoices to which the Forty Seven Thousand Five Hundred and 00/100 (\$47,500.00) Dollar credit was to be applied; that, by email dated June 29, 2011, I received an email from Mandy Naman advising that the credit should be applied to the oldest invoices, copy of which is attached; that, by email dated July 26, 2011, to Nick Borg, copy of which is attached hereto, I confirmed the application of the Forty Seven Thousand Five Hundred and 00/100 (\$47,500.00) Dollar credit.

That, after March 11, 2011, the date that Congaree Triton Acquisitions LLC acquired Triton Stone of Charlotte and Triton Stone of Myrtle Beach, open account sales in the amount of Eighty Nine Thousand one Hundred fifty six (\$89,156.63) Dollars were made; that, but for the application of payment to the oldest invoices, new credit would not have been granted to Congaree Triton Acquisitions, LLC.


Patrick Lytle
Senior Credit/Collections Analyst
Accounts Receivable Credit Department

Sworn to before me this 21
day of August, 2011.

See attached
Notary Public for the State of _____

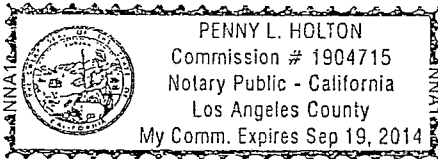
My Commission Expires: _____

CALIFORNIA JURAT

State of California }
County of Los Angeles } ss.

Subscribed and sworn to (or affirmed) before me on
this 16 th day of August, 2013, by

Patrick Lytle



proved to me on the basis of satisfactory evidence
to be the person who appeared before me.

Penny L. Holton

OPTIONAL

Description of Attached Document

Title or Type of Document: Affidavit

Document Date: no date Number of pages 2

Signer (s) Other Than Named Above:

04/13/2011 WED 13:58 FAX 7045831329

0003/003

CONGAREE TRITON ACQUISITIONS, LLO

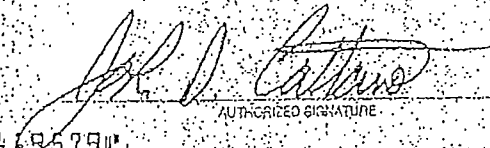
10088

Invoice#	Description	Date	Amount	Paid	Total Paid
2536114		1/7/2011	\$429.03	\$429.03	\$429.03
2518180		1/14/2011	\$424.89	\$424.89	\$853.92
2536913		1/17/2011	\$21.29	\$21.29	\$875.21
2536016		1/18/2011	\$806.31	\$806.31	\$1,681.52
2537356		1/18/2011	\$92.40	\$92.40	\$1,773.92
2536919		1/18/2011	\$6.16	\$6.16	\$1,780.08
2541696		1/19/2011	\$170.55	\$170.55	\$1,950.63
2574218		1/19/2011	\$142.08	\$142.08	\$2,092.71
2559755		1/26/2011	\$1,062.12	\$1,062.12	\$3,154.83
2589580		1/27/2011	\$54,250.00	\$10,000.00	\$13,154.83
2560186		1/31/2011	\$312.33	\$312.33	\$13,467.16
2566194		2/1/2011	\$975.00	\$975.00	\$14,442.16
2586077		2/3/2011	\$90.11	\$90.11	\$14,532.27
2566743		2/4/2011	\$130.00	\$130.00	\$14,662.27

4/12/2011 10088

Emser Tile

\$22,071.45

CONGAREE TRITON ACQUISITIONS, LLC 1813 Milton Street Columbia, SC 29201		CAROLINA FIRST CAROLINA FIRST IS A TRADE NAME OF TO BANK, N.A. 67-219/639	10088 DATE
PAY TO THE ORDER OF:		AMOUNT 4/12/2011 10088 \$22,071.45	
Emser Tile PO Box 69339 Los Angeles, Ca 90069-0339			
Twenty Two Thousand Seventy One and 45/100			
		 AUTHORIZED SIGNATURE	
1010088 10534021971171034695791			



FACSIMILE TRANSMITTAL SHEET

TO:	FROM:
Patrick	Annie Jones
COMPANY:	DATE:
Finser	4/12/11
FAX NUMBER:	TOTAL NO. OF PAGES INCLUDING COVER:
775-655-8445	# 3
PHONE NUMBER:	SENDER'S PHONE NUMBER:
	704-583-1328
RE:	SENDER'S FAX NUMBER:
	704-583-1329

ACH check payment

☒ URGENT	☐ FOR REVIEW	☐ PLEASE COMMENT	☐ PLEASE REPLY	☐ PLEASE RECYCLE
NOTES/COMMENTS:				

11415 GRANITE ST. STUB CHARLOTTE, NC 28273

50

(Exhibit 2)

Patrick Lytle - Accounts Receivable (CAFAR)

From: Mandy Naman <mandy.naman@tritonstone.com>
Sent: Wednesday, June 29, 2011 6:41 AM
To: Patrick Lytle - Accounts Receivable (CAFAR)
Subject: RE: Triton Stone Group Application of: \$47,500.00

Apply to oldest invoices is fine. Just send me an updated statement when complete. ☺

Thank you,

*Mandy Naman
Business Manager
Triton Stone Group*

11415 Granite Street, Ste. B | Charlotte, NC 28273
P: 704.583.1328 | F: 704.583.1329
Mandy.Naman@tritonstone.com

From: Patrick Lytle - Accounts Receivable (CAFAR) [<mailto:PatrickLytle@emser.com>]
Sent: Tuesday, June 28, 2011 8:58 AM
To: Mandy Naman; Judy Weinberg - Accounts Receivable (CAFAR); Eric Barnett - Charlotte, NC (NCCLT)
Cc: Paul Jensen - Charlotte, NC (NCCLT)
Subject: RE: Triton Stone Group Application of: \$47,500.00

Hi Mandy,

Please see the attached. We just wanted to confirm to which invoices we will be applying the offset to. I forwarded the spreadsheet to Nick last night also. Please feel free to get in touch should you have any questions. Talk to you soon. Thanks.

Patrick Lytle
Sr. Credit/Collections Analyst
Emser Tile
Ph# 323-650-2000 Ext-365
Fax# 775-655-8445

From: Mandy Naman [<mailto:mandy.naman@tritonstone.com>]
Sent: Tuesday, June 28, 2011 5:50 AM
To: Judy Weinberg - Accounts Receivable (CAFAR); Eric Barnett - Charlotte, NC (NCCLT); Patrick Lytle - Accounts Receivable (CAFAR)
Cc: Paul Jensen - Charlotte, NC (NCCLT)
Subject: RE: Triton Stone Group Application of: \$47,500.00

I don't have any attachments so I cannot look at what you applied the funds too

Thank you,

Judy Weinberg - Accounts Receivable (CAFAR)

From: Mandy Naman [mandy.naman@tritonstone.com]
Sent: Tuesday, June 28, 2011 6:16 AM
To: Patrick Lytle - Accounts Receivable (CAFAR); Judy Weinberg - Accounts Receivable (CAFAR); Eric Barnett - Charlotte, NC (NCCLT)
Cc: Paul Jensen - Charlotte, NC (NCCLT)
Subject: RE: Triton Stone Group Application of: \$47,500.00
Got it. I am waiting on the owner to come in. He is still really involved in this process so I have to talk to him first before I tell you anything. ☺

Thank you,

*Mandy Naman
Business Manager
Triton Stone Group*

11415 Granite Street, Ste. B | Charlotte, NC 28273
P: 704.583.1328 | F: 704.583.1329
Mandy.Naman@tritonstone.com

From: Patrick Lytle - Accounts Receivable (CAFAR) [mailto:PatrickLytle@emser.com]
Sent: Tuesday, June 28, 2011 9:07 AM
To: Mandy Naman; Judy Weinberg - Accounts Receivable (CAFAR); Eric Barnett - Charlotte, NC (NCCLT)
Cc: Paul Jensen - Charlotte, NC (NCCLT)
Subject: RE: Triton Stone Group Application of: \$47,500.00

Mandy,

We want to apply the money on account to your open invoices prior to our month end (which is today), so please review the spreadsheet and let us know that you are in agreement with the way it's going to be applied. That way we can avoid any confusion down the road. Please get back to us as soon as possible. Thanks.

Patrick Lytle
Sr. Credit/Collections Analyst
Emser Tile
Ph# 323-650-2000 Ext-365
Fax# 775-655-8446

From: Mandy Naman [mailto:mandy.naman@tritonstone.com]
Sent: Tuesday, June 28, 2011 5:50 AM
To: Judy Weinberg - Accounts Receivable (CAFAR); Eric Barnett - Charlotte, NC (NCCLT); Patrick Lytle - Accounts Receivable (CAFAR)
Cc: Paul Jensen - Charlotte, NC (NCCLT)
Subject: RE: Triton Stone Group Application of: \$47,500.00

I don't have any attachments so I cannot look at what you applied the funds too

Thank you,

Mandy Naman

8/9/2013

52

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

)
) IN THE COURT OF COMMON PLEAS
)

Emser Tile

C.A. #2012-CP-40-05587

)
)
) Plaintiff,)
)

vs

John D. Cattano

)
)
)
) Defendant)

RICHLAND COUNTY
FILED
2012 SEP -3 PM 3:23
JEANETTE W. MCBRIDE
C.C.P. & G.S.
AFFIDAVIT

DEFENDANT'S AFFIDAVIT IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGEMENT

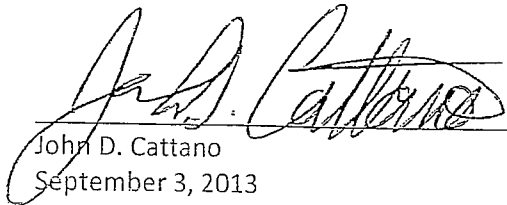
PERSONALLY appeared before me, John D. Cattano, who on oath states that he was the Chief Financial Officer of Congaree Triton Acquisitions, LLC (dba "Triton Stone Group") from March 11, 2011, through June 29, 2012, which was the date the company entered Chapter 7 bankruptcy.

On March 11, 2011, the officers of Congaree Triton Acquisitions, LLC executed the Asset Purchase Agreement and acquired all of the assets of Triton Stone of Myrtle Beach, Inc and Triton Stone of Charlotte, Inc. The Asset Purchase Agreement confirms that all pre-acquisition liabilities were the responsibility of the selling parties and were not included in the acquisition (attached is a copy of the Asset Purchase Agreement that is incorporated herein by reference).

No employee of the new company had the authority to bind Congaree Triton Acquisitions, LLC to pre-acquisition debts, and only the officers of Congaree Triton Acquisitions, LLC, John D. Cattano as the Chief Financial Officer and Carroll A. Campbell, III as the Chief Executive Officer, had the authority to authorize the payment of pre-acquisition debts.

The payment of \$22,071.45 on April 12, 2011, and the credit of \$47,500 on June 28, 2011, were to be applied to post-acquisition invoices.

As such, genuine issues of material facts exist in this case, and the Plaintiff's motion should be denied.


John D. Cattano
September 3, 2013

Subscribed and sworn to (or affirmed) before me on this 3rd day of September, 2013, by John D. Cattano, proved to me on the basis of satisfactory evidence to be the person who appeared before me.

Notary for the State of SL - Richmond Co

My Commission Expires: 1/16/17



STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Emser Tile)

C. A. #2012-CP-40-05587

Plaintiff,)

-vs-)

AFFIDAVIT FOR ATTORNEY'S FEES

John D. Cattano,)

Defendant.)

Personally appeared before me Anthony D. Hoefer, who, on oath, states that he is attorney for Plaintiff above named; that, as attorney of record, the following is provided pursuant to the requirements of Blumberg v Nealco, Inc., 427 S.E. 2nd 659 (S.C. 1993), in support of Plaintiff's request for attorney's fees, as alleged in its Complaint and to which was attached proper documentation of Plaintiff's entitlement to same.

1. THE NATURE, EXTENT AND DIFFICULTY OF THE LEGAL SERVICES RENDERED.

That the undersigned, in representing the Plaintiff to recover the amount as set forth in its Complaint, provided legal services that include, but are not limited to, the following: receiving and reviewing the file; writing a demand letter to Defendant; sending numerous items of correspondence to the client; preparing a Summons and Complaint with itemized statement; obtaining signed Verification from Plaintiff; filing the Complaint with the Clerk of Court; forwarding pleadings to the Sheriff for service; filing the Affidavit of Service; preparing written discovery; preparing a Motion for Summary Judgment with Affidavit thereon; preparing Memorandum of Law; preparing an Order for Judgment; attending two roster meetings' appearance to argue a Motion for Summary Judgment.

2. THE TIME AND LABOR NECESSARILY DEVOTED TO THE CASE.

That up to the current time, the undersigned has expended approximately 22 hours in representing the Plaintiff in this matter;

3. THE PROFESSIONAL STANDING OF COUNSEL.

That the undersigned has been practicing law in both Federal and State Courts in excess of 29 years in civil matters, with special emphasis in the commercial law field; that the undersigned has been a member of the Commercial Law League of America since 1979, has attended seminars related to commercial law matters and has annually fulfilled his continuing legal education requirements;

4. **THE CONTINGENCY OF THE COMPENSATION.**

That the undersigned represents the Plaintiff at a contingency rate of 15% of the sums recovered on its behalf if paid in full, together with a Five Hundred and 00/100 (\$500.00) Dollar non-contingent fee.

5. **A FEE CUSTOMARILY CHARGED IN LOCALITY FOR SIMILAR LEGAL SERVICES.**

That, depending upon the expected recovery, the undersigned is informed and believes that a range of 33.3% to 45% is customary on a contingency fee arrangement or an hourly rate between \$200.00 and \$300.00 per hour;

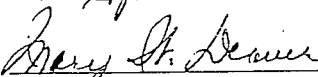
6. **BENEFICIAL RESULT.**

That the undersigned has performed services and labor as set forth herein above and, although no recovery has been made, the basis for judgment has been established, which would place the Plaintiff in a position to pursue its post-judgment remedies if the Order for Judgment is granted and that the Plaintiff believes that an award of fifteen (15%) per cent in the amount of Eight Thousand Two Hundred Eighty-Nine and 00/100 (\$8,289.00) Dollars is an appropriate award;

That the undersigned affirms that this Affidavit is a factual statement based upon the information and belief of the undersigned, the pleadings filed, the laws of this State and is submitted to this Court for an Order for Judgment by Default and an award of attorney's fees on behalf of the Plaintiff.


Anthony D. Hoefer

Sworn to before me this 30th
day of September, A.D., 2013.


Notary Public for South Carolina 
My Commission Expires: July 13, 2020

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2012-CP-40-05587

RECEIVED

DEC 19 2013

SC Court of Appeals

EMSER TILE, LLC,

Respondent,

v.

JOHN D. CATTANO,

Appellant.

RECEIVED

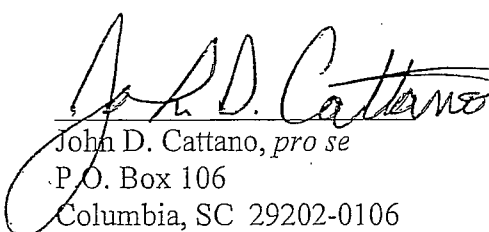
APR 28 2014

SC Court of Appeals

NOTICE OF APPEAL

John D. Cattano appeals the order/judgment of the Honorable G. Thomas Cooper, Jr. dated November 20, 2013. Appellant received written notice of entry of this order/judgment on December 9, 2013.

December 19, 2013


John D. Cattano, *pro se*
P.O. Box 106
Columbia, SC 29202-0106
803-381-5850
cattanoj@aol.com

Other Counsel of Record:

Anthony D. Hoefer, Esq.
Levi, Wittenberg, Harritt, Hoefer & Davis, PA
270 N. Washington Street
P.O. Drawer 730
Sumter, South Carolina 29151
803.773.8431/803.775.9011 (f)

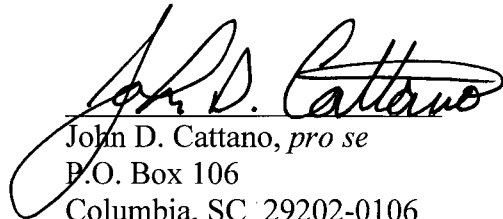
RECEIVED

MAR 24 2014

SC Court of Appeals

CERTIFICATE OF COUNSEL

The undersigned certifies that the Amended Record on Appeal complies with Rule 210 (b), SCACR.


John D. Cattano, *pro se*
P.O. Box 106
Columbia, SC 29202-0106
803-381-5850
cattanoj@aol.com

RECEIVED

APR 28 2014

SC Court of Appeals