

SUPREME COURT - STATE OF NEW YORK

PRESENT: HON. R. BRUCE COZZENS, JR.

Justice.

TRIAL/IAS PART 7
NASSAU COUNTY

SOUTHAMPTON BRICK AND TILE, LLC d/b/a
PRIMA MASON SUPPLY,

Plaintiff(s),

-against-

INDEX #21826/2006

CJG LANDSCAPE DESIGN & MANAGEMENT, INC.
D/B/A CJG ASPHALT & MASON CONTRACTING
AND CARL J. GIROLAMO, JR. A/K/A
CARL J. GIROLAMO,

Defendant(s).

The plaintiff brings this action to recover the value of goods sold and delivered to the defendants for which payment has not been received. Pursuant to a credit agreement plaintiff also seeks interest and attorney's fees.

Craig Lynn, chief operating officer, testified on behalf of plaintiffs. He stated that he was familiar with CJG Landscape Design & Management, Inc. (CJG) and that the plaintiff and defendants had entered into a credit agreement. He testified that the individual defendant, Carl J. Girolamo (Girolamo) had signed the agreement with a personal guarantee. He then testified how the plaintiff's clients either pick up or have delivered materials. The invoices for the goods sold were entered into evidence. An accounting statement for the defendants was also entered into evidence. He further stated that the plaintiff has incurred legal fees of \$10,901.25 in prosecuting this action. The plaintiff presented no other witnesses.

The defendant Girolamo testified. He is the owner of CJG, a corporation. He confirmed that his business had an account with the plaintiff. He testified that he filled out the front side of the credit application but denied that he signed the reverse side which contained the personal guarantee. He also stated that he signed for some of the goods but not all of them. On cross-examination he was read the portion of his transcript where he stated that the signature on the credit application was his signature. He stated that he was confused at the deposition and re-

iterated that he did not sign the agreement.

The defendants also produced Joe Paterno, a former operations manager for the plaintiff. He was terminated by the plaintiff in May 2006. He had Girolamo fill out the front side of the credit application but the defendant refused to sign the personal guarantee. After leaving the plaintiff, he has maintained a business relationship with Girolamo.

On rebuttal, Craig Lynn testified that he would not have granted credit to the defendants if the personal guarantee had not been signed.

The invoices for materials provided to the defendant total \$56,559.01. Although Girolamo claimed that some of the invoices were not signed, he never identified the value of goods which were in question. Plaintiff shall have judgment for \$56,559.01. Pursuant to the credit agreement as well as the invoices, plaintiff is also entitled to interest at 1.5%. Such interest is \$28,148.00.

Whether plaintiff is entitled to recover attorney's fees as well as enter judgment against the defendant Girolamo rests upon the validity of the personal guarantee. Girolamo has been equivocal about his signature. He admitted the signature at the deposition but denied it at trial.

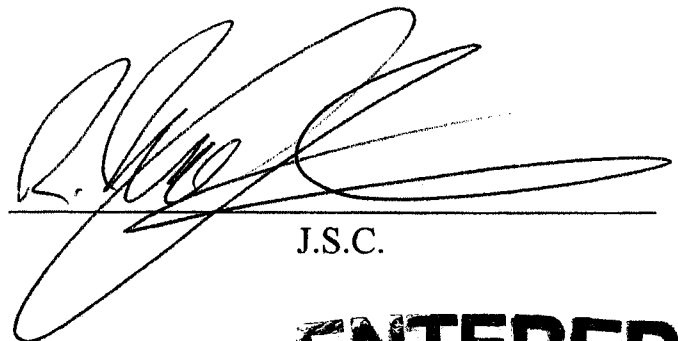
Girolamo entered into evidence a copy of his driver's license for comparison of signatures. Their similarity does not refute the authenticity of the signature on the application for credit. Therefore, the plaintiff is entitled to recover attorney's fees in the amount of \$10,901.25 and enter judgment against the individual defendant as well as his company.

Plaintiff shall enter judgment against the defendants for \$95,608.26 with statutory interest from the date this Order is entered.

The foregoing constitutes the Court's Decision and Order.

Submit Judgment on Notice.

Dated: JUN 16 2009



J.S.C.

ENTERED

JUN 22 2009

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**