ORIGINAL

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF LEWIS

PAPERWORKS INDUSTRIES, INC., Plaintiff,	)	Index No. CA2016-000124
v.	)	**COMPLAINT**
CLIMAX MANUFACTURING COMPANY, Defendant.	)	

Plaintiff PaperWorks Industries, Inc. ("Plaintiff"), by its undersigned attorneys, seeks to recover money due and owing from defendant Climax Manufacturing Company ("Defendant" and, together with Plaintiff, the "Parties"), in connection with outstanding invoices owed by Defendant to Plaintiff and alleges as follows:

PARTIES AND JURISDICTION

1. Plaintiff manufactures and supplies integrated paper packaging solutions. Plaintiff's corporate headquarters are located at 40 Monument Road, Bala Cynwyd, Pennsylvania 19004.

2. Defendant is a manufacturer of folding cartons and has a principal place of business located at 7840 State Route 26, Lowville, New York 13367.

3. Jurisdiction exists, and venue is proper, in this Court, as Defendant does business in New York State, and has its principal place of business in, and transacts business, in Lewis County.

NATURE OF THE ACTION

4. Plaintiff and Defendant entered into a series of agreements, pursuant to which Defendant was obligated to pay Plaintiff for manufactured paper products shipped to Defendant (the "Sales Agreements"). The Sales Agreements were in the form of purchase orders.

5. Plaintiff manufactured and shipped paper products to Defendant from its Napanee Mill and Philadelphia Mill. Defendant received the paper products from Plaintiff.

6. Pursuant to the terms and conditions in the Sales Agreements negotiated by the Parties for product shipped from the Napanee Mill, Defendant was obligated to remit payment to Plaintiff within thirty (30) days from the invoice date. See Statement of Account attached hereto as Exhibit A. Payment for product shipped from the Philadelphia Mill was due in forty-five (45) days. See Invoices attached hereto as Exhibit B.

7. Defendant is delinquent in making payments for the paper products it received and is in default on Defendant's obligation to remit payment to Plaintiff.

8. The outstanding amount owed by Defendant to Plaintiff for product shipped from the Philadelphia Mill is $13,210.88, and for product shipped from the Strathcona Mill is $244,599.74. Accordingly, Defendant owes Plaintiff a total of $257,810.62, plus interest and other fees.

COUNT I
(Breach of Contract)

9. Plaintiff hereby adopts and incorporates the foregoing paragraphs of this Complaint as if fully set forth herein.

10. The Sales Agreements constitute valid and enforceable contracts between the Parties.

11. According to the Sales Agreements, Defendant had a contractual obligation to remit payment to Plaintiff for the paper products that were manufactured and shipped by Plaintiff to Defendant. Despite demand, Defendant has refused to perform its obligations as required pursuant to the Sales Agreements.

12. Plaintiff has performed all of its obligations under the Sales Agreements.

13. As a direct and proximate result of Defendant's breach of its contractual obligations, Plaintiff has suffered and will continue to suffer substantial damages in excess of $257,810.62.

COUNT II
(Quantum Meruit)

14. Plaintiff hereby adopts and incorporates the foregoing paragraphs of this Complaint as if fully set forth herein.

15. Plaintiff provided products and services to Defendant with the expectation of receiving payment for the products and services.

16. Defendant accepted these products and services, and received the benefit of the same knowing that Plaintiff reasonably expected to be paid for the products.

17. Defendant was duly notified of the products provided pursuant to the invoices issued by Plaintiff to Defendant, as well as notices and statements of account delivered to Defendant.

18. Defendant failed and refused to pay for the value of the benefit rendered, and as a direct and proximate result, Plaintiff has suffered and will continue to suffer substantial damages.

COUNT III
(Unjust Enrichment)

19. Plaintiff hereby adopts and incorporates the foregoing paragraphs of this Complaint as if fully set forth herein.

20. Plaintiff conferred a benefit upon Defendant in excess of $257,810.62, plus additional accrued late charges and interest up to the present time, for which Defendant fails and refuses to compensate Plaintiff.

21. Defendant is aware of, and had knowledge of, the value of the paper products which conferred a significant benefit to Defendant by Plaintiff, and Defendant accepted and retained such benefits.

22. It is inequitable for Defendant to receive and retain the benefits of Plaintiff's products without due compensation to Plaintiff for such paper products and benefits.

COUNT IV
(Money Due on Account Stated)

23. Plaintiff hereby adopts and incorporates the foregoing paragraphs of this Complaint as if fully set forth herein.

24. Plaintiff maintained accurate account records related to the shipments of paper products to Defendant as well as the costs and expenses incurred on Defendant's behalf.

25. Upon providing Defendant with the paper products, Plaintiff generated and delivered invoices to Defendant that reflected the paper products supplied and the costs and expenses it incurred on Defendant's behalf.

26. Plaintiff provided periodic invoices to Defendants which stated the amounts owed and that payment was owed to Plaintiff. Defendant has not raised an objection and has not made any attempt to contest the amounts set forth in the invoices, and thus has impliedly assented to the accuracy of the invoices.

27. Plaintiff continued to manufacture paper products and ship them to Defendant, incurring costs and expenses on Defendant's behalf, based upon Defendant's acceptance of the invoices.

28. The amount due and owing exceeds $257,810.62 plus late charges and interest which continues to accrue from day to day on the unpaid balance of this account.

29. The amounts charged by Plaintiff were fair and reasonable and represent the amounts Defendant agreed to pay pursuant to the Sales Agreements between the Parties.

30. Despite notice and demand, Defendant has failed and refused to pay Plaintiff the outstanding balance due and owing under the account. As a direct and proximate result of Defendant's failure and refusal to pay Plaintiff the amounts due and owing, Plaintiff has suffered damages that exceed $257,810.62.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in favor of the Plaintiff and against Defendant as follows:

(A) Monetary damages in the amount of $257,810.62 which reflects the amount of the paper products provided to Defendant by Plaintiff;

(B) Monetary damages in an amount to be determined at trial to compensate for pre- and post-judgment interest, costs and attorneys' fees; and

(C) All other further relief as this Court deems just and proper.

Dated: April 13, 2016

KLEHR HARRISON HARVEY BRANZBURG LLP

By: ______________________

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Attorneys for Plaintiff, PaperWorks Industries, Inc.

EXHIBIT A

Statement of Account

As of: Wednesday, April 6, 2016

Strathcona Paper LP
P.O. Box 130
Napanee, Ontario
K7R 3L6

Climax Manufacturing Company
7840 State Route 26
Lowville, New York
13367
USA

Account #: 00126900
Discount 1% 10 days Net 30

Invoice #	Date	Current	31-45	46-60	61-90	Over 90	Total
16195853	1/5/2016					16,983.81	
16195915	1/7/2016				17,608.88		
16195969	1/11/2016				17,026.47		
16195970	1/11/2016				16,921.21		
16195971	1/11/2016				17,402.02		
16195999	1/12/2016				15,355.48		
16196018	1/13/2016				16,536.47		
16196019	1/13/2016				17,019.93		
16196020	1/13/2016				15,856.69		
16196043	1/14/2016				15,069.33		
16196044	1/14/2016				16,451.92		
16196045	1/14/2016				16,262.05		
16196102	1/19/2016				15,611.81		
16196103	1/19/2016				15,583.52		
16605319	1/22/2016				-1,894.72		
16196291	2/2/2016				16,804.87		
	USD Total	**$0.00**	**$0.00**	**$0.00**	**$227,615.93**	**$16,983.81**	**$244,599.74**

EXHIBIT B

PaperWorks Industries, Inc.
Philadelphia Mill

5000 Flat Rock Rd.
Philadelphia, PA 19127

215 984-7000

MILL COPY

Invoice

Invoice To:
14023601
CLIMAX MFG.CO.
7840 STATE ROUTE 26

LOWVILLE
NY 13367-1290

Invoice No.	BBM 1012392
Invoice Date	Monday, February 8, 2016
Billing Date	Friday, February 5, 2016
Terms	1% 10 DAYS-NET 45
Discount	$ 123.42
FOB	MILL/PREPAID

Ship To:
14023601
CLIMAX MFG. CO.
7840 STATE ROUTE 26

LOWVILLE
NY 13367-1290

Remit To:
PaperWorks Industries. Inc.
3573 Solutions Center
Chicago, IL 60677-3005

Your Order	Our Order	Item	Quantity	Unit Type	Description	Weight	Price	Unit	Amount
011318	1044166	1	9	ROLLS	16 pt MasterWorks Plus 39 1/ 2", 150091LF .016, 494.049MSF	36,070	26.74	MSF	13,210.88

Order Subtotal $13,210.88

Prepaid freight amount: 868.58	0.00

Allowance/Charges Subtotal $0.00

Manifest	Date Shipped	Carrier	Vehicle Number
111311	2/5/2016	CMMS	5301

Comments: LINE ITEM 1 - PART # BR108826

MICHAUD/BAILEY $775/TON

LOAD POKER CHIP W/ SPACERS ON FLOOR & BETWEEN ROLLS

2/4/16 ALLYSON MOVED DELIVERY TO 2/12/16
CALL FOR DEL APPT: (315) 376-8000 X297

Weight (Lbs.): 36,070

Total Due: $13,210.88
U.S. Dollars

PaperWorks Industries, Inc.
PHILADELPHIA MILL
Order Acknowledgement

Date: 4/6/2016 **REGULAR** **Our Order #:** 1044166

Sales Person: Pierre Michaud Customer PO #: 011318

SOLD TO	SHIP TO
CLIMAX MFG. CO 7840 STATE ROUTE 26 LOWVILLE NY 13367-1290	CLIMAX MFG. CO. 7840 STATE ROUTE 26 LOWVILLE NY 13367-1290

Terms: 1% 10 DAYS-NET 45 FOB : Mill Freight Payment: Prepaid

Ordered Items

Total Tons: 20.01 **Last Order: 1043670**

Item	Quantity	Weight	Size	Description	Bas. Wt.	Cal.	PM
1	176,203 lineal feet	40,020 (lbs)	39 1/2 inches	16 pt MasterWorks Plus	69.00	.0160	6

Item Deliveries

Item #	Delivery #	Delivery Date	Shipment Vehicle	Price
1	1	02/12/2016	DRYVAN	26.74 / msf

Specifications

Type Press	FLEXO	Varnish		Pallets		Skids	
Type Copy		Bender		Min Diameter	60	Plybond	
Type Gluer		Food		Max Diameter	72	Tops	
No. Passes		End Use		Wind Top	OUT	Max O/A HT	
No. Colors		Ultimate Customer		Core Opening	12	Max Wt	7000#
Printing Overscores		Seybold		Load On		Double Stack	
% Coverage		Can Overrun	5%	Outturns		Cust. Decks	
Inks		Can Underrun	0%	Bright		Min. Runner Clearai	
Wrap		Straps		Fibre		FSC Recycled Credi	

Comments

Label	LINE ITEM 1 - PART # BR108826
Loader / Checker	
Order	MICHAUD/BAILEY $775/TON
	LOAD POKER CHIP W/ SPACERS ON FLOOR & BETWEEN ROLLS
	2/4/16 ALLYSON MOVED DELIVERY TO 2/12/16
Truck Manifest	CALL FOR DEL APPT: (315) 376-8000 X297

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Terms: 1% 10 DAYS-NET 45	FOB : Mill	Freight Payment: Prepaid

Term and Conditions

PaperWorks Industries, Inc.
Terms and Conditions of Sale

1. Severability: The provisions hereof are severable, and, if any is held to be unenforceable, the remaining provisions will continue in full force and effect. Headings used herein are for convenience only and not for interpretation.

2. Change of Terms: This instrument supersedes all previous communications suggesting additional or different terms. It represents the final understandings of the parties and may be amended or cancelled only by written agreement. Acceptance is conditioned on these terms, and no order shall have any force of effect until acknowledged in writing by Seller. No terms of any order shall be effective to alter or add to these Conditions of Sale, and Buyer's receipt of any portion of the goods shall constitute acceptance of all terms and conditions contained herein, unless Buyer immediately rejects and returns all such goods.

3. Taxes: Prices stated do not include sales, use, excise, privilege, or other taxes or assessments now or hereafter imposed, levied, or increased by or under the authority of any federal, state, or local law, rule, or regulation concerning the goods sold hereunder, or the manufacture or sale thereof. If Seller shall pay such taxes or assessments, Buyer shall, upon demand, reimburse Seller for such amounts.

4. Risk of Loss: All risk of loss or damage to goods shipped hereunder shall pass to Buyer upon the earlier of delivery to Buyer or to a carrier for delivery to Buyer, provided that risk of loss or damage shall remain with Seller during any period when the goods are in the possession of a carrier owned by Seller. In the event of damage or loss during shipment or storage, the party not bearing the risk of loss shall cooperate with the other party in presenting and reasonable claim against any third party.

5. Overruns, Underruns, and Variations: Orders are subject to overruns and underruns of not more that 10%, except that orders for less than 15 tons are subject to variations of not more than 20%. Unless otherwise specified, caliper, count, and basis weight are subject to variations of not more than 5%. Variations in thickness and color of material supplied by Seller will be governed by industry standards. Shades and colors will be duplicated as nearly as possible, but EXACT DUPLICATION IS NOT WARRANTED.

6. Warranties and Limitations on Warranties: Seller expressly warrants that:
(a) It will convey good title to the goods free of all liens excepting only those arising from this transaction or other conduct of Buyer.
(b) The goods will conform to the descriptions and specifications incorporated herein within the guidelines established herein.
(c) The goods will be free from defects in material and workmanship.
THESE ARE SELLER'S ONLY WARRANTIES. SELLER MAKES NO OTHER WARRANTY OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED. ALL IMPLIED WARRANTIES OR MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED BY SELLER AND EXCLUDED.

7. LIMITATIONS ON BUYER'S REMEDIES: In as much as the value of the goods sold hereunder may be substantially disproportionate to the value of products to be used in conjunction therewith, and, for the express purpose of limiting the liability of and remedies against Seller to an extent which is reasonably proportionate to the commercial value of this transaction, Buyer and Seller agree:
(a) In keeping with the course of performance and dealing, usage of the trade, and the accepted practice of Seller, Seller's liability to Buyer or anyone claiming through or on behalf of Buyer, with respect to any claim or loss arising out of this transaction or alleged to have resulted from an act or omission of Seller, negligent or otherwise, including failure to deliver, delay in delivery, or breach of warranty, shall be limited to an amount equal to the purchase price of the goods with respect to which such liability is claimed or, where appropriate and at the option of Seller, to replacement of the goods. IN NO EVENT SHALL SELLER BE LIABLE FOR CONSEQUENTIAL DAMAGES, LOSSES, OR EXPENSES ARISING OUT OF THIS TRANSACTION.
(b) Buyer shall inspect the goods promptly and shall accept or reject the goods within three working days of receipt thereof.
(c) An action to recover the purchase price or to compel such replacement shall be Buyer's sole remedy hereunder and under the Uniform Commercial Code.
(d) Buyer must inform Seller in writing of any breach of warranty or other claim Buyer has hereunder within 90 days, which Buyer and Seller deem a reasonable period of time, or Buyer shall be barred from any remedy whatsoever for such breach or claim.
(e) All claims by, through, or on behalf of Buyer arising out of or connected with this transaction shall expire and be forever barred as against Seller unless an action is commenced thereon against Seller in a court of competent jurisdiction with one year after Seller's tender or delivery of the goods sold hereunder.
(f) Seller shall not be liable for the machinability of cartons or containers sold hereunder which are not used by Buyer within 90 days from the ready date thereof.
(g) The failure of Seller to notify Buyer of any default or breach hereunder shall not constitute a waiver of such default or breach.

8. Indemnities: In the event the goods are manufactured and/or printed in accordance with specifications provided by Buyer, Buyer shall indemnify Seller against all claims, losses, liabilities, and damages, defend Seller against all claims and legal actions, and pay all claims, judgments, awards, costs, and expenses, including attorney's fees, which Seller may incur or become liable to pay arising out of any claim, including a claim relating to patent, trademark, or copyright infringement, or a claim or noncompliance with packaging, labeling, or other law regulation, notwithstanding that Seller may have been consulted as to or may have performed art or design work or other service in connection with this transaction.

9. Force Majeure: Seller shall not be liable for any delay in or failure of performance hereunder due to any contingency beyond its reasonable control, including, but not limited to: an act of nature; war; civil commotion; sabotage; labor dispute; explosion; fire; accident; power or equipment failure; inability to obtain suitable or sufficient labor, fuel,

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Terms: 1% 10 DAYS-NET 45	FOB : Mill	Freight Payment: Prepaid

power, or material; delay of carrier, embargo, or law, ordinance, rule, or regulation, whether valid or invalid, including but not limited to priority, requisition, allocation, or price control. Similarly, Buyer shall not be liable for failure to take delivery of the goods for any of the above causes beyond Buyer's reasonable control if it renders it impossible for Buyer to receive or use the goods. When only a part of Seller's or Buyer's capacity to perform is excused under this paragraph, with respect to goods not used by Seller, Seller or Buyer must allocate production, deliveries, or receipt of deliveries, among various customers or suppliers during the period when Buyer or Seller is unable to perform completely. When either Seller or Buyer claims an excuse for nonperformance under this paragraph, it must give prompt notice in writing to the other party. When an allocation has been made, notice shall be given of the estimated quota made available for Buyer or Seller, as the case may be. Buyer shall not be obligated to purchase, at a later date, that portion of the goods which Seller is unable to deliver or Buyer is unable to receive or use because of any of the aforementioned causes beyond the control of the parties. No goods are to be tendered by Seller after the expiration of the time specified herein without the consent of Buyer. Notwithstanding the above, goods purchased hereunder, which are either completed or in process at the time of notice, must be accepted by Buyer. Delays in securing Buyer's approval of necessary specifications may, at the option of the Seller, extend the date of delivery.

10. Exports: When goods are to be exported, Buyer shall, at its own expense, furnish with each order all consular and custom declarations and licenses and shall accept all responsibility for penalties resulting from errors or omissions thereon.

11. Insecurity: If Seller shall have any reasonable ground for insecurity with respect to Buyer's ability to perform Seller may decline to manufacture or ship hereunder except upon receipt of cash payment.

12. Termination: If this agreement is terminated prematurely, or if Buyer fails to fulfill its obligations hereunder, Seller shall nevertheless be entitled to receive payment for all work, both complete and in process, and for labels, cuts, plates, molds, dies, and special raw materials purchased, plus a reasonable profit thereon.

13. Storage: After 90 days from the ready date of goods sold hereunder, in the absence of agreed shipping dates, Seller shall have the right to bill Buyer for such goods and shall also have the option of either shipping such goods to Buyer or billing for storage charges at the rate of 1 ½% per month of the selling price of such goods held in inventory.

14. Hazardous Materials: All containers manufactured for hazardous materials transportation, or for freight and express shipments, will comply with applicable federal regulations or carrier requirements in effect, provided Buyer has ordered and specified the proper container for Buyer's use, and the dimensions, weight, contents, and marking of such containers, when packed for shipment, meet such requirements. In any event, Seller shall not be liable under any circumstances where the goods sold hereunder are not filled, packed, used, handled, stored, and/or distributed by Buyer, or, in the case of reusable container, are not cleaned and refilled in accordance with Seller's recommendations, customary and good trade or commercial practices, or in accordance with applicable tariffs or federal, state or local laws, rules, or regulations. Seller shall not be liable to Buyer under any circumstances for damages resulting in any way from faulty application or improper use of handling of any of Seller's products, including physical or chemical attack by Buyer's product contained therein.

15. Paperboard-Additional Conditions Applicable to the Sales of Paperboard: Grain of paperboard, unless otherwise specifically stated, will be in the direction of the last dimension. ((Width (cross direction) X Length (machine direction)).