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Eugene "Gene" Moore
Cook County Recorder of Deeds
Date: 05/20/2011 10:25 AM Pg: 1 of 6

**IN THE CIRCUIT COURT OF COOK
COUNTY, ILLINOIS
County Department, Law Division**

Metro Paint Supplies, Inc.,
a corporation

Plaintiff,

-vs-

Lupe's Body Shop, Inc., an Illinois corporation,
and Victor Garcia

Defendants.

(FOR RECORDER'S USE ONLY)
No. 10L-7993

CERTIFIED JUDGMENT or MEMORANDUM OF JUDGMENT

Judgment entered September 15, 2010 in favor of Metro Paint Supplies, Inc., a corporation and against Lupe's Body Shop, Inc., an Illinois corporation, and Victor Garcia in the amount of \$128,267.71, plus costs.

Last Known Address of Judgment Debtor:
Lupe's Body Shop, Inc., an Illinois corporation, and Victor Garcia
15701 S. Chapel Hall
Orland Park, IL 60462

County: Cook

MAIL TO:
TELLER, LEVIT & SILVERTRUST, P.C.
Attorneys for Plaintiff
11 East Adams Street—8th Floor
Chicago, Illinois 60603
(312) 922-3030—Firm No. 90818

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, LAW DIVISION

METRO PAINT SUPPLIES, INC.,)
 a corporation,)
)
 Plaintiff,)
)
 v.)
)
 LUPE'S BODY SHOP, INC., an)
 Illinois corporation and)
 VICTOR GARCIA,)
)
 Defendants.)

No.: 2010 L 007993

ORDER

This matter having come to be heard upon the motion of Plaintiff, Metro Paint Supplies, Inc. ("Metro Paint") for summary judgment against Defendants, Lupe's Body Shop, Inc. ("Body Shop") and Victor Garcia ("Garcia") (collectively "Defendants"), due notice being given and the Court being otherwise advised in the premises, the Court makes the following ruling and offers the following reasons thereto:

FACTS

As set forth in the complaint, Metro Paint agreed to extend credit to Body Shop based on the terms of the application submitted by Body Shop. The complaint alleges that Body Shop ordered from Metro Paint certain goods, wares and merchandise, that Metro Paint delivered the same and that Body Shop accepted the same. The complaint alleges that Body Shop owes Metro Paint the sum of \$124,420.31 for the goods, wares and merchandise delivered, that demand has been made but that Body Shop has refused to pay.

The complaint alleges that in consideration of Metro Paint extending credit to Body Shop, Garcia guaranteed the obligations of Body Shop. The complaint alleges that demand has

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been made but that Garcia has refused to pay. The complaint sounds in breach of contract and breach of the personal guaranty.

COURT'S REASONING

Summary judgment "shall be rendered without delay if the pleadings, depositions and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." 735 ILCS 5/2-1005(c). "In ruling on a motion for summary judgment, the trial court must construe the pleadings, depositions and affidavits in the light most favorable to the nonmoving party." *Benamon v. SOO Line R.R. Co.*, 294 Ill. App. 3d 85, 87 (1st Dist. 1997).

"The aim of summary judgment is not to try issues but to determine whether any triable issues exist." *Staton v. Amax Coal Co.*, 122 Ill. App. 3d 631, 633 (3d Dist. 1984). "A triable issue of fact exists where there is a dispute as to material facts or where the material facts are undisputed but reasonable persons might draw different inferences from those facts." *In re Estate of Hoover*, 155 Ill. 2d 402, 411 (1993).

Metro Paint argues that summary judgment in its favor is proper because in their Answer to Request to Admit, Defendants admitted that they executed the commercial credit application and guaranty and the letter of agreement dated July 28, 2006 ("letter of agreement"). Defendants further admitted that they did not purchase refinished and related products in the sum of \$778,000, that they received the May 13, 2010 letter of termination and that they received four invoices that remain unpaid.

In response, Defendants aver that there was no meeting of the minds between the parties as to the letter of agreement and therefore there is no valid contract between the parties. Defendants point out to the Court that the letter of agreement does not require the \$778,000

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worth of products to be purchased within a specific period of time.

The termination provision in the letter of agreement reads as follows:

1. This agreement may be terminated by either party upon thirty days written notice of one party to the other. 2. The term of this agreement will be applicable for the initial round of mixing color, agitator lids, and the shop investment. 3. [Metro Paint] may terminate for cause (i.e. severely delinquent accounts over 90 days, purchasing inconsistent with exclusive usage, breach of confidentiality, etc.)

The Court agrees with Defendants that the letter of agreement does not call for their performance – purchasing the \$778,000 worth of refinished and related products – within a specified time. However, the Court notes that ¶ 3 of the termination provision allows Metro Paint to terminate the agreement for cause, in particular, in the event of severely delinquent accounts over ninety days.

Here, in their Answer to Request to Admit, Defendants admitted receiving four invoices and admitted that those four invoices remained owing. According to Metro Paint's May 13, 2010 letter of termination, those invoices were for items consigned on August 2, 2006, August 7, 2006, February 25, 2009 and February 26, 2009. Consequently, as of May 13, 2010, the four invoices are properly considered "severely delinquent accounts over 90 days." As such, Metro Paint was within its bounds to terminate the contract, even though Defendants had not fully performed. The parties appear to have contracted for such a scenario as evidenced by the last paragraph of the letter of agreement which states, "Should termination occur before the end of the term, [Body Shop] shall" This paragraph sets forth Body Shop's responsibilities in the event of an early termination.

In the present case, Defendants have admitted to the existence of a credit application signed by Garcia, the letter of agreement signed by Garcia, that they did not purchase the \$778,000 worth of materials as called for by the letter of agreement, that they received certain

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invoices and that those invoices remain unpaid. The letter of agreement allows Metro Paint to terminate the contract upon such circumstances of delinquency. There are no disputes as to material facts in this case. Therefore, Metro Paint's motion for summary judgment is granted.

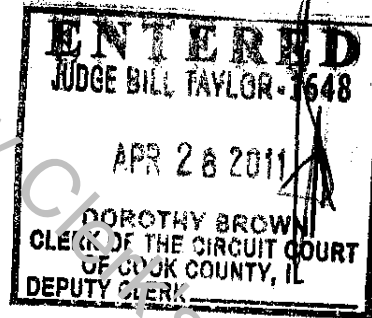
IT IS HEREBY ORDERED THAT:

1. Plaintiff, Metro Paint's motion for summary judgment as to both Counts I and II of the

at Shop Inc and Victor Garcia, in the amount of \$121,420.31 plus costs of suit.
~~complaint~~ *complaint* ~~is granted~~ *is granted*
~~plaintiff~~ *plaintiff* Metro Paint Supplies, Inc shall
~~have and recover~~ *have and recover* Judgment against defendants, Luper Body
~~Shop Inc and Victor Garcia, in the amount of~~ *Shop Inc and Victor Garcia, in the amount of*
\$121,420.31 plus costs of suit.

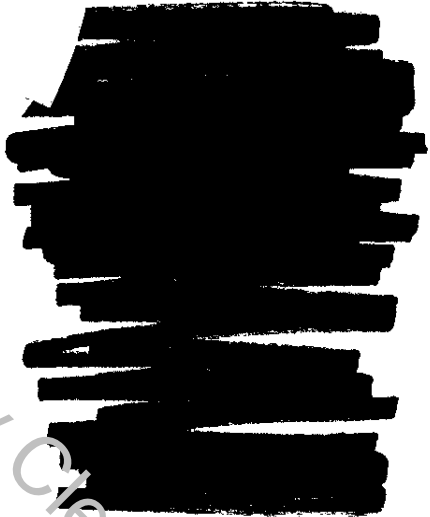
Date: April 28, 2011

Judge Bill Taylor



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I hereby certify that this is a true and correct copy of the document to which this certification applies.
Date **MAY 12 2011**
Clerk of Cook County

