

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION**

GLORIOUS COMPANY)
) **Plaintiff,**)
))
) **v.**)
))
SPARKLE FIREWORKS, INC.)
d/b/a/ ORBIT FIREWORKS,)
JERRY W. WINDHAM, AND)
P. KEITH THURMOND)
) **Defendants.**)

CIVIL ACTION NO. 2:11CV162-P-V

AMENDED COMPLAINT FOR BREACH OF CONTRACT

COMES NOW the Plaintiff Glorious Company, by undersigned counsel, and for its Complaint against Defendants Sparkle Fireworks, Inc. d/b/a Orbit Fireworks, Jerry W. Windham and P. Keith Thurmond states and alleges as follows:

I. PRELIMINARY STATEMENT

1. Plaintiff files its action against Defendant for damages, attorney fees, court costs and other such relief as this Court deems equitable arising from a breach of contract.

II. JURISDICTION

2. The Jurisdiction of this action is proper in this court under 28 U.S.C. § 1332.

III. VENUE

3. 28 U.S.C. 1331 states that a civil action wherein jurisdiction is found only on diversity citizenship may, except as otherwise provided by law, be brought only in a judicial district where any defendant resides, if all defendants reside in the same state; in a judicial district in which a substantial part of the events or admissions can be raised to the claim occurred, or a substantial part of the property that is subject of the action is situated, or in a

EXHIBIT A

judicial district in which any defendant is subject to personal jurisdiction at the time the action is commenced, there is on district in which the court may otherwise be brought. Defendant's principal address and a substantial part of the events or admissions giving a rise to the claim occurred or took place in Tippah County, Mississippi. Accordingly, venue properly lies in this district pursuant to 28 U.S.C. § 1331.

IV. PARTIES

4. Plaintiff Glorious Company ("Glorious") is a Hong Kong corporation with a principal business address of Windbase Center, 22 Queens Road, Central, Hong Kong, SAR, China.

5. Defendant Sparkle Fireworks Inc. d/b/a Orbit Fireworks ("Orbit Fireworks") is a corporation incorporated in the State of Mississippi and has a principal address of 10590 Highway 15 South, Ripley, Mississippi 38663.

6. Defendant Jerry W. Windham is an adult resident of Tippah County, Mississippi, whose address is 10590 Highway 15 South, Ripley, Mississippi 38663, where he may be served.

7. Defendant P. Keith Thurmond is an adult resident of Tippah County, Mississippi, whose address is 7721 C.R. 701, Ripley, Mississippi 38663, where he may be served.

V. GENERAL ALLEGATIONS FOR ALL COUNTS

8. Glorious is a manufacturer and exporter of firework products for fireworks businesses throughout the United States.

9. Orbit Fireworks is a fireworks seller/retailer.

10. The parties entered into an Agreement wherein Glorious would provide and deliver various fireworks products to Orbit Fireworks.

11. Attached hereto and marked as Exhibit "A" is a true and accurate copy of the Invoices and Statement of Accounts showing Defendant's purchase of the above referenced fireworks products.

12. Pursuant to the Invoices and Statement of Accounts referred in the proceeding paragraph, Glorious timely delivered to Defendant the fireworks identified in Exhibit "A".

13. On information and belief, Defendant timely received from Glorious the above referenced fireworks ordered by Defendant and identified in Exhibit "A".

14. Glorious subsequently requested from Orbit Fireworks payment on satisfaction of the amount due on the Invoices and Statement of Accounts relating to Defendant's orders for and delivery to Defendant of the fireworks merchandise.

15. Defendant Orbit Fireworks has paid to Glorious partial payment on the funds due and owing on said Invoices and Statement of Accounts.

16. Glorious has requested that Orbit Fireworks pay the balance due and owing in full in accordance with Miss. Code Ann. § 11-53-81.

17. Defendant Orbit Fireworks has wholly failed and refused to pay the balance due and owing in the sum of Two Hundred Fifty-Six Thousand Ninety-Six Dollars and Seventeen Cents (\$256,096.17) as of July 30, 2009.

18. The unpaid invoices constitute an open account on the part of Defendant Orbit Fireworks.

COUNT 1
BREACH OF CONTRACT

19. Glorious restates and incorporates herein the allegations set forth in paragraph 1 through 18 as if the same was specifically set forth hereinafter.

20. In 2005, Glorious entered into a contractual agreement with Orbit Fireworks to provide various fireworks merchandise to Orbit Fireworks.

21. The value of said fireworks merchandise totaled the sum of Six Hundred Seven Thousand Eight Hundred Fifty-one Dollars and Eighty-Two Cents (\$607,851.82).

22. Orbit Fireworks agreed to pay Glorious an amount totaling the sum of Six Hundred Seven Thousand Eight Hundred Fifty-one Dollars and Eighty-Two Cents (\$607,851.82) upon receipt of said fireworks merchandise.

23. Glorious timely delivered said fireworks merchandise to Defendant Orbit Fireworks, and the Defendant timely received the fireworks merchandise.

24. Glorious provided Invoices and Statement of Accounts to Orbit Fireworks as to the balance due on the open account for the purchase of fireworks merchandise.

25. Defendant Orbit Fireworks paid Glorious the sum of Three Hundred Fifty-one Thousand Seven Hundred Fifty-five Dollars (\$351,755.65).

26. Defendant Orbit Fireworks failed and refused to pay the balance due on the open account relating to said fireworks merchandise.

27. Orbit Fireworks has failed to pay Glorious the sum of Two Hundred Fifty-Six Thousand Ninety-Six Dollars and Seventeen Cents (\$256,096.17), which is the balance due and owing on said open account as evidenced by the Invoices and Statement of Accounts.

28. As a direct and approximate result of Orbit Fireworks' breach of the contract of the open account, Glorious has suffered damages. In accordance with Miss. Code Ann. § 11-53-81 and all other applicable provisions of the Mississippi Code, Glorious also demands court costs and attorney's fees associated with the prosecution of this claim.

COUNT 2
UNJUST ENRICHMENT

29. Glorious restates and incorporates herein the allegations set forth in paragraph 1 through 28 as if the same was specifically set forth hereinafter.

30. Glorious timely provided the fireworks merchandise to Orbit Fireworks and Orbit Fireworks timely received said fireworks merchandise.

31. The value of said fireworks merchandise was the sum or Six Hundred Seven Thousand Eight Hundred Fifty-one Dollars and Eighty-Two Cents (\$607,851.82).

32. Glorious requested on numerous occasions that Orbit Fireworks pay the balance due and owing for the fireworks merchandise provided.

33. Orbit Fireworks has not paid the sum of the balance due on the account for the fireworks merchandise ordered and delivered, which is the sum of Two Hundred Fifty-Six Thousand Ninety-Six Dollars and Seventeen Cents (\$256,096.17) as of May 1, 2011.

34. Orbit Fireworks has obtained the benefit of the possession and use of fireworks merchandise without fully compensating Glorious for the value of said fireworks merchandise.

35. Orbit Fireworks has knowledge or appreciation of the burden that conferred upon it by virtue of its receipt of, possession of and use of the fireworks merchandise.

36. Orbit Fireworks did not fully compensate Glorious for the value of the fireworks merchandise it provided to Orbit Fireworks.

37. Orbit Fireworks was unjustly enriched by receiving and retaining fireworks merchandise provided to it by Glorious without fully compensating Glorious for said merchandise.

38. There would be inequitable for Orbit Fireworks to retain the fireworks merchandise without fully paying Glorious the value thereof.

**COUNT 3
CONVERSION**

39. Glorious restates and incorporates herein the allegations set forth in paragraph 1 through 38 as if the same was specifically set forth hereinafter.

40. Orbit Fireworks ordered, and Glorious agreed to provided, certain fireworks merchandise to Defendant.

41. Glorious kindly provided the fireworks merchandise to Orbit Fireworks who retained possession of the fireworks merchandise.

42. Orbit Fireworks has intentionally and willfully failed to pay the balance due on account for the fireworks merchandise ordered and delivered, leaving a balance of Two Hundred Fifty-Six Thousand Ninety-Six Dollars and Seventeen Cents (\$256,096.17) for said fireworks merchandise.

43. On information and belief, Orbit Fireworks have failed to maintain the distinction between Orbit Fireworks and the personal finances of Jerry W. Windham and P. Keith Thurmond. By failing to keep corporate and personal distinctions, Mr. Windham and Mr. Thurmond have made the corporation insolvent.

44. Jerry W. Windham and P. Keith Thurmond paid and converted corporate assets at a time that the corporation would not be able to pay its debts as they became due or when the corporation's assets would be less than the sum of the total liabilities in violation of Miss. Code Ann. § 79-4-6.40.

45. Orbit Fireworks has converted the property of Glorious for its own use with the intent to deprive Glorious of the use or value thereof.

46. The foregoing actions of Defendants have caused Glorious a pecuniary loss.

COUNT 4
FRAUD

47. Glorious restates and incorporates herein the allegations set forth in paragraph 1 through 46 as if the same was specifically set forth hereinafter.

48. Defendant Jerry W. Windham executed a check numbered 3749 drawn on an account held by Defendant Sparkle Fireworks, Account xxxx5962, in the amount of \$50,000.00 (attached hereto as Exhibit "B").

49. At the time he executed the check, Jerry Windham knew the account had insufficient funds to cover the check drawn thereon.

50. The check was issued as a purported payment with the intent to defraud Plaintiff Glorious and intended to induce Glorious to continue shipping goods to the Defendants.

51. The Plaintiff relied upon the tender of this check as a tender of payment and deposited the check into its account for payment.

52. The check was returned due to the account having insufficient funds to cover the amount of the check.

53. The foregoing actions of Defendants have caused Glorious a pecuniary loss.

WHEREFORE, the Plaintiff Glorious, by counsel, respectfully requests that the Court enter a judgment for compensatory damages against the Defendants Orbit Fireworks, Jerry W. Windham and P. Keith Thurmond in the sum of Two Hundred Fifty-Six Thousand Ninety-Six Dollars and Seventeen Cents (\$256,096.17), for pre-judgment interest at the statutory rate, attorney fees, consequential and punitive damages, and all costs incurred by Plaintiff in this litigation and all other relief the Court deems just and appropriate in this matter.

Respectfully Submitted,

J. Hale Freeland, MSB No. 5525
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Oxford, Mississippi 38655-2249
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CERTIFICATE OF SERVICE

I, J. Hale Freeland, hereby certify that I filed the above and foregoing document through the Court's ECF system which then served a copy of the foregoing document to the following via email:

B. Sean Akins
Akins & Adams, P.A.
108 E. Jefferson Street
Ripley, Mississippi 38663
sean@akinsadams.com

This the _____ day of September, 2011.

J. HALE FREELAND