

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

CROSSET COMPANY, LLC)	CASE NO. 1:14-cv-895
)	
Plaintiff,)	JUDGE SANDRA A. BECKWITH
)	
v.)	
)	
YOUNG'S CARDINAL FOOD STORE, INC.)	
a/k/a YOUNG'S IGA)	
)	
Defendant.)	

**DEFAULT JUDGMENT IN FAVOR OF PLAINTIFF CROSSET COMPANY, LLC
AND AGAINST DEFENDANT YOUNG'S CARDINAL FOOD STORE, INC.
A/K/A YOUNG'S IGA**

This matter came before the Court upon the Motion of Plaintiff Crosset Company, LLC ("Crosset" or "Plaintiff"), for Default Judgment against Defendant Young's Cardinal Food Store, Inc. a/k/a Young's IGA ("Young's"). Upon review of the Motion, Memorandum, and the Declarations and Exhibits submitted therewith, the Court makes the following findings:

1. On January 14, 2015, Defendant Young's was served with the Complaint and Summons. More than twenty-one days have passed, with no answer, appearance or responsive pleading having been filed by Defendant Young's.
2. On February 20, 2015, the Clerk entered the default of Defendant Young's (Doc. No. 6).
3. In the Complaint, Crosset seeks relief against Young's under the Perishable Agricultural Commodities Act, 7 U.S.C. §499 *et seq.* ("PACA").
4. Crosset sold to Young's perishable agricultural commodities in the principal amount of \$8,874.84, of which \$1,374.84 remains unpaid, plus accruing interest and attorneys' fees and costs.

5. Young's is a "dealer" as that term is defined by 7 C.F.R. §46.46(m) and 7 U.S.C. §499a(b)(6).

6. As a "dealer" who purchased perishable agricultural commodities within interstate commerce, Young's is subject to PACA and the PACA Regulations promulgated thereunder.

7. On its invoices, Crosset included the following language, which is required by 7 U.S.C. §499e(c)(4) in order to preserve its rights under PACA:

The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by Section 5(c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. §499e(c)). The seller of these commodities retains a trust claim over these commodities, all inventories of food or other products derived from these commodities and any receivables or proceeds from the sale of these commodities until full payment is received.

8. Crosset's invoices further provide, in pertinent part, as follows:

Past due invoices shall accrue interest at 1½% per month. If overdue accounts are referred to an attorney, you agree to pay our attorney's fees plus the costs of all legal action as an additional charge under the contract of sale covered by this invoice. Additionally, all interest and attorney's fees are sums owing in connection with the transaction.

9. Crosset has preserved its rights under PACA, and has established that it is a perfected PACA trust beneficiary entitled to distributions of the trust created under PACA.

10. Young's is a trustee of the PACA trust held for the benefit of Crosset and other PACA creditors. Young's has breached its fiduciary duty to preserve these trust funds for Crosset and other PACA creditors. Young's has failed to pay Crosset for the perishable agricultural commodities it ordered, received, and accepted from Crosset, despite due demand. As such, Young's is liable under PACA.

11. In addition to the unpaid principal, Young's is liable to Crosset for interest, attorneys' fees, and costs, as sums owing in connection with the produce transactions at issue. 7 U.S.C. §499e(c)(2); *Middle Mountain Land & Produce, Inc. v. Sound Commodities*, 307 F.3d 1220 (9th Cir. 2002).

Based upon the foregoing, it is hereby ORDERED, ADJUDGED, AND DECREED that Default Judgment is hereby granted in favor of Crosset and against Defendant Young's in the principal amount of \$1,374.84, plus interest of \$75.40 as of February 10, 2015, accruing at \$0.68 per diem going forward until this Judgment is satisfied in full, plus attorneys' fees and costs of \$4,365.21.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Young's and its officers, agents, servants, employees, attorneys, and financial institutions are hereby ordered to turn over to Plaintiff's counsel at Martyn and Associates, 820 W. Superior Avenue, Tenth Floor, Cleveland, Ohio 44113 all PACA trust assets and/or commingled assets in Defendant Young's possession, custody, or control to the extent that this Judgment is satisfied and Crosset is paid all amounts due hereunder.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED, that because Crosset asserted a cause of action for dissipation/misappropriation of trust assets and breach of fiduciary duty under PACA, wherein Crosset is a qualified and perfected PACA trust beneficiary, this Judgment against Defendant Young's is non-dischargeable pursuant to 11 U.S.C. §523(a).

IT IS SO ORDERED.

3/30/15
Date


THE HONORABLE SANDRA S. BECKWITH
UNITED STATES DISTRICT JUDGE