

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION**

SUPREME BUILDING TECHNOLOGIES,  
INC.,

Plaintiff,

vs.

ELITE MANUFACTURING, LLC,

Defendant.

CAUSE NO. 08-

**JURY TRIAL DEMANDED**

**COMPLAINT**

Plaintiff, Supreme Building Technologies, Inc., by counsel, for its complaint  
against Defendant, Elite Manufacturing, LLC, alleges and states as follows:

**PARTIES, JURISDICTION, AND VENUE**

1. Supreme Building Technologies, Inc. ("SBT") is an Indiana corporation with its principal place of business located in Angola, Indiana.
2. Elite Manufacturing, LLC ("Elite") is a Florida limited liability company with its principal place of business located in Fort Walton Beach, Florida.
3. Upon information and belief, Fransynergy, Inc. ("Fransynergy") is an Alabama corporation and the 100% member of Elite.
4. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332, as there is complete diversity between Plaintiff and Defendant, and the amount in controversy exceeds \$75,000.00.
5. Venue is proper in the Northern District of Indiana, Fort Wayne Division, because a substantial part of the events or omissions giving rise to these claims occurred within such judicial district.

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U.S. DISTRICT COURT  
FOR THE NORTHERN DISTRICT  
OF INDIANA

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FACTS COMMON TO ALL COUNTS

6. Upon information and belief, Elite is a franchisor of coffee shops throughout the United States doing business as Cuppy's Coffee, Smoothies & More, Inc. ("Cuppy's").

7. The franchise agreements between Elite and its customers/franchisees contemplate that Elite will provide the physical space in which the Cuppy's franchises will be housed. This includes both the build-out of existing leased spaces and buildings ("Inline Construction") and the construction of kiosks, carts and mobile units ("Modular Construction").

8. On or about January 15, 2007, Elite hired SBT to perform its Inline Construction and Modular Construction. The agreement between Elite and SBT (the "Contract") contemplated that SBT would act as the general contractor for the construction of all of Elite's franchise buildings and units, with a payment structure for such services as follows:

Inline Construction - 10% of total job due up front as down payment  
30% of total job due upon issuance of building permit  
30% of total job due upon commencement of build-out  
30% final payment due within 10 days of completion of job

Modular Construction - 50% of total job due up front as down payment  
50% due within 10 days of completion of job

9. For each new franchise purchase order Elite received, SBT would issue a quote ("Job Quote") outlining the general payment terms and anticipated cost of the individual job, which would in turn be acknowledged and executed by Elite. A true and accurate copy of a representative sample of a Job Quote is attached hereto as Exhibit 1.

10. As amounts became due and owing to SBT pursuant to the terms of each

individual Job Quote, SBT issued invoices to Elite for such amounts. True and accurate copies of a representative sample invoices provided to Elite by SBT are attached hereto as Exhibit 2.

11. On or about April 17, 2008, Fransynergy purchased 100% of the membership interest of Elite. As a part of such purchase, the parties executed an Agreement for the Sale of Corporate Stock and Membership Interests (the "Purchase Agreement"). In the Purchase Agreement, Fransynergy and Elite expressly acknowledged and reaffirmed the existing agreement between Elite and SBT, and further agreed that the Contract would remain in place with respect to all of Elite's outstanding franchise purchase orders. A true and accurate copy of Exhibit D to the Purchase Agreement evidencing such acknowledgment and reaffirmation is attached hereto as Exhibit 3.

12. Pursuant to the Contract and the Job Quotes, SBT has performed a significant amount of work throughout the United States relating to the Inline Construction and Modular Construction.

13. As of June 27, 2008, approximately \$1,752,000.00 was due and owing from Elite to SBT for work performed pursuant to the Contract and the Job Quotes. Pursuant to a January 27, 2008 e-mail from Mike Peller of Elite, Elite explicitly acknowledged the accuracy of such outstanding balance. A true and accurate copy of the June 27, 2008 e-mail is attached hereto as Exhibit 4.

14. Despite demands from SBT, Elite has failed to remit payment to SBT for amounts due and owing on the Contract and the Job Quotes.

15. Elite and SBT have used a common engineering contractor for the

performance of certain engineering work, which engineer had access to confidential and proprietary plans and details for the Inline Constriction SBT was performing for Elite (the "Confidential Information").

16. Upon information and belief, Elite, without authority or permission from SBT, obtained access to the Confidential Information through the engineering contractor.

17. Upon information and belief, and using the Confidential Information, Elite is working directly with SBT's subcontractors, as well as other independent contractors, to complete the Inline Construction and Modular Construction in an effort to avoid paying SBT amounts due, or to become due, on the Contract and the Job Quotes.

#### COUNT I - BREACH OF CONTRACT

18. SBT hereby realleges and incorporates by reference all preceding paragraphs of this Complaint.

19. Elite, by failing to remit payment as set forth above, and by working directly with SBT's subcontractors in an effort to avoid paying SBT amounts due or to become due, has breached its agreement with SBT pursuant to the terms of the Contract and the Job Quotes.

20. SBT has suffered and continues to suffer damages as a result of Elite's breach of contract.

WHEREFORE, SBT respectfully requests a judgment in its favor, and against Elite, for damages in an amount to be determined at trial, and for all other just and proper relief.

#### COUNT II - ACTION FOR ACCOUNT STATED

21. SBT hereby realleges and incorporates by reference all preceding

paragraphs of this Complaint.

22. The amounts presently due and owing from Elite to SBT constitute an account stated.

23. Elite has retained the rendered account statements without objection.

24. Elite has failed and refused to pay the account.

WHEREFORE, SBT respectfully requests a judgment in its favor, and against Elite, in an amount equal to the outstanding account balance, together with prejudgment interest.

COUNT III - QUASI CONTRACT/QUANTUM MERUIT

25. SBT hereby realleges and incorporates by reference all preceding paragraphs of this Complaint.

26. On grounds of equity and unjust enrichment, Elite is obligated to pay for the Inline Construction and Modular Construction provided by SBT.

27. The Inline Construction and Modular Construction were provided for the benefit of Elite on the basis of an express and implied contract in law, and on the basis of an express and implied promise by Elite to pay SBT the reasonable value of the Inline Construction and Modular Construction.

28. SBT performed on the Contract and the Job Quotes through performance of the Inline Construction and Modular Construction for Elite, and Elite accepted such services and supplies under circumstances which clearly give notice to it that SBT expected to be paid for such services.

29. Elite has received a substantial benefit which was desired by it, under circumstances making it plainly inequitable for Elite to receive and retain the value of

that benefit without fully compensating SBT for providing the benefit.

WHEREFORE, SBT respectfully requests a judgment in its favor, and against Elite, in an amount equal to the reasonable value of the Inline Construction and Modular Construction performed pursuant to the Contract and the Job Quotes, together with prejudgment interest, and for all other just and proper relief.

COUNT IV- TRADE SECRET MISAPPROPRIATION

30. SBT hereby realleges and incorporates by reference all preceding paragraphs of this Complaint.

31. The Confidential Information is information that derives independent economic value, and is not generally known or readily ascertainable by proper means by others who can obtain economic value from its disclosure or use.

32. SBT has at all times exerted reasonable efforts to maintain the secrecy of the Confidential Information.

33. The Confidential Information constitutes trade secrets pursuant to the Indiana Trade Secret Act, Ind. Code § 24-2-3-1 *et seq.*

34. Elite has misappropriated SBT's trade secrets by knowingly and improperly obtaining access to the Confidential Information, and SBT has suffered damages as a result thereof.

35. Elite's actions set forth above were undertaken with malicious intent and for the purpose of causing harm to SBT. As a result, SBT is entitled to recover punitive damages against Elite for its trade secret misappropriation.



WHEREFORE, SBT respectfully requests a judgment in its favor, and against Elite, for compensatory damages, punitive damages, and attorneys' fees in an amount to be determined at trial, and for all other just and proper relief.

COUNT V - UNFAIR COMPETITION

36. SBT hereby realleges and incorporates by reference all preceding paragraphs of this Complaint.

37. Elite, by using the Confidential Information and by working directly with SBT's subcontractors to complete the Inline Construction and Modular Construction, has engaged in unfair competition which has resulted in significant losses to SBT.

38. Elite's actions set forth above were undertaken with malicious intent and for the purpose of causing harm to SBT. As a result, SBT is entitled to recover punitive damages against Elite for its unfair competition.

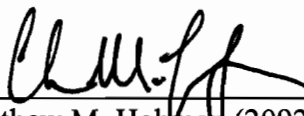
WHEREFORE, SBT respectfully requests a judgment in its favor, and against Elite, for compensatory and punitive damages in an amount to be determined at trial, and for all other just and proper relief.

JURY DEMAND

SBT hereby demands a jury trial in this cause of action with respect to all claims so triable.

Respectfully submitted,

BARNES & THORNBURG LLP

A handwritten signature in black ink, appearing to read 'C. M. Forrest', is written over a horizontal line.

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ATTORNEYS FOR PLAINTIFFS