

General Civil Case Filing Information Form (Non-Domestic)

Court
 Superior
 State

County Cherokee

Date Filed 09-24-2009
MM-DD-YYYY

Docket # 095c-2853-

Plaintiff(s)

PlayNation Play Systems, Inc.

Last First Middle I. Suffix Prefix Maiden

Defendant(s)

Flanagan, Gerald

Last First Middle I. Suffix Prefix Maiden

Jackson, Robert J.

PlayNation Play Systems, Inc.,

PATTY BAKER, CLERK

Plaintiff,

Civil Action File No. 09-SC-2855

v.

Gerald Flanagan and Robert J.
Jackson II,

Defendants.

Complaint

PlayNation Play Systems, Inc. files this complaint against Gerald Flanagan and Robert J. Jackson II and shows the court as follows:

1.

Gerald Flanagan resides in the Commonwealth of Pennsylvania.

Flanagan may be served with process by second original in accordance with

O.C.G.A. § 9-10-90 *et. seq.* at his last known place of residence 40 Troquois Court, Wayne, Pennsylvania 19087.

2.

Robert J. Jackson II resides in the State of New Jersey. Jackson may be served with process by second original in accordance with O.C.G.A. § 9-10-90 *et. seq.* at his last known place of residence, 10 Bennet Court, Marlboro New

14.

As of the date of this complaint, \$119,104.82 of the account has been due and payable for more than 30 days.

15.

The remaining balance of the account will become due and payable for more than 30 days on October 9, 2009.

16.

Under the terms of the account that Flanagan guaranteed, O.C.G.A. § 7-4-16, and O.C.G.A. § 13-6-13, PlayNation is entitled to interest on the account at the rate of 1½% per month until paid in full.

Count 3: Breach of Personal Guaranty by Jackson

17.

PlayNation re-alleges and incorporates the preceding paragraphs.

18.

Count 1: Breach of Personal Guaranty by Flanagan

6.

The Bottom Line, LLC D/b/a Swingset Planet ("Swingset Planet") owes PlayNation \$125,428.97 for goods sold and delivered by PlayNation to Swingset Planet from May 28, 2009, to September 8, 2009.

7.

Flanagan entered into a personal guaranty agreement with PlayNation in consideration for PlayNation extending trade credit to Swingset Planet.

8.

A true and accurate copy of Flanagan's personal guaranty is attached to this complaint as Exhibit A. (Any redactions are to prevent the unnecessary public disclosure of an individual's social security number.)

ORDER ON MOTION FOR SUMMARY JUDGMENT

This case comes before the Court based upon Defendant's Motion for Summary Judgment.

PlayNation manufactures children's playground equipment, swing sets, and related accessories. Swingset Planet purchased children's playground playsets from Plaintiff from approximately December 2006 until December 2007, which it then sold to individual purchasers. Defendants executed a dealership agreement between Swingset Planet and Plaintiff to provide the terms under which Swingset Planet would purchase swingsets and playgrounds from Plaintiff. On or about December 4, 2006, Defendants Gerald Flanagan and Robert J. Jackson, II, executed personal guaranties for the debts of "Swing set Planet". The invoices for the goods purchased during this time frame were billed to Swingset planet. In December 2007, Swingset Planet ceased operating its business and purchasing playground playsets.

In January 2008, Defendants began operating as "PlayNation Parties & Playgrounds." PlayNation Parties & Playgrounds (P3) purchased playgrounds and playsets from Plaintiff on open account. The invoices were billed to P3. From May 28th to September, 2009, PlayNation sold \$125,428.97 worth of playground equipment to P3 for which it has not been paid. Subsequently, Plaintiff brought suit against the guarantors Mr. Jackson and Mr. Flanagan for the guarantees signed in 2006 for debts incurred by P3 for purchase of the Playgrounds etc.

Both Swingset Planet and PlayNation Parties and Playgrounds are tradenames registered by Bottom Line, LLC.

On June 4th, 2010, Robert Jackson, one of the guarantors, filed a Motion for Summary Judgment arguing that as the guaranty agreements identified Swingset Planet as the principal debtor, Plaintiff could not rely on it to collect the debts of P3. In response, Plaintiff pointed out that Swingset Planet and P3 are both tradenames owned by Bottom Line, LLC and as changing tradename did not change the underlying corporate entity (Bottom Line, LLC), the change in tradenames did not discharge guarantors from liability under his guaranty.