

06-1633-CD
Giuseppe's Finer Food vs Freshtec et al

Giuseppe's et al vs Freshtec et al
2006-1633-CD

Giuseppe's Finer Foods, Inc., Gortech Global Fabrication, LLC, ICP Asset Management, Inc. vs. Freshtec International, LLC, Industrial Machinery Automation and Controls, LLC, Larry Salone

Civil Other

Date		Judge
10/6/2006	New Case Filed.	No Judge
	X Filing: Complaint Paid by: Christopher E. Mohny, Esq. Receipt number: 1915873 Dated: 10/06/2006 Amount: \$85.00 (Check) 1CC Atty and 4 CC shff.	No Judge
10/30/2006	X Acceptance of Service, filed. I, David J. Hopkins Esq., attorney for Defendant, Larry Salone in the above-captioned matter, do hereby accept service on Complaint on behalf of Defendant, Larry Salone on this 25th day of October, 2006 and certify that I am authorized to do so by the Defendant, Larry Salone, signed by s/ David J. Hopkins Esq. 3CC Atty Mohny.	No Judge
11/28/2006	X Praeipce to schedule Argument, filed. Pursuant to Local Rule 1028 (c) and Local Rule 211, please schedule for argument on Defendants' Preliminary Objections, filed by s/ David J. Hopkins Esq. 1CC Atty Hopkins.	No Judge
	X Preliminary Objections of Freshtec International LLC, Industrial Machinery Automation and Controls, LLC. and Larry Salone, plaintiffs, filed by s/ David J. Hopkins Esq. 3CC Atty Hopkins.	No Judge
12/5/2006	X Scheduling Order, NOW, this 4th day of Dec., 2006, upon consideration of the Preliminary Objections filed on behalf of Defendants it is Ordered: A rule is used upon the Respondent. The Respondent shall file an answer to the Preliminary Objections withing 20 days of service upon the Respondent; Notice of the entry of this Order shall be provided to all parties by the Petitioner. Arugment on Defendants' Preliminary Objections shall be scheduled on Jan. 3, 2007, in Courtroom No. 1 at 10:30 a.m. in Clfd. Co. Courthouse. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 2CC Atty. Hopkins	Fredric Joseph Ammerman
12/19/2006	X Plaintiffs' Response to Defendants' Preliminary Objections, filed by Atty. Mohny 4 Cert. to Atty.	Fredric Joseph Ammerman
1/5/2007	X Order, filed cert to Atty's Teufel, Heinman, Mohny and Hopkins. X NOW, this 3rd day of January, 2007, RE: Preliminary Objections.	Fredric Joseph Ammerman
1/19/2007	X Sheriff Return, October 12, 2006 at 2:15 pm Served the within Complaint on Frestec International, LLC. October 12, 2006 at 2:15 pm Served the within Complaint on Industrial Machinery Automation and Controls LLC. January 19, 2007 Returned the within Complaint "Not served per attorney" as to Larry Salone. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm Shff Hawkins costs pd by Mohny \$76.30	Fredric Joseph Ammerman
2/1/2007	X Plaintiff ICP Asset Management, Inc.'s Motion For a Determination of Finality, filed by s/ Christopher E. Mohny, Esquire. 4CC Atty. Mohny	Fredric Joseph Ammerman
2/9/2007	X Answer to Complaint, New Matter And Counterclaim, filed by s/ David J. Hopkins, Esquire. No CC	Fredric Joseph Ammerman
2/27/2007	X Reply to New Matter, Answer to Counter Claim, and New Matter to Counterclaim, filed by s/ Christopher E. Mohny, Esquire. 4CC Atty. Mohny	Fredric Joseph Ammerman
3/14/2007	X Answer to New Matter to Counterclaim, filed by s/ David J. Hopkins Esq. 1CC Atty Hopkins.	Fredric Joseph Ammerman
4/12/2007	X Motion For Leave to File Amended Complaint, filed by s/ Christopher E. Mohny, Esquire. 3CC Atty. Mohny	Fredric Joseph Ammerman

Giuseppe's Finer Foods, Inc., Gortech Global Fabrication, LLC, ICP Asset Management, Inc. vs. Freshtec International, LLC, Industrial Machinery Automation and Controls, LLC, Larry Salone

Civil Other

Date		Judge
4/13/2007	<p>Order, NOW, this 13th day of April, 2007, upon consideration of the foregoing motion, it is Ordered that:</p> <ol style="list-style-type: none"> 1. A rule is issued upon the respondents/defendants 2. Argument shall be held on May 17, 2007 at 9:00 a.m. in Courtroom 1; and 3. Notice of the entry of this order shall be provided to all parties by the moving party. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 3CC Atty. Mohney 	Fredric Joseph Ammerman
4/19/2007	<p>Certificate of Service, filed. That on the 17th day of April 2007, served certified true and correct copy of Scheduling Order for the Petition to Amend Complaint on David J. Hopkins Esq., filed by s/ Christopher E. Mohney Esq. NO CC.</p>	Fredric Joseph Ammerman
5/10/2007	<p>Answer to Plaintiff's Motion for Leave to File Amended Complaint, filed by s/ David J. Hopkins, Esquire. No CC</p>	Fredric Joseph Ammerman
5/18/2007	<p>Order, this 17th day of May, 2007, following argument on Plaintiff's Motion for Leave to File Amended Complaint, it is the Order of this Court that counsel shall have 10 days from date hereof to supply the Court with a letter brief. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Teufel & Heineman, Mohney, Hopkins</p>	Fredric Joseph Ammerman
6/6/2007	<p>Order, NOW, this 5th day of June, 2007, following argument of Plaintiff's Motion for Leave to File an Amended Complaint, it is Ordered that the Motion for Leave to File an Amended Complaint is Granted. The Plaintiff shall have no more than 20 days to file an Amended Complaint. By The Court, /s/ Fredric J. Ammerman, Judge. 1CC Attys: Teufel, Heineman, Mohney, Hopkins</p>	Fredric Joseph Ammerman
6/18/2007	<p>Amended Complaint, filed by s/ Gregory H. Teufel, Esquire. 1CC to Atty.</p>	Fredric Joseph Ammerman
7/12/2007	<p>Preliminary Objections of Freshtec International LLC, Industrial Machinery Automation and Controls, LLC, and Larry Salone, Defendants, filed by s/ David J. Hopkins, Esquire. 1CC Atty. Hopkins</p>	Fredric Joseph Ammerman
7/18/2007	<p>Scheduling Order, NOW, this 18th day of July, 2007, upon consideration of the Preliminary Objections filed on behalf of Defendants it is Ordered: a rule is issued upon the Respondent. The Respondent shall file an answer to the Preliminary Objections within 20 days of service upon the Respondent. Notice of the entry of this Order shall be provided to all parties by the Petitioner. Argument on Defendants' Preliminary Objections shall be scheduled on Sept. 13, 2007, in Courtroom 2 at 3:00 p.m. By The Court, /s/ Fredric J. Ammerman, pres. Judge. 2CC Atty. Hopkins</p>	Fredric Joseph Ammerman
8/17/2007	<p>Plaintiffs' Response to Defendants' Preliminary Objections, filed by s/ Gregory H. Teufel, Esquire. No CC</p>	Fredric Joseph Ammerman
8/29/2007	<p>Motion to Compel Defendants' Discovery Responses, filed by s/ Sarah B. Heineman, Esquire. 1CC Atty. Teufel</p>	Fredric Joseph Ammerman
8/31/2007	<p>Scheduling Order, this 31st day of August, 2007, upon consideration of Plaintiffs' motion, a rule is issued upon respondent. Argument shall be held on Oct. 15, 2007 @ 9:30 a.m. in Courtroom 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty. Teufel</p>	Fredric Joseph Ammerman
9/17/2007	<p>Order, this 14th day of Sept., 2007, following argument on Defendants' Preliminary Objections, it is Ordered that the said Preliminary Objections are dismissed. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Hopkins, Mohney, Teufel & Heineman</p>	Fredric Joseph Ammerman

Clearfield County Court of Common Pleas

Date: 1/2/2008
Time: 12:23 PM
Page 1 of 1

ROA Report

Case: 2006-01633-CD

Current Judge: Fredric Joseph Ammerman

Giuseppe's Finer Foods, Inc., Gortech Global Fabrication, LLC, ICP Asset Management, Inc. vs. Freshtec International, LLC, Industrial Machinery Automation and Controls, LLC, Larry Salone

Civil Other

Date	Selected Items	Judge
10/16/2007	<input checked="" type="checkbox"/> Order, this 15th day of Oct., 2007, Plaintiff's Motion to Compel is granted. Defense shall have no more than 20 days from this date in which to supply any requested discovery. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 2CC Attys: Teufel & Heineman; 1CC Attys: Mohnhey, Hopkins	Fredric Joseph Ammerman
11/9/2007	<input checked="" type="checkbox"/> Plaintiff's Motion For Sanctions, filed by s/ Gregory H. Teufel, Esquire. 2CC Fredric Joseph Ammerman Atty. Teufel	
11/13/2007	<input checked="" type="checkbox"/> Answer to Plaintiffs' Motion for Sanctions, filed by Atty. Hopkins, no cert. copies.	Fredric Joseph Ammerman
11/16/2007	<input checked="" type="checkbox"/> Order, this 15th day of Nov., 2007, argument on the Motion for Sanctions is scheduled for the 19th day of Dec., 2007 at 9:30 a.m. in Courtroom 1. By the Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Teufel/Heineman, Mohnhey, Hopkins	Fredric Joseph Ammerman
11/20/2007	<input checked="" type="checkbox"/> Motion to Continue, filed by Atty. Heltzel 1 Cert. to Atty.	Fredric Joseph Ammerman
11/27/2007	<input checked="" type="checkbox"/> Order, this 26th day of Nov., 2007, upon consideration of Defendants' Motion to Continue; it is Ordered that the argument scheduled for Dec. 19, 2007 at 9:00 a.m. shall be rescheduled for the 9th day of Jan., 2008, at 2:30 p.m. By The court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty. Hopkins	Fredric Joseph Ammerman
11/30/2007	<input checked="" type="checkbox"/> Reply Brief in Support of Plaintiff's Motion for Sactions with Exhibits A-D filed 1 Cert. to Atty. Henineman w/o exhibits	Fredric Joseph Ammerman

1-14-08 Order, dated 1-9-08

3-12-08 Order, dated 3-12-08

Date: 03/28/2006

Time: 02:21 PM

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Clearfield County Court of Common Pleas

ROA Report

Case: 2002-01055-CD

Current Judge: John K. Reilly Jr.

User: LBENDER

Civil Other

Date		Judge
08/02/2005	✓ Certificate of Service, filed. Served the original Interrogatories of Bell Atlantic-Pennsylvania Inc., and Verizon Pennsylvania Inc. Addressed to Plaintiff Priscilla Kephart, Administratrix of the Estate of James Blaylock Jr., deceased, upon Mark F. Bennett Esquire., attorney for the plaintiff and a true and correct copy of same upon the following counsel and parties of record to Mark F. Bennett Esq., Joseph A. Hudock Jr Esq., Victoria Visnofsky , Andrew Visnofsky and John Visnofsky on August 1, 2005 filed by s/ James E. Himes Esquire. No CC>	John K. Reilly Jr.
08/05/2005	✓ Certificate of Service, filed. I served the orginial Request for Production of Documents of Defendants Bell Atlantic-Pennsylvania Inc., and Verizon Pennsylvania Inc. to Plaintiff Priscilla Kephart, administratrix of the Estate of James Blaylock Jr., deceased upon Mark F. Bennett Esquire, Joseph A. Hudock Jr Esquire., Victoria Visnofsky, Andrew Visnofsky and John Visnofsky filed by s/ James E. Himes Esquire. No CC.	John K. Reilly Jr.
01/30/2006	✓ Notice of Service of Answers to Interrogatories and Response to Request For Production of Documents of Bell Atlantic-Penna. and Verizon Penna, Inc., served upon James E. Himes, Esquire, on Jan. 26, 2006. Filed by s/ Mark F. Bennett Esquire. No CC	John K. Reilly Jr.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GIUSEPPE'S FINER FOODS, INC.,)
GORTECH GLOBAL FABRICATION, LLC,) CIVIL DIVISION
and ICP ASSET MANAGEMENT, INC.,)

Plaintiffs,) NO. 06- 1633 C.D.

vs.)

FRESHTEC INTERNATIONAL, LLC,) **COMPLAINT**
INDUSTRIAL MACHINERY)
AUTOMATION AND CONTROLS, LLC,)
and LARRY SALONE,)

Defendants.)

) Filed on behalf of Plaintiffs,
) Giuseppe Finer Foods

) Counsel of Record for this Party:

) Gregory H. Teufel

) Pa. Id. No. 73062

) Sarah B. Heineman

) Pa. Id. No. 91040

) SCHNADER HARRISON SEGAL & LEWIS

) LLP

) Suite 2700, Fifth Avenue Place

) 120 Fifth Avenue

) Pittsburgh, PA 15222-3010

) (412) 577-5200 (telephone)

) (412) 765-3858 (facsimile)

) Christopher E. Mohny, Esquire

) Pa. Id. 63494

) 25 East Park Avenue, Suite 6

) DuBois, PA 15801

) (814) 375-1044

FILED 1cc Amy
019-26391-4 cc Shff
OCT 06 2006
Amy pd. 85.00
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GIUSEPPE'S FINER FOODS, INC., et al., CIVIL DIVISION

Plaintiffs,

vs.

No. 06- - C.D.

FRESHTEC INTERNATIONAL, LLC, et al.,

Defendants.

Notice to Defend

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and notice are served by entering a written appearance personally or by attorney and filing, in writing, with the Court your defenses or objections to the claims set forth before you. You are warned that if you fail to do so, the case may proceed without further notice for any money claimed in this Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or other property rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICES SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP:

Court Administrator's Office
Clearfield County Courthouse
Clearfield, PA 16830
(814) 765-2641 Ext. 1300

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GIUSEPPE'S FINER FOODS, INC., et al., CIVIL DIVISION

Plaintiffs,

vs.

No. 06- - C.D.

FRESHTEC INTERNATIONAL, LLC, et al.,

Defendants.

COMPLAINT

Plaintiffs, Giuseppe's Finer Foods, Inc., Gortech Global Fabrication, LLC, and ICP Asset Management, Inc., by and through their undersigned attorneys, hereby file the following Complaint in Civil Action, the grounds of which the following is a statement:

Introduction

1. This action seeks to recover damages from an equipment manufacturer that breached its contract ("the Contract") to manufacture and install paste bin dumpers, a cheese dumper, and related equipment (collectively, "the Equipment"), and committed fraud in the sale of the Equipment.

Parties

2. Plaintiff Giuseppe's Finer Foods, Inc. ("Giuseppe's") is a Pennsylvania corporation with a place of business at 2592 Oklahoma-Salem Road, DuBois, Pennsylvania 15801.

3. Plaintiff Gortech Global Fabrication, LLC ("Gortech") is a Pennsylvania limited liability company with a place of business at 215 Beaver Drive, DuBois, Pennsylvania 15801.

4. Plaintiff ICP Asset Management, Inc. ("ICP Asset") is a Pennsylvania corporation with a place of business at 2592 Oklahoma-Salem Road, DuBois, Pennsylvania 15801.

5. Upon information and belief, Defendant Freshtec International, LLC ("Freshtec") is a Pennsylvania corporation with a place of business at 602 West DuBois Ave., Dubois, Pennsylvania 15801.

6. Upon information and belief, Defendant Industrial Machinery Automation and Controls, LLC ("IMAC") is a Pennsylvania limited liability company with a place of business at 602 West DuBois Ave., DuBois, Pennsylvania 15801.

7. Upon information and belief, Larry Salone is a Pennsylvania resident who currently resides at 1562 Treasure Lake, DuBois, PA 15801.

Jurisdiction and Venue

8. This Court has original jurisdiction over this action pursuant to 42 Pa.Cons.Stat. § 931.

9. Venue is proper in this Court under Pa.R.Civ.P. 1006 because transactions and occurrences out of which the causes of action set forth herein arose took place in Clearfield County.

Facts

10. Beginning in the Fall of 2004, Larry Salone, as agent of Freshtec and IMAC, and Dennis Raybuck, Allan Simpson, Luke Sicard, and George Bennett, among others, as agents of Giuseppe's had discussions and other communications regarding Giuseppe's purchasing the Equipment.

11. Upon information and belief, during those discussions and other communications, Larry Salone, acting as agent of Freshtec and IMAC, made false representations that Freshtec

and IMAC could design, manufacture, and install the Equipment, and misrepresented Freshtec's and IMAC's prior experience and expertise. Information from Freshtec's website is attached hereto as Exhibit A and is incorporated by reference as if fully set forth herein.

12. Upon information and belief, Larry Salone, acting as agent of Freshtec and IMAC, further misrepresented Freshtec's and IMAC's experience, knowledge, and ability to design, manufacture, and install the Equipment consistent with Hazard Analysis Critical Control Points (HACCP) standards and Good Manufacturing Practices (GMP).

13. On January 18, 2005, Freshtec provided a quotation for a paste bin dumper and different options offered to control and integrate the paste bin dumper, with delivery terms of "8-10 weeks". A true and correct copy of the January 18, 2005 quotation is attached hereto as Exhibit B and is incorporated by reference as if fully set forth herein.

14. Gortech was a contractor providing equipment and materials to Giuseppe's for the construction of Giuseppe's food manufacturing plant and acted as agent for Giuseppe's in purchasing equipment from other vendors. In reliance on Larry Salone's misrepresentations, Giuseppe's requested Gortech to issue a purchase order to Freshtec to supply the Equipment to Giuseppe's.

15. In reliance on Larry Salone's misrepresentations, on or about April 5, 2005, Gortech issued a purchase order ("the Paste Bin Dumper Equipment Purchase Order") to Freshtec based upon the January 18, 2005 quotation for four (4) Paste Bin Dumpers, the cost of installing four electric elevator drives to replace the hydraulic system, and four (4) control packages (collectively, the "Paste Bin Dumper Equipment") for the total cost of \$166,360.00, 50% to be paid with the order and 50% to be paid upon shipment. A true and correct copy of

that May 5, 2005 Purchase Order, No. 10292, is attached hereto as Exhibit C and is incorporated by reference as if fully set forth herein.

16. On or about April 6, 2005, Freshtec issued an invoice in the amount of \$83,180.00 for the Paste Bin Dumper Equipment to be shipped on June 6, 2005. A true and correct copy of that Invoice, No.1057, is attached hereto as Exhibit D and incorporated by reference as if fully set forth herein.

17. Giuseppe's financed the purchase of the Equipment through a lease arrangement with ICP Asset whereby ICP Asset paid for the Equipment and leased it to Giuseppe's.

18. In reliance on Larry Salone's misrepresentations, on or about April 11, 2005, ICP Asset paid Freshtec \$83,180.00 in accordance with Exhibits B, C and D attached hereto.

19. On or about July 25, 2005, Freshtec issued a quotation for a cheese dumper, Raybuck tipper modifications, new flat top conveyor, and a hoist/rotation crane for the cheese handling portion of the Giuseppe's food manufacturing plant (collectively the "Cheese Dumper Equipment") with a completion date of September 10, 2005 and with payment terms of 50% on order and 50% on ready to ship. A true and correct copy of the July 25, 2005 quotation is attached hereto as Exhibit E and incorporated by reference as if fully set forth herein.

20. The cover sheet for the July 25, 2005 quotation requested the purchase order to be issued to Freshtec's "automation division," "Industrial Automation, Machinery & Controls."

21. In reliance on Larry Salone's misrepresentations, on or about July 26, 2005, in response to the July 25, 2005 quotation, Gortech issued a purchase order to "Freshtec International c/o Industrial Automation, Machinery & Controls" for the Cheese Dumper Equipment for delivery on September 10, 2005, with a total cost of \$62,000.00. A true and

correct copy of that Purchase Order, No. 50012, is attached hereto as Exhibit F and is incorporated by reference as if fully set forth herein.

22. On or about July 26, 2005, "Ind. Automation, Machinery & Controls--Freshtec Int'l" issued an invoice in the amount of \$31,000.00 for the Cheese Dumper Equipment to be shipped on September 1, 2005. A true and correct copy of that Invoice, No.1285, is attached hereto as Exhibit G and incorporated by reference as if fully set forth herein.

23. In reliance on Larry Salone's misrepresentations, on or about August 8, 2005, ICP Asset paid "Ind. Automation, Machinery & Controls" \$31,000.00 in accordance with Exhibits E, F and G attached hereto.

24. In reliance on Larry Salone's misrepresentations, on or about August 17, 2005, ICP Asset paid Freshtec another \$63,180.00.

25. Upon information and belief, Larry Salone, acting as agent for Freshtec and IMAC, periodically misrepresented the progress of the work, the quality of the Equipment, and testing of the Equipment that had been performed, all in an effort to encourage further payments for the Equipment, despite knowledge that his representations in that regard were false.

26. In reliance on Larry Salone's misrepresentations, on or about October 7, 2005, ICP Asset paid "Ind. Automation, Machinery & Controls" another \$1,650.

27. In reliance on Larry Salone's misrepresentations, on or about December 2, 2005, ICP Asset paid "Ind. Automation, Machinery & Controls" another \$40,000.

28. In reliance on Larry Salone's misrepresentations, on or about December 5, 2005, ICP Asset paid Freshtec another \$500.00.

29. The Equipment was delivered late and riddled with problems which, upon information and belief, were well known by Larry Salone to exist prior to delivery.

30. Delivery of the Paste Bin Dumper Equipment was not completed until December 5, 2005. The first bin dumper arrived on September 30, 2005 and the remaining three on December 2 and December 5, 2005.

31. The Cheese Dumper Equipment was not delivered until on or about December 2, 2005.

32. Problems with the Equipment included the following:

a. Problems with the Cheese Dumper Equipment included the following:

- i. The long conveyor supplied by Freshtec was not matched to the height of the existing conveyors with which it was intended to be used.
- ii. The motor for the Raybuck Tipper was not powder coated as quoted.
- iii. The quote promised to "add a drive" to the existing drive and this was not done.
- iv. The conveyor supplied did not include any means of transferring product to and from the supplied conveyor to the preexisting conveyors.
- v. The control panel provided did not match the quote, which promised that the conveyor would be "VFD controlled, stainless steel sloped top control panel. With AB SLC PLC."
- vi. The necessary photo eyes to run the Cheese Dumper Equipment were not supplied.
- vii. The chain holder supplied for use directly above product did not meet HACCP and GMP standards for food safety, and required the addition of a cover.

- viii. The drive drum, idle drum, and take-up rollers on the conveyors were not sealed so that water from the wash down of the equipment would not end up inside the rollers, resulting in a serious product contamination problem and violation of HACCP and GMP safety standards.
 - ix. The belts supplied on the conveyor have metal cleats to link the belts together which are not allowed under HACCP and GMP safety standards.
 - x. Conveyor rollers supplied were not adequate to handle the weight of the cheese barrels the conveyors were intended to convey.
 - xi. The Cheese Dumper did not have, as promised by the quote, "Powder coated linear actuator for elevation, electric drive. Linear actuator for rotation. Stainless steel guarding. With AB PLC and controls for eventual automatic operation. . . . VFD on both actuators."
 - xii. The Cheese Dumper did not have a hoisting "bucket" as quoted. Instead, a belt driven system was supplied.
 - xiii. The overall quality of the workmanship was poor.
- b. Problems with the Paste Bin Dumper Equipment included the following:
- i. The overall quality of the workmanship was poor.
 - ii. The bellows that cover the linear actuators were cracking and unsanitary, in violation of HACCP and GMP standards.
 - iii. There were rust marks on the Equipment.
 - iv. The Paste Bin Dumper Equipment did not have 3000 pound capacity as quoted and was inadequate to lift and dump the totes of tomato paste as intended.

- v. The Paste Bin Dumper Equipment, though used properly and as intended, quickly developed failed welds, bent support brackets, and other problems indicating a lack of structural integrity potentially dangerous to Equipment operators.
- vi. The Paste Bin Dumper Equipment experienced limit switch failures as well as blown fuses and PLC faults that prevented it from operating and/or operating properly.

33. The parties met to discuss the problems with the Equipment on May 4, 2006 and agreed to give Freshtec an opportunity to cure the problems. Larry Salone, acting as agent for Freshtec and IMAC, promised to address many of the problems, giving specific dates for completion of various items. Letters and emails documenting the May 4, 2006 meeting are attached hereto as Exhibits H and I, and are incorporated by reference as if fully set forth herein, however, the summary by counsel for Larry Salone, et al. is not entirely accurate. However, rather than address any of the problems, counsel for Larry Salone, et al., called counsel for Giuseppe's, Gortech, and ICP Asset to inform him that the promises made at the May 4, 2006 to address the problems with the Equipment would not be honored and that Freshtec planned to file for bankruptcy protection in the near future.

34. Upon information and belief, Freshtec is undercapitalized and is merely the alter ego of Larry Salone and IMAC.

35. Upon information and belief IMAC is undercapitalized and merely the alter ego of Larry Salone and Freshtec.

COUNT I: BREACH OF CONTRACT
(Gortech v. Larry Salone, Freshtec, and IMAC)

36. Paragraphs 1 through 35 of this Complaint are incorporated by reference as if fully set forth herein.

37. Gortech, Freshtec and IMAC mutually assented to valid, enforceable contracts regarding supply of the Paste Bin Dumper Equipment and the Cheese Dumper Equipment.

38. Freshtec and IMAC agreed to provide the Equipment as called for in the quotations and purchase orders attached hereto.

39. Freshtec and IMAC breached their contractual obligations and the duty of good faith and fair dealing by supplying Equipment that was poorly designed, poorly manufactured, and unreliable, and by failing to deliver the Equipment on time, *inter alia*, as detailed above.

40. Freshtec and IMAC further breached their contractual obligations by failing to correct numerous defects in the Equipment.

41. Freshtec and IMAC profess to be merchants engaged in the sale of equipment similar to the Equipment at issue in this case, such that the Equipment is subject to an implied warranty of merchantability.

42. Freshtec and IMAC breached the implied warranty of merchantability because the Equipment supplied was not reasonably fit for the ordinary purposes of such equipment.

43. Freshtec and IMAC breached the implied warranty of fitness for particular purpose because the Equipment supplied was not reasonably fit for the particular purposes that were known to Freshtec and IMAC at the time of the formation of the contracts at issue.

44. Despite repeated promises to the contrary, Freshtec and IMAC never corrected all of the problems with the Equipment.

45. As a result of Freshtec's and IMAC's breach of their contractual obligations and failure to correct the many problems with the Equipment, Gortech has suffered damages in excess of \$20,000.

46. Freshtec and IMAC should be held jointly and severally liable for the breaches of contract by Freshtec and IMAC because, upon information and belief, they operated as a single entity or corporate combine, with Freshtec referring to IMAC as a mere "division" of Freshtec, and issuing combined Freshtec/IMAC invoices and/or alternately issued invoices from Freshtec and IMAC for different portions of the price of the same goods.

47. Moreover, the Court should pierce the corporate veils of Freshtec and IMAC and hold Larry Salone, Freshtec, and IMAC jointly and severally liable for the breaches of contract at issue because Larry Salone abused the corporate form in order to perpetrate a fraud upon the Plaintiffs, as detailed above.

WHEREFORE, Gortech respectfully requests that this Court enter judgments in its favor jointly and severally against Defendants Larry Salone, Freshtec, and IMAC in an amount in excess of \$20,000, plus interest, costs and such other and further relief as this Court deems just and proper.

COUNT II: BREACH OF CONTRACT
(Giuseppe's v. Larry Salone, Freshtec, and IMAC)

48. Paragraphs 1 through 47 of this Complaint are incorporated by reference as if fully set forth herein.

49. Giuseppe's was an intended third-party beneficiary of the contracts with Freshtec and IMAC.

50. Giuseppe's relied on Freshtec's and IMAC's repeated promises to fix the many defects in the Equipment, and thus Giuseppe's did not immediately arrange to obtain replacement Equipment.

51. As a result of Freshtec's and IMAC's breach of their contractual obligations and failure to correct the many problems with the Equipment, Giuseppe's suffered damages in excess of \$20,000.

WHEREFORE, Giuseppe's respectfully requests that this Court enter judgments in its favor jointly and severally against Defendants Larry Salone, Freshtec, and IMAC in an amount in excess of \$20,000, plus interest, costs and such other and further relief as this Court deems just and proper.

COUNT III: UNJUST ENRICHMENT
(Gortech v. Larry Salone, Freshtec, and IMAC)

52. Paragraphs 1 through 51 of this Complaint are incorporated by reference as if fully set forth herein.

53. ICP Asset conferred a benefit upon Larry Salone, Freshtec, and IMAC by making payments to Freshtec and IMAC, which funds, upon information and belief, were in large part presumably transferred to Larry Salone, the sole owner of Freshtec and IMAC

54. Acceptance and retention of such monies under the circumstances described above would be unjust and inequitable.

55. Freshtec and IMAC should be held jointly and severally liable for unjust enrichment because, upon information and belief, they operated as a single entity or corporate combine, with Freshtec referring to IMAC as a mere "division" of Freshtec, and issuing combined Freshtec/IMAC invoices and/or alternately issued invoices from Freshtec and IMAC for different portions of the price of the same goods.

56. Moreover, the Court should pierce the corporate veils of Freshtec and IMAC and hold Larry Salone, Freshtec, and IMAC jointly and severally liable for the unjust enrichment because Larry Salone abused the corporate form in order to perpetrate a fraud upon the Plaintiffs, as detailed above.

WHEREFORE, ICP Asset respectfully requests that this Court enter judgments in its favor jointly and severally against Defendants Larry Salone, Freshtec, and IMAC in an amount in excess of \$20,000, plus interest, costs and such other and further relief as this Court deems just and proper.

COUNT IV: FRAUD
(Giuseppe's vs. Larry Salone, Freshtec, and IMAC)

57. Paragraphs 1 through 56 of this Complaint are incorporated by reference as if fully set forth herein.

58. As is detailed above, upon information and belief, Larry Salone, acting as agent of Freshtec and IMAC, made false representations that Freshtec and IMAC could design, manufacture, and install the Equipment, and misrepresented Freshtec's and IMAC's prior experience and expertise.

59. Upon information and belief, Larry Salone, acting as agent of Freshtec and IMAC, further misrepresented Freshtec's and IMAC's experience, knowledge, and ability to design, manufacture, and install the Equipment consistent with HACCP and GMP standards.

60. Upon information and belief, Larry Salone, acting as agent for Freshtec and IMAC, periodically misrepresented the progress of the work, the quality of the Equipment, and testing of the Equipment that had been performed, all in an effort to encourage further payments for the Equipment, despite knowledge that his representations in that regard were false.

61. Larry Salone made those misrepresentations intentionally, intending that Giuseppe's would rely on them in first agreeing to purchase and then in paying for the Equipment.

62. Giuseppe's did in fact rely on those misrepresentations in entering into lease financing arrangements regarding the Equipment.

63. Because of its reliance on Larry Salone's false representations, Giuseppe's incurred damages in excess of \$20,000.

WHEREFORE, Giuseppe's respectfully requests that this Court enter judgments in its favor jointly and severally against Defendants Larry Salone, Freshtec, and IMAC in an amount in excess of \$20,000, plus interest, costs and such other and further relief as this Court deems just and proper.

COUNT V: FRAUD
(Gortech vs. Larry Salone, Freshtec, and IMAC)

64. Paragraphs 1 through 63 of this Complaint are incorporated by reference as if fully set forth herein.

65. As is detailed above, upon information and belief, Larry Salone, acting as agent of Freshtec and IMAC, made false representations that Freshtec and IMAC could design, manufacture, and install the Equipment, and misrepresented Freshtec's and IMAC's prior experience and expertise.

66. Upon information and belief, Larry Salone, acting as agent of Freshtec and IMAC, further misrepresented Freshtec's and IMAC's experience, knowledge, and ability to design, manufacture, and install the Equipment consistent with HACCP and GMP standards.

67. Upon information and belief, Larry Salone, acting as agent for Freshtec and IMAC, periodically misrepresented the progress of the work, the quality of the Equipment, and

testing of the Equipment that had been performed, all in an effort to encourage further payments for the Equipment, despite knowledge that his representations in that regard were false.

68. Larry Salone made those misrepresentations intentionally, intending that Gortech would rely on them in first issuing purchase orders and then in paying for the Equipment.

69. Gortech did in fact rely on those misrepresentations in issuing the purchase orders attached hereto and in arranging with ICP Asset for ICP Asset to pay for the Equipment.

70. Because of its reliance on Larry Salone's false representations, Gortech incurred damages in excess of \$20,000.

WHEREFORE, Gortech respectfully requests that this Court enter judgments in its favor jointly and severally against Defendants Larry Salone, Freshtec, and IMAC in an amount in excess of \$20,000, plus interest, costs and such other and further relief as this Court deems just and proper.

COUNT VI: FRAUD
(ICP Asset vs. Larry Salone, Freshtec, and IMAC)

71. Paragraphs 1 through 70 of this Complaint are incorporated by reference as if fully set forth herein.

72. As is detailed above, upon information and belief, Larry Salone, acting as agent of Freshtec and IMAC, made false representations that Freshtec and IMAC could design, manufacture, and install the Equipment, and misrepresented Freshtec's and IMAC's prior experience and expertise.

73. Upon information and belief, Larry Salone, acting as agent of Freshtec and IMAC, further misrepresented Freshtec's and IMAC's experience, knowledge, and ability to design, manufacture, and install the Equipment consistent with HACCP and GMP standards.

74. Upon information and belief, Larry Salone, acting as agent for Freshtec and IMAC, periodically misrepresented the progress of the work, the quality of the Equipment, and testing of the Equipment that had been performed, all in an effort to encourage further payments for the Equipment, despite knowledge that his representations in that regard were false.

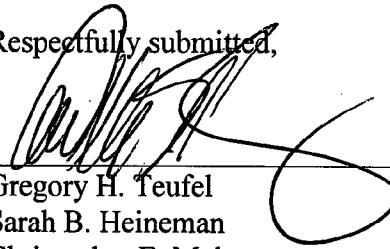
75. Larry Salone made those misrepresentations intentionally, intending that ICP Asset would rely on them in paying for the Equipment.

76. ICP Asset did in fact rely on those misrepresentations in paying for the Equipment.

77. Because of its reliance on Larry Salone's false representations, Giuseppe's incurred damages in excess of \$20,000.

WHEREFORE, Giuseppe's respectfully requests that this Court enter judgments in its favor jointly and severally against Defendants Larry Salone, Freshtec, and IMAC in an amount in excess of \$20,000, plus interest, costs and such other and further relief as this Court deems just and proper.

Respectfully submitted,



Gregory H. Teufel
Sarah B. Heineman
Christopher E. Mohnney

DATED: October 6, 2006

*Attorneys for Plaintiffs, GIUSEPPE'S FINER
FOODS, INC., GORTECH GLOBAL
FABRICATION, LLC, and ICP ASSET
MANAGEMENT, INC.*

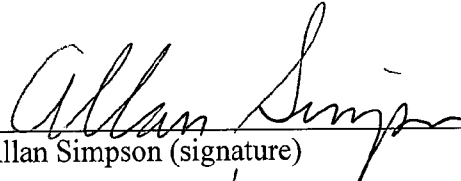
JURY TRIAL DEMAND

Plaintiffs demand trial by jury on all issues so triable.

VERIFICATION

I, Allan Simpson, as Chief Operating Officer of GIUSEPPE'S FINER FOODS, INC., am authorized to make this verification on behalf of GIUSEPPE'S FINER FOODS, INC. and hereby verify that I have reviewed the information provided in the **COMPLAINT** and that the information provided therein is true and correct to the best of my knowledge, information, and belief.

I give this Verification pursuant to 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities.



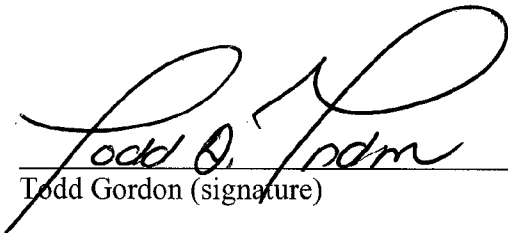
Allan Simpson (signature)

Date: 9/25/06

VERIFICATION

I, Todd Gordon, as Chief Operating Officer of GORTECH GLOBAL FABRICATION, LLC, am authorized to make this verification on behalf of GORTECH GLOBAL FABRICATION, LLC and hereby verify that I have reviewed the information provided in the **COMPLAINT** and that the information provided therein is true and correct to the best of my knowledge, information, and belief.

I give this Verification pursuant to 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities.

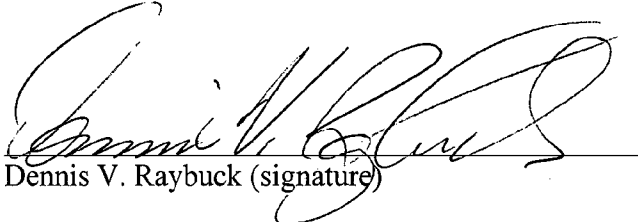


Todd Gordon (signature)
Date: 9-25-06

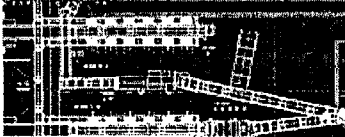
VERIFICATION

I, Dennis V. Raybuck, as President of ICP ASSET MANAGEMENT, INC., am authorized to make this verification on behalf of ICP ASSET MANAGEMENT, INC. and hereby verify that I have reviewed the information provided in the **COMPLAINT** and that the information provided therein is true and correct to the best of my knowledge, information, and belief.

I give this Verification pursuant to 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities.

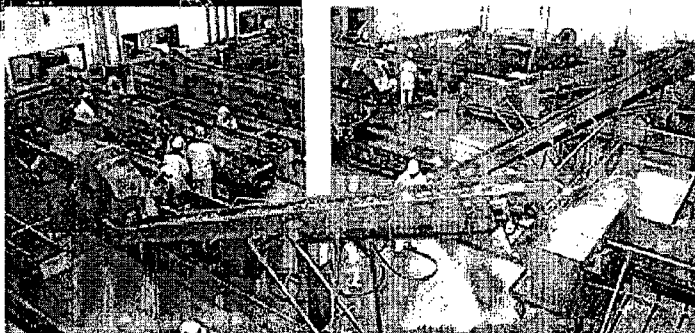

Dennis V. Raybuck (signature)

Date: 25 SEPTEMBER 2006



freshtec
INTERNATIONAL

custom processing lines



- Modular plant layout design
- All capacities
- Short order processing lines
- 100% Made in USA

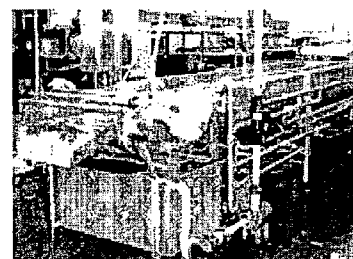
Capabilities include:

- Complete processing facilities, from start to finish.
- Large or small capacity.
- Short order equipment. Short order processing lines.
- Adding a single new machine, to adding a new production line of machines.
- Design of specialty processing equipment.
- Custom conveyors, hoppers, and a complete product line of machines from start to finish. Including conveyors, weighers, hoppers, peelers, slicers, washers, dryers, packaging equipment, etc.
- Integration of other manufacturers' equipment with our equipment into your facilities' needs.
- Complete control systems and control panel work.



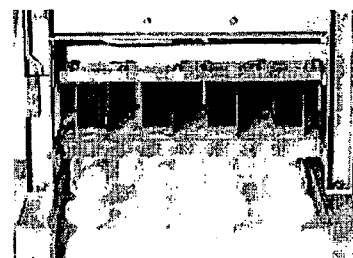
Modular plant layout design

Our new modular plant layout design allows for unlimited flexibility of your processing needs. High volume and easy product changeover at a realistic price. You do not need to be tied down to fixed processing lines, instead, let us design a modular system for you that can be moved, reconfigured, and used to its fullest potential.



Please ask your FreshTec sales engineer for assistance and have him review our product literature with you for your specific needs. Please schedule a visit from one of our sales engineers or designers to discuss and review your plant and its needs. Or ask to visit one of our customers' facilities to see our systems in operation.

FreshTec can design and build your processing facility for you. Our engineering and sales staff has worldwide experience in all types of processing plants, whether large or small. We take great pride in being able to add a new process or piece of equipment to an existing facility, or to completely fabricate and design a new state-of-the-art facility. Our varied skills allow us to specifically engineer and recommend the right solution for your needs. We work with other equipment suppliers worldwide. And of course our product line is standard in the industry. Our manufacturing flexibility allows us to target the right machines to your exact needs and specifications.

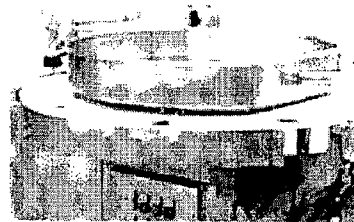
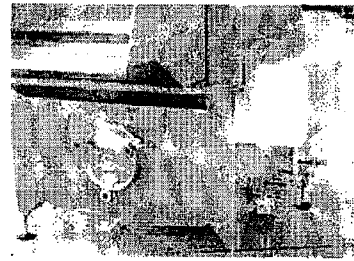


Custom machine needs? No problem. We design and build special machines.

Machine Specifications

We manufacture and use only the best equipment in the industry. We consistently strive to improve our equipment, and fabricate our equipment with the following guidelines in mind:

- HAACP
- Cleaning is a must for your facility. Our machines are washdown and designed for ease in cleaning.
- Maintenance. We keep service needs in mind when designing machines, by making them simple to work on.
- Spare parts. We are constantly striving to make our spare parts inventory simpler, larger and more accessible for customers.
- E-stop and control panel circuitry. All our machines are equipped for operator safety. UL listed and CE approved.
- All voltages available, 110-575 VAC.
- Heavy-duty industrial construction, stainless steel and other food grade components.
- OSHA. Guarding and operator safety is critical. Our machines are always built to OSHA standards.
- Operator ergonomics. We design our machines and systems to be user friendly. We consider the actual movements and procedures of operators. We recognize and relate our equipment to the weights and capacities of the products being used, the noise levels, and of course, the waste disposal issues.

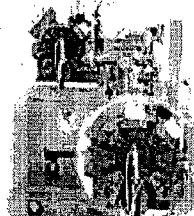
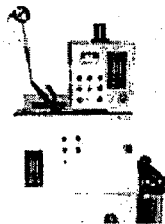
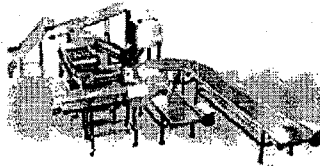


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automation engineering group



- Custom automation
- Engineering and design using CAD
- Manufacturing and fabrication
- Installation and service
- **100% Made in USA**
- Please, ask your FreshTec sales engineer for assistance. Please schedule a visit from one of our sales engineers or designers to discuss and review your plant and its needs. Or ask to visit one of our customers' facilities to see our systems in operation.

Custom Automation available including:

- Custom machinery, for the food industry and all other industries.
- Pneumatic, hydraulics, electro-mechanical.
- Pick and Place systems, robotics.
- Conveyors and conveying systems.
- Labor saving systems.
- Cost reduction systems.
- New process systems.
- Complete processing and manufacturing facilities, from start to finish.
- Large or small capacity.
- Complete control systems and control panel work.

Engineering and Design using CAD

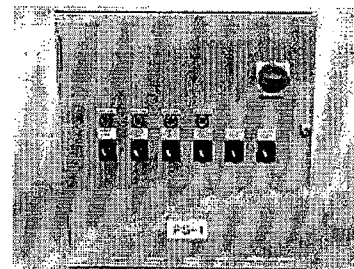
- Custom specific machinery.
- Complete factory or line specific layouts.
- Process design.
- Integration of existing equipment.
- Labor saving systems.

Manufacturing and Fabrication

- Complete fabrication capabilities.
- Full staff of engineers, technicians and sales engineers.
- Reliable on-time deliveries.
- Complete control and control panel shop.

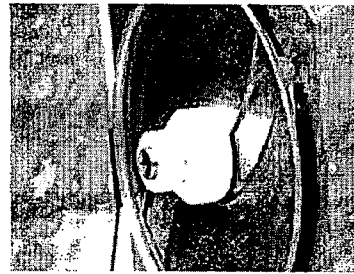
Installation and Service

- Expert technical installation - over 25 years of experience in a vast array of production environments.



- Continual service and support.
- Parts department for next day service.

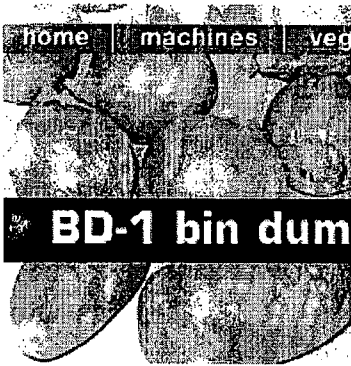
Our varied skills allow us to specifically engineer and design the right solution for your needs.
We work with other equipment suppliers worldwide.



◀ previous

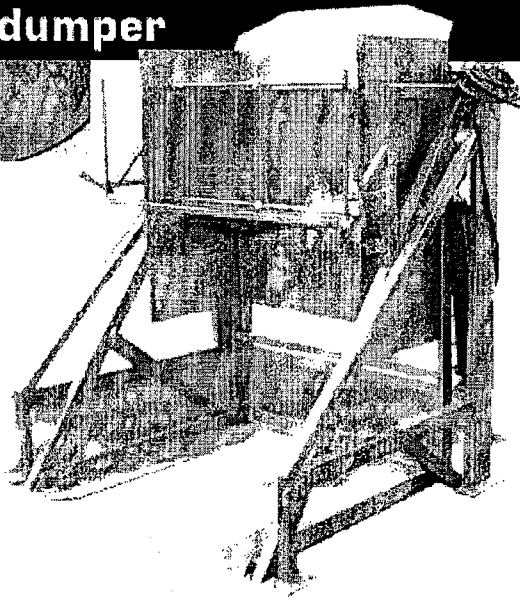
next ▶

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freshtec
INTERNATIONAL

BD-1 bin dumper




100% Made in USA

Complete processing lines are also available. Please ask your FreshTec sales engineer for assistance.

Machine Specifications

- Self contained hydraulic power pack.
- All voltages available, 110-575 VAC.
- Heavy-duty industrial construction, stainless steel and other food grade components.
- Fully guarded.
- Pivot point can be made specifically for your dump height.
- Bin can be fabricated to accommodate your size box or tote.
- Fork truck or pallet jack loading available.
- Up to 3000 pounds capacity.



 [previous](#)

[next](#) 

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FreshTec International
P. O. Box 585
DuBois, PA 15801

Phone 814 375 0700
Fax 814 375 0707
Email info@freshtecinternational.com
www.freshtecinternational.com

freshtec
INTERNATIONAL



**Tierney S. Wheaton
Giuseppe's Finer Foods
2592 Oklahoma-Salem Rd.
PO Box 687
DuBois, PA., 15801**

Quotation

1/18/05

Bin Dumper

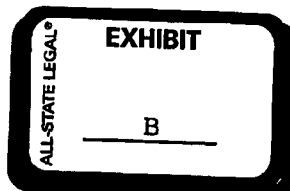
We are pleased to provide you with a proposal for our **Paste Bin Dumper**.

Standard, our paste bin dumper includes:

- Ability to load directly from a fork truck.
- 3 foot high loading, to provide for OSHA safety protection under the bin in case of collapse.
- Self-contained hydraulic power-pack. Note: See Option 1 for electric drive.
- Adjustable retaining bar for the bin.
- Full stainless steel construction. Floor anchored design.
- OSHA guarding, as required.
- Operator control panel for semi-automatic operation as well as OSHA safety. UL listed. RH or LH operation.
- Center "under the elevated bin" sensor to provide lockout of movement in case of a person being under the bin during operation.
- Total height to not exceed 12 feet fully elevated. Final height based on your final mixer height requirement for loading.
- Discharge end fabricated to match exactly with your mixer load area.
- 48" cube load dimension, 3000 pound capacity.
- 150 degree rotation.

As always, 100% made in the USA.

Lot price.....\$27,900.00 USD.



FreshTec International
P. O. Box 585
DuBois, PA 15801

Phone 814 375 0700
Fax 814 375 0707
Email info@freshtecinternational.com
www.freshtecinternational.com



Option 1.

Electric elevator drive to replace hydraulic unit. Fully contained, stainless motor and gearbox, wash down. Provides additional OSHA protection in case of failure to lock the load in position, with power on or off.

Lot price.....\$7,700.00 USD.

Option 2.

Control package: to contain AB SLC controller with E-net abilities. Includes positioning sensors and reads for complete system integration and detection. NOTE: OSHA dis-allows complete remote operation, this package integrates and detects all motions and provides for monitoring.

Lot price.....\$5,990.00 USD.

Delivery: 8-10 weeks

Terms: 50% with order, 50% upon shipment.

Exclusive: Installation, freight, FOB Pennsylvania.

This offer subject to Freshtec standard terms and conditions. Our standard warranties apply. Copies available upon request.



RODNEY

Freshtec International
PO Bo 585
DuBois, PA 15801

PAGE NO.	P.O. NO.	ORDER DATE	VEND NO.
1	10292	4/5/2005	

PURCHASE ORDER

SHIP TO

Giuseppe's Finer Foods
2592 Oklahoma Salem Road
PO Box 687
DuBois, PA 15801
814-375-0516

ORDER DATE 4/5/2005		CANCELLATION DATE 5/5/2005		SHIP VIA		F.O.B.		TERMS	
JOB#/FOR Shop				RESPONSIBILITY Todd Gordon			BRANCH Gortech		
ITEM NO. MFG NO.	DESCRIPTION	QUANTITY ORDERED	UM	QTY REC	UNIT PRICE	EXTENSION			
	PASTE BIN DUMPER	4	EA		27,900.00	\$111,600.00			
	ELECTRIC ELEVATOR TO REPLACE HYDRAULIC	4	EA		7,700.00	\$30,800.00			
	CONTROL PACKAGE	4	EA		5990.000	\$23,960.00			
50% WITH ORDER, 50% UPON SHIPMENT									
						SUBTOTAL \$166,360.00			
						TAX			
						SURCHARGES			
						TOTAL \$166,360.00			

AUTHORIZED SIGNATURE

ORDER TERMS AND CONDITIONS

1. INVOICES must bear exact same prices and terms or authorization for changes must be received from our company in writing prior to shipping
2. Goods not in accordance with specifications will be rejected and held at vendor's risk awaiting disposal. Vendor must pay freight on all rejected materials
3. The right is reserved, to cancel all or part of this order if not delivered within the time specified.
4. Packing slips must accompany all shipments.
5. By acceptance of this order, vendor warrants that all merchandise shipped under this order does comply with all laws and regulations of Federal and State governments.
6. Back orders must be prepaid when less than a minimum freight shipment.
7. In the event of interruption of our business in whole or in part by reason of fire, flood, windstorm, earthquake, war, strike, embargo, acts of God, government action, or any cause beyond our control, we shall have the option of canceling undelivered orders in whole or part.
8. Acceptance of this purchase order, or shipment of any part of it will constitute an agreement to all of its specifications as to terms, delivery and price.

ALL-STATE LEGAL®

EXHIBIT

C

HPR 08 US 12:45p

P.2

Invoice

FreshTec Int'l LLC
P.O. Box 585
DuBois, PA 15801
USA

Invoice Number:
1057
Invoice Date:
Apr 6, 2005
Page:
1

Voice: 814-375-0700
Fax: 814-375-0707

Duplicate

Sold To:
Gortech Global Fabrication
P.O. Box 347
DuBois, PA 15801
USA

Ship To
Giuseppe's Finer Foods
2592 Oklahoma Salem Road
DuBois, PA 15801
USA

Customer ID		Customer PO		Payment Terms	
203		10292		Upon Receipt	
Sales Rep		Shipping Method		Ship Date	Due Date
		Best Way		6/6/05	5/6/05
Quantity	Item	Description		Unit Price	Extension
0.50		Paste Bin Dumper - 4		111600.00	55,800.00
		each- each unit is			
		\$27,900.00 USD. Per			
		quotation on 03-19-05.			
0.50		Option 1 of an electric		30,800.00	15,400.00
		elevator drive to replace			
		hydraulic unit. Each			
		unit is \$7,700.00 USD.			
0.50		Control Package, four		23,960.00	11,980.00
		each, each unit is			
		\$5990.00 USD each.			
	2	Please pay to: FreshTec			
		Int'l. LLC P.O. Box 585			
		DuBois, PA			
	2A	This offer subject to			
		FreshTec Standard terms			
		and conditions. Our			
		standard warranties			
		apply. Copies available			
		upon request.			
	3	All amounts in US			
		dollars. Customer shall			

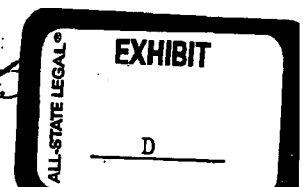
Check No:

Subtotal
Sales Tax
Total Invoice Amount
Payment Received
TOTAL

Continued
Continued
Continued
Continued
Continued

OK to pay
for
4/8/05

OK
K. J. [Signature]
4/8/05



Apr 08 05 12:45p

P.3

Invoice

FreshTec Int'l LLC
P.O. Box 585
DuBois, PA 15801
USA

Invoice Number:
1057

Invoice Date:
Apr 6, 2005
Page:
2

Voice: 814-375-0700
Fax: 814-375-0707

Duplicate

Sold To:
Gortech Global Fabrication
P.O. Box 347
DuBois, PA 15801
USA

Ship To
Giuseppe's Finer Foods
2592 Oklahoma Salem Road
DuBois, PA 15801
USA

Customer ID		Customer PO	Payment Terms	
203		10292	Upon Receipt	
Sales Rep		Shipping Method	Ship Date	Due Date
		Best Way	6/6/05	5/6/05
Quantity	Item	Description	Unit Price	Extension
14		pay invoice to the payment due date terms on this invoice.Objection to all or any part of this invoice must be submitted to FreshTec Int'l. LLC in writing within 7 (Seven) days of the invoice date on this invoice.Absence of written notification of objection constitutes acceptance of invoice and payment terms. A 1 1/2% per month interest penalty is effectibe on all unpaid balances.In the event client does not pay this invoice in listed and agreed upon terms and collection proceedings become		
5				
6				

Check No:

Subtotal
Sales Tax
Total Invoice Amount
Payment Received
TOTAL

Continued
Continued
Continued
Continued
Continued

Apr 08 05 12:45p

P. 4

Invoice

Invoice Number:
1057

Invoice Date:
Apr 6, 2005
Page:
3

FreshTec Int'l LLC
P.O. Box 585
DuBois, PA 15801
USA

Voice: 814-375-0700
Fax: 814-375-0707

Duplicate

Sold To:
Gortech Global Fabrication
P.O. Box 347
DuBois, PA 15801
USA

Ship To
Giuseppe's Finer Foods
2592 Oklahoma Salem Road
DuBois, PA 15801
USA

Customer ID		Customer PO	Payment Terms	
203		10292	Upon Receipt	
Sales Rep		Shipping Method	Ship Date	Due Date
		Best Way	6/6/05	5/6/05
Quantity	Item	Description	Unit Price	Extension
17		necessary, client hereby agrees to reimburse FreshTec Int'l. LLC for all legal and collection fees and other costs, including accumulated interest as listed above, associated with the collection of the outstanding invoice. A mechanics lien is assumed in		
8		place for the equipment described in this invoice, if applicable, until the invoice is paid in full.		

Check No:

Subtotal	83,180.00
Sales Tax	
Total Invoice Amount	83,180.00
Payment Received	0.00
TOTAL	\$83,180.00

FAX COVER SHEET

Freshtec Int'l.
P.O. Box 585
DuBois, Pennsylvania, 15801, USA

Phone number: 814-375-0700
Fax number: 814-375-0707

SEND TO/ AN/ POUR	
Company name/ Firmenname/ Société Giuseppe's	From/ Von/ De Larry Salone
Attention/ Zu Händen von/ A l'attention de Luke Sicard II	Date/ Datum/ Date 7/25/2005
Fax number/ Fax nr./ N° de fax	Phone number/ Telefon/ N° de tél.

☐ Urgent/ Dringend/ Urgent
 ☐ Reply ASAP/ Rückantwort/ Réponse urgente attendue
 ☐ Please comment/ Erledigung/ Commentaires attendus
 ☒ Please review/ Überprüfung/ A vérifier
 ☐ For your information/ Kenntnisnahme/ Copie pour information

Total pages, including cover sheet:
Anzahl der übermittelten Seiten inkl. Deckblatt
Nombre de pages (Page de garde incluse)

3

COMMENTS/ ANMERKUNGEN/ COMMENTAIRES

Luke,

Good morning.

Attached is modified quote, per your discussions with George and Denny.

There are a few things to add in later...but we need to get these started asap..

Please issue the PO to our automation division,

Industrial Automation, Machinery & Controls
PO Box 585
DuBois, PA., 15801

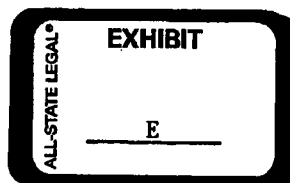
We'll pick up the equipment in a day or so...

Then we can finalize the hoists etc...this week....

I'll have Rachelle follow up with getting the check for the DP...

Warmest regards,

Larry



FreshTec International
P. O. Box 585
DuBols, PA 15801

Phone 814 375 0700
Fax 814 375 0707
Email info@freshtecinternational.com
www.freshtecinternational.com

freshtec
INTERNATIONAL

Proposal - Grinding Room

7/25/05

We are pleased to offer you:

Item 001) Modifications to the Raybuck Tipper. We will modify the Raybuck Tipper as follows: We will remove the hydraulic system, patch all holes and framework to adhere to HAACP standards. We will remove the tipper itself and all associated hardware, as well as removing framework members no longer needed. We will cap, repair and patch/grind any mods to adhere to HAACP standards. We will remove the existing motor, have it powder coated, and replace on the opposite side of the machine. We will modify the drive shafting to be L.H. We will add a drive to the existing motor to make it PLC compatible for future automation. We will clean up and bead blast the entire machine before re-assembly.

Lot price..... *T&M NTE*\$10,000.00 USD.

Item 002) New Flat Top Conveyor. We will supply a new stainless steel flat top conveyor, approx. 16ft. Long to transport the cheese to the rotation station. It will be VFD controlled, stainless steel sloped top control panel. With AB SLC PLC. On leveling feet. Control system to allow for future automation. Operator control panel for indexing/feed.

Lot price.....\$24,000.00 USD.

Item 003) Hoist/rotation crane. TBD. Waiting for quotes to come in.

Item 004) Cheese Dumper. Includes stainless steel frame, stainless steel receiving and hoisting "bucket". Powder coated linear actuator for elevation, electric drive. Linear actuator for rotation. Stainless steel guarding. With AB PLC and controls for eventual automatic operation. With bottom and top sensors for safety and operation control. VFD on both actuators. Heavy duty construction.

Lot price.....\$28,000.00 USD.

FreshTec International
P. O. Box 585
DuBois, PA 15801

Phone 814 375 0700
Fax 814 375 0707
Email info@freshtecinternational.com
www.freshtecinternational.com



freshtec
INTERNATIONAL

Item 005) Modifications to Raybuck Feed Conveyor. TBD

Item 006) Modifications to Raybuck Scale. TBD, based on final load cell prices.

Delivery: Complete by September 10th, based on PO and down payment by July 26th, 2005.

Terms: 50% on order, 50% on ready to ship

FOB: Mt. Jewett PA.

Exclusive: Freight, crating, installation, taxes, fees, etc.

Subject to standard Freshtec terms and conditions. Copies available at our office in DuBois, PA.



KODAK

Freshlec International
c/o Industrial Automation, Machinery & Controls
PO Box 585
DuBois, PA 15801

PAGE NO.	P.O. NO.	ORDER DATE	VEND NO.
1	50012	7/26/2005	

PURCHASE ORDER

SHIP TO

Giuseppe's Finer Foods
2592 Oklahoma Salem Road
PO Box 687
DuBois, PA 15801
814-375-0516

ORDER DATE 7/26/2005		CANCELLATION DATE 7/31/2005		SHIP VIA		F.O.B. Mt. Jewett, PA		TERMS Net 10 days	
JOB#/FOR GFF				RESPONSIBILITY Todd Gordon			BRANCH Gortech		
ITEM NO. MFG NO.	DESCRIPTION	QUANTITY ORDERED	UM	QTY REC	UNIT PRICE	EXTENSION			
001	Modifications to the Raybuck Tipper Time and Materials not to exceed	1	EA		\$ 10,000.00	\$ 10,000.00			
002	New Flat Top Conveyor.	1	EA		\$ 24,000.00	\$ 24,000.00			
003	Cheese Dumper	1	EA		\$ 28,000.00	\$ 28,000.00			
Delivery Complete by September 10, based on PO downpmnt by July 26th.									
Terms: 50% with order, 50% Net 30									
SUBTOTAL						\$62,000.00			
TAX									
SURCHARGES									
TOTAL						\$62,000.00			


AUTHORIZED SIGNATURE

ORDER TERMS AND CONDITIONS

1. INVOICES must bear exact same prices and terms or authorization for changes must be received from our company in writing prior to shipping
2. Goods not in accordance with specifications will be rejected and held at vendor's risk awaiting disposal. Vendor must pay freight on all rejected material.
3. The right is reserved, to cancel all or part of this order if not delivered within the time specified.
4. Packing slips must accompany all shipments.
5. By acceptance of this order, vendor warrants that all merchandise shipped under this order does comply with all laws and regulations of Federal and State governments.
6. Back orders must be prepaid when less than a minimum freight shipment.
7. In the event of interruption of our business in whole or in part by reason of fire, flood, windstorm, earthquake, war, strike, embargo, acts of God, government action, or any cause beyond our control, we shall have the option of canceling undelivered orders in whole or part.
8. Acceptance of this purchase order, or shipment of any part of it will constitute an agreement to all of its specifications as to terms, delivery and price.

ALL-STATE LEGAL

EXHIBIT

F

Ind. Automation, Machinery & Controls - FreshTec, Int'l
 P.O. Box 585
 DuBois, PA 15801
 USA

Voice: 814-375-0700
 Fax: 814-375-0707

Invoice

Invoice Number:
 1285

Invoice Date:
 Jul 26, 2005
 -Page: 1

Duplicate

Sold To:
 Gortech Global Fabrication
 P.O. Box 347
 DuBois, PA 15801
 USA

Ship To
 Giuseppe's Finer Foods
 2592 Oklahoma-Salem Road
 DuBois, PA 15801
 USA

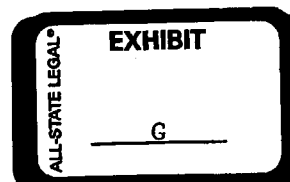
Customer ID		Customer PO	Payment Terms	
203		Verbal Luke - 50012	Upon Receipt	
Sales Rep		Shipping Method	Ship Date	Due Date
		Best Way	9/1/05	7/26/05
Quantity	Item	Description	Unit Price	Extension
0.50		Modifications to Tipper, per quotation on 07-25-05. Not to Exceed \$10,000.00 USD.	10,000.00	5,000.00
0.50		New Flat Top Conveyor, per quotation on 07-25-05.	24,000.00	12,000.00
0.50		Cheese Dumper per quotation on 07-25-05.	28,000.00	14,000.00
1.00	1	Shipping - will be charged at a later time.		
	2	Please pay to: FreshTec Int'l. LLC P.O. Box 585 DuBois, PA		
	2A	This offer subject to FreshTec Standard terms and conditions. Our standard warranties apply. Copies available upon request.		
	3	All amounts in US dollars. Customer shall pay invoice to the		

Check No:

Subtotal
 Sales Tax
 Total Invoice Amount
 Payment Received
 TOTAL

Continued
 Continued
 Continued
 Continued
 Continued

[Signature]
 8/3/05



Jul 26 05 11:31a

P.3

Invoice

Ind. Automation, Machinery & Controls
P.O. Box 585
DuBois, PA 15801
USA

Invoice Number:
1285

Invoice Date:
Jul 26, 2005

Page:

2

Voice: 814-375-0700
Fax: 814-375-0707

Duplicate

Sold To:
Gortech Global Fabrication
P.O. Box 347
DuBois, PA 15801
USA

Ship To
Giuseppe's Finer Foods
2592 Oklahoma-Salem Road
DuBois, PA 15801
USA

Customer ID		Customer PO	Payment Terms	
203		Verbal Luke	Upon Receipt	
Sales Rep		Shipping Method	Ship Date	Due Date
		Best Way	9/1/05	7/26/05
Quantity	Item	Description	Unit Price	Extension
4		payment due date terms on this invoice.Objection to all or any part of this invoice must be submitted to FreshTec Int'l. LLC in writing within 7 (Seven) days of the invoice date on this invoice.Absence of written notification of objection constitutes acceptance of invoice and payment terms. A 1 1/2% per month interest penalty is effectibe on all unpaid balances.In the event client does not pay this invoice in listed and agreed upon terms and collection proceedings become necessary, client hereby		
5				
6				

Check No:

Subtotal
Sales Tax
Total Invoice Amount
Payment Received
TOTAL

Continued
Continued
Continued
Continued
Continued

JUL 26 05 11:31a

P. 4

Invoice

Ind. Automation, Machinery & Controls
P.O. Box 585
DuBois, PA 15801
USA

Invoice Number:
1285

Invoice Date:
Jul 26, 2005
Page:
3

Voice: 814-375-0700
Fax: 814-375-0707

Duplicate

Sold To:
Gortech Global Fabrication
P.O. Box 347
DuBois, PA 15801
USA

Ship To
Giuseppe's Finer Foods
2592 Oklahoma-Salem Road
DuBois, PA 15801
USA

Customer ID		Customer PO	Payment Terms	
203		Verbal Luke	Upon Receipt	
Sales Rep		Shipping Method	Ship Date	Due Date
		Best Way	9/1/05	7/26/05
Quantity	Item	Description	Unit Price	Extension
17		agrees to reimburse FreshTec Int'l. LLC for all legal and collection fees and other costs, including accumulated interest as listed above, associated with the collection of the outstanding invoice. A mechanics lien is assumed in		
8		place for the equipment described in this invoice, if applicable, until the invoice is paid in full.		

	Subtotal	31,000.00
	Sales Tax	
	Total Invoice Amount	31,000.00
Check No:	Payment Received	0.00
	TOTAL	\$31,000.00

Teufel, Gregory

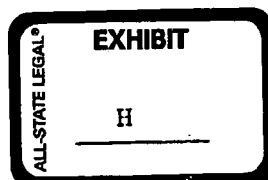
From: Hopkins Heltzel LLP [hopkinslaw@adelphia.net]
Sent: Thursday, May 04, 2006 4:56 PM
To: Teufel, Gregory
Subject: Memo of May 4, 2006 Meeting
Attachments: Memorandum.doc

Greg:

Attached please find Memorandum of our meeting today.

David

9/19/2006



MEMORANDUM

To: Gregory H. Teufel, Esquire

From: David J. Hopkins, Esquire

Date: May 4, 2006

Subject: Recap of May 4, 2006 meeting at Giuseppe's/ICP

Present: FreshTec Food Processing Equipment International
Lawrence J. Salone
David J. Hopkins, Attorney
Giuseppe's
Dennis Raybuck
Gregory H. Teufel, Attorney
Allen Simpson
Luke Sicard

BIN DUMPSTERS

All parties met in the conference room and proceeded to the bin dumpsters. We reviewed bin dumpster no. 1 in detail. We casually looked at bin dumpster no. 2 and bin dumpster no. 3. Luke commented that the problems with bin dumpster no. 2 and no. 3 were similar to the problems with no. 1. Although, later in our meeting someone commented that bin dumpsters nos. 2, 3 and 4 had not been run before.

We attempted to load slightly less than 3,000 pounds on bin dumpster no. 4. The bin dumpster went up but did not tip and remained in its upright position.

All of the aforesaid was videotaped by a representative of Giuseppe's.

My notes reveal the following issues were raised regarding bin dumpster no. 1:

a. Mr. Raybuck suggested the motors will break because they push against the back frame of the bin dumpster. Although to date, none have yet cracked. This same issue was evident on bin dumpsters no. 2 and no. 3 but was unclear on no. 4 because the bin dumpster was in a raised position.

b. The top boot is cracked and the top is open. It appears to be a manufacturer's problem. In its current condition, the boot is not sanitary because material can get into the boot opening.

c. Luke noted that some manufacturers use two "limit switches". The bin dumpsters have one limit switch. The bin dumpster does not stop at the top and may need to be adjusted.

d. The pivot points may need to be adjusted.

e. There is a PLC default issue.

f. The linear actuators are ten (10) ton. Luke stated that they are sufficient, however, they need to be configured correctly. If correctly configured, they will work. Luke stated a "worm reducer" was necessary. Later, Mr. Raybuck raised the issue that they will work but not as fast as he would like them to work.

When we returned to the conference room, you advised that you wanted a detailed plan and a time table to fix the machines. On further discussions, we agreed that this opportunity would be our right to cure defects with the machines.

With reference to the bin dumpsters, we agreed on or before May 12, 2006 FreshTec will set forth a written plan to fix the bin dumpsters. Mr. Raybuck commented that timing is an issue. Giuseppe's will tell FreshTec in writing what it thinks of FreshTec's plan by May 17, 2006. Included in FreshTec's plan will be a timetable for the repairs to be completed.

Regardless of whether Giuseppe's agree or disagree with FreshTec's plan, FreshTec will remove one machine and have the opportunity to make repairs to the machine as FreshTec deems appropriate consistent with the aforesaid plan.

Giuseppe has the right to review at FreshTec's facility any drawing or plans for the bin dumpsters so it can provide its comments that are due on May 17, 2006.

If the bin dumpsters work, then FreshTec gets paid the remaining \$28,000.00 it is due.

CHEESE ROOM

Immediately after viewing the bin dumpsters, we went to the cheese room. There was no electric running to the "cheese line". Giuseppe's raised three (3) issues:

1. Cheese dumper. Giuseppe's state the cheese dumper was to be a bucket as per the quote and further stated that what is currently installed is not sanitary.

2. Conveyor belt is not a "sanitary belt" - clearly the belt had a splice in it. Mr. Raybuck commented that the conveyor belt should have rollers.

3. Giuseppe's personnel raised "transition issues" from the various pieces of the cheese line.

4. There was supposed to be a PLC.

In our conference room discussion, we agreed to the following in reference to the cheese room:

CHEESE DUMPER

FreshTec believes the modified cheese dumper had been approved by Giuseppe's personnel. Mr. Raybuck disputed this and stated that only he, Luke or Steven Havlicheck could have approved the change. This issue was unresolved and FreshTec will review its records and personnel to determine who FreshTec believed approved the modified cheese dumper. This information will be provided to you by May 17, 2006.

CONVEYOR BELT

FreshTec will replace the belt to be a sanitary belt. It will install rollers on the conveyor belt and increase the height of the conveyor belt. The PLC is at FreshTec's shop and is ready to be delivered. Luke agreed Giuseppe's will install the PLC.

INTEGRATION

There was a general discussion regarding integration of the cheese line. We agreed that there was not to be electrical integration. The dispute centered on whether there was to be mechanical integration and FreshTec denied that there was to be mechanical integration. We agreed to compare the original quote verses the quote from which the purchase order was generated. We further agreed the general cost to provide mechanical integration was in the \$2,000.00 to \$3,000.00 ballpark.

Luke agreed to have the conveyor belt pulled and FreshTec will pick up the conveyor belt in the next few days and subject to parts availability, the conveyor belt can be modified within a week.

Luke is to be the point man on height and modifications to the conveyor belt.

CONCLUSION

I understand you are preparing a letter setting forth the terms of our agreement and I wanted to give you my advanced notes on our meeting and discussions.

I appreciate the opportunity to have met with you, Mr. Raybuck and his staff so the problems that you identified could be clearly set forth.

On or before May 12, 2006, I will provide you with the documentation required by FreshTec.

Teufel, Gregory

From: Teufel, Gregory
Sent: Friday, May 05, 2006 4:26 PM
To: 'Hopkins Heltzel LLP'
Subject: RE: Memo of May 4, 2006 Meeting
Attachments: 296657_1.DOC

David:

Thanks for the below and your memo. One issue not mentioned is that we dispute whether Freshtec has any legal right to cure, but nevertheless we have extended opportunities and are extending another opportunity to cure. I do not want to suggest I agree with everything else in your memo, but in general it is a good summary and we appreciate your effort in typing it up. Attached is the word version of the letter I promised. An email back will be sufficient to indicate Freshtec's intention to proceed as described. Please let me know if you have any questions comments or concerns. Have a good weekend.

Best regards,
Greg

Schnader Harrison Segal & Lewis LLP
Suite 2700 Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222-3010
(412)577-5289 (work)
(412)596-6316 (cell)
(412)421-7123 (home)
(412)765-3858 (fax)

From: Hopkins Heltzel LLP [mailto:hopkinslaw@adelphia.net]
Sent: Thursday, May 04, 2006 4:56 PM
To: Teufel, Gregory
Subject: Memo of May 4, 2006 Meeting

Greg:

Attached please find Memorandum of our meeting today.

David

9/19/2006



May 5, 2006

David J. Hopkins, Esq.
100 Meadow Lane
Suite 5
DuBois, PA 15801

Re: Giuseppe's equipment issues

Dear David:

This is to document our discussions yesterday and the opportunity being extended to Freshtec International/Industrial Automation Machinery & Controls (hereafter collectively "Freshtec") to cure existing defects in the products under purchase orders numbered 10292 and 50012.

By May 12, 2006, Freshtec will provide detailed written plans and make drawings available for review outlining how Freshtec intends to correct the identified defects, and setting forth a reasonable timetable for completion of those corrective efforts. On or before May 17, Giuseppe's will respond with any comments on the design changes and fixes proposed. The approach will be to attempt to fix one of the paste bin dumpers first before moving on to attempt corrective measures on the other three paste bin dumpers and related equipment. If the corrective measures work on the first one, we will then proceed to the remaining three. If all four are corrected to Giuseppe's reasonable satisfaction, the remaining \$28,000 will be paid. If the corrective measures do not work to the reasonable satisfaction of Giuseppe's, then the money paid for the Paste Bin Dumpers and related equipment will be refunded and any outstanding charges for same will be cancelled.

On or before May 12, 2006, a representative from Duff Norton will visit to inspect the paste bin dumpers. Reasonable efforts will be made to diagnose how the existing problems came about, to assist in restoring confidence in Freshtec's ability to complete the work competently.

By May 19, 2006, Freshtec will add rollers, replace belts, and increase the height of the flat top conveyor. By May 12, 2006 you will get to me the original quotes that Mr. Salone stated contained items for integration/transitions that were ultimately removed, and we will give further consideration to the suggested resolution of that issue. Also by May 12, 2006, Mr. Salone will obtain and provide to me through you further information about who at Giuseppe's allegedly approved the change from Cheese Dumper "bucket" to the belt cheese dumper. If the change was not properly approved, Freshtec will refund any amounts previously paid for the Cheese Dumper and cancel any outstanding charges for it.

Please confirm in writing Freshtec's intention to take advantage of this opportunity to cure and to proceed as outlined above. Please also let me know if you have any questions, comments, or concerns. Thank you for your attention to this matter.

Best regards,

Gregory H. Teufel

cc: Dennis V. Raybuck

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

GIUSEPPE'S FINER FOODS, INC.,
GORTECH GLOBAL FABRICATION,
LLC, and ICP ASSET MANAGEMENT,
INC.,

Plaintiff,


vs.

FRESHTEC INTERNATIONAL, LLC,
INDUSTRIAL MACHINERY
AUTOMATION AND CONTROLS, LLC,
and LARRY SALONE,

Defendant.

: NO. 06 -1633 - C.D.
:
: Type of Pleading: ACCEPTANCE OF
: SERVICE
:
: Filed on Behalf of: PLAINTIFFS
: GIUSEPPE FINER FOODS
:
: Counsel of Record for this Party:
:
: GREGORY H. TEUFEL, ESQUIRE
: Pa. Id. No. 73062
: SARAH B. HEINEMAN, ESQUIRE
: Pa. Id. No. 91040
: SCHNADER HARRISON SEGAL &
: LEWIS LLP
: Suite 2700, Fifth Avenue Place
: 120 Fifth Avenue
: Pittsburgh, PA 15222-3010
: (412) 577-5200 (telephone)
: (412) 765-3858 (facsimile)
:
: CHRISTOPHER E. MOHNEY, ESQUIRE
: Pa. Id. No. 63494
: 25 East Park Avenue, Suite 6
: DuBois PA 15801
: (814) 375-1044

FILED
OCT 30 2006
300444
Mohney
William A. Shaw
Prothonotary/Clerk of Courts


David J. Hopkins, Esquire
Attorney for Defendant Larry Salone
Hopkins Heltzel, LLP
100 Meadow Lane, Suite 5
DuBois, PA 15801
(814) 375-0300

FILED

RECEIVED BY THE CLERK OF THE COURT OF THE COMMON PLEAS OF THE COUNTY OF COLUMBIA, MISSOURI, OCT-30 2006

William A. Shaw
Prothonotary/Clerk of Courts

CHRISTOPHER E. MOHNEY

ATTORNEY AT LAW

25 EAST PARK AVENUE

SUITE 6

DuBOIS, PA 15801

TELEPHONE: (814) 375-1044

FACSIMILE: (814) 375-1088

October 27, 2006

William A. Shaw, Prothonotary
Clearfield County Courthouse
230 E. Market Street
Clearfield, PA 16830

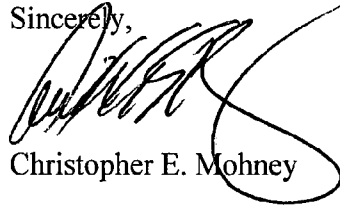
**RE: Giuseppe's Finer Foods, Inc., et. al. vs. Larry Salone, et. al.
No. 06-1633-CD**

Dear Mr. Shaw:

Please file the enclosed original Acceptance of Service on behalf of Plaintiffs.
Regarding the additional copies, kindly certify them and place in my mail box in your
office for pick-up on my next trip to the Courthouse.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Mohney", with a large, sweeping flourish extending from the end of the signature.

Christopher E. Mohney

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
(CIVIL DIVISION)

GIUSEPPE'S FINER FOODS, INC.,
GORTECH GLOBAL FABRICATION,
LLC, and ICP ASSET MANAGEMENT,
INC.,

Plaintiffs,

vs.

No. 06-1633 C.D.


FRESHTEC INTERNATIONAL, LLC,
INDUSTRIAL MACHINERY
AUTOMATION AND CONTROLS, LLC,
and LARRY SALONE,

Defendants.

PRAECIPE TO SCHEDULE ARGUMENT

TO: COURT ADMINISTRATOR

Pursuant to Local Rule 1028(c) and Local Rule 211, please schedule for argument
on Defendants' Preliminary Objections.


David J. Hopkins, Esquire
Attorney for Defendants

FILED ICC Atty Hopkins
0/9:15 am
NOV 28 2006 

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
(CIVIL DIVISION)

GIUSEPPE'S FINER FOODS, INC.,
GORTECH GLOBAL FABRICATION,
LLC, and ICP ASSET MANAGEMENT,
INC.,

Plaintiffs,

vs.

FRESHTEC INTERNATIONAL, LLC,
INDUSTRIAL MACHINERY
AUTOMATION AND CONTROLS, LLC,
and LARRY SALONE,

Defendants.

No. 06-1633 C.D.

Type of Pleading: Preliminary Objections
of Freshtec International LLC, Industrial
Machinery Automation and Controls,
LLC, and Larry Salone, Plaintiffs

Counsel of Record for this party:

HOPKINS HELTZEL

DAVID J. HOPKINS, Esquire
Attorney at Law
Supreme Court No. 42519

LEA ANN HELTZEL, Esquire
Attorney at Law
Supreme Court No. 83998

100 Meadow Lane, Suite 5
DuBois, Pennsylvania 15801

(814) 375-0300

FILED 3CC Atty Hopkins
0/9:15 am
NOV 28 2006

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
(CIVIL DIVISION)

GIUSEPPE'S FINER FOODS, INC.,
GORTECH GLOBAL FABRICATION,
LLC, and ICP ASSET MANAGEMENT,
INC.,

Plaintiffs,

vs.

No. 06-1633 C.D.

FRESHTEC INTERNATIONAL, LLC,
INDUSTRIAL MACHINERY
AUTOMATION AND CONTROLS, LLC,
and LARRY SALONE,,

Defendants

**PRELIMINARY OBJECTIONS OF FRESHTEC
INTERNATIONAL, LLC, INDUSTRIAL
MACHINERY AUTOMATION AND CONTROLS, LLC
AND LARRY SALONE**

AND NOW, come Defendants, Freshtec International, LLC, Industrial Machinery Automation and Controls, LLC, and Larry Salone and files the within Preliminary Objections to Plaintiffs' Complaint.

1. Defendant Freshtec International, LLC (hereinafter "Freshtec") is a limited liability company organized under the laws of the Commonwealth of Pennsylvania and maintains a principal mailing address at 602-9 West DuBois Avenue, DuBois, Pennsylvania 15801.

2. Defendant Industrial Machinery Automation and Controls, LLC (hereinafter "IMAC") is a limited liability company organized under the laws of the

Commonwealth of Pennsylvania and maintains a principal mailing address at 602-9 West DuBois Avenue, DuBois, Pennsylvania 15801.

3. Defendant Larry Salone (hereinafter "Salone") is an adult individual who resides at 1562 Treasure Lake, DuBois, Pennsylvania 15801.

4. Plaintiffs Giuseppe's Finer Foods, Inc. (hereinafter "Giuseppe's"), is a Pennsylvania limited liability company with a principal place of business at 2592 Oklahoma Salem Road, DuBois, Pennsylvania 15801.

5. Plaintiff Gortech Global Fabrication, LLC (hereinafter "Gortech") is a Pennsylvania limited liability company with a principal place of business at 215 Beaver Drive, DuBois, Pennsylvania 15801.

6. Plaintiff ICP Asset Management, Inc. (hereinafter "ICP") is a Pennsylvania corporation with a principal place of business at 2592 Oklahoma Salem Road, DuBois, Pennsylvania 15801.

7. On or about October 6, 2006 Plaintiffs filed a Complaint against Defendants arising from the sale of industrial equipment to be used by Plaintiff Giuseppe's in its food processing manufacturing plant.

8. Exhibit A of Plaintiffs' Complaint is the bid quotation from Defendant Freshtec to Plaintiff Giuseppe's for a "paste bin dumper". Exhibit C is Plaintiff Gortech's purchase order to Defendant Freshtec for said paste bin dumpers with a shipment to be delivered to Plaintiff Giuseppe's.

9. Paragraph 29 of Plaintiffs' Complaint admits the equipment was delivered by Defendant to Giuseppe's.

10. Paragraph 19 of Plaintiffs' Complaint alleges that Freshtec issued a quotation for various "cheese dumper equipment".

11. Exhibit E is a quote from Defendant Freshtec to Plaintiff Giuseppe's for the cheese dumping equipment.

12. Exhibit F is Plaintiff Gortech's purchase order for the cheese dumper equipment.

PRELIMINARY OBJECTION NO. 1
FAILURE TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED.

13. Count 1 and Count 2 are identified as breach of contract actions initiated by Plaintiff Gortech against Defendants Salone, Freshtec and IMAC.

14. Counts 4, 5 and 6 are fraud allegations against Defendants Freshtec, IMAC and Salone.

15. The fraud allegations in Counts 58, 65 and 72 allege that Salone, acting as an agent of Freshtec and IMAC made false representations that Freshtec and IMAC could design, manufacture and install the equipment.

16. Counts 59, 66 and 73 allege Salone acting as the agent for Freshtec and IMAC misrepresented Freshtec and IMAC's experience, knowledge and ability to design, manufacture and install the equipment consistent with HACCP and GMP standards.

17. Paragraph 60, 67 and 74 allege Salone acting as the agent for Freshtec and IMAC periodically misrepresented the progress of the work, the quality of the equipment and testing of the equipment.

18. Claims of fraud in the performance of a contract are barred under the "gist of the action doctrine".

19. The Plaintiffs' Complaint and the exhibits are grounded in contract law and allegations of fraud are barred under the gist of the action doctrine.

20. The contract between the parties is fully integrated and fraud in the inducement of the contract claims are barred.

WHEREFORE, Plaintiffs' claims set forth in Count 4, Count 5 and Count 6 should be dismissed with prejudice for failing to state a claim upon which relief can be granted by the Court.

PRELIMINARY OBJECTION NO. 2

FAILURE OF ICP ASSET MANAGEMENT, INC., TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED

21. Plaintiff ICP is identified in Count 4 as a Pennsylvania Corporation with a place of business at 2592 Oklahoma-Salem Road, DuBois, Pennsylvania. This is the same address identified for Plaintiff Giuseppe's.

22. ICP is not identified on Exhibit B through G that consists of the various quotes and billing between Defendants Freshtec and IMAC and Plaintiffs Giuseppe and Gortech.

23. The only allegations of ICP's involvement in this contract transaction is set forth in Paragraph 17 that states:

Giuseppe's financed the purchase of the equipment through a lease arrangement with ICP Asset whereby ICP Asset paid for the equipment and leased it to Giuseppe's.

24. In Paragraphs 23 through 28 Plaintiff's allege ICP paid Defendant's Freshtec and IMAC various monies for the cheese dumper equipment.

25. ICP is not a party to any quote, purchase order or contract between Defendants Freshtec and IMAC and identifies itself merely as a financier for Giuseppe.

26. The purchase order for the equipment came from Gortech.

27. In as much as ICP did not order the equipment, was not the company who anticipated using the equipment, but rather only financed the equipment through its own internal dealings with Plaintiffs Gortech and/or Giuseppe, ICP had failed to set forth a claim against Defendants Salone, Freshtec or IMAC upon which relief can be granted.

WHEREFORE, the claims of ICP should be dismissed with prejudice for failing to state a claim upon which relief can be granted by the Court.

PRELIMINARY OBJECTION NO. 3

**THE CLAIMS OF THE PLAINTIFF GIUSEPPE'S SHOULD
BE DISMISSED FOR FAILURE TO STATE A CLAIM UPON
WHICH RELIEF CAN BE GRANTED**

28. Exhibit B is a quotation from Defendant Freshtec to Plaintiff Giuseppe's for bin dumpers.

29. Notwithstanding the quotation to Giuseppe's, Gortech was the entity that issued the purchase order and the entity that was billed for the bin dumpers by Freshtec and IMAC.

30. Exhibit E is a quotation for the cheese dumper equipment by Defendant Freshtec to Plaintiff Giuseppe's.

31. Notwithstanding the quotation to Giuseppe's, Gortech was the entity that ordered the cheese dumper equipment pursuant to his purchase order (Exhibit F).

32. Defendant IMAC billed Plaintiff Gortech for the cheese dumper equipment.

33. This is a contract action and there is no privity of contract between Giuseppe's and Defendants Freshtec or IMAC.

34. In as much as Giuseppe's is not a party to the contract, it claims it must be dismissed for failure to state a claim upon which relief can be granted.

WHEREFORE, Defendants respectfully request the claims of Giuseppe's be dismissed with prejudice for failing to state a claim upon which relief can be granted by the Court.

PRELIMINARY OBJECTION NO. 4

**THE CLAIMS OF THE PLAINTIFF AGAINST LARRY SALONE
SHOULD BE DISMISSED FOR FAILURE TO STATE A
CLAIM UPON WHICH RELIEF CAN BE GRANTED**

35. Plaintiffs' Complaint refers to Defendant Salone as an agent of Freshtec and IMAC.

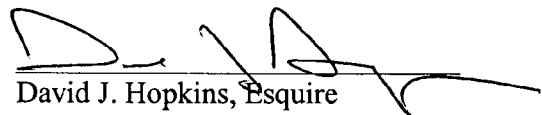
36. Salone is the sole member of Freshtec and IMAC. At all material times hereto, Salone was acting in his capacity as a representative of the limited liability company rather than in his individual capacity.

37. The claims of the Plaintiffs are founded in contract principals based upon the exhibits set forth in Plaintiffs' Complaint and Salone was not a party to the contracts.

38. The Plaintiffs failed to set forth a cause of action against Salone in his individual capacity and therefore the breach of contract claims as well as the unjust enrichment and fraud claims set forth in Plaintiffs' Complaint should be dismissed with prejudice.

WHEREFORE, Larry Salone respectfully request this Court dismiss Plaintiffs' claims against Larry Salone with prejudice for failing to state a claim upon which relief can be granted by the Court.

HOPKINS HELTZEL LLP


David J. Hopkins, Esquire
Attorney for Defendants

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
(CIVIL DIVISION)

GIUSEPPE'S FINER FOODS, INC.,
GORTECH GLOBAL FABRICATION,
LLC, and ICP ASSET MANAGEMENT,
INC.,

Plaintiffs,

vs.

No. 06-1633 C.D.

FRESHTEC INTERNATIONAL, LLC,
INDUSTRIAL MACHINERY
AUTOMATION AND CONTROLS, LLC,
and LARRY SALONE,

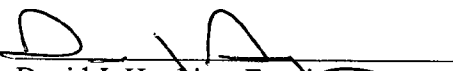
Defendants.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of Preliminary Objections of Freshtec International LLC, Industrial Machinery Automation and Controls, LLC and Larry Salone, was forwarded by first class mail, postage prepaid, on the 28th day of November, 2006 to all counsel of record, addressed as follows:

Gregory H. Teufel, Esquire
Schnader Harrison Segal & Lewis LLP
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222-3010

Christopher E. Mohny, Esquire
25 East Park Avenue, Suite 6
DuBois, PA 15801


David J. Hopkins, Esquire
Attorney for Defendants

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
(CIVIL DIVISION)

GIUSEPPE'S FINER FOODS, INC.,
GORTECH GLOBAL FABRICATION,
LLC, and ICP ASSET MANAGEMENT,
INC.,

Plaintiffs,

vs.

FRESHTEC INTERNATIONAL, LLC,
INDUSTRIAL MACHINERY
AUTOMATION AND CONTROLS, LLC,
and LARRY SALONE,

Defendants.

No. 06-1633 C.D.

FILED
014:36/201
DEC 05 2006
William A. Shaw
Prothonotary/Clerk of Courts
JCC
Atty Hopkins
(6K)

SCHEDULING ORDER

NOW, this 4th day of December, 2006, upon consideration of the Preliminary

Objections filed on behalf of Defendants it is hereby ordered that:

1. a rule is used upon the Respondent to show cause why the Defendants are not entitled to the relief requested;

2. the Respondent shall file an answer to the Preliminary Objections within twenty (20) days of service upon the Respondent;

3. notice of the entry of this Order shall be provided to all parties by the Petitioner.

4. argument on Defendants' Preliminary Objections shall be scheduled on January 3, 2007, in Courtroom No. 1 at 10:30 A.M. in the Clearfield County Courthouse, Clearfield, Pennsylvania.

NOTICE

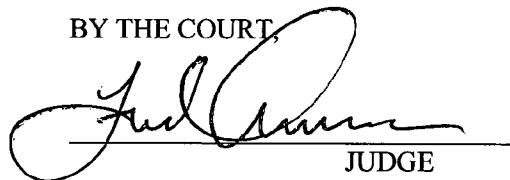
A PETITION OR MOTION HAS BEEN FILED AGAINST YOU IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING PETITION BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE MATTER SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU FAIL TO DO

SO THE CASE MAY PROCEED WITHOUT YOU AND AN ORDER MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR RELIEF REQUESTED BY THE PETITIONER OR MOVANT. YOU MAY LOSE RIGHTS IMPORTANT TO YOU.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

COURT ADMINISTRATOR
Clearfield County Courthouse
230 E. Market Street
Clearfield, PA 16830

BY THE COURT,

A handwritten signature in black ink, appearing to read "Judith A. [unclear]", is written over a horizontal line. Below the line, the word "JUDGE" is printed in capital letters.

JUDGE

FILED

DEC 05 2006

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 12/5/06

☒ You are responsible for serving all appropriate parties.

___ The Prothonotary's office has provided service to the following parties:

___ Plaintiff(s) ___ Plaintiff(s) Attorney ___ Other

___ Defendant(s) ___ Defendant(s) Attorney

___ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GIUSEPPE'S FINER FOODS, INC.,)
GORTECH GLOBAL FABRICATION, LLC,)
and ICP ASSET MANAGEMENT, INC.,)

Plaintiffs,

vs.

FRESHTEC INTERNATIONAL, LLC,
INDUSTRIAL MACHINERY
AUTOMATION AND CONTROLS, LLC,
and LARRY SALONE,

Defendants.

CIVIL DIVISION

NO. 06-1633-C.D.

**PLAINTIFFS' RESPONSE TO
DEFENDANTS' PRELIMINARY
OBJECTIONS**

Filed on behalf of Plaintiffs,
Giuseppe's Finer Foods, Inc., Gortech Global
Fabrication, LLC, and ICP Asset Management,
Inc.

Counsel of Record for this Party:

Gregory H. Teufel
Pa. Id. No. 73062
Sarah B. Heineman
Pa. Id. No. 91040
SCHNADER HARRISON SEGAL & LEWIS
LLP
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222-3010
(412) 577-5200 (telephone)
(412) 765-3858 (facsimile)

Christopher E. Mohny, Esquire
Pa. Id. 63494
25 East Park Avenue, Suite 6
DuBois, PA 15801
(814) 375-1044

FILED

DEC 19 2006

6/12:15/06

William A. Shaw
Prothonotary/Clerk of Courts

4 CEN to ATT

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
GIUSEPPE'S FINER FOODS, INC., et al., CIVIL DIVISION

Plaintiffs,

vs.

No. 06-1633-C.D.

FRESHTEC INTERNATIONAL, LLC, et al.,

Defendants.

PLAINTIFFS' RESPONSE TO DEFENDANTS' PRELIMINARY OBJECTIONS

Plaintiffs, Giuseppe's Finer Foods, Inc., Gortech Global Fabrication, LLC, and ICP Asset Management, Inc. (hereinafter collectively "Plaintiffs"), by and through their undersigned attorneys, hereby file the following Response to Defendants' Preliminary Objections:

1. Plaintiffs are without sufficient knowledge or information to form a belief as to the truth of the averments contained in paragraph 1.

2. Plaintiffs are without sufficient knowledge or information to form a belief as to the truth of the averments contained in paragraph 2.

3. Plaintiffs are without sufficient knowledge or information to form a belief as to the truth of the averments contained in paragraph 3.

4. Admitted.

5. Admitted.

6. Admitted.

7. Admitted.

8. Admitted.

9. Admitted.

10. Admitted.

11. Admitted.

12. Admitted.

PRELIMINARY OBJECTION NO. 1

13. Admitted in part and denied in part. It is admitted that Count I of Plaintiffs' Complaint is a breach of contract action initiated by Plaintiff Gortech. It is denied that Count II is a breach of contract initiated by Plaintiff Gortech. To the contrary, Count II is a breach of contract claim initiated by Plaintiff GFF.

14. Admitted.

15. Denied as stated. Paragraphs 58, 65, & 72 speak for themselves. There are no counts 58, 65, and 72.

16. Denied as stated. Paragraphs 59, 65, & 73 speak for themselves. There are no counts 59, 65, & 73.

17. Denied as stated. Paragraphs 60, 67, & 74 speak for themselves.

18. Denied. The allegations in paragraph 18 constitute conclusions of law to which no response is required. To the extent a response is required, said allegations are denied.

19. Denied. The allegations in paragraph 19 constitute conclusions of law to which no response is required. To the extent a response is required, said allegations are denied. Denied.

20. The allegations in paragraph 20 constitute conclusions of law to which no response is required. To the extent a response is required, said allegations are denied.

WHEREFORE, Plaintiffs request that this Court enter judgments jointly and severally against Defendants and in favor of the Plaintiff and award such other and further relief as this Court deems proper.

PRELIMINARY OBJECTION NO. 2

21. Admitted.

22. Admitted.

23. Admitted in part and denied in part. It is admitted that Paragraph 17 of Plaintiffs' Complaint outlines ICP Asset's involvement in the contract. It is denied that paragraph 17 contains the only allegation of ICP Asset's involvement in the contract. To the contrary, Paragraphs 23, 24, 26, 27, 28, 53-56 all contain allegations regarding ICP Asset's involvement in the contract.

24. Admitted in part and denied in part. It is admitted that in Paragraphs 23, 24, 26-28 Plaintiffs' allege ICP Asset paid Defendant's Freshtec and IMAC various monies for the cheese dumper equipment. It is denied that Paragraph 25 contains such allegations. To the contrary, Paragraph 25 alleges:

Upon information and belief, Larry Salone, acting as agent for Freshtec and IMAC, periodically misrepresented the progress of the work, the quality of the Equipment, and testing of the Equipment that had been performed, all in an effort to encourage further payments for the Equipment, despite knowledge that his representations in that regard were false

25. Denied. The allegations in paragraph 25 constitute conclusions of law to which no response is required. To the extent a response is required, said allegations are denied.

26. Admitted

27. Denied. The allegations in paragraph 27 constitute conclusions of law to which no response is required. To the extent a response is required, said allegations are denied. WHEREFORE, Plaintiffs request that this Court enter judgments jointly and severally against Defendants and in favor of the Plaintiff and award such other and further relief as this Court deems proper.

PRELIMINARY OBJECTION NO. 3

28. Admitted.

29. Admitted.

30. Admitted.

31. Admitted.

32. Admitted.

33. Denied. The allegations in paragraph 33 constitute conclusions of law to which no response is required. To the extent a response is required, said allegations are denied. To the contrary, Plaintiffs alleged that Gortech was acting as an agent on behalf of Giuseppe's and/or Giuseppe's was a third party beneficiary of the contract.

34. Denied. The allegations in paragraph 34 constitute conclusions of law to which no response is required. To the extent a response is required, said allegations are denied.

WHEREFORE, Plaintiffs request that this Court enter judgments jointly and severally against Defendants and in favor of the Plaintiff and award such other and further relief as this Court deems proper.

PRELIMINARY OBJECTION NO. 4

35. Admitted in part, denied in part. It is admitted that Plaintiffs' Complaint refers to Defendant Salone as an agent of Freshtec and IMAC at different times in their Complaint. It is denied that Plaintiffs allege Defendant Salone acted only in the capacity of an agent of Freshtec and IMAC.

36. Denied. The allegations in paragraph 36 constitute conclusions of law to which no response is required. To the extent a response is required, said allegations are denied. By way of

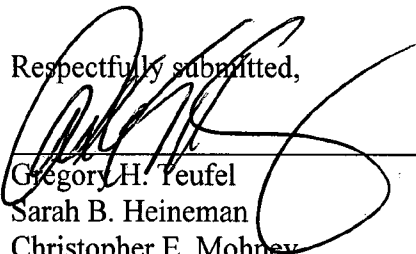
further response, Plaintiffs are without sufficient knowledge or information to form a belief as to the truth of the averments contained in paragraph 36.

37. Denied. Plaintiffs' claims are not founded solely on contract principals; there are also claims of unjust enrichment and fraud against Defendant Salone. It is further denied that Salone was not a party to the contracts. To the contrary, upon information and belief, Salone is the alter ego Freshtec, and IMAC are all a single entity and/or requires the piercing of the respective entities corporate veils. Therefore, Salone through Freshtec and IMAC is a party to the contracts.

38. Denied. The allegations in paragraph 38 constitute conclusions of law to which no response is required. To the extent a response is required, said allegations are denied. To the contrary, Plaintiffs have pled a piercing of the corporate veils of the respective Defendant entities, thereby rendering Salone individually liable to Plaintiffs on all claims. In addition, Salone is personally liable for his own unjust enrichment and fraud.

WHEREFORE, Plaintiffs request that this Court enter judgments jointly and severally against Defendants and in favor of the Plaintiff and award such other and further relief as this Court deems proper.

Respectfully submitted,



Gregory H. Teufel
Sarah B. Heineman
Christopher E. Mohnney

DATED: December 19, 2006

Attorneys for Plaintiffs, GIUSEPPE'S FINER FOODS, INC., GORTECH GLOBAL FABRICATION, LLC, and ICP ASSET MANAGEMENT, INC.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA,
CIVIL DIVISION

GIUSEPPE'S FINER FOODS, INC.,
GORTECH GLOBAL FABRICATION,
LLC, and ICP ASSET MANAGEMENT,
INC.

Plaintiffs,

vs.

FRESHTEC INTERNATIONAL, LLC,
INDUSTRIAL MACHINERY
AUTOMATION AND CONTROLS,
LLC and LARRY SALONE

Defendants.

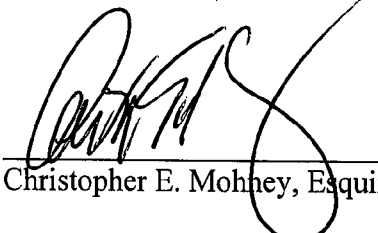
NO. 06-651-C.D.

CERTIFICATE OF SERVICE

I, CHRISTOPHER E. MOHNEY, ESQUIRE, co-counsel of record for Plaintiffs, do hereby certify that on the 19th day of December, 2006, I did cause to be served certified true and correct copies of Plaintiffs' Response to Defendants' Preliminary Objections on the following individuals, by first class United States mail, postage pre-paid:

David J. Hopkins, Esquire
Hopkins Hetzel Law Firm
100 Meadow Lane, Suite 5
DuBois, PA 15801

BY:


Christopher E. Mohney, Esquire

CA

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

GIUSEPPE'S FINER FOODS,
INC., GORTECH GLOBAL
FABRICATION, LLC, AND ICP
ASSET MANAGEMENT, INC.

-vs-

No. 06-1633-CD

FRESHTEC INTERNATIONAL,
LLC, INDUSTRIAL MACHINERY
AUTOMATION AND CONTROL,
LLC, and LARRY SALONE

O R D E R

AND NOW, this 3rd day of January, 2007,
following argument on the Preliminary Objections filed on
behalf of the Defendants, it is the ORDER of this Court as
follows:

1. The Preliminary Objection set forth as No. 1, Paragraphs 13 through 20, is hereby dismissed;
2. The Preliminary Objection set forth as No. 2, Paragraphs 21 through 27, is hereby granted. The ICP Asset Management, Inc., is hereby dismissed as a Plaintiff. The unjust enrichment portion of Plaintiff's complaint is also dismissed;
3. The Preliminary Objections listed as No. 3 and No. 4 are hereby dismissed.

FILED

01/05/2007
JAN 05 2007

William A. Shaw
Prothonotary/Clerk of Courts

cc: Atty's:
G. Teufel
S. Heinemann
C. Mohney
D. Hopkins

BY THE COURT

Frederick J. Ammerman
President Judge

FILED

JAN 05 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 1/5/07

☐ You are responsible for serving all appropriate parties.

☒ The Prothonotary's office has provided service to the following parties:

☐ Plaintiff(s) ☒ Plaintiff(s)/Attorney ☐ Other

☐ Defendant(s) ☒ Defendant(s)/Attorney

☐ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 102010
NO: 06-1633-CD
SERVICE # 1 OF 3
COMPLAINT

PLAINTIFF: GIUSEPPE'S FINER FOODS, INC. al

vs.

DEFENDANT: FRESHTEC INTERNATIONAL LLC, INDUSTRIAL MACHINERY AUTOMATION AND CONTROLS
LLC AND LARRY SALONE

SHERIFF RETURN

NOW, October 12, 2006 AT 2:15 PM SERVED THE WITHIN COMPLAINT ON FRESHTEC INTERNATIONAL, LLC
DEFENDANT AT 602 WEST DUBOIS AVE., DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO
RACHELLE GEIST, SECRETARY A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE
KNOWN THE CONTENTS THEREOF.

SERVED BY: COUDRIET /

FILED
JAN 19 2007
6/3:10 (u)
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 102010
NO: 06-1633-CD
SERVICE # 2 OF 3
COMPLAINT

PLAINTIFF: GIUSEPPE'S FINER FOODS, INC. al

vs.

DEFENDANT: FRESHTEC INTERNATIONAL LLC, INDUSTRIAL MACHINERY AUTOMATION AND CONTROLS
LLC AND LARRY SALONE

SHERIFF RETURN

NOW, October 12, 2006 AT 2:15 PM SERVED THE WITHIN COMPLAINT ON INDUSTRIAL MACHINERY
AUTOMATION AND CONTROLS, LLC DEFENDANT AT 602 WEST DUBOIS AVE., DUBOIS, CLEARFIELD
COUNTY, PENNSYLVANIA, BY HANDING TO RACHELLE GEIST, SECRETARY A TRUE AND ATTESTED COPY
OF THE ORIGINAL COMPLAINT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: COUDRIET /

In The Court of Common Pleas of Clearfield County, Pennsylvania

Service # 3 of 3 Services

Sheriff Docket # **102010**

GIUSEPPE'S FINER FOODS, INC. al

Case # 06-1633-CD

vs.

FRESHTEC INTERNATIONAL LLC, INDUSTRIAL MACHINERY
AUTOMATION AND CONTROLS

TYPE OF SERVICE COMPLAINT

SHERIFF RETURNS

NOW January 19, 2007 RETURNED THE WITHIN COMPLAINT "NOT SERVED PER ATTORNEY" AS TO LARRY SALONE, DEFENDANT. 1/18/06 GAVE COMPLAINT TO ATTY. MOHNEY

SERVED BY: /

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 102010
NO: 06-1633-CD
SERVICES 3
COMPLAINT

PLAINTIFF: GIUSEPPE'S FINER FOODS, INC. a/

vs.

DEFENDANT: FRESHTEC INTERNATIONAL LLC, INDUSTRIAL MACHINERY AUTOMATION AND CONTROLS
LLC AND LARRY SALONE

SHERIFF RETURN

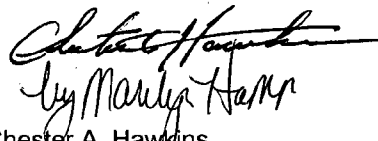
RETURN COSTS

Description	Paid By	CHECK #	AMOUNT
SURCHARGE	MOHNEY	1338	30.00
SHERIFF HAWKINS	MOHNEY	1338	46.30

Sworn to Before Me This

_____ Day of _____ 2007

So Answers,



Chester A. Hawkins
Sheriff

COPY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GIUSEPPE'S FINER FOODS, INC.,)
GORTECH GLOBAL FABRICATION, LLC,) CIVIL DIVISION
and ICP ASSET MANAGEMENT, INC.,)

Plaintiffs,) NO. 06-1633 C.D.

vs.)

FRESHTEC INTERNATIONAL, LLC,) **COMPLAINT**
INDUSTRIAL MACHINERY)
AUTOMATION AND CONTROLS, LLC,)
and LARRY SALONE,)

Defendants.)

) Filed on behalf of Plaintiffs,
) Giuseppe Finer Foods

) Counsel of Record for this Party:

) Gregory H. Teufel

) Pa. Id. No. 73062

) Sarah B. Heineman

) Pa. Id. No. 91040

) SCHNADER HARRISON SEGAL & LEWIS

) LLP

) Suite 2700, Fifth Avenue Place

) 120 Fifth Avenue

) Pittsburgh, PA 15222-3010

) (412) 577-5200 (telephone)

) (412) 765-3858 (facsimile)

) Christopher E. Mohny, Esquire

) Pa. Id. 63494

) 25 East Park Avenue, Suite 6

) DuBois, PA 15801

) (814) 375-1044

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

OCT 06 2006

Attest.

William A. Shaw
Prothonotary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GIUSEPPE'S FINER FOODS, INC., et al., CIVIL DIVISION

Plaintiffs,

vs.

No. 06- - C.D.

FRESHTEC INTERNATIONAL, LLC, et al.,

Defendants.

Notice to Defend

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and notice are served by entering a written appearance personally or by attorney and filing, in writing, with the Court your defenses or objections to the claims set forth before you. You are warned that if you fail to do so, the case may proceed without further notice for any money claimed in this Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or other property rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICES SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP:

Court Administrator's Office
Clearfield County Courthouse
Clearfield, PA 16830
(814) 765-2641 Ext. 1300

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GIUSEPPE'S FINER FOODS, INC., et al., CIVIL DIVISION

Plaintiffs,

vs.

No. 06- - C.D.

FRESHTEC INTERNATIONAL, LLC, et al.,

Defendants.

COMPLAINT

Plaintiffs, Giuseppe's Finer Foods, Inc., Gortech Global Fabrication, LLC, and ICP Asset Management, Inc., by and through their undersigned attorneys, hereby file the following Complaint in Civil Action, the grounds of which the following is a statement:

Introduction

1. This action seeks to recover damages from an equipment manufacturer that breached its contract ("the Contract") to manufacture and install paste bin dumpers, a cheese dumper, and related equipment (collectively, "the Equipment"), and committed fraud in the sale of the Equipment.

Parties

2. Plaintiff Giuseppe's Finer Foods, Inc. ("Giuseppe's") is a Pennsylvania corporation with a place of business at 2592 Oklahoma-Salem Road, DuBois, Pennsylvania 15801.

3. Plaintiff Gortech Global Fabrication, LLC ("Gortech") is a Pennsylvania limited liability company with a place of business at 215 Beaver Drive, DuBois, Pennsylvania 15801.

4. Plaintiff ICP Asset Management, Inc. ("ICP Asset") is a Pennsylvania corporation with a place of business at 2592 Oklahoma-Salem Road, DuBois, Pennsylvania 15801.

5. Upon information and belief, Defendant Freshtec International, LLC ("Freshtec") is a Pennsylvania corporation with a place of business at 602 West DuBois Ave., Dubois, Pennsylvania 15801.

6. Upon information and belief, Defendant Industrial Machinery Automation and Controls, LLC ("IMAC") is a Pennsylvania limited liability company with a place of business at 602 West DuBois Ave., DuBois, Pennsylvania 15801.

7. Upon information and belief, Larry Salone is a Pennsylvania resident who currently resides at 1562 Treasure Lake, DuBois, PA 15801.

Jurisdiction and Venue

8. This Court has original jurisdiction over this action pursuant to 42 Pa.Cons.Stat. § 931.

9. Venue is proper in this Court under Pa.R.Civ.P. 1006 because transactions and occurrences out of which the causes of action set forth herein arose took place in Clearfield County.

Facts

10. Beginning in the Fall of 2004, Larry Salone, as agent of Freshtec and IMAC, and Dennis Raybuck, Allan Simpson, Luke Sicard, and George Bennett, among others, as agents of Giuseppe's had discussions and other communications regarding Giuseppe's purchasing the Equipment.

11. Upon information and belief, during those discussions and other communications, Larry Salone, acting as agent of Freshtec and IMAC, made false representations that Freshtec

and IMAC could design, manufacture, and install the Equipment, and misrepresented Freshtec's and IMAC's prior experience and expertise. Information from Freshtec's website is attached hereto as Exhibit A and is incorporated by reference as if fully set forth herein.

12. Upon information and belief, Larry Salone, acting as agent of Freshtec and IMAC, further misrepresented Freshtec's and IMAC's experience, knowledge, and ability to design, manufacture, and install the Equipment consistent with Hazard Analysis Critical Control Points (HACCP) standards and Good Manufacturing Practices (GMP).

13. On January 18, 2005, Freshtec provided a quotation for a paste bin dumper and different options offered to control and integrate the paste bin dumper, with delivery terms of "8-10 weeks". A true and correct copy of the January 18, 2005 quotation is attached hereto as Exhibit B and is incorporated by reference as if fully set forth herein.

14. Gortech was a contractor providing equipment and materials to Giuseppe's for the construction of Giuseppe's food manufacturing plant and acted as agent for Giuseppe's in purchasing equipment from other vendors. In reliance on Larry Salone's misrepresentations, Giuseppe's requested Gortech to issue a purchase order to Freshtec to supply the Equipment to Giuseppe's.

15. In reliance on Larry Salone's misrepresentations, on or about April 5, 2005, Gortech issued a purchase order ("the Paste Bin Dumper Equipment Purchase Order") to Freshtec based upon the January 18, 2005 quotation for four (4) Paste Bin Dumpers, the cost of installing four electric elevator drives to replace the hydraulic system, and four (4) control packages (collectively, the "Paste Bin Dumper Equipment") for the total cost of \$166,360.00, 50% to be paid with the order and 50% to be paid upon shipment. A true and correct copy of

that May 5, 2005 Purchase Order, No. 10292, is attached hereto as Exhibit C and is incorporated by reference as if fully set forth herein.

16. On or about April 6, 2005, Freshtec issued an invoice in the amount of \$83,180.00 for the Paste Bin Dumper Equipment to be shipped on June 6, 2005. A true and correct copy of that Invoice, No.1057, is attached hereto as Exhibit D and incorporated by reference as if fully set forth herein.

17. Giuseppe's financed the purchase of the Equipment through a lease arrangement with ICP Asset whereby ICP Asset paid for the Equipment and leased it to Giuseppe's.

18. In reliance on Larry Salone's misrepresentations, on or about April 11, 2005, ICP Asset paid Freshtec \$83,180.00 in accordance with Exhibits B, C and D attached hereto.

19. On or about July 25, 2005, Freshtec issued a quotation for a cheese dumper, Raybuck tipper modifications, new flat top conveyor, and a hoist/rotation crane for the cheese handling portion of the Giuseppe's food manufacturing plant (collectively the "Cheese Dumper Equipment") with a completion date of September 10, 2005 and with payment terms of 50% on order and 50% on ready to ship. A true and correct copy of the July 25, 2005 quotation is attached hereto as Exhibit E and incorporated by reference as if fully set forth herein.

20. The cover sheet for the July 25, 2005 quotation requested the purchase order to be issued to Freshtec's "automation division," "Industrial Automation, Machinery & Controls."

21. In reliance on Larry Salone's misrepresentations, on or about July 26, 2005, in response to the July 25, 2005 quotation, Gortech issued a purchase order to "Freshtec International c/o Industrial Automation, Machinery & Controls" for the Cheese Dumper Equipment for delivery on September 10, 2005, with a total cost of \$62,000.00. A true and

correct copy of that Purchase Order, No. 50012, is attached hereto as Exhibit F and is incorporated by reference as if fully set forth herein.

22. On or about July 26, 2005, "Ind. Automation, Machinery & Controls--Freshtec Int'l" issued an invoice in the amount of \$31,000.00 for the Cheese Dumper Equipment to be shipped on September 1, 2005. A true and correct copy of that Invoice, No.1285, is attached hereto as Exhibit G and incorporated by reference as if fully set forth herein.

23. In reliance on Larry Salone's misrepresentations, on or about August 8, 2005, ICP Asset paid "Ind. Automation, Machinery & Controls" \$31,000.00 in accordance with Exhibits E, F and G attached hereto.

24. In reliance on Larry Salone's misrepresentations, on or about August 17, 2005, ICP Asset paid Freshtec another \$63,180.00.

25. Upon information and belief, Larry Salone, acting as agent for Freshtec and IMAC, periodically misrepresented the progress of the work, the quality of the Equipment, and testing of the Equipment that had been performed, all in an effort to encourage further payments for the Equipment, despite knowledge that his representations in that regard were false.

26. In reliance on Larry Salone's misrepresentations, on or about October 7, 2005, ICP Asset paid "Ind. Automation, Machinery & Controls" another \$1,650.

27. In reliance on Larry Salone's misrepresentations, on or about December 2, 2005, ICP Asset paid "Ind. Automation, Machinery & Controls" another \$40,000.

28. In reliance on Larry Salone's misrepresentations, on or about December 5, 2005, ICP Asset paid Freshtec another \$500.00.

29. The Equipment was delivered late and riddled with problems which, upon information and belief, were well known by Larry Salone to exist prior to delivery.

30. Delivery of the Paste Bin Dumper Equipment was not completed until December 5, 2005. The first bin dumper arrived on September 30, 2005 and the remaining three on December 2 and December 5, 2005.

31. The Cheese Dumper Equipment was not delivered until on or about December 2, 2005.

32. Problems with the Equipment included the following:

a. Problems with the Cheese Dumper Equipment included the following:

- i. The long conveyor supplied by Freshtec was not matched to the height of the existing conveyors with which it was intended to be used.
- ii. The motor for the Raybuck Tipper was not powder coated as quoted.
- iii. The quote promised to "add a drive" to the existing drive and this was not done.
- iv. The conveyor supplied did not include any means of transferring product to and from the supplied conveyor to the preexisting conveyors.
- v. The control panel provided did not match the quote, which promised that the conveyor would be "VFD controlled, stainless steel sloped top control panel. With AB SLC PLC."
- vi. The necessary photo eyes to run the Cheese Dumper Equipment were not supplied.
- vii. The chain holder supplied for use directly above product did not meet HACCP and GMP standards for food safety, and required the addition of a cover.

- viii. The drive drum, idle drum, and take-up rollers on the conveyors were not sealed so that water from the wash down of the equipment would not end up inside the rollers, resulting in a serious product contamination problem and violation of HACCP and GMP safety standards.
- ix. The belts supplied on the conveyor have metal cleats to link the belts together which are not allowed under HACCP and GMP safety standards.
- x. Conveyor rollers supplied were not adequate to handle the weight of the cheese barrels the conveyors were intended to convey.
- xi. The Cheese Dumper did not have, as promised by the quote, "Powder coated linear actuator for elevation, electric drive. Linear actuator for rotation. Stainless steel guarding. With AB PLC and controls for eventual automatic operation. . . . VFD on both actuators."
- xii. The Cheese Dumper did not have a hoisting "bucket" as quoted. Instead, a belt driven system was supplied.
- xiii. The overall quality of the workmanship was poor.
- b. Problems with the Paste Bin Dumper Equipment included the following:
 - i. The overall quality of the workmanship was poor.
 - ii. The bellows that cover the linear actuators were cracking and unsanitary, in violation of HACCP and GMP standards.
 - iii. There were rust marks on the Equipment.
 - iv. The Paste Bin Dumper Equipment did not have 3000 pound capacity as quoted and was inadequate to lift and dump the totes of tomato paste as intended.

- v. The Paste Bin Dumper Equipment, though used properly and as intended, quickly developed failed welds, bent support brackets, and other problems indicating a lack of structural integrity potentially dangerous to Equipment operators.
- vi. The Paste Bin Dumper Equipment experienced limit switch failures as well as blown fuses and PLC faults that prevented it from operating and/or operating properly.

33. The parties met to discuss the problems with the Equipment on May 4, 2006 and agreed to give Freshtec an opportunity to cure the problems. Larry Salone, acting as agent for Freshtec and IMAC, promised to address many of the problems, giving specific dates for completion of various items. Letters and emails documenting the May 4, 2006 meeting are attached hereto as Exhibits H and I, and are incorporated by reference as if fully set forth herein, however, the summary by counsel for Larry Salone, et al. is not entirely accurate. However, rather than address any of the problems, counsel for Larry Salone, et al., called counsel for Giuseppe's, Gortech, and ICP Asset to inform him that the promises made at the May 4, 2006 to address the problems with the Equipment would not be honored and that Freshtec planned to file for bankruptcy protection in the near future.

34. Upon information and belief, Freshtec is undercapitalized and is merely the alter ego of Larry Salone and IMAC.

35. Upon information and belief IMAC is undercapitalized and merely the alter ego of Larry Salone and Freshtec.

COUNT I: BREACH OF CONTRACT
(Gortech v. Larry Salone, Freshtec, and IMAC)

36. Paragraphs 1 through 35 of this Complaint are incorporated by reference as if fully set forth herein.

37. Gortech, Freshtec and IMAC mutually assented to valid, enforceable contracts regarding supply of the Paste Bin Dumper Equipment and the Cheese Dumper Equipment.

38. Freshtec and IMAC agreed to provide the Equipment as called for in the quotations and purchase orders attached hereto.

39. Freshtec and IMAC breached their contractual obligations and the duty of good faith and fair dealing by supplying Equipment that was poorly designed, poorly manufactured, and unreliable, and by failing to deliver the Equipment on time, *inter alia*, as detailed above.

40. Freshtec and IMAC further breached their contractual obligations by failing to correct numerous defects in the Equipment.

41. Freshtec and IMAC profess to be merchants engaged in the sale of equipment similar to the Equipment at issue in this case, such that the Equipment is subject to an implied warranty of merchantability.

42. Freshtec and IMAC breached the implied warranty of merchantability because the Equipment supplied was not reasonably fit for the ordinary purposes of such equipment.

43. Freshtec and IMAC breached the implied warranty of fitness for particular purpose because the Equipment supplied was not reasonably fit for the particular purposes that were known to Freshtec and IMAC at the time of the formation of the contracts at issue.

44. Despite repeated promises to the contrary, Freshtec and IMAC never corrected all of the problems with the Equipment.

45. As a result of Freshtec's and IMAC's breach of their contractual obligations and failure to correct the many problems with the Equipment, Gortech has suffered damages in excess of \$20,000.

46. Freshtec and IMAC should be held jointly and severally liable for the breaches of contract by Freshtec and IMAC because, upon information and belief, they operated as a single entity or corporate combine, with Freshtec referring to IMAC as a mere "division" of Freshtec, and issuing combined Freshtec/IMAC invoices and/or alternately issued invoices from Freshtec and IMAC for different portions of the price of the same goods.

47. Moreover, the Court should pierce the corporate veils of Freshtec and IMAC and hold Larry Salone, Freshtec, and IMAC jointly and severally liable for the breaches of contract at issue because Larry Salone abused the corporate form in order to perpetrate a fraud upon the Plaintiffs, as detailed above.

WHEREFORE, Gortech respectfully requests that this Court enter judgments in its favor jointly and severally against Defendants Larry Salone, Freshtec, and IMAC in an amount in excess of \$20,000, plus interest, costs and such other and further relief as this Court deems just and proper.

COUNT II: BREACH OF CONTRACT
(Giuseppe's v. Larry Salone, Freshtec, and IMAC)

48. Paragraphs 1 through 47 of this Complaint are incorporated by reference as if fully set forth herein.

49. Giuseppe's was an intended third-party beneficiary of the contracts with Freshtec and IMAC.

50. Giuseppe's relied on Freshtec's and IMAC's repeated promises to fix the many defects in the Equipment, and thus Giuseppe's did not immediately arrange to obtain replacement Equipment.

51. As a result of Freshtec's and IMAC's breach of their contractual obligations and failure to correct the many problems with the Equipment, Giuseppe's suffered damages in excess of \$20,000.

WHEREFORE, Giuseppe's respectfully requests that this Court enter judgments in its favor jointly and severally against Defendants Larry Salone, Freshtec, and IMAC in an amount in excess of \$20,000, plus interest, costs and such other and further relief as this Court deems just and proper.

COUNT III: UNJUST ENRICHMENT
(Gortech v. Larry Salone, Freshtec, and IMAC)

52. Paragraphs 1 through 51 of this Complaint are incorporated by reference as if fully set forth herein.

53. ICP Asset conferred a benefit upon Larry Salone, Freshtec, and IMAC by making payments to Freshtec and IMAC, which funds, upon information and belief, were in large part presumably transferred to Larry Salone, the sole owner of Freshtec and IMAC

54. Acceptance and retention of such monies under the circumstances described above would be unjust and inequitable.

55. Freshtec and IMAC should be held jointly and severally liable for unjust enrichment because, upon information and belief, they operated as a single entity or corporate combine, with Freshtec referring to IMAC as a mere "division" of Freshtec, and issuing combined Freshtec/IMAC invoices and/or alternately issued invoices from Freshtec and IMAC for different portions of the price of the same goods.

56. Moreover, the Court should pierce the corporate veils of Freshtec and IMAC and hold Larry Salone, Freshtec, and IMAC jointly and severally liable for the unjust enrichment because Larry Salone abused the corporate form in order to perpetrate a fraud upon the Plaintiffs, as detailed above.

WHEREFORE, ICP Asset respectfully requests that this Court enter judgments in its favor jointly and severally against Defendants Larry Salone, Freshtec, and IMAC in an amount in excess of \$20,000, plus interest, costs and such other and further relief as this Court deems just and proper.

COUNT IV: FRAUD
(Giuseppe's vs. Larry Salone, Freshtec, and IMAC)

57. Paragraphs 1 through 56 of this Complaint are incorporated by reference as if fully set forth herein.

58. As is detailed above, upon information and belief, Larry Salone, acting as agent of Freshtec and IMAC, made false representations that Freshtec and IMAC could design, manufacture, and install the Equipment, and misrepresented Freshtec's and IMAC's prior experience and expertise.

59. Upon information and belief, Larry Salone, acting as agent of Freshtec and IMAC, further misrepresented Freshtec's and IMAC's experience, knowledge, and ability to design, manufacture, and install the Equipment consistent with HACCP and GMP standards.

60. Upon information and belief, Larry Salone, acting as agent for Freshtec and IMAC, periodically misrepresented the progress of the work, the quality of the Equipment, and testing of the Equipment that had been performed, all in an effort to encourage further payments for the Equipment, despite knowledge that his representations in that regard were false.

61. Larry Salone made those misrepresentations intentionally, intending that Giuseppe's would rely on them in first agreeing to purchase and then in paying for the Equipment.

62. Giuseppe's did in fact rely on those misrepresentations in entering into lease financing arrangements regarding the Equipment.

63. Because of its reliance on Larry Salone's false representations, Giuseppe's incurred damages in excess of \$20,000.

WHEREFORE, Giuseppe's respectfully requests that this Court enter judgments in its favor jointly and severally against Defendants Larry Salone, Freshtec, and IMAC in an amount in excess of \$20,000, plus interest, costs and such other and further relief as this Court deems just and proper.

COUNT V: FRAUD
(Gortech vs. Larry Salone, Freshtec, and IMAC)

64. Paragraphs 1 through 63 of this Complaint are incorporated by reference as if fully set forth herein.

65. As is detailed above, upon information and belief, Larry Salone, acting as agent of Freshtec and IMAC, made false representations that Freshtec and IMAC could design, manufacture, and install the Equipment, and misrepresented Freshtec's and IMAC's prior experience and expertise.

66. Upon information and belief, Larry Salone, acting as agent of Freshtec and IMAC, further misrepresented Freshtec's and IMAC's experience, knowledge, and ability to design, manufacture, and install the Equipment consistent with HACCP and GMP standards.

67. Upon information and belief, Larry Salone, acting as agent for Freshtec and IMAC, periodically misrepresented the progress of the work, the quality of the Equipment, and

testing of the Equipment that had been performed, all in an effort to encourage further payments for the Equipment, despite knowledge that his representations in that regard were false.

68. Larry Salone made those misrepresentations intentionally, intending that Gortech would rely on them in first issuing purchase orders and then in paying for the Equipment.

69. Gortech did in fact rely on those misrepresentations in issuing the purchase orders attached hereto and in arranging with ICP Asset for ICP Asset to pay for the Equipment.

70. Because of its reliance on Larry Salone's false representations, Gortech incurred damages in excess of \$20,000.

WHEREFORE, Gortech respectfully requests that this Court enter judgments in its favor jointly and severally against Defendants Larry Salone, Freshtec, and IMAC in an amount in excess of \$20,000, plus interest, costs and such other and further relief as this Court deems just and proper.

COUNT VI: FRAUD
(ICP Asset vs. Larry Salone, Freshtec, and IMAC)

71. Paragraphs 1 through 70 of this Complaint are incorporated by reference as if fully set forth herein.

72. As is detailed above, upon information and belief, Larry Salone, acting as agent of Freshtec and IMAC, made false representations that Freshtec and IMAC could design, manufacture, and install the Equipment, and misrepresented Freshtec's and IMAC's prior experience and expertise.

73. Upon information and belief, Larry Salone, acting as agent of Freshtec and IMAC, further misrepresented Freshtec's and IMAC's experience, knowledge, and ability to design, manufacture, and install the Equipment consistent with HACCP and GMP standards.

74. Upon information and belief, Larry Salone, acting as agent for Freshtec and IMAC, periodically misrepresented the progress of the work, the quality of the Equipment, and testing of the Equipment that had been performed, all in an effort to encourage further payments for the Equipment, despite knowledge that his representations in that regard were false.

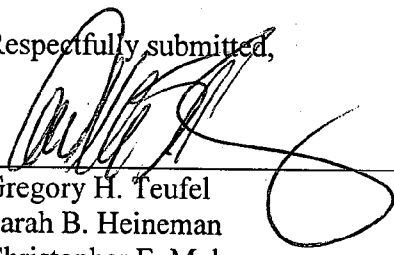
75. Larry Salone made those misrepresentations intentionally, intending that ICP Asset would rely on them in paying for the Equipment.

76. ICP Asset did in fact rely on those misrepresentations in paying for the Equipment.

77. Because of its reliance on Larry Salone's false representations, Giuseppe's incurred damages in excess of \$20,000.

WHEREFORE, Giuseppe's respectfully requests that this Court enter judgments in its favor jointly and severally against Defendants Larry Salone, Freshtec, and IMAC in an amount in excess of \$20,000, plus interest, costs and such other and further relief as this Court deems just and proper.

Respectfully submitted,



Gregory H. Teufel
Sarah B. Heineman
Christopher E. Mohny

DATED: October 6, 2006

*Attorneys for Plaintiffs, GIUSEPPE'S FINER
FOODS, INC., GORTECH GLOBAL
FABRICATION, LLC, and ICP ASSET
MANAGEMENT, INC.*

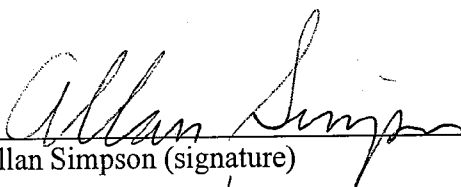
JURY TRIAL DEMAND

Plaintiffs demand trial by jury on all issues so triable.

VERIFICATION

I, Allan Simpson, as Chief Operating Officer of GIUSEPPE'S FINER FOODS, INC., am authorized to make this verification on behalf of GIUSEPPE'S FINER FOODS, INC. and hereby verify that I have reviewed the information provided in the **COMPLAINT** and that the information provided therein is true and correct to the best of my knowledge, information, and belief.

I give this Verification pursuant to 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities.



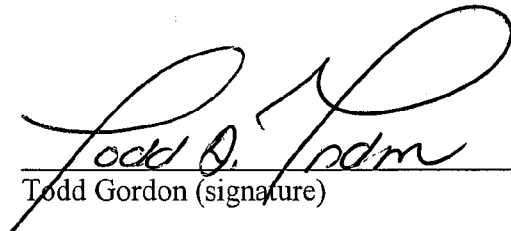
Allan Simpson (signature)

Date: 9/25/06

VERIFICATION

I, Todd Gordon, as Chief Operating Officer of GORTECH GLOBAL FABRICATION, LLC, am authorized to make this verification on behalf of GORTECH GLOBAL FABRICATION, LLC and hereby verify that I have reviewed the information provided in the **COMPLAINT** and that the information provided therein is true and correct to the best of my knowledge, information, and belief.

I give this Verification pursuant to 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities.

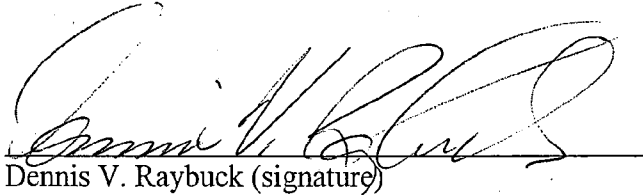


Todd Gordon (signature)
Date: 9-25-06

VERIFICATION

I, Dennis V. Raybuck, as President of ICP ASSET MANAGEMENT, INC., am authorized to make this verification on behalf of ICP ASSET MANAGEMENT, INC. and hereby verify that I have reviewed the information provided in the **COMPLAINT** and that the information provided therein is true and correct to the best of my knowledge, information, and belief.

I give this Verification pursuant to 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities.

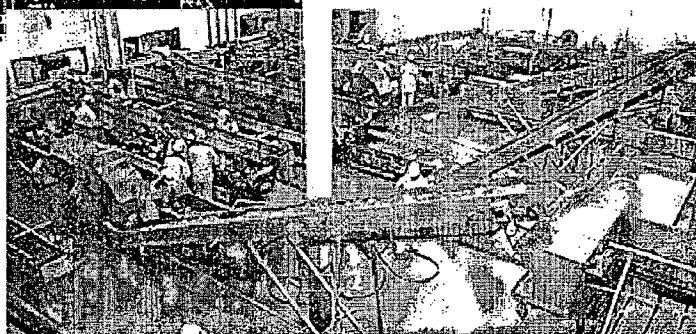


Dennis V. Raybuck (signature)

Date: 25 SEPTEMBER 2006



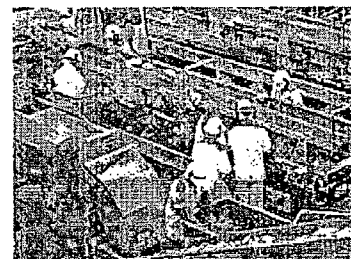
custom processing lines



- Modular plant layout design
- All capacities
- Short order processing lines
- 100% Made in USA

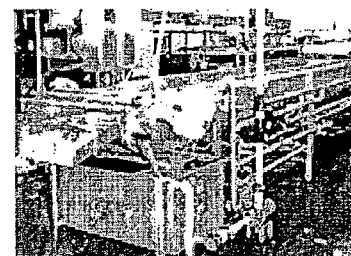
Capabilities include:

- Complete processing facilities, from start to finish.
- Large or small capacity.
- Short order equipment. Short order processing lines.
- Adding a single new machine, to adding a new production line of machines.
- Design of specialty processing equipment.
- Custom conveyors, hoppers, and a complete product line of machines from start to finish. Including conveyors, weighers, hoppers, peelers, slicers, washers, dryers, packaging equipment, etc.
- Integration of other manufacturers' equipment with our equipment into your facilities' needs.
- Complete control systems and control panel work.



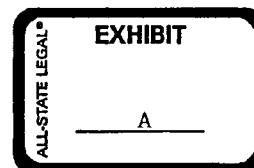
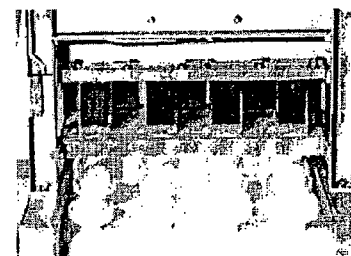
Modular plant layout design

Our new modular plant layout design allows for unlimited flexibility of your processing needs. High volume and easy product changeover at a realistic price. You do not need to be tied down to fixed processing lines, instead, let us design a modular system for you that can be moved, reconfigured, and used to its fullest potential.



Please ask your FreshTec sales engineer for assistance and have him review our product literature with you for your specific needs. Please schedule a visit from one of our sales engineers or designers to discuss and review your plant and its needs. Or ask to visit one of our customers' facilities to see our systems in operation.

FreshTec can design and build your processing facility for you. Our engineering and sales staff has worldwide experience in all types of processing plants, whether large or small. We take great pride in being able to add a new process or piece of equipment to an existing facility, or to completely fabricate and design a new state-of-the-art facility. Our varied skills allow us to specifically engineer and recommend the right solution for your needs. We work with other equipment suppliers worldwide. And of course our product line is standard in the industry. Our manufacturing flexibility allows us to target the right machines to your exact needs and specifications.

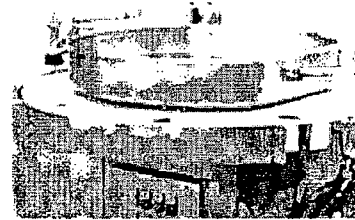
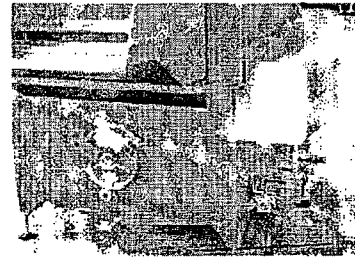



Custom machine needs? No problem. We design and build special machines.

Machine Specifications

We manufacture and use only the best equipment in the industry. We consistently strive to improve our equipment, and fabricate our equipment with the following guidelines in mind:

- HACCP
- Cleaning is a must for your facility. Our machines are washdown and designed for ease in cleaning.
- Maintenance. We keep service needs in mind when designing machines, by making them simple to work on.
- Spare parts. We are constantly striving to make our spare parts inventory simpler, larger and more accessible for customers.
- E-stop and control panel circuitry. All our machines are equipped for operator safety. UL listed and CE approved.
- All voltages available, 110-575 VAC.
- Heavy-duty industrial construction, stainless steel and other food grade components.
- OSHA. Guarding and operator safety is critical. Our machines are always built to OSHA standards.
- Operator ergonomics. We design our machines and systems to be user friendly. We consider the actual movements and procedures of operators. We recognize and relate our equipment to the weights and capacities of the products being used, the noise levels, and of course, the waste disposal issues.



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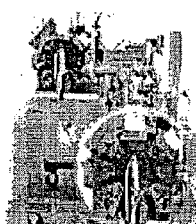
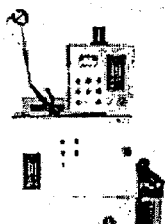
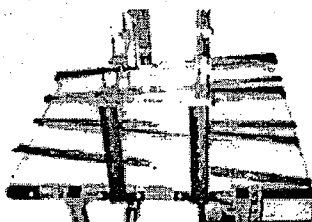
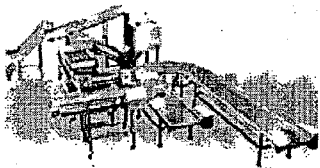
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freshtec
INTERNATIONAL

automation engineering group



- Custom automation
- Engineering and design using CAD
- Manufacturing and fabrication
- Installation and service
- 100% Made in USA
- Please, ask your FreshTec sales engineer for assistance. Please schedule a visit from one of our sales engineers or designers to discuss and review your plant and its needs. Or ask to visit one of our customers' facilities to see our systems in operation.

Custom Automation available including:

- Custom machinery, for the food industry and all other industries.
- Pneumatic, hydraulics, electro-mechanical.
- Pick and Place systems, robotics.
- Conveyors and conveying systems.
- Labor saving systems.
- Cost reduction systems.
- New process systems.
- Complete processing and manufacturing facilities, from start to finish.
- Large or small capacity.
- Complete control systems and control panel work.

Engineering and Design using CAD

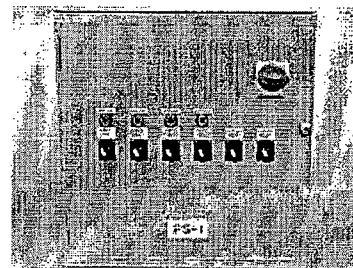
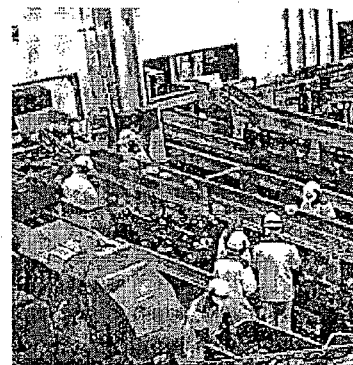
- Custom specific machinery.
- Complete factory or line specific layouts.
- Process design.
- Integration of existing equipment.
- Labor saving systems.

Manufacturing and Fabrication

- Complete fabrication capabilities.
- Full staff of engineers, technicians and sales engineers.
- Reliable on-time deliveries.
- Complete control and control panel shop.

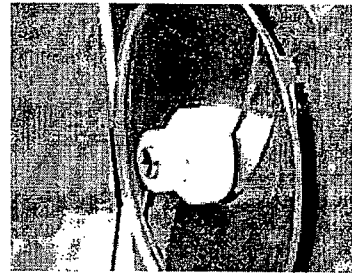
Installation and Service

- Expert technical installation - over 25 years of experience in a vast array of production environments.



- Continual service and support.
- Parts department for next day service.

Our varied skills allow us to specifically engineer and design the right solution for your needs.
We work with other equipment suppliers worldwide.

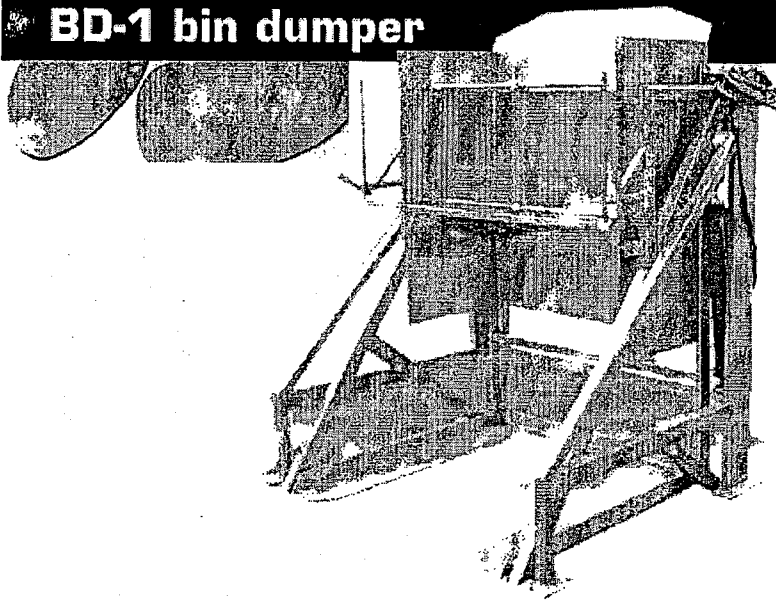


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BD-1 bin dumper



○ 100% Made in USA

Complete processing lines
are also available. Please
ask your FreshTec sales
engineer for assistance.

Machine Specifications

- Self contained hydraulic power pack.
- All voltages available, 110-575 VAC.
- Heavy-duty industrial construction, stainless steel and other food grade components.
- Fully guarded.
- Pivot point can be made specifically for your dump height.
- Bin can be fabricated to accommodate your size box or tote.
- Fork truck or pallet jack loading available.
- Up to 3000 pounds capacity.



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FreshTec International
P. O. Box 585
DuBois, PA 15801

Phone 814 375 0700
Fax 814 375 0707
Email info@freshtecinternational.com
www.freshtecinternational.com



Tierney S. Wheaton
Giuseppe's Finer Foods
2592 Oklahoma-Salem Rd.
PO Box 687
DuBois, PA., 15801

Quotation

1/18/05

Bin Dumper

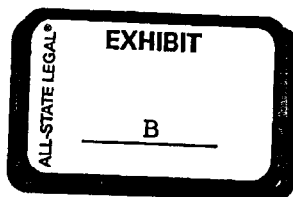
We are pleased to provide you with a proposal for our **Paste Bin Dumper**.

Standard, our paste bin dumper includes:

- Ability to load directly from a fork truck.
- 3 foot high loading, to provide for OSHA safety protection under the bin in case of collapse.
- Self-contained hydraulic power-pack. Note: See Option 1 for electric drive.
- Adjustable retaining bar for the bin.
- Full stainless steel construction. Floor anchored design.
- OSHA guarding, as required.
- Operator control panel for semi-automatic operation as well as OSHA safety. UL listed. RH or LH operation.
- Center "under the elevated bin" sensor to provide lockout of movement in case of a person being under the bin during operation.
- Total height to not exceed 12 feet fully elevated. Final height based on your final mixer height requirement for loading.
- Discharge end fabricated to match exactly with your mixer load area.
- 48" cube load dimension, 3000 pound capacity.
- 150 degree rotation.

As always, 100% made in the USA.

Lot price.....\$27,900.00 USD.



FreshTec International
P. O. Box 585
DuBois, PA 15801

Phone 814 375 0700
Fax 814 375 0707
Email info@freshtecinternational.com
www.freshtecinternational.com



Option 1.

Electric elevator drive to replace hydraulic unit. Fully contained, stainless motor and gearbox, wash down. Provides additional OSHA protection in case of failure to lock the load in position, with power on or off.

Lot price.....\$7,700.00 USD.

Option 2.

Control package: to contain AB SLC controller with E-net abilities. Includes positioning sensors and reads for complete system integration and detection. NOTE: OSHA dis-allows complete remote operation, this package integrates and detects all motions and provides for monitoring.

Lot price.....\$5,990.00 USD.

Delivery: 8-10 weeks

Terms: 50% with order, 50% upon shipment.

Exclusive: Installation, freight, FOB Pennsylvania.

This offer subject to Freshtec standard terms and conditions. Our standard warranties apply. Copies available upon request.



VENDOR

Freshtec International
PO Bo 585
DuBois, PA 15801

PAGE NO.	P.O. NO.	ORDER DATE	VEND NO.
1	10292	4/5/2005	

PURCHASE ORDER

SHIP TO

Giuseppe's Finer Foods
2592 Oklahoma Salem Road
PO Box 687
DuBois, PA 15801
814-375-0516

ORDER DATE 4/5/2005	CANCELLATION DATE 5/5/2005	SHIP VIA	F.O.B.	TERMS		
JOB#/FOR Shop		RESPONSIBILITY Todd Gordon	BRANCH Gortech			
ITEM NO. MFG NO.	DESCRIPTION	QUANTITY ORDERED	UM	QTY REC	UNIT PRICE	EXTENSION
	PASTE BIN DUMPER	4	EA		27,900.00	\$111,600.00
	ELECTRIC ELEVATOR TO REPLACE HYDRAULIC	4	EA		7,700.00	\$30,800.00
	CONTROL PACKAGE	4	EA		5990.000	\$23,960.00
	50% WITH ORDER, 50% UPON SHIPMENT					
					SUBTOTAL	\$166,360.00
					TAX	
					SURCHARGES	
					TOTAL	\$166,360.00


AUTHORIZED SIGNATURE

ORDER TERMS AND CONDITIONS

1. INVOICES must bear exact same prices and terms or authorization for changes must be received from our company in writing prior to shipping
2. Goods not in accordance with specifications will be rejected and held at vendor's risk awaiting disposal. Vendor must pay freight on all rejected materials.
3. The right is reserved, to cancel all or part of this order if not delivered within the time specified.
4. Packing slips must accompany all shipments.
5. By acceptance of this order, vendor warrants that all merchandise shipped under this order does comply with all laws and regulations of Federal and State governments.
6. Back orders must be prepaid when less than a minimum freight shipment.
7. In the event of interruption of our business in whole or in part by reason of fire, flood, windstorm, earthquake, war, strike, embargo, acts of God, government action, or any cause beyond our control, we shall have the option of canceling undelivered orders in whole or part.
8. Acceptance of this purchase order, or shipment of any part of it will constitute an agreement to all of its specifications as to terms, delivery and price.

ALL-STATE LEGAL

EXHIBIT

C

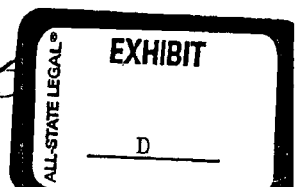
InvoiceInvoice Number:
1057Invoice Date:
Apr 6, 2005
Page:
1FreshTec Int'l LLC
P.O. Box 585
DuBois, PA 15801
USAVoice: 814-375-0700
Fax: 814-375-0707

Duplicate

Sold To:
Gortech Global Fabrication
P.O. Box 347
DuBois, PA 15801
USAShip To
Giuseppe's Finer Foods
2592 Oklahoma Salem Road
DuBois, PA 15801
USA

Customer ID		Customer PO	Payment Terms	
203		10292	Upon Receipt	
Sales Rep		Shipping Method	Ship Date	Due Date
		Best Way	6/6/05	5/6/05
Quantity	Item	Description	Unit Price	Extension
0.50		Paste Bin Dumper - 4 each- each unit is \$27,900.00 USD. Per quotation on 03-19-05.	111600.00	55,800.00
0.50		Option 1 of an electric elevator dribe to replace hydraulic unit. Each unit is \$7,700.00 USD.	30,800.00	15,400.00
0.50		Control Package, four each, each unit is \$5990.00 USD each.	23,960.00	11,980.00
2		Please pay to: FreshTec Int'l. LLC P.O. Box 585 DuBois, PA		
2A		This offer subject to FreshTec Standard terms and conditions. Our standard warranties apply. Copies available upon request.		
3		All amounts in US dollars. Customer shall		

Check No:

Subtotal
Sales Tax
Total Invoice Amount
Payment Received
TOTALContinued
Continued
Continued
Continued
ContinuedOK to Pay
per
4/8/05OK
K. J. [Signature]
4/8/05

Apr 08 05 12:45p

p.3

FreshTec Int'l LLC
P.O. Box 585
DuBois, PA 15801
USA

Voice: 814-375-0700
Fax: 814-375-0707

Invoice
Invoice Number:
1057
Invoice Date:
Apr 6, 2005
Page:
2

Duplicate

Sold To:
Gortech Global Fabrication
P.O. Box 347
DuBois, PA 15801
USA

Ship To
Giuseppe's Finer Foods
2592 Oklahoma Salem Road
DuBois, PA 15801
USA

Customer ID		Customer PO	Payment Terms	
203		10292	Upon Receipt	
Sales Rep		Shipping Method	Ship Date	Due Date
		Best Way	6/6/05	5/6/05
Quantity	Item	Description	Unit Price	Extension
4		pay invoice to the payment due date terms on this invoice.Objection to all or any part of this invoice must be submitted to FreshTec Int'l. LLC in writing within 7 (Seven) days of the invoice date on this invoice.Absence of written notification of objection constitutes acceptance of invoice and payment terms. A 1 1/2% per month interest penalty is effectibe on all unpaid balances.In the event client does not pay this invoice in listed and agreed upon terms and collection proceedings become		
5				
6				

Check No:

Subtotal
Sales Tax
Total Invoice Amount
Payment Received
TOTAL

Continued
Continued
Continued
Continued
Continued

Apr 08 05 12:45p

p. 4

Invoice

Invoice Number:
1057

Invoice Date:
Apr 6, 2005
Page:
3

FreshTec Int'l LLC
P.O. Box 585
DuBois, PA 15801
USA

Voice: 814-375-0700
Fax: 814-375-0707

Duplicate

Sold To:
Gortech Global Fabrication
P.O. Box 347
DuBois, PA 15801
USA

Ship To
Giuseppe's Finer Foods
2592 Oklahoma Salem Road
DuBois, PA 15801
USA

Customer ID		Customer PO	Payment Terms	
203		10292	Upon Receipt	
Sales Rep		Shipping Method	Ship Date	Due Date
		Best Way	6/6/05	5/6/05
Quantity	Item	Description	Unit Price	Extension
17		necessary, client hereby agrees to reimburse FreshTec Int'l. LLC for all legal and collection fees and other costs, including accumulated interest as listed above, associated with the collection of the outstanding invoice. A mechanics lien is assumed in		
8		place for the equipment described in this invoice, if applicable, until the invoice is paid in full.		

Subtotal	83,180.00
Sales Tax	
Total Invoice Amount	83,180.00
Payment Received	0.00
TOTAL	\$83,180.00

Check No:

FAX COVER SHEET

Freshtec Int'l.
P.O. Box 585
DuBois, Pennsylvania, 15801, USA

Phone number: 814-375-0700
Fax number: 814-375-0707

SEND TO/ AN/ POUR	
Company name/ Firmenname/ Société Giuseppe's	From/ Von/ De Larry Salone
Attention/ Zu Händen von/ A l'attention de Luke Sicard II	Date/ Datum/ Date 7/25/2005
Fax number/ Fax nr./ N° de fax	Phone number/ Telefon/ N° de tél.

☐ Urgent/
Dringend/
Urgent
 ☐ Reply ASAP/
Rückantwort/
Réponse urgente
attendue
 ☐ Please comment/
Erledigung/
Commentaires
attendus
 ☒ Please review/
Überprüfung/
A vérifier
 ☐ For your information/
Kenntnisnahme/
Copie pour information

Total pages, including cover sheet:
Anzahl der übermittelten Seiten inkl. Deckblatt
Nombre de pages (Page de garde incluse)

3

COMMENTS/ ANMERKUNGEN/ COMMENTAIRES

Luke,

Good morning.

Attached is modified quote, per your discussions with George and Denny.

There are a few things to add in later...but we need to get these started asap..

Please issue the PO to our automation division,

Industrial Automation, Machinery & Controls
PO Box 585
DuBois, PA., 15801

We'll pick up the equipment in a day or so...

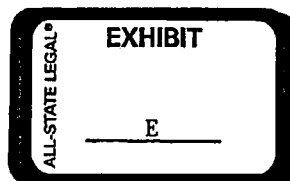
Then we can finalize the hoists etc...this week....

I'll have Rachelle follow up with getting the check for the DP...

Warmest regards,

Larry

[Signature]



FreshTec International
P. O. Box 585
DuBois, PA 15801

Phone 814 375 0700
Fax 814 375 0707
Email info@freshtecinternational.com
www.freshtecinternational.com

freshtec
INTERNATIONAL

Proposal - Grinding Room

7/25/05

We are pleased to offer you:

Item 001) Modifications to the Raybuck Tipper. We will modify the Raybuck Tipper as follows: We will remove the hydraulic system, patch all holes and framework to adhere to HAACP standards. We will remove the tipper itself and all associated hardware, as well as removing framework members no longer needed. We will cap, repair and patch/grind any mods to adhere to HAACP standards. We will remove the existing motor, have it powder coated, and replace on the opposite side of the machine. We will modify the drive shafting to be LH. We will add a drive to the existing motor to make it PLC compatible for future automation. We will clean up and bead blast the entire machine before re-assembly.

Lot price.....*T&M NTE*.....\$10,000.00 USD.

Item 002) New Flat Top Conveyor. We will supply a new stainless steel flat top conveyor, approx. 16ft. Long to transport the cheese to the rotation station. It will be VFD controlled, stainless steel sloped top control panel. With AB SLC PLC. On leveling feet. Control system to allow for future automation. Operator control panel for indexing/feed.

Lot price.....\$24,000.00 USD.

Item 003) Hoist/rotation crane. TBD. Waiting for quotes to come in.

Item 004) Cheese Dumper. Includes stainless steel frame, stainless steel receiving and hoisting "bucket". Powder coated linear actuator for elevation, electric drive. Linear actuator for rotation. Stainless steel guarding. With AB PLC and controls for eventual automatic operation. With bottom and top sensors for safety and operation control. VFD on both actuators. Heavy duty construction.

Lot price.....\$28,000.00 USD.

FreshTec International
P. O. Box 585
DuBois, PA 15801

Phone 814 375 0700
Fax 814 375 0707
Email info@freshtecinternational.com
www.freshtecinternational.com



freshtec
INTERNATIONAL

Item 005) Modifications to Raybuck Feed Conveyor. TBD

Item 006) Modifications to Raybuck Scale. TBD, based on final load cell prices.

Delivery: Complete by September 10th, based on PO and down payment by July 26th, 2005.

Terms: 50% on order, 50% on ready to ship

FOB: Mt. Jewett PA.

Exclusive: Freight, crating, installation, taxes, fees, etc.

Subject to standard Freshtec terms and conditions. Copies available at our office in DuBois, PA.



VENDOR

Freshtec International
c/o Industrial Automation, Machinery & Controls
PO Box 585
DuBois, PA 15801

PAGE NO.	P.O. NO.	ORDER DATE	VEND NO.
1	50012	7/26/2005	

PURCHASE ORDER

SHIP TO

Giuseppe's Finer Foods
2592 Oklahoma Salem Road
PO Box 687
DuBois, PA 15801
814-375-0516

ORDER DATE 7/26/2005		CANCELLATION DATE 7/31/2005		SHIP VIA		F.O.B. Mt. Jewett, PA		TERMS Net 10 days	
JOB#/FOR GFF				RESPONSIBILITY Todd Gordon			BRANCH Gortech		
ITEM NO. MFG NO.	DESCRIPTION	QUANTITY ORDERED	UM	QTY REC	UNIT PRICE	EXTENSION			
001	Modifications to the Raybuck Tipper Time and Materials not to exceed	1	EA		\$ 10,000.00	\$ 10,000.00			
002	New Flat Top Conveyor.	1	EA		\$ 24,000.00	\$ 24,000.00			
003	Cheese Dumper	1	EA		\$ 28,000.00	\$ 28,000.00			
Delivery Complete by September 10, based on PO downpmnt by July 26th.									
Terms: 50% with order, 50% Net 30									
SUBTOTAL						\$62,000.00			
TAX									
SURCHARGES									
TOTAL						\$62,000.00			


AUTHORIZED SIGNATURE

ORDER TERMS AND CONDITIONS

1. INVOICES must bear exact same prices and terms or authorization for changes must be received from our company in writing prior to shipping
2. Goods not in accordance with specifications will be rejected and held at vendor's risk awaiting disposal. Vendor must pay freight on all rejected material.
3. The right is reserved, to cancel all or part of this order if not delivered within the time specified.
4. Packing slips must accompany all shipments.
5. By acceptance of this order, vendor warrants that all merchandise shipped under this order does comply with all laws and regulations of Federal and State governments.
6. Back orders must be prepaid when less than a minimum freight shipment.
7. In the event of interruption of our business in whole or in part by reason of fire, flood, windstorm, earthquake, war, strike, embargo, acts of God, government action, or any cause beyond our control, we shall have the option of canceling undelivered orders in whole or part.
8. Acceptance of this purchase order, or shipment of any part of it will constitute an agreement to all of its specifications as to terms, delivery and price.

ALL-STATE LEGAL®

EXHIBIT

F

Jul 26 US 11:31a

P.C

Ind. Automation, Machinery & Controls - FreshTec Int'l
P.O. Box 585
DuBois, PA 15801
USA

Voice: 814-375-0700
Fax: 814-375-0707

Invoice

Invoice Number:
1285

Invoice Date:
Jul 26, 2005
Page: 1

Duplicate

Sold To:
Gortech Global Fabrication
P.O. Box 347
DuBois, PA 15801
USA

Ship To
Giuseppe's Finer Foods
2592 Oklahoma-Salem Road
DuBois, PA 15801
USA

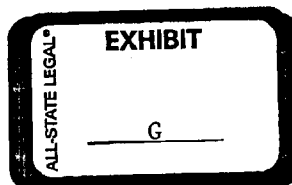
Customer ID		Customer PO	Payment Terms	
203		Verbal Luke - 50012	Upon Receipt	
Sales Rep		Shipping Method	Ship Date	Due Date
		Best Way	9/1/05	7/26/05
Quantity	Item	Description	Unit Price	Extension
0.50		Modifications to Tipper, per quotation on 07-25-05. Not to Exceed \$10,000.00 USD.	10,000.00	5,000.00
0.50		New Flat Top Conveyor, per quotation on 07-25-05.	24,000.00	12,000.00
0.50		Cheese Dumper per quotation on 07-25-05.	28,000.00	14,000.00
1.00	1	Shipping - will be charged at a later time.		
	2	Please pay to: FreshTec Int'l. LLC P.O. Box 585 DuBois, PA		
	2A	This offer subject to FreshTec Standard terms and conditions. Our standard warranties apply. Copies available upon request.		
	3	All amounts in US dollars. Customer shall pay invoice to the		

Check No:

Subtotal
Sales Tax
Total Invoice Amount
Payment Received
TOTAL

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[Signature]
8/3/05



Jul 26 05 11:31a

P.3

Invoice

Ind. Automation, Machinery & Controls
P.O. Box 585
DuBois, PA 15801
USA

Invoice Number:

1285

Invoice Date:

Jul 26, 2005

Page:

2

Voice: 814-375-0700
Fax: 814-375-0707

Duplicate

Sold To:
Gortech Global Fabrication
P.O. Box 347
DuBois, PA 15801
USA

Ship To
Giuseppe's Finer Foods
2592 Oklahoma-Salem Road
DuBois, PA 15801
USA

Customer ID		Customer PO		Payment Terms	
203		Verbal Luke		Upon Receipt	
Sales Rep		Shipping Method		Ship Date	Due Date
		Best Way		9/1/05	7/26/05
Quantity	Item	Description		Unit Price	Extension
4		payment due date terms on this invoice.Objection to all or any part of this invoice must be submitted to FreshTec Int'l. LLC in writing within 7 (Seven) days of the invoice date on this invoice.Absence of written notification of objection constitutes acceptance of invoice and payment terms. A 1 1/2% per month interest penalty is effectibe on all unpaid balances.In the event client does not pay this invoice in listed and agreed upon terms and collection proceedings become necessary, client hereby			
5					
6					

Check No:

Subtotal
Sales Tax
Total Invoice Amount
Payment Received
TOTAL

Continued
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Continued

Jul 26 05 11:31a

P.4

Invoice

Ind. Automation, Machinery & Controls
P.O. Box 585
DuBois, PA 15801
USA

Invoice Number:
1285

Invoice Date:
Jul 26, 2005
Page:
3

Voice: 814-375-0700
Fax: 814-375-0707

Duplicate

Sold To:
Gortech Global Fabrication
P.O. Box 347
DuBois, PA 15801
USA

Ship To
Giuseppe's Finer Foods
2592 Oklahoma-Salem Road
DuBois, PA 15801
USA

Customer ID		Customer PO	Payment Terms	
203		Verbal Luke	Upon Receipt	
Sales Rep		Shipping Method	Ship Date	Due Date
		Best Way	9/1/05	7/26/05
Quantity	Item	Description	Unit Price	Extension
7		agrees to reimburse FreshTec Int'l. LLC for all legal and collection fees and other costs, including accumulated interest as listed above, associated with the collection of the outstanding invoice. A mechanics lien is assumed in		
8		place for the equipment described in this invoice, if applicable, until the invoice is paid in full.		

	Subtotal	31,000.00
	Sales Tax	
	Total Invoice Amount	31,000.00
Check No:	Payment Received	0.00
	TOTAL	\$31,000.00

Teufel, Gregory

From: Hopkins Heltzel LLP [hopkinslaw@adelphia.net]

Sent: Thursday, May 04, 2006 4:56 PM

To: Teufel, Gregory

Subject: Memo of May 4, 2006 Meeting

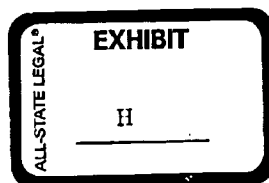
Attachments: Memorandum.doc

Greg:

Attached please find Memorandum of our meeting today.

David

9/19/2006



MEMORANDUM

To: Gregory H. Teufel, Esquire

From: David J. Hopkins, Esquire

Date: May 4, 2006

Subject: Recap of May 4, 2006 meeting at Giuseppe's/ICP

Present: FreshTec Food Processing Equipment International
Lawrence J. Salone
David J. Hopkins, Attorney
Giuseppe's
Dennis Raybuck
Gregory H. Teufel, Attorney
Allen Simpson
Luke Sicard

BIN DUMPSTERS

All parties met in the conference room and proceeded to the bin dumpsters. We reviewed bin dumpster no. 1 in detail. We casually looked at bin dumpster no. 2 and bin dumpster no. 3. Luke commented that the problems with bin dumpster no. 2 and no. 3 were similar to the problems with no. 1. Although, later in our meeting someone commented that bin dumpsters nos. 2, 3 and 4 had not been run before.

We attempted to load slightly less than 3,000 pounds on bin dumpster no. 4. The bin dumpster went up but did not tip and remained in its upright position.

All of the aforesaid was videotaped by a representative of Giuseppe's.

My notes reveal the following issues were raised regarding bin dumpster no. 1:

a. Mr. Raybuck suggested the motors will break because they push against the back frame of the bin dumpster. Although to date, none have yet cracked. This same issue was evident on bin dumpsters no. 2 and no. 3 but was unclear on no. 4 because the bin dumpster was in a raised position.

b. The top boot is cracked and the top is open. It appears to be a manufacturer's problem. In its current condition, the boot is not sanitary because material can get into the boot opening.

c. Luke noted that some manufacturers use two "limit switches". The bin dumpsters have one limit switch. The bin dumpster does not stop at the top and may need to be adjusted.

d. The pivot points may need to be adjusted.

e. There is a PLC default issue.

f. The linear actuators are ten (10) ton. Luke stated that they are sufficient, however, they need to be configured correctly. If correctly configured, they will work. Luke stated a "worm reducer" was necessary. Later, Mr. Raybuck raised the issue that they will work but not as fast as he would like them to work.

When we returned to the conference room, you advised that you wanted a detailed plan and a time table to fix the machines. On further discussions, we agreed that this opportunity would be our right to cure defects with the machines.

With reference to the bin dumpsters, we agreed on or before May 12, 2006 FreshTec will set forth a written plan to fix the bin dumpsters. Mr. Raybuck commented that timing is an issue. Giuseppe's will tell FreshTec in writing what it thinks of FreshTec's plan by May 17, 2006. Included in FreshTec's plan will be a timetable for the repairs to be completed.

Regardless of whether Giuseppe's agree or disagree with FreshTec's plan, FreshTec will remove one machine and have the opportunity to make repairs to the machine as FreshTec deems appropriate consistent with the aforesaid plan.

Giuseppe has the right to review at FreshTec's facility any drawing or plans for the bin dumpsters so it can provide its comments that are due on May 17, 2006.

If the bin dumpsters work, then FreshTec gets paid the remaining \$28,000.00 it is due.

CHEESE ROOM

Immediately after viewing the bin dumpsters, we went to the cheese room. There was no electric running to the "cheese line". Giuseppe's raised three (3) issues:

1. Cheese dumper. Giuseppe's state the cheese dumper was to be a bucket as per the quote and further stated that what is currently installed is not sanitary.

2. Conveyor belt is not a "sanitary belt" - clearly the belt had a splice in it. Mr. Raybuck commented that the conveyor belt should have rollers.

3. Giuseppe's personnel raised "transition issues" from the various pieces of the cheese line.

4. There was supposed to be a PLC.

In our conference room discussion, we agreed to the following in reference to the cheese room:

CHEESE DUMPER

FreshTec believes the modified cheese dumper had been approved by Giuseppe's personnel. Mr. Raybuck disputed this and stated that only he, Luke or Steven Havlicheck could have approved the change. This issue was unresolved and FreshTec will review its records and personnel to determine who FreshTec believed approved the modified cheese dumper. This information will be provided to you by May 17, 2006.

CONVEYOR BELT

FreshTec will replace the belt to be a sanitary belt. It will install rollers on the conveyor belt and increase the height of the conveyor belt. The PLC is at FreshTec's shop and is ready to be delivered. Luke agreed Giuseppe's will install the PLC.

INTEGRATION

There was a general discussion regarding integration of the cheese line. We agreed that there was not to be electrical integration. The dispute centered on whether there was to be mechanical integration and FreshTec denied that there was to be mechanical integration. We agreed to compare the original quote verses the quote from which the purchase order was generated. We further agreed the general cost to provide mechanical integration was in the \$2,000.00 to \$3,000.00 ballpark.

Luke agreed to have the conveyor belt pulled and FreshTec will pick up the conveyor belt in the next few days and subject to parts availability, the conveyor belt can be modified within a week.

Luke is to be the point man on height and modifications to the conveyor belt.

CONCLUSION

I understand you are preparing a letter setting forth the terms of our agreement and I wanted to give you my advanced notes on our meeting and discussions.

I appreciate the opportunity to have met with you, Mr. Raybuck and his staff so the problems that you identified could be clearly set forth.

On or before May 12, 2006, I will provide you with the documentation required by FreshTec.

Teufel, Gregory

From: Teufel, Gregory
Sent: Friday, May 05, 2006 4:26 PM
To: 'Hopkins Heltzel LLP'
Subject: RE: Memo of May 4, 2006 Meeting
Attachments: 296657_1.DOC

David:

Thanks for the below and your memo. One issue not mentioned is that we dispute whether Freshtec has any legal right to cure, but nevertheless we have extended opportunities and are extending another opportunity to cure. I do not want to suggest I agree with everything else in your memo, but in general it is a good summary and we appreciate your effort in typing it up. Attached is the word version of the letter I promised. An email back will be sufficient to indicate Freshtec's intention to proceed as described. Please let me know if you have any questions comments or concerns. Have a good weekend.

Best regards,
Greg

Schnader Harrison Segal & Lewis LLP
Suite 2700 Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222-3010
(412)577-5289 (work)
(412)596-6316 (cell)
(412)421-7123 (home)
(412)765-3858 (fax)

From: Hopkins Heltzel LLP [mailto:hopkinslaw@adelphia.net]
Sent: Thursday, May 04, 2006 4:56 PM
To: Teufel, Gregory
Subject: Memo of May 4, 2006 Meeting

Greg:

Attached please find Memorandum of our meeting today.

David

9/19/2006



May 5, 2006

David J. Hopkins, Esq.
100 Meadow Lane
Suite 5
DuBois, PA 15801

Re: Giuseppe's equipment issues

Dear David:

This is to document our discussions yesterday and the opportunity being extended to Freshtec International/Industrial Automation Machinery & Controls (hereafter collectively "Freshtec") to cure existing defects in the products under purchase orders numbered 10292 and 50012.

By May 12, 2006, Freshtec will provide detailed written plans and make drawings available for review outlining how Freshtec intends to correct the identified defects, and setting forth a reasonable timetable for completion of those corrective efforts. On or before May 17, Giuseppe's will respond with any comments on the design changes and fixes proposed. The approach will be to attempt to fix one of the paste bin dumpers first before moving on to attempt corrective measures on the other three paste bin dumpers and related equipment. If the corrective measures work on the first one, we will then proceed to the remaining three. If all four are corrected to Giuseppe's reasonable satisfaction, the remaining \$28,000 will be paid. If the corrective measures do not work to the reasonable satisfaction of Giuseppe's, then the money paid for the Paste Bin Dumpers and related equipment will be refunded and any outstanding charges for same will be cancelled.

On or before May 12, 2006, a representative from Duff Norton will visit to inspect the paste bin dumpers. Reasonable efforts will be made to diagnose how the existing problems came about, to assist in restoring confidence in Freshtec's ability to complete the work competently.

By May 19, 2006, Freshtec will add rollers, replace belts, and increase the height of the flat top conveyor. By May 12, 2006 you will get to me the original quotes that Mr. Salone stated contained items for integration/transitions that were ultimately removed, and we will give further consideration to the suggested resolution of that issue. Also by May 12, 2006, Mr. Salone will obtain and provide to me through you further information about who at Giuseppe's allegedly approved the change from Cheese Dumper "bucket" to the belt cheese dumper. If the change was not properly approved, Freshtec will refund any amounts previously paid for the Cheese Dumper and cancel any outstanding charges for it.

Please confirm in writing Freshtec's intention to take advantage of this opportunity to cure and to proceed as outlined above. Please also let me know if you have any questions, comments, or concerns. Thank you for your attention to this matter.

Best regards,

Gregory H. Teufel

cc: Dennis V. Raybuck

CIA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GIUSEPPE'S FINER FOODS, INC.,)
GORTECH GLOBAL FABRICATION, LLC,) CIVIL DIVISION
and ICP ASSET MANAGEMENT, INC.,)

Plaintiffs,) NO. 06-1633-C.D.

vs.)

FRESHTEC INTERNATIONAL, LLC,) **PLAINTIFF ICP ASSET MANAGEMENT,**
INDUSTRIAL MACHINERY) **INC.'S MOTION FOR A**
AUTOMATION AND CONTROLS, LLC,) **DETERMINATION OF FINALITY**
and LARRY SALONE,)

Defendants.) Filed on behalf of Plaintiff
ICP Asset Management, Inc.

) Counsel of Record for this Party:

) Gregory H. Teufel

) Pa. Id. No. 73062

) Sarah B. Heineman

) Pa. Id. No. 91040

) SCHNADER HARRISON SEGAL & LEWIS

) LLP

) Suite 2700, Fifth Avenue Place

) 120 Fifth Avenue

) Pittsburgh, PA 15222-3010

) (412) 577-5200 (telephone)

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) Christopher E. Mohnney, Esquire

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DuBois, PA 15801

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FILED 4cc
01/11/04/01 Atty Mohnney
FEB 01 2007
GK

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
GIUSEPPE'S FINER FOODS, INC., et al., CIVIL DIVISION

Plaintiffs,

vs.

No. 06-1633-C.D.

FRESHTEC INTERNATIONAL, LLC, et al.,

Defendants.

PLAINTIFF'S MOTION FOR A DETERMINATION OF FINALITY

Plaintiff, ICP Asset Management, Inc. ("ICPAM"), by and through its undersigned attorneys, hereby file the following Motion for a Determination of Finality in accordance with Pa. R.A.P. No. 341(c).

1. On October 6, 2006, Plaintiff ICPAM filed a Complaint alleging an unjust enrichment claim against the Defendants.

2. ICPAM filed the Complaint with other Plaintiffs who were involved in the same transactions and occurrences that formed the basis for ICPAM's unjust enrichment claim

3. On November 28, 2006, Defendants filed Preliminary Objections seeking the dismissal of ICPAM as a Plaintiff, as well as, seeking the dismissal of the other Plaintiffs and their claims.

4. In its January 3, 2007 Order ("Order"), this Honorable Court granted the Preliminary Objections dismissing ICPAM as a Plaintiff and dismissing ICPAM's unjust enrichment claim.

5. However, the Order denied the rest of Defendants' Preliminary Objections resulting in the other Plaintiffs ("Remaining Plaintiffs") and their claims remaining in the suit.

6. Consequently, the Order dismissing ICPAM is not a final Order under Pa. R.A.P. No. 341(b)(1) or (2) because it does not dispose of all claims or all parties and is not defined as a

final order by statute. Thus, ICPAM would be unable to appeal the Order until all of the Parties' claims are adjudicated.

7. The unjust enrichment claim of ICPAM is based on the same transactions and occurrences as the Remaining Plaintiffs' claims. By the time ICPAM would be allowed to appeal the Order dismissing it from the lawsuit, all of the Remaining Plaintiffs' claims would have already been litigated. This poses a problem if the appellate courts overturn the Order and remands the claim with the end result of ICPAM relitigating the same facts and issues that the Remaining Plaintiffs already litigated.

8. One factor a court should consider in evaluating if a determination of finality should be granted to an order is whether there is a significant relationship between adjudicated and unadjudicated claims. Note to Pa. R.A.P. No. 341.

9. Therefore, to ensure judicial economy in the litigation of all issues arising out of the same transactions and occurrences, ICPAM respectfully requests that this Honorable Court amend its January 3, 2007 Order, by including a determination of finality pursuant to Pa. R.A.P. No. 341(c).

WHEREFORE, ICP Asset Management, Inc., respectfully requests that this Honorable Court grant the Plaintiff's Motion for a Determination of Finality and amend its Order to reflect the Order dismissing ICPAM as a party and ICPAM's unjust enrichment claim is a final order and that an immediate appeal of the Order would facilitate resolution of the entire case.

Respectfully submitted



Gregory H. Teufel

Sarah B. Heineman

Christopher E. Mohnney

Attorneys for Plaintiff, ICP ASSET
MANAGEMENT, INC.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion for a Determination of Finality was served upon the following counsel of record by facsimile and first-class mail, postage prepaid, this 1 day of February, 2007:

David J. Hopkins, Esq.
100 Meadow Lane
Suite 5
DuBois, PA 15801



Christopher E. Mohnhey

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GIUSEPPE'S FINER FOODS, INC., et al., CIVIL DIVISION

Plaintiffs,

vs. No. 06-1633-C.D.

FRESHTEC INTERNATIONAL, LLC, et al.,

Defendants.

ORDER OF COURT

AND NOW, this ____ day of February, 2007, upon due consideration of Defendant's Motion for a Determination of Finality, it is hereby ORDERED, ADJUDGED and DECREED that said Motion is GRANTED. It is further ORDERED that this Court's Order of Court dated January 3, 2007, be and hereby is AMENDED to read as follows:

AND NOW, this ____ day of February, 2007, following argument on the Preliminary Objections filed on behalf of the Defendants, it is the ORDER of this Court as follows:

1. The Preliminary Objection set forth as No. 1, Paragraphs 13 through 20, is hereby dismissed;
2. The Preliminary Objection set forth as No. 2, Paragraphs 21 through 27, is hereby granted. The ICP Asset Management, Inc, is hereby dismissed as a Plaintiff. The unjust enrichment portion of Plaintiff's complaint is also dismissed. It is this Court's opinion that this order is a Final Order due the significant relationship between ICP Asset Management, Inc.'s adjudicated claim and the unadjudicated claims of the other Plaintiffs and an immediate appeal from this order would facilitate resolution of the entire case.
3. The Preliminary Objections listed as No. 3 and No. 4 are hereby dismissed.

By the Court,

President Judge J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
(CIVIL DIVISION)

GIUSEPPE'S FINER FOODS, INC.,
GORTECH GLOBAL FABRICATION,
LLC, and ICP ASSET MANAGEMENT,
INC.,

Plaintiffs,

vs.

FRESHTEC INTERNATIONAL, LLC,
INDUSTRIAL MACHINERY
AUTOMATION AND CONTROLS, LLC,
and LARRY SALONE,

Defendants.

No. 06-1633 C.D.

Type of Pleading: ANSWER TO
COMPLAINT, NEW MATTER
AND COUNTERCLAIM

Counsel of Record for this party:
HOPKINS HELTZEL

DAVID J. HOPKINS, Esquire
Attorney at Law
Supreme Court No. 42519

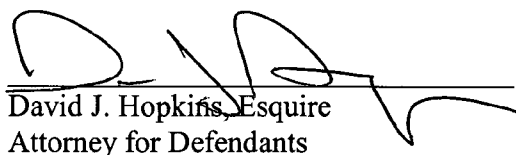
LEA ANN HELTZEL, Esquire
Attorney at Law
Supreme Court No. 83998

100 Meadow Lane, Suite 5
DuBois, Pennsylvania 15801

(814) 375-0300

NOTICE TO PLEAD

Your are hereby notified to plead
to the within pleading within
twenty (20) days of service thereof
or default judgment may be entered
against you.


David J. Hopkins, Esquire
Attorney for Defendants

FILED

FEB 09 2007

M/11:00/w
William A. Shaw
Prothonotary/Clerk of Courts
No c/c (sk)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
(CIVIL DIVISION)

GIUSEPPE'S FINER FOODS, INC.,
GORTECH GLOBAL FABRICATION,
LLC, and ICP ASSET MANAGEMENT,
INC.,

Plaintiffs,

vs.

No. 06-1633 C.D.

FRESHTEC INTERNATIONAL, LLC,
INDUSTRIAL MACHINERY
AUTOMATION AND CONTROLS, LLC,
and LARRY SALONE,,

Defendants

ANSWER TO COMPLAINT, NEW MATTER AND COUNTERCLAIM

AND NOW, comes Defendants, FreshTec International, LLC, (hereinafter "FreshTec"), Industrial Machinery Automation and Controls, LLC (hereinafter "IMAC") and Larry Salone (hereinafter "Salone"), by and through their attorneys, Hopkins Heltzel LLP and files the within Answer to Complaint of Plaintiffs, New Matter and Counterclaim as follows:

ANSWER TO COMPLAINT

1. No answer is required of this paragraph. To the extent an answer is required, Defendants deny any one of them breached a contract or committed a fraud.
2. Admitted.
3. Admitted.
4. No answer is required of this paragraph pursuant to the January 3, 2007 order of the Honorable Fredric J. Ammerman dismissing ICP Asset Management, Inc. as a Plaintiff.

5. Denied. The correct name of Defendant FreshTec International, LLC is FreshTec Food Processing Equipment International, LLC. The entity is a Pennsylvania Limited Liability Company.

6. Admitted.

7. Admitted.

8. Admitted.

9. Admitted.

10. Admitted.

11. Admitted in part and denied in part. Salone was and at all material times did act as an employee and agent of FreshTec and IMAC. Any statements made by Salone were truthful and accurate regarding FreshTec and IMAC's prior experience and expertise.

12. Admitted in part and denied in part. Defendants admit that at all material times Salone acted as an employee and agent of FreshTec and IMAC. All other allegations regarding misrepresentations are denied. All statements made by Salone were truthful and accurate.

13. Admitted.

14. Neither admitted nor denied. Answering Defendants are without sufficient knowledge to admit or deny the allegation set forth in paragraph 14 regarding the relationship between Gortech and Giuseppe's. Defendants deny Salone made any misrepresentations. All statements by Salone were truthful and accurate.

15. Admitted in part and denied in part. Defendants deny Salone made any misrepresentations. All statements made by Salone were truthful and accurate.

Representatives of Plaintiff, including Tierny S. Wheaton, Guiseppe's general manager, personally inspected equipment Defendant FreshTec had built for other customers prior to Gortech issuing a purchase order. Defendants admit Gortech issued a purchase order as set forth on Exhibit "C" of the Complaint. The purchase order contained a cancellation date that changed Defendant FreshTec offer.

16. Admitted.

17. Neither admitted nor denied. Answering Defendants are without sufficient knowledge to admit or deny the allegations set forth in paragraph 17 and strict proof is demanded at trial.

18. Admitted in part and denied in part. Any references in this section or in any other section of this complaint that Salone made misrepresentations are specifically denied and strict proof is demanded at trial. By way of further answer Defendants admit to receiving \$83,180.00 from one or more of the Plaintiffs.

19. Admitted in part and denied in part. Exhibit "E" speaks for itself. By way of further answer, Defendant's quote required a purchase order by July 26, 2005. Plaintiff issued a purchase order by July 26, 2005 but with a cancellation date of July 31, 2005. Said purchase order was not in conformance with Defendant's quote.

20. Admitted.

21. Admitted in part and denied in part. Exhibit "F" speaks for itself. All other the allegations are denied. All of Salone's statements were truthful and accurate. Representatives of Plaintiff, including Tierny S. Wheaton, Guiseppe's general manager, personally inspected equipment Defendant FreshTec had built for other customers prior to Gortech issuing a purchase order.

22. Admitted.

23. Admitted in part and denied in part. Defendants deny Salone made any misrepresentations. Defendants admit receiving \$31,000.00.

24. Admitted in part and denied in part. Defendants deny Salone made any misrepresentations. Defendants admit receiving \$63,180.00.

25. Denied. At all material times Plaintiffs were kept fully apprised of the progress of the Defendants' work. Any delays in the production schedule were caused by representatives of Gortech and representatives of Giuseppe, including Luke Sicard, Tierny S. Wheaton and George _____, being unable to communicate their needs, desired schedules and constantly changing specifications.

26. Admitted in part and denied in part. Defendants deny Salone made any misrepresentations. Defendants admit receiving \$1,650.00.

27. Admitted in part and denied in part. Defendants deny Salone made any misrepresentations. Defendants admit receiving \$40,000.00.

28. Admitted in part and denied in part. Defendants deny Salone made any misrepresentations. Defendants admit receiving \$500.00.

29. Denied in part and admitted in part. Defendants deny knowing any equipment contained any problems when it was delivered. Defendants admit that subsequent to the delivery there were concerns raised by Plaintiffs and the equipment required some minor corrections.

30. Admitted.

31. Admitted.

32. Denied. The only minor adjustments with the machines are set forth in the Hopkins memorandum of May 4, 2006 that accurately describes any minor corrections the machines required.

33. Admitted in part and denied in part. Defendants admit the parties met on May 4, 2006. Defendants admit Salone acted at all material times as an agent for FreshTec and IMAC. Defendants deny that the extent of the equipment problems exceeded the May 4, 2006 memorandum from Defendants' attorney to Plaintiff's attorney. Defendants deny filing for United States Bankruptcy Court protection. The statements made by Defendants' attorney are unknown to Defendants and were not authorized by Defendants and are not accurate.

34. No answer is required of this paragraph inasmuch as it calls for a legal conclusion. To the extent an answer is required, same is denied.

35. No answer is required of this paragraph inasmuch as it calls for a legal conclusion. To the extent an answer is required, same is denied.

COUNT I

36. Defendants repeat their answers as set forth in paragraphs 1 through 35.

37. No answer is required of this paragraph inasmuch as it calls for a legal conclusion. To the extent an answer is required, same is admitted subject to oral modifications made by the parties.

38. Admitted in part and denied in part. FreshTec and IMAC agreed to provide equipment as called for in the purchase orders attached thereto as orally modified by the parties.

39. Denied. All equipment supplied by FreshTec and IMAC was correctly designed, manufactured and reliable. To the extent said equipment required minor corrections or modifications those corrections or modifications are minor and do not affect the design, manufacture or reliability of the equipment delivered.

40. Denied. Defendant FreshTec and IMAC met all of their obligations under the contract between the parties.

41. No answer is required of this paragraph inasmuch as it calls for a legal conclusion. To the extent an answer is required, FreshTec and IMAC admit to being merchants engaged in the sale of equipment.

42. Denied. The equipment supplied by Defendants was reasonably fit for the ordinary purpose of such equipment.

43. Denied. The equipment supplied by Defendants was reasonably fit for the particular purposes as requested by the Defendants. All allegations regarding knowledge at the time of the formation of the contract are denied.

44. Admitted. Defendants admit some minor problems may exist as outlined by the memorandum of David J. Hopkins dated May 4, 2006.

45. Denied. Any minor corrections that need to be completed do not exceed \$5,000.00.

46. Denied. FreshTec and IMAC deny any breaches of contract. By way of further answer, FreshTec was the entity that entered into a contract with Plaintiff Gortech. IMAC did not enter into any contract with Defendants.

47. Denied. Salone has never abused the corporate form. Rather, at all material times the laws of the Commonwealth of Pennsylvania as they relate to

corporations were followed by Salone and the corporations maintain their individual corporate identify. Each Defendant denies any allegation of fraud for the reasons heretofore set forth.

WHEREFORE Defendants respectfully request the allegation of Count I be dismissed with prejudice together with cost of suit and such other and further relief as the Court deems fair, just and equitable.

COUNT II

48. No answer is required of this paragraph.

49. No answer is required of this paragraph inasmuch as it calls for a legal conclusion. To the extent an answer is required, same is denied. Gortech was the party who entered into the contract with FreshTec.

50. Neither Admitted nor Denied. After a reasonable investigation, Defendants are unable to admit or deny the allegations set forth in paragraph 50 as to what Giuseppe did or did not do. By way of further answer, there was no need to obtain replacement equipment.

51. Denied. Defendants FreshTec and IMAC deny a breach of their contractual obligations. Defendants further deny any indebtedness to Giuseppe. By way of further answer, any damages that Gortech or any Plaintiff incurred is far less than \$20,000.00.

WHEREFORE, Defendants respectfully request Count II be dismissed with prejudice together with costs of suit and such other and further relief as the Court deems fair, just and equitable.

COUNT III

52, 53, 54, 55, 56. No answer is required of the aforesaid paragraphs as a result of Judge Ammerman's January 3, 2007 order dismissing claims of unjust enrichment.

COUNT IV

57. No answer is required of this paragraph.

58. Defendants deny Salone made any false representations regarding the ability of FreshTec or IMAC to design, manufacture and install the equipment ordered by Gortech. At all material times statements made by Salone were accurate. Representatives of Plaintiff, including Tierny S. Wheaton, Guiseppe's general manager, personally inspected equipment Defendant FreshTec had built for other customers prior to Gortech issuing a purchase order.

59. Denied. Defendants deny Salone made any misrepresentations of FreshTec or IMAC's experience, knowledge and ability to design, manufacture and install the equipment consistent with HACCP and GPM standards. Representatives of Plaintiff, including Tierny S. Wheaton, Guiseppe's general manager, personally inspected equipment Defendant FreshTec had built for other customers prior to Gortech issuing a purchase order.

60. Denied. Defendants deny Salone misrepresented the progress of the work, the quality of the equipment or the testing of the equipment in an effort to encourage further payment for the equipment knowing same were false. Rather, at all materials times hereto Salone kept representatives of Gortech and representatives of Giuseppe,

including Luke Sicard, Tierny S. Wheaton and George _____, fully aware of the progress of the equipment.

61. Denied. Defendants deny Salone made any intentional misrepresentations. Representatives of Plaintiff, including Tierny S. Wheaton, Guiseppe's general manager, personally inspected equipment Defendant FreshTec had built for other customers prior to Gortech issuing a purchase order.

62. Denied. Defendants deny Salone made any misrepresentations and therefore Giuseppe could not rely upon said misrepresentations. Representatives of Plaintiff, including Tierny S. Wheaton, Guiseppe's general manager, personally inspected equipment Defendant FreshTec had built for other customers prior to Gortech issuing a purchase order.

63. Denied. Defendants deny Salone made false representations.

WHEREFORE, Defendants respectfully request Count IV be dismissed with prejudice together with costs of suit and such other and further relief as the Court deems fair, just and equitable.

COUNT V

64. No answer is required of this paragraph.

65. Defendants deny Salone made any false representations regarding the ability of FreshTec or IMAC to design, manufacture and install the equipment ordered by Gortech. At all material times, statements made by Salone were accurate. Representatives of Plaintiff, including Tierny S. Wheaton, Guiseppe's general manager, personally inspected equipment Defendant FreshTec had built for other customers prior to Gortech issuing a purchase order.

66. Denied. Defendants deny Salone made any misrepresentations of FreshTec or IMAC's experience, knowledge and ability to design, manufacture and install the equipment consistent with HACCP and GPM standards. Representatives of Plaintiff, including Tierny S. Wheaton, Guiseppe's general manager, personally inspected equipment Defendant FreshTec had built for other customers prior to Gortech issuing a purchase order.

67. Denied. Defendants deny Salone misrepresented the progress of the work, the quality of the equipment or the testing of the equipment in an effort to encourage further payment for the equipment knowing same were false. Rather, at all materials times hereto Salone kept representatives of Gortech and representatives of Giuseppe, including Luke Sicard, Tierny S. Wheaton and George _____, fully aware of the progress of the equipment delivery.

68. Denied. Defendants deny Salone made any intentional misrepresentations.

69. Denied. Defendants deny Salone made any misrepresentations and therefore Gortech could not rely upon said misrepresentations. Representatives of

Plaintiff, including Tierny S. Wheaton; Guiseppe's general manager, personally inspected equipment Defendant FreshTec had built for other customers prior to Gortech issuing a purchase order.

70. Denied. Defendants deny Salone made false representations and further deny Gortech's damages are close to \$20,000.00. Representatives of Plaintiff, including Tierny S. Wheaton, Guiseppe's general manager, personally inspected equipment Defendant FreshTec had built for other customers prior to Gortech issuing a purchase order.

WHEREFORE, Defendants respectfully request Count IV be dismissed with prejudice together with costs of suit and such other and further relief as the Court deems fair, just and equitable.

COUNT VI

71, 72, 73, 74, 75, 76, 77. No answer is required of this paragraph as a result of Judge Ammerman's January 3, 2007 order dismissing claims of ICP Asset Management, Inc. To the extent the claims are not from ICP Asset Management but rather of Giuseppe, same are denied for the reasons set forth in paragraph 57 through 63.

NEW MATTER

AND NOW, comes Defendants, by and through their attorneys, Hopkins Heltzel LLP and files the following New Matter.

1. The claims of Plaintiffs must fail as a result of consensual changes to the purchase orders and contracts by Plaintiffs and Defendants.

2. The claims of the Plaintiffs must fail inasmuch as the delays alleged by Plaintiffs were caused solely by the actions of Plaintiffs.

3. The claims against IMAC must fail inasmuch as IMAC was not a party to any contract.

4. The claims against Salone must fail inasmuch as Salone was not a party to any contract. Salone maintained the corporate formalities for both Defendant FreshTec and Defendant IMAC.

5. The claims of Plaintiffs must fail or be severely limited by Plaintiffs' failure to mitigate their damages.

6. The claims of Giuseppe must fail inasmuch as Giuseppe was not a party to any contract with Defendants.

7. The claims of the Plaintiffs must fail because Plaintiffs failed to repair the machinery supplied by Defendant FreshTec.

8. The claims against Salone must fail inasmuch as the Defendant FreshTec is not the alter ego of Salone.

9. The claims against Salone must fail because IMAC is not the alter ego of Salone.

10. The claims of Plaintiffs must fail inasmuch as Plaintiffs routinely unilaterally changed the terms and conditions of the products and equipment they requested from FreshTec.

11. The claims of Plaintiffs must fail inasmuch as agents of Plaintiffs accepted the products when delivered.

12. The claims of Plaintiffs must fail inasmuch as any delays were solely caused by changes to the contract by one or more of Plaintiffs' agents, employees or independent contractors.

13. Defendants claim all rights, privileges of the "Parole Evidence Rule".

14. Plaintiffs' claims are limited to quotes provided by Defendants.

15. Plaintiffs' claims are offset or eliminated because Plaintiffs have not paid Defendants for the equipment delivered to Defendants.

COUNTERCLAIM

AND NOW, comes FreshTec International, LLC and Industrial Machinery Automation and Controls, LLC by and through their attorneys, Hopkins Heltzel LLP, and files the within Counterclaim and in support thereof says as follows:

1. FreshTec International, LLC ("FreshTec") is a Pennsylvania Limited Liability Company with a principal place of business at 602-09 West DuBois Avenue, DuBois, Pennsylvania 15801.

2. Industrial Machinery Automation and Controls, LLC ("IMAC") is a Pennsylvania Limited Liability Company with a principal place of business at 602-09 West DuBois Avenue, DuBois, Pennsylvania 15801.

3. Defendant on the Counterclaim Giuseppe's Finer Foods, Inc. ("Giuseppe") is a Pennsylvania Corporation with a principal place of business at 2592 Oklahoma Salem Road, DuBois, Pennsylvania 15801.

4. Defendant on the Counterclaim, Gortech Global Fabrication, LLC ("Gortech") is a Pennsylvania Limited Liability Company with a principal place of business at 215 Beaver Drive, DuBois, Pennsylvania 15801.

5. In or about the year 2005, Plaintiffs supplied Defendants with various machinery described in the Complaint filed by Giuseppe and Gortech.

6. Plaintiffs on the Counterclaim supplied the goods and materials pursuant to the parties' purchase agreement. Defendants on the Counterclaim, Gortech and Giuseppe, have failed to pay the total amount due and owing.

7. There remains due and owing from Defendant Gortech or Defendant Giuseppe the sum of \$28,000.00.

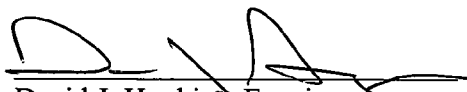
8. Plaintiffs on the Counterclaim have made demand for payment of money due and owing and Defendants on the Counterclaim have refused to pay the amount due and owing.

WHEREFORE, Plaintiffs on the Counterclaim respectfully request this Honorable Court to grant judgment against Defendants, Gortech Global Fabrication LLC and Giuseppe's Finer Foods, Inc., jointly and severally, in the amount of \$28,000.00 with pre-judgment interest, costs of suit and such other and further relief as the Court deems fair, just and equitable.

DEMAND FOR JURY TRIAL

Defendants/Plaintiffs on the Counterclaims demand a trial by twelve jurors on all issues presented herein.

HOPKINS HELTZEL LLP

A handwritten signature in black ink, appearing to read 'D. J. Hopkins', is written over a horizontal line.

David J. Hopkins, Esquire
Attorney for Defendants/Plaintiffs on
the Counterclaim

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
(CIVIL DIVISION)

GIUSEPPE'S FINER FOODS, INC.,
GORTECH GLOBAL FABRICATION,
LLC, and ICP ASSET MANAGEMENT,
INC.,

Plaintiffs,

vs.

No. 06-1633 C.D.

FRESHTEC INTERNATIONAL, LLC,
INDUSTRIAL MACHINERY
AUTOMATION AND CONTROLS, LLC,
and LARRY SALONE,


Defendants.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of Answer to Complaint, New Matter and Counterclaim, was forwarded by first class mail, postage prepaid, on the 2nd day of February, 2007 to all counsel of record, addressed as follows:

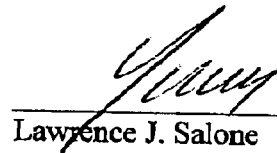
Gregory H. Teufel, Esquire
Schnader Harrison Segal & Lewis LLP
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222-3010

Christopher E. Mohny, Esquire
25 East Park Avenue, Suite 6
DuBois, PA 15801


David J. Hopkins, Esquire
Attorney for Defendants

VERIFICATION

I hereby verify that the statements made in this pleading are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. Section 4904, relating to Unsworn Falsification to Authorities.



Lawrence J. Salone

VERIFICATION

I hereby verify that the statements made in this pleading are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. Section 4904, relating to Unsworn Falsification to Authorities.

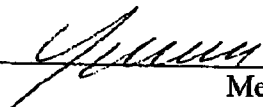
Freshtec International, LLC

By:  Member

VERIFICATION

I hereby verify that the statements made in this pleading are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. Section 4904, relating to Unsworn Falsification to Authorities.

Industrial Machinery Automation and
Controls, LLC

By:  Member

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GIUSEPPE'S FINER FOODS, INC. and)
GORTECH GLOBAL FABRICATION, LLC,) CIVIL DIVISION

Plaintiffs,)

vs.)

FRESHTEC INTERNATIONAL, LLC,)
INDUSTRIAL MACHINERY)
AUTOMATION AND CONTROLS, LLC,)
and LARRY SALONE,)

Defendants.)

NO. 06-1633-C.D.

**Reply to New Matter, Answer to Counter
Claim, and New Matter to Counterclaim.**

Filed on behalf of Plaintiffs,
Giuseppe Finer Foods and Gortech Global
Fabrication, LLC

Counsel of Record for this Party:

Gregory H. Teufel
Pa. Id. No. 73062
Sarah B. Heineman
Pa. Id. No. 91040
SCHNADER HARRISON SEGAL & LEWIS
LLP

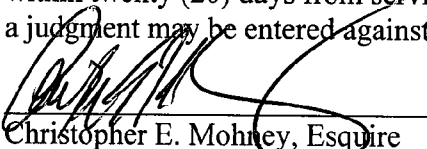
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(412) 765-3858 (facsimile)

Christopher E. Mohnney, Esquire
Pa. Id. 63494
25 East Park Avenue, Suite 6
DuBois, PA 15801
(814) 375-1044

NOTICE TO PLEAD

To: Counterclaim Plaintiffs,

You are hereby notified to file a written
response to the enclosed New Matter and
within twenty (20) days from service hereof or
a judgment may be entered against you.


Christopher E. Mohnney, Esquire
Attorney for Plaintiffs/Counterclaim
Defendants

FILED
01/22/07
FEB 27 2007

4CC
Amy Mohnney
(CR)

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
GIUSEPPE'S FINER FOODS, INC., et al., CIVIL DIVISION

Plaintiffs,

vs.

No. 06-1633 - C.D.

FRESHTEC INTERNATIONAL, LLC, et al.,
Defendants.

Reply to New Matter, Answer to Counter Claim, and New Matter to Counterclaim

Plaintiffs/Counterclaim Defendants, Giuseppe's Finer Foods, Inc. ("Giuseppe's"),
Gortech Global Fabrication, LLC ("Gortech"), and ICP Asset Management, Inc. ("ICP Asset"),
by and through their undersigned attorneys, hereby file the following Reply to New Mater,
Answer to Counter Claim, and New Matter to Counterclaim.

REPLY TO NEW MATTER

1. The averments contained in paragraph 1 of Defendants' New Matter are conclusions of law to which no response is required. To the extent that a further response is required, said averments are denied. To the contrary, Plaintiffs' claims should not fail as a result of any consensual changes to the purchases orders and/or contracts by Plaintiffs and Defendants.

2. The averments contained in paragraph 2 of Defendants' New Matter are conclusions of law to which no response is required. To the extent that a further response is required, said averments are denied. To the contrary, the delays were caused by Defendants.

3. The averments contained in paragraph 3 of Defendants' New Matter are conclusions of law to which no response is required. To the extent that a further response is required, said averments are denied. To the contrary, IMAC is a party to the contract.

4. The averments contained in paragraph 4 of Defendants' New Matter are conclusions of law to which no response is required. To the extent that a further response is required, said averments are denied. After reasonable investigation, Plaintiffs are without knowledge or information sufficient to form a belief as to whether Defendant Salone maintained corporate formalities for both Defendants Freshtec and IMAC.

5. The averments contained in paragraph 5 of Defendants' New Matter are conclusions of law to which no response is required. To the extent that a further response is required, said averments are denied.

6. The averments contained in paragraph 6 of Defendants' New Matter are conclusions of law to which no response is required. To the extent that a further response is required, said averments are denied. To the contrary, Giuseppe's was the disclosed principal for which Gortech .

7. The averments contained in paragraph 7 of Defendants' New Matter are conclusions of law to which no response is required. To the extent that a further response is required, said averments are denied. On the contrary, Plaintiffs permitted Defendants to attempt repairs and Plaintiffs were under no duty to attempt repairs themselves.

8. The averments contained in paragraph 8 of Defendants' New Matter are conclusions of law to which no response is required. To the extent that a further response is required, said averments are denied.

9. The averments contained in paragraph 9 of Defendants' New Matter are conclusions of law to which no response is required. To the extent that a further response is required, said averments are denied.

10. The averments contained in paragraph 10 of Defendants' New Matter are conclusions of law to which no response is required. To the extent that a further response is required, said averments are denied. On the contrary, Plaintiffs did not routinely or unilaterally change the terms or conditions of the products or equipment they requested from Defendants.

11. The averments contained in paragraph 11 of Defendants' New Matter are conclusions of law to which no response is required. To the extent that a further response is required, said averments are denied. No claims are barred by acceptance of the Equipment. By way of further response, Equipment was accepted on the reasonable assumption that non-conformities would be cured and they have not been cured and Equipment was accepted without discovery of non-conformities and acceptance was reasonably induced by the difficulty of discovery before acceptance and by the Defendants' assurances.

12. The averments contained in paragraph 12 of Defendants' New Matter are conclusions of law to which no response is required. To the extent that a further response is required, said averments are denied. On the contrary, no changes to any contracts caused or contributed to causing the late deliveries of Equipment detailed in the Complaint and any basis for claiming an entitlement to an extension of time for performance was waived by agreeing to any changes in contracts without asking for any extension of deadlines in connection with any such changes.

13. The averments contained in paragraph 13 of Defendants' New Matter are conclusions of law to which no response is required. To the extent that a further response is required, said averments are denied.

14. The averments contained in paragraph 14 of Defendants' New Matter are conclusions of law to which no response is required. To the extent that a further response is required, said averments are denied.

15. The averments contained in paragraph 15 of Defendants' New Matter are conclusions of law to which no response is required. To the extent that a further response is required, said averments are denied. On the contrary, payments were made to Defendants as detailed in the Complaint.

WHEREFORE, Plaintiffs respectfully requests that this Court enter judgments in its favor jointly and severally against Defendants Larry Salone, Freshtec, and IMAC, awarding compensatory and punitive damages in an amount in excess of \$20,000, plus interest, costs and such other and further relief as this Court deems just and proper.

ANSWER TO DEFENDANTS' COUNTERCLAIM

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. Denied. The averments contained in paragraph 6 of the Counterclaim are conclusions of law to which no response is required. To the extent that a response may be required, it is denied that Counterclaim Plaintiffs supplied the goods and materials pursuant to the parties' purchase agreement. It is further denied that Counterclaim Defendants owe any money to Counterclaim Plaintiffs. To the contrary, Counterclaim Plaintiffs failed to supply the goods and materials pursuant to the parties' agreements, thereby, breaching said agreements. As a result of said breach, Counterclaim Defendants due not owe Counterclaim Plaintiff anything.

7. Denied. The averments contained in paragraph 7 of the Counterclaim are conclusions of law to which no response is required. To the extent that a response may be required, it is denied that there remains owing from Counterclaim Defendants the sum of \$28,000.00. To the contrary, Counterclaim Plaintiffs breached its agreements with Counterclaim Defendants, resulting in zero monies owed to Counterclaim Plaintiffs.

8. Denied as stated. It is denied that Counterclaim Defendants refuse to pay the amount due and owing to Counterclaim Plaintiffs because there is no amount "due and owing" to Counterclaim Plaintiffs. It is admitted that, in addition to the payments already made, as detailed in the Complaint, Defendants have demanded additional payment in the amount of \$28,000 and such additional amount has not been paid.

WHEREFORE, Counterclaim Defendants demand judgment in their favor and against Counterclaim Plaintiffs, together with costs and attorneys' fees incurred, and such other relief as the Court may deem proper.

NEW MATTER TO COUNTERCLAIM

1. Counterclaim Defendants incorporate by reference their Complaint, Reply to New Matter, Answer to Counterclaim, and New Matter to Counterclaim as if fully set forth herein.

2. Counterclaim Plaintiffs' claims are barred or reduced by Plaintiffs' own breach of the Agreements between Counterclaim Plaintiff and Counterclaim Defendants. Counterclaim Plaintiffs breached said Agreements by not installing and/or providing the equipment pursuant to the Agreement.

3. Counterclaim Plaintiffs' claims are barred or reduced by Counterclaim Plaintiffs' breaches of the implied warranties of merchantability and fitness for particular purpose, because

the Equipment cannot be used as intended or for its ordinary purposes or for its particular purposes.

4. Counterclaim Plaintiffs' claims are barred or reduced by Counterclaim Defendants' payments to Counterclaim Plaintiffs pursuant to their Agreements.

5. Counterclaim Plaintiffs' claims are barred or reduced by the doctrine of laches.

6. Counterclaim Plaintiffs' claims are barred or reduced by estoppel.

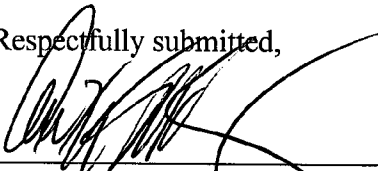
7. Counterclaim Plaintiffs' claims are barred or reduced by the doctrine of unclean hands.

8. Counterclaim Plaintiffs' claims are barred or reduced based on waiver of such claims.

9. Counterclaim Plaintiffs' claims are barred or reduced by their fraud.

WHEREFORE, Counterclaim Defendants demand judgment in their favor and against Counterclaim Plaintiffs, together with costs and attorneys' fees incurred, and such other relief as the Court may deem proper.

Respectfully submitted,



Gregory H. Teufel
Sarah B. Heineman
Christopher E. Mohnney

DATED: 2/23, 2007

Attorneys for Plaintiffs/Counterclaim Defendants
GIUSEPPE'S FINER FOODS, INC.,
GORTECH GLOBAL FABRICATION, LLC, and
ICP ASSET MANAGEMENT, INC.

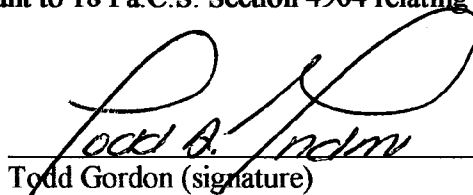
JURY TRIAL DEMAND

Plaintiffs demand trial by jury on all issues so triable.

VERIFICATION

I, Todd Gordon, as Chief Operating Officer of GORTECH GLOBAL FABRICATION, LLC, am authorized to make this verification on behalf of GORTECH GLOBAL FABRICATION, LLC and hereby verify that I have reviewed the information provided in the **Reply to New Matter, Answer to Counter Claim, and New Matter to Counterclaim** and that the information provided therein is true and correct to the best of my knowledge, information, and belief.

I give this Verification pursuant to 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities.



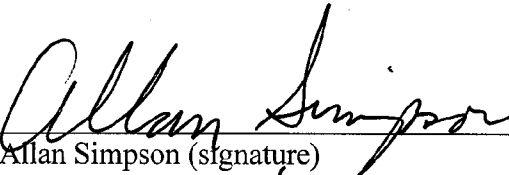
Todd Gordon (signature)

Date: 2-21-07

VERIFICATION

I, Allan Simpson, as Chief Operating Officer of GIUSEPPE'S FINER FOODS, INC., am authorized to make this verification on behalf of GIUSEPPE'S FINER FOODS, INC. and hereby verify that I have reviewed the information provided in the **REPLY TO NEW MATTER, ANSWER TO COUNTERCLAIM, AND NEW MATTER TO COUNTERCLAIM** and that the information provided therein is true and correct to the best of my knowledge, information, and belief.

I give this Verification pursuant to 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities.

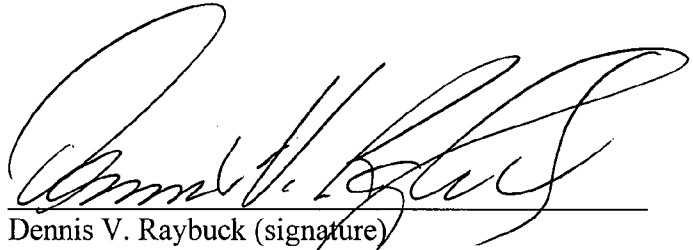

Allan Simpson (signature)

Date: 2/21/07

VERIFICATION

I, Dennis V. Raybuck, as President of ICP ASSET MANAGEMENT, INC., am authorized to make this verification on behalf of ICP ASSET MANAGEMENT, INC. and hereby verify that I have reviewed the information provided in the **REPLY TO NEW MATTER, ANSWER TO COUNTERCLAIM, AND NEW MATTER TO COUNTERCLAIM** and that the information provided therein is true and correct to the best of my knowledge, information, and belief.

I give this Verification pursuant to 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities.

A handwritten signature in black ink, appearing to read "Dennis V. Raybuck", is written over a horizontal line.

Dennis V. Raybuck (signature)

Date: 21 FEB 2007

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA,
CIVIL DIVISION

GIUSEPPE'S FINER FOODS, INC. and
GORTECH GLOBAL FABRICATION,
LLC

Plaintiffs,

vs.

FRESHTEC INTERNATIONAL, LLC,
INDUSTRIAL MACHINERY
AUTOMATION AND CONTROLS,
LLC and LARRY SALONE

Defendants.

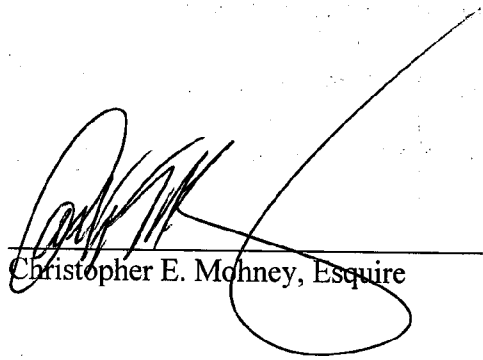
NO. 06-1633-C.D.

CERTIFICATE OF SERVICE

I, CHRISTOPHER E. MOHNEY, ESQUIRE, co-counsel of record for Plaintiffs, do hereby certify that on the 27th day of February, 2007, I did cause to be served certified true and correct copies of Reply to New Matter, Answer to Counterclaim, and New Matter to Counterclaim on the following individual, by first class United States mail, postage pre-paid:

David J. Hopkins, Esquire
Hopkins Heltzel LLP
100 Meadow Lane, Suite 5
DuBois, PA 15801

BY:


Christopher E. Mohney, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
(CIVIL DIVISION)

GIUSEPPE'S FINER FOODS, INC.,
GORTECH GLOBAL FABRICATION,
LLC, and ICP ASSET MANAGEMENT,
INC.,

Plaintiffs,

vs.

FRESHTEC INTERNATIONAL, LLC,
INDUSTRIAL MACHINERY
AUTOMATION AND CONTROLS, LLC,
and LARRY SALONE,

Defendants.

No. 06-1633 C.D.

Type of Pleading: ANSWER TO
NEW MATTER TO COUNTERCLAIM


Counsel of Record for this party:
HOPKINS HELTZEL

DAVID J. HOPKINS, Esquire
Attorney at Law
Supreme Court No. 42519

LEA ANN HELTZEL, Esquire
Attorney at Law
Supreme Court No. 83998

100 Meadow Lane, Suite 5
DuBois, Pennsylvania 15801

(814) 375-0300

FILED ICC Atty Hopkins
0/11:30 am
MAR 14 2007 

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
(CIVIL DIVISION)

GIUSEPPE'S FINER FOODS, INC.,
GORTECH GLOBAL FABRICATION,
LLC, and ICP ASSET MANAGEMENT,
INC.,

Plaintiffs,

vs.

No. 06-1633 C.D.

FRESHTEC INTERNATIONAL, LLC,
INDUSTRIAL MACHINERY
AUTOMATION AND CONTROLS, LLC,
and LARRY SALONE,,

Defendants

ANSWER TO NEW MATTER TO COUNTERCLAIM

AND NOW, comes Defendants, FreshTec International, LLC, (hereinafter "FreshTec"), Industrial Machinery Automation and Controls, LLC (hereinafter "IMAC") and Larry Salone (hereinafter "Salone"), by and through their attorneys, Hopkins Heltzel LLP and files the within Answer to New Matter to Counterclaim as follows:

1. No answer is required of this paragraph. To the extent an answer is required, Plaintiff repeats each allegation set forth in its Answer, New Matter and Counterclaim.

2. Denied. Plaintiff never breached an agreement between the parties and therefore Plaintiffs' claims are neither barred nor reduced.

3. Denied. Plaintiff did not breach warranties of merchantability nor fitness for particular purpose and at all material times Plaintiffs, supplied equipment for its intended purpose working according to the parties' agreement.


4. Denied. Counterclaim Defendants are indebted to Plaintiffs as set forth in

Plaintiffs' Counterclaim.

5. Denied. Counterclaim Plaintiffs brought its claims in a timely fashion.
6. Denied. Counterclaim Plaintiffs' claims are neither barred nor reduced by estoppel.
7. Denied. At all material times, Counterclaim Plaintiffs supplied product pursuant to the parties' agreement and their claims are neither barred nor reduced by the doctrine of unclean hands.
8. Denied. Counterclaim Plaintiffs have never waived their claims nor undertake any action that could reasonably be considered a waiver and therefore Plaintiffs' claims are neither barred nor reduced based on waiver.
9. Denied. Counterclaim Plaintiffs committed no fraud nor undertook any action that could reasonably be considered a fraud and therefore Plaintiffs' claims are neither barred nor reduced by an allegation of fraud.
10. To the extent required, Larry Salone reiterates his prior answers that he was not a party to agreements in this case nor did he undertake any action that imputes personal liability on him.

WHEREFORE, the New Matter of Counterclaim Defendants should be dismissed with prejudice.

HOPKINS HELTZEL LLP


David J. Hopkins, Esquire
Attorney for Defendants/Plaintiffs on
the Counterclaim

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
(CIVIL DIVISION)

GIUSEPPE'S FINER FOODS, INC.,
GORTECH GLOBAL FABRICATION,
LLC, and ICP ASSET MANAGEMENT,
INC.,

Plaintiffs,

vs.

No. 06-1633 C.D.

FRESHTEC INTERNATIONAL, LLC,
INDUSTRIAL MACHINERY
AUTOMATION AND CONTROLS, LLC,
and LARRY SALONE,

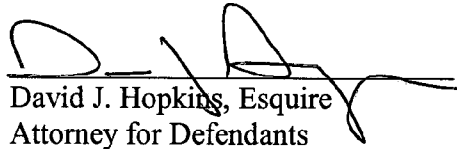
Defendants.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of Answer to Complaint, New Matter and Counterclaim, was forwarded by first class mail, postage prepaid, on the 13th day of March, 2007 to all counsel of record, addressed as follows:

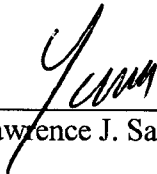
Gregory H. Teufel, Esquire
Schnader Harrison Segal & Lewis LLP
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222-3010

Christopher E. Mohny, Esquire
25 East Park Avenue, Suite 6
DuBois, PA 15801


David J. Hopkins, Esquire
Attorney for Defendants

VERIFICATION

I hereby verify that the statements made in this pleading are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. Section 4904, relating to Unsworn Falsification to Authorities.



Lawrence J. Salone

VERIFICATION

I hereby verify that the statements made in this pleading are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. Section 4904, relating to Unsworn Falsification to Authorities.

Freshtec International, LLC

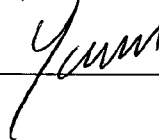
By:  Member

VERIFICATION

I hereby verify that the statements made in this pleading are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. Section 4904, relating to Unsworn Falsification to Authorities.

Industrial Machinery Automation and
Controls, LLC

By: _____

A handwritten signature in black ink, appearing to be 'Yuan', is written over a horizontal line.

Member

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GIUSEPPE'S FINER FOODS, INC.,)
GORTECH GLOBAL FABRICATION, LLC,)

CIVIL DIVISION

Plaintiffs,

NO. 06-1633-C.D.

vs.

FRESHTEC INTERNATIONAL, LLC,
INDUSTRIAL MACHINERY
AUTOMATION AND CONTROLS, LLC,
and LARRY SALONE,

**MOTION FOR LEAVE TO FILE
AMENDED COMPLAINT**

Defendants.

Filed on behalf of Plaintiffs,
Giuseppe Finer Foods

Counsel of Record for this Party:

Gregory H. Teufel

Pa. Id. No. 73062

Sarah B. Heineman

Pa. Id. No. 91040

SCHNADER HARRISON SEGAL & LEWIS

LLP

Suite 2700, Fifth Avenue Place

120 Fifth Avenue

Pittsburgh, PA 15222-3010

(412) 577-5200 (telephone)

(412) 765-3858 (facsimile)

Christopher E. Mohny, Esquire

Pa. Id. 63494

25 East Park Avenue, Suite 6

DuBois, PA 15801

(814) 375-1044

FILED

APR 12 2007

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

GIUSEPPE'S FINER FOODS, INC.,) CIVIL DIVISION
GORTECH GLOBAL FABRICATION, LLC,)
)
)
)
Plaintiffs,) No. 06-1633- C.D.
)
)
vs.)
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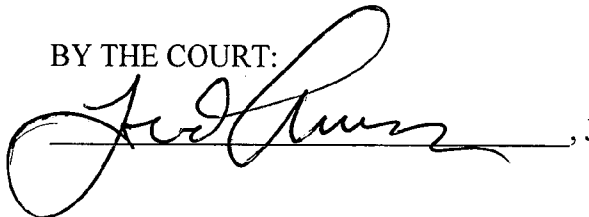
FRESHTEC INTERNATIONAL, LLC,
INDUSTRIAL MACHINERY
AUTOMATION AND CONTROLS, LLC,
and LARRY SALONE,

Order

AND NOW, this 13 day of April, 2007, upon consideration of the foregoing motion, it is hereby ordered that:

- (1) a rule is issued upon the respondents/defendants to show cause why the moving parties are not entitled to the relief requested;
- (2) argument shall be held on May 17, 2007 at 9:00 A.M. in Courtroom Number 1 of the Clearfield County Courthouse; and
- (3) Notice of the entry of this Order shall be provided to all parties by the moving party.

BY THE COURT:

 J

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014:00301
APR 13 2007
Atty. Mohney
(6K)

William A. Shaw
Prothonotary/Clerk of Courts

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GIUSEPPE'S FINER FOODS, INC., CIVIL DIVISION
GORTECH GLOBAL FABRICATION, LLC,

Plaintiffs, No. 06-1633- C.D.

vs.

FRESHTEC INTERNATIONAL, LLC,
INDUSTRIAL MACHINERY
AUTOMATION AND CONTROLS, LLC,
and LARRY SALONE,

Defendants.

MOTION FOR LEAVE TO FILE AMENDED COMPLAINT

Plaintiffs, Giuseppe's Finer Foods, Inc. and Gortech Global Fabrication, LLC,
(collectively "Plaintiffs") by and through their undersigned attorneys, hereby file the following
Motion for Leave to File an Amended Complaint:

1. On or about October 6, 2006, Plaintiffs filed a Complaint alleging Breach of
Contract, Unjust Enrichment, and Fraud claims against Freshtec International, LLC., Industrial
Machinery Automation and Controls, and Larry Salone (collectively "Defendants").

2. At the time of filing the Complaint, ICP Asset Management, Inc. ("ICPAM") was
a Plaintiff in the case and had the sole unjust enrichment claim.

3. Defendants filed preliminary objections to the Complaint asking this Honorable Court, among other things, to dismiss ICPAM's unjust enrichment claim.

4. On or about January 3, 2007, this Honorable Court entered an order ("Order") granting Defendants' preliminary objections dismissing ICPAM's unjust enrichment claim and dismissing ICPAM as a party.

5. This Order resulted in the dismissal of the only unjust enrichment claim.

6. During oral argument for the preliminary objections, counsel for Defendants argued that ICPAM was not a proper party for an unjust enrichment claim due to the financing situation of ICPAM and Giuseppe's Finer Foods ("GFF").

7. Therefore, Plaintiffs want to amend their Complaint to include an unjust enrichment claim on behalf of GFF.

8. Plaintiffs are seeking leave of court pursuant to Pa.R.C.P. 1032 to file an Amended Complaint. A copy of the Amended Complaint is attached as Exhibit "A."

9. The statute of limitations has not expired on an unjust enrichment claim.

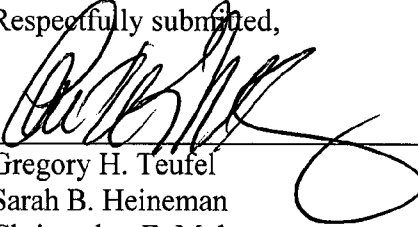
10. Discovery has not yet begun in this case.

11. Defendants will not suffer any prejudice by allowing the Amended Complaint.

12. Counsel for Plaintiffs, specifically, Christopher E. Mohny, Esquire, discussed the within proposed amendments to the Complaint with counsel for Defendants, namely, David J. Hopkins, Esquire, whom was not willing to consent to Plaintiffs' proposed amendments to the Complaint.

WHEREFORE, Plaintiffs respectfully requests this Honorable Court grant Plaintiffs' leave to file an Amended Complaint.

Respectfully submitted,



Gregory H. Teufel
Sarah B. Heineman
Christopher E. Mohnney

DATED: 4/12/07, 2007

Attorneys for Plaintiffs, GIUSEPPE'S FINER
FOODS, INC., GORTECH GLOBAL
FABRICATION, LLC

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

GIUSEPPE'S FINER FOODS, INC.,) CIVIL DIVISION
GORTECH GLOBAL FABRICATION, LLC,)
)
)
)
Plaintiffs,) No. 06-1633- C.D.
)
vs.)
)
)

FRESHTEC INTERNATIONAL, LLC,
INDUSTRIAL MACHINERY
AUTOMATION AND CONTROLS, LLC,
and LARRY SALONE,

ORDER OF COURT

AND NOW, this ____ day of _____, 2007, upon consideration of the Motion for Leave to File Amended Complaint, and any response thereto, IT IS HEREBY ORDERED that said Motion is GRANTED. Plaintiffs may file the Amended Complaint attached to the Motion as Exhibit "A."

BY THE COURT:

_____, J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GIUSEPPE'S FINER FOODS, INC.,)	
GORTECH GLOBAL FABRICATION, LLC,	)	CIVIL DIVISION
)	
)	
Plaintiffs,	)	NO. 06-1633-C.D.
)	
vs.)	
)	
FRESHTEC INTERNATIONAL, LLC,	)	AMENDED COMPLAINT
INDUSTRIAL MACHINERY)	
AUTOMATION AND CONTROLS, LLC,)	
and LARRY SALONE,	)	Filed on behalf of Plaintiffs,
	)	Giuseppe Finer Foods
Defendants.)	
	)	Counsel of Record for this Party:
)	
	)	Gregory H. Teufel
	)	Pa. Id. No. 73062
	)	Sarah B. Heineman
	)	Pa. Id. No. 91040
	)	SCHNADER HARRISON SEGAL & LEWIS
	)	LLP
	)	Suite 2700, Fifth Avenue Place
	)	120 Fifth Avenue
	)	Pittsburgh, PA 15222-3010
	)	(412) 577-5200 (telephone)
	)	(412) 765-3858 (facsimile)
)	
	)	Christopher E. Mohny, Esquire
	)	Pa. Id. 63494
	)	25 East Park Avenue, Suite 6
	)	DuBois, PA 15801
	)	(814) 375-1044

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GIUSEPPE'S FINER FOODS, INC., CIVIL DIVISION
GORTECH GLOBAL FABRICATION, LLC,

Plaintiffs,

No. 06-1633- C.D.

vs.

FRESHTEC INTERNATIONAL, LLC,
INDUSTRIAL MACHINERY
AUTOMATION AND CONTROLS, LLC,
and LARRY SALONE,

Defendants.

COMPLAINT

Plaintiffs, Giuseppe's Finer Foods, Inc. and Gortech Global Fabrication, LLC, by and through their undersigned attorneys, hereby file the following Amended Complaint in Civil Action, the grounds of which the following is a statement:

Introduction

1. This action seeks to recover damages from an equipment manufacturer that breached its contract ("the Contract") to manufacture and install paste bin dumpers, a cheese dumper, and related equipment (collectively, "the Equipment"), and committed fraud in the sale of the Equipment.

Parties

2. Plaintiff Giuseppe's Finer Foods, Inc. ("Giuseppe's") is a Pennsylvania corporation with a place of business at 2592 Oklahoma-Salem Road, DuBois, Pennsylvania 15801.

3. Plaintiff Gortech Global Fabrication, LLC ("Gortech") is a Pennsylvania limited liability company with a place of business at 215 Beaver Drive, DuBois, Pennsylvania 15801.

4. Upon information and belief, Defendant Freshtec International, LLC ("Freshtec") is a Pennsylvania corporation with a place of business at 602 West DuBois Ave., Dubois, Pennsylvania 15801.

5. Upon information and belief, Defendant Industrial Machinery Automation and Controls, LLC ("IMAC") is a Pennsylvania limited liability company with a place of business at 602 West DuBois Ave., DuBois, Pennsylvania 15801.

6. Upon information and belief, Larry Salone is a Pennsylvania resident who currently resides at 1562 Treasure Lake, DuBois, PA 15801.

Jurisdiction and Venue

7. This Court has original jurisdiction over this action pursuant to 42 Pa.Cons.Stat. § 931.

8. Venue is proper in this Court under Pa.R.Civ.P. 1006 because transactions and occurrences out of which the causes of action set forth herein arose took place in Clearfield County.

Facts

9. Beginning in the Fall of 2004, Larry Salone, as agent of Freshtec and IMAC, and Dennis Raybuck, Allan Simpson, Luke Sicard, and George Bennett, among others, as agents of

Giuseppe's had discussions and other communications regarding Giuseppe's purchasing the Equipment.

10. Upon information and belief, during those discussions and other communications, Larry Salone, acting as agent of Freshtec and IMAC, made false representations that Freshtec and IMAC could design, manufacture, and install the Equipment, and misrepresented Freshtec's and IMAC's prior experience and expertise. Information from Freshtec's website is attached hereto as Exhibit A and is incorporated by reference as if fully set forth herein.

11. Upon information and belief, Larry Salone, acting as agent of Freshtec and IMAC, further misrepresented Freshtec's and IMAC's experience, knowledge, and ability to design, manufacture, and install the Equipment consistent with Hazard Analysis Critical Control Points (HACCP) standards and Good Manufacturing Practices (GMP).

12. On January 18, 2005, Freshtec provided a quotation for a paste bin dumper and different options offered to control and integrate the paste bin dumper, with delivery terms of "8-10 weeks". A true and correct copy of the January 18, 2005 quotation is attached hereto as Exhibit B and is incorporated by reference as if fully set forth herein.

13. Gortech was a contractor providing equipment and materials to Giuseppe's for the construction of Giuseppe's food manufacturing plant and acted as agent for Giuseppe's in purchasing equipment from other vendors. In reliance on Larry Salone's misrepresentations, Giuseppe's requested Gortech to issue a purchase order to Freshtec to supply the Equipment to Giuseppe's.

14. In reliance on Larry Salone's misrepresentations, on or about April 5, 2005, Gortech issued a purchase order ("the Paste Bin Dumper Equipment Purchase Order") to Freshtec based upon the January 18, 2005 quotation for four (4) Paste Bin Dumpers, the cost of

installing four electric elevator drives to replace the hydraulic system, and four (4) control packages (collectively, the "Paste Bin Dumper Equipment") for the total cost of \$166,360.00, 50% to be paid with the order and 50% to be paid upon shipment. A true and correct copy of that May 5, 2005 Purchase Order, No. 10292, is attached hereto as Exhibit C and is incorporated by reference as if fully set forth herein.

15. On or about April 6, 2005, Freshtec issued an invoice in the amount of \$83,180.00 for the Paste Bin Dumper Equipment to be shipped on June 6, 2005. A true and correct copy of that Invoice, No.1057, is attached hereto as Exhibit D and incorporated by reference as if fully set forth herein.

16. Guiseppe's financed the purchase of the Equipment through a lease arrangement with ICP Asset whereby ICP Asset paid for the Equipment and leased it to Giuseppe's.

17. In reliance on Larry Salone's misrepresentations, on or about April 11, 2005, ICP Asset paid Freshtec \$83,180.00 in accordance with Exhibits B, C and D attached hereto.

18. On or about July 25, 2005, Freshtec issued a quotation for a cheese dumper, Raybuck tipper modifications, new flat top conveyor, and a hoist/rotation crane for the cheese handling portion of the Giuseppe's food manufacturing plant (collectively the "Cheese Dumper Equipment") with a completion date of September 10, 2005 and with payment terms of 50% on order and 50% on ready to ship. A true and correct copy of the July 25, 2005 quotation is attached hereto as Exhibit E and incorporated by reference as if fully set forth herein.

19. The cover sheet for the July 25, 2005 quotation requested the purchase order to be issued to Freshtec's "automation division," "Industrial Automation, Machinery & Controls."

20. In reliance on Larry Salone's misrepresentations, on or about July 26, 2005, in response to the July 25, 2005 quotation, Gortech issued a purchase order to "Freshtec

International c/o Industrial Automation, Machinery & Controls” for the Cheese Dumper Equipment for delivery on September 10, 2005, with a total cost of \$62,000.00. A true and correct copy of that Purchase Order, No. 50012, is attached hereto as Exhibit F and is incorporated by reference as if fully set forth herein.

21. On or about July 26, 2005, “Ind. Automation, Machinery & Controls--Freshtec Int’l” issued an invoice in the amount of \$31,000.00 for the Cheese Dumper Equipment to be shipped on September 1, 2005. A true and correct copy of that Invoice, No.1285, is attached hereto as Exhibit G and incorporated by reference as if fully set forth herein.

22. In reliance on Larry Salone’s misrepresentations, on or about August 8, 2005, ICP Asset paid “Ind. Automation, Machinery & Controls” \$31,000.00 in accordance with Exhibits E, F and G attached hereto.

23. In reliance on Larry Salone’s misrepresentations, on or about August 17, 2005, ICP Asset paid Freshtec another \$63,180.00.

24. Upon information and belief, Larry Salone, acting as agent for Freshtec and IMAC, periodically misrepresented the progress of the work, the quality of the Equipment, and testing of the Equipment that had been performed, all in an effort to encourage further payments for the Equipment, despite knowledge that his representations in that regard were false.

25. In reliance on Larry Salone’s misrepresentations, on or about October 7, 2005, ICP Asset paid “Ind. Automation, Machinery & Controls” another \$1,650.

26. In reliance on Larry Salone’s misrepresentations, on or about December 2, 2005, ICP Asset paid “Ind. Automation, Machinery & Controls” another \$40,000.

27. In reliance on Larry Salone’s misrepresentations, on or about December 5, 2005, ICP Asset paid Freshtec another \$500.00.

28. The Equipment was delivered late and riddled with problems which, upon information and belief, were well known by Larry Salone to exist prior to delivery.

29. Delivery of the Paste Bin Dumper Equipment was not completed until December 5, 2005. The first bin dumper arrived on September 30, 2005 and the remaining three on December 2 and December 5, 2005.

30. The Cheese Dumper Equipment was not delivered until on or about December 2, 2005.

31. Problems with the Equipment included the following:

a. Problems with the Cheese Dumper Equipment included the following:

- i. The long conveyor supplied by Freshtec was not matched to the height of the existing conveyors with which it was intended to be used.
- ii. The motor for the Raybuck Tipper was not powder coated as quoted.
- iii. The quote promised to "add a drive" to the existing drive and this was not done.
- iv. The conveyor supplied did not include any means of transferring product to and from the supplied conveyor to the preexisting conveyors.
- v. The control panel provided did not match the quote, which promised that the conveyor would be "VFD controlled, stainless steel sloped top control panel. With AB SLC PLC."
- vi. The necessary photo eyes to run the Cheese Dumper Equipment were not supplied.

- vii. The chain holder supplied for use directly above product did not meet HACCP and GMP standards for food safety, and required the addition of a cover.
 - viii. The drive drum, idle drum, and take-up rollers on the conveyors were not sealed so that water from the wash down of the equipment would not end up inside the rollers, resulting in a serious product contamination problem and violation of HACCP and GMP safety standards.
 - ix. The belts supplied on the conveyor have metal cleats to link the belts together which are not allowed under HACCP and GMP safety standards.
 - x. Conveyor rollers supplied were not adequate to handle the weight of the cheese barrels the conveyors were intended to convey.
 - xi. The Cheese Dumper did not have, as promised by the quote, "Powder coated linear actuator for elevation, electric drive. Linear actuator for rotation. Stainless steel guarding. With AB PLC and controls for eventual automatic operation. . . . VFD on both actuators."
 - xii. The Cheese Dumper did not have a hoisting "bucket" as quoted. Instead, a belt driven system was supplied.
 - xiii. The overall quality of the workmanship was poor.
- b. Problems with the Paste Bin Dumper Equipment included the following:
- i. The overall quality of the workmanship was poor.
 - ii. The bellows that cover the linear actuators were cracking and unsanitary, in violation of HACCP and GMP standards.
 - iii. There were rust marks on the Equipment.

- iv. The Paste Bin Dumper Equipment did not have 3000 pound capacity as quoted and was inadequate to lift and dump the totes of tomato paste as intended.
- v. The Paste Bin Dumper Equipment, though used properly and as intended, quickly developed failed welds, bent support brackets, and other problems indicating a lack of structural integrity potentially dangerous to Equipment operators.
- vi. The Paste Bin Dumper Equipment experienced limit switch failures as well as blown fuses and PLC faults that prevented it from operating and/or operating properly.

32. The parties met to discuss the problems with the Equipment on May 4, 2006 and agreed to give Freshtec an opportunity to cure the problems. Larry Salone, acting as agent for Freshtec and IMAC, promised to address many of the problems, giving specific dates for completion of various items. Letters and emails documenting the May 4, 2006 meeting are attached hereto as Exhibits H and I, and are incorporated by reference as if fully set forth herein, however, the summary by counsel for Larry Salone, et al. is not entirely accurate. However, rather than address any of the problems, counsel for Larry Salone, et al., called counsel for Giuseppe's and Gortech to inform him that the promises made at the May 4, 2006 to address the problems with the Equipment would not be honored and that Freshtec planned to file for bankruptcy protection in the near future.

33. Upon information and belief, Freshtec is undercapitalized and is merely the alter ego of Larry Salone and IMAC.

34. Upon information and belief IMAC is undercapitalized and merely the alter ego of Larry Salone and Freshtec.

COUNT I: BREACH OF CONTRACT
(Gortech v. Larry Salone, Freshtec, and IMAC)

35. Paragraphs 1 through 35 of this Complaint are incorporated by reference as if fully set forth herein.

36. Gortech, Freshtec and IMAC mutually assented to valid, enforceable contracts regarding supply of the Paste Bin Dumper Equipment and the Cheese Dumper Equipment.

37. Freshtec and IMAC agreed to provide the Equipment as called for in the quotations and purchase orders attached hereto.

38. Freshtec and IMAC breached their contractual obligations and the duty of good faith and fair dealing by supplying Equipment that was poorly designed, poorly manufactured, and unreliable, and by failing to deliver the Equipment on time, *inter alia*, as detailed above.

39. Freshtec and IMAC further breached their contractual obligations by failing to correct numerous defects in the Equipment.

40. Freshtec and IMAC profess to be merchants engaged in the sale of equipment similar to the Equipment at issue in this case, such that the Equipment is subject to an implied warranty of merchantability.

41. Freshtec and IMAC breached the implied warranty of merchantability because the Equipment supplied was not reasonably fit for the ordinary purposes of such equipment.

42. Freshtec and IMAC breached the implied warranty of fitness for particular purpose because the Equipment supplied was not reasonably fit for the particular purposes that were known to Freshtec and IMAC at the time of the formation of the contracts at issue.

43. Despite repeated promises to the contrary, Freshtec and IMAC never corrected all of the problems with the Equipment.

44. As a result of Freshtec's and IMAC's breach of their contractual obligations and failure to correct the many problems with the Equipment, Gortech has suffered damages in excess of \$20,000.

45. Freshtec and IMAC should be held jointly and severally liable for the breaches of contract by Freshtec and IMAC because, upon information and belief, they operated as a single entity or corporate combine, with Freshtec referring to IMAC as a mere "division" of Freshtec, and issuing combined Freshtec/IMAC invoices and/or alternately issued invoices from Freshtec and IMAC for different portions of the price of the same goods.

46. Moreover, the Court should pierce the corporate veils of Freshtec and IMAC and hold Larry Salone, Freshtec, and IMAC jointly and severally liable for the breaches of contract at issue because Larry Salone abused the corporate form in order to perpetrate a fraud upon the Plaintiffs, as detailed above.

WHEREFORE, Gortech respectfully requests that this Court enter judgments in its favor jointly and severally against Defendants Larry Salone, Freshtec, and IMAC in an amount in excess of \$20,000, plus interest, costs and such other and further relief as this Court deems just and proper.

COUNT II: BREACH OF CONTRACT
(Giuseppe's v. Larry Salone, Freshtec, and IMAC)

47. Paragraphs 1 through 47 of this Complaint are incorporated by reference as if fully set forth herein.

48. Giuseppe's was an intended third-party beneficiary of the contracts with Freshtec and IMAC.

49. Giuseppe's relied on Freshtec's and IMAC's repeated promises to fix the many defects in the Equipment, and thus Giuseppe's did not immediately arrange to obtain replacement Equipment.

50. As a result of Freshtec's and IMAC's breach of their contractual obligations and failure to correct the many problems with the Equipment, Giuseppe's suffered damages in excess of \$20,000.

WHEREFORE, Giuseppe's respectfully requests that this Court enter judgments in its favor jointly and severally against Defendants Larry Salone, Freshtec, and IMAC in an amount in excess of \$20,000, plus interest, costs and such other and further relief as this Court deems just and proper.

COUNT III: UNJUST ENRICHMENT
(Giuseppe's v. Larry Salone, Freshtec, and IMAC)

51. Paragraphs 1 through 51 of this Complaint are incorporated by reference as if fully set forth herein.

52. Giuseppe's conferred a benefit upon Larry Salone, Freshtec, and IMAC by arranging payments to be made to Freshtec and IMAC, which funds, upon information and belief, were in large part presumably transferred to Larry Salone, the sole owner of Freshtec and IMAC

53. Acceptance and retention of such monies under the circumstances described above would be unjust and inequitable.

54. Freshtec and IMAC should be held jointly and severally liable for unjust enrichment because, upon information and belief, they operated as a single entity or corporate combine, with Freshtec referring to IMAC as a mere "division" of Freshtec, and issuing

combined Freshtec/IMAC invoices and/or alternately issued invoices from Freshtec and IMAC for different portions of the price of the same goods.

55. Moreover, the Court should pierce the corporate veils of Freshtec and IMAC and hold Larry Salone, Freshtec, and IMAC jointly and severally liable for the unjust enrichment because Larry Salone abused the corporate form in order to perpetrate a fraud upon the Plaintiffs, as detailed above.

WHEREFORE, Giuseppe's requests that this Court enter judgments in its favor jointly and severally against Defendants Larry Salone, Freshtec, and IMAC in an amount in excess of \$20,000, plus interest, costs and such other and further relief as this Court deems just and proper.

COUNT IV: FRAUD
(Giuseppe's vs. Larry Salone, Freshtec, and IMAC)

56. Paragraphs 1 through 56 of this Complaint are incorporated by reference as if fully set forth herein.

57. As is detailed above, upon information and belief, Larry Salone, acting as agent of Freshtec and IMAC, made false representations that Freshtec and IMAC could design, manufacture, and install the Equipment, and misrepresented Freshtec's and IMAC's prior experience and expertise.

58. Upon information and belief, Larry Salone, acting as agent of Freshtec and IMAC, further misrepresented Freshtec's and IMAC's experience, knowledge, and ability to design, manufacture, and install the Equipment consistent with HACCP and GMP standards.

59. Upon information and belief, Larry Salone, acting as agent for Freshtec and IMAC, periodically misrepresented the progress of the work, the quality of the Equipment, and testing of the Equipment that had been performed, all in an effort to encourage further payments for the Equipment, despite knowledge that his representations in that regard were false.

60. Larry Salone made those misrepresentations intentionally, intending that Giuseppe's would rely on them in first agreeing to purchase and then in paying for the Equipment.

61. Giuseppe's did in fact rely on those misrepresentations in entering into lease financing arrangements regarding the Equipment.

62. Because of its reliance on Larry Salone's false representations, Giuseppe's incurred damages in excess of \$20,000.

WHEREFORE, Giuseppe's respectfully requests that this Court enter judgments in its favor jointly and severally against Defendants Larry Salone, Freshtec, and IMAC in an amount in excess of \$20,000, plus interest, costs and such other and further relief as this Court deems just and proper.

COUNT V: FRAUD
(Gortech vs. Larry Salone, Freshtec, and IMAC)

63. Paragraphs 1 through 63 of this Complaint are incorporated by reference as if fully set forth herein.

64. As is detailed above, upon information and belief, Larry Salone, acting as agent of Freshtec and IMAC, made false representations that Freshtec and IMAC could design, manufacture, and install the Equipment, and misrepresented Freshtec's and IMAC's prior experience and expertise.

65. Upon information and belief, Larry Salone, acting as agent of Freshtec and IMAC, further misrepresented Freshtec's and IMAC's experience, knowledge, and ability to design, manufacture, and install the Equipment consistent with HACCP and GMP standards.

66. Upon information and belief, Larry Salone, acting as agent for Freshtec and IMAC, periodically misrepresented the progress of the work, the quality of the Equipment, and

testing of the Equipment that had been performed, all in an effort to encourage further payments for the Equipment, despite knowledge that his representations in that regard were false.

67. Larry Salone made those misrepresentations intentionally, intending that Gortech would rely on them in first issuing purchase orders and then in paying for the Equipment.

68. Gortech did in fact rely on those misrepresentations in issuing the purchase orders attached hereto and in arranging with ICP Asset for ICP Asset to pay for the Equipment.

69. Because of its reliance on Larry Salone's false representations, Gortech incurred damages in excess of \$20,000.

WHEREFORE, Gortech respectfully requests that this Court enter judgments in its favor jointly and severally against Defendants Larry Salone, Freshtec, and IMAC in an amount in excess of \$20,000, plus interest, costs and such other and further relief as this Court deems just and proper.

Respectfully submitted,

Gregory H. Teufel
Sarah B. Heineman
Christopher E. Mohnery

DATED: _____, 2006

*Attorneys for Plaintiffs, GIUSEPPE'S FINER
FOODS, INC. and GORTECH GLOBAL
FABRICATION, LLC*

JURY TRIAL DEMAND

Plaintiffs demand trial by jury on all issues so triable.

VERIFICATION

I, Allan Simpson, as Chief Operating Officer of GIUSEPPE'S FINER FOODS, INC., am authorized to make this verification on behalf of GIUSEPPE'S FINER FOODS, INC. and hereby verify that I have reviewed the information provided in the **AMENDED COMPLAINT** and that the information provided therein is true and correct to the best of my knowledge, information, and belief.

I give this Verification pursuant to 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities.

Allan Simpson (signature)

Date: _____

VERIFICATION

I, Todd Gordon, as Chief Operating Officer of GORTECH GLOBAL FABRICATION, LLC, am authorized to make this verification on behalf of GORTECH GLOBAL FABRICATION, LLC and hereby verify that I have reviewed the information provided in the **AMENDED COMPLAINT** and that the information provided therein is true and correct to the best of my knowledge, information, and belief.

I give this Verification pursuant to 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities.

Todd Gordon (signature)

Date: _____

Christopher E. Mohnney, Esquire
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

GIUSEPPE'S FINER FOODS, INC.,
GORTECH GLOBAL FABRICATION,
LLC, and ICP ASSET MANAGEMENT,
INC.,

Plaintiff,

vs.

FRESHTEC INTERNATIONAL, LLC,
INDUSTRIAL MACHINERY
AUTOMATION AND CONTROLS, LLC,
and LARRY SALONE,

Defendant.

: NO. 06 -1633 - C.D.
:
: Type of Pleading: CERTIFICATE OF
: SERVICE
:
: Filed on Behalf of: PLAINTIFFS
: GIUSEPPE FINER FOODS
:
: Counsel of Record for this Party:
:
: GREGORY H. TEUFEL, ESQUIRE
: Pa. Id. No. 73062
: SARAH B. HEINEMAN, ESQUIRE
: Pa. Id. No. 91040
: SCHNADER HARRISON SEGAL &
: LEWIS LLP
: Suite 2700, Fifth Avenue Place
: 120 Fifth Avenue
: Pittsburgh, PA 15222-3010
: (412) 577-5200 (telephone)
: (412) 765-3858 (facsimile)
:
: CHRISTOPHER E. MOHNEY,
: ESQUIRE
: Pa. Id. No. 63494
: 25 East Park Avenue, Suite 6
: DuBois PA 15801
: (814) 375-1044

FILED

APR 19 2007

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

GIUSEPPE'S FINER FOODS, INC. and
GORTECH GLOBAL FABRICATION,
LLC,

Plaintiff,

vs.

FRESHTEC INTERNATIONAL, LLC,
INDUSTRIAL MACHINERY
AUTOMATION AND CONTROLS, LLC,
and LARRY SALONE,

Defendant.

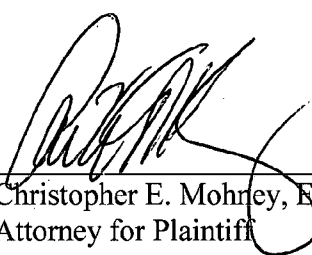
NO. 06 -1633 - C.D.

CERTIFICATE OF SERVICE

I, CHRISTOPHER E. MOHNEY, ESQUIRE, co-counsel of record for Plaintiffs,
do hereby certify that on the 17th day of April, 2007, I did cause to be served certified
true and correct copy of Scheduling Order for the Petition for Leave to Amend Complaint
on the following individual by First Class United States Mail, postage pre-paid:

David J. Hopkins, Esquire
Hopkins, Heltzel LLP
100 Meadow Lane, Suite 5
DuBois, PA 15801

By:


Christopher E. Mohney, Esquire
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
(CIVIL DIVISION)

GIUSEPPE'S FINER FOODS, INC., and
GORTECH GLOBAL FABRICATION,
LLC,

Plaintiffs

vs.

FRESHTEC INTERNATIONAL, LLC,
INDUSTRIAL MACHINERY
AUTOMATION AND CONTROLS, LLC,
and LARRY SALONE,

Defendants

No. 06-1633 C.D.

Type of Pleading: Answer to Plaintiff's
Motion for Leave to File Amended Complaint

Counsel of Record for this party:

HOPKINS HELTZEL LLP

DAVID J. HOPKINS, Esquire

Attorney at Law

Supreme Court No. 42519

LEA ANN HELTZEL, Esquire

Attorney at Law

Supreme Court No. 83998

DuBois, Pennsylvania 15801

(814) 375-0300

FILED^{no cc}
MAY 10 2007
6K

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
(CIVIL DIVISION)

GIUSEPPE'S FINER FOODS, INC., and	:	
GORTECH GLOBAL FABRICATION,	:	
LLC,	:	
Plaintiffs	:	
	:	
vs.	:	No. 06-1633 C.D.
	:	
FRESHTEC INTERNATIONAL, LLC,	:	
INDUSTRIAL MACHINERY	:	
AUTOMATION AND CONTROLS, LLC,	:	
and LARRY SALONE,	:	
Defendants	:	

**ANSWER TO PLAINTIFF'S MOTION FOR
LEAVE TO FILE AMENDED COMPLAINT**

AND NOW, comes Defendants, Freshtec International, LLC, Industrial Management LLC and Larry Salone, by and through their attorneys, Hopkins Heltzel LLP and files an Answer to Plaintiff's Motion for Leave to File Amended Complaint.

1. Admitted.

2. Admitted.

3. Admitted.

4. Admitted.

5. Admitted.

6. Admitted. By way of further response, Defendants argued that any unjust enrichment claims asserted by Plaintiffs is improper because Plaintiffs' claims rest upon an express contract.

7. Admitted. By way of further response, Plaintiffs' request to amend its complaint should be denied. In Wilson Area School District v. Skepton, 586 Pa. 513, 520, 895 A.2d 1250, 1254 (2006), the Court ruled that "it has long been held in this Commonwealth that the doctrine of unjust enrichment is inapplicable when the relationship between parties is founded on a written agreement or express contract" Therefore, because Plaintiff's claim is founded on an express contract, Plaintiffs cannot rely on the "quasi-contract" doctrine of unjust enrichment to seek relief.

8. Admitted.

9. Admitted.

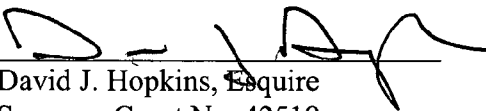
10. Admitted.

11. Denied. Defendants will suffer prejudice by allowing the Plaintiffs to amend its Complaint.

12. Admitted.

WHEREFORE, Defendants respectfully request this Honorable Court deny Plaintiff's Motion for Leave to File Amended Complaint.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. J. Hopkins", written over a horizontal line.

David J. Hopkins, Esquire
Supreme Court No. 42519
Attorney for Defendants

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
(CIVIL DIVISION)

GIUSEPPE'S FINER FOODS, INC., and
GORTECH GLOBAL FABRICATION,
LLC,

Plaintiffs

vs.

No. 06-1633 C.D.

FRESHTEC INTERNATIONAL, LLC,
INDUSTRIAL MACHINERY
AUTOMATION AND CONTROLS, LLC,
and LARRY SALONE,


Defendants

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of Answer to Plaintiff's Motion for Leave to File Amended Complaint, was forwarded by first class mail, postage prepaid, on the 9th day of May, 2007 to all counsel of record, addressed as follows:

Gregory H. Teufel, Esquire
Schnader Harrison Segal & Lewis LLP
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222-3010

Christopher E. Mohny, Esquire
25 East Park Avenue, Suite 6
DuBois, PA 15801


David J. Hopkins, Esquire
Attorney for Defendants

UA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

GIUSEPPE'S FINER FOODS, INC., :

GORTECH GLOBAL FABRICATION, LLC :

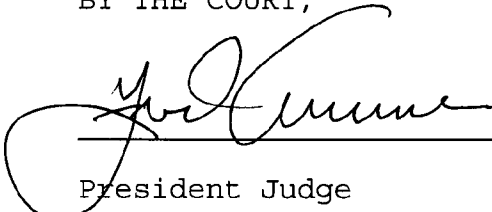
VS. : NO. 06-1633-CD

FRESHTEC INTERNATIONAL, LLC :

O R D E R

AND NOW, this 17th day of May, 2007, following argument on Plaintiff's Motion for Leave to File Amended Complaint, it is the ORDER of this Court that counsel shall have ten (10) days from date hereof to supply the Court with a letter brief.

BY THE COURT,


President Judge

FILED *icc Attys:*
0/2:31a/BL *Tewfel & Heineman*
MAY 18 2007 *Mohney*
William A. Shaw
Prothonotary/Clerk of Courts *Hopkins*
(GR)

FILED

MAY 18 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 5/18/07

____ You are responsible for serving all appropriate parties.

X The Prothonotary's office has provided service to the following parties:

____ Plaintiff(s) X Plaintiff(s) Attorney ____ Other

____ Defendant(s) X Defendant(s) Attorney

____ Special Instructions:

3

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

GIUSEPPE'S FINER FOODS, INC., GORTECH
GLOBAL FABRICATION, LLC, and ICP ASSET
MANAGEMENT, INC.,

Plaintiffs

vs.

FRESHTEC INTERNATIONAL, LLC,
INDUSTRIAL MACHINERY AUTOMATION AND
CONTROLS, LLC, and LARRY SALONE,
Defendants

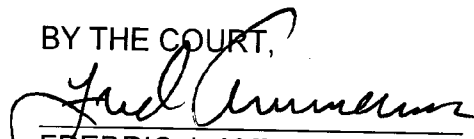
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NO. 06-1633-CD

ORDER

NOW, this 5th day of June, 2007, following argument of Plaintiff's Motion for Leave to File an Amended Complaint, it is the ORDER of this Court that the Motion for Leave to File an Amended Complaint be and is hereby GRANTED. The Plaintiff shall have no more than twenty (20) days to file an Amended Complaint.

BY THE COURT,


FREDRIC J. AMMERMAN
President Judge

FILED
9/8:50 AM
JUN 06 2007

William A. Shaw
Prothonotary/Clerk of Courts

cc Attys:
Teufel, Heinerman
Mohnney
Hopkins

CK

FILED

JUN 06 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 6/6/07

____ You are responsible for serving all appropriate parties.

☒ The Prothonotary's office has provided service to the following parties:

____ Plaintiff(s) ☒ Plaintiff(s) Attorney ____ Other

____ Defendant(s) ☒ Defendant(s) Attorney

____ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GIUSEPPE'S FINER FOODS, INC.,)
GORTECH GLOBAL FABRICATION, LLC,)

Plaintiffs,)

vs.)

FRESHTEC INTERNATIONAL, LLC,)
INDUSTRIAL MACHINERY)
AUTOMATION AND CONTROLS, LLC,)
and LARRY SALONE,)

Defendants.)

CIVIL DIVISION

NO. 06-1633-C.D.

AMENDED COMPLAINT

Filed on behalf of Plaintiffs

Counsel of Record for this Party:

Gregory H. Teufel

Pa. Id. No. 73062

Sarah B. Heineman

Pa. Id. No. 91040

SCHNADER HARRISON SEGAL & LEWIS LLP

Suite 2700, Fifth Avenue Place

120 Fifth Avenue

Pittsburgh, PA 15222-3010

(412) 577-5200 (telephone)

(412) 765-3858 (facsimile)

Christopher E. Mohny, Esquire

Pa. Id. 63494

25 East Park Avenue, Suite 6

DuBois, PA 15801

(814) 375-1044

FILED (GR)

JUN 18 2007

W/1:00/w
William A. Shaw
Prothonotary/Clerk of Courts

1 CEN TO
ATTY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GIUSEPPE'S FINER FOODS, INC., CIVIL DIVISION
GORTECH GLOBAL FABRICATION, LLC,

Plaintiffs,

No. 06-1633- C.D.

vs.

FRESHTEC INTERNATIONAL, LLC,
INDUSTRIAL MACHINERY
AUTOMATION AND CONTROLS, LLC,
and LARRY SALONE,

Defendants.

COMPLAINT

Plaintiffs, Giuseppe's Finer Foods, Inc. and Gortech Global Fabrication, LLC, by and through their undersigned attorneys, hereby file the following Amended Complaint in Civil Action, the grounds of which the following is a statement:

Introduction

1. This action seeks to recover damages from an equipment manufacturer that breached its contract ("the Contract") to manufacture and install paste bin dumpers, a cheese dumper, and related equipment (collectively, "the Equipment"), and committed fraud in the sale of the Equipment.

Parties

2. Plaintiff Giuseppe's Finer Foods, Inc. ("Giuseppe's") is a Pennsylvania corporation with a place of business at 2592 Oklahoma-Salem Road, DuBois, Pennsylvania 15801.

3. Plaintiff Gortech Global Fabrication, LLC ("Gortech") is a Pennsylvania limited liability company with a place of business at 215 Beaver Drive, DuBois, Pennsylvania 15801.

4. Upon information and belief, Defendant Freshtec International, LLC ("Freshtec") is a Pennsylvania corporation with a place of business at 602 West DuBois Ave., Dubois, Pennsylvania 15801.

5. Upon information and belief, Defendant Industrial Machinery Automation and Controls, LLC ("IMAC") is a Pennsylvania limited liability company with a place of business at 602 West DuBois Ave., DuBois, Pennsylvania 15801.

6. Upon information and belief, Larry Salone is a Pennsylvania resident who currently resides at 1562 Treasure Lake, DuBois, PA 15801.

Jurisdiction and Venue

7. This Court has original jurisdiction over this action pursuant to 42 Pa.Cons.Stat. § 931.

8. Venue is proper in this Court under Pa.R.Civ.P. 1006 because transactions and occurrences out of which the causes of action set forth herein arose took place in Clearfield County.

Facts

9. Beginning in the Fall of 2004, Larry Salone, as agent of Freshtec and IMAC, and Dennis Raybuck, Allan Simpson, Luke Sicard, and George Bennett, among others, as agents of Giuseppe's had discussions and other communications regarding Giuseppe's purchasing the Equipment.

10. Upon information and belief, during those discussions and other communications, Larry Salone, acting as agent of Freshtec and IMAC, made false representations that Freshtec

and IMAC could design, manufacture, and install the Equipment, and misrepresented Freshtec's and IMAC's prior experience and expertise. Information from Freshtec's website is attached hereto as Exhibit A and is incorporated by reference as if fully set forth herein.

11. Upon information and belief, Larry Salone, acting as agent of Freshtec and IMAC, further misrepresented Freshtec's and IMAC's experience, knowledge, and ability to design, manufacture, and install the Equipment consistent with Hazard Analysis Critical Control Points (HACCP) standards and Good Manufacturing Practices (GMP).

12. On January 18, 2005, Freshtec provided a quotation for a paste bin dumper and different options offered to control and integrate the paste bin dumper, with delivery terms of "8-10 weeks". A true and correct copy of the January 18, 2005 quotation is attached hereto as Exhibit B and is incorporated by reference as if fully set forth herein.

13. Gortech was a contractor providing equipment and materials to Giuseppe's for the construction of Giuseppe's food manufacturing plant and acted as agent for Giuseppe's in purchasing equipment from other vendors. In reliance on Larry Salone's misrepresentations, Giuseppe's requested Gortech to issue a purchase order to Freshtec to supply the Equipment to Giuseppe's.

14. In reliance on Larry Salone's misrepresentations, on or about April 5, 2005, Gortech issued a purchase order ("the Paste Bin Dumper Equipment Purchase Order") to Freshtec based upon the January 18, 2005 quotation for four (4) Paste Bin Dumpers, the cost of installing four electric elevator drives to replace the hydraulic system, and four (4) control packages (collectively, the "Paste Bin Dumper Equipment") for the total cost of \$166,360.00, 50% to be paid with the order and 50% to be paid upon shipment. A true and correct copy of

that May 5, 2005 Purchase Order, No. 10292, is attached hereto as Exhibit C and is incorporated by reference as if fully set forth herein.

15. On or about April 6, 2005, Freshtec issued an invoice in the amount of \$83,180.00 for the Paste Bin Dumper Equipment to be shipped on June 6, 2005. A true and correct copy of that Invoice, No.1057, is attached hereto as Exhibit D and incorporated by reference as if fully set forth herein.

16. Giuseppe's financed the purchase of the Equipment through a lease arrangement with ICP Asset whereby ICP Asset paid for the Equipment and leased it to Giuseppe's.

17. In reliance on Larry Salone's misrepresentations, on or about April 11, 2005, ICP Asset paid Freshtec \$83,180.00 in accordance with Exhibits B, C and D attached hereto.

18. On or about July 25, 2005, Freshtec issued a quotation for a cheese dumper, Raybuck tipper modifications, new flat top conveyor, and a hoist/rotation crane for the cheese handling portion of the Giuseppe's food manufacturing plant (collectively the "Cheese Dumper Equipment") with a completion date of September 10, 2005 and with payment terms of 50% on order and 50% on ready to ship. A true and correct copy of the July 25, 2005 quotation is attached hereto as Exhibit E and incorporated by reference as if fully set forth herein.

19. The cover sheet for the July 25, 2005 quotation requested the purchase order to be issued to Freshtec's "automation division," "Industrial Automation, Machinery & Controls."

20. In reliance on Larry Salone's misrepresentations, on or about July 26, 2005, in response to the July 25, 2005 quotation, Gortech issued a purchase order to "Freshtec International c/o Industrial Automation, Machinery & Controls" for the Cheese Dumper Equipment for delivery on September 10, 2005, with a total cost of \$62,000.00. A true and

correct copy of that Purchase Order, No. 50012, is attached hereto as Exhibit F and is incorporated by reference as if fully set forth herein.

21. On or about July 26, 2005, "Ind. Automation, Machinery & Controls--Freshtec Int'l" issued an invoice in the amount of \$31,000.00 for the Cheese Dumper Equipment to be shipped on September 1, 2005. A true and correct copy of that Invoice, No.1285, is attached hereto as Exhibit G and incorporated by reference as if fully set forth herein.

22. In reliance on Larry Salone's misrepresentations, on or about August 8, 2005, ICP Asset paid "Ind. Automation, Machinery & Controls" \$31,000.00 in accordance with Exhibits E, F and G attached hereto.

23. In reliance on Larry Salone's misrepresentations, on or about August 17, 2005, ICP Asset paid Freshtec another \$63,180.00.

24. Upon information and belief, Larry Salone, acting as agent for Freshtec and IMAC, periodically misrepresented the progress of the work, the quality of the Equipment, and testing of the Equipment that had been performed, all in an effort to encourage further payments for the Equipment, despite knowledge that his representations in that regard were false.

25. In reliance on Larry Salone's misrepresentations, on or about October 7, 2005, ICP Asset paid "Ind. Automation, Machinery & Controls" another \$1,650.

26. In reliance on Larry Salone's misrepresentations, on or about December 2, 2005, ICP Asset paid "Ind. Automation, Machinery & Controls" another \$40,000.

27. In reliance on Larry Salone's misrepresentations, on or about December 5, 2005, ICP Asset paid Freshtec another \$500.00.

28. The Equipment was delivered late and riddled with problems which, upon information and belief, were well known by Larry Salone to exist prior to delivery.

29. Delivery of the Paste Bin Dumper Equipment was not completed until December 5, 2005. The first bin dumper arrived on September 30, 2005 and the remaining three on December 2 and December 5, 2005.

30. The Cheese Dumper Equipment was not delivered until on or about December 2, 2005.

31. Problems with the Equipment included the following:

a. Problems with the Cheese Dumper Equipment included the following:

- i. The long conveyor supplied by Freshtec was not matched to the height of the existing conveyors with which it was intended to be used.
- ii. The motor for the Raybuck Tipper was not powder coated as quoted.
- iii. The quote promised to “add a drive” to the existing drive and this was not done.
- iv. The conveyor supplied did not include any means of transferring product to and from the supplied conveyor to the preexisting conveyors.
- v. The control panel provided did not match the quote, which promised that the conveyor would be “VFD controlled, stainless steel sloped top control panel. With AB SLC PLC.”
- vi. The necessary photo eyes to run the Cheese Dumper Equipment were not supplied.
- vii. The chain holder supplied for use directly above product did not meet HACCP and GMP standards for food safety, and required the addition of a cover.

- viii. The drive drum, idle drum, and take-up rollers on the conveyors were not sealed so that water from the wash down of the equipment would not end up inside the rollers, resulting in a serious product contamination problem and violation of HACCP and GMP safety standards.
 - ix. The belts supplied on the conveyor have metal cleats to link the belts together which are not allowed under HACCP and GMP safety standards.
 - x. Conveyor rollers supplied were not adequate to handle the weight of the cheese barrels the conveyors were intended to convey.
 - xi. The Cheese Dumper did not have, as promised by the quote, "Powder coated linear actuator for elevation, electric drive. Linear actuator for rotation. Stainless steel guarding. With AB PLC and controls for eventual automatic operation. . . . VFD on both actuators."
 - xii. The Cheese Dumper did not have a hoisting "bucket" as quoted. Instead, a belt driven system was supplied.
 - xiii. The overall quality of the workmanship was poor.
- b. Problems with the Paste Bin Dumper Equipment included the following:
- i. The overall quality of the workmanship was poor.
 - ii. The bellows that cover the linear actuators were cracking and unsanitary, in violation of HACCP and GMP standards.
 - iii. There were rust marks on the Equipment.
 - iv. The Paste Bin Dumper Equipment did not have 3000 pound capacity as quoted and was inadequate to lift and dump the totes of tomato paste as intended.

- v. The Paste Bin Dumper Equipment, though used properly and as intended, quickly developed failed welds, bent support brackets, and other problems indicating a lack of structural integrity potentially dangerous to Equipment operators.
- vi. The Paste Bin Dumper Equipment experienced limit switch failures as well as blown fuses and PLC faults that prevented it from operating and/or operating properly.

32. The parties met to discuss the problems with the Equipment on May 4, 2006 and agreed to give Freshtec an opportunity to cure the problems. Larry Salone, acting as agent for Freshtec and IMAC, promised to address many of the problems, giving specific dates for completion of various items. Letters and emails documenting the May 4, 2006 meeting are attached hereto as Exhibits H and I, and are incorporated by reference as if fully set forth herein, however, the summary by counsel for Larry Salone, et al. is not entirely accurate. However, rather than address any of the problems, counsel for Larry Salone, et al., called counsel for Giuseppe's and Gortech to inform him that the promises made at the May 4, 2006 to address the problems with the Equipment would not be honored and that Freshtec planned to file for bankruptcy protection in the near future.

33. Upon information and belief, Freshtec is undercapitalized and is merely the alter ego of Larry Salone and IMAC.

34. Upon information and belief IMAC is undercapitalized and merely the alter ego of Larry Salone and Freshtec.

COUNT I: BREACH OF CONTRACT
(Gortech v. Larry Salone, Freshtec, and IMAC)

35. Paragraphs 1 through 35 of this Complaint are incorporated by reference as if fully set forth herein.

36. Gortech, Freshtec and IMAC mutually assented to valid, enforceable contracts regarding supply of the Paste Bin Dumper Equipment and the Cheese Dumper Equipment.

37. Freshtec and IMAC agreed to provide the Equipment as called for in the quotations and purchase orders attached hereto.

38. Freshtec and IMAC breached their contractual obligations and the duty of good faith and fair dealing by supplying Equipment that was poorly designed, poorly manufactured, and unreliable, and by failing to deliver the Equipment on time, *inter alia*, as detailed above.

39. Freshtec and IMAC further breached their contractual obligations by failing to correct numerous defects in the Equipment.

40. Freshtec and IMAC profess to be merchants engaged in the sale of equipment similar to the Equipment at issue in this case, such that the Equipment is subject to an implied warranty of merchantability.

41. Freshtec and IMAC breached the implied warranty of merchantability because the Equipment supplied was not reasonably fit for the ordinary purposes of such equipment.

42. Freshtec and IMAC breached the implied warranty of fitness for particular purpose because the Equipment supplied was not reasonably fit for the particular purposes that were known to Freshtec and IMAC at the time of the formation of the contracts at issue.

43. Despite repeated promises to the contrary, Freshtec and IMAC never corrected all of the problems with the Equipment.

44. As a result of Freshtec's and IMAC's breach of their contractual obligations and failure to correct the many problems with the Equipment, Gortech has suffered damages in excess of \$20,000.

45. Freshtec and IMAC should be held jointly and severally liable for the breaches of contract by Freshtec and IMAC because, upon information and belief, they operated as a single entity or corporate combine, with Freshtec referring to IMAC as a mere "division" of Freshtec, and issuing combined Freshtec/IMAC invoices and/or alternately issued invoices from Freshtec and IMAC for different portions of the price of the same goods.

46. Moreover, the Court should pierce the corporate veils of Freshtec and IMAC and hold Larry Salone, Freshtec, and IMAC jointly and severally liable for the breaches of contract at issue because Larry Salone abused the corporate form in order to perpetrate a fraud upon the Plaintiffs, as detailed above.

WHEREFORE, Gortech respectfully requests that this Court enter judgments in its favor jointly and severally against Defendants Larry Salone, Freshtec, and IMAC in an amount in excess of \$20,000, plus interest, costs and such other and further relief as this Court deems just and proper.

COUNT II: BREACH OF CONTRACT
(Giuseppe's v. Larry Salone, Freshtec, and IMAC)

47. Paragraphs 1 through 47 of this Complaint are incorporated by reference as if fully set forth herein.

48. Giuseppe's was an intended third-party beneficiary of the contracts with Freshtec and IMAC.

49. Giuseppe's relied on Freshtec's and IMAC's repeated promises to fix the many defects in the Equipment, and thus Giuseppe's did not immediately arrange to obtain replacement Equipment.

50. As a result of Freshtec's and IMAC's breach of their contractual obligations and failure to correct the many problems with the Equipment, Giuseppe's suffered damages in excess of \$20,000.

WHEREFORE, Giuseppe's respectfully requests that this Court enter judgments in its favor jointly and severally against Defendants Larry Salone, Freshtec, and IMAC in an amount in excess of \$20,000, plus interest, costs and such other and further relief as this Court deems just and proper.

COUNT III: UNJUST ENRICHMENT
(Giuseppe's v. Larry Salone, Freshtec, and IMAC)

51. Paragraphs 1 through 51 of this Complaint are incorporated by reference as if fully set forth herein.

52. Giuseppe's conferred a benefit upon Larry Salone, Freshtec, and IMAC by arranging payments to be made to Freshtec and IMAC, which funds, upon information and belief, were in large part presumably transferred to Larry Salone, the sole owner of Freshtec and IMAC

53. Acceptance and retention of such monies under the circumstances described above would be unjust and inequitable.

54. Freshtec and IMAC should be held jointly and severally liable for unjust enrichment because, upon information and belief, they operated as a single entity or corporate combine, with Freshtec referring to IMAC as a mere "division" of Freshtec, and issuing

combined Freshtec/IMAC invoices and/or alternately issued invoices from Freshtec and IMAC for different portions of the price of the same goods.

55. Moreover, the Court should pierce the corporate veils of Freshtec and IMAC and hold Larry Salone, Freshtec, and IMAC jointly and severally liable for the unjust enrichment because Larry Salone abused the corporate form in order to perpetrate a fraud upon the Plaintiffs, as detailed above.

WHEREFORE, Giuseppe's requests that this Court enter judgments in its favor jointly and severally against Defendants Larry Salone, Freshtec, and IMAC in an amount in excess of \$20,000, plus interest, costs and such other and further relief as this Court deems just and proper.

COUNT IV: FRAUD
(Giuseppe's vs. Larry Salone, Freshtec, and IMAC)

56. Paragraphs 1 through 56 of this Complaint are incorporated by reference as if fully set forth herein.

57. As is detailed above, upon information and belief, Larry Salone, acting as agent of Freshtec and IMAC, made false representations that Freshtec and IMAC could design, manufacture, and install the Equipment, and misrepresented Freshtec's and IMAC's prior experience and expertise.

58. Upon information and belief, Larry Salone, acting as agent of Freshtec and IMAC, further misrepresented Freshtec's and IMAC's experience, knowledge, and ability to design, manufacture, and install the Equipment consistent with HACCP and GMP standards.

59. Upon information and belief, Larry Salone, acting as agent for Freshtec and IMAC, periodically misrepresented the progress of the work, the quality of the Equipment, and testing of the Equipment that had been performed, all in an effort to encourage further payments for the Equipment, despite knowledge that his representations in that regard were false.

60. Larry Salone made those misrepresentations intentionally, intending that Giuseppe's would rely on them in first agreeing to purchase and then in paying for the Equipment.

61. Giuseppe's did in fact rely on those misrepresentations in entering into lease financing arrangements regarding the Equipment.

62. Because of its reliance on Larry Salone's false representations, Giuseppe's incurred damages in excess of \$20,000.

WHEREFORE, Giuseppe's respectfully requests that this Court enter judgments in its favor jointly and severally against Defendants Larry Salone, Freshtec, and IMAC in an amount in excess of \$20,000, plus interest, costs and such other and further relief as this Court deems just and proper.

COUNT V: FRAUD
(Gortech vs. Larry Salone, Freshtec, and IMAC)

63. Paragraphs 1 through 63 of this Complaint are incorporated by reference as if fully set forth herein.

64. As is detailed above, upon information and belief, Larry Salone, acting as agent of Freshtec and IMAC, made false representations that Freshtec and IMAC could design, manufacture, and install the Equipment, and misrepresented Freshtec's and IMAC's prior experience and expertise.

65. Upon information and belief, Larry Salone, acting as agent of Freshtec and IMAC, further misrepresented Freshtec's and IMAC's experience, knowledge, and ability to design, manufacture, and install the Equipment consistent with HACCP and GMP standards.

66. Upon information and belief, Larry Salone, acting as agent for Freshtec and IMAC, periodically misrepresented the progress of the work, the quality of the Equipment, and

testing of the Equipment that had been performed, all in an effort to encourage further payments for the Equipment, despite knowledge that his representations in that regard were false.

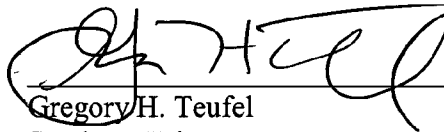
67. Larry Salone made those misrepresentations intentionally, intending that Gortech would rely on them in first issuing purchase orders and then in paying for the Equipment.

68. Gortech did in fact rely on those misrepresentations in issuing the purchase orders attached hereto and in arranging with ICP Asset for ICP Asset to pay for the Equipment.

69. Because of its reliance on Larry Salone's false representations, Gortech incurred damages in excess of \$20,000.

WHEREFORE, Gortech respectfully requests that this Court enter judgments in its favor jointly and severally against Defendants Larry Salone, Freshtec, and IMAC in an amount in excess of \$20,000, plus interest, costs and such other and further relief as this Court deems just and proper.

Respectfully submitted,



Gregory H. Teufel
Sarah B. Heineman
Christopher E. Mohny

DATED: June 14, 2007

*Attorneys for Plaintiffs, GIUSEPPE'S FINER
FOODS, INC. and GORTECH GLOBAL
FABRICATION, LLC*

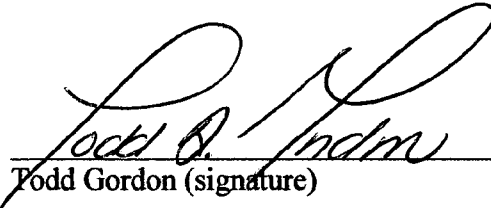
JURY TRIAL DEMAND

Plaintiffs demand trial by jury on all issues so triable.

VERIFICATION

I, Todd Gordon, as Chief Operating Officer of GORTECH GLOBAL FABRICATION, LLC, am authorized to make this verification on behalf of GORTECH GLOBAL FABRICATION, LLC and hereby verify that I have reviewed the information provided in the **AMENDED COMPLAINT** and that the information provided therein is true and correct to the best of my knowledge, information, and belief.

I give this Verification pursuant to 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities.



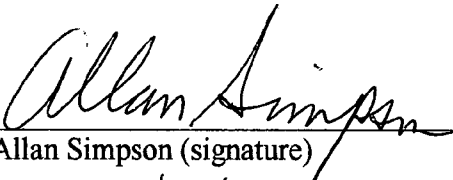
Todd Gordon (signature)

Date: 3-29-2007

VERIFICATION

I, Allan Simpson, as Chief Operating Officer of GIUSEPPE'S FINER FOODS, INC., am authorized to make this verification on behalf of GIUSEPPE'S FINER FOODS, INC. and hereby verify that I have reviewed the information provided in the **AMENDED COMPLAINT** and that the information provided therein is true and correct to the best of my knowledge, information, and belief.

I give this Verification pursuant to 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities.



Allan Simpson (signature)

Date: 6/11/07

CERTIFICATE OF SERVICE

I, Gregory H. Teufel, hereby certify that I served a true and correct copy of the foregoing **Plaintiffs' Amended Complaint**, was served via U.S. Mail, First Class, postage pre-paid, this 14th day of June, 2007, upon the following:

David J. Hopkins, Esq.
Hopkins Heltzel LLP
100 Meadow Lane, Suite 5
DuBois, PA 15801



Gregory H. Teufel

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
(CIVIL DIVISION)

GIUSEPPE'S FINER FOODS, INC.,
GORTECH GLOBAL FABRICATION,
LLC,

Plaintiffs,

vs.

FRESHTEC INTERNATIONAL, LLC,
INDUSTRIAL MACHINERY
AUTOMATION AND CONTROLS, LLC,
and LARRY SALONE,

Defendants.

No. 06-1633 C.D.

Type of Pleading: Preliminary Objections
of Freshtec International LLC, Industrial
Machinery Automation and Controls,
LLC, and Larry Salone, Defendants

Counsel of Record for this party:

HOPKINS HELTZEL

DAVID J. HOPKINS, Esquire
Attorney at Law
Supreme Court No. 42519

LEA ANN HELTZEL, Esquire
Attorney at Law
Supreme Court No. 83998

100 Meadow Lane, Suite 5
DuBois, Pennsylvania 15801

(814) 375-0300

FILED
013:07611
JUL 12 2007
D.J. Hopkins

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
(CIVIL DIVISION)

GIUSEPPE'S FINER FOODS, INC.,	:	
GORTECH GLOBAL FABRICATION,	:	
LLC,	:	
Plaintiffs,	:	
	:	
vs.	:	No. 06-1633 C.D.
	:	
FRESHTEC INTERNATIONAL, LLC,	:	
INDUSTRIAL MACHINERY	:	
AUTOMATION AND CONTROLS, LLC,	:	
and LARRY SALONE,	:	
Defendants.	:	

**PRELIMINARY OBJECTIONS OF FRESHTEC
INTERNATIONAL, LLC, INDUSTRIAL
MACHINERY AUTOMATION AND CONTROLS, LLC
AND LARRY SALONE**

AND NOW, come Defendants, Freshtec International, LLC, Industrial Machinery Automation and Controls, LLC, and Larry Salone and files the within Preliminary Objections to Plaintiffs' amended complaint.

1. Defendant Freshtec International, LLC (hereinafter "Freshtec") is a limited liability company organized under the laws of the Commonwealth of Pennsylvania and maintains a principal mailing address at 602-9 West DuBois Avenue, DuBois, Pennsylvania 15801.

2. Defendant Industrial Machinery Automation and Controls, LLC (hereinafter "IMAC") is a limited liability company organized under the laws of the Commonwealth of Pennsylvania and maintains a principal mailing address at 602-9 West DuBois Avenue, DuBois, Pennsylvania 15801.

3. Defendant Larry Salone (hereinafter “Salone”) is an adult individual who resides at 1562 Treasure Lake, DuBois, Pennsylvania 15801.

4. Plaintiff Giuseppe’s Finer Foods, Inc. (hereinafter “Giuseppe’s”), is a Pennsylvania limited liability company with a principal place of business at 2592 Oklahoma Salem Road, DuBois, Pennsylvania 15801.

5. Plaintiff Gortech Global Fabrication, LLC (hereinafter “Gortech”) is a Pennsylvania limited liability company with a principal place of business at 215 Beaver Drive, DuBois, Pennsylvania 15801.

6. On or about October 6, 2006 Plaintiffs filed a Complaint against Defendants arising from the sale of industrial equipment to be used by Plaintiff Giuseppe’s in its food processing manufacturing plant.

7. Exhibit B of Plaintiffs’ original complaint is the bid quotation from Defendant Freshtec to Plaintiffs for a “Paste Bin Dumper.” Exhibit C is Plaintiff Gortech’s purchase order to Defendant Freshtec for the Paste Bin Dumpers.

8. Exhibit E of Plaintiffs’ original complaint is the bid quotation from Defendant Freshtec to Plaintiffs for various “Cheese Dumper Equipment.” Exhibit F is Plaintiff Gortech’s purchase order for the Cheese Dumper Equipment.

9. By Court Order dated January 3, 2007, Plaintiff ICP Asset Management, Inc. was dismissed as a party to the action.

10. On or about June 14, 2007, Plaintiffs filed an amended complaint which included counts by Plaintiff Gortech and Plaintiff Giuseppe’s, as follows:

- a. Plaintiff Gortech – Breach of Contract;
- b. Plaintiff Giuseppe’s –Breach of Contract;

- c. Plaintiff Giuseppe's – Unjust Enrichment;
- d. Plaintiff Giuseppe's – Fraud; and
- e. Plaintiff Gortech – Fraud.

PRELIMINARY OBJECTION NO. 1
PLAINTIFF GIUSEPPE'S COUNT II: FAILURE OF GIUSEPPE'S FINER
FOODS, INC TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED
BASED UPON BREACH OF CONTRACT

11. Plaintiff Giuseppe's is identified in Paragraph 2 of Plaintiffs' amended complaint as a Pennsylvania Corporation with a place of business at 2592 Oklahoma-Salem Road, DuBois, Pennsylvania.

12. The dispute between Plaintiffs and Defendants is based upon an express contract between Defendants and Plaintiff Gortech. On the purchase orders issued by Plaintiff Gortech to Defendant Freshtec, Plaintiff Gortech is identified as the purchaser of the equipment. Further, the only relation of Plaintiff Giuseppe's to the contract dispute at hand is that the equipment bargained for and purchased by Plaintiff Gortech was delivered and installed at Plaintiff Giuseppe's place of business. See Exhibits C through G of Plaintiffs' original complaint.

13. As such, Plaintiff Guiseppe's lacks privity to the contract between Defendants and Plaintiff Gortech to sustain a claim for breach of contract against Defendants; therefore, Plaintiff Giuseppe's cannot set forth a claim against Defendants for breach of contract and should be dismissed as a party to the action.

WHEREFORE, the claims of Plaintiff Giuseppe's for breach of contract should be dismissed with prejudice for failing to state a claim upon which relief can be granted by the Court and Plaintiff Giuseppe's should be dismissed as a party to the action.

PRELIMINARY OBJECTION NO. 2
PLAINTIFF GIUSEPPE'S COUNT III: FAILURE TO STATE A CLAIM UPON
WHICH RELIEF MAY BE GRANTED
BASED UPON UNJUST ENRICHMENT

14. Count 3 of Plaintiffs' amended complaint is identified as an unjust enrichment claim initiated by Plaintiff Giuseppe against Defendants Salone, Freshtec and IMAC.

15. In Paragraph 12 of Plaintiffs' amended complaint, Plaintiffs allege Defendant Freshtec provided a quotation for the Paste Bin Dumper to Plaintiffs. Said quotation is attached to the original complaint as Exhibit B.

16. In Paragraph 14 of Plaintiffs' amended complaint, Plaintiffs also allege Plaintiff Gortech issued a purchase order for the cost of the Paste Bin Dumper to Defendant Freshtec. Said quotation is attached to the original complaint as Exhibit C.

17. In Paragraph 18 of Plaintiffs' amended complaint, Plaintiffs allege Defendant Freshtec provided a quotation for the Cheese Dumper Equipment to Plaintiffs. Said quotation is attached to the original complaint as Exhibit E.

18. In Paragraph 20 of Plaintiff's amended complaint, Plaintiffs also allege Plaintiff Gortech issued a purchase order for the cost of the Cheese Dumper Equipment to Defendant Freshtec. Said quotation is attached to the original complaint as Exhibit F.

19. Because the parties' dispute is based upon an express contract between Plaintiffs and Defendants, as evidenced through the quotations and purchase orders, Plaintiffs cannot rely on the doctrine of unjust enrichment to seek its requested relief.

20. Plaintiff Gortech may have a claim for breach of contract or fraud, but Plaintiff Giuseppe's does not possess a claim for unjust enrichment. Plaintiffs' original

complaint stated former Plaintiff ICP was the entity that paid Defendants. Plaintiff Giuseppe's has not paid Defendants and therefore has no claim for unjust enrichment.

WHEREFORE, Plaintiffs Giuseppe's claim set forth in Count 3 for unjust enrichment should be dismissed with prejudice for failing to state a claim upon which relief can be granted by the Court and Plaintiff Giuseppe's should be dismissed as a party to the action.

PRELIMINARY OBJECTION NO. 3
PLAINTIFF GIUSEPPE'S COUNT IV: FAILURE OF GIUSEPPE'S FINER
FOODS, INC TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED
BASED UPON FRAUD


21. Plaintiff Giuseppe's is identified in Paragraph 2 of Plaintiffs' amended complaint as a Pennsylvania Corporation with a place of business at 2592 Oklahoma-Salem Road, DuBois, Pennsylvania.

22. The dispute between Plaintiffs and Defendants is based upon an express contract between Defendants and Plaintiff Gortech. On the purchase orders issued by Plaintiff Gortech to Defendant Freshtec, Plaintiff Gortech is identified as the purchaser of the equipment. Further, the only relation of Plaintiff Giuseppe's to the contract dispute at hand is that the equipment bargained for and purchased by Plaintiff Gortech was delivered and installed at Plaintiff Giuseppe's place of business. See Exhibits C through G of Plaintiffs' original complaint.

23. As such, Plaintiff Guiseppe's lacks privity to the contract between Defendants and Plaintiff Gortech to sustain a claim for fraud against Defendants; therefore, Plaintiff Giuseppe's cannot set forth a claim against Defendants for fraud and should be dismissed as a party to the action.

WHEREFORE, the claims of Giuseppe's for fraud should be dismissed with prejudice for failing to state a claim upon which relief can be granted by the Court and Plaintiff Giuseppe's should be dismissed as a party to the action.

HOPKINS HELTZEL LLP


David J. Hopkins, Esquire
Attorney for Defendants

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
(CIVIL DIVISION)

GIUSEPPE'S FINER FOODS, INC.,
GORTECH GLOBAL FABRICATION,
LLC,

Plaintiffs,

vs.

No. 06-1633 C.D.

FRESHTEC INTERNATIONAL, LLC,
INDUSTRIAL MACHINERY
AUTOMATION AND CONTROLS, LLC,
and LARRY SALONE,

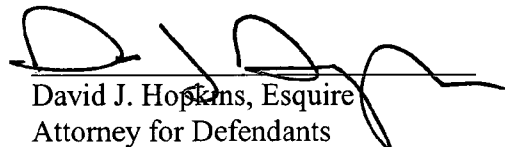
Defendants.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of Preliminary Objections of Freshtec International LLC, Industrial Machinery Automation and Controls, LLC and Larry Salone, was forwarded by first class mail, postage prepaid, on the 12th day of July, 2007 to all counsel of record, addressed as follows:

Gregory H. Teufel, Esquire
Schnader Harrison Segal & Lewis LLP
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222-3010

Christopher E. Mohny, Esquire
25 East Park Avenue, Suite 6
DuBois, PA 15801


David J. Hopkins, Esquire
Attorney for Defendants

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
(CIVIL DIVISION)

GIUSEPPE'S FINER FOODS, INC.,
GORTECH GLOBAL FABRICATION,
LLC, and ICP ASSET MANAGEMENT,
INC.,

Plaintiffs,

vs.

No. 06-1633 C.D.

FRESHTEC INTERNATIONAL, LLC,
INDUSTRIAL MACHINERY
AUTOMATION AND CONTROLS, LLC,
and LARRY SALONE,

Defendants.

FILED

019101301
JUL 19 2007

William A. Shaw
Prothonotary/Clerk of Courts
2cc Atty Hopkins

SCHEDULING ORDER

NOW, this 18 day of July, 2007, upon consideration of the Preliminary

Objections filed on behalf of Defendants it is hereby ordered that:

1. a rule is used upon the Respondent to show cause why the Defendants are not entitled to the relief requested;

2. the Respondent shall file an answer to the Preliminary Objections within twenty (20) days of service upon the Respondent;

3. notice of the entry of this Order shall be provided to all parties by the Petitioner.

4. argument on Defendants' Preliminary Objections shall be scheduled on September 13, 2007, in Courtroom No. 2 at 3:00 P.M. in the Clearfield County Courthouse, Clearfield, Pennsylvania.

NOTICE

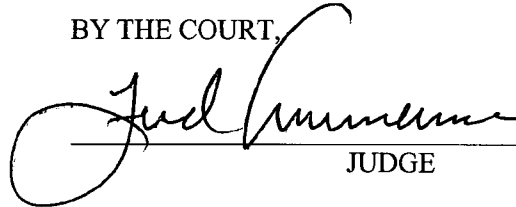
A PETITION OR MOTION HAS BEEN FILED AGAINST YOU IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING PETITION BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE MATTER SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU FAIL TO DO

SO THE CASE MAY PROCEED WITHOUT YOU AND AN ORDER MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR RELIEF REQUESTED BY THE PETITIONER OR MOVANT. YOU MAY LOSE RIGHTS IMPORTANT TO YOU.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

COURT ADMINISTRATOR
Clearfield County Courthouse
230 E. Market Street
Clearfield, PA 16830

BY THE COURT,

A handwritten signature in black ink, appearing to read "Jud. [unclear]", is written over a horizontal line. Below the line, the word "JUDGE" is printed in capital letters.

JUDGE

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GIUSEPPE'S FINER FOODS, INC.,)
GORTECH GLOBAL FABRICATION, LLC,)

CIVIL DIVISION

Plaintiffs,

) NO. 06-1633-C.D.

vs.

FRESHTEC INTERNATIONAL, LLC,)
INDUSTRIAL MACHINERY)
AUTOMATION AND CONTROLS, LLC,)
and LARRY SALONE,)

**PLAINTIFFS' RESPONSE TO
DEFENDANTS' PRELIMINARY
OBJECTIONS**

Defendants.

) Filed on behalf of Plaintiffs

) Counsel of Record for this Party:

) Gregory H. Teufel

) Pa. Id. No. 73062

) Sarah B. Heineman

) Pa. Id. No. 91040

) SCHNADER HARRISON SEGAL & LEWIS LLP

) Suite 2700, Fifth Avenue Place

) 120 Fifth Avenue

) Pittsburgh, PA 15222-3010

) (412) 577-5200 (telephone)

) (412) 765-3858 (facsimile)

) Christopher E. Mohny, Esquire

) Pa. Id. 63494

) 25 East Park Avenue, Suite 6

) DuBois, PA 15801

) (814) 375-1044

FILED *no cc*
m/12:50 PM
AUG 17 2007 *(GW)*
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GIUSEPPE'S FINER FOODS, INC., CIVIL DIVISION
GORTECH GLOBAL FABRICATION, LLC,

Plaintiffs,

No. 06-1633- C.D.

vs.

FRESHTEC INTERNATIONAL, LLC,
INDUSTRIAL MACHINERY
AUTOMATION AND CONTROLS, LLC,
and LARRY SALONE,

Defendants.

PLAINTIFFS' RESPONSE TO DEFENDANTS' PRELIMINARY OBJECTIONS

Plaintiffs, Giuseppe's Finer Foods, Inc. ("Giuseppe's") and Gortech Global Fabrication, LLC ("Gortech"), (collectively "Plaintiffs") by and through their undersigned attorneys, hereby file the following Plaintiffs' Response to Defendants' Preliminary Objections to the Amended Complaint.

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted in part and denied in part. It is denied that Giuseppe's Finer Foods, Inc. is a limited liability company. To the contrary, it is a corporation.
5. Admitted.
6. Denied as stated. Plaintiffs' Original Complaint speaks for itself.

7. Denied as stated. Plaintiffs' Exhibits B and C speak for themselves.
8. Denied as stated. Plaintiffs' Exhibits E and F speak for themselves.
9. Admitted.
10. Denied as stated. Plaintiffs' Amended Complaint speaks for itself.

PRELIMINARY OBJECTION NO. 1
PLAINTIFF GIUSEPPE'S COUNT II: FAILURE OF GIUSEPPE'S FINER FOODS, INC
TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED BASED UPON
BREACH OF CONTRACT

11. Admitted.

12. Denied. Plaintiffs deny the dispute between Plaintiffs and Defendants is based solely upon an express contract between Defendants and Gortech. To the contrary, the dispute is based on all of the issues alleged in Plaintiffs' Amended Complaint. Plaintiffs deny that on the purchase orders Gortech is identified as the purchaser of the equipment. To the contrary, the purchase orders do not specify the purchaser, but state the goods should be shipped to Giuseppe's Finer Foods. As Plaintiffs' alleged in the Amended Complaint, Gortech was acting as an agent for Giuseppe's when it issued the purchase order for the equipment. Plaintiffs deny that the only relation Giuseppe's had to the contract dispute at hand is that the equipment bargained for and purchased by Gortech was delivered and installed at Giuseppe's place of business. To the contrary, Giuseppe's bargained for and ordered the equipment through its agent Gortech and arranged for payment for the equipment through ICP Asset Management.

13. Denied. Plaintiffs deny that Giuseppe's lacks privity to the contract and cannot sustain a breach of contract claim against Defendants. At the outset, Defendants have waived this preliminary objection because it was not raised in their first set of preliminary objections. Pa. R. C. P Rule 1028(b) states that all of preliminary objections shall be raised at one time. Courts therefore have interrupted this rule in the context of amended complaints to mean,

“[p]reliminary objections to an amended complaint may not include matters which appeared in the original [complaint].” *Commonwealth, Dep't of Transp. (PennDOT) v. Bethlehem Steel Corp.*, 380 A.2d 1308, 1311, 33 Pa. Commw. 1, 6 (Pa. Commw. Ct. 1977). *See also Grugan v. Johns-Manville Corp.*, 3 Pa. D. & C.3d 748 (C.C.P. Phila. Cty. 1978). Giuseppe’s had a breach of contract claim in the original Complaint, and therefore, Defendants are barred from raising this preliminary objection. Even if this preliminary objection was not waived, it still fails because the Amended Complaint alleges that Gortech was an agent of Giuseppe’s when it entered into the contract. *See* Amended Complaint at ¶13. Therefore, Giuseppe’s has alleged facts sufficient to support a breach of contract claim.

WHEREFORE, Plaintiffs request that this Court overrules Defendants’ Preliminary Objections and grant such other and further relief as this Court deems proper.

PRELIMINARY OBJECTION NO. 2
PLAINTIFF GIUSEPPE’S COUNT III: FAILURE TO STATE A CLAIM UPON WHICH
RELIEF MAY BE GRANTED BASED UPON UNJUST ENRICHMENT

14. Denied as Stated. Plaintiffs’ Amended Complaint speaks for itself

15. Denied as Stated. Plaintiffs’ Amended Complaint and Exhibits to the Original Complaint speaks for themselves.

16. Denied as Stated. Plaintiffs’ Amended Complaint and Exhibits to the Original Complaint speaks for themselves.

17. Denied as Stated. Plaintiffs’ Amended Complaint and Exhibits to the Original Complaint speaks for themselves.

18. Denied as Stated. Plaintiffs’ Amended Complaint and Exhibits to the Original Complaint speaks for themselves.

19. Denied. It is denied that Plaintiffs cannot rely on the doctrine of unjust enrichment where there may be evidence of a contract. To the contrary, Plaintiffs are allowed to plead in the alternative. Plaintiffs incorporate by reference the letter brief they filed with respect to Plaintiffs' Motion for Leave to Amend.

20. Admitted in part and denied in part. It is admitted that Gortech may have a claim for breach of contract or fraud. It is admitted that Plaintiffs' Original Complaint alleged that ICP Asset paid the Defendants. It is denied that Giuseppe's does not possess a claim for unjust enrichment. To establish an unjust enrichment claim, a plaintiff is required to prove a benefit was conferred on the defendant by the plaintiff, appreciation of such benefit by the defendant, and acceptance and retention of such benefit under circumstances that would create an inequity if defendant retained the benefit without payment. *J. F. Walker Co. Inc. v. Excalibur Oil Group, Inc.*, 792 A.2d 1269, 2002 PA Super 39 (2002). Here, Giuseppe's has adequately pled these elements. Giuseppe's arranged the payment to Defendants through ICP Asset management who financed the transaction on behalf of Giuseppe's. The Defendants have unjustly retained this benefit. Therefore, Giuseppe's has pled sufficient facts to maintain an unjust enrichment claim. Moreover, Defendants arguments in this preliminary objection were already rejected by this Court when it ruled on the Motion to Amend the Complaint.

WHEREFORE, Plaintiffs request that this Court overrules Defendants' Preliminary Objections and grant such other and further relief as this Court deems proper.

PRELIMINARY OBJECTION NO. 3
PLAINTIFF GIUSEPPE'S COUNT IV: FAILURE OF GIUSEPPE'S FINER FOODS,
INC TO STATE A CLAIM UPON WHICH RELIEF
CAN BE GRANTED BASED UPON FRAUD

21. Admitted.

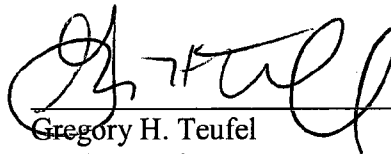
22. Denied. Plaintiffs deny the dispute between Plaintiffs and Defendants is based solely upon an express contract between Defendants and Gortech. To the contrary, the dispute is based on all of the issues alleged in Plaintiffs' Amended Complaint. Plaintiffs deny that on the purchase orders Gortech is identified as the purchaser of the equipment. To the contrary, the purchase orders do not specify the purchaser, but state the goods should be shipped to Giuseppe's Finer Foods. As Plaintiffs' alleged in the Amended Complaint, Gortech was acting as an agent for Giuseppe's when it issued the purchase order for the equipment. Plaintiffs deny that the only relation Giuseppe's had to the contract dispute at hand is that the equipment bargained for and purchased by Gortech was delivered and installed at Giuseppe's place of business. To the contrary, Giuseppe's bargained for and ordered the equipment through its agent Gortech and arranged for payment for the equipment through ICP Asset Management.

23. Denied. Plaintiffs deny that Giuseppe's does not have privity of contract with the Defendants and cannot sustain a claim for fraud against Defendants. Again, Defendants have waived this preliminary objection by not raising it during their first set of preliminary objections. *See* Paragraph 13 of Plaintiffs' Response to Defendants' Preliminary Objections. However, Defendants' preliminary objection should also be overruled because Giuseppe's has adequately plead a cause of action for fraud against Defendants. In order to establish a cause of action for fraud, a plaintiff must plead the following elements with particularity: (1) a misrepresentation; (2) a fraudulent utterance thereof; (3) an intention by the maker to induce the recipient thereby; (4) justifiable reliance by the recipient on the misrepresentation; and (5) damage to the recipient

as a proximate result of the misrepresentation. *Rivello v. New Jersey Auto. Full Ins. Underwriting Ass'n*, 638 A.2d 253(Pa. Super. Ct. 1994). Noticeably absent from this list of elements is privity of contract. Plaintiffs have pled the elements of fraud with requisite particularity, and therefore, this claim survives.

WHEREFORE, Plaintiffs request that this Court overrules Defendants' Preliminary Objection and grant such other and further relief as this Court deems proper.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'G. Teufel', is written over a horizontal line.

Gregory H. Teufel
Sarah B. Heineman
Christopher E. Mohnney

DATED: August 15, 2007

*Attorneys for Plaintiffs, GIUSEPPE'S FINER
FOODS, INC. and GORTECH GLOBAL
FABRICATION, LLC*

CERTIFICATE OF SERVICE

I, Gregory H. Teufel, hereby certify that I served a true and correct copy of the foregoing **Plaintiffs' Response to Preliminary Objections to Amended Complaint**, was served via U.S. Mail, First Class, postage pre-paid, this 15th day of August, 2007, upon the following:

David J. Hopkins, Esq.
Hopkins Heltzel LLP
100 Meadow Lane, Suite 5
DuBois, PA 15801



Gregory H. Teufel

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GIUSEPPE'S FINER FOODS, INC.,)
GORTECH GLOBAL FABRICATION, LLC,)

CIVIL DIVISION

Plaintiffs,

NO. 06-1633-C.D.

vs.

FRESHTEC INTERNATIONAL, LLC,
INDUSTRIAL MACHINERY
AUTOMATION AND CONTROLS, LLC,
and LARRY SALONE,

Defendants.

**MOTION TO COMPEL DEFENDANTS'
DISCOVERY RESPONSES**

) Filed on behalf of Plaintiffs,
) Giuseppe Finer Foods

) Counsel of Record for this Party:

) Gregory H. Teufel

) Pa. Id. No. 73062

) Sarah B. Heineman

) Pa. Id. No. 91040

) SCHNADER HARRISON SEGAL & LEWIS

) LLP

) Suite 2700, Fifth Avenue Place

) 120 Fifth Avenue

) Pittsburgh, PA 15222-3010

) (412) 577-5200 (telephone)

) (412) 765-3858 (facsimile)

) Christopher E. Mohny, Esquire

) Pa. Id. 63494

) 25 East Park Avenue, Suite 6

) DuBois, PA 15801

) (814) 375-1044

FILED 100
m/12:30/04 Atty Teufel
AUG 29 2007

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

GIUSEPPE'S FINER FOODS, INC., CIVIL DIVISION
GORTECH GLOBAL FABRICATION, LLC,

Plaintiffs,

No. 06-1633- C.D.

vs.

FRESHTEC INTERNATIONAL, LLC,
INDUSTRIAL MACHINERY
AUTOMATION AND CONTROLS, LLC,
and LARRY SALONE,

Defendants.

**PLAINTIFFS' MOTION TO COMPEL RESPONSES TO DISCOVERY
PROPOUNDED UPON DEFENDANTS**

Plaintiffs, Giuseppe's Finer Foods, Inc. and Gortech Global Fabrication, LLC,
(collectively "Plaintiffs") by and through their undersigned counsel, Schnader Harrison
Segal & Lewis LLP, hereby move the Court to enter an Order pursuant to Pa. R.Civ.P.
4019 compelling Defendants, Freshtec International, LLC, Industrial Machinery
Automation and Controls, LLC, and Larry Salone (collectively "Defendants"), to answer
certain discovery propounded upon them in this matter. In support of this Motion,
Plaintiffs aver as follows:

1. On or about October 6, 2006, Plaintiffs and ICP Asset Management, Inc.
("ICPAM") filed a Complaint alleging Breach of Contract, Unjust Enrichment, and Fraud
claims against Freshtec International, LLC., Industrial Machinery Automation and
Controls, and Larry Salone (collectively "Defendants").

2. Defendants filed preliminary objections to the Complaint asking this Honorable Court, among other things, to dismiss ICPAM's unjust enrichment claim.

3. On or about January 3, 2007, this Honorable Court entered an order ("Order") granting Defendants' preliminary objections dismissing ICPAM's unjust enrichment claim and dismissing ICPAM as a party.

4. On or about June 14, 2007, Plaintiffs filed an Amended Complaint against the Defendants which added an unjust enrichment claim by Plaintiff Giuseppe's.

5. On or about July 12, 2007, Defendants filed a second set of Preliminary Objections to Plaintiffs' Amended Complaint.

6. These Preliminary Objections are still pending before the Court¹.

7. On June 7, 2007 and a month prior to Defendants filing their Preliminary Objections, Plaintiffs served Discovery upon the Defendants. *See* June 7, 2007 Letter serving discovery attached as Exhibit "A."

8. Defendants' answers and objections, if any, to Plaintiffs' discovery requests were due on or before July 7, 2007. *See* Pa. R.Civ.P. 4006(a)(2), 4009.12(a).

9. No responses were served by July 7, 2007.

10. Plaintiffs' counsel contacted Defendants' counsel to inquire about the status of the discovery.

11. As a professional courtesy, Plaintiffs granted Defendants an extension until August 17, 2007.

12. On August 22, 2007 and August 24, 2007, Plaintiffs' counsel again contacted Defendants' counsel to inquire as to the status of the discovery responses.

¹ The Argument on Defendants' second set of Preliminary Objections is scheduled for September 13, 2007.

Defendants' counsel has not returned Plaintiffs' counsel's phone calls. *See* August 24, 2007 email attached as Exhibit "B."

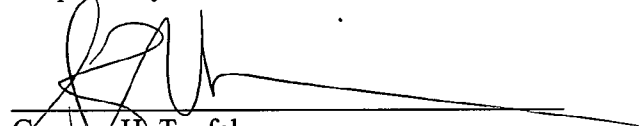
13. To date, Plaintiffs have yet to receive any discovery responses from Defendants or any explanation for the delay.

14. Defendants' responses Plaintiffs' Discovery are now overdue.

15. Plaintiffs seek an Order compelling Defendants to answer their Discovery, without objections.

WHEREFORE, Plaintiffs, Giuseppe's Finer Foods, Inc. and Gortech Global Fabrication, LLC, respectfully requests that the Court enter an Order compelling Defendants, Freshtec International, LLC, Industrial Machinery Automation and Controls, LLC, and Larry Salone, to file full and complete answers to Plaintiffs' Discovery within ten (10) days of such Order's entry.

Respectfully submitted,



Gregory H. Teufel
Sarah B. Heineman
Christopher E. Mohney

DATED: August 24, 2007

*Attorneys for Plaintiffs, GIUSEPPE'S
FINER FOODS, INC., GORTECH GLOBAL
FABRICATION, LLC.*

I, Gregory Teufel, hereby certified that I have attempted to confer with opposing counsel in attempt to resolve Defendants' overdue discovery responses prior to filing this motion and he has failed to return calls. I conferred with opposing counsel and granted an extension after the original deadline for responses was not met.

Date: August 24, 2007



Gregory Teufel, Esquire

Schnader
ATTORNEYS AT LAW

FIFTH AVENUE PLACE
120 FIFTH AVENUE SUITE 2700 PITTSBURGH, PA 15222-3001
412.577.5200 FAX 412.765.3858 schnader.com

June 7, 2007

Gregory H. Teufel
Direct Dial 412-577-5289
Direct Fax 412-765-3858
E-mail: gteufel@schnader.com

David J. Hopkins, Esquire
Hopkins Heltzel LLP
100 Meadow Lane, Suite 5
DuBois, PA 15801

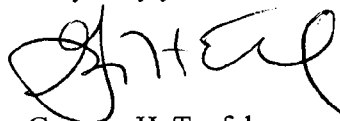
**RE: Giuseppe's Finer Foods, Inc. et al. v. Freshtec International, LLC, et al.
Case No. 06-1633-C.D.**

Dear Mr. Hopkins:

Enclosed please Plaintiffs' First Set of Interrogatories and Requests for Production of Documents to Freshtec International, LLC, Industrial Machinery Automation & Controls LLC, and Larry Salone in reference to the above matter.

Due to the fact that there are Interrogatories and Request for Production that ask for confidential information, I have enclosed a proposed Motion for Stipulated Protective Order. Please contact me at your earliest convenience so we can discuss it further.

Very truly yours,

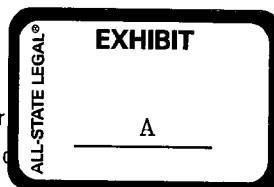


Gregory H. Teufel
For SCHNADER HARRISON SEGAL & LEWIS LLP

SBH/lhw

Enclosure

cc: Christopher E. Mohney, Esq. (w/enc.)



Heineman, Sarah B.

From: Teufel, Gregory
Sent: Friday, August 24, 2007 3:16 PM
To: 'Hopkins Heltzel LLP'
Cc: Heineman, Sarah B.; 'Christopher E. Mohny, Esquire'
Subject: RE: Giuseppe's, et al. v. Freshtec, et al.

David:

Sarah and I both left you phone messages this week, her call was Wednesday, and mine today, regarding the discovery responses for the above matter, which are now overdue. We gave you a generous extension to August 17 for the responses and have not seen anything in our mailbox, nor have we heard from you. We need an explanation for the delay, to determine whether a motion to compel is necessary. Not hearing from you leaves us with little choice but to go ahead and file a motion to compel, which we are now doing.

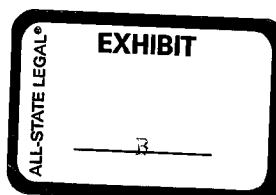
We are not pleased to need to go to the expense of drafting a motion to compel just to get you to serve responses. This should not be necessary. You should at least be able to contact us before the deadline to let us know there is going to be further delay and why. So please call Sarah or me at your earliest reasonable opportunity to let us know what the problem is. Please note that unexcused lateness in responding to discovery requests results in waiver of objections.

Best regards,
Greg

Schnader Harrison Segal & Lewis LLP
Suite 2700 Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222-3010
(412)577-5289 (work)
(412)596-6316 (cell)
(412)421-7123 (home)
(412)765-3858 (fax)
<mailto:gteufel@schnader.com>

To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed within.

The information transmitted is intended only for the person or entity to whom it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon this information by persons or entities other than the intended recipient is prohibited. If you received this message in error, please contact the sender and delete the material from your computer.



8/24/2007

GIUSEPPE'S FINER FOODS, INC.,) CIVIL DIVISION
 GORTECH GLOBAL FABRICATION, LLC,)
)
)
 Plaintiffs,) No. 06-1633- C.D.
)
 vs.)
)

ORDER OF COURT

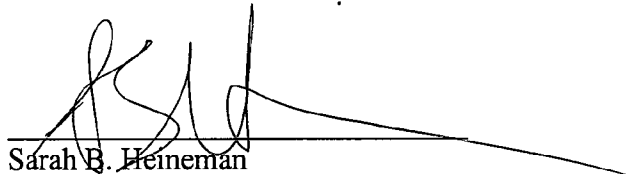
BY THE COURT,

_____ J.

CERTIFICATE OF SERVICE

I, Sarah B. Heineman, hereby certify that I served a true and correct copy of the foregoing **Plaintiffs' Motion to Compel Responses to Discovery Propounded Upon Defendants**, was served via U.S. Mail, First Class, postage pre-paid, this 24th day of August, 2007, upon the following:

David J. Hopkins, Esq.
Hopkins Heltzel LLP
100 Meadow Lane, Suite 5
DuBois, PA 15801



Sarah B. Heineman

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GIUSEPPE'S FINER FOODS, INC.,) CIVIL DIVISION
GORTECH GLOBAL FABRICATION, LLC,)

Plaintiffs,) No. 06-1633- C.D.

vs.)

FRESHTEC INTERNATIONAL, LLC,)
INDUSTRIAL MACHINERY)
AUTOMATION AND CONTROLS, LLC,)
and LARRY SALONE,)

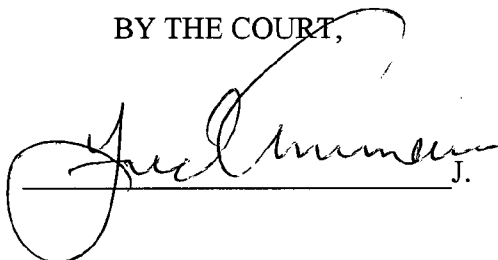
SCHEDULING ORDER

AND NOW, this 31 day of August, 2007, upon consideration of Plaintiffs'

foregoing motion, it is hereby ordered that:

- (1) a rule is issued upon the respondent to show cause why the moving party is not entitled to the relief requested;
- (2) the respondent shall file an answer to the motion within ____ days of this date;
- (3) argument shall be held on October, in Courtroom No. 1 of the Clearfield County Courthouse; and
15, 2007 @ 9:30 AM.
- (4) notice of the entry of this order shall be provided to all parties by the moving party.

BY THE COURT,


J.

FILED ICC
0140087
AUG 31 2007
William A. Shaw
Prothonotary/Clerk of Courts
@k

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

GIUSEPPE'S FINER FOODS, INC., GORTECH
GLOBAL FABRICATION, LLC,
Plaintiffs

vs.

FRESHTEC INTERNATIONAL, LLC,
INDUSTRIAL MACHINERY AUTOMATION AND
CONTROLS, LLC, and LARRY SALONE,
Defendants

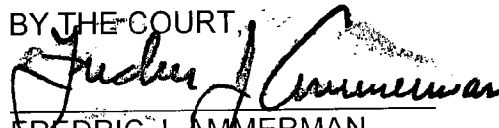
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*
*

NO. 06-1633-CD

ORDER

NOW, this 14th day of September, 2007, following argument on Defendants' Preliminary Objections, it is the ORDER of this Court that the said Preliminary Objections be and are hereby dismissed.

BY THE COURT,


FREDRIC J. AMMERMAN
President Judge

FILED

SEP 17 2007

William A. Shaw
Prothonotary/Clerk of Courts

rec
Atty's:
Hopkins
Mohney
Teufel
Heinemann
CR

FILED

SEP 17 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 9/17/07

☒ You are responsible for serving all appropriate parties.

☒ The Prothonotary's office has provided service to the following parties:

☐ Plaintiff(s) ☒ Plaintiff(s) Attorney ☐ Other

☐ Defendant(s) ☒ Defendant(s) Attorney

☐ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

GIUSEPPE'S FINER FOODS, INC., :

GORTECH GLOBAL FABRICATIONS, LLC:

VS. : NO. 06-1633-CD

FRESHTEC INTERNATIONAL, LLC, :

INDUSTRIAL MACHINERY AUTOMATION :

and CONTROLS, LLC, and :

LARRY SALONE :

O R D E R

AND NOW, this 15th day of October, 2007, following argument on the Plaintiff's Motion to Compel, it is the ORDER of this Court that said Motion be and is hereby granted. Defense shall have no more than twenty (20) days from this date in which to supply any requested discovery.

BY THE COURT,

Frederick J. Krumm

President Judge

FILED 200
01/4:00/01
OCT 16 2007

William A. Shaw
Prothonotary/Clerk of Courts

1CC Atty Mohney
1CC Atty Hopkins
Henneman

(610)

FILED

OCT 16 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 10/16/07

___ You are responsible for serving all appropriate parties.

☒ The Prothonotary's office has provided service to the following parties:

___ Plaintiff(s) ☒ Plaintiff(s) Attorney ___ Other

___ Defendant(s) ☒ Defendant(s) Attorney

___ Special Instructions:

CR

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GIUSEPPE'S FINER FOODS, INC.,)
GORTECH GLOBAL FABRICATION, LLC,) CIVIL DIVISION
)
)
Plaintiffs,) NO. 06-1633-C.D.
)
vs.)
) **PLAINTIFFS' MOTION FOR**
) **SANCTIONS**
)
FRESHTEC INTERNATIONAL, LLC,)
INDUSTRIAL MACHINERY)
AUTOMATION AND CONTROLS, LLC,)
and LARRY SALONE,)
Defendants.)
) Filed on behalf of Plaintiffs,
) Giuseppe Finer Foods
)
) Counsel of Record for this Party:
)
) Gregory H. Teufel
) Pa. Id. No. 73062
) Sarah B. Heineman
) Pa. Id. No. 91040
) SCHNADER HARRISON SEGAL & LEWIS
) LLP
) Suite 2700, Fifth Avenue Place
) 120 Fifth Avenue
) Pittsburgh, PA 15222-3010
) (412) 577-5200 (telephone)
) (412) 765-3858 (facsimile)
)
) Christopher E. Mohny, Esquire
) Pa. Id. 63494
) 25 East Park Avenue, Suite 6
) DuBois, PA 15801
) (814) 375-1044

FILED 2CC
m/11/08/30/ Atty Teufel
NOV 09 2007 (6P)
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

GIUSEPPE'S FINER FOODS, INC., CIVIL DIVISION
GORTECH GLOBAL FABRICATION, LLC,

Plaintiffs,

No. 06-1633- C.D.

vs.

FRESHTEC INTERNATIONAL, LLC,
INDUSTRIAL MACHINERY
AUTOMATION AND CONTROLS, LLC,
and LARRY SALONE,

Defendants.

PLAINTIFFS' MOTION FOR SANCTIONS

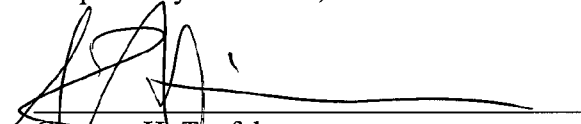
Plaintiffs, Giuseppe's Finer Foods, Inc. and Gortech Global Fabrication, LLC,
(collectively "Plaintiffs") by and through their undersigned counsel, Schnader Harrison
Segal & Lewis LLP, hereby file their Motion for Sanctions. In support of this Motion,
Plaintiffs aver as follows:

1. On or about June 14, 2007, Plaintiffs filed an Amended Complaint against
Freshtec International, LLC., Industrial Machinery Automation and Controls, and Larry
Salone (collectively "Defendants").
2. On June 7, 2007, Plaintiffs served interrogatories and requests for
production upon the Defendants.
3. Defendants' answers and objections, if any, to Plaintiffs' discovery
requests were due on or before July 7, 2007. *See* Pa. R.Civ.P. 4006(a)(2), 4009.12(a).

4. No responses were served by July 7, 2007.
5. As a professional courtesy, Plaintiffs granted Defendants an extension until August 17, 2007.
6. Again, no responses were served by August 17, 2007.
7. Because Defendants' counsel was not returning phone calls, on August 29, 2007, Plaintiffs were forced to file a Motion to Compel.
8. On October 15, 2007, this Honorable Court granted Plaintiffs' Motion to Compel and required Defendants to respond to the discovery responses within twenty (20) days of the Order. *See* Order attached as Exhibit "A."
9. Because twenty (20) days from the Order resulted on them being due on Sunday, Nov. 4, 2007, the actual due date was extended to November 5, 2007.
10. To date, Plaintiffs have yet to receive any discovery responses from Defendants.
11. On November 7, 2007, Plaintiffs' counsel contacted Defendants' counsel by telephone and email to inquire into the status of the responses, but received no response.
12. Defendants are now in violation of this Honorable Court's October 15, 2007 Order.
13. Plaintiffs have and will incur over One Thousand Dollars (\$1,000.00) in costs for drafting and arguing their Motion to Compel and drafting and arguing this Motion for Sanctions.
14. Plaintiffs request this Honorable Court to again compel Defendants to produce their discovery responses and impose a sanction in the amount of One Thousand Dollars (\$1,000.00) for contempt of this Court's October 15, 2007 Order.

WHEREFORE, Plaintiffs, Giuseppe's Finer Foods, Inc. and Gortech Global Fabrication, LLC, respectfully request that the Court enter an Order compelling Defendants, Freshtec International, LLC, Industrial Machinery Automation and Controls, LLC, and Larry Salone, to serve full and complete answers within five (5) days to Plaintiffs' Discovery and Sanction them for One Thousand Dollars (\$1,000.00) or to grant such other relief as this Court may deem proper.

Respectfully submitted,



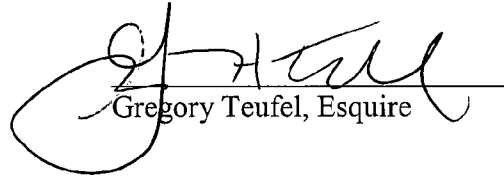
Gregory H. Teufel
Sarah B. Heineman
Christopher E. Mohney

DATED: November 7, 2007

*Attorneys for Plaintiffs, GIUSEPPE'S
FINER FOODS, INC., GORTECH GLOBAL
FABRICATION, LLC.*

I, Gregory Teufel, hereby certify that I have attempted to confer with opposing counsel in attempt to resolve Defendants' overdue discovery responses prior to filing this motion and he has failed to return my call or email.

Date: November 7, 2007



Gregory Teufel, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

GIUSEPPE'S FINER FOODS, INC., :

GORTECH GLOBAL FABRICATIONS, LLC:

VS. : NO. 06-1633-CD

FRESHTEC INTERNATIONAL, LLC, :

INDUSTRIAL MACHINERY AUTOMATION :

and CONTROLS, LLC, and :

LARRY SALONE :

O R D E R

AND NOW, this 15th day of October, 2007, following argument on the Plaintiff's Motion to Compel, it is the ORDER of this Court that said Motion be and is hereby granted. Defense shall have no more than twenty (20) days from this date in which to supply any requested discovery.

BY THE COURT,

/S/ Fredric J Ammerman

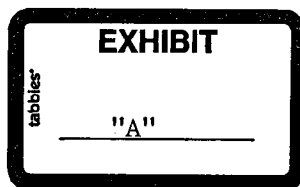
President Judge

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

OCT 16 2007

Attest.

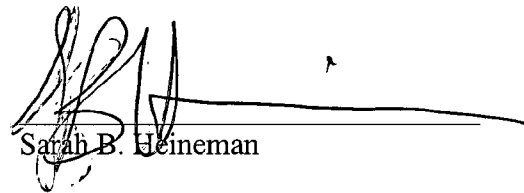
William A. Brown
Prothonotary/
Clerk of Courts



CERTIFICATE OF SERVICE

I, Sarah B. Heineman, hereby certify that I served a true and correct copy of the foregoing **Plaintiffs' Motion for Sanctions**, was served via U.S. Mail, First Class, postage pre-paid, this 7th day of November, 2007, upon the following:

David J. Hopkins, Esq.
Hopkins Heltzel LLP
100 Meadow Lane, Suite 5
DuBois, PA 15801



Sarah B. Heineman

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
(CIVIL DIVISION)

GIUSEPPE'S FINER FOODS, INC.,
GORTECH GLOBAL FABRICATION,
LLC, and ICP ASSET MANAGEMENT,
INC.,

Plaintiffs,

vs.

FRESHTEC INTERNATIONAL, LLC,
INDUSTRIAL MACHINERY
AUTOMATION AND CONTROLS, LLC,
and LARRY SALONE,

Defendants.

No. 06-1633 C.D.

Type of Pleading: Answer to
Plaintiffs' Motion for Sanctions

Counsel of Record for this party:

HOPKINS HELTZEL

DAVID J. HOPKINS, Esquire
Attorney at Law
Supreme Court No. 42519

LEA ANN HELTZEL, Esquire
Attorney at Law
Supreme Court No. 83998

100 Meadow Lane, Suite 5
DuBois, Pennsylvania 15801

(814) 375-0300

FILED

NOV 13 2007

W/12:50
William A. Shaw
Prothonotary/Clerk of Courts
w/c/c

13. Denied. Plaintiffs' actions in filing this Motion for Sanctions was done purely to embarrass the Defendants' attorney and to run up legal fees.

14. Denied. Plaintiffs' actions in filing this Motion for Sanctions was done purely to embarrass the Defendants' attorney and to run up legal fees.

WHEREFORE, Defendants respectfully request this Honorable Court to deny Plaintiffs' Motions for Sanctions.

HOPKINS HELTZEL LLP

A handwritten signature in black ink, appearing to read 'D. J. Hopkins', is written over a horizontal line.

David J. Hopkins, Esquire
Attorney for Defendants/Plaintiffs on
the Counterclaim

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
(CIVIL DIVISION)

GIUSEPPE'S FINER FOODS, INC.,
GORTECH GLOBAL FABRICATION,
LLC, and ICP ASSET MANAGEMENT,
INC.,

Plaintiffs,

vs.

No. 06-1633 C.D.

FRESHTEC INTERNATIONAL, LLC,
INDUSTRIAL MACHINERY
AUTOMATION AND CONTROLS, LLC,
and LARRY SALONE,


Defendants.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of Answer to Plaintiffs' Motion for Sanctions, was forwarded by first class mail, postage prepaid, on the 9th day of November, 2007 to all counsel of record, addressed as follows:

Gregory H. Teufel, Esquire
Schnader Harrison Segal & Lewis LLP
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222-3010

Christopher E. Mohnhey, Esquire
25 East Park Avenue, Suite 6
DuBois, PA 15801


David J. Hopkins, Esquire
Attorney for Defendants

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

GIUSEPPE'S FINER FOODS, INC., GORTECH
GLOBAL FABRICATION, LLC,
Plaintiffs

vs.

FRESHTEC INTERNATIONAL, LLC,
INDUSTRIAL MACHINERY AUTOMATION AND
CONTROLS, LLC, and LARRY SALONE,
Defendants

NO. 06-1633-CD

ORDER

NOW, this 15th day of November, 2007, the Court being in receipt of the Plaintiffs' Motion for Sanctions, it is the ORDER of this Court that argument on the Motion for Sanctions be and is hereby scheduled for the 19th day of December, 2007 at 9:30 a.m. in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT,


FREDRIC LAMMERMAN
President Judge

FILED
9/9:45 AM
NOV 16 2007

William A. Shaw
Prothonotary/Clerk of Courts
ICC Days: Tensel/Heinemann
Mohnrey
Hopkins

OK

FILED

NOV 16 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 11/16/07

☐ You are responsible for serving all appropriate parties.

☒ The Prothonotary's office has provided service to the following parties:

☐ Plaintiff(s) ☒ Plaintiff(s) Attorney ☐ Other

☐ Defendant(s) ☒ Defendant(s) Attorney

☐ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
(CIVIL DIVISION)

GIUSEPPE'S FINER FOODS, INC.,
GORTECH GLOBAL FABRICATION,
LLC, and ICP ASSET MANAGEMENT,
INC.,

Plaintiffs,

vs.

FRESHTEC INTERNATIONAL, LLC,
INDUSTRIAL MACHINERY
AUTOMATION AND CONTROLS, LLC,
and LARRY SALONE,

Defendants.

No. 06-1633 C.D.

FILED

NOV 20 2007

013:50/2
William A. Shaw
Prothonotary/Clerk of Courts

1 sent to Atty

Type of Pleading: Motion to Continue

Filed on behalf of: Defendants

Counsel of Record for this party:

HOPKINS HELTZEL LLP

DAVID J. HOPKINS, ESQUIRE

Attorney at Law

Supreme Court No. 42519

LEA ANN HELTZEL, ESQUIRE

Attorney at Law

Supreme Court No. 83998

100 Meadow Lane, Suite 5

DuBois, Pennsylvania 15801

(814) 375-0300

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
(CIVIL DIVISION)

GIUSEPPE'S FINER FOODS, INC.,	:	
GORTECH GLOBAL FABRICATION,	:	
LLC, and ICP ASSET MANAGEMENT,	:	
INC.,	:	
	:	
Plaintiffs,	:	
	:	
vs.	:	No. 06-1633 C.D.
	:	
FRESHTEC INTERNATIONAL, LLC,	:	
INDUSTRIAL MACHINERY	:	
AUTOMATION AND CONTROLS, LLC,	:	
and LARRY SALONE,	:	
	:	
Defendants.	:	

MOTION TO CONTINUE

AND NOW, comes Defendants, FreshTec International, LLC, Industrial Machinery Automation and Controls, LLC and Larry Salone, by and through their attorneys, Hopkins Heltzel LLP, and files the within Motion to Continue and says as follows:

1. The above captioned matter is scheduled for an argument on December 19, 2007 at 9:30 a.m. in Courtroom No. 1.
2. Counsel for Defendants is also scheduled to be in depositions in Harrisburg in the matter of Jack Wayne McBride, et ux vs. Randy E. Tock, et al., Centre

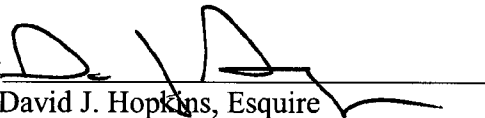
County, No. 2007-3721. The depositions have been twice rescheduled and involve two other attorneys.

3. The Court had previously scheduled an argument for a Summary Judgment Motion in the matter of BreamTek Associates, LLC vs. P.S.I., Inc. for the same date and upon motion of counsel, rescheduled the argument date to January 4, 2008.

WHEREFORE, Defendants respectfully requests this matter be continued.

Respectfully submitted,

HOPKINS HELTZEL LLP

BY: 
David J. Hopkins, Esquire
Attorney for Defendants

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
(CIVIL DIVISION)

GIUSEPPE'S FINER FOODS, INC.,
GORTECH GLOBAL FABRICATION,
LLC, and ICP ASSET MANAGEMENT,
INC.,

Plaintiffs,

vs.

No. 06-1633 C.D.

FRESHTEC INTERNATIONAL, LLC,
INDUSTRIAL MACHINERY
AUTOMATION AND CONTROLS, LLC,
and LARRY SALONE,

Defendants.

CERTIFICATE OF SERVICE


I hereby certify that a true and correct copy of the within Motion to Continue, filed on behalf of Defendants, FreshTec International LLC, Industrial Machinery Automation and Controls, LLC and Larry Salone, was served on the 20th day of November, 2007, on all counsel of record by first-class mail, postage prepaid addressed as follows:

Gregory H. Teufel, Esquire
Schnader Harrison Segal & Lewis LLP
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222-3010

Christopher E. Mohny, Esquire
25 East Park Avenue, Suite 6
DuBois, PA 15801

HOPKINS HELTZEL LLP

Dated: November 20, 2007


David J. Hopkins, Esquire
Attorney for Defendants

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
(CIVIL DIVISION)

GIUSEPPE'S FINER FOODS, INC.,
GORTECH GLOBAL FABRICATION,
LLC, and ICP ASSET MANAGEMENT,
INC.,

Plaintiffs,

vs.

No. 06-1633 C.D.

FRESHTEC INTERNATIONAL, LLC,
INDUSTRIAL MACHINERY
AUTOMATION AND CONTROLS, LLC,
and LARRY SALONE,

Defendants.

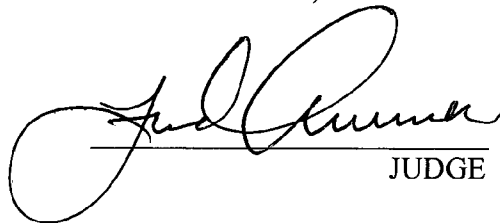
ORDER

AND NOW, this 26th day of Nov., 2007, upon consideration of

Defendants' Motion to Continue;

It is hereby ORDERED and ADJUDGED that the argument scheduled for
December 19, 2007 at 9:00 a.m. shall be rescheduled for the 9th day of
January, 2008 at 2:30 P.M.

BY THE COURT,


JUDGE

FILED ^{icc}
0/10:16/07 *Atty Hopkins*
NOV 27 2007
William A. Shaw ^(GK)
Prothonotary/Clerk of Courts

FILED

NOV 27 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 11/27/07

☒ You are responsible for serving all appropriate parties.
___ The Prothonotary's office has provided service to the following parties:
___ Plaintiff(s) ___ Plaintiff(s) Attorney ___ Other
___ Defendant(s) ___ Defendant(s) Attorney
___ Special Instructions:

FILED

NOV 30 2007

m/11:45/w
William A. Shaw
Prothonotary/Clerk of Courts

1 URGENT TO ATTORNEY
w/o EXHIBITS

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GIUSEPPE'S FINER FOODS, INC.,)
GORTECH GLOBAL FABRICATION, LLC,) CIVIL DIVISION

Plaintiffs,) NO. 06-1633-C.D.

vs.)

FRESHTEC INTERNATIONAL, LLC,) **REPLY BRIEF IN SUPPORT OF**
INDUSTRIAL MACHINERY) **PLAINTIFFS' MOTION FOR**
AUTOMATION AND CONTROLS, LLC,) **SANCTIONS**
and LARRY SALONE,)

Defendants.)

) Filed on behalf of Plaintiffs,

) Giuseppe Finer Foods

) Counsel of Record for this Party:

) Gregory H. Teufel

) Pa. Id. No. 73062

) Sarah B. Heineman

) Pa. Id. No. 91040

) SCHNADER HARRISON SEGAL & LEWIS

) LLP

) Suite 2700, Fifth Avenue Place

) 120 Fifth Avenue

) Pittsburgh, PA 15222-3010

) (412) 577-5200 (telephone)

) (412) 765-3858 (facsimile)

) Christopher E. Mohny, Esquire

) Pa. Id. 63494

) 25 East Park Avenue, Suite 6

) DuBois, PA 15801

) (814) 375-1044

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

GIUSEPPE'S FINER FOODS, INC., CIVIL DIVISION
GORTECH GLOBAL FABRICATION, LLC,

Plaintiffs,

No. 06-1633- C.D.

vs.

FRESHTEC INTERNATIONAL, LLC,
INDUSTRIAL MACHINERY
AUTOMATION AND CONTROLS, LLC,
and LARRY SALONE,

Defendants.

REPLY BRIEF IN SUPPORT OF PLAINTIFFS' MOTION FOR SANCTIONS

Plaintiffs, Giuseppe's Finer Foods, Inc. and Gortech Global Fabrication, LLC, (collectively "Plaintiffs") by and through their undersigned counsel, Schnader Harrison Segal & Lewis LLP, hereby file their Reply Brief in Support of Plaintiffs' Motion for Sanctions.

I. FACTS

On June 7, 2007, Plaintiffs served Interrogatories and Requests for Production of Documents upon the Defendants. Plaintiffs gave Defendants an extension to August 21, 2007. On August 29, 2007, Plaintiffs were forced to file a Motion to Compel because they had yet to receive any response or any communication from Defendants as to why Plaintiffs had yet to receive the responses. Then on October 15, 2007, this Honorable Court granted Plaintiffs' Motion to Compel and required Defendants to respond to the

discovery responses within twenty (20) days of the Order. Even after the twenty day time limit, Defendants had yet to respond to the discovery resulting in Plaintiffs' filing their Motion for Sanctions on November 7, 2007. Only after Defendants received the Motion for Sanctions did they finally serve their responses to the discovery on November 9, 2007. However, the Defendants only partially answered some questions, were non-responsive to others, and did not even answer some questions and instead made baseless relevancy objections. Such objections were waived long ago by their failure to respond to the discovery for six months and their failure to respond within the time ordered by this Court. Further, they failed to identify and produce numerous documents. The Defendants have had approximately six months in which to respond to the discovery requests. Still the responses Defendants provide are not responsive to Plaintiffs' discovery requests. Plaintiffs are now requesting that Defendants be compelled to answer the discovery and be sanctioned for their obstructive and dilatory behavior during the discovery process.

II. ARGUMENT

There are several questions that Defendants did not answer which are relevant and not privileged. Set forth below are the questions directed to each Defendant as well as their corresponding answers. Many answers by the Defendants were non-responsive to the question asked. In addition, many interrogatories were partially answered or were simply not answered.

A. Defendant Larry Salone

Defendant Larry Salone ("Salone") either improperly refused to answer questions or answered certain question in an unresponsive manner.

1. Interrogatories Salone Refused to Answer

Defendant Larry Salone ("Salone") failed to answer questions regarding his social security number and his employment history. Answers to Interrogatories of Larry Salone Attached as Exhibit "A¹," Nos. 1 and 2. In his response concerning his employment history, he simply stated he will provide this information at a later date. Due to Salone's past history of not providing discovery unless court ordered, Plaintiffs request that this Honorable Court compel him now to produce this information. Again, he had over six months to compile his work history.

Salone further refused to answer Interrogatories 19, 23, 24, and 25 and Request for Production No. 2 all involving his own personal finances. Salone's response was essentially, "Salone objects to Interrogatory [No.] inasmuch as it is not relevant nor will it lead to relevant information." Salone also refused to answer the question as to whether he considered filing a petition for bankruptcy, again stating it was not relevant. This information is relevant because Plaintiffs have pled the necessary elements to have Salone personally liable for his intentional tort of fraud. Even if he is classified as an "agent" of Freshtec, he can still be held personally liable to Plaintiffs for any intentional torts he commits on his own. Moreover, Salone's personal finances are relevant to punitive damages and also to determine where the location of the money paid to the Defendants in reliance on their fraud. This information is further relevant to determine the extent of the commingling of funds with other Defendants. Therefore, these questions are relevant and must be answered. Moreover, this objection is waived.

¹ Due to the fact that Defendants served their Answers and Responses without the corresponding Interrogatory or Request, Plaintiffs are attaching their initial discovery requests to each Defendant collectively as Exhibit "D."

2. Interrogatories Where Salone was Non-Responsive or Only

Partially Answered

Set forth below are Interrogatories directed to Salone and his Answers. His Answers are either non-responsive or only partially answer the Interrogatory. Plaintiffs request that Salone be compelled to respond to these Interrogatories with complete answers.

Salone was asked to describe any experience he had in designing and/or manufacturing the Paste Bin Dumper Equipment and Cheese Dumper Equipment. Ex. "A," No. 7 & No. 8. His response to both interrogatories was, "[i]nvolved in the design and manufacture of multiple bin dumpsters." This is a non responsive answer. The question was to describe the experience, not whether he had any experience.

In the next two interrogatories, Salone's answer again is non-responsive.

Interrogatory No. 9

Describe any experience you have in selling Paste Bin Dumper Equipment or similar equipment.

ANSWER: Yes, as an employee of Freshtec.

Interrogatory No. 10

Describe any experience you have in selling Cheese Dumper Equipment or similar equipment.

ANSWER: As an employee of, I have sold multiple conveying lines.

Again, these answers do not describe any experience. He merely states he has had experience. Salone must be compelled to answer the question he was asked.

Interrogatory Nos. 13-18 essentially asked the same thing with only changing the date:

“On [date], what was your knowledge as to the progress of the design, manufacturing, delivery, installation, quality, performance, and/or testing of the Cheese Dumper and Paste Bin Dumper Equipment.”

In which Mr. Salone responded to each interrogatory with, “[a]ll knowledge that I had was as employee of Freshtec or IMAC.” This does not respond to what his knowledge was. It only identifies where he derived his knowledge. Again, Salone must respond to these interrogatories with answers that actually answer the Interrogatory.

Mr. Salone was asked to identify all documents in relation to the Cheese Dumper Equipment and the Paste Bin Dumper including any testing, performances or relating to any allegations in the Complaint. Exhibit “A” Nos. 26 and 27. He responded to all of the question’s subparts with, “(a)-(f) See quote” and “(a)-(d) See quote.” The quote does not address any testing performed on the equipment. Moreover, this cannot be the only document that relates to any allegation in the Complaint.

Finally, Salone in Interrogatory No. 11, Salone simply failed to respond to all of the subparts.

Interrogatory No. 11

For any and all communications between you and Plaintiffs, please identify as to each:

- (a) The participants involved;
- (b) How the communication took place (in person, by telephone, *etc.*);
- (c) The date of the communication;
- (d) Whether any documents were exchanged during that communication;
- (e) Any documents memorializing the communication; and
- (f) Describe what was discussed in the communication.

ANSWER: George, Tierney Wheaton, Luke Sicard and Dennis Raybuck.

Salone's answer only answered who the participants were in the communications. It does not address any of the other subparts. Further, he failed to identify any documents involving the communications.

In sum, Salone should be compelled to answer the above Interrogatories as well as identify all relevant documents. He has cited no privilege or any reason that would allow these responses to be acceptable. His failure to identify documents effects his document production which requested all identified documents. Therefore, if he identifies any other documents, Plaintiffs request that the Court compel the production of such documents as well as their identification.

B. FRESHTEC and Industrial Automated and Controls, LLC

Discovery propounded upon Freshtec International, LLC ("Freshtec") and Industrial Machinery Automation and Controls, LLC ("IMAC") were similar resulting in Freshtec and IMAC responding to Interrogatories with the same answers.

1. Interrogatories and Document Requests That Freshtec and IMAC

Failed to Answer

The two defendants were asked to identify and itemize all capital contributions to from their inception to the present with a list of specific types of capital. Both responded with, "[d]efendant has asked its accountant to supply the information requested in this Interrogatory and same will be supplied shortly." Answer to Interrogatories of Freshtec, No. 6, attached as Exhibit B, See Answers to Interrogatories of Industrial Machinery Automation and Controls, No. 6 attached as Exhibit C. Due to Defendants track record in responding to discovery, a Court order is necessary in order to ensure these responses are answered. No supplemental answer has been received to date. Defendants should have requested this information from their accountant six months ago.

When asked whether Freshtec and IMAC considered filing bankruptcy, Freshtec and IMAC both objected on the grounds that it was not relevant nor will it lead to the discovery of relevant information. Exhibits “B” and “C” at Interrogatory Nos. 15. Similarly, Freshtec and IMAC objected to Plaintiffs’ document request for Freshtec and IMAC’s financial records. These questions are clearly relevant to the claims as to under capitalization, potential commingling of funds, and to trace where the money went that Plaintiffs paid to Defendants. Moreover, this objection is waived.

Finally, Freshtec and IMAC both objected to Interrogatories requesting them to identify all documents relating to the “Cheese Dumper Equipment and Paste Bin Equipment.” Freshtec and IMAC object on the grounds that these interrogatories are over broad. Exhibits “B” and “C,” Nos. 31 and 32. Incidentally, Salone responded to the exact same interrogatories by referring to the quote, which is an inadequate answer, but there was no objection as to the breadth of the interrogatory. These are not overbroad in that the Cheese Dumper Equipment and Paste Bin Equipment were specifically defined in the definitions as:

J. The “Paste Bin Dumper Equipment” means the paste bin equipment and parts ordered by Giuseppe’s in the May 5, 2005 Purchase Order No. 10292 attached to the Complaint as Exhibit “C.”

K. The “Cheese Dumper Equipment” means the cheese dumper and parts ordered by Giuseppe’s in July 26, 2005 Purchase Order No. 50012 attached to the Complaint as Exhibit “F.”

Exhibits, “B” and “C” at pg. 4. Therefore, Defendants knew exactly which Cheese Dumper Equipment and Paste Bin Dumper Equipment referred to in the Interrogatories. Moreover, this equipment forms the basis of the lawsuit. Requesting documents that

relate to the equipment is not only relevant, but also imperative and certainly not overbroad. Finally, this objection is waived.

2. Interrogatories and Requests for Production Inadequately

Answered

There are Interrogatories and Requests for Production that Freshtec and IMAC did not give complete answers or were completely non-responsive.

Freshtec and IMAC were asked to identify all past experiences(s) in designing or manufacturing Past Bin Dumper Equipment and Cheese Dumper Equipment as well as identify any documents involving these past experiences. Both responded to these interrogatories with, “designed and supplied multiple bin dumpers.” and “designed multiple conveying equipment.” Exhibits “B” and “C,” Nos. 12 and 13. They did not identify any past experiences, nor did they identify any documents relating to their past experiences. This information is relevant because of the fraudulent misrepresentations the Defendants made prior to entering into an agreement with Plaintiffs concerning their past experience.

Freshtec and IMAC also inadequately answered questions involving the whereabouts of the money Plaintiffs paid Freshtec and IMAC. Plaintiffs specifically requested information regarding bank, bank account numbers, and who had access to the accounts, and asked Defendants to identify all account statements for certain time periods. Exhibits “B” and “C” Nos. 16-21. Freshtec and IMAC only responded with the name and location of a bank. They did not even address the other questions, nor did they cite to any privilege or reason as to why they would not have to respond.

III. CONCLUSION

In sum, the Defendants' responses are incomplete and non-responsive. Defendants should be compelled to answer the Interrogatories mentioned above completely and responsively. Moreover, Defendants should not be able to avoid being sanctioned merely because they served *something* on Plaintiffs. Plaintiffs have incurred over One Thousand Dollars (\$1,000.00) in costs on motions in order to obtain discovery from Defendants. The Defendants' obstructive and dilatory behavior must be sanctioned. Therefore, Plaintiffs request this Honorable Court to again compel Defendants to produce complete discovery responses and impose a sanction in the amount of One Thousand Dollars (\$1,000.00) for contempt of this Court's October 15, 2007 Order.

Respectfully submitted,



Gregory H. Teufel
Sarah B. Heineman
Christopher E. Mohney

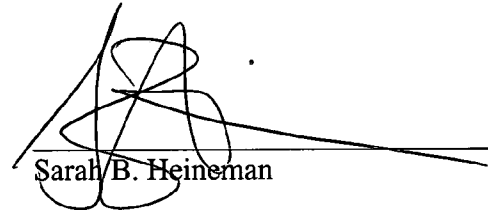
DATED: November 29, 2007

*Attorneys for Plaintiffs, GIUSEPPE'S
FINER FOODS, INC., GORTECH GLOBAL
FABRICATION, LLC.*

CERTIFICATE OF SERVICE

I, Sarah B. Heineman, hereby certify that I served a true and correct copy of the foregoing **Reply Brief in Support of Plaintiffs' Motion for Sanctions**, was served via U.S. Mail, First Class, postage pre-paid, this 29th day of November, 2007, upon the following:

David J. Hopkins, Esq.
Hopkins Heltzel LLP
100 Meadow Lane, Suite 5
DuBois, PA 15801



Sarah B. Heineman

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
(CIVIL DIVISION)

GIUSEPPE'S FINER FOODS, INC., and
GORTECH GLOBAL FABRICATION,
LLC,

Plaintiffs

vs.

FRESHTEC INTERNATIONAL, LLC,
INDUSTRIAL MACHINERY
AUTOMATION AND CONTROLS, LLC,
and LARRY SALONE,

Defendants

No. 06-1633 C.D.

Type of Pleading: Answer to Plaintiffs'
First Set of Interrogatories and Request
for Production of Documents to Larry
Salone

Counsel of Record for this party:

HOPKINS HELTZEL LLP

DAVID J. HOPKINS, Esquire
Attorney at Law
Supreme Court No. 42519

LEA ANN HELTZEL, Esquire
Attorney at Law
Supreme Court No. 83998

DuBois, Pennsylvania 15801

(814) 375-0300

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
(CIVIL DIVISION)

GIUSEPPE'S FINER FOODS, INC., and	:	
GORTECH GLOBAL FABRICATION,	:	
LLC,	:	
Plaintiffs	:	
	:	
vs.	:	No. 06-1633 C.D.
	:	
FRESHTEC INTERNATIONAL, LLC,	:	
INDUSTRIAL MACHINERY	:	
AUTOMATION AND CONTROLS, LLC,	:	
and LARRY SALONE,	:	
Defendants	:	

ANSWER TO PLAINTIFFS' FIRST SET OF INTERROGATORIES
AND REQUEST FOR PRODUCTION OF DOCUMENTS
TO LARRY SALONE

AND NOW, comes Defendant, Larry Salone, by and through his attorneys, Hopkins Heltzel LLP, and files an Answer to Plaintiffs' First Set of Interrogatories and Request for Production of Document to Larry Salone as follows:

1. (a) Lawrence J. Salone
- (b) Treasure Lake, DuBois, Pennsylvania 15801
- (c) (814) 375-0700.
- (d) Mr. Salone objects to Interrogatory 1(d) inasmuch as it is not relevant nor will it lead to relevant information.

- (e) October 6, 1958.
- 2. To be supplied.
- 3. (a) President and Secretary.
(b) January 2, 2003 to the present.
(c) Salary \$0.00.
- 4. (a) President and Secretary.
(b) February 14, 2005 to the present.
(c) Salary \$0.00.
- 5. At all times, I was an employee of FreshTec and/or IMAC. Plaintiffs came to FreshTec. I prepared a quote for FreshTec. The Plaintiffs did not provide any specifications nor was there a request for a quote. There were verbal conflicting specifications by Luke Sicard, George, Tierney Wheaton and Alan Simpson.
- 6. At all times, I was an employee of FreshTec and/or IMAC. Plaintiffs came to FreshTec. I prepared a quote for FreshTec. The Plaintiffs did not provide any specifications nor was there a request for a quote. There were verbal conflicting specifications by Luke Sicard, George, Tierney Wheaton, Alan Simpson and Dennis Raybuck. Mr. Raybuck wanted existing equipment used.
- 7. Involved in the design and manufacture of multiple bin dumpsters.
- 8. Involved in the design and manufacture of multiple conveying lines.
- 9. Yes, as an employee of FreshTec.
- 10. As an employee of, I have sold multiple conveying lines.
- 11. George, Tierney Wheaton, Luke Sicard and Dennis Raybuck.
- 12. Mr. Salone objects to Interrogatory No. 12 inasmuch as it is not relevant nor will it lead to relevant information.
- 13. All knowledge that I had was as employee of FreshTec or IMAC.
- 14. All knowledge that I had was as employee of FreshTec or IMAC.

15. All knowledge that I had was as employee of FreshTec or IMAC.
16. All knowledge that I had was as employee of FreshTec or IMAC.
17. All knowledge that I had was as employee of FreshTec or IMAC.
18. All knowledge that I had was as employee of FreshTec or IMAC.
19. Salone objects to Interrogatory No. 19 inasmuch as it is not relevant nor will it lead to relevant information.
20. I made no representations personally but rather only as an employee of FreshTec or IMAC.

(a) – (f) See quote.
21. No expert has yet been identified but preserves the right to update this Interrogatory when an expert is retained.
22. Martin Casilio, Todd Gordon, Tierney Wheaton, Luke Sicard, George, David Knox, Dennis Raybuck, Alan Simpson, Jeremy Carrier, Bill Marasco and John Pazur.
23. Salone objects to Interrogatory No. 23 inasmuch as it is not relevant nor will it lead to relevant information.
24. Salone objects to Interrogatory No. 24 inasmuch as it is not relevant nor will it lead to relevant information.
25. Salone objects to Interrogatory No. 25 inasmuch as it is not relevant nor will it lead to relevant information.
26. (a) – (f) See quote.
27. (a) – (d) See quote.
28. Martin Casilio, Todd Gordon, Tierney Wheaton, Luke Sicard, George, David Knox, Dennis Raybuck, Alan Simpson, Jeremy Carrier, Bill Marasco and John Pazur.
29. Martin Casilio, Todd Gordon, Tierney Wheaton, Luke Sicard, George, David Knox, Dennis Raybuck, Alan Simpson, Jeremy Carrier, Bill Marasco and John Pazur.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

GIUSEPPE'S FINER FOODS, INC., and
GORTECH GLOBAL FABRICATION,
LLC,

Plaintiffs

vs.

No. 06-1633 C.D.

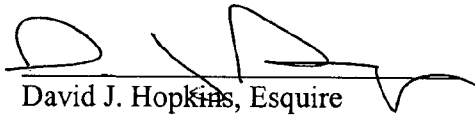
FRESHTEC INTERNATIONAL, LLC,
INDUSTRIAL MACHINERY
AUTOMATION AND CONTROLS, LLC,
and LARRY SALONE,

Defendants

ANSWER TO REQUESTS FOR DOCUMENTS

1. See documents produced for FreshTec.
2. Objectionable inasmuch as it is not relevant nor will it lead to relevant information.

Respectfully submitted,


David J. Hopkins, Esquire
Supreme Court No. 42519
Attorney for Larry Salone

Subj: RE: letter
 Date: 4/4/2006 2:41:11 P.M. Pacific Daylight Time
 From: draybuck@icpglobal.net
 To: LarrySalon@aol.com

Larry:

I am sorry to have taken so long to answer but I was unavailable last week to do so. I am sorry that we do not seem to communicate well. It is definitely not typical for manufacturers of customized equipment to withhold detailed drawings of the equipment. As a matter of fact, it is the policy of each and every manufacturer we have ever dealt with over the past 35 years to not only provide the detailed blueprints of any customized equipment but also to get us to sign off on it prior to it being manufactured. In any case your equipment does not and in our opinion will not perform the specified tasks for which it was purchased. In order to stay out of the legal system, I suggest that you take back the bin dumpers and the cheese dumper and conveyor and refund our money to us. We will then release you from responsibility and have the bin dumpers and cheese equipment built by another manufacturer. If this is acceptable, please have a bank check for \$189,805 (which is \$166,360 for the bin dumpers, \$28,000 for the cheese dumper and \$24,000 for the cheese conveyor or \$218,360 total less the \$28,555 that is still owed to you) when you are ready to pick-up the equipment. While this situation is not optimum for Giuseppe's and is likely not so for FreshTec it is a way to get out of the problem without a legal argument and without any disparaging remarks to other customers or questioners by either of us in the heat of a legal battle. Let me know within the next seven days so as not to prolong our mutual problem.

Best regards,

Dennis V. Raybuck
 President
 International Custom Products, Inc.
 Oklahoma-Salem Road
 DuBois, Pennsylvania 15801

Phone 814-375-9600
 Fax 814-375-0718
 E-Mail DRaybuck@ICPUSA.net

From: LarrySalon@aol.com [mailto:LarrySalon@aol.com]
Sent: Monday, March 27, 2006 1:49 PM
To: Dennis Raybuck; Luke Sicard; george@mpeconsulting.com
Cc: rycolewelding@verizon.net
Subject: letter

Denny,

Thanks for quick reply. We do not give out drawings of our equipment for obvious reasons, they can be copied etc. And George knew that. Everyone in our industry does that, its very typical. And as a side note which is very important, the bin dumpers were only quoted for 3000 pounds. We did talk to Duff Norton in detail and they agree with us that this will work, we are re-calculating through an independent again, to insure we calculated correctly on loading. We are ready to start this week, but I feel we need to get a listing (contract) clearly defining what you expect, and we expect in return. We have sent emails back and forth, and I know you understand the importance of a contract, so I would feel better, and my subs would also, knowing exactly what is being done and expected. I have replied to your list with what I have planned to do, and if you agree with this, then that is what we will start on this week. You state this has to be done to your satisfaction, we will be pleased to do whatever you desire, even above and beyond the quoted job as we noted in our proposal. I also would like you to define the person who will verify the machinery, as we have made numerous trips with no one available, wasting our time and money, and it appears everything that Luke and other employees approved is not to your liking. Please identify an individual(s) that we can work with that will commission this equipment as meeting the above referenced list of items we are putting together for additional work. This should leave no confusion or he said, she said later on. I am looking forward to working on this asap..please advise and email me the listing, or your approval of my previous email plan, with any exceptions noted.

Monday, April 17, 2006 America Online: LarrySalon

Bobbi

From: LarrySalon@aol.com
Sent: Monday, April 24, 2006 3:19 PM
To: draybuck@icpglobal.net
Cc: hopkinslaw@adelphia.net
Subject: letter

Denny,

I have received your email. I cannot agree to those ideas. We have built these units to the quoted specifications, and to your employee's and representatives' decisions and verbal comments. They viewed our equipment before ordering and also viewed and accepted the equipment.

We have a right to cure any problems. We stand behind our units. The actuator company is prepared to fly here from Europe to review the units. The units may have been permanently damaged from your people's mis-use and overloading. Maybe not. If we need to fix something done by your people, or because it was not specified properly, then we will be pleased to do it as a change order and expect compensation for that work.

I sent you a plan on March 27th. I will stand by that plan, but I want a contact so we have no further disputes, as well as a designated "point" person from your facility to approve these units. We are ready to accept the first bin dumper back with the contract when it is ready, and we will begin work on the cheese line when the contract is finalized as well.

Denny, I think all parties want and need to get these machines to a point where everyone is pleased, without any further un-pleasantries. Lets work towards that with the contract stated above.

Please feel free to contact my attorney, Mr. David Hopkins at 814-375-0300 if you wish to have him assist in the contract.

I look forward to resolving the difficulties and moving forward.

Freshtec Int'l, LLC
Larry Salone
PO Box 585
DuBois, PA., 15801
ph: 814-375-0700
fax: 814-375-0707

4/28/2006

Subj: **Answer**
Date: 4/12/2006 12:50:56 P.M. Pacific Daylight Time
From: draybuck@icpglobal.net
To: LarrySalon@aol.com
CC: asimpson@giuseppesfinerfoods.com, lsicard@giuseppesfinerfoods.com,
george@mpeconsulting.com, kmitchell@icpusa.net, GTeufel@Schnader.com

Larry:

I need to have your decision so that we can proceed. Delaying at this point would only increase our claim as it is holding up production and I will not be willing for very long to accept the deal I spoke about last week without asking for additional compensation. At this time I have two licensed engineers that are willing to testify that the equipment will not perform the function required and they tell me we can have as many more as necessary testify to the same thing since it is apparent whenever we tried to use the bin dumpers. Let me know by Friday.

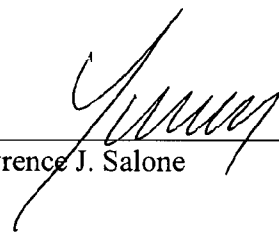
Best regards,

Dennis V. Raybuck
President
Giuseppe's Finer Foods
Oklahoma-Salem Road
DuBois, Pennsylvania 15801

Phone 814-375-9600
Fax 814-375-0718
E-Mail DRaybuck@Giuseppesfinerfoods.com

VERIFICATION

I hereby verify that the statements made in this pleading are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. Section 4904, relating to Unsworn Falsification to Authorities.



Lawrence J. Salone

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
(CIVIL DIVISION)

GIUSEPPE'S FINER FOODS, INC., and
GORTECH GLOBAL FABRICATION,
LLC,

Plaintiffs

vs.

No. 06-1633 C.D.

FRESHTEC INTERNATIONAL, LLC,
INDUSTRIAL MACHINERY
AUTOMATION AND CONTROLS, LLC,
and LARRY SALONE,


Defendants

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of Answer to Plaintiffs' First Set of Interrogatories and Request for Production of Documents to Larry Salone, was forwarded by first class mail, postage prepaid, on the 9th day of November, 2007 to all counsel of record, addressed as follows:

Gregory H. Teufel, Esquire
Schnader Harrison Segal & Lewis LLP
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222-3010

Christopher E. Mohny, Esquire
25 East Park Avenue, Suite 6
DuBois, PA 15801


David J. Hopkins, Esquire
Attorney for Larry Salone

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GIUSEPPE'S FINER FOODS, INC.,)
GORTECH GLOBAL FABRICATION, LLC,)

CIVIL DIVISION

Plaintiffs,

) NO. 06-1633-C.D.

vs.

FRESHTEC INTERNATIONAL, LLC,)
INDUSTRIAL MACHINERY)
AUTOMATION AND CONTROLS, LLC,)
and LARRY SALONE,)

**PLAINTIFFS' FIRST SET OF
DISCOVERY SERVED UPON
LARRY SALONE**

Defendants.

) Filed on behalf of Plaintiffs

) Counsel of Record for this Party:

) Gregory H. Teufel

) Pa. Id. No. 73062

) Sarah B. Heineman

) Pa. Id. No. 91040

) SCHNADER HARRISON SEGAL & LEWIS LLP

) Suite 2700, Fifth Avenue Place

) 120 Fifth Avenue

) Pittsburgh, PA 15222-3010

) (412) 577-5200 (telephone)

) (412) 765-3858 (facsimile)

) Christopher E. Mohnney, Esquire

) Pa. Id. 63494

) 25 East Park Avenue, Suite 6

) DuBois, PA 15801

) (814) 375-1044

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GIUSEPPE'S FINER FOODS, INC.,
GORTECH GLOBAL FABRICATION, LLC,

CIVIL DIVISION

Plaintiffs,

No. 06-1633- C.D.

vs.

FRESHTEC INTERNATIONAL, LLC,
INDUSTRIAL MACHINERY
AUTOMATION AND CONTROLS, LLC,
and LARRY SALONE,

Defendants.

**PLAINTIFFS' FIRST SET OF INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF DOCUMENTS
TO LARRY SALONE**

NOW COMES Plaintiffs, Giuseppe's Finer Foods, Inc. and Gortech Global Fabrication, LLC, by and through their undersigned attorneys, hereby serves the following First Set of Interrogatories and Requests for Production of Documents directed to Larry Salone ("Salone") and demands that Salone serve full and complete answers, under oath, within thirty (30) days from the date of service hereof, in accordance with Rules 4006 and 4009.12 of the Pennsylvania Rules of Civil Procedure.:

I. INSTRUCTIONS

A. Supplement your responses to these interrogatories and requests in accordance with the Pennsylvania Rules of Civil Procedure.

B. Where facts set forth in any answer or portion thereof are supplied upon information and belief rather than actual knowledge, the answer should so state and specifically describe or identify the source of such information and belief. If you cannot answer an Interrogatory in full after exercising due diligence to secure the information so requested, so state and answer such Interrogatory to the fullest extent possible, specifying the exact reason for your inability to answer the remainder and stating whatever information or knowledge you have concerning the unanswered portion.

C. Should you claim that a privilege or immunity entitles you to withhold any documents, as to each such document: (a) state the date the document was prepared; (b) identify all persons who have seen or been provided a copy of the document; (c) provide a brief description of the nature of the document; and (d) describe the basis for your assertion that a claim of privilege or immunity entitles you to withhold the document.

D. If any document that is or may be responsive to these requests has been destroyed or discarded, that document is to be identified by stating (i) any addressor and addressee; (ii) whether there are any redacted or partial copies or transcriptions; (iii) the document's date, subject matter, number of pages and attachments or appendices; (iv) all persons to whom the document was distributed, shown or explained; (v) its date of destruction or discard, manner of destruction or discard, and the reason for destruction or discard; and, (vi) the person(s) authorizing and/or carrying out such destruction or discard.

II. DEFINITIONS

A. "Identify" as applied to a person means to state the following:

1. Full name;
2. Title, if any;

3. Present home address; and
4. Present business address.

B. "Identify," when used in reference to a document, requires you to state the date, the author (or, if different, the signer or signers), the addressee, and the type of document (e.g., letter, memorandum, telegram, chart, etc.) or to attach an accurate copy of the document to your answer.

C. "Person" means any individual, firm, association, partnership, corporation, trustee or other entity and also, where relevant, the persons representing or acting for such "person."

D. "Freshtec" means Defendant Freshtec International LLC its predecessors, successors, subsidiaries, past or present employees, agents, representatives, or attorneys, and any person who has or is acting or purporting to act on its behalf for any purpose whatsoever.

E. "Larry Salone" refers to defendant Larry Salone.

F. "You" or "Your" means Larry Salone.

G. "Industrial Machinery Automation and Controls, LLC or IMAC" means Defendant Industrial Machinery Automation and Controls, LLC, past or present employees, agents, representatives, or attorneys, and any person who has or is acting or purporting to act on its behalf for any purpose whatsoever.

H. "Communication" or "communications" as used herein includes, without limitation, letters and written communications of every kind and description, emails, faxes, and any oral statements, conversations, discussions and conferences.

I. "Document" or "documents" as used herein includes, without limitation, letters, memoranda, notes, statements, writings, drawings, graphs, charts, photographs, electronically

created data, and any other compilations of data from which information can be obtained, translated, if necessary, through detection or recovery devices into readily usable form.

J. The “Paste Bin Dumper Equipment” means the paste bin equipment and parts ordered by Giuseppe’s in the May 5, 2005 Purchase Order No. 10292 attached to the Complaint as Exhibit “C.”

K. The “Cheese Dumper Equipment” means the cheese dumper and parts ordered by Giuseppe’s in July 26, 2005 Purchase Order No. 50012 attached to the Complaint as Exhibit “F.”

III. INTERROGATORIES

1. Please identify:
 - (a) your full name;
 - (b) your current address;
 - (c) your phone number;
 - (d) your social security number; and
 - (e) your date of birth.

ANSWER:

2. Please list your place(s) of employment and your occupations for the last 10 years. For each place of employment, please set forth:
- (a) the name of your employer;
 - (b) your job title and nature of your occupation;
 - (c) during what dates you were so employed or so occupied;
 - (d) the location of your employment or occupation;
 - (e) why you left that employment or occupation; and
 - (f) what your duties were.

ANSWER:

3. Identify all of your job title(s) for Freshtec, including your present title. For each job title, please set forth:
- (a) your duties at each position;
 - (b) the time frame you were employed at each position;
 - (c) your salary at each position.

ANSWER:

4. Identify all of your job title(s) for IMAC, including your present title. For each job title, please set forth:
- (a) your duties at each position;
 - (b) the time frame you were employed at each position;
 - (c) your salary at each position.

ANSWER:

5. Describe your role in the transaction between Plaintiffs and Freshtec and IMAC for the Paste Bin Dumper Equipment.

ANSWER:

6. Describe your role in the transaction between Plaintiffs and Freshtec and IMAC for the Cheese Dumper Equipment.

ANSWER:

7. Describe any experience you have in designing and/or manufacturing Paste Bin
Dumper Equipment or similar equipment.

ANSWER:

8. Describe any experience you have in designing and/or manufacturing Cheese
Dumper Equipment or similar equipment.

ANSWER:

9. Describe any experience you have in selling Paste Bin Dumper Equipment or similar equipment.

ANSWER:

10. Describe any experience you have in selling Cheese Dumper Equipment or similar equipment.

ANSWER:

11. For any and all communications between you and Plaintiffs, please identify as to each:
- (a) The participants involved;
 - (b) How the communication took place (in person, by telephone, *etc.*);
 - (c) The date of the communication;
 - (d) Whether any documents were exchanged during that communication;
 - (e) Any documents memorializing the communication; and
 - (f) Describe what was discussed in the communication.

ANSWER:

12. Have you considered filing a petition for bankruptcy under Chapter 7 or Chapter 11 or Chapter 13 of the U.S. Code? If so, please identify when and why.

ANSWER:

13. On or about April 11, 2005, what was your knowledge as to the progress of the design, manufacturing, delivery, installation, quality, performance, and/or testing of the Cheese Dumper and Paste Bin Dumper Equipment.

ANSWER:

14. On or about August 8, 2005, what was your knowledge as to the progress of the design, manufacturing, delivery, installation, quality, performance, and/or testing of the Cheese Dumper and Paste Bin Dumper Equipment.

ANSWER:

15. On or about August 17, 2005, what was your knowledge as to the progress of the design, manufacturing, delivery, installation, quality, performance, and/or testing of the Cheese Dumper and Paste Bin Dumper Equipment.

ANSWER:

16. On or about, October 7, 2005, what was your knowledge as to the progress of the design, manufacturing, delivery, installation, quality, performance, and/or testing of the Cheese Dumper and Paste Bin Dumper Equipment.

ANSWER:

17. On or about December 2, 2005, what was your knowledge as to the progress of the design, manufacturing, delivery, installation, quality, performance, and/or testing of the Cheese Dumper and Paste Bin Dumper Equipment.

ANSWER:

18. On or about December 5, 2005, what was your knowledge as to the progress of the design, manufacturing, delivery, installation, quality, performance, and/or testing of the Cheese Dumper and Paste Bin Dumper Equipment.

ANSWER:

19. Please identify all of your bank accounts. For each account, please set forth;
- (a) the name of the financial institution;
 - (b) the account number(s)
 - (c) who has access to the account; and
 - (d) identify all account statements for such account from April 2005-present.

ANSWER:

20. Please identify any representations you made about the Cheese Dumper and/or Paste Bin Dumper. Please identify for each:
- (a) the participants involved;
 - (b) how the representation took place (in person, by telephone, *etc.*);
 - (c) the date of the representation;
 - (d) whether any documents were exchanged during that representation;
 - (e) any documents memorializing the representation; and
 - (f) the substance and details of the representation.

ANSWER:

21. Identify each person you intend to call to testify at trial as an expert witness. For each such expert, identify:
- (a) his or her name and present address;
 - (b) his or her educational background, including all educational institutions attended, dates of attendance, and degrees, if any, received and any other specialized training in his or her field, including the types of training received, the institution at which the training was received, and the dates of training;
 - (c) each professional, trade, academic or other organization of which he or she is a member, including in your response the name of the organization, the dates of membership, and a description of each office held;
 - (d) each book, paper, article, or other writing or publication which he or she authored or co-authored, including the title, subject matter, name and address of publisher, date of publication, and co-authors, if any;
 - (e) his or her work experience, including the name and address of each employer, dates of employment, and a description of each position held;
 - (f) all other judicial or administrative actions, hearings, proceedings, or arbitrations (identified by year, court or other forum, parties, docket number or other identifying number, and dates of testimony) in which he or she has testified in deposition or trial, the substance of any such testimony, and the party for whom the testimony was given;
 - (g) the substance and subject matter of the facts and opinions about which the expert is expected to testify and the grounds for each opinion including the facts upon which each opinion is based;
 - (h) all documents or document summaries he or she has been shown, or that have been made available for his or her review in connection with his or her expected testimony in this litigation;
 - (i) anything else shown to or reviewed by each expert in connection with his or her testimony in this proceeding;
 - (j) all reports, including drafts and work papers, whether preliminary or final, prepared by or for each expert in connection with his or her expected testimony in this litigation;

- (k) all instructions given by you in connection with each expert's expected testimony in this litigation;
- (l) each person with whom each expert spoke in connection with the expert's expected testimony in this litigation, and the substance of the discussions;
- (m) all persons assisting each expert in the preparation of his or her expected testimony in this litigation, including the type of assistance given, and the dates during which such assistance was given;
- (n) the compensation already paid by you or anyone else to each expert for reasons related to this litigation; and
- (o) the compensation expected to be paid to each expert, the times when payment will become due, and any conditions that could affect any expert's compensation related to this litigation.

ANSWER:

22. Identify each person you intend to call to testify at trial as a fact witness and for each such person describe the substance of his or her expected testimony.

ANSWER:

23. How much is your present net worth?

ANSWER:

24. Identify all asset(s) owned in whole or in part by you since January 1, 2005. For

each asset set forth:

(a) a description of the asset;

(b) location of the asset; and

(c) value of the asset.

ANSWER:

25. Identify all of your personal indebtedness since January 1, 2005. For each loan or debt, please set forth
- (a) amount of the loan or debt;
 - (b) terms of the loan or debt;
 - (c) date of the loan or debt; and
 - (d) identify each party to the loan or debt.

ANSWER:

26. Identify all documents related to:

- (a) the Cheese Dumper Equipment;
- (b) the Purchase Order No. 50012;
- (c) the performance of the Cheese Dumper Equipment;
- (d) any testing of the Cheese Dumper Equipment;
- (e) the allegations in the Complaint or any of the other pleadings filed in this lawsuit.

ANSWER:

27. Identify all documents related to:

- (a) the Paste Bin Dumper Equipment;
- (b) the Purchase Order No. 10292;
- (c) the performance of the Paste Bin Dumper Equipment; and
- (d) any testing of the Paste Bin Dumper Equipment

ANSWER:

28. Identify all individuals who have knowledge related to:

- (a) the Cheese Dumper Equipment;
- (b) the Purchase Order No. 50012;
- (c) the performance of the Cheese Dumper Equipment;
- (d) any testing of the Cheese Dumper Equipment; and
- (e) the allegations in the Complaint or any of the other pleadings filed in this lawsuit.

ANSWER:

29. Identify all individuals who have knowledge related to:
- (a) the Paste Bin Dumper Equipment;
 - (b) the Purchase Order No. 10292;
 - (c) the performance of the Paste Bin Dumper Equipment; and
 - (d) any testing of the Paste Bin Dumper Equipment.

ANSWER:

REQUESTS FOR DOCUMENTS

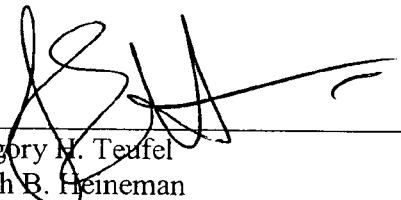
1. Produce all documents that were identified or reviewed for purposes of answering the preceding Interrogatories.

Response:

2. Produce all of your income tax returns for the years 2005 and 2006.

Response:

Respectfully submitted,




Gregory H. Teufel
Sarah B. Heineman
Christopher E. Mohnery

DATED: June 7, 2007

CERTIFICATE OF SERVICE

I, Sarah B. Heineman, hereby certify that I served a true and correct copy of the foregoing **Plaintiffs' First Set of Interrogatories and Requests for Production of Documents** to **Larry Salone**, was served via U.S. Mail, First Class, postage pre-paid, this 7th day of June, 2007, upon the following:

David J. Hopkins, Esq.
Hopkins Heltzel LLP
100 Meadow Lane, Suite 5
DuBois, PA 15801



Sarah B. Heineman

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
(CIVIL DIVISION)

GIUSEPPE'S FINER FOODS, INC., and
GORTECH GLOBAL FABRICATION,
LLC,

Plaintiffs

vs.

FRESHTEC INTERNATIONAL, LLC,
INDUSTRIAL MACHINERY
AUTOMATION AND CONTROLS, LLC,
and LARRY SALONE,

Defendants

No. 06-1633 C.D.

Type of Pleading: Answer to Plaintiffs'
First Set of Interrogatories and Request
for Production of Documents to FreshTec
International, LLC

Counsel of Record for this party:
HOPKINS HELTZEL LLP

DAVID J. HOPKINS, Esquire
Attorney at Law
Supreme Court No. 42519

LEA ANN HELTZEL, Esquire
Attorney at Law
Supreme Court No. 83998

DuBois, Pennsylvania 15801

(814) 375-0300

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
(CIVIL DIVISION)

GIUSEPPE'S FINER FOODS, INC., and	:	
GORTECH GLOBAL FABRICATION,	:	
LLC,	:	
Plaintiffs	:	
	:	
vs.	:	No. 06-1633 C.D.
	:	
FRESHTEC INTERNATIONAL, LLC,	:	
INDUSTRIAL MACHINERY	:	
AUTOMATION AND CONTROLS, LLC,	:	
and LARRY SALONE,	:	
Defendants	:	

ANSWER TO PLAINTIFFS' FIRST SET OF INTERROGATORIES
AND REQUEST FOR PRODUCTION OF DOCUMENTS
TO FRESHTEC INTERNATIONAL LLC

AND NOW, comes Defendant, Freshtec International, LLC, by and through its attorneys, Hopkins Heltzel LLP, and files an Answer to Plaintiffs' First Set of Interrogatories and Request for Production of Document to FreshTec International LLC as follows:

1. FreshTec Food Processing Equipment International, LLC.
2. (a) January 2, 2003.
(b) Limited liability corporation.
(c) Lawrence J. Salone.
(d) Lawrence J. Salone.
(e) 602-09 West DuBois Avenue, DuBois, Pennsylvania 15801
(f) Secretary of State filing.
3. None.

4. Lawrence J. Salone and counsel.
5. Sale of food processing equipment.
6. Defendant has asked its accountant to supply the information requested in this Interrogatory and same will be supplied shortly.
7. Lawrence J. Salone, 602-09 West DuBois Avenue, DuBois, Pennsylvania 15801.
8. Lawrence J. Salone, David Knox, Martin A. Casilio, Duff Norton Representative, Luke Sicard, George, Tierney Wheaton, Dennis Raybuck.
9. Martin A. Casilio, Lawrence J. Salone and various Rycole Welding Innovations, Inc. employees.
10. Lawrence J. Salone, David Knox, Martin A. Casilio, Duff Norton Representative, Luke Sicard, George, Tierney Wheaton, Dennis Raybuck.
11. Martin A. Casilio, Lawrence J. Salone and various Rycole Welding Innovations, Inc. employees.
12. Designed and supplied multiple bin dumpers.
13. Designed multiple conveying equipment.
14. (a) George, Tierney Wheaton, Luke Sicard and Dennis Raybuck.
(b) In person and by telephone. Tierney Wheaton and Luke Sicard went to Rycole to review and inspect bin dumpers and conveying lines and to customer of FreshTec.
(c) Numerous communications.
(d) The quote.
(e) Quote.
(f) See quote.
15. Freshtec objects to Interrogatory No. 15 because it is not relevant nor will it lead to the discovery of relevant information.
16. Timberland Federal Credit Union, Beaver Drive, DuBois, Pennsylvania.
17. Timberland Federal Credit Union, Beaver Drive, DuBois, Pennsylvania.

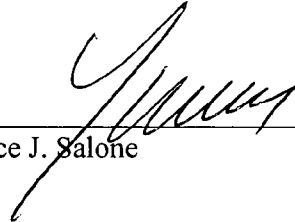
18. Timberland Federal Credit Union, Beaver Drive, DuBois, Pennsylvania.
19. Timberland Federal Credit Union, Beaver Drive, DuBois, Pennsylvania.
20. Timberland Federal Credit Union, Beaver Drive, DuBois, Pennsylvania.
21. Timberland Federal Credit Union, Beaver Drive, DuBois, Pennsylvania.
22. No.
23. Manufacturer of pace bin dumper equipment and cheese dumper equipment is custom designed based upon the specifications of buyers.
24. Defendant FreshTec has not yet identified an expert witness. When same is identified, FreshTec will update this Interrogatory.
25. Martin Casilio, Todd Gordon, Tierney Wheaton, Luke Sicard, George, David Knox, Dennis Raybuck, Alan Simpson, Jeremy Carrier, Bill Marasco and John Pazur.
26. 602-09 West DuBois Avenue, DuBois, Pennsylvania or at the Giuseppe site.
27.
 - (a) Multiple tests.
 - (b) Martin A. Casilio.
 - (c) Martin A. Casilio.
 - (d) The cheese dumper equipment worked.
 - (e) To be certain the cheese dumper equipment worked.
 - (f) None.
28.
 - (a) Multiple tests.
 - (b) Martin A. Casilio.
 - (c) Martin A. Casilio.
 - (d) The paste bin dumper equipment worked.
 - (e) To be certain the paste bin dumper equipment worked.
 - (f) None.

29. Martin Casilio, Todd Gordon, Tierney Wheaton, Luke Sicard, George, David Knox, Dennis Raybuck, Alan Simpson, Jeremy Carrier, Bill Marasco and John Pazur.
30. Martin Casilio, Todd Gordon, Tierney Wheaton, Luke Sicard, George, David Knox, Dennis Raybuck, Alan Simpson, Jeremy Carrier, Bill Marasco and John Pazur.
31. FreshTec objects to the over broad nature of this question.
32. FreshTec objects to the over broad nature of this question.
33. Various representatives of Gortech and Giuseppe's reviewed the design of the bin dumpers and cheese dumper. They worked with Lawrence Salone and Martin Casilio. Lawrence J. Salone, David Knox, Martin A. Casilio, Duff Norton Representative, Luke, George, Tierney Wheaton and Dennis Raybuck.
34. Both the bin dumper and cheese dumper generally worked as specified and designed. If there were minor modifications, Plaintiffs could have easily adjusted same. For example, in the cheese dumper line, one table needed to be raised slightly. Plaintiffs have replaced all of the bin dumpers with completely different technology that was not part of the specifications or quote. Lawrence J. Salone, David Knox, Martin A. Casilio, Duff Norton Representative, Luke Sicard, George, Tierney Wheaton, Dennis Raybuck. Martin Casilio, Todd Gordon, Tierney Wheaton, Luke Sicard, George, David Knox, Dennis Raybuck, Alan Simpson, Jeremy Carrier, Bill Marasco and John Pazur.
35. Both the bin dumper and cheese dumper generally worked as specified and designed. If there were minor modifications, Plaintiffs could have easily adjusted same. For example, in the cheese dumper line, one table needed to be raised slightly. Plaintiffs have replaced all of the bin dumpers with completely different technology that was not part of the specifications or quote. Lawrence J. Salone, David Knox, Martin A. Casilio, Duff Norton Representative, Luke Sicard, George, Tierney Wheaton, Dennis Raybuck. Martin Casilio, Todd Gordon, Tierney Wheaton, Luke Sicard, George, David Knox, Dennis Raybuck, Alan Simpson, Jeremy Carrier, Bill Marasco and John Pazur.

36. FreshTec and Industrial Automation and Controls, LLC supplied the bin dumpers and cheese dumper line and has not been paid pursuant to its quote.
37. FreshTec objects to Interrogatory 37 inasmuch as the Interrogatory is not relevant nor will it lead to the discovery of relevant information.
38. FreshTec objects to Interrogatory 38 inasmuch as the Interrogatory is not relevant nor will it lead to the discovery of relevant information.

VERIFICATION

I hereby verify that the statements made in this pleading are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. Section 4904, relating to Unsworn Falsification to Authorities.



Lawrence J. Salone

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
(CIVIL DIVISION)

GIUSEPPE'S FINER FOODS, INC., and
GORTECH GLOBAL FABRICATION,
LLC,

Plaintiffs

vs.

FRESHTEC INTERNATIONAL, LLC,
INDUSTRIAL MACHINERY
AUTOMATION AND CONTROLS, LLC,
and LARRY SALONE,

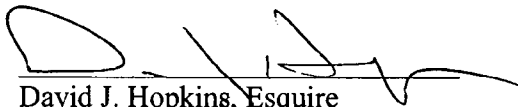
Defendants

No. 06-1633 C.D.

ANSWER TO REQUESTS FOR DOCUMENTS

1. See attached.
2. See attached.
3. See attached.
4. Objections. Request for Production of Documents No. 4 is not relevant nor will it lead to relevant information.

Respectfully submitted,



David J. Hopkins, Esquire
Supreme Court No. 42519
Attorney for FreshTec International, LLC

Subj: **RE: letter**
 Date: 4/4/2006 2:41:11 P.M. Pacific Daylight Time
 From: draybuck@icpglobal.net
 To: LarrySalon@aol.com

Larry:

I am sorry to have taken so long to answer but I was unavailable last week to do so. I am sorry that we do not seem to communicate well. It is definitely not typical for manufacturers of customized equipment to withhold detailed drawings of the equipment. As a matter of fact, it is the policy of each and every manufacturer we have ever dealt with over the past 35 years to not only provide the detailed blueprints of any customized equipment but also to get us to sign off on it prior to it being manufactured. In any case your equipment does not and in our opinion will not perform the specified tasks for which it was purchased. In order to stay out of the legal system, I suggest that you take back the bin dumpers and the cheese dumper and conveyer and refund our money to us. We will then release you from responsibility and have the bin dumpers and cheese equipment built by another manufacturer. If this is acceptable, please have a bank check for \$189,805 (which is \$166,360 for the bin dumpers, \$28,000 for the cheese dumper and \$24,000 for the cheese conveyer or \$218,360 total less the \$28,555 that is still owed to you) when you are ready to pick-up the equipment. While this situation is not optimum for Giuseppe's and is likely not so for FreshTec it is a way to get out of the problem without a legal argument and without any disparaging remarks to other customers or questioners by either of us in the heat of a legal battle. Let me know within the next seven days so as not to prolong our mutual problem.

Best regards,

Dennis V. Raybuck
 President
 International Custom Products, Inc.
 Oklahoma-Salem Road
 DuBois, Pennsylvania 15801

Phone 814-375-9600
 Fax 814-375-0718
 E-Mail DRaybuck@ICPUSA.net

From: LarrySalon@aol.com [<mailto:LarrySalon@aol.com>]
Sent: Monday, March 27, 2006 1:49 PM
To: Dennis Raybuck; Luke Sicard; george@mpeconsulting.com
Cc: rycolewelding@verizon.net
Subject: letter

Denny,

Thanks for quick reply. We do not give out drawings of our equipment for obvious reasons, they can be copied etc. And George knew that. Everyone in our industry does that, its very typical. And as a side note which is very important, the bin dumpers were only quoted for 3000 pounds. We did talk to Duff Norton in detail and they agree with us that this will work, we are re-calculating through an independent again, to insure we calculated correctly on loading. We are ready to start this week, but I feel we need to get a listing (contract) clearly defining what you expect, and we expect in return. We have sent emails back and forth, and I know you understand the importance of a contract, so I would feel better, and my subs would also, knowing exactly what is being done and expected. I have replied to your list with what I have planned to do, and if you agree with this, then that is what we will start on this week. You state this has to be done to your satisfaction, we will be pleased to do whatever you desire, even above and beyond the quoted job as we noted in our proposal. I also would like you to define the person who will verify the machinery, as we have made numerous trips with no one available, wasting our time and money, and it appears everything that Luke and other employees approved is not to your liking. Please identify an individual(s) that we can work with that will commission this equipment as meeting the above referenced list of items we are putting together for additional work. This should leave no confusion or he said, she said later on.

I am looking forward to working on this asap..please advise and email me the listing, or your approval of my previous email plan, with any exceptions noted.

Monday, April 17, 2006 America Online: LarrySalon

Bobbi

From: LarrySalon@aol.com
Sent: Monday, April 24, 2006 3:19 PM
To: draybuck@icpglobal.net
Cc: hopkinslaw@adelphia.net
Subject: letter

Denny,

I have received your email. I cannot agree to those ideas. We have built these units to the quoted specifications, and to your employee's and representatives' decisions and verbal comments. They viewed our equipment before ordering and also viewed and accepted the equipment.

We have a right to cure any problems. We stand behind our units. The actuator company is prepared to fly here from Europe to review the units. The units may have been permanently damaged from your people's mis-use and overloading. Maybe not. If we need to fix something done by your people, or because it was not specified properly, then we will be pleased to do it as a change order and expect compensation for that work.

I sent you a plan on March 27th. I will stand by that plan, but I want a contact so we have no further disputes, as well as a designated "point" person from your facility to approve these units. We are ready to accept the first bin dumper back with the contract when it is ready, and we will begin work on the cheese line when the contract is finalized as well.

Denny, I think all parties want and need to get these machines to a point where everyone is pleased, without any further un-pleasantries. Lets work towards that with the contract stated above.

Please feel free to contact my attorney, Mr. David Hopkins at 814-375-0300 if you wish to have him assist in the contract.

I look forward to resolving the difficulties and moving forward.

Freshtec Int'l, LLC
Larry Salone
PO Box 585
DuBois, PA., 15801
ph: 814-375-0700
fax: 814-375-0707

4/28/2006

Subj: **Answer**
Date: 4/12/2006 12:50:56 P.M. Pacific Daylight Time
From: draybuck@icpglobal.net
To: LarrySalon@aol.com
CC: asimpson@giuseppesfinerfoods.com, lsicard@giuseppesfinerfoods.com,
george@mpeconsulting.com, kmitchell@icpusa.net, GTeufel@Schnader.com

Larry:

I need to have your decision so that we can proceed. Delaying at this point would only increase our claim as it is holding up production and I will not be willing for very long to accept the deal I spoke about last week without asking for additional compensation. At this time I have two licensed engineers that are willing to testify that the equipment will not perform the function required and they tell me we can have as many more as necessary testify to the same thing since it is apparent whenever we tried to use the bin dumpers. Let me know by Friday.

Best regards,

Dennis V. Raybuck
President
Giuseppe's Finer Foods
Oklahoma-Salem Road
DuBois, Pennsylvania 15801

Phone 814-375-9600
Fax 814-375-0718
E-Mail DRaybuck@Giuseppesfinerfoods.com

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
(CIVIL DIVISION)

GIUSEPPE'S FINER FOODS, INC., and
GORTECH GLOBAL FABRICATION,
LLC,

Plaintiffs

vs.

No. 06-1633 C.D.

FRESHTEC INTERNATIONAL, LLC,
INDUSTRIAL MACHINERY
AUTOMATION AND CONTROLS, LLC,
and LARRY SALONE,


Defendants

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of Answer to Plaintiffs' First Set of Interrogatories and Request for Production of Documents to FreshTec International, LLC, was forwarded by first class mail, postage prepaid, on the 9th day of November, 2007 to all counsel of record, addressed as follows:

Gregory H. Teufel, Esquire
Schnader Harrison Segal & Lewis LLP
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222-3010

Christopher E. Mohny, Esquire
25 East Park Avenue, Suite 6
DuBois, PA 15801


David J. Hopkins, Esquire
Attorney for FreshTec International, LLC

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GIUSEPPE'S FINER FOODS, INC.,)
GORTECH GLOBAL FABRICATION, LLC,)

CIVIL DIVISION

Plaintiffs,

NO. 06-1633-C.D.

vs.

FRESHTEC INTERNATIONAL, LLC,
INDUSTRIAL MACHINERY
AUTOMATION AND CONTROLS, LLC,
and LARRY SALONE,

**PLAINTIFFS' FIRST SET OF
INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF
DOCUMENTS TO FRESHTEC
INTERNATIONAL, LLC**

Defendants.

Filed on behalf of Plaintiffs

Counsel of Record for this Party:

Gregory H. Teufel
Pa. Id. No. 73062
Sarah B. Heineman
Pa. Id. No. 91040
SCHNADER HARRISON SEGAL & LEWIS
LLP
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222-3010
(412) 577-5200 (telephone)
(412) 765-3858 (facsimile)

Christopher E. Mohnery, Esquire
Pa. Id. 63494
25 East Park Avenue, Suite 6
DuBois, PA 15801
(814) 375-1044

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GIUSEPPE'S FINER FOODS, INC., CIVIL DIVISION
GORTECH GLOBAL FABRICATION, LLC,

Plaintiffs, No. 06-1633- C.D.

vs.

FRESHTEC INTERNATIONAL, LLC,
INDUSTRIAL MACHINERY
AUTOMATION AND CONTROLS, LLC,
and LARRY SALONE,

Defendants.

**PLAINTIFFS' FIRST SET OF INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF DOCUMENTS
TO FRESHTEC INTERNATIONAL, LLC**

NOW COMES Plaintiffs , Giuseppe's Finer Foods, Inc. and Gortech Global Fabrication, LLC, by and through their undersigned attorneys, hereby serves the following First Set of Interrogatories and Requests for Production of Documents directed to Freshtec International, LLC ("Freshtec") and demands that Freshtec serve full and complete answers, under oath, within thirty (30) days from the date of service hereof, in accordance with Rules 4006 and 4009.12 of the Pennsylvania Rules of Civil Procedure.:

I. INSTRUCTIONS

A. Supplement your responses to these interrogatories and requests in accordance with the Pennsylvania Rules of Civil Procedure.

B. Where facts set forth in any answer or portion thereof are supplied upon information and belief rather than actual knowledge, the answer should so state and specifically describe or identify the source of such information and belief. If you cannot answer an Interrogatory in full after exercising due diligence to secure the information so requested, so state and answer such Interrogatory to the fullest extent possible, specifying the exact reason for your inability to answer the remainder and stating whatever information or knowledge you have concerning the unanswered portion.

C. Should you claim that a privilege or immunity entitles you to withhold any documents, as to each such document: (a) state the date the document was prepared; (b) identify all persons who have seen or been provided a copy of the document; (c) provide a brief description of the nature of the document; and (d) describe the basis for your assertion that a claim of privilege or immunity entitles you to withhold the document.

D. If any document that is or may be responsive to these requests has been destroyed or discarded, that document is to be identified by stating (i) any addressor and addressee; (ii) whether there are any redacted or partial copies or transcriptions; (iii) the document's date, subject matter, number of pages and attachments or appendices; (iv) all persons to whom the document was distributed, shown or explained; (v) its date of destruction or discard, manner of destruction or discard, and the reason for destruction or discard; and, (vi) the person(s) authorizing and/or carrying out such destruction or discard.

II. DEFINITIONS

A. "Identify" as applied to a person means to state the following:

1. Full name;
2. Title, if any;

3. Present home address; and
4. Present business address.

B. "Identify," when used in reference to a document, requires you to state the date, the author (or, if different, the signer or signers), the addressee, and the type of document (e.g., letter, memorandum, telegram, chart, etc.) or to attach an accurate copy of the document to your answer.

C. "Person" means any individual, firm, association, partnership, corporation, trustee or other entity and also, where relevant, the persons representing or acting for such "person."

D. "Freshtec" means Defendant Freshtec International LLC its predecessors, successors, subsidiaries, past or present employees, agents, representatives, or attorneys, and any person who has or is acting or purporting to act on its behalf for any purpose whatsoever.

E. "Larry Salone" refers to defendant Larry Salone.

F. "You" or "Your" means Defendant Freshtec.

G. "Industrial Machinery Automation and Controls, LLC or IMAC" means Defendant Industrial Machinery Automation and Controls, LLC, past or present employees, agents, representatives, or attorneys, and any person who has or is acting or purporting to act on its behalf for any purpose whatsoever.

H. "Communication" or "communications" as used herein includes, without limitation, letters and written communications of every kind and description, emails, faxes, and any oral statements, conversations, discussions and conferences.

I. "Document" or "documents" as used herein includes, without limitation, letters, memoranda, notes, statements, writings, drawings, graphs, charts, photographs, electronically

created data, and any other compilations of data from which information can be obtained, translated, if necessary, through detection or recovery devices into readily usable form.

J. The "Paste Bin Dumper Equipment" means the paste bin equipment and parts ordered by Giuseppe's in the May 5, 2005 Purchase Order No. 10292 attached to the Complaint as Exhibit "C."

K. The "Cheese Dumper Equipment" means the cheese dumper and parts ordered by Giuseppe's in July 26, 2005 Purchase Order No. 50012 attached to the Complaint as Exhibit "F."

III. INTERROGATORIES

1. State the correct legal name of your organization and state any other names that your organization uses or has used to identify itself, regardless of whether such names are registered with any official, but, if registered, provide the date and place of registration.

ANSWER:

2. Identify:

- (a) when Freshtec was created;
- (b) what type of corporation it is;
- (c) who are the officers of Freshtec;
- (d) who are the members or other owners of Freshtec;
- (e) where Freshtec's principle place of business is located; and
- (f) identify any documents that concern, refer, or relate to these answers.

ANSWER:

3. Identify any subsidiaries, divisions, or parent corporations of Freshtec and explain each such entities relationship to Freshtec.

ANSWER:

4. Identify by name, address, corporate position and years of corporate employment with the defendant of all persons who aided in gathering information for answering these Interrogatories.

ANSWER:

5. Describe the nature of Freshtec's business.

ANSWER:

6. Identify and itemize all capital contributions to Freshtec from its inception to the present including:
- (a) who or what entity contributed;
 - (b) how much;
 - (c) when; and
 - (d) identify any documents that concern, refer, or relate to these answers.

ANSWER:

7. Identify by name, address, and position as to who maintains the accounting records for Freshtec.

ANSWER:

8. Identify the person or person(s) that performed, supervised, conceived or otherwise participated in the designing of the Paste Bin Dumper Equipment.

ANSWER:

9. Identify each of your employees or agents involved in the negotiation, testing, manufacture and sale of the Paste Bin Dumper Equipment to Plaintiffs, and describe the role of each person identified.

ANSWER:

10. Identify the person or person(s) that performed, supervised, conceived or otherwise participated in the designing of the Paste Bin Dumper Equipment.

ANSWER:

11. Identify each of your employees or agents involved in the negotiation, testing, manufacture and sale of the Cheese Dumper Equipment to Plaintiffs, and describe the role of each person identified.

ANSWER:

12. Identify all past experience(s), if any, in designing or manufacturing Paste Bin Dumper Equipment or similar equipment and identify all documentation that relates, concerns, or refers to your answer.

ANSWER:

13. Identify all past experience(s), if any, in designing or manufacturing Cheese Dumper Equipment or similar equipment and identify all documentation that relates, concerns, or refers to your answer.

ANSWER:

14. For any and all communications between you and Plaintiffs, please identify as to each:

- (a) The participants involved;
- (b) How the communication took place (in person, by telephone, *etc.*);
- (c) The date of the communication;
- (d) Whether any documents were exchanged during that communication;
- (e) Any documents memorializing the communication; and
- (f) Describe what was discussed in the communication.

ANSWER:

15. Has Freshtec considered filing a petition for bankruptcy under Chapter 7 or Chapter 11 of the U.S. Code? If so, please identify when and why.

ANSWER:

17. With respect to the \$31, 000.00 paid to Freshtec on or about August 8, 2005, please identify:
- (a) the institution where the money was deposited;
 - (b) the account number;
 - (c) who has access to the account; and
 - (d) identify all account statements of the bank account from April 2005-present.

ANSWER:

18. With respect to the \$63,180.00 paid to Freshtec on or about August 17, 2005, please identify:
- (a) the institution where the money was deposited;
 - (b) the account number;
 - (c) who has access to the account; and
 - (d) identify all account statements of the bank account from April 2005-present.

ANSWER:

19. With respect to the \$1,650.00 paid to Freshtec on or October 7, 2005, please identify:
- (a) the institution where the money was deposited;
 - (b) the account number;
 - (c) who has access to the account; and
 - (d) identify all account statements of the bank account from April 2005-present.

ANSWER:

20. With respect to the \$40,000.00 paid to Freshtec on or about December 2, 2005, please identify:
- (a) the institution where the money was deposited;
 - (b) the account number;
 - (c) who has access to the account; and
 - (d) identify all account statements of the bank account from April 2005-present.

ANSWER:

21. With respect to the \$500.00 paid to Freshtec on or about December 5, 2005, please identify:
- (a) the institution where the money was deposited;
 - (b) the account number;
 - (c) who has access to the account; and
 - (d) identify all account statements of the bank account from April 2005-present.

ANSWER:

22. State whether you have or had insurance coverage applicable to the harm alleged in this case. If so, please provide the following information:
- (a) the name of the insurance carrier(s);
 - (b) the policy number(s);
 - (c) the applicable policy dates;
 - (d) whether any question concerning coverage has been raised by the carrier;
 - (e) kindly attach a copy of the declaration page(s) of your policy(ies) to your responses to these Interrogatories.

ANSWER:

23. State any established policies and/or procedures you have for designing or manufacturing equipment such as the Paste Bin Dumper Equipment and the Cheese Dumper Equipment, and set forth the dates during which such policies and procedures were in effect. If the policies or procedures have been reduced to writing, provide copies of those documents and set forth the date each such document was prepared.

ANSWER:

24. Identify each person you intend to call to testify at trial as an expert witness. For each such expert, identify:
- (a) his or her name and present address;
 - (b) his or her educational background, including all educational institutions attended, dates of attendance, and degrees, if any, received and any other specialized training in his or her field, including the types of training received, the institution at which the training was received, and the dates of training;
 - (c) each professional, trade, academic or other organization of which he or she is a member, including in your response the name of the organization, the dates of membership, and a description of each office held;
 - (d) each book, paper, article, or other writing or publication which he or she authored or co-authored, including the title, subject matter, name and address of publisher, date of publication, and co-authors, if any;
 - (e) his or her work experience, including the name and address of each employer, dates of employment, and a description of each position held;
 - (f) all other judicial or administrative actions, hearings, proceedings, or arbitrations (identified by year, court or other forum, parties, docket number or other identifying number, and dates of testimony) in which he or she has testified in deposition or trial, the substance of any such testimony, and the party for whom the testimony was given;
 - (g) the substance and subject matter of the facts and opinions about which the expert is expected to testify and the grounds for each opinion including the facts upon which each opinion is based;
 - (h) all documents or document summaries he or she has been shown, or that have been made available for his or her review in connection with his or her expected testimony in this litigation;
 - (i) anything else shown to or reviewed by each expert in connection with his or her testimony in this proceeding;
 - (j) all reports, including drafts and work papers, whether preliminary or final, prepared by or for each expert in connection with his or her expected testimony in this litigation;

- (k) all instructions given by you in connection with each expert's expected testimony in this litigation;
- (l) each person with whom each expert spoke in connection with the expert's expected testimony in this litigation, and the substance of the discussions;
- (m) all persons assisting each expert in the preparation of his or her expected testimony in this litigation, including the type of assistance given, and the dates during which such assistance was given;
- (n) the compensation already paid by you or anyone else to each expert for reasons related to this litigation; and
- (o) the compensation expected to be paid to each expert, the times when payment will become due, and any conditions that could affect any expert's compensation related to this litigation.

ANSWER:

25. Identify each person you intend to call to testify at trial as a fact witness and for each such person describe the substance of his or her expected testimony.

ANSWER:

26. Identify all locations where you performed any of the work for either the Paste Bin Dumper or Cheese Dumper, and, for each location listed, describe the work performed at that location.

ANSWER:

27. Identify all testing performed on the Cheese Dumper Equipment, and, for each test identified, identify:
- (a) when the test was performed;
 - (b) who conducted the test;
 - (c) any witnesses to the test;
 - (d) the results of the test;
 - (e) why the test was conducted; and
 - (f) any documents related to the test(s).

ANSWER:

28. Identify all testing performed on the Paste Bin Dumper Equipment, and, for each test identified, identify:
- (a) when the test was performed;
 - (b) who conducted the test;
 - (c) any witnesses to the test;
 - (d) the results of the test;
 - (e) why the test was conducted; and
 - (f) any documents related to the test(s).

ANSWER:

29. Identify all individuals who have knowledge related to:
- (a) the Cheese Dumper Equipment;
 - (b) the Purchase Order No. 50012;
 - (c) the performance of the Cheese Dumper Equipment;
 - (d) any testing of the Cheese Dumper Equipment; and
 - (e) the allegations in the Complaint or any of the other pleadings filed in this lawsuit.

ANSWER:

30. Identify all individuals who have knowledge related to:
- (a) the Paste Bin Dumper Equipment;
 - (b) the Purchase Order No. 10292;
 - (c) the performance of the Paste Bin Dumper Equipment; and
 - (d) any testing of the Paste Bin Dumper Equipment.

ANSWER:

32. Identify all documents related to:

- (a) the Paste Bin Dumper Equipment;
- (b) the Purchase Order No. 10292;
- (c) the performance of the Paste Bin Dumper Equipment; and
- (d) any testing of the Paste Bin Dumper Equipment

ANSWER:

33. If you contend, as in paragraph 1 of your New Matter, that Plaintiffs' claims fail because of consensual changes to the purchase orders and contract, then

(a) set forth:

1. specifically what were the consensual changes;
2. who authorized them for Freshtec and Plaintiffs;
3. when were these alleged consensual changes;
4. identify specifically the documents upon which you rely for this contention and identify all documents relating to this contention; and
5. identify every person who has knowledge of the facts upon which you rely for this contention.

ANSWER:

34. If you contend, as in paragraph 5 of your New Matter, Plaintiffs' claims are barred or reduced by Plaintiffs' failure to mitigate damages, then
- (a) set forth:
 - 1. specifically each item of damages that you contend could have reasonably been avoided;
 - 2. for each item of damages that you contend could have been avoided, the specific actions that you contend that the Plaintiffs should have taken, and the specific dates upon which you contend that the Plaintiffs should have taken such actions, to avoid such item of damages; and
 - 3. the specific factual basis on which you contend that the Plaintiffs should have known to take each such mitigating action;
 - (b) identify specifically the documents upon which you rely for this contention and identify all documents relating to this contention; and
 - (c) identify every person who has knowledge of the facts upon which you rely for this contention.

ANSWER:

35. If you contend, as in paragraph 10 of your New Matter, Plaintiffs' claims must fail because Plaintiffs unilaterally changed the terms and conditions of the products and equipment, then

(a) set forth:

1. specifically what were the unilateral changes;
2. who from the Plaintiffs made these unilateral changes; and
3. when were these alleged unilateral changes;

ANSWER:

36. With respect to your counterclaim, set forth:

- (a) all facts on which you rely to support your claim; and
- (b) all documents that concern, refer, or relate to this answer.

ANSWER:

37. Identify all asset(s) owned in whole or in part by Freshtec since January 1, 2005.

For each asset set forth:

- (a) a description of the asset;
- (b) location of the asset;
- (c) value of the asset; and
- (d) percentage of such assets owned by Freshtec.

ANSWER:

38. Identify all of Freshtec's indebtedness since January 1, 2005. For each debt or loan set forth:

- (a) amount of the debt or loan;
- (b) terms of the debt or loan;
- (c) date of the debt or loan; and
- (d) identify each party to the debt or loan.

ANSWER:

REQUESTS FOR DOCUMENTS

1. Produce all documents that you identified or reviewed for purposes of answering the preceding Interrogatories.

Response:

2. Produce all documents relating to the design and manufacturing of the Cheese Dumper Equipment and Paste Bin Dumper Equipment.

Response:

3. Produce all documents relating to any inspections, examinations, maintenance or tests performed on the Cheese Dumper Equipment and Paste Bin Dumper Equipment.

Response:

4. Produce all audited and unaudited financial statements for Freshtec for any time period since January 1, 2004.

Response:

Respectfully submitted,



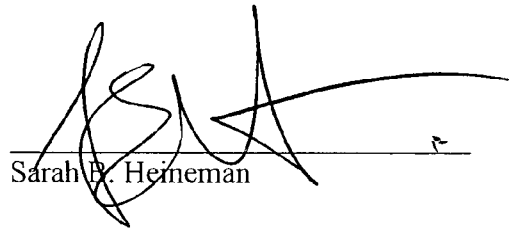
Gregory H. Deufel
Sarah B. Heineman
Christopher E. Mohnney

DATED: June 7, 2007

CERTIFICATE OF SERVICE

I, Sarah B. Heineman, hereby certify that I served a true and correct copy of the foregoing **Plaintiffs' First Set of Interrogatories and Requests for Production of Documents to Freshtec International, LLC**, was served via U.S. Mail, First Class, postage pre-paid, this 7th day of June, 2007, upon the following:

David J. Hopkins, Esq.
Hopkins Heltzel LLP
100 Meadow Lane, Suite 5
DuBois, PA 15801



Sarah B. Heineman

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
(CIVIL DIVISION)

GIUSEPPE'S FINER FOODS, INC., and
GORTECH GLOBAL FABRICATION,
LLC,

Plaintiffs

vs.

FRESHTEC INTERNATIONAL, LLC,
INDUSTRIAL MACHINERY
AUTOMATION AND CONTROLS, LLC,
and LARRY SALONE,

Defendants

No. 06-1633 C.D.

Type of Pleading: Answer to Plaintiffs'
First Set of Interrogatories and Request
for Production of Documents to Industrial
Automation and Controls, LLC

Counsel of Record for this party:

HOPKINS HELTZEL LLP

DAVID J. HOPKINS, Esquire

Attorney at Law

Supreme Court No. 42519

LEA ANN HELTZEL, Esquire

Attorney at Law

Supreme Court No. 83998

DuBois, Pennsylvania 15801

(814) 375-0300

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
(CIVIL DIVISION)

GIUSEPPE'S FINER FOODS, INC., and	:	
GORTECH GLOBAL FABRICATION,	:	
LLC,	:	
Plaintiffs	:	
	:	
vs.	:	No. 06-1633 C.D.
	:	
FRESHTEC INTERNATIONAL, LLC,	:	
INDUSTRIAL MACHINERY	:	
AUTOMATION AND CONTROLS, LLC,	:	
and LARRY SALONE,	:	
Defendants	:	

ANSWER TO PLAINTIFFS' FIRST SET OF INTERROGATORIES
AND REQUEST FOR PRODUCTION OF DOCUMENTS
TO INDUSTRIAL AUTOMATION AND CONTROLS, LLC

AND NOW, comes Defendant, Industrial Automation and Controls, LLC, by and through its attorneys, Hopkins Heltzel LLP, and files an Answer to Plaintiffs' First Set of Interrogatories and Request for Production of Document to Industrial Automation and Controls, LLC as follows:

1. Industrial Machinery Automation and Controls, LLC.
2. (a) February 14, 2005
(b) Limited Liability Company.
(c) Lawrence J. Salone.
(d) Lawrence J. Salone – sole member.
(e) 602-09 West DuBois Avenue, DuBois, Pennsylvania 15801
(f) See Secretary of State.
3. N/A

4. Lawrence J. Salone
5. Sale of Industrial Equipment.
6. Defendant has asked its accountant to supply the information requested in this Interrogatory and same will be supplied shortly.
7. Lawrence J. Salone, 602-09 West DuBois Avenue, DuBois, Pennsylvania 15801.
8. Lawrence J. Salone, David Knox, Martin A. Casilio, Duff Norton Representative, Luke Sicard, George, Tierney Wheaton, Dennis Raybuck.
9. Martin A. Casilio, Lawrence J. Salone and various Rycole Welding Innovations, Inc. employees.
10. Lawrence J. Salone, David Knox, Martin A. Casilio, Duff Norton Representative, Luke Sicard, George, Tierney Wheaton, Dennis Raybuck.
11. Martin A. Casilio, Lawrence J. Salone and various Rycole Welding Innovations, Inc. employees.
12. Designed and supplied multiple bin dumpers.
13. Designed multiple conveying equipment.
14. (a) George, Tierney Wheaton, Luke Sicard and Dennis Raybuck.
(b) In person and by telephone. Tierney Wheaton and Luke Sicard went to Rycole to review and inspect bin dumpers and conveying lines and to customer of FreshTec.
(c) Numerous communications.
(d) The quote.
(e) Quote.
(f) See quote.
15. Industrial Automation and Controls, LLC objects to Interrogatory No. 15 because it is not relevant nor will it lead to the discovery of relevant information.
16. Timberland Federal Credit Union, Beaver Drive, DuBois, Pennsylvania.
17. Timberland Federal Credit Union, Beaver Drive, DuBois, Pennsylvania.

18. Timberland Federal Credit Union, Beaver Drive, DuBois, Pennsylvania.
19. Timberland Federal Credit Union, Beaver Drive, DuBois, Pennsylvania.
20. Timberland Federal Credit Union, Beaver Drive, DuBois, Pennsylvania.
21. Timberland Federal Credit Union, Beaver Drive, DuBois, Pennsylvania.
22. No.
23. Manufacturer of pace bin dumper equipment and cheese dumper equipment is custom designed based upon the specifications of buyers.
24. Defendant Industrial Automation and Controls, LLC has not yet identified an expert witness. When same is identified, FreshTec will update this Interrogatory.
25. Martin Casilio, Todd Gordon, Tierney Wheaton, Luke Sicard, George, David Knox, Dennis Raybuck, Alan Simpson, Jeremy Carrier, Bill Marasco and John Pazur.
26. 602-09 West DuBois Avenue, DuBois, Pennsylvania or at the Giuseppe site.
27.
 - (a) Multiple tests.
 - (b) Martin A. Casilio.
 - (c) Martin A. Casilio.
 - (d) The cheese dumper equipment worked.
 - (e) To be certain the cheese dumper equipment worked.
 - (f) None.
28.
 - (a) Multiple tests.
 - (b) Martin A. Casilio.
 - (c) Martin A. Casilio.
 - (d) The paste bin dumper equipment worked.
 - (e) To be certain the paste bin dumper equipment worked.
 - (f) None.

29. Martin Casilio, Todd Gordon, Tierney Wheaton, Luke Sicard, George, David Knox, Dennis Raybuck, Alan Simpson, Jeremy Carrier, Bill Marasco and John Pazur.
30. Martin Casilio, Todd Gordon, Tierney Wheaton, Luke Sicard, George, David Knox, Dennis Raybuck, Alan Simpson, Jeremy Carrier, Bill Marasco and John Pazur.
31. Industrial Automation and Controls, LLC objects to the over broad nature of this question.
32. Industrial Automation and Controls, LLC objects to the over broad nature of this question.
33. Various representatives of Gortech and Giuseppe's reviewed the design of the bin dumpers and cheese dumper. They worked with Lawrence Salone and Martin Casilio. Lawrence J. Salone, David Knox, Martin A. Casilio, Duff Norton Representative, Luke, George, Tierney Wheaton and Dennis Raybuck.
34. Both the bin dumper and cheese dumper generally worked as specified and designed. If there were minor modifications, Plaintiffs could have easily adjusted same. For example, in the cheese dumper line, one table needed to be raised slightly. Plaintiffs have replaced all of the bin dumpers with completely different technology that was not part of the specifications or quote. Lawrence J. Salone, David Knox, Martin A. Casilio, Duff Norton Representative, Luke Sicard, George, Tierney Wheaton, Dennis Raybuck. Martin Casilio, Todd Gordon, Tierney Wheaton, Luke Sicard, George, David Knox, Dennis Raybuck, Alan Simpson, Jeremy Carrier, Bill Marasco and John Pazur.
35. Both the bin dumper and cheese dumper generally worked as specified and designed. If there were minor modifications, Plaintiffs could have easily adjusted same. For example, in the cheese dumper line, one table needed to be raised slightly. Plaintiffs have replaced all of the bin dumpers with completely different technology that was not part of the specifications or quote. Lawrence J. Salone, David Knox, Martin A. Casilio, Duff Norton Representative, Luke Sicard, George, Tierney Wheaton, Dennis Raybuck. Martin Casilio, Todd Gordon, Tierney Wheaton, Luke Sicard, George, David Knox, Dennis Raybuck, Alan Simpson, Jeremy Carrier, Bill Marasco and John Pazur.
36. FreshTec and Industrial Automation and Controls, LLC supplied the bin dumpers and cheese dumper line and has not been paid pursuant to its quote.

37. Industrial Automation and Controls, LLC objects to Interrogatory 37 inasmuch as the Interrogatory is not relevant nor will it lead to the discovery of relevant information.
38. Industrial Automation and Controls, Inc. objects to Interrogatory 38 inasmuch as the Interrogatory is not relevant nor will it lead to the discovery of relevant information.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
(CIVIL DIVISION)

GIUSEPPE'S FINER FOODS, INC., and
GORTECH GLOBAL FABRICATION,
LLC,

Plaintiffs

vs.

No. 06-1633 C.D.

FRESHTEC INTERNATIONAL, LLC,
INDUSTRIAL MACHINERY
AUTOMATION AND CONTROLS, LLC,
and LARRY SALONE,

Defendants

ANSWER TO REQUESTS FOR DOCUMENTS

1. See attached.
2. See attached.
3. See attached.
4. Objections. Request for Production of Documents No. 4 is not relevant nor will it lead to relevant information.

Respectfully submitted,



David J. Hopkins, Esquire
Supreme Court No. 42519
Attorney for Industrial Automation
and Controls, LLC

Subj: RE: letter
 Date: 4/4/2006 2:41:11 P.M. Pacific Daylight Time
 From: draybuck@icpglobal.net
 To: LarrySalon@aol.com

Larry:

I am sorry to have taken so long to answer but I was unavailable last week to do so. I am sorry that we do not seem to communicate well. It is definitely not typical for manufacturers of customized equipment to withhold detailed drawings of the equipment. As a matter of fact, it is the policy of each and every manufacturer we have ever dealt with over the past 35 years to not only provide the detailed blueprints of any customized equipment but also to get us to sign off on it prior to it being manufactured. In any case your equipment does not and in our opinion will not perform the specified tasks for which it was purchased. In order to stay out of the legal system, I suggest that you take back the bin dumpers and the cheese dumper and conveyor and refund our money to us. We will then release you from responsibility and have the bin dumpers and cheese equipment built by another manufacturer. If this is acceptable, please have a bank check for \$189,805 (which is \$166,360 for the bin dumpers, \$28,000 for the cheese dumper and \$24,000 for the cheese conveyor or \$218,360 total less the \$28,555 that is still owed to you) when you are ready to pick-up the equipment. While this situation is not optimum for Giuseppe's and is likely not so for FreshTec it is a way to get out of the problem without a legal argument and without any disparaging remarks to other customers or questioners by either of us in the heat of a legal battle. Let me know within the next seven days so as not to prolong our mutual problem.

Best regards,

Dennis V. Raybuck
 President
 International Custom Products, Inc.
 Oklahoma-Salem Road
 DuBois, Pennsylvania 15801

Phone 814-375-9600
 Fax 814-375-0718
 E-Mail DRaybuck@ICPUSA.net

From: LarrySalon@aol.com [<mailto:LarrySalon@aol.com>]
Sent: Monday, March 27, 2006 1:49 PM
To: Dennis Raybuck; Luke Sicard; george@mpeconsulting.com
Cc: rycolewelding@verizon.net
Subject: letter

Denny,

Thanks for quick reply. We do not give out drawings of our equipment for obvious reasons, they can be copied etc. And George knew that. Everyone in our industry does that, its very typical. And as a side note which is very important, the bin dumpers were only quoted for 3000 pounds. We did talk to Duff Norton in detail and they agree with us that this will work, we are re-calculating through an independent again, to insure we calculated correctly on loading. We are ready to start this week, but I feel we need to get a listing (contract) clearly defining what you expect, and we expect in return. We have sent emails back and forth, and I know you understand the importance of a contract, so I would feel better, and my subs would also, knowing exactly what is being done and expected. I have replied to your list with what I have planned to do, and if you agree with this, then that is what we will start on this week. You state this has to be done to your satisfaction, we will be pleased to do whatever you desire, even above and beyond the quoted job as we noted in our proposal.

I also would like you to define the person who will verify the machinery, as we have made numerous trips with no one available, wasting our time and money, and it appears everything that Luke and other employees approved is not to your liking. Please identify an individual(s) that we can work with that will commission this equipment as meeting the above referenced list of items we are putting together for additional work. This should leave no confusion or he said, she said later on.

I am looking forward to working on this asap..please advise and email me the listing, or your approval of my previous email plan, with any exceptions noted.

Monday, April 17, 2006 America Online: LarrySalon

Bobbi

From: LarrySalon@aol.com
Sent: Monday, April 24, 2006 3:19 PM
To: draybuck@icpglobal.net
Cc: hopkinslaw@adelphia.net
Subject: letter

Denny,

I have received your email. I cannot agree to those ideas. We have built these units to the quoted specifications, and to your employee's and representatives' decisions and verbal comments. They viewed our equipment before ordering and also viewed and accepted the equipment.

We have a right to cure any problems. We stand behind our units. The actuator company is prepared to fly here from Europe to review the units. The units may have been permanently damaged from your people's mis-use and overloading. Maybe not. If we need to fix something done by your people, or because it was not specified properly, then we will be pleased to do it as a change order and expect compensation for that work.

I sent you a plan on March 27th. I will stand by that plan, but I want a contract so we have no further disputes, as well as a designated "point" person from your facility to approve these units. We are ready to accept the first bin dumper back with the contract when it is ready, and we will begin work on the cheese line when the contract is finalized as well.

Denny, I think all parties want and need to get these machines to a point where everyone is pleased, without any further un-pleasantries. Lets work towards that with the contract stated above.

Please feel free to contact my attorney, Mr. David Hopkins at 814-375-0300 if you wish to have him assist in the contract.

I look forward to resolving the difficulties and moving forward.

Freshtec Int'l, LLC
Larry Salone
PO Box 585
DuBois, PA., 15801
ph: 814-375-0700
fax: 814-375-0707

4/28/2006

Subj: **Answer**
Date: 4/12/2006 12:50:56 P.M. Pacific Daylight Time
From: draybuck@icpglobal.net
To: LarrySalon@aol.com
CC: asimpson@giuseppesfinerfoods.com, lsicard@giuseppesfinerfoods.com,
george@mpeconsulting.com, kmitchell@icpusa.net, GTeufel@Schnader.com

Larry:

I need to have your decision so that we can proceed. Delaying at this point would only increase our claim as it is holding up production and I will not be willing for very long to accept the deal I spoke about last week without asking for additional compensation. At this time I have two licensed engineers that are willing to testify that the equipment will not perform the function required and they tell me we can have as many more as necessary testify to the same thing since it is apparent whenever we tried to use the bin dumpers. Let me know by Friday.

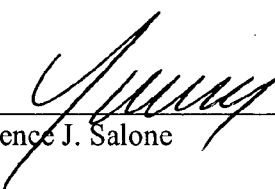
Best regards,

Dennis V. Raybuck
President
Giuseppe's Finer Foods
Oklahoma-Salem Road
DuBois, Pennsylvania 15801

Phone 814-375-9600
Fax 814-375-0718
E-Mail DRaybuck@Giuseppesfinerfoods.com

VERIFICATION

I hereby verify that the statements made in this pleading are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. Section 4904, relating to Unsworn Falsification to Authorities.



Lawrence J. Salone

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
(CIVIL DIVISION)

GIUSEPPE'S FINER FOODS, INC., and
GORTECH GLOBAL FABRICATION,
LLC,

Plaintiffs

vs.

No. 06-1633 C.D.

FRESHTEC INTERNATIONAL, LLC,
INDUSTRIAL MACHINERY
AUTOMATION AND CONTROLS, LLC,
and LARRY SALONE,


Defendants

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of Answer to Plaintiffs' First Set of Interrogatories and Request for Production of Documents to Industrial Automation and Controls, LLC, was forwarded by first class mail, postage prepaid, on the 9th day of November, 2007 to all counsel of record, addressed as follows:

Gregory H. Teufel, Esquire
Schnader Harrison Segal & Lewis LLP
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222-3010

Christopher E. Mohnney, Esquire
25 East Park Avenue, Suite 6
DuBois, PA 15801


David J. Hopkins, Esquire
Attorney for Industrial Automation and
Controls, LLC

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GIUSEPPE'S FINER FOODS, INC.,)	
GORTECH GLOBAL FABRICATION, LLC,	)	CIVIL DIVISION
)	
)	
Plaintiffs,	)	NO. 06-1633-C.D.
)	
vs.)	
	)	PLAINTIFFS' FIRST SET OF
FRESHTEC INTERNATIONAL, LLC,	)	DISCOVERY SERVED UPON
INDUSTRIAL MACHINERY	)	INDUSTRIAL AUTOMATION AND
AUTOMATION AND CONTROLS, LLC,	)	CONTROLS, LLC.
and LARRY SALONE,)	
)	
Defendants.	)	Filed on behalf of Plaintiffs
)	
	)	Counsel of Record for this Party:
)	
	)	Gregory H. Teufel
	)	Pa. Id. No. 73062
	)	Sarah B. Heineman
	)	Pa. Id. No. 91040
	)	SCHNADER HARRISON SEGAL & LEWIS
	)	LLP
	)	Suite 2700, Fifth Avenue Place
	)	120 Fifth Avenue
	)	Pittsburgh, PA 15222-3010
	)	(412) 577-5200 (telephone)
	)	(412) 765-3858 (facsimile)
)	
	)	Christopher E. Mohny, Esquire
	)	Pa. Id. 63494
	)	25 East Park Avenue, Suite 6
	)	DuBois, PA 15801
	)	(814) 375-1044

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GIUSEPPE'S FINER FOODS, INC., CIVIL DIVISION
GORTECH GLOBAL FABRICATION, LLC,

Plaintiffs, No. 06-1633- C.D.

vs.

FRESHTEC INTERNATIONAL, LLC,
INDUSTRIAL MACHINERY
AUTOMATION AND CONTROLS, LLC,
and LARRY SALONE,

Defendants.

**PLAINTIFFS' FIRST SET OF INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF DOCUMENTS
TO INDUSTRIAL MACHINERY AUTOMATION AND CONTROLS, LLC**

NOW COMES Plaintiffs , Giuseppe's Finer Foods, Inc. and Gortech Global Fabrication, LLC, by and through their undersigned attorneys, hereby serves the following First Set of Interrogatories and Requests for Production of Documents directed to Industrial Machinery Automation and Controls("IMAC") and demands that IMAC serve full and complete answers, under oath, within thirty (30) days from the date of service hereof, in accordance with Rules 4006 and 4009.12 of the Pennsylvania Rules of Civil Procedure.:

I. INSTRUCTIONS

A. Supplement your responses to these interrogatories and requests in accordance with the Pennsylvania Rules of Civil Procedure.

B. Where facts set forth in any answer or portion thereof are supplied upon information and belief rather than actual knowledge, the answer should so state and specifically describe or identify the source of such information and belief. If you cannot answer an Interrogatory in full after exercising due diligence to secure the information so requested, so state and answer such Interrogatory to the fullest extent possible, specifying the exact reason for your inability to answer the remainder and stating whatever information or knowledge you have concerning the unanswered portion.

C. Should you claim that a privilege or immunity entitles you to withhold any documents, as to each such document: (a) state the date the document was prepared; (b) identify all persons who have seen or been provided a copy of the document; (c) provide a brief description of the nature of the document; and (d) describe the basis for your assertion that a claim of privilege or immunity entitles you to withhold the document.

D. If any document that is or may be responsive to these requests has been destroyed or discarded, that document is to be identified by stating (i) any addressor and addressee; (ii) whether there are any redacted or partial copies or transcriptions; (iii) the document's date, subject matter, number of pages and attachments or appendices; (iv) all persons to whom the document was distributed, shown or explained; (v) its date of destruction or discard, manner of destruction or discard, and the reason for destruction or discard; and, (vi) the person(s) authorizing and/or carrying out such destruction or discard.

II. DEFINITIONS

A. "Identify" as applied to a person means to state the following:

1. Full name;
2. Title, if any;

3. Present home address; and
4. Present business address.

B. "Identify," when used in reference to a document, requires you to state the date, the author (or, if different, the signer or signers), the addressee, and the type of document (e.g., letter, memorandum, telegram, chart, etc.) or to attach an accurate copy of the document to your answer.

C. "Person" means any individual, firm, association, partnership, corporation, trustee or other entity and also, where relevant, the persons representing or acting for such "person."

D. "Freshtec" means Defendant Freshtec International LLC its predecessors, successors, subsidiaries, past or present employees, agents, representatives, or attorneys, and any person who has or is acting or purporting to act on its behalf for any purpose whatsoever.

E. "Larry Salone" refers to defendant Larry Salone.

F. "You" or "Your" means Defendant IMAC.

G. "Industrial Machinery Automation and Controls, LLC or IMAC" means Defendant Industrial Machinery Automation and Controls, LLC, past or present employees, agents, representatives, or attorneys, and any person who has or is acting or purporting to act on its behalf for any purpose whatsoever.

H. "Communication" or "communications" as used herein includes, without limitation, letters and written communications of every kind and description, emails, faxes, and any oral statements, conversations, discussions and conferences.

I. "Document" or "documents" as used herein includes, without limitation, letters, memoranda, notes, statements, writings, drawings, graphs, charts, photographs, electronically

created data, and any other compilations of data from which information can be obtained, translated, if necessary, through detection or recovery devices into readily usable form.

J. The “Paste Bin Dumper Equipment” means the paste bin equipment and parts ordered by Giuseppe’s in the May 5, 2005 Purchase Order No. 10292 attached to the Complaint as Exhibit “C.”

K. The “Cheese Dumper Equipment” means the cheese dumper and parts ordered by Giuseppe’s in July 26, 2005 Purchase Order No. 50012 attached to the Complaint as Exhibit “F.”

III. INTERROGATORIES

1. State the correct legal name of your organization and state any other names that your organization uses or has used to identify itself, regardless of whether such names are registered with any official, but, if registered, provide the date and place of registration.

ANSWER:

2. Identify:

- (a) when IMAC was created;
- (b) what type of corporation IMAC is;
- (c) who are the officers of IMAC;
- (d) who are the shareholders of IMAC;
- (e) where IMAC's principle place of business is located; and
- (f) identify any documents that concern, refer, or relate to these answers.

ANSWER:

3. Identify any subsidiaries, divisions, or parent corporations of IMAC and explain each such entities relationship to IMAC.

ANSWER:

4. Identify by name, address, corporate position and years of corporate employment with the defendant of all persons who aided in gathering information for answering these Interrogatories.

ANSWER:

5. Describe the nature of IMAC's business.

ANSWER:

Sale of industrial
equipment

6. Identify and itemize all capital contributions to IMAC from its inception to the present including:
- (a) who or what entity contributed;
 - (b) how much;
 - (c) when; and
 - (d) identify any documents that concern, refer, or relate to these answers.

ANSWER:

7. Identify by name, address, and position as to who maintains the accounting records for IMAC.

ANSWER:

8. Identify the person or person(s) that performed, supervised, conceived or otherwise participated in the designing of the Paste Bin Dumper Equipment.

ANSWER:

9. Identify each of your employees or agents involved in the negotiation, testing, manufacture and sale of the Paste Bin Dumper Equipment to Plaintiffs, and describe the role of each person identified.

ANSWER:

10. Identify the person or person(s) that performed, supervised, conceived or otherwise participated in the designing of the Paste Bin Dumper Equipment.

ANSWER:

11. Identify each of your employees or agents involved in the negotiation, testing, manufacture and sale of the Cheese Dumper Equipment to Plaintiffs, and describe the role of each person identified.

ANSWER:

12. Identify all past experience(s), if any, in designing or manufacturing Paste Bin Dumper Equipment or similar equipment and attach all documentation that relates, concerns, or refers to your answer.

ANSWER:

13. Identify all past experience(s), if any, in designing or manufacturing Cheese Dumper Equipment or similar equipment and attach all documentation that relates, concerns, or refers to your answer.

ANSWER:

14. For any and all communications between you and Plaintiffs, please identify as to each:

- (a) The participants involved;
- (b) How the communication took place (in person, by telephone, *etc.*);
- (c) The date of the communication;
- (d) Whether any documents were exchanged during that communication;
- (e) Any documents memorializing the communication; and
- (f) Describe what was discussed in the communication.

ANSWER:

15. Has IMAC considered filing a petition for bankruptcy under Chapter 7 or Chapter 11 of the U.S. Code? If so, please identify when and why.

ANSWER:

16. With respect to the \$83,180.00 paid to IMAC on or about April 11, 2005, please identify:
- (a) the institution where the money was deposited;
 - (b) the account number;
 - (c) who has access to the account; and
 - (d) identify all account statements of the bank account from April 2005-present.

ANSWER:

17. With respect to the \$31, 000.00 paid to IMAC on or about August 8, 2005, please identify:
- (a) the institution where the money was deposited;
 - (b) the account number;
 - (c) who has access to the account; and
 - (d) identify all account statements of the bank account from April 2005-present.

ANSWER:

18. With respect to the \$63,180.00 paid to IMAC on or about August 17, 2005, please identify:
- (a) the institution where the money was deposited;
 - (b) the account number;
 - (c) who has access to the account; and
 - (d) identify all account statements of the bank account from April 2005-present.

ANSWER:

19. With respect to the \$1,650.00 paid to IMAC on or October 7, 2005, please identify:
- (a) the institution where the money was deposited;
 - (b) the account number;
 - (c) who has access to the account; and
 - (d) identify all account statements of the bank account from April 2005-present.

ANSWER:

20. With respect to the \$40,000.00 paid to IMAC on or about December 2, 2005, please identify:
- (a) the institution where the money was deposited;
 - (b) the account number;
 - (c) who has access to the account; and
 - (d) identify all account statements of the bank account from April 2005-present.

ANSWER:

21. With respect to the \$500.00 paid to IMAC on or about December 5, 2005, please identify:
- (a) the institution where the money was deposited;
 - (b) the account number;
 - (c) who has access to the account; and
 - (d) identify all account statements of the bank account from April 2005-present.

ANSWER:

22. State whether you have or had insurance coverage applicable to the harm alleged in this case. If so, please provide the following information:
- (a) the name of the insurance carrier(s);
 - (b) the policy number(s);
 - (c) the applicable policy dates;
 - (d) whether any question concerning coverage has been raised by the carrier;
 - (e) kindly attach a copy of the declaration page(s) of your policy(ies) to your responses to these Interrogatories.

ANSWER:

23. State any established policies and/or procedures you have for designing or manufacturing equipment such as the Paste Bin Dumper Equipment and the Cheese Dumper Equipment, and set forth the dates during which such policies and procedures were in effect. If the policies or procedures have been reduced to writing, provide copies of those documents and set forth the date each such document was prepared.

ANSWER:

24. Identify each person you intend to call to testify at trial as an expert witness. For each such expert, identify:
- (a) his or her name and present address;
 - (b) his or her educational background, including all educational institutions attended, dates of attendance, and degrees, if any, received and any other specialized training in his or her field, including the types of training received, the institution at which the training was received, and the dates of training;
 - (c) each professional, trade, academic or other organization of which he or she is a member, including in your response the name of the organization, the dates of membership, and a description of each office held;
 - (d) each book, paper, article, or other writing or publication which he or she authored or co-authored, including the title, subject matter, name and address of publisher, date of publication, and co-authors, if any;
 - (e) his or her work experience, including the name and address of each employer, dates of employment, and a description of each position held;
 - (f) all other judicial or administrative actions, hearings, proceedings, or arbitrations (identified by year, court or other forum, parties, docket number or other identifying number, and dates of testimony) in which he or she has testified in deposition or trial, the substance of any such testimony, and the party for whom the testimony was given;
 - (g) the substance and subject matter of the facts and opinions about which the expert is expected to testify and the grounds for each opinion including the facts upon which each opinion is based;
 - (h) all documents or document summaries he or she has been shown, or that have been made available for his or her review in connection with his or her expected testimony in this litigation;
 - (i) anything else shown to or reviewed by each expert in connection with his or her testimony in this proceeding;
 - (j) all reports, including drafts and work papers, whether preliminary or final, prepared by or for each expert in connection with his or her expected testimony in this litigation;

- (k) all instructions given by you in connection with each expert's expected testimony in this litigation;
- (l) each person with whom each expert spoke in connection with the expert's expected testimony in this litigation, and the substance of the discussions;
- (m) all persons assisting each expert in the preparation of his or her expected testimony in this litigation, including the type of assistance given, and the dates during which such assistance was given;
- (n) the compensation already paid by you or anyone else to each expert for reasons related to this litigation; and
- (o) the compensation expected to be paid to each expert, the times when payment will become due, and any conditions that could affect any expert's compensation related to this litigation.

ANSWER:

25. Identify each person you intend to call to testify at trial as a fact witness and for each such person describe the substance of his or her expected testimony.

ANSWER:

26. Identify all locations where you performed any of the work for either the Paste Bin Dumper or Cheese Dumper, and, for each location listed, describe the work performed at that location.

ANSWER:

27. Identify all testing performed on the Cheese Dumper Equipment, and, for each test identified, identify:
- (a) when the test was performed;
 - (b) who conducted the test;
 - (c) any witnesses to the test;
 - (d) the results of the test;
 - (e) why the test was conducted; and
 - (f) any documents related to the test(s).

ANSWER:

28. Identify all testing performed on the Paste Bin Dumper Equipment, and, for each test identified, identify:
- (a) when the test was performed;
 - (b) who conducted the test;
 - (c) any witnesses to the test;
 - (d) the results of the test;
 - (e) why the test was conducted; and
 - (f) any documents related to the test(s).

ANSWER:

29. Identify all individuals who have knowledge related to:
- (a) the Cheese Dumper Equipment;
 - (b) the Purchase Order No. 50012;
 - (c) the performance of the Cheese Dumper Equipment;
 - (d) any testing of the Cheese Dumper Equipment; and
 - (e) the allegations in the Complaint or any of the other pleadings filed in this lawsuit.

ANSWER:

30. Identify all individuals who have knowledge related to:
- (a) the Paste Bin Dumper Equipment;
 - (b) the Purchase Order No. 10292;
 - (c) the performance of the Paste Bin Dumper Equipment; and
 - (d) any testing of the Paste Bin Dumper Equipment.

ANSWER:

31. Identify all documents related to:
- (a) the Cheese Dumper Equipment;
 - (b) the Purchase Order No. 50012;
 - (c) the performance of the Cheese Dumper Equipment;
 - (d) any testing of the Cheese Dumper Equipment; and
 - (e) the allegations in the Complaint or any of the other pleadings filed in this lawsuit.

ANSWER:

32. Identify all documents related to:

- (a) the Paste Bin Dumper Equipment;
- (b) the Purchase Order No. 10292;
- (c) the performance of the Paste Bin Dumper Equipment; and
- (d) any testing of the Paste Bin Dumper Equipment

ANSWER:

33. If you contend, as in paragraph 1 of your New Matter, that Plaintiffs' claims fail because of consensual changes to the purchase orders and contract, then

(a) set forth:

1. specifically what were the consensual changes;
2. who authorized them for IMAC and Plaintiffs;
3. when were these alleged consensual changes;
4. identify specifically the documents upon which you rely for this contention and identify all documents relating to this contention;
and
5. identify every person who has knowledge of the facts upon which you rely for this contention.

ANSWER:

34. If you contend, as in paragraph 5 of your New Matter, Plaintiffs' claims are barred or reduced by Plaintiffs' failure to mitigate damages, then
- (a) set forth:
1. specifically each item of damages that you contend could have reasonably been avoided;
 2. for each item of damages that you contend could have been avoided, the specific actions that you contend that the Plaintiffs should have taken, and the specific dates upon which you contend that the Plaintiffs should have taken such actions, to avoid such item of damages; and
 3. the specific factual basis on which you contend that the Plaintiffs should have known to take each such mitigating action;
- (b) identify specifically the documents upon which you rely for this contention and identify all documents relating to this contention; and
- (c) identify every person who has knowledge of the facts upon which you rely for this contention.

ANSWER:

35. If you contend, as in paragraph 10 of your New Matter, Plaintiffs' claims must fail because Plaintiffs unilaterally changed the terms and conditions of the products and equipment, then

(a) set forth:

1. specifically what were the unilateral changes;
2. who from the Plaintiffs made these unilateral changes; and
3. when were these alleged unilateral changes;

ANSWER:

36. With respect to your counterclaim, set forth:

- (a) all facts on which you rely to support your claim; and
- (b) all documents that concern, refer, or relate to this answer.

ANSWER:

37. Identify all asset(s) owned in whole or in part by IMAC since January 1, 2005.

For each asset set forth:

- (a) a description of the asset;
- (b) location of the asset;
- (c) value of the asset; and
- (d) percentage of such assets owned by IMAC.

ANSWER:

REQUESTS FOR DOCUMENTS

1. Produce all documents that you identified or reviewed for purposes of answering the preceding Interrogatories.

Response:

2. Produce all documents relating to the design and manufacturing of the Cheese Dumper Equipment and Paste Bin Dumper Equipment.

Response:

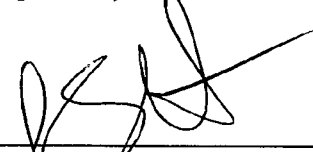
3. Produce all documents relating to any inspections, examinations, maintenance or tests performed on the Cheese Dumper Equipment and Paste Bin Dumper Equipment.

Response:

4. Produce all audited and unaudited financial statements for IMAC for any time period since January 1, 2004.

Response:

Respectfully submitted,



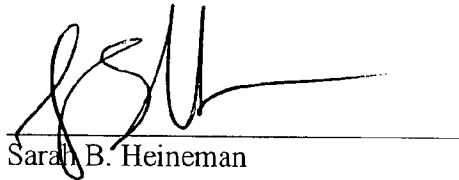
Gregory H. Teufel
Sarah B. Heineman
Christopher E. Mohnney

DATED: June 7, 2007

CERTIFICATE OF SERVICE

I, Sarah B. Heineman, hereby certify that I served a true and correct copy of the foregoing **Plaintiffs' First Set of Interrogatories and Requests for Production of Documents to Industrial Machinery Automation and Controls, LLC**, was served via U.S. Mail, First Class, postage pre-paid, this 7th day of June, 2007, upon the following:

David J. Hopkins, Esq.
Hopkins Heltzel LLP
100 Meadow Lane, Suite 5
DuBois, PA 15801



Sarah B. Heineman



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GIUSEPPE'S FINER FOODS, INC.,)
GORTECH GLOBAL FABRICATION, LLC,)

CIVIL DIVISION

Plaintiffs,

NO. 06-1633-C.D.

vs.

FRESHTEC INTERNATIONAL, LLC,
INDUSTRIAL MACHINERY
AUTOMATION AND CONTROLS, LLC,
and LARRY SALONE,

**PLAINTIFFS' FIRST SET OF
DISCOVERY SERVED UPON
LARRY SALONE**

Defendants.

Filed on behalf of Plaintiffs

Counsel of Record for this Party:

Gregory H. Teufel

Pa. Id. No. 73062

Sarah B. Heineman

Pa. Id. No. 91040

SCHNADER HARRISON SEGAL & LEWIS LLP

Suite 2700, Fifth Avenue Place

120 Fifth Avenue

Pittsburgh, PA 15222-3010

(412) 577-5200 (telephone)

(412) 765-3858 (facsimile)

Christopher E. Mohny, Esquire

Pa. Id. 63494

25 East Park Avenue, Suite 6

DuBois, PA 15801

(814) 375-1044

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GIUSEPPE'S FINER FOODS, INC., CIVIL DIVISION
GORTECH GLOBAL FABRICATION, LLC,

Plaintiffs, No. 06-1633- C.D.

vs.

FRESHTEC INTERNATIONAL, LLC,
INDUSTRIAL MACHINERY
AUTOMATION AND CONTROLS, LLC,
and LARRY SALONE,

Defendants.

**PLAINTIFFS' FIRST SET OF INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF DOCUMENTS
TO LARRY SALONE**

NOW COMES Plaintiffs, Giuseppe's Finer Foods, Inc. and Gortech Global Fabrication, LLC, by and through their undersigned attorneys, hereby serves the following First Set of Interrogatories and Requests for Production of Documents directed to Larry Salone ("Salone") and demands that Salone serve full and complete answers, under oath, within thirty (30) days from the date of service hereof, in accordance with Rules 4006 and 4009.12 of the Pennsylvania Rules of Civil Procedure.:

I. INSTRUCTIONS

A. Supplement your responses to these interrogatories and requests in accordance with the Pennsylvania Rules of Civil Procedure.

B. Where facts set forth in any answer or portion thereof are supplied upon information and belief rather than actual knowledge, the answer should so state and specifically describe or identify the source of such information and belief. If you cannot answer an Interrogatory in full after exercising due diligence to secure the information so requested, so state and answer such Interrogatory to the fullest extent possible, specifying the exact reason for your inability to answer the remainder and stating whatever information or knowledge you have concerning the unanswered portion.

C. Should you claim that a privilege or immunity entitles you to withhold any documents, as to each such document: (a) state the date the document was prepared; (b) identify all persons who have seen or been provided a copy of the document; (c) provide a brief description of the nature of the document; and (d) describe the basis for your assertion that a claim of privilege or immunity entitles you to withhold the document.

D. If any document that is or may be responsive to these requests has been destroyed or discarded, that document is to be identified by stating (i) any addressor and addressee; (ii) whether there are any redacted or partial copies or transcriptions; (iii) the document's date, subject matter, number of pages and attachments or appendices; (iv) all persons to whom the document was distributed, shown or explained; (v) its date of destruction or discard, manner of destruction or discard, and the reason for destruction or discard; and, (vi) the person(s) authorizing and/or carrying out such destruction or discard.

II. DEFINITIONS

A. "Identify" as applied to a person means to state the following:

1. Full name;
2. Title, if any;

3. Present home address; and

4. Present business address.

B. "Identify," when used in reference to a document, requires you to state the date, the author (or, if different, the signer or signers), the addressee, and the type of document (e.g., letter, memorandum, telegram, chart, etc.) or to attach an accurate copy of the document to your answer.

C. "Person" means any individual, firm, association, partnership, corporation, trustee or other entity and also, where relevant, the persons representing or acting for such "person."

D. "Freshtec" means Defendant Freshtec International LLC its predecessors, successors, subsidiaries, past or present employees, agents, representatives, or attorneys, and any person who has or is acting or purporting to act on its behalf for any purpose whatsoever.

E. "Larry Salone" refers to defendant Larry Salone.

F. "You" or "Your" means Larry Salone.

G. "Industrial Machinery Automation and Controls, LLC or IMAC" means Defendant Industrial Machinery Automation and Controls, LLC, past or present employees, agents, representatives, or attorneys, and any person who has or is acting or purporting to act on its behalf for any purpose whatsoever.

H. "Communication" or "communications" as used herein includes, without limitation, letters and written communications of every kind and description, emails, faxes, and any oral statements, conversations, discussions and conferences.

I. "Document" or "documents" as used herein includes, without limitation, letters, memoranda, notes, statements, writings, drawings, graphs, charts, photographs, electronically

created data, and any other compilations of data from which information can be obtained, translated, if necessary, through detection or recovery devices into readily usable form.

J. The “Paste Bin Dumper Equipment” means the paste bin equipment and parts ordered by Giuseppe’s in the May 5, 2005 Purchase Order No. 10292 attached to the Complaint as Exhibit “C.”

K. The “Cheese Dumper Equipment” means the cheese dumper and parts ordered by Giuseppe’s in July 26, 2005 Purchase Order No. 50012 attached to the Complaint as Exhibit “F.”

III. INTERROGATORIES

1. Please identify:
 - (a) your full name;
 - (b) your current address;
 - (c) your phone number;
 - (d) your social security number; and
 - (e) your date of birth.

ANSWER:

2. Please list your place(s) of employment and your occupations for the last 10 years. For each place of employment, please set forth:
- (a) the name of your employer;
 - (b) your job title and nature of your occupation;
 - (c) during what dates you were so employed or so occupied;
 - (d) the location of your employment or occupation;
 - (e) why you left that employment or occupation; and
 - (f) what your duties were.

ANSWER:

3. Identify all of your job title(s) for Freshtec, including your present title. For each job title, please set forth:
- (a) your duties at each position;
 - (b) the time frame you were employed at each position;
 - (c) your salary at each position.

ANSWER:

4. Identify all of your job title(s) for IMAC, including your present title. For each job title, please set forth:
- (a) your duties at each position;
 - (b) the time frame you were employed at each position;
 - (c) your salary at each position.

ANSWER:

5. Describe your role in the transaction between Plaintiffs and Freshtec and IMAC
for the Paste Bin Dumper Equipment.

ANSWER:

6. Describe your role in the transaction between Plaintiffs and Freshtec and IMAC
for the Cheese Dumper Equipment.

ANSWER:

7. Describe any experience you have in designing and/or manufacturing Paste Bin
Dumper Equipment or similar equipment.

ANSWER:

8. Describe any experience you have in designing and/or manufacturing Cheese
Dumper Equipment or similar equipment.

ANSWER:

9. Describe any experience you have in selling Paste Bin Dumper Equipment or similar equipment.

ANSWER:

10. Describe any experience you have in selling Cheese Dumper Equipment or similar equipment.

ANSWER:

11. For any and all communications between you and Plaintiffs, please identify as to each:

- (a) The participants involved;
- (b) How the communication took place (in person, by telephone, *etc.*);
- (c) The date of the communication;
- (d) Whether any documents were exchanged during that communication;
- (e) Any documents memorializing the communication; and
- (f) Describe what was discussed in the communication.

ANSWER:

12. Have you considered filing a petition for bankruptcy under Chapter 7 or Chapter 11 or Chapter 13 of the U.S. Code? If so, please identify when and why.

ANSWER:

13. On or about April 11, 2005, what was your knowledge as to the progress of the design, manufacturing, delivery, installation, quality, performance, and/or testing of the Cheese Dumper and Paste Bin Dumper Equipment.

ANSWER:

14. On or about August 8, 2005, what was your knowledge as to the progress of the design, manufacturing, delivery, installation, quality, performance, and/or testing of the Cheese Dumper and Paste Bin Dumper Equipment.

ANSWER:

15. On or about August 17, 2005, what was your knowledge as to the progress of the design, manufacturing, delivery, installation, quality, performance, and/or testing of the Cheese Dumper and Paste Bin Dumper Equipment.

ANSWER:

16. On or about, October 7, 2005, what was your knowledge as to the progress of the design, manufacturing, delivery, installation, quality, performance, and/or testing of the Cheese Dumper and Paste Bin Dumper Equipment.

ANSWER:

17. On or about December 2, 2005, what was your knowledge as to the progress of the design, manufacturing, delivery, installation, quality, performance, and/or testing of the Cheese Dumper and Paste Bin Dumper Equipment.

ANSWER:

18. On or about December 5, 2005, what was your knowledge as to the progress of the design, manufacturing, delivery, installation, quality, performance, and/or testing of the Cheese Dumper and Paste Bin Dumper Equipment.

ANSWER:

19. Please identify all of your bank accounts. For each account, please set forth;
- (a) the name of the financial institution;
 - (b) the account number(s)
 - (c) who has access to the account; and
 - (d) identify all account statements for such account from April 2005-present.

ANSWER:

20. Please identify any representations you made about the Cheese Dumper and/or Paste Bin Dumper. Please identify for each:
- (a) the participants involved;
 - (b) how the representation took place (in person, by telephone, *etc.*);
 - (c) the date of the representation;
 - (d) whether any documents were exchanged during that representation;
 - (e) any documents memorializing the representation; and
 - (f) the substance and details of the representation.

ANSWER:

21. Identify each person you intend to call to testify at trial as an expert witness. For each such expert, identify:

- (a) his or her name and present address;
- (b) his or her educational background, including all educational institutions attended, dates of attendance, and degrees, if any, received and any other specialized training in his or her field, including the types of training received, the institution at which the training was received, and the dates of training;
- (c) each professional, trade, academic or other organization of which he or she is a member, including in your response the name of the organization, the dates of membership, and a description of each office held;
- (d) each book, paper, article, or other writing or publication which he or she authored or co-authored, including the title, subject matter, name and address of publisher, date of publication, and co-authors, if any;
- (e) his or her work experience, including the name and address of each employer, dates of employment, and a description of each position held;
- (f) all other judicial or administrative actions, hearings, proceedings, or arbitrations (identified by year, court or other forum, parties, docket number or other identifying number, and dates of testimony) in which he or she has testified in deposition or trial, the substance of any such testimony, and the party for whom the testimony was given;
- (g) the substance and subject matter of the facts and opinions about which the expert is expected to testify and the grounds for each opinion including the facts upon which each opinion is based;
- (h) all documents or document summaries he or she has been shown, or that have been made available for his or her review in connection with his or her expected testimony in this litigation;
- (i) anything else shown to or reviewed by each expert in connection with his or her testimony in this proceeding;
- (j) all reports, including drafts and work papers, whether preliminary or final, prepared by or for each expert in connection with his or her expected testimony in this litigation;

- (k) all instructions given by you in connection with each expert's expected testimony in this litigation;
- (l) each person with whom each expert spoke in connection with the expert's expected testimony in this litigation, and the substance of the discussions;
- (m) all persons assisting each expert in the preparation of his or her expected testimony in this litigation, including the type of assistance given, and the dates during which such assistance was given;
- (n) the compensation already paid by you or anyone else to each expert for reasons related to this litigation; and
- (o) the compensation expected to be paid to each expert, the times when payment will become due, and any conditions that could affect any expert's compensation related to this litigation.

ANSWER:

22. Identify each person you intend to call to testify at trial as a fact witness and for each such person describe the substance of his or her expected testimony.

ANSWER:

23. How much is your present net worth?

ANSWER:

24. Identify all asset(s) owned in whole or in part by you since January 1, 2005. For each asset set forth:
- (a) a description of the asset;
 - (b) location of the asset; and
 - (c) value of the asset.

ANSWER:

25. Identify all of your personal indebtedness since January 1, 2005. For each loan or debt, please set forth
- (a) amount of the loan or debt;
 - (b) terms of the loan or debt;
 - (c) date of the loan or debt; and
 - (d) identify each party to the loan or debt.

ANSWER:

26. Identify all documents related to:

- (a) the Cheese Dumper Equipment;
- (b) the Purchase Order No. 50012;
- (c) the performance of the Cheese Dumper Equipment;
- (d) any testing of the Cheese Dumper Equipment;
- (e) the allegations in the Complaint or any of the other pleadings filed in this lawsuit.

ANSWER:

27. Identify all documents related to:

- (a) the Paste Bin Dumper Equipment;
- (b) the Purchase Order No. 10292;
- (c) the performance of the Paste Bin Dumper Equipment; and
- (d) any testing of the Paste Bin Dumper Equipment

ANSWER:

28. Identify all individuals who have knowledge related to:
- (a) the Cheese Dumper Equipment;
 - (b) the Purchase Order No. 50012;
 - (c) the performance of the Cheese Dumper Equipment;
 - (d) any testing of the Cheese Dumper Equipment; and
 - (e) the allegations in the Complaint or any of the other pleadings filed in this lawsuit.

ANSWER:

29. Identify all individuals who have knowledge related to:
- (a) the Paste Bin Dumper Equipment;
 - (b) the Purchase Order No. 10292;
 - (c) the performance of the Paste Bin Dumper Equipment; and
 - (d) any testing of the Paste Bin Dumper Equipment.

ANSWER:

REQUESTS FOR DOCUMENTS

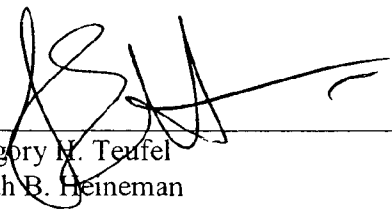
1. Produce all documents that were identified or reviewed for purposes of answering the preceding Interrogatories.

Response:

2. Produce all of your income tax returns for the years 2005 and 2006.

Response:

Respectfully submitted,



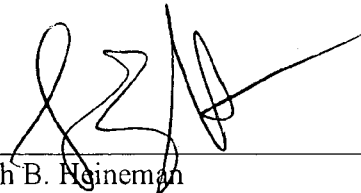
Gregory H. Teufel
Sarah B. Heineman
Christopher E. Mohnney

DATED: June 7, 2007

CERTIFICATE OF SERVICE

I, Sarah B. Heineman, hereby certify that I served a true and correct copy of the foregoing **Plaintiffs' First Set of Interrogatories and Requests for Production of Documents** to **Larry Salone**, was served via U.S. Mail, First Class, postage pre-paid, this 7th day of June, 2007, upon the following:

David J. Hopkins, Esq.
Hopkins Heltzel LLP
100 Meadow Lane, Suite 5
DuBois, PA 15801



Sarah B. Heineman

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GIUSEPPE'S FINER FOODS, INC.,)
GORTECH GLOBAL FABRICATION, LLC,)

CIVIL DIVISION

Plaintiffs,

) NO. 06-1633-C.D.

vs.

FRESHTEC INTERNATIONAL, LLC,
INDUSTRIAL MACHINERY
AUTOMATION AND CONTROLS, LLC,
and LARRY SALONE,

) **PLAINTIFFS' FIRST SET OF**
) **INTERROGATORIES AND**
) **REQUESTS FOR PRODUCTION OF**
) **DOCUMENTS TO FRESHTEC**
) **INTERNATIONAL, LLC**

Defendants.

) Filed on behalf of Plaintiffs

) Counsel of Record for this Party:

) Gregory H. Teufel

) Pa. Id. No. 73062

) Sarah B. Heineman

) Pa. Id. No. 91040

) SCHNADER HARRISON SEGAL & LEWIS

) LLP

) Suite 2700, Fifth Avenue Place

) 120 Fifth Avenue

) Pittsburgh, PA 15222-3010

) (412) 577-5200 (telephone)

) (412) 765-3858 (facsimile)

) Christopher E. Mohny, Esquire

Pa. Id. 63494

25 East Park Avenue, Suite 6

DuBois, PA 15801

(814) 375-1044

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GIUSEPPE'S FINER FOODS, INC., CIVIL DIVISION
GORTECH GLOBAL FABRICATION, LLC,

Plaintiffs, No. 06-1633- C.D.

vs.

FRESHTEC INTERNATIONAL, LLC,
INDUSTRIAL MACHINERY
AUTOMATION AND CONTROLS, LLC,
and LARRY SALONE,

Defendants.

**PLAINTIFFS' FIRST SET OF INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF DOCUMENTS
TO FRESHTEC INTERNATIONAL, LLC**

NOW COMES Plaintiffs , Giuseppe's Finer Foods, Inc. and Gortech Global Fabrication, LLC, by and through their undersigned attorneys, hereby serves the following First Set of Interrogatories and Requests for Production of Documents directed to Freshtec International, LLC ("Freshtec") and demands that Freshtec serve full and complete answers, under oath, within thirty (30) days from the date of service hereof, in accordance with Rules 4006 and 4009.12 of the Pennsylvania Rules of Civil Procedure.:

I. INSTRUCTIONS

A. Supplement your responses to these interrogatories and requests in accordance with the Pennsylvania Rules of Civil Procedure.

B. Where facts set forth in any answer or portion thereof are supplied upon information and belief rather than actual knowledge, the answer should so state and specifically describe or identify the source of such information and belief. If you cannot answer an Interrogatory in full after exercising due diligence to secure the information so requested, so state and answer such Interrogatory to the fullest extent possible, specifying the exact reason for your inability to answer the remainder and stating whatever information or knowledge you have concerning the unanswered portion.

C. Should you claim that a privilege or immunity entitles you to withhold any documents, as to each such document: (a) state the date the document was prepared; (b) identify all persons who have seen or been provided a copy of the document; (c) provide a brief description of the nature of the document; and (d) describe the basis for your assertion that a claim of privilege or immunity entitles you to withhold the document.

D. If any document that is or may be responsive to these requests has been destroyed or discarded, that document is to be identified by stating (i) any addressor and addressee; (ii) whether there are any redacted or partial copies or transcriptions; (iii) the document's date, subject matter, number of pages and attachments or appendices; (iv) all persons to whom the document was distributed, shown or explained; (v) its date of destruction or discard, manner of destruction or discard, and the reason for destruction or discard; and, (vi) the person(s) authorizing and/or carrying out such destruction or discard.

II. DEFINITIONS

A. "Identify" as applied to a person means to state the following:

1. Full name;
2. Title, if any;

3. Present home address; and
4. Present business address.

B. "Identify," when used in reference to a document, requires you to state the date, the author (or, if different, the signer or signers), the addressee, and the type of document (e.g., letter, memorandum, telegram, chart, etc.) or to attach an accurate copy of the document to your answer.

C. "Person" means any individual, firm, association, partnership, corporation, trustee or other entity and also, where relevant, the persons representing or acting for such "person."

D. "Freshtec" means Defendant Freshtec International LLC its predecessors, successors, subsidiaries, past or present employees, agents, representatives, or attorneys, and any person who has or is acting or purporting to act on its behalf for any purpose whatsoever.

E. "Larry Salone" refers to defendant Larry Salone.

F. "You" or "Your" means Defendant Freshtec.

G. "Industrial Machinery Automation and Controls, LLC or IMAC" means Defendant Industrial Machinery Automation and Controls, LLC, past or present employees, agents, representatives, or attorneys, and any person who has or is acting or purporting to act on its behalf for any purpose whatsoever.

H. "Communication" or "communications" as used herein includes, without limitation, letters and written communications of every kind and description, emails, faxes, and any oral statements, conversations, discussions and conferences.

I. "Document" or "documents" as used herein includes, without limitation, letters, memoranda, notes, statements, writings, drawings, graphs, charts, photographs, electronically

created data, and any other compilations of data from which information can be obtained, translated, if necessary, through detection or recovery devices into readily usable form.

J. The “Paste Bin Dumper Equipment” means the paste bin equipment and parts ordered by Giuseppe’s in the May 5, 2005 Purchase Order No. 10292 attached to the Complaint as Exhibit “C.”

K. The “Cheese Dumper Equipment” means the cheese dumper and parts ordered by Giuseppe’s in July 26, 2005 Purchase Order No. 50012 attached to the Complaint as Exhibit “F.”

III. INTERROGATORIES

1. State the correct legal name of your organization and state any other names that your organization uses or has used to identify itself, regardless of whether such names are registered with any official, but, if registered, provide the date and place of registration.

ANSWER:

2. Identify:

- (a) when Freshtec was created;
- (b) what type of corporation it is;
- (c) who are the officers of Freshtec;
- (d) who are the members or other owners of Freshtec;
- (e) where Freshtec's principle place of business is located; and
- (f) identify any documents that concern, refer, or relate to these answers.

ANSWER:

3. Identify any subsidiaries, divisions, or parent corporations of Freshtec and explain each such entities relationship to Freshtec.

ANSWER:

4. Identify by name, address, corporate position and years of corporate employment with the defendant of all persons who aided in gathering information for answering these Interrogatories.

ANSWER:

5. Describe the nature of Freshtec's business.

ANSWER:

6. Identify and itemize all capital contributions to Freshtec from its inception to the present including:
- (a) who or what entity contributed;
 - (b) how much;
 - (c) when; and
 - (d) identify any documents that concern, refer, or relate to these answers.

ANSWER:

7. Identify by name, address, and position as to who maintains the accounting records for Freshtec.

ANSWER:

8. Identify the person or person(s) that performed, supervised, conceived or otherwise participated in the designing of the Paste Bin Dumper Equipment.

ANSWER:

9. Identify each of your employees or agents involved in the negotiation, testing, manufacture and sale of the Paste Bin Dumper Equipment to Plaintiffs, and describe the role of each person identified.

ANSWER:

10. Identify the person or person(s) that performed, supervised, conceived or otherwise participated in the designing of the Paste Bin Dumper Equipment.

ANSWER:

11. Identify each of your employees or agents involved in the negotiation, testing, manufacture and sale of the Cheese Dumper Equipment to Plaintiffs, and describe the role of each person identified.

ANSWER:

12. Identify all past experience(s), if any, in designing or manufacturing Paste Bin Dumper Equipment or similar equipment and identify all documentation that relates, concerns, or refers to your answer.

ANSWER:

13. Identify all past experience(s), if any, in designing or manufacturing Cheese Dumper Equipment or similar equipment and identify all documentation that relates, concerns, or refers to your answer.

ANSWER:

14. For any and all communications between you and Plaintiffs, please identify as to each:

- (a) The participants involved;
- (b) How the communication took place (in person, by telephone, *etc.*);
- (c) The date of the communication;
- (d) Whether any documents were exchanged during that communication;
- (e) Any documents memorializing the communication; and
- (f) Describe what was discussed in the communication.

ANSWER:

15. Has Freshtec considered filing a petition for bankruptcy under Chapter 7 or Chapter 11 of the U.S. Code? If so, please identify when and why.

ANSWER:

16. With respect to the \$83,180.00 paid to Freshtec on or about April 11, 2005, please identify:
- (a) the institution where the money was deposited;
 - (b) the account number;
 - (c) who has access to the account; and
 - (d) identify all account statements of the bank account from April 2005-present.

ANSWER:

17. With respect to the \$31, 000.00 paid to Freshtec on or about August 8, 2005, please identify:
- (a) the institution where the money was deposited;
 - (b) the account number;
 - (c) who has access to the account; and
 - (d) identify all account statements of the bank account from April 2005-present.

ANSWER:

18. With respect to the \$63,180.00 paid to Freshtec on or about August 17, 2005, please identify:
- (a) the institution where the money was deposited;
 - (b) the account number;
 - (c) who has access to the account; and
 - (d) identify all account statements of the bank account from April 2005-present.

ANSWER:

19. With respect to the \$1,650.00 paid to Freshtec on or October 7, 2005, please identify:
- (a) the institution where the money was deposited;
 - (b) the account number;
 - (c) who has access to the account; and
 - (d) identify all account statements of the bank account from April 2005-present.

ANSWER:

20. With respect to the \$40,000.00 paid to Freshtec on or about December 2, 2005, please identify:
- (a) the institution where the money was deposited;
 - (b) the account number;
 - (c) who has access to the account; and
 - (d) identify all account statements of the bank account from April 2005-present.

ANSWER:

21. With respect to the \$500.00 paid to Freshtec on or about December 5, 2005, please identify:
- (a) the institution where the money was deposited;
 - (b) the account number;
 - (c) who has access to the account; and
 - (d) identify all account statements of the bank account from April 2005-present.

ANSWER:

22. State whether you have or had insurance coverage applicable to the harm alleged in this case. If so, please provide the following information:
- (a) the name of the insurance carrier(s);
 - (b) the policy number(s);
 - (c) the applicable policy dates;
 - (d) whether any question concerning coverage has been raised by the carrier;
 - (e) kindly attach a copy of the declaration page(s) of your policy(ies) to your responses to these Interrogatories.

ANSWER:

23. State any established policies and/or procedures you have for designing or manufacturing equipment such as the Paste Bin Dumper Equipment and the Cheese Dumper Equipment, and set forth the dates during which such policies and procedures were in effect. If the policies or procedures have been reduced to writing, provide copies of those documents and set forth the date each such document was prepared.

ANSWER:

24. Identify each person you intend to call to testify at trial as an expert witness. For each such expert, identify:

- (a) his or her name and present address;
- (b) his or her educational background, including all educational institutions attended, dates of attendance, and degrees, if any, received and any other specialized training in his or her field, including the types of training received, the institution at which the training was received, and the dates of training;
- (c) each professional, trade, academic or other organization of which he or she is a member, including in your response the name of the organization, the dates of membership, and a description of each office held;
- (d) each book, paper, article, or other writing or publication which he or she authored or co-authored, including the title, subject matter, name and address of publisher, date of publication, and co-authors, if any;
- (e) his or her work experience, including the name and address of each employer, dates of employment, and a description of each position held;
- (f) all other judicial or administrative actions, hearings, proceedings, or arbitrations (identified by year, court or other forum, parties, docket number or other identifying number, and dates of testimony) in which he or she has testified in deposition or trial, the substance of any such testimony, and the party for whom the testimony was given;
- (g) the substance and subject matter of the facts and opinions about which the expert is expected to testify and the grounds for each opinion including the facts upon which each opinion is based;
- (h) all documents or document summaries he or she has been shown, or that have been made available for his or her review in connection with his or her expected testimony in this litigation;
- (i) anything else shown to or reviewed by each expert in connection with his or her testimony in this proceeding;
- (j) all reports, including drafts and work papers, whether preliminary or final, prepared by or for each expert in connection with his or her expected testimony in this litigation;

- (k) all instructions given by you in connection with each expert's expected testimony in this litigation;
- (l) each person with whom each expert spoke in connection with the expert's expected testimony in this litigation, and the substance of the discussions;
- (m) all persons assisting each expert in the preparation of his or her expected testimony in this litigation, including the type of assistance given, and the dates during which such assistance was given;
- (n) the compensation already paid by you or anyone else to each expert for reasons related to this litigation; and
- (o) the compensation expected to be paid to each expert, the times when payment will become due, and any conditions that could affect any expert's compensation related to this litigation.

ANSWER:

25. Identify each person you intend to call to testify at trial as a fact witness and for each such person describe the substance of his or her expected testimony.

ANSWER:

26. Identify all locations where you performed any of the work for either the Paste Bin Dumper or Cheese Dumper, and, for each location listed, describe the work performed at that location.

ANSWER:

27. Identify all testing performed on the Cheese Dumper Equipment, and, for each test identified, identify:
- (a) when the test was performed;
 - (b) who conducted the test;
 - (c) any witnesses to the test;
 - (d) the results of the test;
 - (e) why the test was conducted; and
 - (f) any documents related to the test(s).

ANSWER:

28. Identify all testing performed on the Paste Bin Dumper Equipment, and, for each test identified, identify:
- (a) when the test was performed;
 - (b) who conducted the test;
 - (c) any witnesses to the test;
 - (d) the results of the test;
 - (e) why the test was conducted; and
 - (f) any documents related to the test(s).

ANSWER:

29. Identify all individuals who have knowledge related to:

- (a) the Cheese Dumper Equipment;
- (b) the Purchase Order No. 50012;
- (c) the performance of the Cheese Dumper Equipment;
- (d) any testing of the Cheese Dumper Equipment; and
- (e) the allegations in the Complaint or any of the other pleadings filed in this lawsuit.

ANSWER:

30. Identify all individuals who have knowledge related to:
- (a) the Paste Bin Dumper Equipment;
 - (b) the Purchase Order No. 10292;
 - (c) the performance of the Paste Bin Dumper Equipment; and
 - (d) any testing of the Paste Bin Dumper Equipment.

ANSWER:

31. Identify all documents related to:
- (a) the Cheese Dumper Equipment;
 - (b) the Purchase Order No. 50012;
 - (c) the performance of the Cheese Dumper Equipment; and
 - (d) any testing of the Cheese Dumper Equipment; and
 - (e) the allegations in the Complaint or any of the other pleadings filed in this lawsuit.

ANSWER:

32. Identify all documents related to:
- (a) the Paste Bin Dumper Equipment;
 - (b) the Purchase Order No. 10292;
 - (c) the performance of the Paste Bin Dumper Equipment; and
 - (d) any testing of the Paste Bin Dumper Equipment

ANSWER:

33. If you contend, as in paragraph 1 of your New Matter, that Plaintiffs' claims fail because of consensual changes to the purchase orders and contract, then

(a) set forth:

1. specifically what were the consensual changes;
2. who authorized them for Freshtec and Plaintiffs;
3. when were these alleged consensual changes;
4. identify specifically the documents upon which you rely for this contention and identify all documents relating to this contention; and
5. identify every person who has knowledge of the facts upon which you rely for this contention.

ANSWER:

34. If you contend, as in paragraph 5 of your New Matter, Plaintiffs' claims are barred or reduced by Plaintiffs' failure to mitigate damages, then
- (a) set forth:
1. specifically each item of damages that you contend could have reasonably been avoided;
 2. for each item of damages that you contend could have been avoided, the specific actions that you contend that the Plaintiffs should have taken, and the specific dates upon which you contend that the Plaintiffs should have taken such actions, to avoid such item of damages; and
 3. the specific factual basis on which you contend that the Plaintiffs should have known to take each such mitigating action;
- (b) identify specifically the documents upon which you rely for this contention and identify all documents relating to this contention; and
- (c) identify every person who has knowledge of the facts upon which you rely for this contention.

ANSWER:

35. If you contend, as in paragraph 10 of your New Matter, Plaintiffs' claims must fail because Plaintiffs unilaterally changed the terms and conditions of the products and equipment, then

(a) set forth:

1. specifically what were the unilateral changes;
2. who from the Plaintiffs made these unilateral changes; and
3. when were these alleged unilateral changes;

ANSWER:

36. With respect to your counterclaim, set forth:

- (a) all facts on which you rely to support your claim; and
- (b) all documents that concern, refer, or relate to this answer.

ANSWER:

37. Identify all asset(s) owned in whole or in part by Freshtec since January 1, 2005.

For each asset set forth:

- (a) a description of the asset;
- (b) location of the asset;
- (c) value of the asset; and
- (d) percentage of such assets owned by Freshtec.

ANSWER:

38. Identify all of Freshtec's indebtedness since January 1, 2005. For each debt or loan set forth:

- (a) amount of the debt or loan;
- (b) terms of the debt or loan;
- (c) date of the debt or loan; and
- (d) identify each party to the debt or loan.

ANSWER:

REQUESTS FOR DOCUMENTS

1. Produce all documents that you identified or reviewed for purposes of answering the preceding Interrogatories.

Response:

2. Produce all documents relating to the design and manufacturing of the Cheese Dumper Equipment and Paste Bin Dumper Equipment.

Response:

3. Produce all documents relating to any inspections, examinations, maintenance or tests performed on the Cheese Dumper Equipment and Paste Bin Dumper Equipment.

Response:

4. Produce all audited and unaudited financial statements for Freshtec for any time period since January 1, 2004.

Response:

Respectfully submitted,



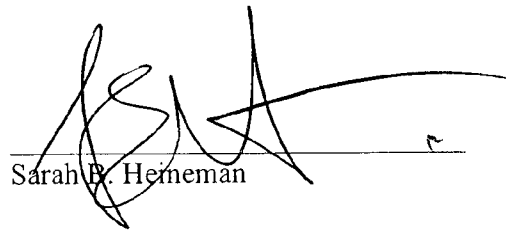
Gregory H. Deufel
Sarah B. Heineman
Christopher E. Mohnney

DATED: June 7, 2007

CERTIFICATE OF SERVICE

I, Sarah B. Heineman, hereby certify that I served a true and correct copy of the foregoing **Plaintiffs' First Set of Interrogatories and Requests for Production of Documents to Freshtec International, LLC**, was served via U.S. Mail, First Class, postage pre-paid, this 7th day of June, 2007, upon the following:

David J. Hopkins, Esq.
Hopkins Heltzel LLP
100 Meadow Lane, Suite 5
DuBois, PA 15801



Sarah B. Heineman

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GIUSEPPE'S FINER FOODS, INC.,)	
GORTECH GLOBAL FABRICATION, LLC,	)	CIVIL DIVISION
)	
)	
Plaintiffs,	)	NO. 06-1633-C.D.
)	
vs.)	
)	
FRESHTEC INTERNATIONAL, LLC,	)	PLAINTIFFS' FIRST SET OF
INDUSTRIAL MACHINERY	)	DISCOVERY SERVED UPON
AUTOMATION AND CONTROLS, LLC,	)	INDUSTRIAL AUTOMATION AND
and LARRY SALONE,	)	CONTROLS, LLC.
)	
)	
Defendants.	)	Filed on behalf of Plaintiffs
)	
	)	Counsel of Record for this Party:
)	
	)	Gregory H. Teufel
	)	Pa. Id. No. 73062
	)	Sarah B. Heineman
	)	Pa. Id. No. 91040
	)	SCHNADER HARRISON SEGAL & LEWIS
	)	LLP
	)	Suite 2700, Fifth Avenue Place
	)	120 Fifth Avenue
	)	Pittsburgh, PA 15222-3010
	)	(412) 577-5200 (telephone)
	)	(412) 765-3858 (facsimile)
)	
	)	Christopher E. Mohny, Esquire
	)	Pa. Id. 63494
	)	25 East Park Avenue, Suite 6
	)	DuBois, PA 15801
	)	(814) 375-1044

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GIUSEPPE'S FINER FOODS, INC., CIVIL DIVISION
GORTECH GLOBAL FABRICATION, LLC,

Plaintiffs, No. 06-1633- C.D.

vs.

FRESHTEC INTERNATIONAL, LLC,
INDUSTRIAL MACHINERY
AUTOMATION AND CONTROLS, LLC,
and LARRY SALONE,

Defendants.

**PLAINTIFFS' FIRST SET OF INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF DOCUMENTS
TO INDUSTRIAL MACHINERY AUTOMATION AND CONTROLS, LLC**

NOW COMES Plaintiffs , Giuseppe's Finer Foods, Inc. and Gortech Global Fabrication, LLC, by and through their undersigned attorneys, hereby serves the following First Set of Interrogatories and Requests for Production of Documents directed to Industrial Machinery Automation and Controls("IMAC") and demands that IMAC serve full and complete answers, under oath, within thirty (30) days from the date of service hereof, in accordance with Rules 4006 and 4009.12 of the Pennsylvania Rules of Civil Procedure.:

I. INSTRUCTIONS

A. Supplement your responses to these interrogatories and requests in accordance with the Pennsylvania Rules of Civil Procedure.

B. Where facts set forth in any answer or portion thereof are supplied upon information and belief rather than actual knowledge, the answer should so state and specifically describe or identify the source of such information and belief. If you cannot answer an Interrogatory in full after exercising due diligence to secure the information so requested, so state and answer such Interrogatory to the fullest extent possible, specifying the exact reason for your inability to answer the remainder and stating whatever information or knowledge you have concerning the unanswered portion.

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C. "Person" means any individual, firm, association, partnership, corporation, trustee or other entity and also, where relevant, the persons representing or acting for such "person."

D. "Freshtec" means Defendant Freshtec International LLC its predecessors, successors, subsidiaries, past or present employees, agents, representatives, or attorneys, and any person who has or is acting or purporting to act on its behalf for any purpose whatsoever.

E. "Larry Salone" refers to defendant Larry Salone.

F. "You" or "Your" means Defendant IMAC.

G. "Industrial Machinery Automation and Controls, LLC or IMAC" means Defendant Industrial Machinery Automation and Controls, LLC, past or present employees, agents, representatives, or attorneys, and any person who has or is acting or purporting to act on its behalf for any purpose whatsoever.

H. "Communication" or "communications" as used herein includes, without limitation, letters and written communications of every kind and description, emails, faxes, and any oral statements, conversations, discussions and conferences.

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J. The “Paste Bin Dumper Equipment” means the paste bin equipment and parts ordered by Giuseppe’s in the May 5, 2005 Purchase Order No. 10292 attached to the Complaint as Exhibit “C.”

K. The “Cheese Dumper Equipment” means the cheese dumper and parts ordered by Giuseppe’s in July 26, 2005 Purchase Order No. 50012 attached to the Complaint as Exhibit “F.”

III. INTERROGATORIES

1. State the correct legal name of your organization and state any other names that your organization uses or has used to identify itself, regardless of whether such names are registered with any official, but, if registered, provide the date and place of registration.

ANSWER:

2. Identify:

- (a) when IMAC was created;
- (b) what type of corporation IMAC is;
- (c) who are the officers of IMAC;
- (d) who are the shareholders of IMAC;
- (e) where IMAC's principle place of business is located; and
- (f) identify any documents that concern, refer, or relate to these answers.

ANSWER:

3. Identify any subsidiaries, divisions, or parent corporations of IMAC and explain each such entities relationship to IMAC.

ANSWER:

4. Identify by name, address, corporate position and years of corporate employment with the defendant of all persons who aided in gathering information for answering these Interrogatories.

ANSWER:

5. Describe the nature of IMAC's business.

ANSWER:

6. Identify and itemize all capital contributions to IMAC from its inception to the present including:
- (a) who or what entity contributed;
 - (b) how much;
 - (c) when; and
 - (d) identify any documents that concern, refer, or relate to these answers.

ANSWER:

7. Identify by name, address, and position as to who maintains the accounting records for IMAC.

ANSWER:

8. Identify the person or person(s) that performed, supervised, conceived or otherwise participated in the designing of the Paste Bin Dumper Equipment.

ANSWER:

9. Identify each of your employees or agents involved in the negotiation, testing, manufacture and sale of the Paste Bin Dumper Equipment to Plaintiffs, and describe the role of each person identified.

ANSWER:

10. Identify the person or person(s) that performed, supervised, conceived or otherwise participated in the designing of the Paste Bin Dumper Equipment.

ANSWER:

11. Identify each of your employees or agents involved in the negotiation, testing, manufacture and sale of the Cheese Dumper Equipment to Plaintiffs, and describe the role of each person identified.

ANSWER:

12. Identify all past experience(s), if any, in designing or manufacturing Paste Bin Dumper Equipment or similar equipment and attach all documentation that relates, concerns, or refers to your answer.

ANSWER:

13. Identify all past experience(s), if any, in designing or manufacturing Cheese Dumper Equipment or similar equipment and attach all documentation that relates, concerns, or refers to your answer.

ANSWER:

14. For any and all communications between you and Plaintiffs, please identify as to each:

- (a) The participants involved;
- (b) How the communication took place (in person, by telephone, *etc.*);
- (c) The date of the communication;
- (d) Whether any documents were exchanged during that communication;
- (e) Any documents memorializing the communication; and
- (f) Describe what was discussed in the communication.

ANSWER:

15. Has IMAC considered filing a petition for bankruptcy under Chapter 7 or Chapter 11 of the U.S. Code? If so, please identify when and why.

ANSWER:

16. With respect to the \$83,180.00 paid to IMAC on or about April 11, 2005, please identify:
- (a) the institution where the money was deposited;
 - (b) the account number;
 - (c) who has access to the account; and
 - (d) identify all account statements of the bank account from April 2005-present.

ANSWER:

17. With respect to the \$31, 000.00 paid to IMAC on or about August 8, 2005, please identify:
- (a) the institution where the money was deposited;
 - (b) the account number;
 - (c) who has access to the account; and
 - (d) identify all account statements of the bank account from April 2005-present.

ANSWER:

18. With respect to the \$63,180.00 paid to IMAC on or about August 17, 2005, please identify:
- (a) the institution where the money was deposited;
 - (b) the account number;
 - (c) who has access to the account; and
 - (d) identify all account statements of the bank account from April 2005-present.

ANSWER:

19. With respect to the \$1,650.00 paid to IMAC on or October 7, 2005, please identify:
- (a) the institution where the money was deposited;
 - (b) the account number;
 - (c) who has access to the account; and
 - (d) identify all account statements of the bank account from April 2005-present.

ANSWER:

20. With respect to the \$40,000.00 paid to IMAC on or about December 2, 2005, please identify:
- (a) the institution where the money was deposited;
 - (b) the account number;
 - (c) who has access to the account; and
 - (d) identify all account statements of the bank account from April 2005-present.

ANSWER:

21. With respect to the \$500.00 paid to IMAC on or about December 5, 2005, please identify:
- (a) the institution where the money was deposited;
 - (b) the account number;
 - (c) who has access to the account; and
 - (d) identify all account statements of the bank account from April 2005-present.

ANSWER:

22. State whether you have or had insurance coverage applicable to the harm alleged in this case. If so, please provide the following information:
- (a) the name of the insurance carrier(s);
 - (b) the policy number(s);
 - (c) the applicable policy dates;
 - (d) whether any question concerning coverage has been raised by the carrier;
 - (e) kindly attach a copy of the declaration page(s) of your policy(ies) to your responses to these Interrogatories.

ANSWER:

23. State any established policies and/or procedures you have for designing or manufacturing equipment such as the Paste Bin Dumper Equipment and the Cheese Dumper Equipment, and set forth the dates during which such policies and procedures were in effect. If the policies or procedures have been reduced to writing, provide copies of those documents and set forth the date each such document was prepared.

ANSWER:

24. Identify each person you intend to call to testify at trial as an expert witness. For each such expert, identify:
- (a) his or her name and present address;
 - (b) his or her educational background, including all educational institutions attended, dates of attendance, and degrees, if any, received and any other specialized training in his or her field, including the types of training received, the institution at which the training was received, and the dates of training;
 - (c) each professional, trade, academic or other organization of which he or she is a member, including in your response the name of the organization, the dates of membership, and a description of each office held;
 - (d) each book, paper, article, or other writing or publication which he or she authored or co-authored, including the title, subject matter, name and address of publisher, date of publication, and co-authors, if any;
 - (e) his or her work experience, including the name and address of each employer, dates of employment, and a description of each position held;
 - (f) all other judicial or administrative actions, hearings, proceedings, or arbitrations (identified by year, court or other forum, parties, docket number or other identifying number, and dates of testimony) in which he or she has testified in deposition or trial, the substance of any such testimony, and the party for whom the testimony was given;
 - (g) the substance and subject matter of the facts and opinions about which the expert is expected to testify and the grounds for each opinion including the facts upon which each opinion is based;
 - (h) all documents or document summaries he or she has been shown, or that have been made available for his or her review in connection with his or her expected testimony in this litigation;
 - (i) anything else shown to or reviewed by each expert in connection with his or her testimony in this proceeding;
 - (j) all reports, including drafts and work papers, whether preliminary or final, prepared by or for each expert in connection with his or her expected testimony in this litigation;

- (k) all instructions given by you in connection with each expert's expected testimony in this litigation;
- (l) each person with whom each expert spoke in connection with the expert's expected testimony in this litigation, and the substance of the discussions;
- (m) all persons assisting each expert in the preparation of his or her expected testimony in this litigation, including the type of assistance given, and the dates during which such assistance was given;
- (n) the compensation already paid by you or anyone else to each expert for reasons related to this litigation; and
- (o) the compensation expected to be paid to each expert, the times when payment will become due, and any conditions that could affect any expert's compensation related to this litigation.

ANSWER:

25. Identify each person you intend to call to testify at trial as a fact witness and for each such person describe the substance of his or her expected testimony.

ANSWER:

26. Identify all locations where you performed any of the work for either the Paste Bin Dumper or Cheese Dumper, and, for each location listed, describe the work performed at that location.

ANSWER:

27. Identify all testing performed on the Cheese Dumper Equipment, and, for each test identified, identify:

- (a) when the test was performed;
- (b) who conducted the test;
- (c) any witnesses to the test;
- (d) the results of the test;
- (e) why the test was conducted; and
- (f) any documents related to the test(s).

ANSWER:

28. Identify all testing performed on the Paste Bin Dumper Equipment, and, for each test identified, identify:

- (a) when the test was performed;
- (b) who conducted the test;
- (c) any witnesses to the test;
- (d) the results of the test;
- (e) why the test was conducted; and
- (f) any documents related to the test(s).

ANSWER:

29. Identify all individuals who have knowledge related to:

- (a) the Cheese Dumper Equipment;
- (b) the Purchase Order No. 50012;
- (c) the performance of the Cheese Dumper Equipment;
- (d) any testing of the Cheese Dumper Equipment; and
- (e) the allegations in the Complaint or any of the other pleadings filed in this lawsuit.

ANSWER:

30. Identify all individuals who have knowledge related to:
- (a) the Paste Bin Dumper Equipment;
 - (b) the Purchase Order No. 10292;
 - (c) the performance of the Paste Bin Dumper Equipment; and
 - (d) any testing of the Paste Bin Dumper Equipment.

ANSWER:

31. Identify all documents related to:
- (a) the Cheese Dumper Equipment;
 - (b) the Purchase Order No. 50012;
 - (c) the performance of the Cheese Dumper Equipment;
 - (d) any testing of the Cheese Dumper Equipment; and
 - (e) the allegations in the Complaint or any of the other pleadings filed in this lawsuit.

ANSWER:

32. Identify all documents related to:
- (a) the Paste Bin Dumper Equipment;
 - (b) the Purchase Order No. 10292;
 - (c) the performance of the Paste Bin Dumper Equipment; and
 - (d) any testing of the Paste Bin Dumper Equipment

ANSWER:

33. If you contend, as in paragraph 1 of your New Matter, that Plaintiffs' claims fail because of consensual changes to the purchase orders and contract, then

(a) set forth:

1. specifically what were the consensual changes;
2. who authorized them for IMAC and Plaintiffs;
3. when were these alleged consensual changes;
4. identify specifically the documents upon which you rely for this contention and identify all documents relating to this contention;
and
5. identify every person who has knowledge of the facts upon which you rely for this contention.

ANSWER:

34. If you contend, as in paragraph 5 of your New Matter, Plaintiffs' claims are barred or reduced by Plaintiffs' failure to mitigate damages, then
- (a) set forth:
 - 1. specifically each item of damages that you contend could have reasonably been avoided;
 - 2. for each item of damages that you contend could have been avoided, the specific actions that you contend that the Plaintiffs should have taken, and the specific dates upon which you contend that the Plaintiffs should have taken such actions, to avoid such item of damages; and
 - 3. the specific factual basis on which you contend that the Plaintiffs should have known to take each such mitigating action;
 - (b) identify specifically the documents upon which you rely for this contention and identify all documents relating to this contention; and
 - (c) identify every person who has knowledge of the facts upon which you rely for this contention.

ANSWER:

35. If you contend, as in paragraph 10 of your New Matter, Plaintiffs' claims must fail because Plaintiffs unilaterally changed the terms and conditions of the products and equipment, then

(a) set forth:

1. specifically what were the unilateral changes;
2. who from the Plaintiffs made these unilateral changes; and
3. when were these alleged unilateral changes;

ANSWER:

36. With respect to your counterclaim, set forth:

- (a) all facts on which you rely to support your claim; and
- (b) all documents that concern, refer, or relate to this answer.

ANSWER:

37. Identify all asset(s) owned in whole or in part by IMAC since January 1, 2005.

For each asset set forth:

- (a) a description of the asset;
- (b) location of the asset;
- (c) value of the asset; and
- (d) percentage of such assets owned by IMAC.

ANSWER:

REQUESTS FOR DOCUMENTS

1. Produce all documents that you identified or reviewed for purposes of answering the preceding Interrogatories.

Response:

2. Produce all documents relating to the design and manufacturing of the Cheese Dumper Equipment and Paste Bin Dumper Equipment.

Response:


3. Produce all documents relating to any inspections, examinations, maintenance or tests performed on the Cheese Dumper Equipment and Paste Bin Dumper Equipment.

Response:

4. Produce all audited and unaudited financial statements for IMAC for any time period since January 1, 2004.

Response:

Respectfully submitted,




Gregory H. Teufel
Sarah B. Heineman
Christopher E. Mohnney

DATED: June 7, 2007

CERTIFICATE OF SERVICE

I, Sarah B. Heineman, hereby certify that I served a true and correct copy of the foregoing **Plaintiffs' First Set of Interrogatories and Requests for Production of Documents to Industrial Machinery Automation and Controls, LLC**, was served via U.S. Mail, First Class, postage pre-paid, this 7th day of June, 2007, upon the following:

David J. Hopkins, Esq.
Hopkins Heltzel LLP
100 Meadow Lane, Suite 5
DuBois, PA 15801



Sarah B. Heineman

Cr

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

GIUSEPPE'S FINER FOODS,
INC., GORTECH GLOBAL
FABRICATION, LLC

-VS-

No. 06-1633-CD

FRESHTEC INTERNATIONAL,
LLC, INDUSTRIAL MACHINERY
AUTOMATION AND CONTROLS,
LLC, AND LARRY SALONE

O R D E R

AND NOW, this 9th day of January, 2008, following argument on the Plaintiffs' Motion for Sanctions, it is the ORDER of this Court that counsel for both parties supply the Court with proposed Order within no more than seven (7) days from this date. The Court has no objection to the proposed Order being faxed.

BY THE COURT,



President Judge

FILED

JAN 14 2008

William A. Shaw
Prothonotary/Clerk of Courts

cc Atty's:
Teutels Heikeman
Mohney
Hopkins
GP

FILED

JAN 14 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 1/14/08

X You are responsible for serving all appropriate parties.

X The Prothonotary's office has provided service to the following parties:

 Plaintiff(s) X Plaintiff(s) Attorney Other

 Defendant(s) X Defendant(s) Attorney

 Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

GIUSEPPE'S FINER FOODS, INC.,
GORTECH GLOBAL FABRICATION, LLC,


Plaintiffs,

vs.

FRESHTEC INTERNATIONAL, LLC,
INDUSTRIAL MACHINERY
AUTOMATION AND CONTROLS, LLC,
and LARRY SALONE,

) CIVIL DIVISION

) No. 06-1633- C.D.

FILED 
MAR 12 2008
6 / 1:30 / W
William A. Shaw
Prothonotary/Clerk of Courts
Sent to Atty's
TEUFEL.
HOPKINS
MCHNRY

ORDER OF COURT

AND NOW, this 12 day of March, 2008, upon consideration of
Plaintiffs' Motion for Sanctions, and any response thereto, it is hereby ORDERED,
ADJUDGED and DECREED that Defendants shall serve full and complete answers
Plaintiffs' Discovery within 25^{FJA} days of the date of this Order, without objections. In
particular:

1. Defendant Larry Salone shall provide full and complete answers to:
 - a. Interrogatories 7 and 8 regarding experience he had in designing and/or manufacturing Paste Bin Dumper Equipment and Cheese Dumper Equipment or similar equipment;
 - b. Interrogatories 9 and 10 regarding experience he had in selling Paste Bin Dumper Equipment and Cheese Dumper Equipment or similar equipment;
 - c. Interrogatory 11 regarding communications between Mr. Salone and the Plaintiffs;
 - d. Interrogatories 13 through 18 regarding his knowledge as to the progress of the design, manufacturing, delivery, installation, quality, performance, and/or

testing of the Cheese Dumper and Paste Bin Dumper Equipment;

- e. Interrogatory 19 regarding his bank accounts;
- f. Interrogatory 23 regarding his present net worth;
- g. Interrogatory 24 regarding his assets;
- h. Interrogatory 25 regarding his personal indebtedness;
- i. Interrogatories 26 and 27 regarding identifying all documents in

relation to the Cheese Dumper Equipment and the Paste Bin Dumper Equipment including any testing and performance of same or relating to any allegations in the Complaint and the Requests for Production 1 and 2 regarding production of all documents that were identified or reviewed for purposes of answering the Interrogatories and regarding tax returns for 2005 and 2006.

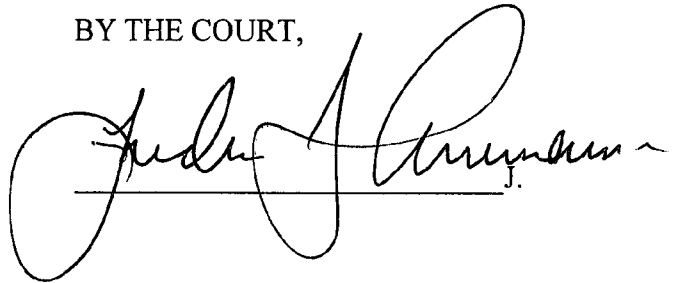
2. Defendants Freshtec International, LLC and Industrial Machinery Automation and Controls, LLC shall provide full and complete answers to:

- a. Interrogatory 6 regarding capital contributions;
- b. Interrogatories 12 and 13 regarding past experiences(s) in designing or manufacturing Past Bin Dumper Equipment and Cheese Dumper Equipment as well as regarding identifying any documents involving these past experiences;
- c. Interrogatory 15 regarding consideration of filing for bankruptcy;
- d. Interrogatories 16 through 21 regarding identifying who had access to the accounts and identifying all account statements of the relevant bank accounts from April 2005-present;
- e. Interrogatories 31 and 32 regarding identifying all documents in relation to the Cheese Dumper Equipment and the Paste Bin Dumper Equipment including any testing and performance of same or relating to any allegations in the

Complaint and the Requests for Production 1 through 4 regarding production of all documents that were identified or reviewed for purposes of answering the Interrogatories, documents relating to the design, manufacture, inspections, examinations, maintenance or tests performed on said equipment, and regarding financial statements since January 1, 2004.

It is further ORDERED that Defendants are sanctioned and must pay Plaintiffs the amount of One Thousand Dollars (\$1,000.00) for costs.

BY THE COURT,

A handwritten signature in black ink, appearing to read "Judge J. Arundson", is written over a horizontal line. The signature is stylized with large loops and a long horizontal stroke at the end.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

GIUSEPPE'S FINER FOODS, INC.,

Plaintiff,

v.

FRESHTEC INTERNATIONAL, LLC.,

Defendant.

CIVIL ACTION - LAW

No. 06-1633 C.D.

ENTRY OF APPEARANCE

Filed on Behalf of Defendant
Giuseppe's Finer Foods, Inc.

Counsel of Record for Defendant:

Gregory H. Teufel
PA I.D. No. 73062

Eckert Seamans Cherin & Mellott, LLC
Firm No. 075
44th Floor, U.S. Steel Tower
600 Grant Street
Pittsburgh, PA 15219
412-566-5977
412-566-6099 (facsimile)
gteufel@eckertseamans.com

Christopher E. Mohnhey, Esq.
Pa. I.D. 63494
25 East Park Avenue, Suite 6
DuBois, PA 16801
814-375-15801

FILED
MAY 14 2008

William A. Shaw
Prothonotary/Clerk of Courts

copy to
CIA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

GIUSEPPE'S FINER FOODS, INC.,

CIVIL ACTION - LAW

Plaintiff,

No. 06-1633-C.D.

v.

FRESHTEC INTERNATIONAL, LLC.,

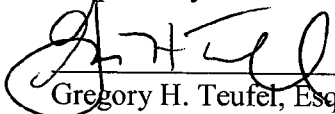
Defendant.

ENTRY OF APPEARANCE

TO THE PROTHONOTARY:

Please enter the appearance of Gregory H. Teufel, Esq. and Eckert Seamans Cherin &
Mellott, LLC on behalf of Defendant Giuseppe's Finer Foods, Inc.

Respectfully submitted,



Gregory H. Teufel, Esq.

Eckert Seamans Cherin & Mellott, LLC

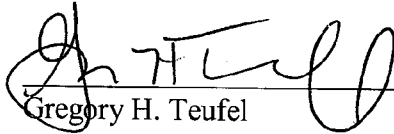
CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing Entry of Appearance were served upon the following by deposit in the United States mail, first class postage prepaid, this 12th day of May, 2008.

David J. Hopkins, Esq.
Hopkins Heltzel, LLP
100 Meadow Lane, Suite 5
DuBois, PA 15801

Sarah B. Heineman, Esq.
Schnader Harrison Segal & Lewis, LLP
120 Fifth Avenue, Suite 2700
Fifth Avenue Place
Pittsburgh, PA 15222

Christopher E. Mohny, Esq.
25 East Park Avenue, Suite 6
DuBois, PA 16801



Gregory H. Teufel

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GIUSEPPE'S FINER FOODS, INC.,)
GORTECH GLOBAL FABRICATION, LLC,)

CIVIL DIVISION

Plaintiffs,

NO. 06-1633-C.D.

vs.

FRESHTEC INTERNATIONAL, LLC,
INDUSTRIAL MACHINERY
AUTOMATION AND CONTROLS, LLC,
and LARRY SALONE,

Defendants.

NOTICE OF WITHDRAWAL OF
APPEARANCE

Filed on behalf of Plaintiffs,
Giuseppe Finer Foods

Counsel of Record for this Party:

Sarah B. Heineman
Pa. Id. No. 91040
SCHNADER HARRISON SEGAL & LEWIS LLP
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222-3010
(412) 577-5200 (telephone)
(412) 765-3858 (facsimile)

FILED
MAY 19 2008

William A. Shaw
Prothonotary/Clerk of Courts

Copy to CIA

CR

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GIUSEPPE'S FINER FOODS, INC., CIVIL DIVISION
GORTECH GLOBAL FABRICATION, LLC,

Plaintiffs,

No. 06-1633- C.D.

vs.

FRESHTEC INTERNATIONAL, LLC,
INDUSTRIAL MACHINERY
AUTOMATION AND CONTROLS, LLC,
and LARRY SALONE,

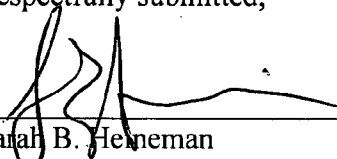
Defendants.

NOTICE OF WITHDRAWAL OF APPEARANCE

Kindly withdraw the appearance of the undersigned counsel and Schnader Harrison Segal & Lewis LLP on behalf of the Defendant Giuseppe's Finer Foods, Inc. in the above-captioned action.

Respectfully submitted,

DATED: May 15, 2008



Sarah B. Henneman
Schnader Harrison Segal & Lewis LLP
Fifth Avenue Place, Suite 2700
120 Fifth Avenue
Pittsburgh, PA 15222-3010
Telephone: (412) 577-5200
Facsimile: (412) 765-3858

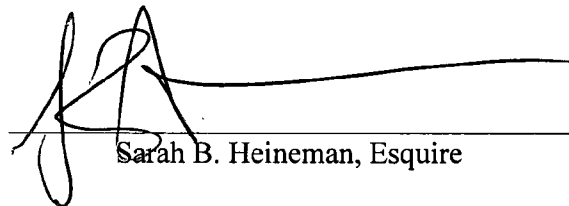
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **NOTICE TO
WITHDRAWAL APPEARANCE** has been served upon Plaintiff's counsel this 15
day of May 2008 via first-class U.S. Mail:

David J. Hopkins, Esq.
Hopkins Heltzel, LLP
100 Meadow Lane, Suite 5
DuBois, PA 15801

Christopher E. Mohny, Esq.
25 East Park Avenue, Suite 6
DuBois, PA 16801

Gregory H. Teufel, Esq.
Eckert Seamans Cherin & Mellott, LLC
U.S. Steel Tower, 44th Floor
600 Grant Street
Pittsburgh, PA 15219



Sarah B. Heineman, Esquire

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION**

GIUSEPPE'S FINER FOODS, INC., GORTECH
GLOBAL FABRICATION, LLC and ICP ASSET
MANAGEMENT, INC.,
Plaintiffs

vs.

FRESHTEC INTERNATIONAL, LLC, INDUSTRIAL
MACHINERY AUTOMATION & CONTROLS, LLC,
and LARRY SALONE,
Defendants

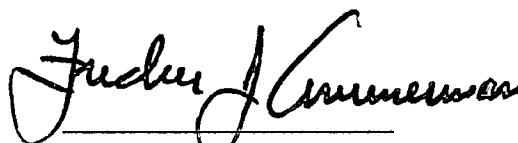
* NO. 2006-1633-CD
*
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*
*

ORDER

NOW, this 15th day of April, 2013, following a review of the docket, due to the case's extended period of time in pending status; it is the ORDER of this Court that a **status conference** be and is hereby scheduled for the **8th day of May, 2013 at 1:30 p.m.** in Courtroom No. 1, Clearfield County Courthouse, Clearfield, Pennsylvania.

If this case has been concluded, the moving party is directed to file the appropriate Praecipe with the Prothonotary of Clearfield County to finalize that status of the case.

BY THE COURT,



FREDRIC J. AMMERMAN
President Judge

FILED
0/3:19cm
5 APR 17 2013

William A. Shaw
Prothonotary/Clerk of Courts

ICC Attys:
Teufel
Heinemann
Mohnen
Hopkins

FILED

MAY 08 2013

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GIUSEPPE'S FINER FOODS, INC.,)
GORTECH GLOBAL FABRICATION, LLC,)

CIVIL DIVISION

Plaintiffs,

NO. 06-1633-C.D.

vs.

FRESHTEC INTERNATIONAL, LLC,
INDUSTRIAL MACHINERY
AUTOMATION AND CONTROLS, LLC,
and LARRY SALONE,

Defendants.

**PLAINTIFFS' PRAECIPE FOR
VOLUNTARY DISCONTINUANCE**

Filed on behalf of Plaintiffs,
Giuseppe's Finer Foods and Gortech Global
Fabrication, LLC

Counsel of Record for this Party:

Gregory H. Teufel
PA I.D. No. 73062

Eckert Seamans Cherin & Mellott, LLC
Firm No. 075
44th Floor, U.S. Steel Tower
600 Grant Street
Pittsburgh, PA 15219
412-566-5977
412-566-6099 (facsimile)
gteufel@eckertseamans.com

Christopher E. Mohny, Esquire
Pa. I.D. No. 63494
51 Beaver Drive, Suite 1
DuBois, PA 15801
(814) 375-1044
(814) 375-1088 (facsimile)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

GIUSEPPE'S FINER FOODS, INC., CIVIL DIVISION
GORTECH GLOBAL FABRICATION, LLC,

Plaintiffs,

No. 06-1633- C.D.

vs.

FRESHTEC INTERNATIONAL, LLC,
INDUSTRIAL MACHINERY
AUTOMATION AND CONTROLS, LLC,
and LARRY SALONE,

Defendants.

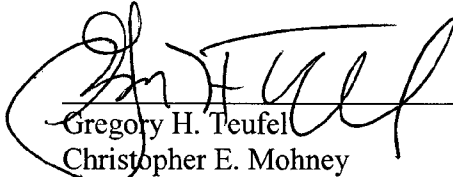
PLAINTIFFS' PRAECIPE FOR VOLUNTARY DISCONTINUANCE

TO THE PROTHONOTARY:

Plaintiffs, Giuseppe's Finer Foods, Inc. and Gortech Global Fabrication, LLC,
(collectively "Plaintiffs") by and through their undersigned counsel, hereby voluntarily
dismiss the above-captioned action at G.D. No. 04-029010 in its entirety and as to all
Defendants pursuant to Pa.R.C.P. 229.

Kindly mark the above-captioned action as dismissed without prejudice.

Respectfully submitted,



Gregory H. Teufel
Christopher E. Mohny

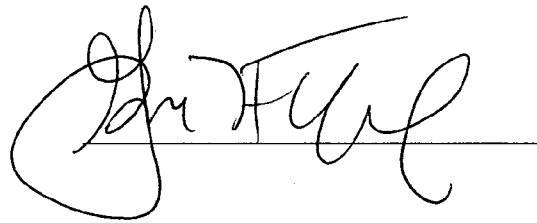
DATED: May 8, 2013

*Attorneys for Plaintiffs, GIUSEPPE'S
FINER FOODS, INC., GORTECH GLOBAL
FABRICATION, LLC.*

Certificate of Service

The undersigned hereby certifies that I served a true and correct copy of the foregoing **Plaintiffs' Praecipe for Voluntary Discontinuance**, was served via U.S. Mail, First Class, postage pre-paid, this 8th day of May, 2008, upon the following:

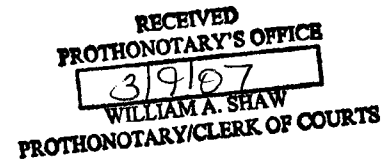
David J. Hopkins, Esq.
Hopkins Heltzel LLP
100 Meadow Lane, Suite 5
DuBois, PA 15801

A handwritten signature in black ink, appearing to read "D.J. Hopkins", is written over a horizontal line.

March 7, 2007

DL-1633-CD

Sarah B. Heineman
Direct Dial: (412) 577-5201
Facsimile: (412) 765-3858
E-Mail: sheineman@schnader.com



David J. Hopkins, Esquire
Hopkins Heltzel LLP
100 Meadow Lane, Suite 5
DuBois, PA 15801

RE: ICP Asset Management, Inc. v. Freshtec International, LLC, et al.
Case No. 25 WDM 2007

Dear Mr. Hopkins:

Enclosed please the Application for Leave to Appeal from Denial of Application for a Determination of Finality filed this date with the Court.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to be "SBH", written over a horizontal line.

Sarah B. Heineman
For SCHNADER HARRISON SEGAL & LEWIS LLP

SBH/rl
Enclosure

cc: Honorable Frederic J. Ammerman (w/enc.)
William Shaw, Clearfield County Prothonotary (w/enc.)
Christopher E. Mohny, Esq. (w/enc.)
Gregory H. Teufel, Esq. (w/o enc.)

IN THE SUPERIOR COURT OF PENNSYLVANIA
WESTERN DISTRICT

MAR - 7

ICP ASSET MANAGEMENT, INC.,

Petitioner,

vs.

FRESHTEC INTERNATIONAL, LLC,
INDUSTRIAL MACHINERY
AUTOMATION AND CONTROLS, LLC,
and LARRY SALONE,

Respondents.

NO.

25 Wom 2007

**APPLICATION FOR LEAVE TO APPEAL
FROM DENIAL OF APPLICATION FOR
A DETERMINATION OF FINALITY**

Filed on behalf of Petitioner
ICP Asset Management, Inc.

Counsel of Record for this Party:

Gregory H. Teufel
Pa. Id. No. 73062
Sarah B. Heineman
Pa. Id. No. 91040

SCHNADER HARRISON SEGAL & LEWIS
LLP
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222-3010
(412) 577-5200 (telephone)
(412) 765-3858 (facsimile)

Christopher E. Mohny, Esquire
Pa. Id. 63494
25 East Park Avenue, Suite 6
DuBois, PA 15801
(814) 375-1044

IN THE SUPERIOR COURT OF PENNSYLVANIA
WESTERN DISTRICT

ICP ASSET MANAGEMENT, INC.,

Petitioner, No.
vs.

FRESHTEC INTERNATIONAL, LLC,
INDUSTRIAL MACHINERY
AUTOMATION AND CONTROLS, LLC,
and LARRY SALONE,

Respondents.

**APPLICATION FOR LEAVE TO APPEAL FROM DENIAL OF
MOTION FOR A DETERMINATION OF FINALITY**

Petitioner, ICP Asset Management, Inc. ("ICPAM"), by and through its undersigned counsel, files its Application for Leave to Appeal From Denial of its Motion for a Determination of Finality by the Court of Common Pleas of Clearfield County pursuant to Pa. R.A.P. No. 341(c)(4) and in support represents as follows:

1. On October 6, 2006, ICPAM filed a Complaint against Respondents alleging an unjust enrichment claim based on a commercial transaction where several Plaintiffs, including ICPAM, were involved in the purchase of defective equipment sold by Respondents.
2. The Complaint alleges that Respondents breached the contract for the sale of the equipment and Respondents misrepresented their ability to perform the underlying contract and also misrepresented about the status of the work performed in order to induce progress payments.
3. ICPAM's role in the transaction was that it was the entity that paid Respondents for the defective equipment.

4. The Respondents have unjustly retained all of the money that ICPAM has paid to them.

5. Therefore, ICPAM's claim of unjust enrichment is intertwined with the other Plaintiffs' claims of breach of contract and fraud because they all arise out of the same commercial transaction and misrepresentations.

6. On November 28, 2006, Defendants filed Preliminary Objections seeking the dismissal of ICPAM as a Plaintiff, as well as, seeking the dismissal of the other Plaintiffs and their claims.

7. On January 3, 2007¹, The Court of Common Pleas for Clearfield County granted the Preliminary Objections dismissing ICPAM as a Plaintiff and dismissing ICPAM's unjust enrichment claim. *See* attached Order as Exhibit "A."

8. However, the Order denied the rest of Defendants' Preliminary Objections resulting in the other Plaintiffs ("Remaining Plaintiffs") and their claims remaining in the suit. *See* Exhibit "A."

9. Consequently, the Order dismissing ICPAM is not a final Order under Pa. R.A.P. No. 341(b)(1) or (2) because it does not dispose of all claims or all parties and is not defined as a final order by statute.

10. Pursuant to Pa. R.A.P. No. 341(c) ICPAM filed a Motion for a Determination of Finality with the Court of Common Pleas of Clearfield County in order to be allowed to file an appeal. A copy of Motion for Determination of Finality is attached as Exhibit "B."

¹ The Order was not actually filed with the Clearfield County Prothonotary until January 5, 2007.

11. On February 5, 2007, the Honorable Fredic J. Ammerman denied ICPAM's application for a determination of finality by not responding within 30 days of entry of the Order dismissing ICPAM's claim as required by Pa. R.A.P. No. 341(c)(2)-(3). *See* Exhibit "C."

12. This denial constituted an abuse of discretion by the lower court in that the unjust enrichment claim of ICPAM is based on the same transactions and occurrences as the Remaining Plaintiffs' claims. By the time ICPAM would be allowed to appeal the Order dismissing it from the lawsuit, all of the Remaining Plaintiffs' claims would have already been litigated. This poses a problem if the appellate courts overturn the Order and remands the claim with the end result of ICPAM relitigating the same facts and issues that the Remaining Plaintiffs already litigated.

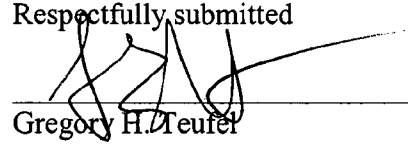
13. As outlined by the Note to Pa. R.A.P. No. 341, one factor a court should consider in evaluating if a determination of finality should be granted to an order is whether there is a significant relationship between adjudicated and unadjudicated claims.

14. Further, it is important to note that the issue as to the viability of ICPAM's unjust enrichment claim was never briefed for the lower court before it dismissed the claim.

15. Therefore, to ensure judicial economy in the litigation of all issues arising out of the same transactions and occurrences, ICPAM respectfully requests that this Honorable Court grant leave to appeal the denial of determination of finality.

WHEREFORE, ICP Asset Management, Inc., respectfully requests that this Honorable Court enter an order permitting ICPAM to appeal from the denial of its application for a determination of finality.

Respectfully submitted



Gregory H. Teufel

Pa. Id. No. 73062

Sarah B. Heineman

Pa. Id. No. 91040

SCHNADER HARRISON SEGAL & LEWIS LLP

Suite 2700, Fifth Avenue Place

120 Fifth Avenue

Pittsburgh, PA 15222-3010

(412) 577-5200 (telephone)

(412) 765-3858 (facsimile)

*Attorneys for Petitioner, ICP ASSET MANAGEMENT,
INC.*

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

GIUSEPPE'S FINER FOODS,
INC., GORTECH GLOBAL
FABRICATION, LLC, AND ICP
ASSET MANAGEMENT, INC.

JAN 05 2007

Attest.

William D. Brown
Prothonotary/
Clerk of Courts

-VS-

No. 06-1633-CD

FRESHTEC INTERNATIONAL,
LLC, INDUSTRIAL MACHINERY
AUTOMATION AND CONTROL,
LLC, and LARRY SALONE

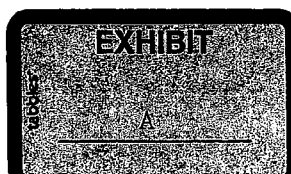
ORDER

AND NOW, this 3rd day of January, 2007,
following argument on the Preliminary Objections filed on
behalf of the Defendants, it is the ORDER of this Court as
follows:

1. The Preliminary Objection set forth as No. 1, Paragraphs 13 through 20, is hereby dismissed;
2. The Preliminary Objection set forth as No. 2, Paragraphs 21 through 27, is hereby granted. The ICP Asset Management, Inc., is hereby dismissed as a Plaintiff. The unjust enrichment portion of Plaintiff's complaint is also dismissed;
3. The Preliminary Objections listed as No. 3 and No. 4 are hereby dismissed.

BY THE COURT,
/s/ Fredric J. Ammerman

President Judge



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GIUSEPPE'S FINER FOODS, INC.,)
GORTECH GLOBAL FABRICATION, LLC,) CIVIL DIVISION
and ICP ASSET MANAGEMENT, INC.,)

Plaintiffs,) NO. 06-1633-C.D.

vs.)

FRESHTEC INTERNATIONAL, LLC,) **PLAINTIFF ICP ASSET MANAGEMENT,**
INDUSTRIAL MACHINERY) **INC.'S MOTION FOR A**
AUTOMATION AND CONTROLS, LLC,) **DETERMINATION OF FINALITY**
and LARRY SALONE,)

Defendants.)

) Filed on behalf of Plaintiff
) ICP Asset Management, Inc.

) Counsel of Record for this Party:

) Gregory H. Teufel

) Pa. Id. No. 73062

) Sarah B. Heineman

) Pa. Id. No. 91040

) SCHNADER HARRISON SEGAL & LEWIS

) LLP

) Suite 2700, Fifth Avenue Place

) 120 Fifth Avenue

) Pittsburgh, PA 15222-3010

) (412) 577-5200 (telephone)

) (412) 765-3858 (facsimile)

) Christopher E. Mohny, Esquire

) Pa. Id. 63494

25 East Park Avenue, Suite 6

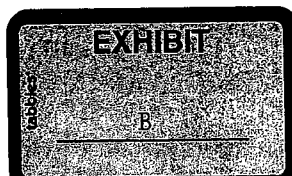
DuBois, PA 15801

(814) 375-1044

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

FEB 01 2007

PTDATA 299035_1



Attest.

William L. Shaw
Prothonotary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
GIUSEPPE'S FINER FOODS, INC., et al., CIVIL DIVISION

Plaintiffs,

vs.

No. 06-1633-C.D.

FRESHTEC INTERNATIONAL, LLC, et al.,

Defendants.

PLAINTIFF'S MOTION FOR A DETERMINATION OF FINALITY

Plaintiff, ICP Asset Management, Inc. ("ICPAM"), by and through its undersigned attorneys, hereby file the following Motion for a Determination of Finality in accordance with Pa. R.A.P. No. 341(c).

1. On October 6, 2006, Plaintiff ICPAM filed a Complaint alleging an unjust enrichment claim against the Defendants.

2. ICPAM filed the Complaint with other Plaintiffs who were involved in the same transactions and occurrences that formed the basis for ICPAM's unjust enrichment claim

3. On November 28, 2006, Defendants filed Preliminary Objections seeking the dismissal of ICPAM as a Plaintiff, as well as, seeking the dismissal of the other Plaintiffs and their claims.

4. In its January 3, 2007 Order ("Order"), this Honorable Court granted the Preliminary Objections dismissing ICPAM as a Plaintiff and dismissing ICPAM's unjust enrichment claim.

5. However, the Order denied the rest of Defendants' Preliminary Objections resulting in the other Plaintiffs ("Remaining Plaintiffs") and their claims remaining in the suit.

6. Consequently, the Order dismissing ICPAM is not a final Order under Pa. R.A.P. No. 341(b)(1) or (2) because it does not dispose of all claims or all parties and is not defined as a

final order by statute. Thus, ICPAM would be unable to appeal the Order until all of the Parties' claims are adjudicated.

7. The unjust enrichment claim of ICPAM is based on the same transactions and occurrences as the Remaining Plaintiffs' claims. By the time ICPAM would be allowed to appeal the Order dismissing it from the lawsuit, all of the Remaining Plaintiffs' claims would have already been litigated. This poses a problem if the appellate courts overturn the Order and remands the claim with the end result of ICPAM relitigating the same facts and issues that the Remaining Plaintiffs already litigated.

8. One factor a court should consider in evaluating if a determination of finality should be granted to an order is whether there is a significant relationship between adjudicated and unadjudicated claims. Note to Pa. R.A.P. No. 341.

9. Therefore, to ensure judicial economy in the litigation of all issues arising out of the same transactions and occurrences, ICPAM respectfully requests that this Honorable Court amend its January 3, 2007 Order, by including a determination of finality pursuant to Pa. R.A.P. No. 341(c).

WHEREFORE, ICP Asset Management, Inc., respectfully requests that this Honorable Court grant the Plaintiff's Motion for a Determination of Finality and amend its Order to reflect the Order dismissing ICPAM as a party and ICPAM's unjust enrichment claim is a final order and that an immediate appeal of the Order would facilitate resolution of the entire case.

Respectfully submitted



Gregory H. Teufel

Sarah B. Heineman

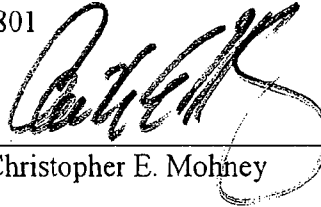
Christopher E. Mohny

Attorneys for Plaintiff, ICP ASSET
MANAGEMENT, INC.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion for a Determination of Finality was served upon the following counsel of record by facsimile and first-class mail, postage prepaid, this 1 day of February, 2007:

David J. Hopkins, Esq.
100 Meadow Lane
Suite 5
DuBois, PA 15801

A handwritten signature in black ink, appearing to read "C. Mohney", is written over a horizontal line.

Christopher E. Mohney

CHRISTOPHER E. MOHNEY

ATTORNEY AT LAW

25 EAST PARK AVENUE

SUITE 6

DuBOIS, PA 15801

TELEPHONE: (814) 375-1044

FACSIMILE: (814) 375-1088

February 1, 2007

David J. Hopkins, Esquire
Hopkins Heltzel, LLP
100 Meadow Lane, Suite 5
DuBois, PA 15801

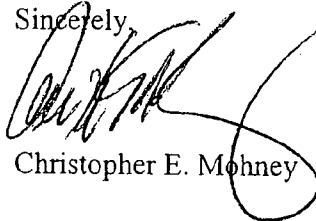
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**RE: Giuseppe's Finer Foods, Inc., et al. vs.
Freshtec International, LLC, et al.
No. 06-1633-C.D.**

Dear Dave:

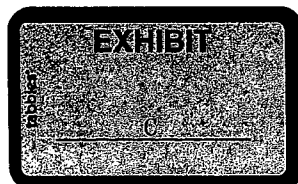
Judge Ammerman's chambers called my office this afternoon to indicate that Judge Ammerman was not going to sign the proposed order attached to our Motion for a Determination of Finality.

Sincerely,



Christopher E. Mohney

Copy to: Gregory H. Teufel, Esquire
Dennis V. Raybuck



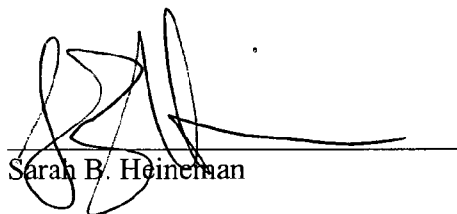
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **APPLICATION FOR LEAVE TO APPEAL FROM DENIAL OF APPLICATION FOR A DETERMINATION OF FINALITY** was served upon the following counsel of record by first-class mail, postage prepaid, this 7 day of March, 2007:

David J. Hopkins, Esq.
100 Meadow Lane, Suite 5
DuBois, PA 15801

William Shaw
Clearfield County Prothonotary
Clearfield County Courthouse
230 E. Market Street
Clearfield, PA 16830

Honorable Frederic J. Ammerman
Court of Common Pleas of Clearfield County
230 E. Market Street
Clearfield, PA 16830



Sarah B. Heineman