

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
NORTHERN DIVISION**

MAY 21 2020

JAMES W. McCORMACK, CLERK
By: [Signature]
PLAINTIFF DEP. CLERK

PECO FOODS, INC.

VS.

CIVIL ACTION NO. 3:20-cv-140-BSM

MAINES PAPER & FOOD SERVICE, INC.

DEFENDANT

COMPLAINT

Plaintiff Peco Foods, Inc. (“**Peco**”) files this Complaint against Defendant Maines Paper & Food Service, Inc. (“**Maines Paper**”), and in support, states the following:

PARTIES

1. Peco is an Alabama corporation with its principal place of business located in Alabama. Peco operates facilities in Pocahontas, Arkansas, among other locations in Arkansas.
2. Maines Paper is a New York corporation with its principal place of business located at 101 Broome Corporate Parkway, Conklin, New York 13748-0450. Maines Paper may be served through its registered agent, Corporation Service Company, at 80 State Street, Albany, New York 12207-2543.

JURISDICTION AND VENUE

3. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332 because Peco is a citizen of Alabama and Maines Paper is a citizen of New York, and the amount in controversy exceeds \$75,000.
4. Venue is proper in this division pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to Peco’s claims occurred in this division. Alternatively, venue is proper in this division pursuant to 28 U.S.C. § 1391(b)(3).

This case assigned to District Judge Miller
and to Magistrate Judge Harris

FACTS

5. Peco is a poultry products provider for the industrial, retail, and food service markets across the United States.

6. Maines Paper is a food distributor that sells to fast food restaurants such as Wendy's.

7. On April 3, 2020, Peco sold to Maines Paper poultry products on an open account. Copies of the accounts receivable report, invoice, and shipping manifest are attached hereto as **Exhibit 1**. As reflected in the invoice and manifest, this order was fulfilled and shipped from Peco's facilities in Pocahontas, Arkansas.

8. Maines Paper has failed to pay Peco for the poultry products.

9. The total amount of the invoice is \$97,524.00. The account included a credit in the amount of \$11,043.47 related to an adjustment of a prior invoice, which Peco has offset and applied to the past due invoice. Accordingly, Maines Paper is indebted to Peco in the principal amount of \$86,480.53.

10. Attached hereto as **Exhibit 2** is the affidavit of Linda McCollum, submitted pursuant to Ark. Code § 16-45-104, certifying the correctness of the facts stated in this complaint and that the account described herein is just and correct.

COUNT I: OPEN ACCOUNT

11. Peco incorporates by reference the allegations contained in the preceding paragraphs.

12. Peco sold Maines Paper poultry products on an open account.

13. Maines Paper failed to pay for the poultry products.

14. Accordingly, Maines Paper is liable to Peco in the amount of \$86,480.53, plus interest at the legal rate pursuant to Ark. Code Ann. § 16-65-114.

15. Additionally, pursuant to Ark. Code Ann. § 16-22-308, Peco requests that the Court award it reasonable attorneys' fees and costs.

COUNT II: BREACH OF CONTRACT

16. Peco incorporates by reference the allegations contained in the preceding paragraphs.

17. Alternatively, Peco and Maines Paper entered into a valid and binding contract as represented by the shipping manifest and invoice, to which Maines Paper failed to object, and Maines Paper's acceptance of the poultry products.

18. Maines Paper breached the contract by failing to pay for the poultry products.

19. Accordingly, Maines Paper is liable to Peco in the amount of \$86,480.53, plus interest at the legal rate pursuant to Ark. Code Ann. § 16-65-114.

20. Additionally, pursuant to Ark. Code Ann. § 16-22-308, Peco requests that the Court award it reasonable attorneys' fees and costs.

COUNT III: UNJUST ENRICHMENT/QUANTUM MERUIT

21. Peco incorporates by reference the allegations contained in the preceding paragraphs.

22. Peco sold poultry products to Maines Paper. Maines Paper received and accepted the poultry products but did not pay Peco as promised. As a result, Maines Paper received a valuable benefit in the form of poultry products sold from Peco. Maines Paper's retention of the benefits conferred by Peco without payment violates principles of justice, equity, and good conscience. It would be unjust for Maines Paper to retain the benefits conferred upon it by Peco.

Therefore, Peco is entitled to recover from Maines Paper the reasonable value of the wrongfully accepted poultry products. The reasonable value of the poultry products for which Maines Paper has not paid is \$86,480.53, plus interest at the legal rate pursuant to Ark. Code Ann. § 16-65-114.

23. Additionally, pursuant to Ark. Code Ann. § 16-22-308, Peco requests that the Court award it reasonable attorneys' fees and costs.

WHEREFORE, PREMISES CONSIDERED, Peco respectfully requests that the Court enter a judgment in its favor and against Maines Paper in the amount of \$86,480.53, plus interest at the legal rate, plus reasonable attorneys' fees and costs. Peco requests such other relief to which it is entitled.

Dated: May 20, 2020.

PECO FOODS, INC.


One of its Attorneys

OF COUNSEL:

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Tuesday, May 12, 2020 11:14AM

Peco Foods, Inc.

Accounts Receivable - Customer Activity Summary - FOR CREDIT

Invoices Posted Thru 05/09/2020

Payments Posted Thru 05/12/2020

B=Bay Springs, D=Pocahontas, E=West Point, L=Feather Lane, N=Galleville, P=Tuscaloosa, V=Brookville, W=Fallon Street, X=Sebastopol

Invoice#	Invoice Date	Manifest	Purchase Order	Co	Pay Date	Days to Pay	Invoice Amt	Payments	Adjustments	Invoice Bal	
323202	MAINES PAPER & FOOD SERVICE, INC.		P.O. BOX 655					CONKLIN, NY		(887) 772-1936	
306035	01/10/2020	50495	1000996100	D	04/15/2020		\$101,147.77	\$101,147.77	\$0.00	\$0.00	
313599	03/10/2020	53324	1001013307	D	04/29/2020		\$101,147.77	\$191,045.67	\$78,854.43	(\$11,043.47)	
316665	04/03/2020	54603	1001020277	D			\$97,524.00	\$0.00	\$0.00	\$97,524.00	
Current:	\$0.00	22-30:	\$0.00	Over 45:	(\$11,043.47)		\$299,819.54	\$292,193.44	\$78,854.43	\$86,480.53	Credit:\$0
14-24:	\$0.00	31-45:	\$97,524.00								

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