

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

**SUZHOU ALLPRO CERTIFIED)
PUBLIC ACCOUNTANTS CO., LTD.,)
as Bankruptcy Administrator of)
SURE HEAT MANUFACTURING)
(SUZHOU) CO. LTD.,)**

Plaintiff,)

vs.)

Case No.: _:15-cv-____ -__

**SURE HEAT MANUFACTURING,)
INC., MICHAEL R. MULBERRY,)
MICHAEL S. MULBERRY, HARRY)
CLIFFORD VILLERS, and)
CLIFFORD DONAL THOMPSON)**

Defendants.)

_____)

COMPLAINT

COMES NOW, Suzhou Allpro Certified Public Accountants Co., Ltd., as Bankruptcy Administrator of Sure Heat Manufacturing (Suzhou) Co. Ltd., a debtor under the laws of the People’s Republic of China, and files this Complaint against Sure Heat Manufacturing, Inc., Michael R. Mulberry, Michael S. Mulberry, Clifford Villers, and Clifford Donal Thompson.

PARTIES, JURISDICTION, AND VENUE

1. Sure Heat Manufacturing (Suzhou) Co., Ltd. (the “Debtor”) is a debtor in a bankruptcy proceeding under the Law of the People’s Republic of China on Enterprise Bankruptcy. The Debtor commenced the bankruptcy proceeding on January 8, 2014.

2. The Debtor is a business entity organized under the laws of the People’s Republic of China.

3. Plaintiff Suzhou Allpro Certified Public Accountants Co., Ltd. (the “Plaintiff”) is a corporation organized under the laws of the People’s Republic of China and is bringing this Complaint in its capacity as the Bankruptcy Administrator of the Debtor’s bankruptcy estate.

4. The Plaintiff was appointed as the Bankruptcy Administrator of the Debtor pursuant to an order issued by the Suzhou Huqiu District People’s Court on April 25, 2014. As the Bankruptcy Administrator of the Debtor, the Plaintiff has the responsibility and the legal duty to, among other things, administer the Debtor’s estate by liquidating its assets, pursuing litigation on behalf of the Debtor, and distributing assets to the Debtor’s creditors.

5. The Debtor’s liquidation in bankruptcy is ongoing, and it currently owes its creditors tens of millions of dollars.

6. Defendant Sure Heat Manufacturing, Inc. (“Sure Heat”) is a Georgia corporation and may be properly served by delivering a summons and a copy of the Complaint to its registered agent, Michael R. Mulberry, 1861 West Oak Parkway, Cobb, Marietta, GA 30062.

7. At all times relevant to the Complaint, on information and belief, Defendant Michael R. Mulberry was the chief executive officer and president of Sure Heat.

8. At all times relevant to the Complaint, on information and belief, Defendant Michael R. Mulberry was chairman of the Debtor’s Board of Directors and president of the Debtor.

9. On information and belief, Michael R. Mulberry is a resident and citizen of Georgia.

10. At all times relevant to the Complaint, on information and belief, Defendant Michael S. Mulberry was the secretary of Sure Heat.

11. At all times relevant to the Complaint, on information and belief, Defendant Michael S. Mulberry was a director of the Debtor.

12. On information and belief, Michael S. Mulberry is a resident and citizen of Georgia.

13. At all times relevant to the Complaint, on information and belief, Defendant Clifford Donal Thompson (“Thompson”) was a member of the Debtor’s Board of Directors.

14. On information and belief, Thompson is a resident and citizen of Georgia.

15. At all times relevant to the Complaint, on information and belief, Defendant Harry Clifford Villers (“Villers”) was a member of the Debtor’s Board of Directors.

16. On information and belief, Villers is a resident and citizen of Texas.

17. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332.

18. Venue is proper in this Court pursuant to 28 U.S.C. § 1391.

FACTS

19. Sure Heat develops and sells gas-related appliances for indoor and outdoor spaces, including gas logs, fireboxes, wall heaters, smoker ovens, patio heaters, strip heaters, and gas grills. On information and belief, Sure Heat sells these products and related replacement parts through its website and amazon.com, among other outlets. Certain of its products are available at “big box” home

improvement stores. These products are sold under a variety of trade names, including Sure Heat, ReddyHeater, Vanguard, and Emberglow.

20. On information and belief, Defendants Michael R. Mulberry and Michael S. Mulberry (collectively the “Sure Heat Individual Defendants”) managed and controlled Sure Heat at all times relevant to the Complaint.

21. The Sure Heat Individual Defendants served on the Debtor’s Board of Directors at all times relevant to the Complaint.

22. On information and belief, the Sure Heat Individual Defendants and Defendants Thompson and Villers (collectively with the Sure Heat Individual Defendants, the “Individual Defendants”) managed and controlled the Debtor at all times relevant to the Complaint.

23. On information and belief, the Sure Heat Individual Defendants were the sole shareholders of Sure Heat at all times relevant to the Complaint.

24. The Debtor is a wholly owned subsidiary of Sure Heat. The Debtor manufactured certain of Sure Heat’s products, components, and replacement parts, which the Debtor supplied to Sure Heat through a purchase and sale arrangement, whereby the Debtor sold the goods to Sure Heat and exported them from China to Sure Heat in Georgia.

25. The sale and export of the Debtor's products to Sure Heat was contractual in nature. Sure Heat would issue purchase orders to the Debtor, who would then fulfill the purchase orders by manufacturing the requested goods and shipping them to Sure Heat (collectively, the "Agreement").

26. The Debtor issued Sure Heat an invoice memorializing each purchase and shipment of the Debtor's products to Sure Heat. Between July 1, 2009 and July 31, 2010, the Debtor issued Sure Heat the following invoices (collectively, the "Invoices"):

Date	Invoice No.	Amount Due¹
July, 2009	00622357	\$1,249,807.36
August, 2009	00622360	\$1,698,991.53
September, 2009	00622361	\$2,013,254.41
October, 2009	00622366	\$1,045,305.73
November, 2009	00622373	\$2,026,334.59
December, 2009	01987029	\$1,909,675.38
January, 2010	01987031	\$1,845,341.71
February, 2010	01987033	\$976,740.21
March, 2010	01987036	\$2,968,768.33
April, 2010	01987037	\$1,836,739.17
May, 2010	01987040	\$1,278,179.26
June, 2010	01987042	\$1,112,764.46
July, 2010	01987043	\$885,897.85
Total		\$20,847,899.99

¹ All amounts due are in U.S. Dollars.

27. On information and belief, Sure Heat received each product itemized on the Invoices, and delivery of the items listed on the Invoices are further evidenced by customs forms and declarations, as well as bills of lading.

28. Sure Heat did not pay the amounts due and owing under the Invoices. Sure Heat currently owes the Debtor \$20,847,899.99, plus interest, any other fees due and owing under the Invoices, and all other damages to which it is entitled under law and equity.

29. Plaintiff, in its capacity as Bankruptcy Administrator of the Debtor, demanded repayment of the amounts due and owing as set forth on the Invoices on July 29, 2014 (the “Demand Letter”).

30. To date, Sure Heat has refused to pay the amounts due and owing as set forth on the Invoices, and neither it nor the Sure Heat Individual Defendants ever responded to the Demand Letter.

31. On information and belief, Sure Heat never intended to pay the amounts due and owing as set forth on the Invoices.

32. Rather, Sure Heat and the Individual Defendants conspired and sought to personally benefit by receiving “free” products from a Chinese supplier — an affiliate established and controlled by the Individuals Defendants — selling the products for their own benefit, and ultimately keeping the profits for themselves.

33. On information and belief, the Sure Heat Individual Defendants used the assets of Sure Heat for their personal use, such that Sure Heat was unable to pay the sums due and owing as set forth on the Invoices.

34. On information and belief, Defendants Michael R. Mulberry, Thompson and Villers used the assets of the Debtor for their personal use, such that the Debtor was unable to pay its creditors.

35. On information and belief, each of the Defendants used the assets of the Debtor for their personal use, such that Debtor was unable to pay its creditors as debts became due and leaving the Debtor with unreasonably small capital.

Count I – Breach of Contract Against Sure Heat

36. Plaintiff repeats and re-alleges paragraphs 1 through 35 as if fully set forth herein.

37. On information and belief, the Debtor and Sure Heat entered into the Agreement governing the purchase, sale and export of the Debtor's products to Sure Heat.

38. On information and belief, the Agreement required prompt payment of all outstanding amounts due and owing under the Invoices.

39. By failing to pay the outstanding amounts due and owing, Sure Heat breached the terms of the Agreement.

40. The Debtor has been damaged in the amount of \$20,847,899.99, plus interest and any other fees due and owing under the Agreement resulting from Sure Heat's nonpayment.

41. The Plaintiff, as Bankruptcy Administrator of the Debtor, is entitled to recover \$20,847,899.99, plus interest and any other fees due and owing under the Agreement and any other damages to which it is entitled as a matter of law and equity.

**Count II – Unjust Enrichment Against Sure Heat and Individual
Defendants**

(O.C.G.A. § 9-2-7)

42. Plaintiff repeats and re-alleges paragraphs 1 through 41 as if fully set forth herein.

43. The Debtor transferred property of value to Sure Heat.

44. Sure Heat never paid the Debtor for the products it received as set forth on the Invoices.

45. Sure Heat enjoyed the benefits of the products without compensating the Debtor for such benefits. On information and belief, Sure Heat resold the products it ordered from the Debtor to Sure Heat's customers. Accordingly, Sure Heat has been unjustly enriched at the Debtor's expense.

46. The Plaintiff, as Bankruptcy Administrator of the Debtor, is entitled to damages for the benefits unjustly derived by Sure Heat for its use of the products delivered as set forth on the Invoices in an amount not less than \$20,847,899.99, plus interest and any other fees and expenses incurred by the Debtor in seeking to collect such amounts, and any other damages to which it is entitled as a matter of law and equity.

**Count III – Money Had and Received Against Sure Heat and the
Sure Heat Individual Defendants**

47. Plaintiff repeats and re-alleges paragraphs 1 through 46. The Sure Heat Individual Defendants served on the Debtor's Board of Directors at all times relevant to the Complaint as if fully set forth herein.

48. Sure Heat never remitted the \$20,847,899.99 due and owing to the Debtor as set forth on the Invoices.

49. The Plaintiff, as Bankruptcy Administrator of the Debtor, is entitled to the \$20,847,899.99 due and owing as set forth on the Invoices.

50. In the Demand Letter, the Plaintiff, on behalf of the Debtor, demanded payment of the \$20,847,899.99 due and owing as set forth on the Invoices.

51. Sure Heat and the Sure Heat Individual Defendants have refused to pay the Debtor.

52. The Debtor is entitled to damages not less than \$20,847,899.99, plus interest and any other fees and expenses incurred by the Debtor in seeking to collect such amounts, and any other damages to which it is entitled as a matter of law and equity.

Count IV – Alter Ego Liability Against Sure Heat

53. Plaintiff repeats and re-alleges paragraphs 1 through 52 as if fully set forth herein.

54. At all times relevant to the Complaint, Sure Heat was an affiliate, or parent company (whether direct or indirect) of the Debtor.

55. At all times relevant to the Complaint, Sure Heat conducted, managed, and controlled the affairs of the Debtor.

56. On information and belief, Sure Heat ignored corporate formalities, used the Debtor for its own benefit and gain and, because it controlled the affairs of the Debtor, was responsible for the Debtor's inability to pay its creditors, who are owed tens of millions of dollars.

57. As a result, Sure Heat is the alter ego of the Debtor and is therefore jointly and severally liable for all of the Debtor's debts and liabilities owed to its creditors.

Count V – Alter Ego Liability Against Individual Defendants

58. Plaintiff repeats and re-alleges paragraphs 1 through 57 as if fully set forth herein.

59. At all times relevant to the Complaint, the Individual Defendants were directors and/or officers of the Debtor.

60. At all times relevant to the Complaint, the Individual Defendants conducted, managed, and controlled the affairs of the Debtor.

61. On information and belief, the Individual Defendants ignored corporate formalities, engaged in self-dealing by using the Debtor for their personal benefit and gain, and as directors and officers of both the Debtor and Sure Heat, were responsible for Sure Heat's failure to pay the Debtor and its creditors, who are owed tens of millions of dollars.

62. As a result, the Individual Defendants are the alter egos of the Debtor and are therefore jointly and severally liable for all of the Debtor's debts and liabilities owed to its creditors.

Count VI – Civil Conspiracy Against All Defendants

63. Plaintiff repeats and re-alleges paragraphs 1 through 62 as if fully set forth herein.

64. The Defendants agreed to engage in the unlawful acts alleged herein.

65. Each of the unlawful acts alleged herein constitute a tort under Georgia law.

66. As a result, the Individual Defendants conspired to engage in the unlawful acts alleged herein and are therefore jointly and severally liable for all damages flowing therefrom.

WHEREFORE, the Plaintiff prays for the following relief:

- (a) That judgment be entered in favor of Plaintiff and against Defendants;
- (b) On Count I, that judgment be entered against Sure Heat for breaching the contract and that Sure Heat pay the Plaintiff not less than \$20,847,899.99, plus interest and any other fees due and owing under the Agreement;
- (c) On Count II, that judgment be entered against Sure Heat and the Individual Defendants for being unjustly enriched at the Debtor's expense and awarding the Plaintiff not less than \$20,847,899.99;
- (d) On Count III, that judgment be entered against Sure Heat and the Individual Defendants for money had and received in the amount of \$20,847,899.99;
- (e) On Count IV, that judgment be entered against Sure Heat as the alter ego of the Debtor, holding Sure Heat liable for all of the Debtor's debts and liabilities;

- (f) On Count V, that judgment be entered against the Individual Defendants as the alter egos of the Debtor, holding the Individual Defendants liable for all of the Debtor's debts and liabilities;
- (g) On Count VI, that judgment be entered against all Defendants for civil conspiracy and that each Defendant be held liable for all of the Debtor's debts and liabilities;
- (h) That the Plaintiff be awarded pre-judgment interest on all amounts awarded to the Plaintiff in this litigation, plus costs and attorneys' fees; and
- (i) That the Plaintiff be granted such other and further relief as the Court deems just and proper.

This 30th day of September, 2015.

Respectfully submitted,

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