

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

LINCOLN WOOD PRODUCTS, INC.

Plaintiff,

v.

BUILDERS WHOLESALE CLUB, INC.
and DAVID L. RUSH,

Defendants.

MEMORANDUM AND ORDER
07-C-281-S

Plaintiff Lincoln Wood Products, Inc. commenced this collection action alleging that defendant Builders Wholesale Club, Inc. purchased merchandise on account and failed to pay the amount when due. Plaintiff further alleges that defendant Rush had personally guaranteed payment. Defendant Builders wholesale has not responded to the complaint. Defendant Rush answered, conceding the debt and his personal liability for it. Jurisdiction is based on 28 U.S.C. § 1332. The matter is presently before the Court on plaintiff's motion for judgment on the pleadings.

The following facts are undisputed. Between October 30, 2006 and January 23, 2007 defendant Builders Wholesale purchased merchandise on account from plaintiff in the amount of \$89,181.29. All accounts were due thirty days from sale and none have been paid. The purchase contract imposed 18% annual interest on past due accounts. Defendant Rush, president of defendant Builders, personally guaranteed payment of the debt. Under the terms of the

guarantee, defendant Rush also agreed to pay plaintiff's collection costs including reasonable attorneys' fees. Plaintiff has incurred fees and costs in the amount of \$5,254.49 pursuing this action. On June 7, 2007 defendant Rush sent a letter to Plaintiff and the Court conceding liability and acknowledging his personal guarantee of payment. On July 5, 2007 defendants paid plaintiff \$5,036.92.

Defendants have not opposed plaintiff's claim for judgment in the amount of \$91,678.15 which includes interest, together with collection costs of \$5,254.49. The sum of those amounts must be reduced by defendants' recent payment in the amount of \$5,036.92. Accordingly, judgment shall be entered in the net amount of \$91,895.72.

ORDER

IT IS ORDERED that plaintiff's motion for judgment on the pleadings is GRANTED.

IT IS FURTHER ORDERED that judgment be entered in favor of plaintiff Lincoln Wood Products, Inc. and against defendants Builders Wholesale Club Inc. and David L. Rush in the amount of \$91,895.72, inclusive of costs.

Entered this 18th day of July, 2007.

BY THE COURT:

/s/

JOHN C. SHABAZ
District Judge