

UNITED STATES BANKRUPTCY COURT <u>NORTHERN</u> DISTRICT OF <u>ILLINOIS</u>		<b>PROOF OF CLAIM</b>
Name of Debtor <b>KMART CORPORATION</b>		Case Number <b>02-B-02474</b>
Name of Creditor (The person or other entity to whom the debtor owes money or property): <b>Pro Cycle Assembly, Inc.</b>		<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case. <input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court.
Name and address where notices should be sent: <b>Jeffrey L. Oakes, Esq. Carruthers &amp; Roth, P.A. P.O. Box 540 Greensboro, NC 27402 Telephone number: (336) 379-8651</b>		
Account or other number by which creditor identifies debtor: <b>None</b>		Check here if this claim <input type="checkbox"/> replaces a previously filed claim, dated: _____ <input type="checkbox"/> amends
<b>1. Basis for Claim</b> <input type="checkbox"/> Goods sold <input checked="" type="checkbox"/> Services performed <input type="checkbox"/> Money loaned <input type="checkbox"/> Personal injury/wrongful death <input type="checkbox"/> Taxes <input type="checkbox"/> Other _____		<input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a) <input type="checkbox"/> Wages, salaries, and compensation (fill out below) Your SS #: _____ Unpaid compensation for services performed from _____ to _____ (date) (date)
<b>2. Date debt was incurred:</b> <u>July 2000 through November 2001</u>		<b>3. If court judgment, date obtained:</b>
<b>4. Total Amount of Claim at Time Case Filed:</b> \$ <u>17,385</u> If all or part of your claim is secured or entitled to priority, also complete Item 5 or 6 below. <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.		
<b>5. Secured Claim.</b> <input type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff). Brief Description of Collateral: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____  Value of Collateral: \$ _____  Amount of arrearage and other charges at time case filed included in secured claim, if any: \$ _____		<b>6. Unsecured Priority Claim.</b> <input type="checkbox"/> Check this box if you have an unsecured priority claim Amount entitled to priority \$ _____ Specify the priority of the claim: <input type="checkbox"/> Wages, salaries, or commissions (up to \$4,650),* earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(3). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Up to \$2,100* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6). <input type="checkbox"/> Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(____). *Amounts are subject to adjustment on 4/1/04 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.
<b>7. Credits:</b> The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim. <b>8. Supporting Documents:</b> Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary. <b>9. Date-Stamped Copy:</b> To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.		THIS SPACE IS FOR COURT USE ONLY  <div style="font-size: 2em; font-weight: bold;">KP 675</div>  <div style="font-size: 1.5em;">3/18/02</div>
Date <b>March 13, 2002</b>	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any): <b>By: RCF Greene jr Title: CEO</b>	

STATE OF NORTH CAROLINA  
COUNTY OF GUILFORD  
GUILFORD COUNTY, C.S.C.

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
Case No. 02 CvS 3334

FILED  
JAN 16 AM 11:22

PRO CYCLE ASSEMBLY, INC.,  
BY 

Plaintiff,

v.

K MART CORPORATION,

Defendant.

**VERIFIED COMPLAINT**

Plaintiff Pro Cycle Assembly, Inc. complaining of the Defendant, alleges as follows:

1. Plaintiff Pro Cycle Assembly, Inc. ("Pro Cycle") is a North Carolina corporation with its registered office in Greensboro, Guilford County, North Carolina.

2. Upon information and belief, Defendant K Mart Corporation ("K Mart") is a Michigan corporation with a registered office in Wake County, North Carolina and its principal office in a state other than North Carolina.

3. At all times relevant hereto, Pro Cycle has been and is in the business of providing on-site services in the assembly of bicycles, lawn mowers and other lawn care equipment, outdoor furniture, grills, and similar products, for in-store display and for consumer purchase, on behalf of retailers such as K Mart and others.

4. Through authorized representatives at various of K Mart's stores, Pro Cycle provided assembly services to K Mart at various times from July, 2000 through November, 2001. A true and accurate schedule of store locations, invoice numbers, invoice dates, and invoice amounts due from K Mart to Pro Cycle is attached hereto as Exhibit "A" and incorporated herein as though fully set forth.

## **FIRST CLAIM FOR RELIEF**

### **BREACH OF CONTRACT**

5. Pro Cycle realleges and incorporates herein by reference paragraphs 1 through 4 of the Complaint as though fully set forth.

6. Pro Cycle and K Mart entered into various contracts, as referenced in Exhibit A, pursuant to which Pro Cycle was to perform, and did perform, assembly services for K Mart in exchange for receipt of payment from K Mart.

7. Pro Cycle performed all of its obligations under the contracts, and has performed any and all other conditions to its entitlement to payment under the contracts.

8. Under the contracts, K Mart was to pay the invoice amount within thirty (30) days of the date of such invoices. K Mart breached each of the contracts referenced in Exhibit "A" by failing to pay the amounts due, notwithstanding demand for payment by Pro Cycle.

9. Pro Cycle is entitled to Judgment against K Mart for breach of contract in the principal amount of \$17,385.00, together with interest at the legal rate from the dates such invoice amounts became due.

## **SECOND CLAIM FOR RELIEF**

### **QUANTUM MERUIT**

Pleading in the alternative, Pro Cycle alleges as follows:

10. Pro Cycle realleges and incorporates herein by reference paragraphs 1 through 4 of the Complaint as though fully set forth.

11. K Mart requested, desired and ordered that Pro Cycle provide and perform its assembly services at its various stores, which Pro Cycle provided and performed as requested.

12. Pro Cycle reasonably expected K Mart to compensate it for the services and

materials provided.

13. K Mart knew or reasonably should have known that Pro Cycle expected compensation for the services and materials provided.

14. Pro Cycle is entitled to recover the fair value of these services and materials which they have provided to K Mart, which amount is in excess of \$10,000.00.

### **THIRD CLAIM FOR RELIEF**

#### **UNJUST ENRICHMENT**

Pleading in the alternative, Pro Cycle alleges as follows:

15. Pro Cycle realleges and incorporates herein by reference paragraphs 1 through 4 of the Complaint as though fully set forth.

16. Pro Cycle provided and furnished certain services and materials to improve K Mart's products and services offered to customers.

17. Pro Cycle is entitled to a reasonable and fair price for the services and materials provided to K Mart.

18. Pro Cycle rendered benefits to K Mart under such circumstances that it is only fair that Pro Cycle be compensated, and compensation in an amount in excess of \$10,000.00 is necessary to prevent the unjust enrichment of K Mart at the expense of Pro Cycle.

WHEREFORE, Plaintiff Pro Cycle Assembly, Inc. respectfully requests that: (a) this Court enter Judgment in its favor and against Defendant K Mart Corporation, awarding Pro Cycle damages in the principal amount of \$17,235.00 under its first claim for relief or, alternatively, in an amount in excess of \$10,000.00 as to its second and third claims for relief, together with all accruing pre-judgment interest at the legal rate; (b) the costs of this action be taxed against Defendant; and (c) the Court award to Pro Cycle such other and further relief as it deems just and

proper.

Respectfully submitted this 16th day of January, 2002.



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Michael J. Allen  
Attorney for Plaintiff

OF COUNSEL:

CARRUTHERS & ROTH, P.A.  
Post Office Box 540  
Greensboro, North Carolina 27402  
Telephone: (336)379-8651

**JURY DEMAND**

Plaintiff demands that all issues in this action triable to a jury be so tried.



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Michael J. Allen  
Attorney for Plaintiff

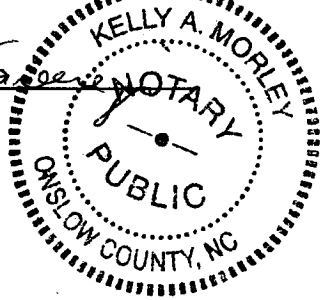
STATE OF NORTH CAROLINA

**VERIFICATION**

COUNTY OF GUILFORD

RICHARD C.Z. GREENE, JR., President of Pro Cycle Assembly, Inc., being first duly sworn, deposes and says that he is authorized to execute this Verification; that he has read the foregoing Verified Complaint, and that such allegations are true his knowledge, except as to those matters stated on information and belief, and as to those matters he believes them to be true.

By: Richard C. Z. Greene, Jr.  
 Richard C. Z. Greene, Jr.



Sworn to and subscribed  
before me this the 10  
day of January, 2002.

Kelly A. Morley  
Notary Public

My Commission Expires:  
10-28-2002

	<u>Date</u>	<u>Invoice</u>	<u>Amount</u>
7513 Corbin, Ky	3-28-01	365674	217
	8-2-01	361461	140
	8-7-01	361459	160
7342 Elizabeth City, NC	4-2-01	346282	107
	6-8-01	369096	170
	6-11-01	364166	267
	6-18-01	364167	90
	7-10-01	346335	180
	7-11-01	346334	223
	7-16-01	368505	188
	7-2-01	364263	111
	7-3-01	364261	189
7046 Goldsboro, NC	7-7-01	362564	195
	7-7-01	362581	221
1259 Williamsburg, VA	6-16-01	369108	56
	6-16-01	365140	98
4826 Fayetteville, NC	6-28-01	351549	133
	8-1-01	362759	131
3206 Richmond, VA	6-18-01	368498	211
3365 Norfolk, VA	6-16-01	365296	294
3428 Winston-Salem, NC	3-14-01	364493	276
	3-17-01	364712	125
	3-22-01	364474	281
3632 Conover, NC	5-7-01	364408	46 pd 216.00 of 262.00
3752 Laurinburg, NC	7-3-01	339442	226
	7-5-01	362754	136
	7-5-01	339443	153
3976 Virginia Beach, VA	2-7-01	346604	112
3560 Virginia Beach, VA	3-9-01	345149	196
7174 Pikeville, KY	12-11-00	365992	184
	2-14-01	364539	46
	2-14-01	364538	264
	2-3-01	362428	261
	2-8-01	11623	46
	2-8-01	362426	217
	3-22-01	364021	152
	3-24-01	364551	189
	3-29-01	364552	28
	5-22-01	362491	95
	5-22-01	362492	70
3886 Asheville, NC	10-26-00	364355	201

EXHIBIT A

	<u>Date</u>	<u>Invoice</u>	<u>Amount</u>
9783 Middlesboro, KY	1-13-01	365953	171
	2-13-01	365954	174
	2-27-01	365969	180
	2-3-01	365964	136
	3-13-01	365960	8
	3-13-01	365959	87
	3-24-01	353992	25
	3-24-01	354002	44
	3-3-01	365955	70
	4-2-01	364024	312
	7-4-01	365564	120
3838 Lenoir, NC	10-24-00	364351	80
	10-24-00	364353	24
	2-7-01	364399	150
	3-1-01	364406	64
	3-1-01	364401	163
	7-13-00	307360	54
	7-13-00	307361	58
	8-11-00	307302	182
	8-17-00	307315	50
9-13-00	307330	119	
7323 Cary, NC	10-18-00	362687	140
	10-19-00	362686	224
	3-20-01	340148	116
	8-8-01	362760	45
3705 Wise, VA	2-14-01	365974	158
	3-9-01	364543	128
	6-25-01	364032	192
	7-6-01	365621	212
3941 Russell Springs, KY	2-20-01	364064	143
	2-3-01	364669	254
	2-6-01	364063	134
	3-6-01	363464	130
	3-9-01	363465	85
3136 Shillington, PA	11-14-00	360001	154
	11-15-00	360502	211
4754 Spindale, NC	3-16-01	364387	190
	3-16-01	364352	103
	3-19-01	364403	210
9503 Frankfort, KY	3-16-01	364088	119
	3-19-01	364698	90
	3-8-01	364087	86
3815 Midway Park, NC	3-13-01	362633	117
4701 Bluefield, WV	2-24-01	365977	165
	2-26-01	365979	187
	2-26-01	364542	130
	2-27-01	365978	192
	3-16-01	364019	104



## Kmart A/R as of 12-15-01

	<u>Date</u>	<u>Invoice</u>	<u>Amount</u>	
3667 Raleigh, NC	7-19-01	362757	80	
4550 Raleigh, NC	9-29-01	362582	25	
3442 Raleigh, NC	6-21-01	362774	85	
	6-21-01	362773	80	
3116 Wilmington, NC	11-20-01	360109	14	
	11-20-01	360108	189	
	11-20-01	102130	56	
	11-20-01	102129	189	
3065 Knoxville, TN	3-16-01	365970	215	
3669 Greensboro, NC	3-1-01	364471	90	
	3-1-01	364472	160	
	3-15-01	364492	120	
	3-15-01	364491	108	
	3-23-01	364489	185	
3646 Bowling Green, KY	3-1-01	362349	130	
	3-1-01	362350	20	
	5-12-01	364521	140	
	5-12-01	364522	91	
	5-23-01	364523	14	
	5-23-01	364524	124	
	6-12-01	364525	275	
	6-26-01	362354	217	
	7-7-01	362356	252	
	8-2-01	368935	205	
	8-7-01	362459	267	
	8-9-01	362372	238	
	1380 Kimball, KY	6-7-01	364028	21
9666 Whiteville, NC	8-3-01	361750	134	
7090 Jacksonville, NC	10-4-01	348838	157	
	10-4-01	363885	32	
3826 Albemarle, NC	11-28-01	369148	175	
3887 Mooresville, NC	11-27-01	348965	140	
	11-27-01	348966	182	17385

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March 15, 2002

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WRITER'S E MAIL: JLO@CRLAW.COM

**Kmart Corp.**  
c/o Trumbull Services  
P. O. Box 426  
Windsor, Connecticut 06095

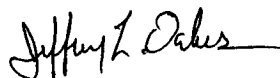
Re: Bankruptcy case of Kmart Corp., case no. 02 B 02474

Dear Sir or Madam:

Enclosed you will find the original and two (2) copies of a proof of claim which this office has prepared on behalf of our client, Pro Cycle Assembly, Inc. The original and one copy are for your files. Please acknowledge the second copy of the proof of claim and return it to me. I have enclosed a self-addressed postage-paid return envelope for your convenience.

Please contact me with any questions.

Sincerely,

  
Jeffrey L. Oakes

JLO/nw  
Enclosures  
cc: Mr. Richard C. Z. Greene, Jr.