

SUPREME COURT
STATE OF NEW YORK

COUNTY OF ALBANY

CAPITAL DISTRICT COOPERATIVE, INC.

Plaintiff,

-against-

BRADCO SUPPLY CORPORATION,

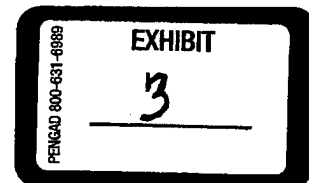
Defendant.

COMPLAINT

Index No.: 9918-08

Plaintiff, by and through its attorneys, Tabner, Ryan and Keniry, LLP, as and for a
Complaint against the Defendant, alleges:

1. Plaintiff, Capital District Cooperative, Inc. ("Plaintiff"), is a domestic corporation, duly organized and existing under the laws of the State of New York, with its principal place of business located at 381 Broadway, in the Village of Menands, County of Albany and State of New York.
2. Upon information and belief, Defendant, Bradco Supply Corporation ("Defendant"), is a foreign corporation, licensed to do business in the State of New York, with its principal place of business located at 34 Englehard Avenue, Avenel, New Jersey, 07001.
3. On or about June 1, 2003, Plaintiff and Wickes, Inc. ("Wickes"), entered into and executed a written lease agreement ("Lease Agreement") granting Wickes the right to possess certain real property located at 391 Broadway, in the Village of Menands, County of Albany and State of New York ("Premises") for a period of five years,



scheduled to expire on May 31, 2008. A copy of the Lease Agreement is attached hereto and made a part hereof as Exhibit "A".

4. On or about January 20, 2004, Wickes filed a Voluntary Petition under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division. Wickes' bankruptcy proceedings were consolidated with those of GLC Division, Inc. ("GLC"), a debtor-affiliate of Wickes, which also filed a Voluntary Petition under Chapter 11 on or about January 20, 2004.
5. On or about June 23, 2004, Wickes, GLC, Lumber Trademark Company and Defendant entered into and executed an asset purchase and sale agreement ("Asset Purchase and Sale Agreement").
6. On or about July 22, 2004, the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division, Hon. Bruce J. Black, issued an order ("Order"), *inter alia*, approving the Asset Purchase and Sale Agreement and authorizing the assumption and assignment of certain executory contracts and unexpired leases held by Wickes. A copy of the Order is attached hereto and made a part hereof as Exhibit "B".
7. On or about July 26, 2004, pursuant to the Asset Purchase and Sale Agreement, Wickes and Defendant entered into and executed an assignment of leases agreement ("Assignment of Leases") whereby Wickes agreed to grant, transfer, convey and assign to Defendant "all of the right, title and interest of [Wickes] in, to and under" the lease of "the premises located at 391 Broadway, Menands, New York and more

particularly described in the Lease Agreement dated as of June 1, 2003 by and between [Wickes], as lessee, and Capital District Cooperative, Inc., as lessor (as amended or supplemented, the "NY Lease")." A copy of the Assignment of Leases is attached hereto and made a part hereof as Exhibit "C".

8. Section 2 of the Assignment of Leases states that "[Defendant] hereby accepts the foregoing assignment and, subject to the terms and conditions of the Purchase Agreement, assumes all of [Wickes'] duties, obligations and liabilities (collectively, "obligations") under the NY Lease . . . accruing from and after the date hereof."
9. Section 3 of the Assignment of Leases states that "This assignment shall not alter, modify or amend the terms of the NY Lease . . . in any respect."
10. On or about July 26, 2004, pursuant to the Assignment of Leases, Defendant assumed Wickes' duties, obligations and liabilities as set forth in the Lease Agreement.
11. Defendant is subject to the jurisdiction of the Supreme Court of the State of New York by virtue of Defendant's status as a licensed foreign corporation, upon service of process upon the Secretary of State of the State of New York, pursuant to Business Corporation Law Section 306.
12. Defendant is further subject to the jurisdiction of the Supreme Court of the State of New York by virtue of Defendant's use or possession of the real property located at ~~391 Broadway, in the Village of Menands, County of Albany and State of New York.~~

AS AND FOR A FIRST SEPARATE AND DISTINCT CAUSE OF ACTION:

13. Plaintiff repeats and realleges each and every allegation contained in Paragraphs "1" through "12" inclusive, of the within complaint, with the same force and effect as though set forth at length herein.
14. Section 2 of the Lease Agreement provides "That the Tenant shall take good care of the premises and shall, at the Tenant's own cost and expense, make all repairs, and at the end or other expiration of the term, shall deliver up the demised premises in good order or condition, damages by the elements excepted."
15. Section 28 of the Lease Agreement provides that upon default of the Tenant, the Landlord shall be entitled to recover, in addition to its damages, reasonable attorney's fees and disbursements.
16. On or about May 31, 2008, Defendant vacated the Premises, as the term of the Lease Agreement had ended.
17. Defendant delivered the Premises to Plaintiff in such condition that substantial maintenance and repairs, including but not limited to: general building repairs, repairs to the roof, exterior painting, fencing, paving and vegetation removal, are necessary so as to restore the Premises to "good order or condition."
18. Plaintiff has demanded that Defendant perform these maintenance and repairs.
19. Defendant has refused to perform the demanded maintenance and repairs.
- ~~20. Plaintiff has fully and satisfactorily performed each and every duty owed to~~
Defendant under the terms of the Lease Agreement.

21. Defendant's failure to deliver the Premises in good order or condition is in breach of Defendant's contractual obligation to Plaintiff.
22. Furthermore, as a result of Defendant's breach of the Lease Agreement, Plaintiff has been unable to rent the subject property since the time that Defendant vacated the Premises on or about May 31, 2008.
23. In addition, as a result of Defendant's breach of the Lease Agreement, the Premises have substantially depreciated in value.
24. As a result of Defendant's breach of the Lease Agreement, Plaintiff has sustained damages in an amount expected to be not less than \$1,000,000.00, plus reasonable attorney's fees.

AS AND FOR A SECOND SEPARATE AND DISTINCT CAUSE OF ACTION:

25. Plaintiff repeats and realleges each and every allegation contained in Paragraphs "1" through "24" inclusive, of the within complaint, with the same force and effect as though set forth at length herein.
26. At the time Defendant entered into and executed the Assignment of Leases, Defendant made certain representations that it would return the Premises to Plaintiff in good order or condition.
27. Defendant made these certain representations with knowledge of their falsity.
28. Defendant made these certain representations with reckless disregard as to their truth.

29. ~~Defendant made these representations with the intent that they would be relied upon by Plaintiff.~~
30. Plaintiff relied upon these representations.

31. As a result of Plaintiff's reliance upon these representations, Plaintiff has sustained damages in an amount expected to be not less than \$1,000,000.00, plus reasonable attorney's fees.

AS AND FOR A THIRD SEPARATE AND DISTINCT CAUSE OF ACTION:

32. Plaintiff repeats and realleges each and every allegation contained in Paragraphs "1" through "31" inclusive, of the within complaint, with the same force and effect as though set forth at length herein.
33. At the time Defendant entered into and executed the Assignment of Leases, Defendant was aware that the provision contained in the Lease Agreement, requiring the leaseholder to deliver the subject premises to Plaintiff in good order or condition at the conclusion of the lease period, constituted a benefit bargained for by Plaintiff.
34. Plaintiff relied upon Defendant's agreement to accept each and every provision contained in the Lease Agreement and upon Defendant's agreement to provide each and every benefit to Plaintiff for which Plaintiff had originally bargained.
35. Defendant's conduct in entering into and executing the Assignment of Leases with Wickes, thereby agreeing to deliver the Premises to Plaintiff in good order or condition, evinced Defendant's understanding of Plaintiff's reliance.
36. As a result of Defendant's negligent misrepresentation that, among other things, Defendant would deliver the Premises to Plaintiff in good order or condition at the conclusion of the lease period, Plaintiff has sustained damages in an amount expected to be not less than \$1,000,000.00, plus reasonable attorney's fees.
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AS AND FOR A FOURTH SEPARATE AND DISTINCT CAUSE OF ACTION:

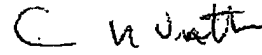
37. Plaintiff repeats and realleges each and every allegation contained in Paragraphs "1" through "36", inclusive, of the within complaint, with the same force and effect as though set forth at length herein.
38. Upon entering into and executing the Assignment of Leases, Defendant assumed the obligation to make tenantable repairs to avoid permissive waste of the Premises.
39. Defendant failed to make such repairs.
40. As a result, Defendant permitted waste upon the Premises.
41. Defendant's omissions caused and/or exacerbated structural, interior, exterior and roof damage to buildings/structures as well as damage to fencing, pavement and landscaping of the Premises.
42. As a result of Defendant's permissive waste, Plaintiff has been unable to rent the Premises since May 31, 2008, the time when Defendant vacated the Premises.
43. As a result of Defendant's permissive waste, the Premises have substantially depreciated in value.
44. As a result of Defendant's failure to make tenantable repairs so as to avoid permissive waste upon the Premises, Plaintiff has sustained damages in an amount expected to be not less than \$1,000,000.00, plus reasonable attorney's fees.

WHEREFORE, it is respectfully requested that this Court grant an Order directing that judgment be entered in favor of Plaintiff, Capital District Cooperative, Inc., and against Defendant, Bradco Supply Corporation, in the amount of \$1,000,000.00, plus interest thereon from May 31, 2008, plus punitive damages in the amount of \$1,000,000.00, together with attorney's fees and the costs and disbursements of this action.

Dated: December 2, 2008
Albany, New York

Yours, etc.,

TABNER RYAN AND KENIRY, LLP



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LEASE AGREEMENT

This Lease Agreement is made and entered into as of the 1st day of June, 2003 ("Lease"), by and between CAPITAL DISTRICT COOPERATIVE, INC., a New York corporation, with its principal place of business located at 381 Broadway, Menands, New York 12204, Village of Menands, County of Albany, State of New York ("Landlord"), and WICKES INC., a Delaware corporation, with its principal place of business located at 706 Deerpath Drive, Vernon Hills, Illinois 60061 ("Tenant").

W I T N E S S E T H :

WHEREAS, Landlord and The Wickes Corporation had an existing relationship of landlord and tenant with regard to the premises pursuant to a lease agreement dated June 1, 1973, the term of which is scheduled to expire on May 31, 2003;

WHEREAS, pursuant to said lease agreement title to all buildings and improvements has vested with Landlord; and

WHEREAS, Landlord and Tenant desire to enter into this new lease agreement with regard to the premises, as of June 1, 2003.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants and promises set forth herein, Landlord hereby demises and leases to Tenant, and Tenant takes and leases from Landlord, the premises hereinafter described upon the following terms and conditions:

The premises ("Premises") let to Tenant hereunder shall consist of all of the premises situated in the Village of Menands, County of Albany, State of New York, particularly described in the annexed Exhibit "A". The Premises let are strictly "as is" and without warranty of any kind or nature. The initial term of this Lease shall commence on June 1, 2003 and shall expire at midnight on May 31, 2008, unless otherwise terminated or extended by the parties as set forth herein. Tenant's occupancy hereunder may be extended beyond the initial term, at the election of Tenant, for three (3) five (5) year terms. Tenant may exercise any option to renew, by giving Landlord written notice of its intention to do so, no less than six (6) months before the expiration of the then existing term. Tenant may not exercise such option if it is in default of any of the terms of this Agreement without the prior written consent of Landlord.

1. That the Tenant shall pay the annual rent of Forty-eight Thousand and 00/100 (\$48,000.00) Dollars, said rent to be paid in equal monthly payments in advance on the 1st day of each and every month during the term aforesaid, as follows: Four Thousand and 00/100 (\$4,000.00) Dollars on June 1, 2003 and Four Thousand and 00/100 (\$4,000.00) Dollars per month on the first day of each consecutive month thereafter during the term of this lease agreement or as it may be extended.

In the event Tenant shall elect to exercise any future option(s) then the monthly and annual rent shall be as determined as follows:

Minimum monthly rental during the second five year term, from June 1, 2008 through May 31, 2013, shall be Fifty-two Thousand Eight Hundred and 00/100 (\$52,800.00) Dollars, said rent to be paid in equal monthly payments in advance on the 1st day of each and every month during the term aforesaid, as follows: Four Thousand Four Hundred and 00/100 (\$4,400.00) Dollars on June 1, 2008 and Four Thousand Four Hundred and 00/100 (\$4,400.00) Dollars per month on the first day of each consecutive month thereafter during the second five year term of this lease agreement.

Minimum monthly rental during the third five year term, from June 1, 2013 through May 31, 2018, shall be Fifty-seven Thousand Six Hundred and 00/100 (\$57,600.00) Dollars, said rent to be paid in equal monthly payments in advance on the 1st day of each and every month during the term aforesaid, as follows: Four Thousand Eight Hundred and 00/100 (\$4,800.00) Dollars on June 1, 2013 and Four Thousand Eight Hundred and 00/100 (\$4,800.00) Dollars per month on the first day of each consecutive month thereafter during the third five year term of this lease agreement.

Minimum monthly rental during the fourth five year term, from June 1, 2018 through May 31, 2023, shall be Sixty-two Thousand Four Hundred and 00/100 (\$62,400.00) Dollars, said rent to be paid in equal monthly payments in advance on the 1st day of each and every month during the term aforesaid, as follows: Five Thousand Two Hundred and 00/100 (\$5,200.00) Dollars on June 1, 2018 and Five Thousand Two Hundred and 00/100 (\$5,200.00) Dollars per month on the first day of each consecutive month thereafter during the third five year term of this lease agreement.

The foregoing minimum monthly rental rate shall be a net amount excluding all utilities, all insurances, all property taxes, levies, assessments, and building maintenance (including but not limited to all structural repairs, roof repairs, snow removal, grounds care and maintenance of all mechanical systems), which shall be Tenant's sole responsibility. Such rental shall be prepaid on a monthly basis on or before the first day of each month of the term of this Lease.

Tenant shall promptly pay all charges for electricity, water, gas, telephone service, sewerage service, and other utilities furnished to the Premises. Landlord may furnish one or more utility services to Tenant. In such event, Tenant shall purchase the use of all such services and pay on demand as additional rent the rates established for them by Landlord. The rates shall not exceed those that local public utility companies would charge for directly furnishing the same services. Landlord may at any time discontinue a service without obligation to Tenant other than to connect the Premises to the public utility furnishing such service.

Landlord shall not be liable for any interruption in utility services not furnished by it, or for interruptions in utility services furnished by it that are due to fire, accident, strike, acts of God, or other causes beyond its control or are necessary to make alterations, repairs, or improvements.

2. That the Tenant shall take good care of the premises and shall, at the Tenant's own cost and expense, make all repairs, and at the end or other expiration of the term, shall deliver up the demised premises in good order or condition, damages by the elements excepted.

3. That the Tenant shall promptly execute and comply with all reasonable rules and regulations of Landlord and all statutes, ordinances, rules, orders, regulations and requirements of the Federal, State and Local Governments and of any and all their Departments and Bureaus applicable to said premises, for the correction, prevention, and abatement of nuisances or other grievances, in, upon, or connected with said premises during said term; and shall also promptly comply with and execute all rules, orders and regulations of the New York Board of Fire Underwriters, or any other similar body, at the Tenant's own cost and expense.

4. That the Tenant, successors, heirs, executors or administrators shall not assign this agreement, or underlet or underlease the premises, or any part thereof, or make any alterations on the premises, without the Landlord's consent in writing; or occupy, or permit or suffer the same to be occupied for any business or purpose deemed disreputable or extra-hazardous on account of fire, under the penalty of damages and forfeiture, and in the event of a breach thereof, the term herein shall immediately cease and determine at the option of the Landlord as if it were the expiration of the original term.

5. In the event the Premises is wholly or partially damaged or destroyed by fire or other casualty which is covered by Tenant's insurance then, at Landlord's election, either: (i) Tenant will proceed to restore the Premises to substantially the same condition existing immediately prior to such damage or destruction, or (ii) Tenant will turn over the net insurance proceeds recovered by reason of the damage or destruction to Landlord, and Landlord will restore the Premises to substantially the same condition existing immediately prior to such damage or destruction.

To the extent after fire or other casualty that Tenant shall be deprived of the use and occupancy of the Premises or any portion thereof as a result of any such damage, destruction or the repair thereof, Tenant shall be relieved of the same ratable portion of the monthly rent hereunder as the amount of damaged or useless space in the Premises bears to the rentable square footage of the Premises until such time as the Premises may be restored. Landlord shall reasonably determine the amount of damaged or useless space and the square footage of the Premises referenced in the prior sentence.

6. The said Tenant agrees that the said Landlord and the Landlord's agents and other representatives shall have the right to enter into an upon said premises, or any part thereof, at all reasonable hours for the purpose of examining the same, or making such repairs or alterations therein as may be necessary for the safety and preservation thereof.

7. The Tenant also agrees to permit the Landlord or the Landlord's agents to show the premises to persons wishing to hire or purchase the same; and the Tenant further agrees that on and after the sixth month, next preceding the expiration of the term

hereby granted, the Landlord or the Landlord's agents shall have the right to place notices on the front of said premises, or any part thereof, offering the premises "To Let" or "For Sale", and the Tenant hereby agrees to permit the same to remain thereon without hindrance or molestation.

8. That if any default be made in the payment of the said rent or any part thereof, or if any default be made in the performance of any of the covenants herein contained, the Landlord or representatives may re-enter the said premises by force, summary proceedings or otherwise, and remove all persons therefrom, without being liable to prosecution therefor, and the Tenant hereby expressly waives the service of any notice in writing of intention to re-enter, and the Tenant shall pay at the same time as the rent becomes payable under the terms hereof a sum equivalent to the rent reserved herein, and the Landlord may rent the premises on behalf of the Tenant, reserving the right to rent the premises for a longer period of time than fixed in the original lease without releasing the original Tenant from any liability, applying any moneys collected, first to the expense of resuming or obtaining possession, second to restoring the premises to a rentable condition, and then to the payment of the rent and all other charges due and to become due to the Landlord, any surplus to be paid to the Tenant, who shall remain liable for any deficiency.

9. That the Tenant shall neither encumber nor obstruct the sidewalk in front of, entrance to, or halls and stairs of any commonly shared areas within the Premises, nor allow the same to be obstructed or encumbered in any manner.

10. The Tenant shall neither place, or cause or allow to be placed, any new sign or signs of any kind whatsoever at, in or about the entrance to said premises or any other part of same, except in or at such place or places as may be indicated by the Landlord and consented to by the Landlord in writing. The Tenant shall be able to replace or maintain current signs with significantly similar sign or signs without the Landlord's consent. And in case the Landlord or the Landlord's representatives shall deem it necessary to remove any such sign or signs in order to paint the said premises or the building wherein same is situated or make any other repairs, alterations or improvements in or upon said premises or building or any part thereof, the Landlord shall have the right to do so, providing the same be removed and replaced at the Landlord's expense, whenever the said repairs, alterations or improvements shall be completed.

11. That the Landlord is exempt from any and all liability for any damage or injury to person or property caused by or resulting from steam, electricity, gas, water, rain, ice or snow, or any leak or flow from or into any part of said building or from any damage or injury resulting or arising from any other cause or happening whatsoever unless said damage or injury be caused by or be due to the negligence of the Landlord.

Tenant, as a material part of the consideration to be provided to Landlord under this Lease, hereby assumes all risk of damage to property or injury to persons in or about the Premises from any cause whatsoever, except that which is caused by Landlord's negligence or the failure of Landlord to observe any of the terms and conditions of this