

ORIGINAL

FILED IN OPEN COURT  
U.S.D.C. - Atlanta

APR 17 2009

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

JAMES N. HATTEN, Clerk  
By:  Deputy Clerk

UNITED STATES OF AMERICA	)	Criminal No.: 1:09-CR-197
	)	
v.	)	Filed:
	)	
RONALD DOUGLASS MATHENY II,	)	Violations:
	)	18 U.S.C. § 1349 (Count I)
Defendant.	)	18 U.S.C. § 1956(h)(Count II)
	)	
_____	)	

CRIMINAL INFORMATION

The United States of America, through its attorneys, charges:

COUNT ONE

(18 U.S.C. § 1349 - Conspiracy to violate 18 U.S.C. §§ 1341, 1343, 1346)

1. Beginning at least as early as June 2002 and continuing thereafter at least through May 2005, the exact dates being unknown to the United States, in the Northern District of Georgia and elsewhere, the defendant, RONALD DOUGLASS MATHENY II (hereinafter referred to as "DEFENDANT MATHENY") and other co-conspirators did unlawfully, willfully, and knowingly conspire, combine, confederate, and agree, in violation of Title 18, United States Code, Section 1349, to commit offenses

against the United States, to wit, to violate Title 18, United States Code, Sections 1341, 1343 and 1346, by having devised and intending to devise a scheme and artifice to:

- (a) defraud The Home Depot, Inc. and its wholly-owned subsidiary, Home Depot U.S.A., Inc. (The Home Depot, Inc. and its wholly-owned subsidiary, Home Depot U.S.A., Inc., are hereinafter referred to as "Home Depot");
- (b) obtain money and property by means of false and fraudulent pretenses, representations, and promises; and
- (c) deprive Home Depot of the honest services of DEFENDANT MATHENY,

and executed the aforesaid scheme and artifice by causing certain items to be sent, delivered, and moved by the United States Postal Service and through the use of certain writings, signs, sounds, and signals transmitted in interstate wire communications.

#### BACKGROUND

2. At all times relevant to this Criminal Information, Home Depot was a publicly-traded corporation with its business centered on the operation of Home Depot retail stores located throughout the United States, Puerto

Rico, Canada, and Mexico. Those Home Depot retail stores sold a wide variety of building materials, home improvement products, and lawn and garden items. Home Depot had its corporate headquarters located at 2455 Paces Ferry Road, N.W., Atlanta, Georgia, within the Northern District of Georgia. Sometime in 2001, Home Depot centralized its purchasing functions to an Atlanta Store Support Center, also headquartered at 2455 Paces Ferry Road, N.W., Atlanta, Georgia.

3. DEFENDANT MATHENY was employed by Home Depot in various positions from May, 1987 until July, 2007. He held the position of a Product Merchant for Home Depot Department 23 (Flooring), during the approximate period May, 2002 through April, 2005. As a Product Merchant and throughout his career at Home Depot, DEFENDANT MATHENY owed a fiduciary duty to Home Depot. DEFENDANT MATHENY had a duty to act honestly and faithfully in all business dealings with Home Depot. As a Product Merchant, he was based in Home Depot's Atlanta Store Support Center. In his position as a Product Merchant, among other things, DEFENDANT MATHENY was responsible for overseeing the location of suppliers which could supply lower cost, high quality Department 23 items for resale in Home Depot retail stores and for locating outside firms who

could supply services to facilitate the display of products within those stores.

4. During the time that DEFENDANT MATHENY was a Product Merchant for Home Depot, Home Depot maintained corporate policies prohibiting its employees from engaging in activities in which their personal interests would interfere with company business and prohibited its employees from receiving improper personal benefits as a result of their positions with the company such as bribes and kickbacks from suppliers. These policies were enacted to ensure that Home Depot employees acted honestly and faithfully in all of their dealings with Home Depot, including a duty to make full and fair disclosure to Home Depot of any personal interest, profit, or kickback the employee expected to derive from any transaction in which he participated in the course of the employment.

#### **THE MANNER AND MEANS**

5. Home Depot was defrauded by a kickback scheme arranged by DEFENDANT MATHENY, Co-conspirators A, B, C and D, and other co-conspirators. Home Depot had a right to rely on DEFENDANT MATHENY to conduct his work on Home Depot's behalf in an honest fashion so as to benefit Home Depot, including his work in securing high quality items from suppliers at the best prices and on the most advantageous other terms of sale,

for resale in Home Depot retail stores, as well as dealing with firms who could supply services to facilitate the display of products within those stores. Home Depot employees were prohibited from taking bribes and kickbacks from suppliers or potential suppliers in return for favorable treatment.

6. DEFENDANT MATHENY and Co-conspirators A and B arranged for Home Depot to purchase items for resale in Home Depot retail stores, on less than the most advantageous terms of sale, from certain Home Depot suppliers, and to have Co-conspirators A and B supply services, on less than the most advantageous terms, to a wide range of Home Depot suppliers to facilitate the display of products within those stores. In return, DEFENDANT MATHENY received from Co-conspirators A, B and C approximately \$1,471,467.64 for his role in approving and supporting Home Depot's purchases from certain Home Depot suppliers and for his role in approving and supporting Co-conspirator A's company, Co-conspirator B, supplying services to a wide range of suppliers to facilitate the display of products within Home Depot's retail stores.

7. For the purposes of forming and effectuating the aforesaid conspiracy, DEFENDANT MATHENY, Co-conspirators A, B, C and D, and other co-conspirators did those things they conspired to do, including, among

other things:

- (a) While employed by Home Depot as a Product Merchant, DEFENDANT MATHENY approved and supported Home Depot's purchase of items from certain suppliers represented by Co-conspirators A and B for resale in Home Depot's various retail stores;
- (b) While employed by Home Depot as a Product Merchant, DEFENDANT MATHENY approved and supported Home Depot's designation of Co-conspirator A's company, Co-conspirator B, to supply services to a wide range of suppliers to facilitate the display of products within Home Depot's retail stores; and
- (c) While employed by Home Depot as a Product Merchant, DEFENDANT MATHENY accepted approximately \$1,471,467.64 from Co-conspirators A, B and C for his activities described in paragraphs 7 (a) and 7 (b) above.

DEFENDANT MATHENY foresaw or reasonably should have foreseen that Home Depot might suffer an economic harm as a result of his breach of his fiduciary duty to Home Depot.

### OVERT ACTS

8. In addition to the United States Mail, interstate telephone calls, interstate facsimiles, and interstate wire transfers made and caused to be transmitted in furtherance of the conspiracy by DEFENDANT MATHENY, Co-conspirators A, B, C and D, and other co-conspirators, the following acts were done in furtherance of the conspiracy:

- (a) DEFENDANT MATHENY arranged for a company which he controlled, Co-conspirator D, to be incorporated in the State of Georgia on or about July 16, 2002; and
- (b) Substantial monetary payments in the approximate amount of \$1,471,467.64 were provided to DEFENDANT MATHENY and a company which he controlled, Co-conspirator D, by Co-Conspirators A, B and C.

ALL IN VIOLATION OF TITLE 18, UNITED STATES CODE, SECTION 1349.

### COUNT TWO

(18 U.S.C. § 1956(h) - conspiracy to violate 18 U.S.C. § 1957)

9. The allegations set forth in paragraphs 1-8 of this Criminal Information are hereby repeated, re-alleged and incorporated herein as if

fully set forth in this Count.

10. Beginning at least as early as June 2002 and continuing thereafter at least through September 19, 2005, the exact dates being unknown to the United States, in the Northern District of Georgia and elsewhere, DEFENDANT MATHENY and other co-conspirators did knowingly conspire, combine, confederate, and agree with each other in violation of Title 18, United States Code, Section 1956(h) to violate Title 18, United States Code, Section 1957 by: knowingly engaging in and attempting to engage in monetary transactions in criminally derived property of a value greater than \$10,000, listed below, consisting of the deposit, withdrawal, transfer and exchange, in and affecting interstate commerce, of funds and monetary instruments by, through and to a financial institution, specifically Wachovia Corporation and its subsidiaries and affiliates (hereinafter referred to as "Wachovia Bank") and SunTrust Banks, Inc. and its subsidiaries and affiliates (hereinafter referred to as "SunTrust Bank"), such property having been derived from specified unlawful activity, as more particularly described in Count One of this Criminal Information and incorporated herein, to wit: a scheme to (a) defraud Home Depot; (b) obtain money and property by means of false and fraudulent pretenses, representations, and promises; and (c)

deprive Home Depot of the honest services of DEFENDANT MATHENY, in violation of Title 18, United States Code Sections 1341, 1343 and 1346.

11. Said monetary transactions included the deposits, withdrawals, wires and transfers in the amounts listed in paragraphs 12-14 below, as more particularly described therein, which overt acts, among others, were done in furtherance of the conspiracy and to effect its object, and were committed in the Northern District of Georgia and elsewhere on or about the dates set forth below:

12. On or about the following dates, overt act monetary transactions were made by and on behalf of Co-conspirators A, B and C, from the below-listed bank accounts of Co-conspirators B and C, in which the proceeds of the aforesaid criminal activity had been deposited, by means of checks drawn on those accounts which were deposited by or on behalf of DEFENDANT MATHENY in the bank account \*\*\*\*\*5673 of Co-conspirator D at SunTrust Bank over which DEFENDANT MATHENY had control.

Overt Act No.	Date of debit to accounts of Co-conspirators B and C	Check drawn on Co-conspirator B Wachovia Bank Account (*****5307) and Co-Conspirator C Wachovia Bank account (*****4841), both Controlled by Co-conspirator A	Check No.	Amount
1	09/23/2002	*****5307	1012	\$15,000.00
2	10/10/2002	*****5307	1019	\$63,000.00
3	10/29/2002	*****5307	1021	\$27,000.00
4	11/05/2002	*****5307	1028	\$35,000.00
5	11/22/2002	*****5307	1035	\$25,000.00
6	01/10/2003	*****5307	1085	\$12,500.00
7	01/07/2003	*****5307	1040	\$30,000.00
8	02/20/2003	*****5307	1102	\$12,885.15
9	03/10/2003	*****5307	1108	\$15,816.00
10	04/28/2003	*****5307	1117	\$60,000.00
11	07/11/2003	*****5307	1068	\$56,480.60
12	11/17/2003	*****5307	1127	\$11,227.35
13	12/10/2003	*****5307	1134	\$20,000.00
14	01/05/2004	*****5307	1143	\$31,500.00
15	02/11/2004	*****5307	1154	\$22,943.79
16	04/01/2004	*****5307	1160	\$51,018.00

17	08/03/2004	*****4841	2089	\$30,000.00
18	08/31/2004	*****4841	2110	\$50,000.00
19	09/10/2004	*****4841	2119	\$50,000.00
20	10/06/2004	*****4841	2097	\$38,000.00
21	10/19/2004	*****5307	1291	\$55,500.00
22	10/27/2004	*****5307	1293	\$25,000.00
23	10/27/2004	*****5307	1294	\$25,000.00
24	11/23/2004	*****5307	1309	\$59,000.00
25	12/10/2004	*****5307	1322	\$37,000.00
26	01/05/2005	*****5307	1318	\$285,000.00
27	03/10/2005	*****5307	1283	\$90,000.00
28	03/10/2005	*****5307	1284	\$90,000.000

13. On or about the following dates, overt act monetary transactions were made by and on behalf of DEFENDANT MATHENY from the bank account \*\*\*\*\*5673 of Co-conspirator D at SunTrust Bank over which DEFENDANT MATHENY had control, in which the proceeds of the aforesaid criminal activity had been deposited referred to in paragraph 12 above, by means of checks, wires or transfers to the following recipients:

Overt Act No.	Date of debit to account of Co-conspirator D	Recipient	Check No., Wire or Transfer	Amount
29	10/23/2002	L.K. c/o First Tennessee Bank	Wire	\$47,100.00
30	06/07/2004	SunTrust Bank Account No. *****4224 Controlled by DEFENDANT MATHENY	Transfer	\$17,500.00
31	09/16/2004	CarMax	1548	\$42,051.34
32	10/07/2004	Marietta Jeep	1686	\$27,595.00
33	11/24/2004	Anthony & Sylvan Pools	1578	\$28,269.20
34	12/22/2004	Anthony & Sylvan Pools	1712	\$38,320.15
35	03/01/2005	SunTrust Bank Account No. *****4224 Controlled by DEFENDANT MATHENY	Transfer	\$60,000.00
36	05/02/2005	Environ & Associates	1962	\$15,695.00
37	05/06/2005	Bay Marine	2120	\$82,829.25
38	07/13/2005	Environ & Associates	1586	\$11,800.00
39	09/19/2005	Environ & Associates	1884	\$11,169.00

14. On or about the following dates, overt act monetary transactions were made by and on behalf of DEFENDANT MATHENY from the bank account\*\*\*\*\*4224 at SunTrust Bank over which he had control, in which the proceeds of the aforesaid criminal activity referred to in paragraph 12 above had been transferred as detailed in paragraph 13 above, by means of checks to the following recipients:

Overt Act No.	Date of debit to account controlled by DEFENDANT MATHENY	Recipient	Check No.	Amount
40	02/28/2005	Harley Davidson Credit	7741	\$13,700.00
41	03/01/2005	SunTrust Bank Account No. *****00911	7736	\$27,874.15

ALL IN VIOLATION OF TITLE 18, UNITED STATES CODE, SECTION 1956(h).

**FORFEITURE PROVISION**

Upon conviction of Counts One and Two of this Criminal Information, DEFENDANT MATHENY shall, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28

U.S.C. § 2461(c), forfeit to the United States any and all property constituting, or derived from, proceeds obtained directly or indirectly, as a result of the violation(s).

The property to be forfeited includes, but is not limited to, the following:


A monetary forfeiture judgment in the amount of \$1,471,467.64.

If any of the above-described forfeitable property, as a result of any act or omission of the defendant:

- (a) cannot be located upon the exercise of due diligence;
- (b) has been transferred or sold to, or deposited with, a third party;
- (c) has been placed beyond the jurisdiction of the Court;
- (d) has been substantially diminished in value; or
- (e) has been commingled with other property which cannot be divided without difficulty; it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c), to seek forfeiture of any other property of said defendant up to the value of the forfeitable property described above.

Dated this 17 day of APRIL, 2009.

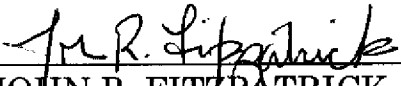
DAVID E. NAHMIAS  
UNITED STATES ATTORNEY

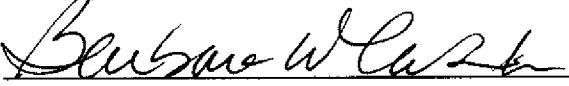
  
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