

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION**

OMNISOURCE ELECTRONICS)
RECYCLING, LLC,)

Plaintiff,)

v.)

PC REBUILDERS AND)
RECYCLERS LLC,)

Defendant.)

CAUSE NO.: 1:17-CV-27

JURY DEMANDED

SECOND AMENDED COMPLAINT

COMES NOW the Plaintiff, OmniSource Electronics Recycling, LLC (“OER”), by counsel, Barrett McNagny LLP, for its Second Amended Complaint against Defendant, PC Rebuilders and Recyclers LLC (“PCRR”), and alleges and states as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff, OER, is an Indiana Company with its principal place of business located at 219 Murray Street, Fort Wayne, Indiana. OER is wholly-owned by STLD Holdings, Inc., a citizen of Indiana. STLD Holdings, Inc. is owned 50% by Steel Dynamics, Inc., which is a publicly traded corporation and citizen of Indiana, and 50% by Ace Recycling, Inc., which is wholly-owned by Kevin Cawood, a resident and citizen of Indiana.

2. OER is in the business of recycling electronic equipment.

3. Defendant, PCRR, is an Illinois Company with its principal place of business located at 4734 West Chicago Avenue, Chicago, Illinois. PCRR is wholly owned by its sole member, Mr. Willie Cade, who is a resident and citizen of Illinois.

4. PCRR is in the business of refurbishing and upgrading computer and electronic equipment.

5. A substantial part of the events giving rise to the Complaint occurred in Fort Wayne, Indiana.

6. PCRR has numerous ties to Indiana generally and purposefully and deliberately traveled to Fort Wayne, Indiana several times related to this Complaint and entered into a business agreement with OER in Fort Wayne giving this Court personal jurisdiction over PCRR.

7. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §1332. The parties are citizens of different States and the amount in controversy exceeds \$75,000.00 exclusive of interest or costs.

8. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b).

COUNT I – BREACH OF CONTRACT

9. Plaintiff incorporates rhetorical paragraphs 1 through 8 as though fully set forth herein.

10. Willie Cade (“Cade”) is the owner, founder and CEO of PCRR.

11. On or about June 22, 2016, Cade came to Fort Wayne, Indiana and met with an OER representative to inspect electronic equipment. In particular, PCRR and OER discussed a proposed bid on the used electronic equipment, whereby OER would bid on and purchase the equipment, thereafter selling portions of the equipment to PCRR.

12. Through phone calls, emails, and in-person communication, Cade advised and provided suggestions as to the amount OER should offer in a bid and the amount PCRR would then pay OER for the equipment.

13. OER ultimately won the bid to purchase the used electronic equipment from Southwest Allen Schools Corporation in Fort Wayne, Indiana.

14. On or about June 22, 2016, OER and PCRR entered into a valid legally binding agreement (“Contract”) wherein OER was to sell and ship to PCRR approximately 5,400 electronic components and/or computers.

15. On or about July 7, 2016, Cade and a potential buyer of refurbished computer equipment came to the OER facility, located in Fort Wayne, Indiana and then traveled to Homestead High School in Fort Wayne, Indiana, to further inspect the electronic equipment.

16. On or about July 11, 2016, Cade came to the OER facility to pick up some electronic equipment.

17. In July and August 2016, OER sent PCRR approximately 5,400 electronic components and/or computers pursuant to the Contract.

18. PRCC timely received approximately 5,400 electronic components and/or computers from OER.

19. On or about August 16, 2016, Cade came to the OER facility in Fort Wayne, Indiana to pick up additional electronic components and/or computers.

20. Attached and incorporated herein as Exhibits 1 and 2 respectively are true and accurate copies of the June 24, 2016 and July 20, 2016 Purchase Orders from PCRR.

21. Attached and incorporated herein as Exhibits 3 and 4 respectively are true and accurate copies of the August 22, 2016 Invoices from OER.

22. OER has fulfilled all its obligations under the Contract.

23. PCRR has failed to pay OER One Hundred Ninety Thousand Seven Hundred Ninety Two Dollars and 75/100 Cents (\$190,792.75) as the agreed upon purchase price for the electronic components and/or computers.

24. OER has attempted to collect the past due debt owed by PCRR to OER to no avail.

25. PCRR's failure and refusal to remit the amounts to OER due under the Contract constitute a breach of the Contract.

26. As set forth in the Notice to Bidders by Southwest Allen Schools Corporation, the electronic components and computers were required to have their hard drives wiped and certification of data destruction to Department of Defense standards. OER informed PCRR of this request and PCRR agreed to complete the same.

27. Pursuant to the Contract entered into between the parties, PCRR is required to comply with the above requirement to wipe all data and software from the electronic components and computers, and provide certifications that the same has been accomplished.

28. The Contract is complete as to its essential elements, and the intention of the parties is certain regarding the substantial terms of the Contract, including the wiping of hard drives and certification of data destruction.

29. PCRR has not provided certifications of data destruction and hard drive wiping of the equipment.

30. PCRR's failure to complete data wiping and data destruction of the electronic components and computers, and provide certifications, causes harm to OER and potentially Southwest Allen Schools Corporation and others, who are at significant risk should an unlicensed or unauthorized use of software on the electronic components and computers occur.

31. PCRR's refusal either to conduct data wiping and/or provide certifications of data destruction is a breach of the terms of the Contract. The equitable remedy of specific performance, specifically a requirement that PCRR wipe all hard drives and data and provide certification of data destruction, is appropriate.

32. PCRR's breach of the Contract has caused OER damages.

WHEREFORE, Plaintiff requests that the Court enter judgment against Defendant and order specific performance of the terms of the Contract that PCRR must wipe the data and hard drives of all electronic components and computers, and provide certification of data destruction. Plaintiff requests that the Court enter judgment against Defendant in the amount of One Hundred Ninety Thousand Seven Hundred Ninety Two Dollars and 75/100 Cents (\$190,792.75), plus pre-judgment and post-judgment interest, attorney fees, costs and all other just and proper relief in the premises.

COUNT II – UNJUST ENRICHMENT

33. Plaintiff incorporates rhetorical paragraphs 1 through 8 and rhetorical paragraphs 9 through 32 of Count I as though fully set forth herein.

34. OER sent the electronic components and computers to PCRR at PCRR's request.

35. OER expected payment from PCRR pursuant to the Contract entered into by the parties.

36. PCRR's failure and refusal to pay OER the debt owed has unjustly enriched PCRR in that PCRR has received the benefit of electronic components and computers provided by OER without having to pay for the same.

WHEREFORE, Plaintiff requests that the Court enter judgment against Defendant in the amount of One Hundred Ninety Thousand Seven Hundred Ninety Two Dollars and 75/100 Cents

(\$190,792.75), plus pre-judgment and post-judgment interest, attorney fees, costs and all other just and proper relief in the premises.

COUNT III – PROMISSORY ESTOPPEL

37. Plaintiff incorporates rhetorical paragraphs 1 through 8, rhetorical paragraphs 9 through 32 of Count I and rhetorical paragraphs 33 through 36 of Count II as though fully set forth herein.

38. OER reasonably relied on PCRR's promise to pay the debt owed and provide services under the terms of the Contract when it shipped the electronic components and computers to PCRR.

39. OER relied, to its detriment, on PCRR's promise to pay and provide services and injustice can only be avoided by enforcement of that promise.

40. PCRR's failure and refusal to pay the money owed to OER has caused damages in the amount of One Hundred Ninety Thousand Seven Hundred Ninety Two Dollars and 75/100 Cents (\$190,792.75) plus attorney fees, costs, and pre and post judgment interest.

41. PCRR's failure to show proof of the work performed has caused OER damages.

42. OER reasonably relied on PCRR's promise to wipe all data and software from the electronic components and computers, and provide certifications that the same has been accomplished.

43. OER relied, to its detriment, on PCRR's promise to wipe all data and software from the electronic components and computers, and provide certifications that the same has been accomplished, and injustice can only be avoided by enforcement of that promise.

44. PCRR's refusal either to conduct data wiping and/or provide certifications of data destruction is has caused OER damages. The equitable remedy of specific performance,

specifically a requirement that PCRR wipe all hard drives and data and provide certification of data destruction, is appropriate.

WHEREFORE, Plaintiff requests that the Court enter judgment against Defendant and order specific performance of the terms of the Contract that PCRR must wipe the data and hard drives of all electronic components and computers, and provide certification of data destruction. Plaintiff requests that the Court enter judgment against Defendant in the amount of One Hundred Ninety Thousand Seven Hundred Ninety Two Dollars and 75/100 Cents (\$190,792.75), plus pre-judgment and post-judgment interest, attorney fees, costs, specific performance and all other just and proper relief in the premises.

COUNT IV – ACCOUNT STATED

45. Plaintiff incorporates rhetorical paragraphs 1 through 8, rhetorical paragraphs 9 through 32 of Count I, rhetorical paragraphs 33 through 36 of Count II and rhetorical paragraphs 37 through 44 of Count III as though fully set forth herein.

46. PCRR is indebted to OER in the amount of One Hundred Ninety Thousand Seven Hundred Ninety Two Dollars and 75/100 Cents (\$190,792.75) on its account with OER plus pre and post-judgment interest, attorney fees and expenses.

47. PCRR's account with OER is past due. Despite OER's demands and best efforts to collect from PCRR and PCRR's promise to pay, PCRR has failed and refused and continues to fail and refuse to pay said account balance.

WHEREFORE, Plaintiff requests that the Court enter judgment against Defendant in the amount of One Hundred Ninety Thousand Seven Hundred Ninety Two Dollars and 75/100 Cents (\$190,792.75), plus pre-judgment and post-judgment interest, attorney fees, costs and all other just and proper relief in the premises.

COUNT V – DECLARATORY JUDGMENT

48. Plaintiff incorporates rhetorical paragraphs 1 through 8, rhetorical paragraphs 9 through 32 of Count I, rhetorical paragraphs 33 through 36 of Count II, rhetorical paragraphs 37 through 44 of Count III, and rhetorical paragraphs 45 through 47 of Count IV as though fully set forth herein.

49. As set forth above in Counts I and III, PCRR was required, pursuant to the terms of the Contract, to wipe data from the hard drives and provide certification of data destruction to OER.

50. OER has relied on PCRR's promise to timely wipe the hard drives and certify data destruction of the electronic components and computers.

51. Despite numerous requests from OER, PCRR has failed to respond as to whether it has complied with the data wiping requirements and has not provided certification of data destruction. As such, PCRR has breached the Contract.

52. PCRR's failure to wipe the hard drives and issue a certification of data destruction has harmed OER by, among other things, subjecting it to risk of and/or liability should the unlicensed or unauthorized use of software on the electronic components and computers occur.

53. PCRR is entitled to a declaratory judgment that PCRR has breached the Contract and must indemnify and hold harmless OER should any claim be made against OER due to PCRR's failure to timely sanitize and wipe clean the data from the electronic components and computers.

WHEREFORE, Plaintiff requests that the Court enter declaratory judgment against Defendant and find that PCRR breached the Contract and must indemnify and hold harmless OER and its insurers against any claims known or unknown, past and future, for damages of

