

**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 TRIAL DEMANDED

**DEFENDANT’S ANSWER AND DEFENSES TO PLAINTIFF’S SECOND
AMENDED COMPLAINT**

COMES NOW the Defendant, PC Rebuilders and Recyclers LLC (“PC Rebuilders” or “Defendant”) and hereby, through its counsel, submits its Answer and Defenses to the Second Amended Complaint (“Complaint”) by Plaintiff OmniSource Electronics Recycling, LLC (“OER” or “Plaintiff”), as follows:

PARTIES, JURISDICTION AND VENUE

COMPLAINT PARAGRAPH 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.

ANSWER:

Defendant lacks sufficient information upon which to admit or deny the allegations stated in paragraph 1 and therefore denies them.

COMPLAINT PARAGRAPH 2:

OER is in the business of recycling electronic equipment.

ANSWER:

The allegations stated in paragraph 2 are admitted.

COMPLAINT PARAGRAPH 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.

ANSWER:

The allegations stated in paragraph 3 are admitted.

COMPLAINT PARAGRAPH 4:

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

ANSWER:

The allegations stated in paragraph 4 are admitted.

COMPLAINT PARAGRAPH 5:

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

ANSWER:

Denied.

COMPLAINT PARAGRAPH 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.

ANSWER:

Denied.

COMPLAINT PARAGRAPH 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.

ANSWER:

Admitted, subject to Defendant's objections to venue, jurisdiction and service of process in Indiana.

COMPLAINT PARAGRAPH 8:

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

ANSWER:

Denied.

COUNT I – BREACH OF CONTRACT

COMPLAINT PARAGRAPH 9:

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

ANSWER:

Defendant does not know what rhetorical paragraphs are and therefore objects to this Paragraph as vague and ambiguous. To the extent a response is required, Defendant incorporates by reference its answers to all of the foregoing paragraphs stated in Plaintiff's Complaint.

COMPLAINT PARAGRAPH 10:

Willie Cade ("Cade") is the owner, founder and CEO of PCRR.

ANSWER:

The allegations stated in paragraph 10 are admitted.

COMPLAINT PARAGRAPH 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.

ANSWER:

The allegations stated in paragraph 11 are admitted.

COMPLAINT PARAGRAPH 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.

ANSWER:

The allegations stated in paragraph 12 are admitted.

COMPLAINT PARAGRAPH 13:

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

ANSWER:

Defendant lacks sufficient knowledge or information upon which to admit or deny the allegations stated in paragraph 13 and therefore denies them.

COMPLAINT PARAGRAPH 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.

ANSWER:

Denied. Plaintiff’s purchase order was received through email communications on June 28, 2016 and requested 3650 computers and 150 components.

COMPLAINT PARAGRAPH 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.

ANSWER:

The allegations stated in paragraph 15 are admitted.

COMPLAINT PARAGRAPH 16:

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

ANSWER:

The allegations stated in paragraph 16 are admitted.

COMPLAINT PARAGRAPH 17:

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

ANSWER:

The allegations stated in paragraph 17 are admitted.

COMPLAINT PARAGRAPH 18:

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

ANSWER:

The allegations stated in paragraph 18 are admitted.

COMPLAINT PARAGRAPH 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.

ANSWER:

The allegations stated in paragraph 19 are admitted.

COMPLAINT PARAGRAPH 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.

ANSWER:

The allegations stated in paragraph 20 are admitted.

COMPLAINT PARAGRAPH 21:

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

ANSWER:

The allegations stated in paragraph 21 are admitted.

COMPLAINT PARAGRAPH 22:

OER has fulfilled all its obligations under the Contract.

ANSWER:

The allegations stated in paragraph 22 are denied. The computers and electronics, especially the grade, quality and cosmetics and appearance of the computers and electronics, were deficient and defective and not what OER promised and was required to provide.

COMPLAINT PARAGRAPH 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.

ANSWER:

Admitted that the stated sum has not been paid. Denied that it is due to OER providing poor quality and deficient computers and electronics as stated in response to Paragraph 22.

COMPLAINT PARAGRAPH 24:

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

ANSWER:

Admitted that the stated sum has not been paid. Denied that it is due to OER providing poor quality and deficient computers and electronics as stated in response to Paragraph 22.

COMPLAINT PARAGRAPH 25:

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

ANSWER:

The allegations stated in paragraph 25 are denied. The computers and electronics, especially the grade, quality and cosmetics and appearance of the computers and electronics, were deficient and defective and not what OER promised and was required to provide.

COMPLAINT PARAGRAPH 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.

ANSWER:

Defendant lacks knowledge and information sufficient to admit or deny and therefore denies the allegations stated in Paragraph 26. Defendant denies that it agreed to or was obligated to certify data destruction to DOD standards.

COMPLAINT PARAGRAPH 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.

ANSWER:

Denied.

COMPLAINT PARAGRAPH 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.

ANSWER:

The allegations stated in Paragraph 28 are legal conclusions which require no response.

To the extent a response is required, the allegations stated in Paragraph 28 are denied.

COMPLAINT PARAGRAPH 29:

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

ANSWER:

The allegations stated in paragraph 29 are admitted.

COMPLAINT PARAGRAPH 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.

ANSWER:

The allegations of paragraph 30 are denied. The wiping was completed, and certifications are available.

COMPLAINT PARAGRAPH 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.

ANSWER:

The allegations stated in paragraph 31 are denied.

COMPLAINT PARAGRAPH 32:

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

ANSWER:

Denied.

PRAYER FOR RELIEF:

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 prejudgment and post-judgment interest, attorney fees, costs and all other just and proper relief in the premises.

ANSWER:

Admitted only that Plaintiff requests the specified relief. Denied that Plaintiff is entitled to the requested relief.

COUNT II – UNJUST ENRICHMENT

COMPLAINT PARAGRAPH 33:

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

ANSWER:

Defendant does not know what rhetorical paragraphs are and therefore objects to this Paragraph as vague and ambiguous. To the extent a response is required, Defendant

incorporates by reference its answers to all of the foregoing paragraphs stated in Plaintiff's Complaint.

COMPLAINT PARAGRAPH 34:

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

ANSWER:

The allegations of paragraph 34 are admitted.

COMPLAINT PARAGRAPH 35:

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

ANSWER:

Denied, because Plaintiff did not perform its obligations under the contract.

COMPLAINT PARAGRAPH 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.

ANSWER:

Denied, because Plaintiff did not perform its obligations under the contract.

PRAYER FOR RELIEF:

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.

ANSWER:

Admitted only that Plaintiff requests the specified relief. Denied that Plaintiff is entitled to the requested relief. Plaintiff cannot maintain an action for unjust enrichment in the presence of one or more express contracts between the parties.

COUNT III – PROMISSORY ESTOPPEL

COMPLAINT PARAGRAPH 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.

ANSWER:

Defendant does not know what rhetorical paragraphs are and therefore objects to this Paragraph as vague and ambiguous. To the extent a response is required, Defendant incorporates by reference its answers to all of the foregoing paragraphs stated in Plaintiff's Complaint.

COMPLAINT PARAGRAPH 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.

ANSWER:

Denied, because Plaintiff failed to perform its obligations under the contract.

COMPLAINT PARAGRAPH 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.

ANSWER:

Denied, because Plaintiff failed to perform its obligations under the contract.

COMPLAINT PARAGRAPH 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.

ANSWER:

Denied.

COMPLAINT PARAGRAPH 41:

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

ANSWER:

Denied. Proof that the work was performed was provided to Mr. NiuH on August 23, 2016 and by e-mail on June 28, 2016.

COMPLAINT PARAGRAPH 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.

ANSWER:

Denied.

COMPLAINT PARAGRAPH 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.

ANSWER:

Denied.

COMPLAINT PARAGRAPH 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.

ANSWER:

Denied.

PRAYER FOR RELIEF:

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 al 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 prejudgment and post-judgment interest, attorney fees, costs, specific performance and all other just and proper relief in the premises.

ANSWER:

Admitted only that Plaintiff requests the specified relief. Otherwise denied. Plaintiff cannot maintain a suit for promissory estoppel in the presence of a claim for damages for breach of one or more express contracts.

COUNT IV – ACCOUNT STATED

COMPLAINT PARAGRAPH 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.

ANSWER:

Defendant does not know what rhetorical paragraphs are and therefore objects to this Paragraph as vague and ambiguous. To the extent a response is required, Defendant incorporates by reference its answers to all of the foregoing paragraphs stated in Plaintiff's Complaint.

COMPLAINT PARAGRAPH 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.

ANSWER:

Denied, because of Plaintiff's failure to perform its obligations under the contract.

COMPLAINT PARAGRAPH 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.

ANSWER:

Denied, because of Plaintiff's failure to perform its obligations under the contract.

PRAYER FOR RELIEF:

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.

ANSWER:

Admitted only that Plaintiff requests the specified relief. Otherwise denied. Plaintiff cannot maintain a suit for account stated in the presence of a claim for damages for breach of one or more express contracts.

COUNT V – DECLARATORY JUDGMENT

COMPLAINT PARAGRAPH 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.

ANSWER:

Defendant does not know what rhetorical paragraphs are and therefore objects to this Paragraph as vague and ambiguous. To the extent a response is required, Defendant incorporates by reference its answers to all of the foregoing paragraphs stated in Plaintiff's Complaint.

COMPLAINT PARAGRAPH 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.

ANSWER:

The allegations stated in paragraph 49 are denied.

COMPLAINT PARAGRAPH 50:

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

ANSWER:

The allegations stated in paragraph 50 are denied.

COMPLAINT PARAGRAPH 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.

ANSWER:

The allegations stated in paragraph 51 are denied.

COMPLAINT PARAGRAPH 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.

ANSWER:

The allegations stated in paragraph 52 are denied.

COMPLAINT PARAGRAPH 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.

ANSWER:

The allegations stated in paragraph 53 are denied.

PRAYER FOR RELIEF:

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 kind or nature that may be brought or could have been brought against it by way of subrogation, damage, injury, or otherwise that any person or entity may have in connection with PCRR's failure to timely wipe the data from hard drives and provide certification of data destruction to OER regarding the electronic components and computers, including attorney fees, costs, and all other just and proper relief in the premises.

ANSWER:

Admitted only that Plaintiff requests the specified relief. Otherwise denied. Plaintiff cannot maintain a suit for declaratory judgment in the presence of a claim for damages for breach of one or more express contracts. If Plaintiff has not suffered any damages from the alleged failure to wipe the products (which Plaintiff knows is untrue) then the claim is not ripe for adjudication.

JURY DEMAND

COMPLAINT PARAGRAPH 54:

Pursuant to Federal Rule of Civil Procedure 38, OER respectfully demands a trial by jury of all issues so triable.

ANSWER:

Admitted to the extent the right to a jury trial has not been effectively waived in the parties' agreements. Otherwise denied.

DEFENSES

1. Discharge By Prior Material Breach.

Defendant's obligations were discharged by Plaintiff's prior material breach in providing equipment of poor, deficient and defective grade and quality and substandard cosmetics and appearance in violation of the parties' agreements.

2. Set-Off And Recoupment.

Defendant is entitled to set off against any debt claimed by Plaintiff and to recoup from Plaintiff the damages suffered by Defendant from Plaintiff providing equipment of poor, deficient and defective grade and quality and substandard cosmetics and appearance in violation of the parties' agreements.

3. Failure To State a Claim.

Counts II through V to Plaintiff's Complaint fail to state a claim on which relief can be granted due to the allegations of one or more express contracts and the claim for damages for breach of express contracts which are incorporated by Plaintiff into each count.

4. Express Contract Bar.

Plaintiff cannot pursue or recover on Counts II through V to Plaintiff's Complaint in the presence of one or more express contracts between the parties and Plaintiff's claim for damages based on breach of the same express contracts.

5. Lack of Personal Jurisdiction, Improper Venue and Insufficient Service of Process.

Venue is improper in this court, this court lacks personal jurisdiction over the Defendant, and service of process was improper.

PC REBUILDERS AND RECYCLERS LLC

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By: /s/ Michael C. Whitticar
Michael C. Whitticar

CERTIFICATE OF SERVICE

I hereby certify that on March 20, 2017, I served the foregoing *Defendant's Answer and Defenses to Plaintiff's Second Amended Complaint* and this *Certificate* by electronic filing on the following counsel of record:

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