

Original

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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WORLD COLOR (USA) CORP. fka
QUEBECOR WORLD, :

Plaintiff, :

-against- :

JOHN McAULIFFE, MICHAEL DESISTO,
COMPENDIUM SYSTEMS and BEAUTY
HANDBOOK

Defendant. :

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Index No. 29936-09

**AFFIDAVIT OF JOHN McAULIFFE
IN OPPOSITION TO PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT
AND IN SUPPORT OF CROSS-
MOTION TO DISMISS COMPLAINT**

STATE OF NEW YORK :
)
)
COUNTY OF WESTCHESTER :

JOHN McAULIFFE, duly sworn, deposes and says:

INTRODUCTION

1. I am a Defendant in the above-captioned proceeding and the president of Defendant Compendium Systems Corp. ("Compendium") which uses the trade name "Beauty Handbook."

2. I submit this affidavit (i) in opposition to the motion of Plaintiff World Color (USA) Corp. Fka Quebecor World for summary judgment granting the relief sought in the Complaint and (ii) in support of Defendants' cross-motion for summary judgment dismissing the Plaintiff's complaint to CPLR 3212 and (iii) for such other and further relief as this Court deems appropriate.

3. I have personal knowledge of the facts and circumstances set forth herein.

4. In the Complaint, Plaintiff seeks recovery of \$242,609.00 plus interest of \$96,162.75 based upon the Defendants' alleged breach of contract. More specifically, Plaintiff alleges that Defendants failed to pay for printing services it rendered in 2007 and 2008. A copy of the Complaint is annexed hereto as Exhibit A.

5. As set forth more fully below, the claims set forth in the Complaint are entirely without merit, lack foundation in fact and law and should be dismissed in their entirety.

BACKGROUND

6. Defendant Compendium was a corporation authorized to do business in New York with a principle business office at 346 North Main Street, Port Chester, New York 10573.

7. I was an am currently the president of Compendium.

8. Defendant Michael DeSisto is an individual who was formerly employed by Compendium.

8. At the time relative to the Complaint, Defendant Compendium was engaged primarily in publishing circulars, advertising inserts, catalogs, flyers and direct mail for large chain drug stores under the trade name "Beauty Handbook."

9. Compendium typically engaged outside printers to publish the materials which, in turn, would be provided to the customer or to others on the customer's behalf.

10. Compendium never did business with Plaintiff World Color (USA) Corp, which according to Exhibit A of the Affidavit of Jacqueline De Buck (referred to hereinafter as DeBuck Aff.), was not formed until 2009.

11. Compendium did engage Quebecor to perform certain print jobs during the period from 2003 to 2008.

12. Initially, Quebecor performed services for which it was engaged properly. Indeed, Quebecor was paid a substantial amount by Compendium in 2003 (\$231,615.00), 2004 (\$664,328.00), 2005 (\$950,339.00) and 2006 (\$1,080,458.00).

13. In 2007, Quebecor performed sub-standard services for Compendium. As discussed more fully below, it completely botched up the print and delivery jobs which are the subject of the Complaint,

14. Upon information and belief, during the period from 2006 to 2009, Quebecor was experiencing severe financial reverses. It engaged in efforts to down-size its operations and re-structure its obligations. Quebecor closed facilities in Kingsport, Tennessee, Red Bank, Ohio, and Brookfield, Wisconsin where Compendium's work was processed. It laid off or terminated staff members familiar with Compendium's account including the following Tom Tzoucalis, Account Manager; Nancy Oestreich, Account Manager; Brenda Reed, Ad Service Coordinator; Michael J. Riley, Vice President, Sales; David H. Blair, Vice President, Sales; Kerry Joyce, Account Representative; Mark "Duke" Mulvoy, Jr., Sales Executive; Jeremy Trescott, Customer Service Asst.; Rick Neal, Plant Manager; Brian O'Keefe, Customer Service Rep.; Stacie Higa, Account Mgr.; and Chuck Landrum.

15. Upon information and belief, Quebecor's operations were further disrupted by re-tooling of presses.

16. In sum, during the period from 2007 to 2008, Quebecor's operations vis a vis Compendium were in complete shambles.

17. Quebecor filed a petition for relief under Chapter 11 of the United States Bankruptcy Code on January 21, 2008. Proof of filing is annexed hereto as Exhibit B. Upon

information and belief, the Chapter 11 case is pending.

18. An excerpt from Quebecor's Chapter 11 disclosure statement which summarizes the events that lead to Quebecor's Chapter 11 filing is annexed hereto as Exhibit C. Quebecor acknowledges plant closings, difficulties with re-tooling and lay offs.

19. Compendium filed a claim against Quebecor in its Chapter 11 proceeding for losses it suffered from Quebecor's failure to properly print material.

Plaintiff Has No Standing and is Stayed from This Action

20. Plaintiff which was formed in 2009 is not the proper party in interest in this proceeding. Plaintiff, which has not described its relationship with Quebecor, has no standing to pursue claims against Defendants.

21. Moreover, the automatic stay implicated by 11 U.S.C. § 362(a) prevents the Plaintiff from pursuing claims outside of the Bankruptcy Court absent a court order to the contrary.

Plaintiff's Motion is Wholly Unsupported

22. In support of its motion, Plaintiff relies exclusively on the affirmation of Jacqueling De Buck who identifies herself as a Senior Director, Client Financial Services of World Color (USA) Corp. See DeBuck Aff. at 1.

23. Ms. DeBuck does not describe her position and tenure with World Color (USA) Corp. Moreover, she does not allege that she has personal knowledge of the facts and circumstances which support the motion. Ms. DeBuck does not assert that she is personally familiar with World Color's books and records.

24. It is submitted that Ms. DeBuck's affidavit is inherently suspect.

25. In light of the foregoing, Ms DeBuck's affidavit should be treated as a nullity and completely disregarded by the Court.

McAuliffe and DeSisto are Not Liable for Obligations

26. At no time did Quebecor perform services for me or my co-defendant, Michael DeSisto. All services were performed for Compendium in its corporate capacity. Exhibits C - G of the DeBuck Aff. which are allegedly billing statements to Compendium support this.

27. At no time did I or Mr. DeSisto sign a guarantee or otherwise obligate ourselves for any liability of Compendium.

28. It is noteworthy that the document identified by Plaintiff as a "credit application" and annexed to the DeBuck Aff. as Exhibit H is not completed or executed. I do not recognize the untitled document which bears no signature or date. Upon information and belief, the form may have been completed by Quebecor's representative. A chain of custody of the document has not been established.

Plaintiff Is Not Entitled to Payment

29. Plaintiff is not entitled to payment for the November 2007 orders, the December 2007 orders, the February 2008 orders, and the March 2008 orders.

30. In each case, Quebecor failed to print and deliver materials according to Compendium's specifications.

31. Quebecor was alerted to the gross errors in production in each case.

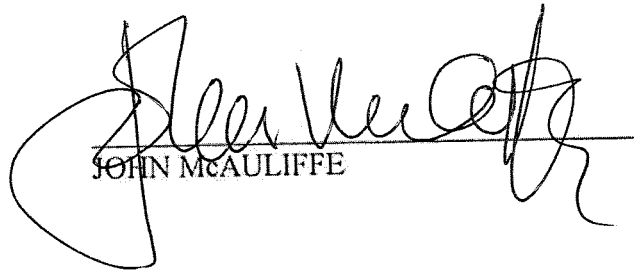
32. Compendium was severely damaged by Quebecor's failure to properly print and deliver materials and filed a claim against Quebecor for injuries it suffered.

33. Quebecor did not object to Compendium's proof of claim. As such, it is my understanding that the claim is deemed allowed under the Bankruptcy Code.

34. It should be noted that Compendium did not pursue Quebecor for its claims in light of its bankruptcy filing. Compendium understood that it was stayed from asserting an action against Quebecor other than filing a claim in the bankruptcy court. As such, Plaintiff's claim under the theory of "Account Stated" must fail. Compendium was barred from challenging Quebecor under 11 U.S.C. 362(a).

WHEREFORE, it is respectfully requested that this Court deny the Plaintiff's motion for summary judgment granting the relief sought in the complaint, grant Defendants' cross motion to dismiss and grant such other and further relief as it deems just and proper..

Dated: January 16, 2010



JOHN MCAULIFFE

Sworn to this 15 day of
June 2010



NOTARY PUBLIC

MILDRED ALICEA
Notary Public - State of New York
ID No. 01AL6192074
Qualified in County of Bronx
My Commission Expires August 25 2012