

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Best Buy Purchasing LLC,

Case No.: 0:15-CV-03309-RHK-LIB

Plaintiff,

AMENDED COMPLAINT
JURY TRIAL DEMANDED

vs.

JACO Environmental, Inc.,

Defendant.

Plaintiff Best Buy Purchasing LLC (“Best Buy”) for its Amended Complaint and jury trial demand against the above-named Defendant JACO Environmental, Inc. (“JACO”) states and alleges as follows:

PRELIMINARY STATEMENT

1. Best Buy brings this action against JACO for JACO’s breaches of several contracts between the parties, including the Appliance Hauling and Recycling Services Agreement, entered into effective June 1, 2009 (Exhibit 1), Addendum 11 to the Appliance Hauling and Recycling Services Agreement, entered into effective September 4, 2014 (Exhibit 2), and Addendum 13 to the Appliance Hauling and Recycling Services Agreement, entered into effective May 1, 2015 (Exhibit 3). By failing to make payments to Best Buy – despite Best Buy’s repeated willingness to provide financial concessions and accommodations to JACO – JACO’s entire debt to Best Buy is immediately due and owing.

PARTIES

2. Plaintiff Best Buy Purchasing LLC is a Minnesota limited liability company with its principal place of business located at 7601 Penn Avenue S., Richfield, MN 55423. Plaintiff has one member, Best Buy Enterprise Services, Inc., which is a Minnesota corporation with its principal place of business located at 7601 Penn Avenue S., Richfield, MN 55423. Best Buy Enterprise Services, Inc. is a wholly-owned subsidiary of Best Buy Co., Inc., which is a Minnesota corporation with its principal place of business located at 7601 Penn Avenue S., Richfield, MN 55423.

3. Defendant JACO Environmental, Inc. is a company organized and existing under the laws of the State of Washington, with its principal place of business located at 18323 Bothell-Everett Highway, Suite 220, Bothell, WA 98012.

JURISDICTION & VENUE

4. This Court has personal jurisdiction over Defendant JACO because JACO or its agents transact business in the District of Minnesota and certain activities giving rise to this action have taken place through contacts and communications in the District of Minnesota. Furthermore, JACO has purposefully established a business relationship and contracted with Best Buy, a Minnesota corporation, and in that capacity, has maintained an ongoing and intentional relationship with Best Buy involving regular communications and contacts in this District.

5. This Court has jurisdiction pursuant to 28 U.S.C. § 1332(a) because there is complete diversity of citizenship between the parties and the amount in controversy, exclusive of interest and costs, exceeds \$75,000.

6. Venue in this district is proper pursuant 28 U.S.C. § 1391(b) as a substantial part of the events or omissions giving rise to the claims occurred within the District of Minnesota. Best Buy is located in the District of Minnesota, and certain individuals involved in negotiations with JACO work and reside in this District.

FACTS

Brief History of the Parties' Relationship

7. Best Buy has operated an appliance haul away and recycling program for more than ten years. For customers who make qualifying purchases of appliances from Best Buy, Best Buy will take the customers' old appliances away and recycle them responsibly at no charge.

8. Over the years, Best Buy has issued requests for proposal from various appliance hauling and recycling companies with whom it can partner to provide hauling and recycling services.

9. JACO responded to an RFP and became Best Buy's primary appliance recycling service provider in 2009. At that time, JACO was a privately-held, family-owned business. Best Buy was pleased with JACO's pricing and service.

10. On June 1, 2009, JACO and Best Buy entered into the Appliance Hauling and Recycling Services Agreement (Exhibit 1). Pursuant to that contract, Best Buy would pick up appliances from customers and bring the appliances to its sites. JACO would pick up the appliances from Best Buy's sites, recycle them responsibly, and pay Best Buy a contract price – a rebate payment – for the appliances.

11. The rebate payments – still in effect today – are calculated per the Appliance Hauling and Recycling Services Agreement. That Agreement provides that “[JACO] will rebate Best Buy a) On a monthly basis b) No later than the twentieth (20th) day of the month following the collection.” (Exhibit 1, Exhibit A: Services, III(D)).

JACO seeks financial concessions from Best Buy

12. Over the last year, JACO has repeatedly come to Best Buy asking to delay payment or reduce contract prices to be paid to Best Buy by JACO.

13. Best Buy has agreed to accept late payments or reduced pricing on a number of occasions, including the adjustments allowed by Addendum 11 (Exhibit 2) and Addendum 13 (Exhibit 3), among others.

Addendum 11

14. On September 4, 2014, the parties entered into Addendum 11 which provided that JACO “is obligated under the terms of the Agreement to make payments to Best Buy arising out of various underpayments identified by the Parties for the time period between February 1, 2014 and July 31, 2014.”

15. Addendum 11 includes an acceleration clause which states: “In the event of non-payment of any amount due under the terms of this Addendum 11, Best Buy may declare the entire remaining balance due and payable immediately, and Best Buy may pursue any and all remedies at law or in equity to recover the entire amount due. If Best Buy engages counsel for legal advice in connection with any collection efforts, Service Provider shall pay all costs, regardless of whether Best Buy files suit or

commences any other proceeding to enforce the terms of this Addendum 11. Failure to make any payment timely when due shall be considered a breach under the Agreement.” (Exhibit 2 at ¶ 4).

Addendum 13

16. On May 1, 2015, the Parties entered into Addendum 13, which outlines that Best Buy was willing to provide reduced, emergency pricing to JACO for a limited time, but would not forgive the amounts owed by JACO in total.

17. Specifically, Addendum 13 is clear that: “WHEREAS Best Buy wishes to avoid the need to enter into additional addenda on an emergency basis, and is willing to alter the payment structure in a way that will reduce the monthly amount paid by [JACO] but will not reduce the total amount owed to Best Buy under the pricing currently in effect pursuant to Addendum 11 and as restated in Exhibit A to this Addendum 13[.]” (Exhibit 3 at p. 1.)

18. Further, Addendum 13 states that “Best Buy is willing to defer a portion of the amounts owed for appliances collected from Best Buy locations during and after March 2015, as described in greater detail below, which deferred amounts [JACO] will pay to Best Buy at a later date[.]” (Exhibit 3 at p. 1.)

19. Per Addendum 13, JACO “acknowledges that all other terms and conditions of the 2009 Agreement will continue to apply and bind Service Provider in all other respects.” (Exhibit 3 at p. 1.)

20. Addendum 13 also states: "In the event of non-payment of any amount due for the March Payment or any payment due under Paragraph 2 or Paragraph 3 above, [JACO] will pay Best Buy the full amount that would otherwise have been owed under the 2009 Agreement for those months, less any amounts already paid under this Addendum 13." (Exhibit 3 at ¶ 5).

JACO fails to pay even the reduced-payment amounts

21. JACO missed the non-deferred payments due dates for the May service rebates.

22. On July 13, 2015, JACO made a payment of \$160,305.80, but that still did not cover the amounts JACO owed Best Buy.

23. On July 20, 2015, the June service rebate of \$62,114.75 came due.

24. JACO had assured Best Buy that it had received new financing and could expect the June service rebate on July 20, 2015 and that it would continue to make additional payments to become current on what it owed Best Buy.

25. On July 20, 2015, Best Buy contacted JACO to ask how and when it should expect to receive the payment due on that date.

26. JACO's Executive Vice President and General Counsel responded by email to Best Buy on July 20, 2015 and said: "We wanted to keep you updated. The check has not been sent out today. Our funder has reorganized our use of funds and priorities and it will be a couple more days before we can provide you a further update on payment. Thank you as always for your patience."

27. JACO's Executive Vice President and General Counsel emailed Best Buy again on July 31, 2015 and said: "As stated earlier, the various obligations we have here at JACO are being evaluated and prioritized as we continue to manage through a tremendous and continuing reduction in scrap. It is clear of course that the past amounts owed and the amounts due today (July 31, 2015) will not be timely paid. I will be back with you shortly with a proposed rescheduling of our obligations. Thank you and Best Buy again for your patience."

28. Best Buy has not received the payments that were due on July 20, 2015, July 31, 2015, or any other payment since the July 13, 2015 payment.

COUNT I
BREACH OF CONTRACT
(ADDENDUM 11)

29. Best Buy incorporates by reference paragraphs 1 through 28 of this Complaint.

30. Addendum 11 is a valid and binding addendum to the 2009 Agreement.

31. Best Buy has performed, and continues to perform, all of its obligations under the 2009 Agreement, including Addendum 11.

32. JACO has taken action, as described above, that constitutes actual breaches of its obligations under Addendum 11 including but not limited to:

- a. Failure to pay the June Arrearage payment due on or before June 5, 2015 in the amount of \$90,000 plus 1.5% late payment interest of \$1,350 for a total of \$91,350.

- b. Failure to pay the July Arrearage payment due on or before July 5, 2015 in the amount of \$90,000 plus 1.5% late payment interest of \$1,350 for a total of \$91,350.
33. Because JACO failed to make those payments in a timely fashion, those amounts, plus the remaining balloon payment of \$409,730, is due and payable immediately.
34. JACO did make a payment of \$160,305.80 on July 13, 2015, reducing the total amount owed under Addendum 11 to \$432,124.20, plus accruing interest.
35. JACO's breaches of contract have caused Best Buy damage in excess of \$75,000, exclusive of interest, costs, and attorneys' fees, the specific amount to be determined at trial.

COUNT II
BREACH OF CONTRACT
(ADDENDUM 13)

36. Best Buy incorporates by reference paragraphs 1 through 35 of this Complaint.
37. Addendum 13 is a valid and binding addendum to the 2009 Agreement.
38. Best Buy has performed, and continues to perform, all of its obligations under the 2009 Agreement, including Addendum 13.
39. JACO has taken action, as described above, which constitutes actual breaches of its obligations under Addendum 13 including but not limited to failing to make the non-deferred service rebate payments for April, May, and June 2015.

40. Because JACO failed to make those non-deferred payments, JACO not only owes the non-deferred payments, but also “the full amount that would otherwise have been owed under the 2009 Agreement for those months” – in other words, the deferred payments as well. And “[a]ny breach of Paragraph 3 will result in the Deferred Payments becoming immediately due and payable in full.” (Exhibit 3, ¶ 5).

41. The only payment that JACO made under Addendum 13 was in March 2015.

42. Therefore, JACO still owes Best Buy the following amounts under Addendum 13:

- a. March’s contract pricing of \$373,181.75 minus March’s non-deferred payment of \$137,497.75 that JACO did pay, equaling a total of \$235,684.
- b. April’s contract pricing of \$375,442, minus April’s non-deferred payment of \$140,689.75 that JACO did pay, equaling a total of \$234,752.25.
- c. May’s contract pricing of \$399,520.
- d. June’s contract pricing of \$62,114.75.

43. The total amount owed under Addendum 13 is \$932,071, plus accruing interest.

44. JACO’s breaches of contract have caused Best Buy damage in excess of \$75,000, exclusive of interest, costs, and attorneys’ fees, the specific amount to be determined at trial.

JURY DEMAND

45. Best Buy demands trial by jury in this action of all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Best Buy respectfully requests that the Court award the following relief:

1. An award of damages for JACO's breach of Addendum 11, together with interest, and Best Buy's costs of suit and attorneys' fees;
2. An award of damages for JACO's breach of Addendum 13, together with interest, and Best Buy's costs of suit and attorneys' fees;
3. Such other relief as the Court deems just and proper.

DATED: August 19, 2015

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