

ORIGINAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Kristi Lea Harrington, Circuit Court Judge

Case No. 2011-CP-08-2439

INDRA SI, S.A.

Respondent,

v.

ROTOMOTION, LLC, a
South Carolina
Limited Liability Company

Appellant.

RECORD ON APPEAL

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SC Court of Appeals

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Order Granting Plaintiff's Motion for Summary Judgment filed April 30, 2012

STATE OF SOUTH CAROLINA)
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 COUNTY OF BERKELEY)
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 Indra SI, S.A.)
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 v.)
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 Rotomotion, LLC, a South Carolina)
 Limited Liability Company)
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IN THE COURT OF COMMON PLEAS
 FOR THE NINTH JUDICIAL CIRCUIT

2011-CP-08-2439

ORDER GRANTING PLAINTIFF'S
 MOTION FOR SUMMARY JUDGMENT

2012 APR 30 PM 3:38
 CLERK OF COURT
 BERKELEY COUNTY, SC

This matter is before the Court on the Motions of Plaintiff Indra, SI, S.A. ("Plaintiff" or "Indra") for Summary Judgment on its Complaint, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, or in the alternative, to Dismiss Rotomotion, LLC's ("Defendant" or "Rotomotion") Counterclaim, pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. The Court held a hearing on this Motion on April 2, 2012. After taking the matter under consideration, the Court hereby grants the Plaintiff's Motion.

PROCEDURAL FACTS

This action arose out of Defendant's alleged failure and refusal to deliver to Plaintiff, pursuant to a March 2009 Sale Agreement and subsequent written assurances, a Rotomotion SR20 Electric Helicopter UAV System and other equipment, items and services, for which Plaintiff in advance paid the full purchase price of \$45,400.00.

On September 7, 2011, Plaintiff served the Summons and Complaint, Plaintiff's First Set of Interrogatories, and Plaintiff's First Request for Production on Defendant via Process Server, providing Defendant thirty (30) days to answer or otherwise appear and defend. The Complaint includes detailed allegations and asserts four causes of action including: (1) Breach of Contract; (2) Unjust Enrichment; (3) South Carolina Unfair Trade Practice; and (4) Breach of Contract

Accompanied by Fraudulent Act. The Complaint also includes requests for actual, consequential, compensatory, and punitive damages, attorney fees and costs, pre and post judgment interest, and such other relief as the Court deems proper.

Defendant did not answer the Complaint or otherwise defend within thirty (30) days, which expired on October 7, 2011. On or about October 4, 2011, Counsel for Plaintiff was contacted via email by Defendant's Florida Counsel, and as a courtesy, Counsel for Plaintiff agreed to an extension of ten (10) days, which would be used to retain South Carolina local counsel for Defendant. On October 17, 2011, Counsel for Plaintiff agreed to an additional twenty (20) day extension via telephone with Defendant's newly retained South Carolina local counsel, which was memorialized in a letter dated October 19, 2011. Defendant did not answer the Complaint or otherwise defend within the additional twenty (20) day extended period, which expired on November 5, 2011.

Accordingly, on November 11, 2011, Counsel for Plaintiff served and filed an Affidavit of Default, swearing that more than sixty (60) days had elapsed since the service of the Summons and Complaint (including the ten (10) day extension and subsequent twenty (20) day extension) exclusive of the date of service upon the Defendant, and that no Answer, Demurrer, or Notice of Appearance had been served upon him as required by the Summons and that Defendant is therefore in default.

Only thereafter, on or about November 18, 2011, which was seventy-six (76) days after service of the Summons and Complaint, without first making a motion to show good cause to file a late answer, Defendant filed an Answer and Counterclaim for Specific Performance, which was not properly served; rather, it was e-mailed to Counsel for Plaintiff.

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2011

Based on those failures, Plaintiff served and filed Notice of the instant Motion for Summary Judgment or in the Alternative Motion to Dismiss Counterclaim on December 16, 2011. Notably, Defendant has yet to serve any response to the above mentioned discovery requests served by Plaintiff over six (6) months ago on September 7, 2011, which is further indicative of Defendant's pattern of disregard for the Rules of Civil Procedure.

Plaintiff has also submitted an affidavit of Eduardo Riccardo Viaggio in support of Plaintiff's Motion for Summary Judgment that is demonstrative of the prima facie case as set forth in Plaintiff's Complaint.

STANDARD OF REVIEW

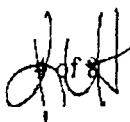
Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. S.C. R. Civ. P. 56(c); Pittman v. Grand Strand Entm't, Inc., 363 S.C. 531, 611 S.E.2d 922 (2005); B & B Liquors, Inc. v. O'Neil, 361 S.C. 267, 603 S.E.2d 629 (Ct. App. 2004). In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party. Medical Univ. of South Carolina v. Arnaud, 360 S.C. 615, 602 S.E.2d 747 (2004); Rife v. Hitachi Constr. Mach. Co., Ltd., 363 S.C. 209, 609 S.E.2d 565 (Ct. App. 2005). Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. S.C. R. Civ. P. 56(c); Helms Realty, Inc. v. Gibson-Wall Co., 363 S.C. 334, 611 S.E.2d 485 (2005); BPS, Inc. v. Worthy, 362 S.C. 319, 608 S.E.2d 155 (Ct. App. 2005).

FINDINGS OF LAW

Rule 12(a) of the South Carolina Rules of Civil Procedure provides that a defendant must serve an answer or otherwise defend a summons and complaint within thirty (30) days. Rule 13(a) provides that compulsory counterclaims must be asserted in such answer. Rule 6(b) allows for extensions up to thirty (30) days when agreed to in writing by counsel. Rule 5(b)(1) provides how service must be made; notably, e-mail is not an option. Defendant has not adhered to these rules, filing its Answer and Counterclaim seventy-six (76) days after being served with the Summons and Complaint, which was outside of the ten (10) day extension and subsequent twenty (20) day extension, and moreover, was not properly served, but merely e-mailed.

Rule 55(a) provides that if a defendant fails to serve an answer or otherwise defend within the above described period, and that fact is made to appear by affidavit or otherwise, the clerk of court must enter default. “[W]hether default was actually entered is of no consequence since the entry of default is a purely ministerial act which the clerk was required to perform once the default was made to appear by the affidavit.” Thynes v. Lloyd, 294 S.C. 152, 153-54, 363 S.E.2d 122, 123 (Ct. App. 1987); Stark Truss Co., Inc. v. Superior Construction Corp., 602 S.E.2d 99, 360 S.C. 503 (Ct. App. 2004) (“A plain reading of Rule 55(a) allows entry of default when a pleading or defense is asserted in a manner noncompliant with the Rules of Civil Procedure. To hold otherwise would render the requirements in Rule 12(a), SCRPC, meaningless.”). After Defendant’s extended time to answer had expired, Plaintiff served and filed an Affidavit of Default. Accordingly, the Court effectively deems default as having been entered by the clerk at that time.

Rule 55(c) provides that the Court may set aside an entry of default only after a showing of “good cause.” Defendant did not move under Rule 55(c) to show good cause to file a late



answer, but rather filed on its own accord without the Court's approval. Such an unauthorized late filing does not constitute an answer, but merely an "appearance" that entitles Defendant to notice and a hearing before entry of default can be converted into a judgment of default under Rule 55(b). Dyman v. Hyman, 305 S.C. 170, 406 S.E.2d 388 (Ct. App. 1991); Stark Truss Co., Inc. v. Superior Construction Corp., 602 S.E.2d 99, 360 S.C. 503 (Ct. App. 2004) ("Appellants failed to timely serve and file their answer and compulsory counterclaims on Stark Truss pursuant to the Rules of Civil Procedure. Thus, the entry of default was proper, the circuit court's refusal to set aside the entry of default was supported by the evidence, and the dismissal of Appellants' compulsory counterclaims was proper. However, as Appellants made an appearance in this action by filing a late answer, they were entitled to notice before entry of default judgment.").

In opposition to Plaintiff's Motion for Summary Judgment, three and a half months after service of notice of the Motion, and four and a half months after Defendant's failure to timely answer, Defendant argued that it had "good cause" to file its answer late. Again, a showing of good cause is required to have been made in a motion under Rule 55(c) before Defendant filed its late answer. See Sundown Operating Co., Inc. v. Intedge Industries, Inc., 383 S.C. 601, 607-08, 681 S.E.2d 885, 888 (2009). The Court therefore finds that it would be inappropriate at this juncture to issue an Order finding good cause and setting aside the entry of default, where Defendant has not filed a motion requesting such relief, but has merely argued in opposition to summary judgment that it had good cause for filing its answer late.

Regardless, the Court finds that no good cause exists. The good cause standard of Rule 55(c) requires, as a threshold burden, a party to put forth an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice. Sundown

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Operating Co., 383 S.C. at 607-08, 681 S.E.2d at 888. Once a party has put forth a satisfactory explanation, the Court must also consider: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted. Id. However, the Court need not make specific findings of fact for each factor if sufficient evidence supports a determination that no reasonable explanation exists for vacation of default. Id.

Under this standard, the explanation offered in Defendant's Opposition – "clerical error and/or inadvertence," which was further explained by Defendant's Counsel at the April 2, 2012 hearing to have resulted from a legal assistant's failure to docket the extension date – falls short of good cause. Courts have rejected this type of explanation – mere negligence on the part of the defendant or its attorney is not good cause. Williams v. Vanvolkenburg, 312 S.C. 373, 375, 440 S.E.2d 408, 410 (S.C. App. 1994) ("Whether the [defendants] failed to ask their attorney to file an answer or whether the attorney was negligent in failing to answer, however, is not critical, because even if the attorney were negligent in failing to answer the Complaint, his negligence would be imputed to the [defendant] Because the [defendants] have failed to set forth any other reason why they failed to answer the Complaint, the master's finding that the [defendants] failed to demonstrate good cause in setting aside the default is supported by the evidence.").

Moreover, the lateness of the filing was not the only deficiency, and Defendant's proffered excuse does not even address those other issues. As explained above, Defendant failed to satisfy the first of the Sundown Operating Co. elements, which is to timely file a motion for relief. Additionally, Defendant did not properly serve its late filed answer, but merely e-mailed a copy. Finally, Defendant has yet to respond to Plaintiff's discovery requests, served over six (6) months ago.

Because the Court has decided not to recognize Defendant's late and improperly served Answer and Counterclaim, Defendant is necessarily deemed to have admitted all of the allegations in the Complaint, pursuant to Rule 8(d). SCRPC 8(d) ("Effect of Failure to Deny. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading."). In turn, because Defendant has admitted all of the allegations in Plaintiffs' Complaint, no material issues of fact exist, the discovery alluded to in Defendant's Opposition is unnecessary, and summary judgment should be granted in Plaintiff's favor.

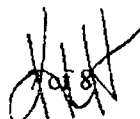
Furthermore, Plaintiff's affidavit in support of its Motion for Summary Judgment supports the factual allegations made in the Complaint and contradicts any allegations that Defendant has made in a general, summary fashion, in both Defendant's Opposition to Plaintiff's Motion and Defendant's late filed Answer and Counterclaim. As such, Defendant has not made a showing of any meritorious defenses either by affidavit or otherwise.

CONCLUSION

The South Carolina Rules of Civil Procedure cannot be ignored. The Court finds that Defendant's late and improperly served Answer is ineffective as a denial of Plaintiffs' allegations or assertion of any defense or counterclaim. Accordingly, Plaintiff's allegations are deemed admitted, there are no material facts at issue, and Plaintiff is summarily entitled to the relief sought in its Complaint.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Plaintiff's Motion for Summary Judgment on the causes of action asserted in its Complaint is granted.

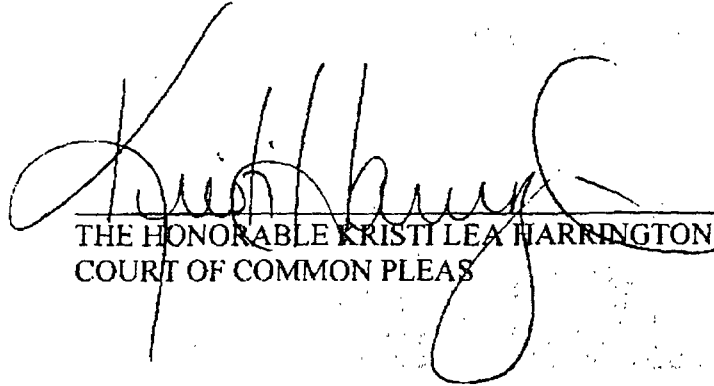
IT IS FURTHER ORDERED that Plaintiff be awarded actual, consequential, compensatory, treble and punitive damages, legal fees and costs, and prejudgment interest, as



follows: Actual damages of \$45,400.00 which are trebled, pursuant to the South Carolina Unfair Trade Practices Act, to \$136,200.00 as a result of the willful acts of Defendant, plus prejudgment interest as of April 6, 2012, of \$10,270.62, filing fees and costs of \$331.00, and attorneys fees of \$7,012.50, for a total of \$153,814.12.

AND IT IS SO ORDERED.

April 30, 2012
Moncks Corner, South Carolina


THE HONORABLE KRISTI LEA HARRINGTON
COURT OF COMMON PLEAS

Summons and Complaint filed September 2, 2011

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Indra SI, S.A.

Plaintiff(s)

vs.

Rotomotion, LLC, a South Carolina limited Liability Company.

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2011-CP-08-2439

FILED SEP-22 AM 9:38 MARY P. BROWN CLERK OF COURT BERKELEY COUNTY, S.C.

(Please Print)

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NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint.
NON-JURY TRIAL demanded in complaint.
This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
This case is exempt from ADR. (Proof of ADR/Exemption Attached) Non ADR County

NATURE OF ACTION (Check One Box Below)

- Contracts: Breach of Contract (140)
Torts - Professional Malpractice: Dental Malpractice (200), Legal Malpractice (210), Medical Malpractice (220), Notice/ File Med Mal (230)
Torts - Personal Injury: Assault/Slander/Libel (300), Conversion (310), Motor Vehicle Accident (320), Premises Liability (330), Products Liability (340), Personal Injury (350), Wrongful Death (360)
Real Property: Claim & Delivery (400), Condemnation (410), Foreclosure (420), Mechanic's Lien (430), Partition (440), Possession (450), Building Code Violation (460)
Inmate Petitions: PCR (500), Mandamus (520), Habeas Corpus (530)
Judgments/Settlements: Death Settlement (700), Foreign Judgment (710), Magistrate's Judgment (720), Minor Settlement (730), Transcript Judgment (740), Lis Pendens (750), Transfer of Structured Settlement Payment Rights Application (760)
Administrative Law/Relief: Reinstatement Driver's License (800), Judicial Review (810), Relief (820), Permanent Injunction (830), Forfeiture-Petition (840), Forfeiture-Consent Order (850)
Appeals: Arbitration (900), Magistrate-Civil (910), Magistrate-Criminal (920), Municipal (930), Probate Court (940), SCDOT (950), Worker's Comp (960), Zoning Board (970), Public Service Commission (990), Employment Security Comm (991)
Special/Complex /Other: Environmental (600), Automobile Arb. (610), Medical (620), Pharmaceuticals (630), Unfair Trade Practices (640), Out-of State Depositions (650), Motion to Quash Subpoena in an Out-of-County Action (660), Sexual Predator (510)

Submitting Party Signature:

[Handwritten Signature]

Date: 9/11/11

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Indra SI, S.A.

Plaintiff,

v.

Rotomotion, LLC, a South Carolina Limited Liability Company,

Defendant.

IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT

2011-CP-08-2439

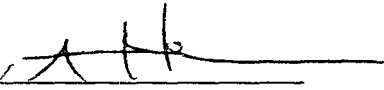
SUMMONS

FILED
2011 SEP - 2 AM 9:38
HARRY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, or to otherwise appear and defend, and to serve a copy of your Answer to said Complaint upon the Clerk of this Court and upon the subscriber at his office, 145 King Street, Suite 102, Charleston, South Carolina 29401, within thirty (30) days after service hereof; and if you fail to answer the Complaint within the time aforesaid, or otherwise appear and defend, the Plaintiff in this action will apply to the Court for the relief demanded therein and judgment by default will be rendered against you for the relief demanded in the Complaint

HELLMAN & YATES, P.A.

By: 

Brian A. Hellman
bh@hellmanyates.com
SC Bar # 72399
145 King Street, Suite 102
Charleston, SC 29401
(843) 266-9099
(843) 266-9188 facsimile

ATTORNEY FOR THE PLAINTIFF

Charleston, South Carolina

August 31, 2011

30.6
DBH

5. The events, acts and omissions underlying this action giving rise to Plaintiff Indra's claims and this action arose in Wando, Berkeley County, South Carolina.

6. The Court has jurisdiction over this matter and venue is proper in this Court pursuant to S.C. Code Ann. § 15-7-30.

FACTUAL BACKGROUND

7. At times relevant to this action, Defendant Rotomotion has engaged in and engages in the marketing, advertising and sale of helicopter robots and aerial robotic systems and components.

8. On or about March 4, 2009, Defendant Rotomotion agreed to sell to Plaintiff Indra and Plaintiff Indra agreed to purchase from Defendant Rotomotion a Rotomotion SR20 Electric Helicopter UAV System and other equipment, items and services (the "Equipment") (the "March 2009 Sale Agreement"). (Exhibit 1).

9. Terms of the agreement for sale of the Rotomotion SR20 Electric Helicopter UAV System and other Equipment by Defendant Rotomotion to Plaintiff Indra are memorialized in the March 2009 Sale Agreement.

10. Defendant Rotomotion and Plaintiff Indra agreed that the purchase price to be paid by Plaintiff Indra to Defendant Rotomotion for the Equipment was \$45,400.00 (the "Purchase Price").

11. Plaintiff Indra agreed to pay and on or about March 20, 2009 did pay thirty percent (30%) (\$13,320.00) of the Purchase Price to Defendant Rotomotion.

12. Plaintiff Indra agreed to pay and, on or about July 8, 2009, did pay the remaining seventy percent (70%) (\$31,080.00) of the Purchase Price to Defendant Rotomotion before the scheduled delivery of the Equipment.

13. The payment of the Purchase Price in advance was required by Defendant Rotomotion in order for it to be able to manufacture and deliver the Equipment.

14. Plaintiff Indra's pre-payments constituted full payment of the Purchase Price in the amount of \$45,400.00 to Defendant Rotomotion for the Equipment Defendant Rotomotion agreed to sell and deliver to Plaintiff Indra.

15. Defendant Rotomotion agreed to deliver the Equipment to Plaintiff Indra within four (4) to six (6) weeks.

16. Defendant Rotomotion failed to deliver the Equipment to Plaintiff Indra within four (4) to six (6) weeks. In the intervening time, from the date of the order Plaintiff Indra offered services in Argentina to potential clients which required that Plaintiff Indra have the Equipment.

17. Defendant Rotomotion, by letter to Plaintiff Indra dated October 28, 2009, confirmed that "Rotomotion will ship the SR20 from Charleston, SC, via Federal Express International Priority, on or before November 6, 2009." (Exhibit 2).

18. Defendant Rotomotion, in its October 28, 2009 letter, confirmed that if Defendant Rotomotion did not ship the SR20, "Rotomotion will refund, via wire transfer, the entire purchase price of the SR20 and related equipment." (Exhibit 2).

19. Defendant Rotomotion failed to ship the SR20 and other Equipment to Plaintiff Indra on or before November 6, 2009.

20. Defendant Rotomotion did not refund the Purchase Price paid by Plaintiff Indra as promised and agreed by Defendant Rotomotion in its October 28, 2009 letter.

21. Plaintiff Indra, by letter dated May 31, 2010 to Defendant Rotomotion, demanded immediate reimbursement of the Purchase Price previously paid by Plaintiff Indra to Defendant Rotomotion for the Equipment (\$45,400.00). (Exhibit 3).

22. Defendant Rotomotion has not reimbursed any portion of the Purchase Price, nor has it paid accrued interest thereon or compensated or paid for other losses and damages sustained by Plaintiff Indra caused by, and resulting from the non-delivery of the Equipment.

23. All conditions precedent to the filing and commencement of this action have occurred, been satisfied or waived.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

24. Plaintiff re-alleges and incorporates herein the allegations of paragraph 1 through 23 of this Complaint as if fully set forth herein.

25. The agreement reached between Plaintiff Indra and Defendant Rotomotion and memorialized in the March 2009 Sale Agreement is a valid and enforceable contract.

26. The Equipment constitutes goods pursuant to S.C. Code § 36-2-105.

27. Plaintiff Indra performed under the contract by pre-paying Defendant Rotomotion the entire Purchase Price of the Equipment as required by the terms of the March 2009 Sale Agreement.

28. Defendant Rotomotion breached the contract by not delivering the Equipment to Plaintiff Indra within four (4) to six (6) weeks of the date of order as Defendant Rotomotion was obligated to under the March 2009 Sale Agreement, or at any time thereafter.

29. Despite demand by Plaintiff Indra, Defendant Rotomotion has failed and refused to deliver the Equipment and has failed and refused to refund any portion of the Purchase Price to Plaintiff Indra.

30. Defendant Rotomotion's conduct, including receiving payment of the Purchase Price, failing to deliver the Equipment and failure to refund the Purchase Price pre-paid by Plaintiff Indra, has caused Plaintiff Indra to incur losses and damages and constitutes a breach of contract, including pursuant to S.C. Code Ann. §§ 36-2-301 and 36-2-771, for which Plaintiff Indra is entitled receive to actual and consequential damages against Defendant Rotomotion, pre-judgment and post-judgment interest thereon at the legal rate of interest, and costs, as well as all other relief and remedies to which it is entitled by law in an amount to be determined at trial.

FOR A SECOND CAUSE OF ACTION
(Unjust Enrichment)

31. Plaintiff re-alleges and incorporates herein the allegations of paragraph 1 through 23 of this Complaint as if fully set forth herein.

32. Plaintiff conferred a benefit upon the Defendant Rotomotion by paying to Defendant Rotomotion the full Purchase Price for the Equipment in advance of delivery of the Equipment.

33. Defendant Rotomotion received and retained Plaintiff Indra's pre-payment of the full Purchase Price even though Defendant Rotomotion failed to deliver the Equipment to Plaintiff Indra, and thereby Defendant Rotomotion realized a benefit.

34. Defendant Rotomotion's receipt of the Purchase Price and realization of a benefit thereby, failure to deliver the Equipment and subsequent and unjust withholding of the Purchase Price funds without ever delivering any portion of the Equipment is inequitable and has caused Plaintiff compensable losses and damages and unjustly enriched Defendant Rotomotion.

35. As a direct and proximate result of Plaintiff's pre-payment of the Purchase Price and Defendant Rotomotion's actions, Defendant Rotomotion has been unjustly enriched and Plaintiff has suffered damages and losses.

36. Plaintiff Indra is entitled to the amount Defendant Rotomotion has been unjustly enriched, damages, pre-judgment and post-judgment interest thereon at the legal rate of interest, and costs in an amount to be determined at trial, as well as all other relief and remedies to which it is entitled by at law and in equity in an amount to be determined at trial.

FOR A THIRD CAUSE OF ACTION

(South Carolina Unfair Trade Practices Act *S.C. Code Ann § 39-5-20 et seq.*)

37. Plaintiff incorporates herein the allegations of paragraph 1 through 23 of this Complaint as if fully set forth herein.

38. In negotiation of the agreement for sale of the Equipment, Plaintiff Indra communicated to Defendant Rotomotion that it would use the Equipment to provide services to customers.

39. Defendant Rotomotion knew that Plaintiff Indra required timely delivery of the Equipment for reasons including Plaintiff Indra's need to have the Equipment in order to be able to provide service to customers.

40. Defendant Rotomotion did not apply the Purchase Price funds to the manufacture and delivery of the Equipment.

41. Defendant Rotomotion engaged in deceptive conduct by requiring pre-payment of the Purchase Price and thereafter failing to manufacture and deliver the Equipment to Plaintiff Indra or by diverting the Equipment to another buyer.

42. Defendant Rotomotion continued its deceptive and unfair practices even after its failure to deliver the Equipment to Plaintiff Indra by promising to repay the Purchase Price.

43. On information and belief, Defendant Rotomotion is engaged in trade and commerce, and the facts complained of herein occurred in the ordinary course of Defendant

Rotomotion's business of manufacturing and selling items such as the Equipment and are capable of repetition and affect the public interest.

44. On information and belief, Defendant Rotomotion knowingly and willfully engaged in unfair and/or deceptive acts and practices in the conduct of trade or commerce within the meaning of South Carolina Unfair Trade Practices Act ("SCUTPA"), which, if unchecked, are likely to recur and which has affected, and will continue to affect, the public interest.

45. The activity described in this Complaint constitutes unfair and deceptive trade practices within the meaning of SCUTPA.

46. The conduct of Rotomotion in accepting pre-payment of the Purchase Price and thereafter failing to deliver the Equipment or refund the pre-payment has been intentional on the part of the Defendant Rotomotion and is an intentional violation of SCUTPA.

47. As a direct and proximate result of the aforementioned unfair and deceptive trade practices, the Plaintiff has sustained the damages and is entitled to recover, actual damages, attorney's fees and costs.

48. On information and belief, Defendant Rotomotion's violations of SCUTPA were willful and knowing, and Plaintiff is entitled to treble damages plus attorney's fees and costs.

49. Plaintiff Indra is entitled to receive actual and treble damages as a result of Defendant Rotomotion breach of the SCUTPA, attorneys fees, pre- and post-judgment interest thereon at the legal rate of interest, costs and all other relief and remedies to which it is entitled by law in an amount to be determined at trial.

FOR A FOURTH CAUSE OF ACTION
(Breach of Contract Accompanied by Fraudulent Act)

50. Plaintiff re-alleges the allegations set forth in paragraphs 1-23 as if fully set forth herein.

51. At all times mentioned herein, the parties had entered into a binding contract for the sale and purchase of the Equipment.

52. Without justification and/or with fraudulent intent, Defendant Rotomotion breached the contract with Plaintiff by failing to manufacture and deliver the Equipment to Plaintiff Indra or by diverting the Equipment to another customer.

53. Prior to and after the agreed delivery date for the Equipment, Defendant Rotomotion made representations regarding delivery of the SR20, the status of the manufacture of the Equipment, the timing of its delivery and reasons for delay. These representations were false when made and known to be false by Defendant Rotomotion. These false representations include, but are not limited to, the following:

(a) Defendant Rotomotion agreed to deliver the Equipment to Plaintiff Indra within four (4) to six (6) weeks from the date of order.

(b) Defendant Rotomotion represented that pre-payment of the Purchase Price would enable it to be able to produce and deliver the Equipment.

(c) Defendant Rotomotion failed to deliver the Equipment to Plaintiff Indra within four (4) to six (6) weeks from the date of order, but made assurances the Equipment would be delivered, knowing that Plaintiff Indra offered services in Argentina to potential clients which required that Plaintiff Indra receive the Equipment bought from Defendant Rotomotion.

(d) Defendant Rotomotion, by letter to Plaintiff Indra dated October 28, 2009, confirmed that "Rotomotion will ship the SR20 from Charleston, SC, via Federal Express International Priority, on or before November 6, 2009."

(e) On October 28, 2009, Defendant Rotomotion confirmed by letter to Plaintiff that if Defendant Rotomotion did not ship the SR20, "Rotomotion will refund, via wire transfer, the entire purchase price of the SR20 and related equipment."

54. The breach of contract was accompanied by bad faith, unreasonable conduct, dishonesty in fact, unfair dealing and/or unlawful appropriation by design.

55. As a direct and proximate cause of Defendant Rotomotion's wrongful conduct, Plaintiff has suffered and is entitled to recover actual damages, special damages, consequential damages, attorney's fees, costs and expenses.

56. Defendant Rotomotion's actions were willful, wanton and/or in reckless disregard for Plaintiff's rights and upon information and belief, Plaintiff is entitled to punitive damages against Defendant Rotomotion.

57. As a direct and proximate result of the aforementioned breach of contract accompanied by fraudulent act, Plaintiff has sustained the damages set forth above and is entitled to recover actual damages, punitive damages, attorney's fees and costs.

58. Plaintiff Indra is entitled to receive actual, special, consequential, and punitive damages, pre- and post-judgment interest thereon at the legal rate of interest, costs and all other relief and remedies to which it is entitled by law as a result of Defendant Rotomotion's breach of contract accompanied by a fraudulent act in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Indra prays that the Court issue an Order granting the following relief:

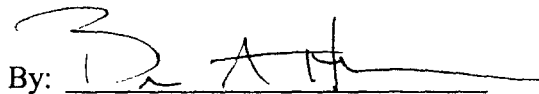
1. As to the First Cause of Action, that the Court find that Defendant Rotomotion breached the March 2009 Sale Agreement and non delivery of the Equipment,

and that Plaintiff Indra is entitled to a judgment against Defendants for actual, consequential, and compensatory damages, including as provided in S.C. Code Ann. §§ 36-2-711, 36-2-713, 36-2-715, 36-2-716, and 36-2-721, in an amount to be determined by the Court, as well as its reasonable attorneys' fees and costs incurred in prosecuting this action, and pre- and post-judgment interest.

2. As to the Second Cause of Action, that the Court find that Defendant Rotomotion was unjustly enriched by its unjust retention of the Purchase Price without delivery of the Equipment to Plaintiff Indra; and that Plaintiff Indra be awarded actual and consequential damages, legal fees and costs, and pre- and post-judgment interest in an amount to be determined at trial.
3. As to the Third Cause of Action, for a judgment that Plaintiff Indra is entitled to receive actual damages, treble damages, and attorneys fees and costs as a result of Defendant Rotomotion breach of the SCUTPA, pre- and post-judgment interest thereon at the legal rate of interest, costs and all other relief and remedies to which it is entitled by law in an amount to be determined at trial.
4. As to the Fourth Cause of Action, for a judgment that Plaintiff Indra is entitled to receive actual, consequential, compensatory, and punitive damages, in an amount to be determined by the Court, as well as its reasonable attorneys' fees and costs incurred in prosecuting this action, and pre- and post-judgment interest, as a result of Defendant Rotomotion's breach of the March 2009 Sale Agreement accompanied by a fraudulent act.
5. That Plaintiff Indra be awarded its legal fees and costs.

6. That Plaintiff Indra be awarded such other and further relief as the Court deems appropriate and proper.

HELLMAN & YATES, PA

By: 

Brian A. Hellman
bh@hellmanyates.com
SC Bar # 72399
145 King Street, Suite 102
Charleston, SC 29401
(843) 266-9099
(843) 266-9188 facsimile

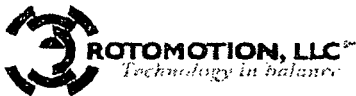
ATTORNEYS FOR PLAINTIFF

Dated August 31, 2011

Exhibit 1

March 2009 Sale Agreement

See attached.



459 Jessen Lane
Suite C
Charleston, SC 29492

Phone: 843.971.7455
Fax: 843.971.9774

Quote

Date	Quote #
3/4/2009..	03042009440

Name / Address
INDRA SI SA Paraná 1073 1018 - Ciudad Autónoma de Buenos Aires Argentina Attn: Manuel Gomez de Lima

Terms	Quote Valid Until
Prepaid	4/3/2009

Item	Description	Qty	Per Unit	Total
SR20	Rotomotion SR20 Electric Helicopter UAV System, including full autonomous flight system, ground control software, one set of batteries, one battery charger, 802.11 800m LOS Telemetry, Transmitter for safety pilot and 2-days training in Charleston, SC in the use of the Rotomotion Flight Control System (customer pays all travel related costs)	1		18,500.00
OPTAFCSAUTO...	Auto Takeoff and Assisted Land	1		3,000.00
OPTSR20CAMPL..	SR20 Pan & Tilt Camera Platform	1		3,000.00
OPTVIDEO	Rotomotion Video System (including Sony Day Camera)	1		4,000.00
OPTSS4PLIPOLY	5S4P Li-Poly Battery (2 additional batteries to make one additional set - allow for 40 minute flight time)	2		950.00
OPTJOYST	USB Joystick for UAV control	1		500.00
OPTSR20RUNLL..	SR20 Running Lights and Strobe	1		500.00
OPTGRCOMP	Ground Station Computer - non-ruggedized with Rotomotion Ground Control Software installed and integrated	1		1,000.00
OPTFLIRCAM	FLIR Photon IR CAMERA	1		10,500.00
OPTSR20SPARE..	SR20 Spare Parts Kit - augmented with additional set of main and tail blades, tail boom (with gear and supports), main rotor head and additional set of gears - AT NO CHARGE	1		
OPTSR20UNDER	SR20 UAV Undercarriage (spare) - AT NO CHARGE	1		
	Add Additional Optional Equipment:			
OPTCAM	Canon EOS Rebel XS; EF-S 18-155IS Kit, with EF-S 18-55mm F3.5-5.6 IS Lens with Optical Image Stabilizer	1		900.00
OPTSR20CAMPL..	Modify SR20 camera platform to hold both video and SLR camera	1		400.00
OPTSR20CASE	Hardened Storage and Shipping Case for SR20 UAV - with foam insert	1		1,850.00

Total

Phone #	Fax #	E-mail
(843) 971-7455	(843) 971-9774	dsd@rotomotion.com



459 Jessen Lane
Suite C
Charleston, SC 29492

Phone: 843.971.7455
Fax: 843.971.9774

Quote

Date	Quote #
3/4/2009	03042009440

Name / Address
INDRA SI SA Paraná 1073 1018 - Ciudad Autónoma de Buenos Aires Argentina Attn: Manuel Gómez de Lima

Terms	Quote Valid Until
Prepaid	4/3/2009

Item	Description	Qty	Per Unit	Total
ZZZUV	Customer Logo on White Canopy (customer to provide color requirements) Delivery: 4-6 weeks from date of order, subject to receipt of export license from US Department of Commerce Additional Terms: Payment: 30% (\$13,320) with order / 70% (\$31,080) prior to shipment Training: In addition to training provided with purchase of SR20, Rotomotion will send a technician to customer location (for up to 5 business days) for additional training and assistance with initial product demonstration. Customer will pay all travel costs, including airfare, hotel and per diem - Rotomotion will pay technician's salary Shipping Cost: To be determined at time of shipping and either prepaid or arranged directly by customer	1		300.00

Total	\$45,400.00
--------------	--------------------

Phone #	Fax #	E-mail
(843) 971-7455	(843) 971-9774	dsd@rotomotion.com



Wire Transfer Instructions

Bank Name: First Federal Savings and Loan of Charleston
(Telegraphic abbreviation: FIRST FED SL CHAS)

ABA Routing Number: [REDACTED]

Bank Address: 632 Long Point Road
Mount Pleasant, SC 29464

Bank Phone: 843.856.5703

Our Account Name: Rotomotion, LLC

Our Account Number: [REDACTED]

Our Address
(where we receive
statements) 459 Jessen Lane
Suite C
Charleston, SC 29492

Exhibit 2

Rotomotion Letter of October 28, 2009

See attached.



October 28, 2009

Mr. Ricardo Viaggio
General Director
INDRA SI SA
Paraná 1073
Buenos Aires, Argentina

VIA EMAIL

Dear Mr. Viaggio.

This letter will confirm that:

1. Rotomotion will ship the SR20 from Charleston, SC, via Federal Express International Priority, on or before November 6, 2009,
- or
2. Rotomotion will refund, via wire transfer, the entire purchase price of the SR20 and related equipment.

We regret the unfortunate delay in shipping the goods, but remain confident that shipment will occur as set forth above.

Very truly yours,
Rotomotion, LLC

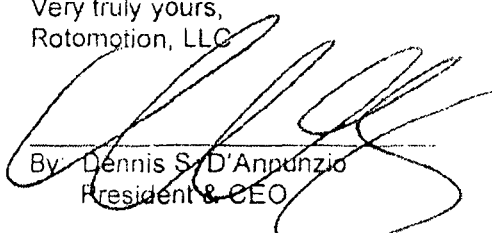

By: Dennis S. D'Annunzio
President & CEO

Exhibit 3

Indra Letter of May 31, 2010

See attached.



indra

May 31, 2010

Mr. Dennis D'Annunzio
CEO
ROTOMOTION; LLC
459, Jessen Lane, Suite C
Charleston, South Carolina 29492
United States of America

Dear Mr. D'Annunzio

On March of 2009 INDRA SI S.A. bought from ROTOMOTION an SR20 helicopter with digital equipment, which was paid totally in advance, failing ROTOMOTION to deliver the equipment to the city of Buenos Aires, Argentina as stated in your proposal.

On October 28, 2009 you sent us a letter confirming us that you would either ship the SR20 on or before November 6, 2009, or you would refund us the entire purchase price of the SR20, which was not done.

INDRA SI SA tried to understand all your different explanations given during nine long months, regarding the delay in the delivery of the SR20, and accepted at last, your proposal to reimburse the money paid in March 20, 2009 and July 8, 2009, at your recognition of your problems to comply with the terms of the purchase.

ROTOMOTION has failed to comply with all the terms of the sale which also affected our business that we were planning to do in Argentina with potential clients interested in the services of the equipment.

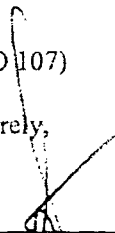
This regrettable situation obviously has also damaged our commercial relationship, and we will have to report the United States Embassy in Argentina about your breach of the contract.

We demand an immediately reimbursement of the money transferred by INDRA SI SA to ROTOMOTION (u\$s 45.400,00) plus interest of (u\$s 4.152,33) for the purchase of the SR20 and related equipment in the below bank account in 72 hours, otherwise we will be force to start legal actions against ROTOMOTION.

STANDARD CHARTERED BANK - NEW YORK - USA One Madison Ave, New York, NY
10010-3603, USA ABA [REDACTED] - CHIPS UID: [REDACTED] - CODIGO SWIFT:

[REDACTED]
CUENTA: [REDACTED] DE SANTANDER RIO
A FAVOR DE: INDRA SI S.A. (CUIT [REDACTED])
CUENTA CORRIENTE en Santander Río N° 417-25/3
CONCEPTO: DEVOLUCION PAGO ANTICIPADO (CODIGO 107)

Sincerely,

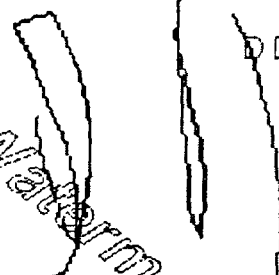


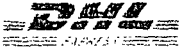
Eduardo Ricardo Viaggio
CEO
Indra SI S.A.

Indra SI, Sociedad Anónima
Paraná 1073
C1018ADA, Ciudad Autónoma de Buenos Aires
Argentina

Delivery Signature



Delivery Details		Package Details
Delivery date/time : 2010-06-04 00:38	Pick up date/time :	Number of pieces : 1
Service Area Code: CHS CHS	Origin Area Code :	Weight :
Tour ID : CH1E-A	Product Code :	AirWay Bill number
Driver ID or Name :	Cash Amount :	Piece Identifiers
Event Code : OK		3109315101
Customer Name :		
Address :		
City & Zip :		
Electronic Signature		
 <p>D DILLING</p> <p>OK - D DILLING CHS - CHS 2010-06-03 12:31:08</p>		
CHS20100603CH1EA9994 SIG CHS CHS 001 20100603 123100.tif		



Rastree este envío por medio de la internet <http://www.dhl.com>

Mencione este número de Envío para consultas

GUIA AEREA
(No negociable)

3 1 0 9 3 1 5 1 0 1

ORIGEN

CÓDIGO DE DESTINO

1) Número de cuenta y seguro del envío

Cobrar al Remitente Destinatario Tercero

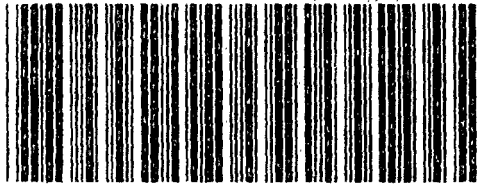
No. de cuenta de esta guía

Seguro del Envío ver al Reverso

Si valor asegurado (en moneda local)

Efectivo
 Cheque
 Tipo de Cuenta

NO APLICAN LAS FORMAS DE PAGO SI ESTAN DISPONIBLES EN ZONAS NO PERMITIDAS.



3109315101

2) Enviado por (remitente)

No. de cuenta

Nombre del remitente

Referencia del remitente (en la factura aparecerán los 12 primeros caracteres)

Nombre de la compañía

Dirección

Código postal

Teléfono/Fax/Correo electrónico (requerido)

Código postal

Teléfono/Fax/Correo electrónico (requerido)

3) País (Destinatario)

Nombre de la Compañía

Dirección de entrega

Código postal

País

Persona a contactar

Teléfono/Fax/Correo electrónico (requerido)

4) Detalles del envío

No. de piezas	Peso total	Dimensiones			
		Piezas	Largo	Ancho	Alto
1		1	x	x	x
1		1	x	x	x
1		1	x	x	x
1		1	x	x	x
1		1	x	x	x
1		1	x	x	x

kg

5) Detalles del envío

Descripción del contenido y cantidad:

6) Sólo envíos por aduana (WPK)

Adjuntar el original y tres copias de la factura proforma o Comercial

Número de Licencia de Exportación (si aplica) / No. IVA/GST del Remitente

Valor declarado indica moneda

Código aduanero concertado para el producto si se aplica

TIPO DE EXPORTACIÓN PERMANENTE REPARACIÓN/DEVOLUCIÓN TEMPORAL

Impuestos/derechos de destino (Si se deja en blanco, el destinatario los paga)

Destinatario Remitente Otro

7) Autorización y firma del remitente

Yo/Nosotros, con plena conciencia en que a este envío se aplican los términos y condiciones de DHL y sus filiales y representantes DHL, Excmo. Sr. Director de Comercio de Venezuela (ver a reverso) también manifiesto/manifestamos que este envío no contiene ningún artículo peligroso (ver al reverso)

Firma

Fecha / /

8) Productos y Servicios / Productos y Servicios

Internacional (Document) International Non Document (Document)

Documento Internacional Documento Internacional

Productos Free of charge available to and from all countries (Notas en facturas para productos que no pagan los impuestos)

EXPRESS 9:00

EXPRESS 10:30

EXPRESS 12:00

EXPRESS WORLDWIDE

ECONOMY SELECT

EXPRESS ENVELOPE

OTHER

Optional Services (extra charges may apply) / Servicios Opcionales (extra cargos pueden aplicarse)

Saturday Delivery Non standard Pickup

Delivery Notification Private Postage

Other

GlobalMail Business / Correo Global

Priority Standard Other

PESO FACTURABLE / VOLUMETRICO

CARGOS
servicios
Otros
Seguro
VAT

CODIGO DE MONEDA

TOTAL

No. DE ETIQUETA TRANSPORTE POR COBRAR

DETALLES DE PAGO (Cheque, Tarjeta No.)

No.
Tipo

RECIBIDO POR

Firma No.
Hora Fecha

Copia Del Remitente

Affidavit of Service filed September 12, 2011

AFFIDAVIT OF SERVICE

State of South Carolina

County of Berkeley

Common Pleas Court

Case Number: 2011-CP-08-2439

Plaintiff:

Indra SI, S.A.

vs.

Defendant:

Rotomotion, LLC, a South Carolina Limited Liability Company

For:

Brian A. Hellman, Esquire

145 King Street

Suite 102

Charleston, SC 29401

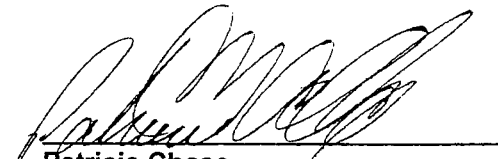
2011 SEP 12 PM 4:33
FILED
HARRY P. BRUNN
CLERK OF COURT
BERKELEY COUNTY, SC

Received by FALCON EXPRESS SERVICES, LLC to be served on Rotomotion, LLC, 459 Jessen Lane, Daniel Island, SC 29492.


I, Patricia Chase, being duly sworn, depose and say that on the 7th day of September, 2011 at 1:46 pm, I:

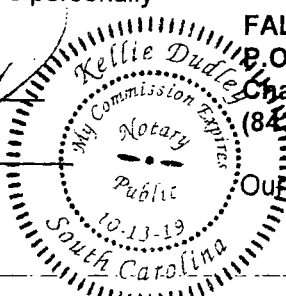
served a CORPORATION by delivering a true copy of the LETTER, CIVIL ACTION COVER SHEET, SUMMONS, COMPLAINT, EXHIBITS, PLAINTIFF'S FIRST SET OF INTERROGATORIES UPON DEFENDANT ROTOMOTION, LLC and PLAINTIFF'S FIRST REQUEST FOR PRODUCTION UPON DEFENDANT ROTOMOTION, LLC with the date and hour of service endorsed thereon by me, to: Dennis S. D'Annunzio as Registered Agent for Rotomotion, LLC, at the address of: 459 Jessen Lane, Daniel Island, SC 29492, and informed said person of the contents therein, in compliance with state statutes.

I certify that I am over the age of 18 and have no interest in the above action.


Patricia Chase
Process Server

Subscribed and sworn to before me on the 7th day of September, 2011 by the affiant who is personally known to me.


Kellie J. Dudley
Notary Public for South Carolina
My Commission Expires: 10/13/2019



FALCON EXPRESS SERVICES, LLC
P.O. Box 874
Charleston, SC 29402-0874
(843) 577-9696

Our Job Serial Number: 2011001460

Affidavit of Default filed November 15, 2011

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BERKELEY)
)
 INDRA SI, S.A.)
)
 Plaintiff,)
)
 v.)
)
 ROTOMOTION, LLC, a South)
 Carolina Limited Liability Company,)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 FOR THE NINTH JUDICIAL CIRCUIT


2011-CP-08-2439

AFFIDAVIT OF DEFAULT

FILED
 2011 NOV 15 PM 4:21
 HENRY P. SNOWDEN
 CLERK OF COURT
 BERKELEY COUNTY, SC

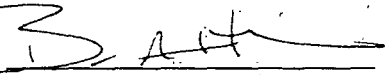
PERSONALLY APPEARED before me the undersigned, who, being duly sworn, states that he is the Attorney for the Plaintiff and that more than sixty (60) days have elapsed since the service of the Summons and Complaint (including a 30 day extension) exclusive of the date of service, upon the Defendant, and that no Answer, Demurrer or Notice of Appearance has been served upon him as required by the Summons in this action and therefore the Defendant is in default.

Sworn to and Subscribed before me this)
 11 day of November, 2011)
)



 Notary Public for South Carolina
 My Commission expires 6-9-21

HELLMAN & YATES, PA

By: 
 Brian A. Hellman
 bh@hellmanyates.com
 SC Bar # 72399
 145 King Street, Suite 102
 Charleston, SC 29401
 (843) 266-9099
 (843) 266-9188 facsimile

437

A.

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Indra SI, S.A.

Plaintiff,

v:

Rotomotion, LLC, a South Carolina Limited Liability Company,

Defendant.

IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT


2011-CP-08-2439

CERTIFICAT OF SERVICE

2011 NOV 15 PM 4:21
HELD
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

I, the undersigned Administrative Assistant of the law office of Hellman & Yates, P.A. attorney for Plaintiff, do hereby certify that I have served all counsel in this action with a copy of the Affidavit of Default by mailing a copy of the same by United States Mail, postage prepaid, to the following address:

Counsel Served: Karen DeJong, Esq.
DeJong Law Firm, LLC
940 Johnnie Dodds Blvd., Suite 203
Mount Pleasant, SC 29464



Sidsel Berry, Administrative Assistant

November 11, 2011

Answer filed November 21, 2011

8. Defendant admits the allegations of Paragraph 8 of Plaintiff's Complaint.

9. Defendant denies the allegations of Paragraph 9 of Plaintiff's Complaint.

Defendant obtained a quoted price but never entered into a sales agreement with Plaintiff.

10. Defendant admits the allegations of Paragraph 10 of Plaintiff's Complaint.

11. Defendant admits the allegations of Paragraph 11 of Plaintiff's Complaint.

12. Defendant admits the allegations of Paragraph 12 of Plaintiff's Complaint.

13. Defendant lack knowledge or information sufficient to form a belief as to the allegations of Paragraph 13 of Plaintiff's.

14. Defendant admits the allegations of Paragraph 14 of Plaintiff's Complaint.

15. Defendant admits the allegations of Paragraph 15 of Plaintiff's Complaint, insofar as Defendant agreed to deliver the Equipment to Plaintiff within four to six weeks, subject to obtaining an Export License.

16. Defendant admits the allegations of Paragraph 16 of Plaintiff's Complaint, insofar as Defendant could not obtain an export license and was not able to deliver the Equipment within a four to six week period. Defendant repeatedly told Plaintiff not to offer its services to other companies due to the uncertainty of an export license.

17. Defendant admits the allegations of Paragraph 17 of Plaintiff's Complaint.

18. Defendant admits all the allegations of Paragraph 18 of Plaintiff's Complaint.
19. Defendant admits the allegations of Paragraph 19 of the Plaintiff's Complaint.
20. Defendant admits the allegations of Paragraph 20 of the Plaintiff's Complaint insofar as Defendant did not refund the Purchase Price. Defendant agreed to ship the Equipment at a later date and Plaintiff accepted Defendant's offer.
21. Defendant admits all the allegations of Paragraph 21 of the Plaintiff's Complaint.
22. Defendant admits all the allegations of Paragraph 22 of the Plaintiff's Complaint.
23. Defendant lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 23 of Plaintiff's Complaint.
24. Defendant lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 24 of Plaintiff's Complaint.
25. Defendant denies the allegations of Paragraph 25 of the Plaintiff's Complaint.
26. Defendant lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 26 of Plaintiff's Complaint.
27. Defendant lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 27 of the Plaintiff's Complaint.
28. Defendant admits the allegations of Paragraph 28 of the Plaintiff's Complaint insofar as Defendant has failed to deliver the Equipment. Defendant was required to refile the

request for an export license upon learning that Plaintiff was not taking delivery of the Equipment. This refiling of the export license request delayed the delivery date.

Defendant lacks knowledge or information sufficient to form a belief as to the remaining allegations of Paragraph 28 of the Complaint.

29. Defendant has offered to deliver the Equipment to Plaintiff.

30. Defendant lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 30 of Plaintiff's Complaint.

31. Defendant lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 31 of Plaintiff's Complaint.

32. Defendant lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 32 of Plaintiff's Complaint.

33. Defendant lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 33 of Plaintiff's Complaint.

34. Defendant lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 43 of Plaintiff's Complaint.

35. Defendant lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 35 of Plaintiff's Complaint.

36. Defendant lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 36 of Plaintiff's Complaint.

37. Defendant lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 37 of Plaintiff's Complaint.

38. Defendant admits the allegations of Paragraph 38 of the Plaintiff's Complaint.

39. Defendant denies the allegations of Paragraph 39 of the Plaintiff's Complaint.
40. Defendant denies the allegations of Paragraph 40 of the Plaintiff's Complaint.
41. Defendant denies the allegations of Paragraph 41 of the Plaintiff's Complaint.
42. Defendant denies the allegations of Paragraph 42 of the Plaintiff's Complaint.
43. Defendant admits that it is engaged in trade and commerce, and that it is in the business of manufacturing and selling items such as the Equipment. Defendant denies the remaining allegations of Paragraph 43 of the Plaintiff's Complaint.
44. Defendant denies the allegations of Paragraph 44 of the Plaintiff's Complaint.
45. Defendant lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 45 of Plaintiff's Complaint.
46. Defendant lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 46 of the Plaintiff's Complaint.
47. Defendant lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 47 of Plaintiff's Complaint.
48. Defendant denies the allegations of Paragraph 48 of the Plaintiff's Complaint.

49. Defendant lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 49 of Plaintiff's Complaint.
50. Defendant lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 50 of Plaintiff's Complaint.
51. Defendant denies the allegations of Paragraph 51 of the Complaint.
52. Defendant denies the allegations of Paragraph 52 of the Complaint.
53. (a) Defendant denies the allegations of Paragraph 53(a) of the Complaint; Defendant informed the Plaintiff that delivery of the Equipment was subject to obtaining an export license.
- (b) Defendant denies the allegations of Paragraph 53(b) of the Complaint.
- (c) Defendant admits that it failed to deliver the Equipment to Plaintiff as alleged in Paragraph 53(c) of the Complaint. Defendant was unable to obtain an export license as quickly as requested by the Plaintiff. Defendant told Plaintiff not to offer its services to other companies due to the uncertainty of obtaining an export license.
- (d) Defendant admits the allegations of Paragraph 53(d) of the Complaint.
- (e) Defendant admits the allegations of Paragraph 53(e) of the Complaint.
54. Defendant denies the allegations of Paragraph 54 of the Complaint.
55. Defendant lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 55 of Plaintiff's Complaint.
56. Defendant lacks knowledge or information sufficient to form a belief as to the

allegations of Paragraph 56 of the Complaint.

57. Defendant lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 57 of Plaintiff's Complaint.

58. Defendant lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 58 of Plaintiff's Complaint.

FOR A FIRST DEFENSE

59. Plaintiff's action is barred by the doctrine of waiver.

FOR A SECOND DEFENSE

60. Plaintiff's action is barred by the doctrine of estoppel.

FOR A THIRD DEFENSE

61. Plaintiff's action is barred by the doctrine of forbearance.

FOR A FOURTH DEFENSE

62. Plaintiff's action is barred by the doctrine of unclean hands.

FOR A FIFTH DEFENSE

63. Plaintiff's action is barred by the doctrine of unconscionability.

FOR A SIXTH DEFENSE

64. Plaintiff's action is barred by the doctrine of laches. Plaintiff has waited two years to resolve the issues between the parties.

FOR A SEVENTH DEFENSE

65. Plaintiff has failed to mitigate its damages.

FOR AN EIGHTH DEFENSE

66. Plaintiff and Defendant never entered into a written contract as required under the Statue of Frauds.

**FOR A NINTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Specific Performance)**

67. Every contract imposes on the parties thereof a duty of good faith and fair dealing.

68. Defendant and Plaintiff never entered into a contract. Defendant had numerous conversations with representatives and agents of Plaintiff wherein Plaintiff was informed that Defendant might not be able to obtain an export license within the time frame requested by Plaintiff.

69. Plaintiff directed the Defendant to obtain an export license for Plaintiff, then changed the receiver to a shipping company. This change delayed the issuance of the export license.

70. As a direct and proximate result of Plaintiff's action, Defendant was unable to obtain an export license in the time frame demanded by the Plaintiff.

71. Defendant offered to refund the full purchase price of the Equipment to the Plaintiff or deliver the Equipment at a later date.

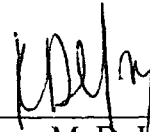
72. Plaintiff breached its duty of good faith and fair dealing by failing to choose either to receive a full refund or to receive the Equipment at a later date.

73. Defendant is ready, willing and able to provide the Equipment to the Plaintiff subject to obtaining an export license.

74. As a direct and proximate result of Plaintiff's action, Defendant is informed and believes that it is entitled to a judgment against Plaintiff for specific performance and for Plaintiff's breach of its duty of good faith and fair dealing in an amount to be determined by a jury, plus an award of incidental and consequential damages.

WHEREFORE the Defendant demand that they be permitted to recover all statutory, actual, special, incidental, and exemplary damages against Plaintiff as may be determined by the trier of fact, and that they recover their costs herein. The Defendant further demand that the Complaint of Plaintiff be dismissed, and that they recover their costs, pre-judgment interest, and attorney's fees.

Respectfully submitted,



Karen M. DeJong, Esq.
DeJong Law Firm, LLC
940 Johnnie Dodds Blvd., Suite 203
Mt. Pleasant, SC 29464
Tel: (843) 216-6161
Fax: (843) 216-1119
Counsel for Defendant

November 18, 2011
Mt. Pleasant, SC

**Plaintiff's Motion for Summary Judgment or in the Alternative Motion to Dismiss the
Counterclaim filed December 19, 2011**

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

Indra SI, S.A.,

Plaintiff,

v.

Rotomotion, LLC

Defendants

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO. 2011-CP-08-2439

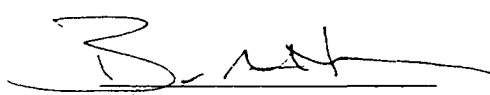
**MOTION FOR SUMMARY JUDGMENT
OR IN THE ALTERNATIVE MOTION TO
DISMISS COUNTERCLAIM**

[Handwritten signature]
FILED
DEC 19 PM 2:49
CLERK OF COURT, SC
BERKELEY COUNTY, SC

Plaintiff Indra SI, S.A. (hereinafter "Plaintiff"), by and through undersigned counsel, hereby moves this Court for an Order Granting Summary Judgment in favor of Plaintiff to all claims made by Plaintiff against Defendant pursuant to Rule 56 South Carolina Rules of Civil Procedure, other applicable authorities, and a Memorandum and accompanying Affidavit or Affidavits to be filed.

In the alternative Plaintiff hereby moves the Court for an Order Dismissing Defendant's late filed Counterclaim pursuant to Rule 12(b)(6) South Carolina Rules of Civil Procedure, other applicable authorities, and a Memorandum to be filed.

HELLMAN & YATES, P.A.

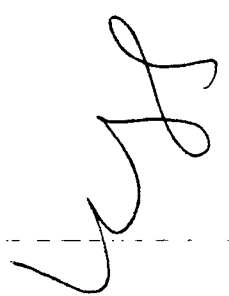


Brian A. Hellman
bh@hellmanyates.com
SC Bar # 72399
145 King Street, Suite 102
Charleston, SC 29401
(843) 266-9099
(843) 266-9188 (facsimile)

ATTORNEYS FOR DEFENDANT

December 16, 2011

Charleston, South Carolina



STATE OF SOUTH CAROLINA)
)
 COUNTY OF BERKELEY)
)
 Indra SI, S.A.)
)
 Plaintiff,)
)
 v.)
)
 Rotomotion, LLC, a South Carolina Limited)
 Liability Company,)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 FOR THE NINTH JUDICIAL CIRCUIT


2011-CP-08-2439

CERTIFICATE OF SERVICE

FILED
 2011 DEC 19 PM 2:49
 MARY K. BROWN
 CLERK OF COURT
 BERKELEY COUNTY, SC

I, the undersigned Legal Assistant of the law office of Hellman & Yates, PA, do hereby certify that I have served all counsel listed below in this action with a copy of Plaintiff's Motion for Summary Judgment or in the alternative Motion to Dismiss Counterclaim by mailing a copy of the same by United States Mail, First Class, postage prepaid, to the following:

Karen Dejong, Esq.
 Dejong Law Firm, LLC
 940 Johnnie Dodds Blvd., Suite 2023
 Mount Pleasant, SC 29464



 Sidsel Berry
 Legal Assistant
 145 King Street, Suite 102
 Charleston, SC 29401

December 16, 2011

**Plaintiff's Memorandum in Support of Plaintiff's Motion for Summary Judgment or in
Alternative Motion to Dismiss Counterclaim filed March 23, 2012**

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)
INDRA SI, S.A.)
Plaintiff,)
v.)
ROTOMOTION, LLC, a South)
Carolina Limited Liability Company,)
Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

2011-CP-08-2439

**MEMORANDUM IN SUPPORT OF
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT OR IN THE
ALTERNATIVE MOTION TO
DISMISS COUNTERCLAIM**

2012 MAR 23 PM 1:36
CLERK OF COURT
NINTH JUDICIAL CIRCUIT
SOUTH CAROLINA

PLEASE TAKE NOTICE THAT Plaintiff Indra, SI, S.A., ("Plaintiff" or "Indra"), by and through undersigned counsel, submits this Memorandum in Support of its Motion for Summary Judgment on the Complaint pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, or in the alternative, its Motion to Dismiss Rotomotion, LLC's ("Defendant" or "Rotomotion") Counterclaim, pursuant to SCRCRCP Rule 12(b)(6).

I. Summary

Plaintiff was forced to bring this law suit because Defendant refused to refund the purchase price of goods that it never delivered, as contractually obligated. Defendant's pattern of disregard for its obligations has continued before this Court. Defendant did not timely answer the Summons and Complaint, despite the courtesy of a 10 day extension followed by an additional 20 day extension. Plaintiff accordingly served and filed an Affidavit of Default. Only thereafter, 76 days after being served with the Summons and Complaint, without explanation or excuse, did Defendant file an Answer and Counterclaim, which was not properly served, but merely e-mailed. Notably, Defendant has yet to respond to Plaintiff's discovery requests, which

FILE

were served over 6 months ago. Defendant's failure to adhere to the South Carolina Rules of Civil Procedure entitles Plaintiff to Summary Judgment granting the relief sought in Plaintiff's Complaint, as well as the dismissal of Defendant's compulsory counterclaim for specific performance.

II. Procedural Facts

This action arose out of Defendant's failure and refusal to deliver to Plaintiff, pursuant to a March 2009 Sale Agreement and subsequent written assurances, a Rotomotion SR20 Electric Helicopter UAV System and other equipment, items and services, for which Plaintiff in advance paid the full purchase price of \$45,400.00.

On September 7, 2011, Plaintiff served the Summons and Complaint, Plaintiff's First Set of Interrogatories and Plaintiff's First Request for Production on Defendant via Process Server, providing Defendant thirty (30) days to answer or otherwise appear and defend. The filed Affidavit of Service is attached as Exhibit A.

The Complaint includes detailed allegations and asserts four causes of action: (1) Breach of Contract; (2) Unjust Enrichment; (3) South Carolina Unfair Trade Practice; and (4) Breach of Contract Accompanied by Fraudulent Act. The Complaint also includes requests for actual, consequential, compensatory, and punitive damages, legal fees and costs, pre and post judgment interest, and such other relief as the Court deems proper.

Defendant did not answer the Complaint or otherwise defend within 30 days, which expired on October 7, 2011.

On or about October 4, 2011 Counsel for Plaintiff was contacted via email by Gorham Rutter, Defendant's Florida Counsel, and as a courtesy, Counsel for Plaintiff agreed to an extension of 10 days, which would be used to retain South Carolina local counsel for Defendant.

On October 17, 2011, Counsel for Plaintiff agreed to an additional 20 day extension via telephone with Defendant's newly retained South Carolina local counsel, which was memorialized in a letter dated October 24, 2011, attached as Exhibit B.

Defendant did not answer the Complaint or otherwise defend within the additional 20 day extended period, which expired on November 5, 2011.

Accordingly, on November 11, 2011, Counsel for Plaintiff served and filed an Affidavit of Default, swearing that more than sixty (60) days had elapsed since the service of the Summons and Complaint (including the 10 day extension and subsequent 20 day extension) exclusive of the date of service upon the Defendant, and that no Answer, Demurrer or Notice of Appearance had been served upon him as required by the Summons and therefore that Defendant is in default.

Only thereafter, on or about November 21, 2011, which was 76 days after service of the Summons and Complaint, did Defendant file an Answer and Counterclaim for Specific Performance, which was not properly served; it was merely e-mailed to Counsel for Plaintiff. The email is attached as Exhibit C.

Going back to September 7, 2011, Plaintiff served on Defendant: (1) First Request for Production; and (2) First Set of Interrogatories to Defendant, each of which provided forty five (45) for Defendant to respond. Defendants have yet to serve any response to those discovery requests.

III. Legal Standard

Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. S.C. R. Civ. P. 56(c); Pittman v. Grand Strand Entm't, Inc., 363 S.C. 531, 611 S.E.2d 922 (2005); B & B Liquors, Inc. v. O'Neil,

361 S.C. 267, 603 S.E.2d 629 (Ct. App. 2004). In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party. Medical Univ. of South Carolina v. Arnaud, 360 S.C. 615, 602 S.E.2d 747 (2004); Rife v. Hitachi Constr. Mach. Co., Ltd., 363 S.C. 209, 609 S.E.2d 565 (Ct. App. 2005). Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. S.C. R. Civ. P. 56(c); Helms Realty, Inc. v. Gibson-Wall Co., 363 S.C. 334, 611 S.E.2d 485 (2005); BPS, Inc. v. Worthy, 362 S.C. 319, 608 S.E.2d 155 (Ct. App. 2005).

Under Rule 12(b)(6), a motion to dismiss should be granted if the allegations in the pleading cannot sustain a cause of action for which relief can be granted. Bergstorm v. Palmetto Health Alliance, 358 S.C. 388, 395, 596 S.E.2d 42, 45 (S.C. 2004). Such a motion may not be sustained if the facts alleged and the inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case. Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). The question is whether, in the light most favorable to the plaintiff and with every doubt resolved in his behalf, the complaint states any valid claim for relief. Id.

IV. Legal Argument

Rule 12(a) of the South Carolina Rules of Civil Procedure provides that a defendant must *serve* an answer or otherwise defend a summons and complaint within 30 days. Rule 13(a) provides that compulsory counterclaims must be asserted in such answer. Rule 6(b) allows for extensions up to 30 days when agreed to in writing by counsel. Rule 5(b)(1) provides how service must be made; notably, e-mail is not an option. Rule 55(a) provides that if a defendant fails to serve an answer or otherwise defend within such period, and that fact is made to appear

by affidavit or otherwise, the clerk of court must enter default. See Thynes v. Lloyd, 294 S.C. 152, 153-54, 363 S.E.2d 122, 123 (Ct. App. 1987) (“[W]hether default was actually entered is of no consequence since the entry of default is a purely ministerial act which the clerk was required to perform once the default was made to appear by the affidavit”); Stark Truss Co., Inc. v. Superior Construction Corp., 602 S.E.2d 99, 360 S.C. 503 (Ct. App. 2004) (“A plain reading of Rule 55(a) allows entry of default when a pleading or defense is asserted in a manner noncompliant with the Rules of Civil Procedure. To hold otherwise would render the requirements in Rule 12(a), SCRCP, meaningless.”). Rule 55(c) provides that the Court may set aside an entry of default only after a showing of “good cause.” Rule 55(b) sets forth how a plaintiff may convert an entry of default into a judgment of default. In the situation where a defendant files an answer late, the late filed answer is considered an “appearance,” and the defendant is entitled to notice and hearing on a plaintiff’s motion for default judgment. Dyman v. Hyman, 305 S.C. 170, 406 S.E.2d 388 (Ct. App. 1991).

An analogous South Carolina case applying these rules is Stark Truss Co., Inc. v. Superior Construction Corp., 602 S.E.2d 99, 360 S.C. 503 (Ct. App. 2004) (“Appellants failed to timely serve and file their answer and compulsory counterclaims on Stark Truss pursuant to the Rules of Civil Procedure. Thus, the entry of default was proper, the circuit court’s refusal to set aside the entry of default was supported by the evidence, and the dismissal of Appellants’ compulsory counterclaims was proper. However, as Appellants made an appearance in this action by filing a late answer, they were entitled to notice before entry of default judgment.”).

In the instant case, Defendant filed its Answer and Counterclaim 73 days after being served with the Summons and Complaint, which was outside of the 10 day extension and subsequent 20 day extension and after Plaintiff had served and filed an Affidavit of Default, and

moreover, was not properly served, but merely e-mailed. There is no imaginable "good cause" for such failure to adhere to the South Carolina Rules of Civil Procedure. And notably, Defendant's pattern of disregard has continued by failing to respond to Plaintiff's discovery requests, which were served over 6 months ago.

As such, Plaintiff is entitled to Judgment on its behalf. In support of the damages Plaintiff has incurred, in addition to the facts and exhibits provided in the complaint, Plaintiff has set forth the liquidated amount of damages prior to pre-judgment interest in the affidavit attached hereto as Exhibit D and incorporated herein by reference.

WHEREFORE, upon the hearing scheduled for April 2, 2012, Plaintiff respectfully requests that the Court grant Plaintiff Summary Judgment and grant Plaintiff the relief requested in its Complaint, and dismiss Defendant's compulsory counterclaim for specific performance as not being timely filed or served.

HELLMAN & YATES, P.A.



Brian A. Hellman

bh@hellmanyates.com

SC Bar # 72399

145 King Street, Suite 102

Charleston, SC 29401

(843) 266-9099

(843) 266-9188 (facsimile)

ATTORNEYS FOR PLAINTIFF

March 21, 2012

Defendant's Objection to Plaintiff's Motion for Summary Judgment or Alternative Motion to
Dismiss Counterclaim filed March 29, 2012

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BERKELEY)
)
 INDRA SI, S.A.,)
)
 PLAINTIFF,)
)
 vs.)
)
 ROTOMOTION, LLC,)
)
 DEFENDANT.)

IN THE COURT OF COMMON PLEAS
 NINTH JUDICIAL CIRCUIT
 CASE NO: 2011-CP-08-2439
**DEFENDANT’S OBJECTION TO
 PLAINTIFF’S
 MOTION FOR SUMMARY JUDGMENT
 OR IN THE ALTERNATIVE MOTION TO
 DISMISS COUNTERCLAIM**

FILED
 2012 MAR 29
 CLERK OF COURT
 BERKELEY COUNTY SC
 36

Now comes the Defendant, Rotomotion, LLC (“Defendant”), by and through its undersigned counsel, in opposition to Plaintiff’s Motion for Summary Judgment or in the alternative, Motion to Dismiss Counterclaim.

This objection is made pursuant to Rule 56 and Rule 12 of the South Carolina Rules of Civil Procedure upon the following grounds:

1. Plaintiff’s Motion for Summary Judgment should be denied. Discovery has not yet been conducted in this matter. Plaintiff has not yet deposed the Defendant or any of the witnesses.
2. Genuine issues of material fact remain unresolved in this case.

MO

3. The Motion for Summary Judgment is inappropriate and premature at this time until all issues of material fact have been resolved by the parties.
4. Plaintiff's Motion to Dismiss Counterclaim should be denied.
5. On November 21, 2011, Defendant filed an Answer and Counterclaim against the Plaintiff.
6. Upon information and belief, Defendant believed that the Answer and Counterclaim were filed on a timely basis.
7. If Defendant did file the Answer and Counterclaim out of time, it was through clerical error and/or inadvertence, Defendant has a meritorious defense and Plaintiff will not be unduly prejudiced by the late filing of Defendant's Answer and Counterclaim.

WHEREFORE, Defendant respectfully prays that this Court:

- A. Deny Plaintiff's Motion for Summary Judgment;
- B. Deny Plaintiff's Motion to Dismiss Counterclaim;
- C. Award Defendant reasonable attorneys' fees, costs, and expenses of litigation;
and
- D. Award Defendant such other and further relief as it deems just, necessary, and proper.

Respectfully Submitted,



Karen M. DeJong, Esq.
DeJong Law Firm, LLC
940 Johnnie Dodds Blvd., Ste. 203
Mt. Pleasant, SC 29464

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)
)
INDRA SI, S.A.,)
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PLAINTIFF,)
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vs.)
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ROTOMOTION, LLC,)
)
DEFENDANT.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

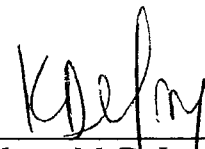
CASE NO: 2011-CP-08-2439

DEFENDANT'S CERTIFICATE OF MAILING

2012 MAR 29 AM 10:36
BERKELEY COUNTY CLERK OF COURT
CLERK OF COURT
BERKELEY COUNTY, SC

I, Karen M. DeJong, hereby certify that on March 28, 2012, a copy of the Defendant's Objection to Plaintiff's Motion for Summary Judgment and Motion to Dismiss Counterclaim was sent via email and regular mail to:

Brian A. Hellman, Esq.
145 King Street, Suite 102
Charleston, SC 29401
Attorney for Plaintiff



Karen M. DeJong, Esq.
DeJong Law Firm, LLC
940 Johnnie Dodds Blvd., Ste. 203
Mt. Pleasant, SC 29464
(843) 216-6161
Attorney for the Defendant

**Plaintiff's Reply in Support of Plaintiff's Motion for Summary Judgment or Alternative Motion
to Dismiss Counterclaim filed April 2, 2012**

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BERKELEY)
)
 Indra SI, S.A.)
)
 v.)
)
 Rotomotion, LLC, a South Carolina)
 Limited Liability Company)
)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE NINTH JUDICIAL CIRCUIT

2011-CP-08-2439

REPLY IN SUPPORT OF PLAINTIFF'S
 MOTION FOR SUMMARY JUDGMENT
 OR IN THE ALTERNATIVE TO DISMISS
 COUNTERCLAIM

Plaintiff Indra, SI, S.A., ("Plaintiff" or "Indra"), by and through undersigned counsel, submits this Reply in Support of its Motion for Summary Judgment, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, or in the alternative, its Motion to Dismiss Rotomotion, LLC's ("Defendant" or "Rotomotion") Counterclaim, pursuant to Rule 12(b)6 of the South Carolina Rules of Civil Procedure.

As explained in Plaintiff's initial Memorandum, Defendant filed its so-called "Answer" inexcusably late and without making proper service. Such filing amounts to an appearance for notice purposes, but does not constitute an answer, and does not prevent Defendant from being deemed to have admitted all allegations for failing to deny. Stark Truss Co., Inc. v. Superior Construction Corp., 602 S.E.2d 99, 360 S.C. 503 (Ct. App. 2004) ("[A]s Appellants made an appearance in this action by filing a late answer, they were entitled to notice before entry of default judgment."); SCRCF 8(d) ("Effect of Failure to Deny. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading."). Because Defendant has, by law, admitted all of the allegations in Plaintiffs' Complaint by failing to serve a timely answer, no material issues of

fact exist, the discovery alluded to by Defendant is unnecessary, and summary judgment should be granted in Plaintiff's favor.

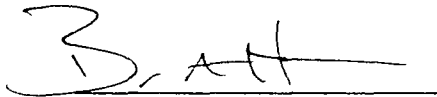
The only saving grace for Defendant would be to show "good cause" as to why it did not timely file and serve an answer. The good cause standard of SCRCP 55(c) requires, as a threshold burden, a party to put forth an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice. Sundown Operating Co., Inc. v. Intedge Industries, Inc., 383 S.C. 601, 607-08, 681 S.E.2d 885, 888 (2009). Once a party has put forth a satisfactory explanation, the Court must also consider: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted. Id. However, the Court need not make specific findings of fact for each factor if sufficient evidence supports a determination that no reasonable explanation exists for vacation of default. Id.

Under this standard, the explanation offered in Defendant's Opposition – "clerical error and/or inadvertence" – falls short of good cause. Courts have held that such mere negligence on the part of the defendant or its attorney is not good cause. Williams v. Vanvolkenburg, 312 S.C. 373, 375, 440 S.E.2d 408, 410 (S.C. App. 1994) ("Whether the [defendants] failed to ask their attorney to file an answer or whether the attorney was negligent in failing to answer, however, is not critical, because even if the attorney were (*sic*) negligent in failing to answer the Complaint, his negligence would be imputed to the [defendant] Because the [defendants] have failed to set forth any other reason why they failed to answer the Complaint, the master's finding that the [defendants] failed to demonstrate good cause in setting aside the default is supported by the evidence."). Additionally, the first of the Sundown Operating Co. elements, a timely motion for relief of the late filed answer has not been filed by Defendant. Sundown Operating Co., Inc., 383

at 607-08, 681 S.E.2d at 888. Defendant has only raised this matter in Defendant's Opposition to Plaintiff's summary judgment motion, three and a half months after Plaintiff's service of the notice of the summary judgment motion on Defendant and four and a half months after Defendant's failure to timely file the answer and properly serve it on Plaintiff.

WHEREFORE, Plaintiff respectfully requests that the Court grant summary judgment to Plaintiff, awarding actual damages, treble damages, punitive damages, attorneys fees, costs, and pre-judgment interest, and dismiss Defendant's compulsory counterclaim for specific performance.

HELLMAN & YATES, P.A.



Brian A. Hellman
bh@hellmanyates.com
SC Bar # 72399
145 King Street, Suite 102
Charleston, SC 29401
(843) 266-9099
(843) 266-9188 (facsimile)

ATTORNEYS FOR PLAINTIFF

March 30, 2012

**Plaintiff's Proposed Order Granting Summary Judgment for Plaintiff and Dismissing Defendant's
Counterclaim mailed to Court on April 5, 2012**

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)
)
Indra SI, S.A.)
)
)
v.)
)
Rotomotion, LLC, a South Carolina)
Limited Liability Company)
)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

2011-CP-08-2439

**PROPOSED ORDER GRANTING
SUMMARY JUDGMENT FOR
PLAINTIFF AND DISMISSING
DEFENDANT'S COUNTERCLAIM**

This matter is before the Court on the Motions of Plaintiff Indra, SI, S.A., (“Plaintiff” or “Indra”) for Summary Judgment on its Complaint, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, or in the alternative, to Dismiss Rotomotion, LLC’s (“Defendant” or “Rotomotion”) Counterclaim, pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. The Court held a hearing on those Motions on April 2, 2012. After taking the matter under consideration, the Court hereby grants both of Plaintiffs’ Motions:

I. PROCEDURAL FACTS

This action arose out of Defendant’s alleged failure and refusal to deliver to Plaintiff, pursuant to a March 2009 Sale Agreement and subsequent written assurances, a Rotomotion SR20 Electric Helicopter UAV System and other equipment, items and services, for which Plaintiff in advance paid the full purchase price of \$45,400.00.

On September 7, 2011, Plaintiff served the Summons and Complaint, Plaintiff’s First Set of Interrogatories, and Plaintiff’s First Request for Production on Defendant via Process Server, providing Defendant thirty (30) days to answer or otherwise appear and defend.

The Complaint includes detailed allegations and asserts four causes of action: (1) Breach of Contract; (2) Unjust Enrichment; (3) South Carolina Unfair Trade Practice; and (4) Breach of

Contract Accompanied by Fraudulent Act. The Complaint also includes requests for actual, consequential, compensatory, and punitive damages, attorneys fees and costs, pre and post judgment interest, and such other relief as the Court deems proper.

Defendant did not answer the Complaint or otherwise defend within 30 days, which expired on October 7, 2011.

On or about October 4, 2011, Counsel for Plaintiff was contacted via email by Defendant's Florida Counsel, and as a courtesy, Counsel for Plaintiff agreed to an extension of 10 days, which would be used to retain South Carolina local counsel for Defendant.

On October 17, 2011, Counsel for Plaintiff agreed to an additional 20 day extension via telephone with Defendant's newly retained South Carolina local counsel, which was memorialized in a letter dated October 19, 2011.

Defendant did not answer the Complaint or otherwise defend within the additional 20 day extended period, which expired on November 5, 2011.

Accordingly, on November 11, 2011, Counsel for Plaintiff served and filed an Affidavit of Default, swearing that more than sixty (60) days had elapsed since the service of the Summons and Complaint (including the 10 day extension and subsequent 20 day extension) exclusive of the date of service upon the Defendant, and that no Answer, Demurrer or Notice of Appearance had been served upon him as required by the Summons and therefore that Defendant is in default.

Only thereafter, on or about November 18, 2011, which was 76 days after service of the Summons and Complaint, without first making a motion to show good cause to file a late answer, Defendant filed an Answer and Counterclaim for Specific Performance, which was not properly served; it was merely e-mailed to Counsel for Plaintiff.

Based on those failures, Plaintiff served and filed Notice of the instant Motions for Summary Judgment and to Dismiss Defendant's Counterclaim on December 16, 2011.

Notably, Defendant has yet to serve any response to the above mentioned discovery requests served by Plaintiff over 6 months ago on September 7, 2011, which is only further indicative of Defendant's pattern of disregard for the Rules of Civil Procedure.

Plaintiff has further submitted an affidavit of Eduardo Riccardo Viaggio in support of Plaintiff's Motion for Summary Judgment that is demonstrative of the prima facie case as set forth in Plaintiff's Complaint.

II. STANDARD OF REVIEW

Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. S.C. R. Civ. P. 56(c); Pittman v. Grand Strand Entm't, Inc., 363 S.C. 531, 611 S.E.2d 922 (2005); B. & B Liquors, Inc. v. O'Neil, 361 S.C. 267, 603 S.E.2d 629 (Ct. App. 2004). In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party. Medical Univ. of South Carolina v. Arnaud, 360 S.C. 615, 602 S.E.2d 747 (2004); Rife v. Hitachi Constr. Mach. Co., Ltd., 363 S.C. 209, 609 S.E.2d 565 (Ct. App. 2005). Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. S.C. R. Civ. P. 56(c); Helms Realty, Inc. v. Gibson-Wall Co., 363 S.C. 334, 611 S.E.2d 485 (2005); BPS, Inc. v. Worthy, 362 S.C. 319, 608 S.E.2d 155 (Ct. App. 2005).

Under Rule 12(b)(6), a motion to dismiss should be granted if the allegations in the pleading cannot sustain a cause of action for which relief can be granted. Bergstorm v. Palmetto

Health Alliance, 358 S.C. 388, 395, 596 S.E.2d 42, 45 (S.C. 2004). Such a motion may not be sustained if the facts alleged and the inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case. Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). The question is whether, in the light most favorable to the non-moving party and with every doubt resolved in his behalf, the complaint or counterclaim states any valid claim for relief. Id.

III. FINDINGS OF LAW

Rule 12(a) of the South Carolina Rules of Civil Procedure provides that a defendant must *serve* an answer or otherwise defend a summons and complaint within 30 days. Rule 13(a) provides that compulsory counterclaims must be asserted in such answer. Rule 6(b) allows for extensions up to 30 days when agreed to in writing by counsel. Rule 5(b)(1) provides how service must be made; notably, e-mail is not an option. Defendant has not adhered to any of those rules, filing its Answer and Counterclaim 76 days after being served with the Summons and Complaint, which was outside of the 10 day extension and subsequent 20 day extension, and moreover, was not properly served, but merely e-mailed.

Rule 55(a) provides that if a defendant fails to serve an answer or otherwise defend within the above described period, and that fact is made to appear by affidavit or otherwise, the clerk of court must enter default. “[W]hether default was actually entered is of no consequence since the entry of default is a purely ministerial act which the clerk was required to perform once the default was made to appear by the affidavit.” Thynes v. Lloyd, 294 S.C. 152, 153-54, 363 S.E.2d 122, 123 (Ct. App. 1987); Stark Truss Co., Inc. v. Superior Construction Corp., 602 S.E.2d 99, 360 S.C. 503 (Ct. App. 2004) (“A plain reading of Rule 55(a) allows entry of default when a pleading or defense is asserted in a manner noncompliant with the Rules of Civil

Procedure. To hold otherwise would render the requirements in Rule 12(a), SCRPC, meaningless.”). After Defendant’s extended time to answer had expired, Plaintiff served and filed an Affidavit of Default. Accordingly, the Court effectively deems default as having been entered by the clerk at that time.

Rule 55(c) provides that the Court may set aside an entry of default only after a showing of “good cause.” Defendant did not move under Rule 55(c) to show good cause to file a late answer, but rather filed on its own accord without the Court’s approval. Such an unauthorized late filing does not constitute an answer, but merely an “appearance” that entitles Defendant to notice and a hearing before entry of default can be converted into a judgment of default under Rule 55(b). Dyman v. Hyman, 305 S.C. 170, 406 S.E.2d 388 (Ct. App. 1991); Stark Truss Co., Inc. v. Superior Construction Corp., 602 S.E.2d 99, 360 S.C. 503 (Ct. App. 2004) (“Appellants failed to timely serve and file their answer and compulsory counterclaims on Stark Truss pursuant to the Rules of Civil Procedure. Thus, the entry of default was proper, the circuit court’s refusal to set aside the entry of default was supported by the evidence, and the dismissal of Appellants’ compulsory counterclaims was proper. However, as Appellants made an appearance in this action by filing a late answer, they were entitled to notice before entry of default judgment.”).

Only now, not by motion but in opposition to Plaintiff’s Motion for Summary Judgment, three and a half months after service of notice of the Motion, and four and a half months after Defendant’s failure to timely answer, does Defendant argue that it had “good cause” to file its answer late. Again, a showing of good cause is required to have been made in a motion under Rule 55(c) *before* Defendant filed its late answer. See Sundown Operating Co., Inc. v. Intedge Industries, Inc., 383 S.C. 601, 607-08, 681 S.E.2d 885, 888 (2009). The Court thus finds that it

would be inappropriate at this juncture to *sua sponte* issue an Order finding good cause and setting aside the entry of default, where Defendant has not filed a motion requesting such relief, but has merely argued in opposition to summary judgment that it had good cause for filing its answer late.

Regardless, the Court finds that no good cause exists. The good cause standard of Rule 55(c) requires, as a threshold burden, a party to put forth an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice. Sundown Operating Co., 383 S.C. at 607-08, 681 S.E.2d at 888. Once a party has put forth a satisfactory explanation, the Court must also consider: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted. Id. However, the Court need not make specific findings of fact for each factor if sufficient evidence supports a determination that no reasonable explanation exists for vacation of default. Id.

Under this standard, the explanation offered in Defendant's Opposition – "clerical error and/or inadvertence," which was further explained by Defendant's Counsel at the April 2, 2012 hearing to have resulted from a legal assistant's failure to docket the extension date – falls short of good cause. Courts have rejected this type of explanation – mere negligence on the part of the defendant or its attorney is not good cause. Williams v. Vanvolkenburg, 312 S.C. 373, 375, 440 S.E.2d 408, 410 (S.C. App. 1994) ("Whether the [defendants] failed to ask their attorney to file an answer or whether the attorney was negligent in failing to answer, however, is not critical, because even if the attorney were negligent in failing to answer the Complaint, his negligence would be imputed to the [defendant] Because the [defendants] have failed to set forth any

other reason why they failed to answer the Complaint, the master's finding that the [defendants] failed to demonstrate good cause in setting aside the default is supported by the evidence.”).

Moreover, the lateness of the filing was not the only deficiency, and Defendant’s proffered excuse does not even address those other issues. As explained above, Defendant failed to satisfy the first of the Sundown Operating Co. elements, which is to timely file a motion for relief. Additionally, Defendant did not properly serve its late filed answer, but merely e-mailed a copy. Finally, Defendant has yet to respond to Plaintiff’s discovery requests, served over 6 months ago. The Court will not allow Defense Counsel to blame and use her legal assistant as a scapegoat for this pattern of total disregard for the South Carolina Rules of Civil Procedure.

Because the Court has decided not to recognize Defendant’s late and improperly served Answer and Counterclaim, Defendant is necessarily deemed to have admitted all of the allegations in the Complaint, pursuant to Rule 8(d). SCRCP 8(d). (“Effect of Failure to Deny. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading.”). In turn, because Defendant has admitted all of the allegations in Plaintiffs’ Complaint, no material issues of fact exist, the discovery alluded to in Defendant’s Opposition is unnecessary, and summary judgment should be granted in Plaintiff’s favor.

Furthermore, Plaintiff’s affidavit in support of its Motion for Summary Judgment supports the factual allegations made in the Complaint and contradicts any allegations that Defendant has made in a general, summary fashion in both Defendant’s Opposition to Plaintiff’s Motion and Defendant’s late filed Answer and Counterclaim. As such, Defendant has made no showing of any meritorious defenses either by affidavit or otherwise. Plaintiff’s affidavit is dispositive of this matter, both substantively and procedurally.

In addition to the above described procedural deficiencies, which alone support the dismissal of Defendant's counterclaim for specific performance, the Court takes notice that Plaintiff, as set forth in Plaintiff's Affidavit in support of its Motion, paid Defendant in full and in advance to construct said helicopter, and has therefore fully performed under the contract at issue. Accordingly, the Court dismisses that counterclaim on the merits, as well as on procedural grounds.

IV. CONCLUSION

The South Carolina Rules of Civil Procedure cannot be ignored. The Court finds that Defendant's inexcusably late, unauthorized, and improperly served Answer is ineffective as a denial of Plaintiffs' allegations or assertion of any defense or counterclaim. Accordingly, Plaintiff's allegations are deemed admitted, there are no material facts at issue, and Plaintiff is summarily entitled to the relief sought in its Complaint. The Court also finds that Defendant's counterclaim for specific performance should be dismissed on the merits, as well as on procedural grounds.

NOW, THEREFORE,

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Plaintiff's Motions for Summary Judgment on the causes of action asserted in its Complaint and to Dismiss Defendant's Counterclaim are granted.

IT IS FURTHER ORDERED that Plaintiff be awarded actual, consequential, compensatory, treble and punitive damages, legal fees and costs, and prejudgment interest, as follows: Actual damages of \$45,400.00 which are trebled, pursuant to the South Carolina Unfair Trade Practices Act, to \$136,200.00 as a result of the willful acts of Defendant, plus prejudgment

interest as of April 6, 2012, of \$10,270.62, filing fees and costs of \$331.00, and attorneys fees of \$7,012.50, for a total of \$153,814.12.

AND IT IS SO ORDERED.

THE HONORABLE KRISTI LEA HARRINGTON
COURT OF COMMON PLEAS

_____, 2012
Moncks Corner, South Carolina

Affidavit of Attorney Fees of Hellman & Yates

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)
)
Indra SI, S.A.)
)
)
v.)
)
Rotomotion, LLC, a South Carolina)
Limited Liability Company)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
2011-CP-08-2439

AFFIDAVIT OF ATTORNEYS FEES
OF HELLMAN & YATES, P.A.

PERSONALLY APPEARED BEFORE ME, Brian A. Hellman, who, being duly sworn, swears and deposes that if he were called as a witness in the above-entitled action he would truthfully and accurately testify as follows:

QUALIFICATIONS OF COUNSEL

1. I am an attorney for Plaintiff Indra SI, S.A.
2. I practice with a law firm, Hellman & Yates, P.A., which is located at 145 King Street, Suite 102, Charleston, South Carolina.
3. I graduated from the University of South Carolina School of Law in 2004, and was admitted to the South Carolina Bar in 2004. I am also admitted to practice before the Federal Courts of the District of South Carolina. I have been in private practice since September of 2004, at Nelson Mullins Riley & Scarborough, LLP until October, 2009, and at Hellman & Yates, PA and its predecessor, Brian A. Hellman, P.A. since November, 2009.
4. I am a member of various professional organizations. These organizations include the South Carolina Bar, the American Bar Association, the Federal Communications Bar, and the Charleston County Bar Association.
5. My practice primarily involves complex transactions and litigation in real estate; corporate, and commercial law.

HISTORY OF REPRESENTATION

6. This matter was referred to my firm for collection and this action has been pending before this Court since September, 2011.

7. At the time we accept a case, we do not know the full extent of the challenges we will run into and have to deal with for the fees we have agreed to handle the case for.

8. Prior to, and including the hearing and drafting proposed orders approximately 29 hours were expended on behalf of Plaintiff by Affiant and his firm. Affiant and other lawyers and staff with Affiant's firm have been responsible for the preparation of the following pleadings and other documents in this case:

- a. Summons and Complaint
- b. Interrogatories and Requests for Production
- c. Affidavit of Default
- d. Motion for Summary Judgment
- e. Memorandum of Support for Summary Judgment
- f. Reply to Opposition of Defendant to Summary Judgment
- g. Notice(s) of Hearing
- h. Conferences and communications with Defendant's counsel regarding matters related to this action.

9. Additionally, we have been responsible for preparing and serving the pleadings and discovery upon the defendant personally and scheduling and attending the hearing in this matter.

LEGAL AUTHORITIES

10. I incorporate Rule 407 of the South Carolina Appellate Court Rules, Rule 1.5 of the Rules of Professional Conduct, and further call the attention of the Court to the holdings in *Baron Data Systems, Inc. v. Loter*, 297 SC 382, 377 S.E.2d 196 (1989) and *Blumberg v. Nealco*, 310 SC 482, 427 S.E.2d 659 (Ct App 1993), concerning the factors and criteria which should be considered in setting of attorney fees, including: (1) the nature, extent and difficulty of the legal services rendered; (2) the time and labor devoted to the case; (3) the professional standing of counsel; (4) contingency of counsel; (5) the fee customarily charged in the location for similar services; and (6) the beneficial results obtained. I rely upon the discretion of this Court in

determination of the amount of fees based, among other things, upon the Court's file, the Court's knowledge of the litigation between these parties, which reflects nature, extent and difficulty of the services rendered, the time necessarily devoted to the case, the beneficial results accomplished, the professional standing of counsel; and fees customarily charged in this area for similar legal service.

TIME AND COSTS

11. The undersigned is informed and believes that the time spent, as set forth more fully hereafter, was necessary to the protection of this client's interests and to make as concise and clear presentation to the Court of the issues now before the Court. Representation of Plaintiff by the undersigned as they relate to the fees incurred for this foreclosure hearing.

12. My client has incurred attorney fees through April 6, 2012, in the amount of \$5,262.50 and costs in the amount of \$331.00. I believe these amounts are appropriate in light of my experience and the issues involved.

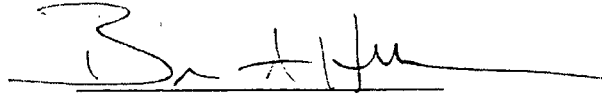
13. The undersigned will provide, upon request of this Court, a billing summary of all time and costs incurred for this case under seal to the Court for the judge's review.

14. The undersigned is further informed and believes that the complexity of the instant action, coupled with the sum at issue, effort to be expended by this firm in executing on the judgment, and the favorable outcome obtained by this firm on behalf of the Plaintiff, justifies a reasonable fee of \$1,750.00 over and above what has previously been incurred as interim costs of collection.

REQUEST FOR AWARD AND CONCLUSION

15. The undersigned respectfully submits, based only upon the time devoted to this collection matter, that this Court review the file herein and grant judgment in favor of the undersigned's client against the Defendant for Hellman Yates' attorney's fees and costs.

HELLMAN & YATES, PA



Brian A Hellman, Esquire
Hellman & Yates, PA
145 King Street, Suite 102
Charleston, SC 29401
SC Bar # 72399
bh@hellman-law.com
(843) 266-9099 voice
(843) 266-9188 fax
Attorneys for Plaintiff

SWORN to and subscribed before me
this 6th day of April, 2012.



NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 6-9-21

Defendant's Proposed Order Denying Plaintiff's Motion for Summary Judgment or in the
Alternative Motion to Dismiss Counterclaim submitted by overnight mail on April 5, 2012.

DEJONG LAW FIRM, LLC
940 Johnnie Dodds Blvd., Suite 203
Mount Pleasant, SC 29464

Telephone: (843) 216-6161

Fax: (843) 216-1119

April 5, 2012

SENT VIA OVERNIGHT MAIL

The Honorable Kristi Lea Harrington
P.O. Box 998
300B California Ave.
Moncks Corner, SC 29461

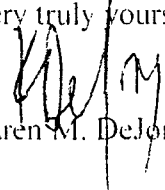
Re: Indra SL S.A. v. Rotomotion, LLC

Case No. 2011-CP-08-2439

Dear Judge Harrington:

Enclosed please find the proposed Order in connection with the hearing that was held on April 2, 2012. If you have any questions, please do not hesitate to contact me.

Very truly yours,


Karen M. DeJong

KMD:abc

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)
)
INDRA SI, S.A.,)
)
 PLAINTIFF,)
)
 vs.)
)
ROTOMOTION, LLC,)
)
 DEFENDANT.)
_____)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO: 2011-CP-08-2439

**ORDER DENYING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT
OR IN THE ALTERNATIVE, MOTION
TO DISMISS COUNTERCLAIM**

THIS MATTER came to be heard by me on April 2, 2012 pursuant to Plaintiff's Motion for Summary Judgment or in the alternative Motion to Dismiss Counterclaim. Present at the hearing was the Plaintiff's attorney, Brian A. Hellman, Esq. of Hellman & Yates, PA and Karen M. DeJong, Esq. of the DeJong Law Firm, LLC.

After considering the arguments of counsel with supporting pleadings, the Court finds and concludes as follows:

ONE: The due date for the filing of Defendant's Answer and Counterclaim for Specific Performance was on November 5, 2011 and Defendant's Answer and Counterclaim was subsequently filed on November 21, 2011. The Answer and Counterclaim were filed late due to

clerical error/inadvertence.

TWO: Defendant has a meritorious defense with regard to Plaintiff's allegations regarding breach of contract, i.e. the delay in fulfilling the order was due to difficulty in obtaining permission to ship the UAV (remote control drone) from the United States to Argentina.

THREE: Plaintiff has not been unduly prejudiced by the late filing of Defendant's Answer and Counterclaim.

FOUR: Discovery and depositions have not yet been taken in this matter, thereby there exists genuine issues of material fact.

NOW, THEREFORE, it is hereby

ORDERED, ADJUDGED and DECREED that Plaintiff's Motion for Summary Judgment or in the alternative, Motion to Dismiss Counterclaim is denied.

AND IT IS SO ORDERED on this _____ day of April, 2012.

HON. KRISTI LEA HARRINGTON

Transcript of Proceedings held on April 2, 2012 before Hon. Kristi Lea Harrington- Pages 7; 8
and 9

SHARON D. JONES,
OFFICIAL COURT REPORTER
1525 ISLAND OVERLOOK
MT. PLEASANT, SC 29464
sjones@sccourts.org

August 2, 2012

Karen M. DeJong, Esquire
940 Johnnie Dodds Blvd. Ste 203
Mt. Pleasant, SC 29464

Re: INDRA SI. S.A. v. ROTOMOTIONS, LLC
TRANSCRIPT OF RECORD 4.2.12

13 PAGES @ \$3.25 PER PAGE \$ 42.25

TOTAL DUE \$ 42.25

1 deadline date, November 18th, I immediately drew up an
2 Answer and Counterclaim, sent it for filing on
3 November 21, 2011.

4 It is not my policy to just email an Answer. I
5 have never just done that. I always send it by regular
6 mail. So I don't know if somehow it got lost in the
7 mail. It's just not the way I practice law. So I
8 apologize for that.

9 Because it is a only short time, a 13 day
10 window, I would ask that the Motion for Summary
11 Judgment be denied. I filed as soon as I could.

12 We do have a meritorious defense. We do have a
13 contract. My client is willing to honor the contract
14 and build the UAV, according to the terms of that
15 agreement. And that there won't be any degree of
16 prejudice if I -- if that relief for Summary Judgment
17 is denied.

18 **THE COURT:** Ms. DeJong, what motion is before me?
19 I guess, procedurally, for me to -- are you -- what are
20 you asking me to do, first of all.

21 **MS. DEJONG:** I'm sorry, Your Honor, but
22 Mr. Hellman filed a motion. I think he's asking for
23 Summary Judgment.

24 **THE COURT:** I understand that. But he's saying
25 that I -- I should grant Summary Judgment because your

1 Answers were not filed timely.

2 **MS. DEJONG:** Right. Well, generally speaking,
3 these types of motions for Summary Judgment or Motion
4 to Dismiss the Counterclaims are denied, especially if
5 it's just a short delay between filing. It's not as if
6 I filed an Answer a year later.

7 But also the basis of the Summary Judgment
8 Motion, you still have to show that, you know, there's
9 general issues as to material facts, and in this case
10 there is regarding the construction of the UAV and why
11 --

12 **THE COURT:** Well, I haven't heard that, I guess,
13 counsel, is what -- is -- if I'm to buy his argument,
14 and go along with that, there's -- your Answers are
15 late, so I shouldn't even consider them so then there
16 is no genuine issue of material fact.

17 But if you're telling me that I need to not
18 follow the Rules of Civil Procedure and allow late time
19 -- late filed Answers, then I will hear your arguments.

20 **MS. DEJONG:** Thank you very much. The nature of
21 ROTOMOTION is that they design and manufacturer what
22 are known as UAVs. These are remote control drones for
23 surveillance. And in this particular case, because the
24 U.S. has not yet passed a law to permit them in this
25 state, ROTOMOTION goes outside to other countries.

1 This company is, in fact, in Argentina. Because
2 they are considered an export of the U.S. import --
3 export out of the U.S., but an import into Argentina,
4 ROTOMOTION had to file appropriate paperwork and get
5 appropriate licenses and so on. And that caused the
6 delay. And sometimes it can take many months. It just
7 depends on the company, the country and the -- the
8 financing.

9 So that's why I'm saying, we have not yet
10 conducted depositions, exchanged discovery. There is a
11 genuine issue as to material fact and I ask that the
12 motion be denied.

13 **THE COURT:** All right. Counsel.

14 **MR. HELLMAN:** Thank you, Your Honor.

15 **THE COURT:** Have you shown any prejudice if I
16 allow the late filing?

17 **MR. HELLMAN:** Well, I think there is prejudice
18 here. First of all, we served with our Complaint
19 requests for production and -- and interrogatories.
20 That was well over six months ago. So with response to
21 discovery, that hasn't been answered.

22 And her client -- and we filed this as an
23 exhibit to our Memorandum in Support of Summary
24 Judgment, offered to pay my client back if they
25 couldn't perform by a certain date over two years.

Plaintiff's Counsel's Letter dated October 19, 2011 wherein Extension to filed Answer granted to
November 5, 2011

DEJONG LAW FIRM, LLC
940 Johnnie Dodds Blvd., Suite 203
Mount Pleasant, SC 29464

Telephone: (843) 216-6161

Fax: (843) 216-1119

October 19, 2011

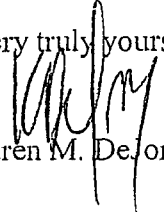
Brian A. Hellman, Esq.
145 King Street, Suite 102
Charleston, SC 29401

Re: Indra Si S.A. v. Rotomotion, LLC
Case No. 2011-CP-08-2439

Dear Brian:

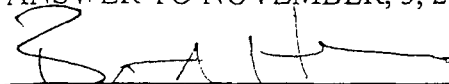
As per our telephone conversation this week, I have been retained by Rotomotion, LLC to represent it in the above entitled action and further, that you have consented to a 20 day extension (from October 17, 2011) with which to file an Answer. If this is your understanding, please sign where indicated below and return to me at your earliest convenience.

Very truly yours,


Karen M. DeJong

KMD:abc

I HEREBY AGREE AND CONSENT TO AN EXTENSION FOR DEFENDANT TO FILE AN ANSWER TO NOVEMBER, 5, 2011.


BRIAN A. HELLMAN, ESQ.

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

November 2, 2012



Karen M. DeJong, Esq.
DeJong Law Firm, LLC
940 Johnnie Dodds Blvd., Ste. 203
Mt. Pleasant, SC 29464
(843) 216-6161
Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Kristi Lea Harrington, Circuit Court Judge

Case No. 2011-CP-08-2439

INDRA SI, S.A.

Respondent,

v.

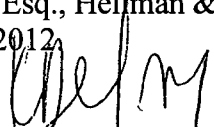
ROTOMOTION, LLC, a
South Carolina
Limited Liability Company

Appellant.

PROOF OF SERVICE

I certify that I have served the Appellant's Record on Appeal to INDRA SI, S.A. by depositing a copy of it in the United States Mail, postage prepaid, by regular mail, on November 5, 2012, addressed to its' attorney of record, Brian A. Hellman, Esq., Hellman & Yates, 145 King Street, Suite 102, Charleston, SC 29401 on November 5, 2012.

November 5, 2012



Karen M. DeJong, Esq.
DeJong Law Firm, LLC
940 Johnnie Dodds Blvd., Ste. 203
Mt. Pleasant, SC 29464
(843) 216-6161
Bar No. 70699
Attorney for Appellant

RECEIVED

NOV 06 2012

SC Court of Appeals