

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas
W. Jeffrey Young, Presiding Judge

Case No. 2011-CP-43-1418

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SC COURT OF APPEALS

Berry, Quackenbush & Stuart, P.A.,Appellant,

v.

BEI Sensors & Systems Company, Inc., d/b/a BEI Duncan Electronics, and The Commercial
Collection Corporation of New York, Inc.,Defendants,

Of Whom The Commercial Collection Corporation of New York, Inc. is theRespondent.

RECORD ON APPEAL

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Berry, Quackenbush & Stuart, P.A.,Appellant,

v.

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Of Whom The Commercial Collection Corporation of New York, Inc. is theRespondent.

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SUMTER	)	CASE NUMBER 2011-CP-43-1418
	)	
Berry, Quackenbush & Stuart, P.A.,	)	
	)	
Plaintiff,	)	
	)	ORDER GRANTING SUMMARY
v.	)	JUDGMENT TO DEFENDANT
	)	COMMERCIAL COLLECTION
BEI Sensors & Systems Company, Inc.,	)	CORPORATION OF NEW YORK
d/b/a BEI Duncan Electronics and The	)	
Commercial Collection Corporation	)	
of New York, Inc.,	)	
	)	
Defendants.	)	
_____	)	

The Plaintiff herein has brought the present action seeking recovery against Defendant BEI Sensors & Systems Company, Inc. asserting a cause of action for breach of contract, and a cause of action against Defendant Commercial Collection Corporation of New York, Inc. for tortious interference with contractual relations. The matter is before the Court upon the Motion for Summary Judgment filed by Defendant Commercial Collection Corporation of New York, Inc. A hearing was conducted on December 17, 2012 in Sumter County. For the reasons which follow, the Court hereby grants summary judgment to the Defendant Commercial Collection Corporation of New York, Inc. upon the cause of action asserted in the Complaint.

Commercial Collection Corporation of New York, Inc. was retained by BEI Sensors & Systems Company, Inc. to attempt collection of the balance owed to it by Fluid Power of the Carolinas, a company operating in Sumter County. Having been unable to collect the balance, Commercial Collection Corporation of New York, Inc. contacted the Plaintiff regarding representation of BEI Sensors & Systems Company, Inc. in the attempted collection of the balance due from Fluid Power of the Carolinas. By letter to the Plaintiff, Commercial Collection

Corporation of New York, Inc. wrote that "Claimant has authorized us as its agent to forward to you the enclosed claim for collection on the rates and conditions stated." Thereafter, the Plaintiff took on the case and attempted collection pursuant to the collection rates stated in the collection referral letter. Having been unsuccessful in collecting any amount from Fluid Power of the Carolinas, the Plaintiff proposed that it file suit on behalf of BEI Sensors & Systems Company, Inc. against Fluid Power of the Carolinas. The Plaintiff proposed two different suits and two different fee structures, and relayed the proposal to BEI Sensors & Systems Company, Inc. through Commercial Collection Corporation of New York, Inc., as its agent. The Plaintiff disputes whether the employees of Commercial Collection Corporation of New York acted diligently in passing along its suit recommendations or in influencing BEI Sensors & Systems Company, Inc. to file suit. BEI Sensors & Systems Company, Inc. declined to proceed with litigation.

The Plaintiff thereafter brought this action, claiming breach of contract against the Defendants. In response to the Complaint, Defendant Commercial Collection Corporation of New York, Inc. advised the Plaintiff that it was not a party to the contract, since it was acting as a disclosed agent for the principal, BEI Sensors & Systems Company, Inc. Thereafter, the Plaintiff amended the Complaint to assert the breach of contract action only against BEI Sensors & Systems Company, Inc., and asserted a cause of action against Commercial Collection Corporation of New York, Inc. for tortious interference with contractual relations.

In support of its motion for summary judgment, Commercial Collection Corporation of New York, Inc. has filed the affidavit of Frank Vecchio. Mr. Vecchio's affidavit asserts that the company was acting solely as agent of BEI Sensors & Systems Company, Inc. in its communications with the Plaintiff and that it passed along all of the communications from the Plaintiff to BEI Sensors & Systems Company, Inc., and that BEI Sensors & Systems Company, Inc. declined to pursue litigation. The Plaintiff has filed the affidavit of Leonard Jordan, asserting that he believed from

the circumstances that the debtor may have paid the balance due to the creditor, and that Commercial Collection Company of New York acted unprofessionally in failing to respond to a number of his communications suggesting that suit be pursued, which he believes may have contributed to the decision by BEI Sensors & Systems Company, Inc. not to pursue litigation.

In the present action, it is undisputed that Commercial Collection Corporation of New York, Inc. was acting as agent for BEI Sensors & Systems Company, Inc. in relaying communications from the Plaintiff to BEI Sensors & Systems Company, Inc., and in relaying responses thereto. Neither the Complaint nor the affidavit of the Plaintiff alleged or established any independent benefit to Commercial Collection Corporation of New York, Inc. to be gained by interfering with the contract between the Plaintiff and Defendant BEI Sensors & Systems Company, Inc. In Dutch Fork Development Group II, LLC v. SEL Properties, LLC, 398 S.C. 406, 730 S.E.2d 290 (2012), the Court set forth the elements for the cause of action and addressed the circumstances under which an agent can be held responsible for interfering with the contract of its principal.

"The elements of a cause of action for tortious interference with contract are: (1) existence of a valid contract; (2) the wrongdoer's knowledge thereof; (3) his intentional procurement of its breach; (4) the absence of justification; and (5) resulting damages." Camp v. Springs Mortgage Corp., 310 S.C. 514, 517, 426 S.E.2d 304, 305 (1993). "[A]n action for tortious interference protects the property rights of the parties to a contract against unlawful interference by third parties." Threlkeld v. Christoph, 280 S.C. 225, 227, 312 S.E.2d 14, 15 (Ct. App. 1984). "Therefore, it does not protect a party to a contract from actions of the other party." Id.

It is generally recognized that when a contract is breached by a corporation as the result of the inducement of an officer or agent of the corporation acting on behalf of the corporation and within the scope of his employment, the inducement is privileged and is not actionable." Bradburn v. Colonial Stores, Inc., 273 S.C. 186, 188, 255 S.E.2d 453, 455 (1979). Thus, "[t]he actions of a principal's agent are afforded a qualified privilege from liability for tortious interference with the principal's contract." CGB Occupational Therapy, Inc. v. RHA Health Servs., Inc., 357 F.3d 375, 385 (3d Cir. 2004).

* * *

"The reason for this privilege is that holding an agent liable would be like

holding the principal itself liable for the tort of interfering with its own contract, instead of holding the principal liable for breach of contract." CGB Occupational Therapy, Inc., 357 F.3d at 385. "The agent's privilege is qualified, however, because it applies only when the agent is acting within the scope of its authority." Id. "Conversely, an agent may be liable for tortious interference, just as if the agent were an outside third party, if the allegedly interfering acts were conducted outside the scope of the agent's authority." Id.; Kia v. Imaging Scis. Int'l, Inc., 735 F. Supp. 2d 256, 268 (E.D. Pa. 2010) ("[A] corporate officer can be liable for tortious interference only if he was acting in a personal capacity or outside the scope of his authority."

Dutch Fork Development Group II, LLC v. SEL Properties, LLC, 398 S.C. at 414-15, 730 S.E.2d at 294-95.

Applying these principles to the present action, the only basis upon which the Plaintiff has asserted the liability of Commercial Collection Corporation of New York, Inc. is that it failed to respond to numerous e-mails sent by the Plaintiff, and the Plaintiff believes that this may have contributed to the decision by BEI Sensors & Systems Company, Inc. not to proceed with the litigation¹. In essence, the Plaintiff asserts that the agent of BEI failed to properly perform its duties as agent, inducing the principal to terminate the contract. Even if true or there were some evidence to this effect, the actions of Commercial Collection Corporation of New York, Inc. which form the basis of the Plaintiff's complaint are actions of the agent in the course and scope of its agency. Since the complained of acts are not actions outside the scope of the agency relationship, the actions are privileged and cannot form the basis for a cause of action for tortious interference with contractual relations.

The Plaintiff has asserted that the dictates of Dutch Fork Development Group II, LLC apply only to an employer-employee relationship, and do not apply where an independent agent performs

¹ This assertion is denied by both Defendants; an agent for BEI Sensors & Systems Company, Inc. has submitted an affidavit asserting that it decided not to proceed because it did not deem the litigation worthwhile.

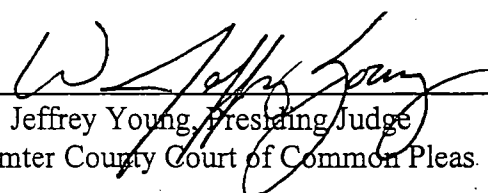
actions for a corporation. The language of the Dutch Fork Development Group II, LLC case does not so limit its holdings. The concept is the same whether or not the agency relationship exists in the employment setting or not. The actions of the agent in the scope of its are binding upon and are the actions of the principal; as such, the Plaintiff is really complaining of the actions of the principal in allegedly terminating the contract. "[A]n action for tortious interference protects the property rights of the parties to a contract against unlawful interference by third parties." Threlkeld v. Christoph, 280 S.C. 225, 227, 312 S.E.2d 14, 15 (Ct. App. 1984). "Therefore, it does not protect a party to a contract from actions of the other party." Id. An agent can be held individually liable only if acting outside its authority; since Defendant Commercial Collection Corporation of New York, Inc. was acting solely as agent for BEI Sensors & Systems Company, Inc. in passing along information from the Plaintiff, and in relaying the response of BEI Sensors & Systems Company, Inc., the Plaintiff is essentially complaining of the actions of the other party to the contract.

For the foregoing reasons, the Plaintiff has failed to establish any triable issue of fact, and the Defendant Commercial Collection Corporation of New York is entitled to judgment as a matter of law. Defendant Commercial collection Corporation of New York, inc. is therefore granted summary judgment upon the cause of action asserting interference with contractual relations.

IT IS SO ORDERED.

February 26, 2013

Sumter, South Carolina


W. Jeffrey Young, Presiding Judge
Sumter County Court of Common Pleas

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

IN THE COURT OF COMMON PLEAS

RECORDED
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Berry, Quackenbush & Stuart, P.A.,)

Plaintiff,)

-vs-)

BEI Sensors & Systems Company, Inc.)
d/b/a BEI Duncan Electronics, Commercial)
Collection Corp. of NY and Fluid Power of)
the Carolinas, Inc.,)

Defendants.)

COMPLAINT
(Collection of Debt;
Breach of Contract)
Non-Jury

J. J. SPENCE
CLERK OF COURT
SUMTER COUNTY, S.C.

2011-CP-43-1418

The Plaintiff, complaining of the Defendants above-named, would respectfully show unto this Honorable Court:

1. The Plaintiff is a professional association organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County.

2. The Defendant, BEI Sensors & Systems Company, Inc., d/b/a BEI Duncan Electronics ("BEI"), upon information and belief, is a corporation organized and existing under the laws of the State of Delaware, and subject to the jurisdiction of this Court.

3. The Defendant, Commercial Collection Corp. of NY ("Commercial"), upon information and belief, is a corporation organized and existing under the laws of the State of New York, and subject to the jurisdiction of this Court.

4. The Defendant, Fluid Power of the Carolinas, Inc. ("Fluid"), upon information and belief, is a corporation organized and existing under the laws of the State of South Carolina, doing business in Sumter County and subject to the jurisdiction of this Court.

FOR A FIRST CAUSE OF ACTION
(Collection of Debt Owed by Fluid to BEI)

5. The Plaintiff realleges Paragraphs 1 through 4 above as fully as if repeated herein verbatim.

6. From about September 24, 2008, through April 15, 2009, BEI sold on credit to Fluid certain products having a value of \$27,600.00.

7. All conditions precedent to Fluid's obligations under the credit sales have occurred.

8. Although demand for payment has been made by BEI, and by the Plaintiff, the Plaintiff is informed and believes that Fluid has failed to pay the debt incurred in connection with the credit sales, and it remains indebted to BEI in the principal amount of \$27,600.00.

9. BEI is also owed interest on the said principal amount at the pre-judgment rate of 8.75% per annum from and after April 15, 2009, and the costs incurred in connection with this suit.

10. A judgment should be entered against Fluid and on behalf of BEI in the amount of \$27,600.00, plus pre-judgment interest and costs of collection, as set forth hereinabove.

FOR A SECOND CAUSE OF ACTION
(Breach of Contract Against BEI and Commercial)

11. The Plaintiff realleges Paragraphs 1 through 10 above as fully as if repeated herein verbatim.

12. On May 26, 2010, Commercial contacted the Plaintiff on behalf of BEI, concerning the collection of a debt owed to BEI by Fluid.

13. Commercial, acting for itself and on behalf of BEI, proposed to retain the Plaintiff to attempt to collect the debt owed to BEI on a contingency-fee basis, which proposal the Plaintiff accepted.

14. The Defendants, BEI and Commercial, proposed to the Plaintiff that it would be compensated on the following contingency-fee basis:

20% of first \$300.00
18% of next \$1,700.00
13% of amount over \$2,000.00
Plus a 10% suit fee

15. The Plaintiff accepted the Defendants' proposal, and it began work to collect the debt.

16. The Plaintiff worked the account for over one year, during which time it encountered a complete lack of cooperation from these Defendants.

17. The Plaintiff's investigation resulted in a proposal of certain collection tactics which were likely to result in a full collection from Fluid of the debt owed to BEI.

18. The Plaintiff communicated with both BEI and Commercial and was given the go-ahead to advance monies to complete its investigation and to institute suits.

19. The Plaintiff drafted two sets of suit papers and presented same to these Defendants for approval and for BEI to sign a Verification.

20. BEI and Commercial then, acting together or individually, informed the Plaintiff to cease all collection efforts against Fluid.

21. The Plaintiff contracted with BEI and Commercial to collect the debt owed by Fluid, and it expected to collect an attorney's fee of at least \$7,500.00, if the amount owed plus interest was collected.

22. The Plaintiff assumed that it would receive the complete cooperation and good faith from BEI and Commercial in connection with the contract and its collection efforts.

23. The Plaintiff, in addition, proposed, and expected to receive, a 20% suit fee (contingency-fee) due to the strategy of filing a second, related suit against Fluid, under which related arrangement the Plaintiff expected to collect an additional attorney's fee of at least \$6,500.00, if the amount owed plus interest was collected.

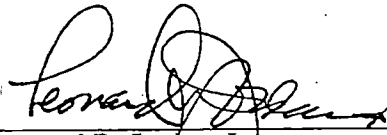
24. The Plaintiff advanced the amount of \$181.12 for title examination and miscellaneous expenses in connection with its investigation, which it billed for on February 16, 2011, but its bill for said expenses has been ignored by BEI and Commercial and remains outstanding.

25. The Plaintiff is informed and believes that it is entitled to a judgment against BEI and Commercial in the amount of at least \$14,181.12 plus pre-judgment interest and costs of collection of this suit.

26. The judgment sought by the Plaintiff will not exceed \$75,000.00.

WHEREFORE, the Plaintiff demands:

1. Judgment against Fluid, and in favor of BEI, on the credit sales, in the amount of \$27,600.00, plus pre-judgment interest, and the costs of collection incurred in this action.
2. Judgment against the Defendants, BEI Sensors & Systems Company, Inc., d/b/a BEI Duncan Electronics and Commercial Collection Corp. of NY, jointly and severally, and in favor of the Plaintiff, in the amount of at least \$14,181.12, plus prejudgment interest and the costs of this action.
3. For such other and further relief as this Court may deem appropriate.



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Columbia, South Carolina
July 26, 2011

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STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER CASE NO.: 2011-CP-43-1418

RECORDED
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Berry, Quackenbush & Stuart, P.A.
JAMES C. CAMPBELL
CLERK OF COURT
Plaintiff SUMTER COUNTY, S.C.

**AMENDED
COMPLAINT**

(Breach of Contract; Tortious
Interference with Contract)
Non-Jury

-vs-

BEI Sensors & Systems Company, Inc.
d/b/a BEI Duncan Electronics and The
Commercial Collection Corporation of
New York, Inc.,

Defendants.

The Plaintiff, complaining of the Defendants above-named, would respectfully show unto this Honorable Court:

1. The Plaintiff is a professional association organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County.

2. The Defendant, BEI Sensors & Systems Company, Inc., d/b/a BEI Duncan Electronics ("BEI"), upon information and belief, is a corporation organized and existing under the laws of the State of Delaware and is subject to the jurisdiction of this Court.

3. The Defendant, The Commercial Collection Corporation of New York, Inc. ("Commercial"), upon information and belief, is a corporation organized and existing under the laws of the State of New York and is subject to the jurisdiction of this Court.

4. Upon information and belief, from about September 24, 2008, through April 15, 2009, BEI sold on credit to Fluid Power of the Carolinas, Inc. ("Fluid") certain products having a value of \$27,600.00.

5. Upon information and belief, Fluid failed and refused to pay to BEI the debts due by Fluid on these credit sales.

6. On May 26, 2010, Commercial contacted the Plaintiff, a law firm, concerning the collection of the aforesaid debt owed to BEI by Fluid.

7. Commercial proposed to retain the Plaintiff to attempt to collect the debt owed to BEI by Fluid on the following contingency-fee basis:

20% of first \$300.00
18% of next \$1,700.00
13% of amount over \$2,000.00
Plus a 10% suit fee

8. The Plaintiff accepted the contingency-fee proposal, entering into a contract to perform legal services; and it began work to collect the debt.

9. Under this contract, the Plaintiff expected to receive an attorney's fee of at least \$7,500.00, if the amount owed plus interest was collected.

10. As Commercial alleges that it disclosed that it was acting at all times as an agent for BEI, a disclosed principal, and assuming that BEI does not dispute that there was a binding contract between BEI and the Plaintiff with regard to the collection of the debt owed to BEI by Fluid, the Plaintiff acknowledges and asserts that the contract was between BEI and Plaintiff and that Commercial was not a party to the contract.

11. The Plaintiff worked the account for well over one year, pursuant to said contract, during which time it encountered a complete lack of cooperation from Commercial, which (upon information and belief) remained the agent of BEI and through which the Plaintiff was expected to communicate with regard to the collection of the debt owed to BEI by Fluid.

12. The Plaintiff's investigation resulted in a proposal by the Plaintiff of certain collection tactics, which tactics, the Plaintiff believed, were likely to result in a full collection from Fluid of the debt owed to BEI.

13. In or about February 2011, the Plaintiff communicated with both BEI and Commercial and was given the go-ahead to advance monies to complete its investigation and to prepare to institute two suits.

14. At this point, the Plaintiff proposed, and expected to receive, in addition to the basic collection suit, a 20% suit fee (contingency-fee) due to the tactic of filing a second, related suit against Fluid, under which related arrangement the Plaintiff expected to collect an additional attorney's fee of at least \$6,500.00, if the amount owed plus interest was collected.

15. Also at this point, the Plaintiff advanced the amount of \$181.12 for title examination and miscellaneous expenses in connection with its investigation, for which it billed on February 16, 2011, but its bill for said expenses was ignored by BEI and Commercial until after this suit was instituted. (This advancement was reimbursed by BEI in September 2011, only after BEI was notified of this suit.)

16. The Plaintiff drafted two sets of suit papers and presented same to Commercial for approval and for BEI to sign a Verification.

17. Subsequently, after various reminders from the Plaintiff requesting the return of the executed Verification, BEI, acting through Commercial, informed the Plaintiff to cease all collection efforts against Fluid.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)
(As to BEI Sensors & Systems Company, Inc.)

18. The Plaintiff realleges Paragraphs 1 through 17 above as fully as if repeated herein verbatim.

19. The Plaintiff assumed that it would receive the complete cooperation and good faith from BEI and its agent, Commercial, in connection with the contract and the Plaintiff's collection efforts.

20. The Plaintiff failed to receive proper cooperation and good faith, including reasonably timely responses to its inquiries and requests for information and instructions, notwithstanding the Plaintiff's appropriate requests and numerous reminders.

21. Due to the failure of BEI to cooperate, in and of itself and through Commercial, its agent, with the Plaintiff's reasonable and appropriate requests for information and instructions, the Plaintiff was denied the opportunity to institute suit to collect the debt allegedly owed by Fluid.

22. The decision by BEI to stop collection is curious and seems to imply that BEI had received payment, accommodation or accord and satisfaction from Fluid, and the Plaintiff

believes that BEI may be guilty of settling the matter with Fluid without remitting to the Plaintiff the attorney's fee earned under its contract with BEI.

23. The Plaintiff is informed and believes that it is entitled to a judgment against BEI on the contract for its reasonably anticipated attorney's fees (lost profits) in the amount of at least \$14,000.00 plus pre-judgment interest and costs of collection of this suit.

24. The judgment sought by the Plaintiff will not exceed \$75,000.00.

FOR A SECOND CAUSE OF ACTION

(Tortious Interference with Contract)

(As to Commercial Collection Corporation of New York, Inc.)

25. The Plaintiff realleges Paragraphs 1 through 24 above as fully as if repeated herein verbatim.

26. By its failure to act in good faith in furtherance of the contract between BEI and the Plaintiff, Commercial, as agent for BEI, through which all communication between the parties to the contract were intended, and necessarily were required, to flow, Commercial caused the delays in the collection of the debt and ultimately contributed to the decision of BEI to stop the collection effort.

27. The Plaintiff is informed and believes that Commercial acted intentionally and without justification to effectively sabotage the efforts made by, and the tactics designed by, the Plaintiff to collect the debt owed by Fluid.

28. Through the actions and inactions of Commercial, the Plaintiff has been denied the opportunity to collect the debt owed by Fluid and to earn potentially significant attorney's fees as contemplated by the contract between BEI and the Plaintiff.

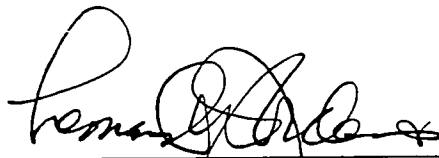
29. The Plaintiff is informed and believes that it is entitled to a judgment against Commercial for Commercial's tortious interference with the contract for its reasonably anticipated attorney's fees (lost profits) in the amount of at least \$14,000.00 plus pre-judgment interest and costs of collection of this suit.

WHEREFORE, the Plaintiff demands:

1. Judgment against the Defendant, BEI Sensors & Systems Company, Inc., d/b/a BEI Duncan Electronics, in the amount of at least \$14,000.00, plus pre-judgment interest and the costs of this action.

2. Judgment against the Defendant, The Commercial Collection Corporation of New York, Inc., in the amount of at least \$14,000.00, plus pre-judgment interest and the costs of this action.

3. For such other and further relief as this Court may deem appropriate.



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Attorney for Plaintiff

#5
Columbia, South Carolina
November 17, 2011

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STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

Berry, Quackenbush & Stuart, P.A.,

Plaintiff,

v.

BEI Sensors & Systems Company, Inc.,
d/b/a BEI Duncan Electronics and The
Commercial Collection Corporation
of New York, Inc.,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NUMBER 2011-CP-43-1418

ANSWER TO AMENDED COMPLAINT
AND COUNTERCLAIM

The Defendant, The Commercial Collection Corporation of New York, Inc., responds to the Amended Complaint and Counterclaims against the Plaintiff as follows:

1. Each and every allegation in said Amended Complaint not hereinafter specifically admitted is denied.

2. The allegations of Paragraphs One (1), Two (2), Three (3), Four (4), Five (5) and Six (6) of the Amended Complaint are admitted.

3. Responding to the allegations of Paragraph Seven (7) of the Amended Complaint, this Defendant admits that, as agent of the Defendant BEI Sensors, it offered on behalf of Defendant BEI Sensors to retain the Plaintiff upon the rates stated in the forwarding letter; any remaining allegation contained in Paragraph Seven (7) of the Amended Complaint not specifically admitted is denied.

4. Responding to the allegations of Paragraph Eight (8) of the Amended Complaint, this Defendant admits that the Plaintiff agreed to the terms and conditions of its retention to pursue collection of the balance due to BEI Sensors; any remaining allegation contained in Paragraph Eight

(8) of the Amended Complaint not specifically admitted is denied.

5. Responding to the allegations of Paragraph Nine (9) of the Amended Complaint, this Defendant admits that the Plaintiff anticipated collecting a fee if and only if the balance was collected from the Defendant, and was aware that if the balance was not collected it would not receive a fee; any remaining allegation contained in Paragraph Nine (9) of the Amended Complaint not specifically admitted is denied.

6. The allegations of Paragraph Ten (10) of the Amended Complaint are admitted.

7. Responding to the allegations of Paragraph Eleven (11) of the Amended Complaint, this Defendant admits that it was the agent of Defendant BEI and that the Plaintiff communicated with BEI through this Defendant; any remaining allegation contained in Paragraph Eleven (11) of the Amended Complaint not specifically admitted is denied.

8. Responding to the allegations of Paragraph Twelve (12) of the Amended Complaint, this Defendant admits that the Plaintiff proposed bringing a separate cause of action for fraudulent conveyance, but denies that the proposed action would likely result in a full or partial collection from Fluid Power; any remaining allegation contained in Paragraph Twelve (12) of the Amended Complaint not specifically admitted is denied.

9. Responding to the allegations of Paragraph Thirteen (13) of the Amended Complaint, this Defendant admits that the Plaintiff proposed incurring costs to further investigate the proposed fraudulent conveyance action and that it was authorized to incur that expense; any remaining allegation contained in Paragraph Thirteen (13) of the Amended Complaint not specifically admitted is denied.

10. Responding to the allegations of Paragraph Fourteen (14) of the Amended Complaint,

this Defendant admits that the Plaintiff proposed an additional fraudulent conveyance suit and proposed an additional contingency fee; and was aware that if the balance was not collected it would not receive a fee; any remaining allegation contained in Paragraph Fourteen (14) of the Amended Complaint not specifically admitted is denied.

11. Responding to the allegations of Paragraph Fifteen (15) of the Amended Complaint, this Defendant admits that the Plaintiff advanced some costs and for which it issued a bill, and this Defendant acknowledges that it sent the bill to Defendant BEI Sensors for payment; any remaining allegation contained in Paragraph Fifteen (15) of the Amended Complaint not specifically admitted is denied.

12. The allegations of Paragraphs Sixteen (16) and Seventeen (17) of the Amended Complaint are admitted.

FOR A FIRST DEFENSE TO THE FIRST CAUSE OF ACTION
(Denial)

PAB
#3
13. Responding to the allegations of Paragraph Eighteen (18) of the Amended Complaint, this Defendant repeats and realleges the allegations of Paragraphs One (1) through Twelve (12) of this Answer and Counterclaim as if repeated herein verbatim.

14. Responding to the allegations of Paragraph Nineteen (19) of the Amended Complaint, this Defendant admits that it provided its full cooperation and good faith acting as agent for BEI; this Defendant lacks sufficient information to respond to the remaining allegations of Paragraph Nineteen (19) of the Amended Complaint, and therefore denies the same and demands proof thereof.

15. The allegations of Paragraph Twenty (20) are denied.

16. Responding to the allegations of Paragraph Twenty-One (21) of the Amended

Complaint, this Defendant admits defendant BEI decided not to pursue suit against Fluid Power and advised the Plaintiff to discontinue collection efforts, and advised it not to pursue litigation; the remaining allegations of Paragraph Twenty-One (21) of the Amended Complaint are denied.

17. The allegations of Paragraphs Twenty-Two (22) and Twenty-Three (23) of the Amended Complaint are denied.

18. The allegations of Paragraph Twenty-Four (24) are admitted.

FOR A FIRST DEFENSE TO THE SECOND CAUSE OF ACTION
(Denial)

19. Responding to the allegations of Paragraph Twenty-Five (25) of the Amended Complaint, this Defendant repeats and realleges the allegations of Paragraphs One (1) through Eighteen (18) of this Answer and Counterclaim as if repeated herein verbatim.

20. The allegations of Paragraphs Twenty-Six (26), Twenty-Seven (27), Twenty-Eight (28) and Twenty-Nine (29) of the Amended Complaint are denied.

FOR A SECOND DEFENSE TO THE SECOND CAUSE OF ACTION
(Accord and Satisfaction)

21. Further responding to the allegations of the Amended Complaint, this Defendant would show that the Plaintiff offered to dismiss all claims against it and release all claims it had against this Defendant if this Defendant conveyed certain information and engaged in certain communications with Defendant BEI Sensors & Systems Company, Inc.; that this Defendant did make such communications and conveyed such information on behalf of the Plaintiff and fully performed all obligations of its agreement; and that by reason thereof, the Plaintiff and this Defendant entered into an accord and satisfaction, for which reason the Plaintiff may not recover against this Defendant in any sum whatsoever.

FOR A THIRD DEFENSE TO THE SECOND CAUSE OF ACTION
(Lack of Duty/Disclosed Agency)

22. Further responding to the allegations of the Amended Complaint, this Defendant would show that it acted at all times as a disclosed agent of Defendant BEI Sensors & Systems Company, Inc., that it acted in the interests of and in good faith for the interest of Defendant BEI Sensors & Systems Company, Inc., and that this Defendant owed no duty in law or contract to the Plaintiff, for which reason the Plaintiff may not recover in any sum whatsoever.

FOR A FIRST COUNTERCLAIM
(Breach of Contract)

23. Heretofore, the Plaintiff contacted this Defendant and advised that it intended to file the Complaint which is the subject matter of this action.

24. Thereafter, the Plaintiff requested that this Defendant communicate with Defendant BEI Sensors & Systems Company, Inc. and convey certain information, in return for which the Plaintiff agreed to dismiss this Defendant from the present litigation and waive any claims it may have against this Defendant.

25. This Defendant agreed to convey the requested information from the Plaintiff to Defendant BEI Sensors & Systems Company, Inc. in return for the dismissal of this action against it.

26. In reliance upon the promise of the Plaintiff, the Defendant conveyed the requested information to Defendant BEI Sensors & Systems, Inc.

27. This Defendant has fully performed its obligations under its agreement with the Plaintiff.

28. Despite this Defendant's performance, the Plaintiff has failed and refused to dismiss

the pending action and dismiss the claims against this Defendant.

29. The failure of the Plaintiff to dismiss this Defendant from the pending litigation constitutes a breach of contract.

30. As a proximate result of the breach of contract by the Plaintiff, the Defendant has suffered damages in that it has had to and in the future will be required to spend significant funds defending the present action and the allegations therein.

31. By reason of the aforesaid breach of contract, the Plaintiff is liable to the Defendant for any and all costs, expenses and attorneys' fees incurred in defending the present action.

FOR A SECOND COUNTERCLAIM
(Frivolous Litigation)

32. The allegations of Paragraphs Twenty-Three (23) through Thirty-One (31) are realleged as if repeated herein verbatim.

33. At all times in its dealings with the Plaintiff, this Defendant identified that it was acting as agent for BEI Sensors & Systems Company, or its predecessor.

34. Under South Carolina agency law, an agent for a disclosed principal does not thereby become a party to a contractual relationship between the contracting party and the principal.

35. Under South Carolina law, this Defendant owed its obligation of loyalty and good faith to the Defendant BEI Sensors & Systems Company, and owed no duty in law or contract to the Plaintiff.

36. When the Plaintiff made initial demand upon this Defendant contending that this Defendant was responsible for an alleged breach of contract, this Defendant advised the Plaintiff that it was acting at all times as agent for a disclosed principal, and thus was not a party to or liable under

any contract between the Plaintiff and Defendant BEI Sensors & Systems Company.

37. Despite the notice of this Defendant's disclosed agency, the Plaintiff filed the present action asserting that this Defendant is liable for a breach of a contractual relationship, and has asserted a duty in law which does not exist.

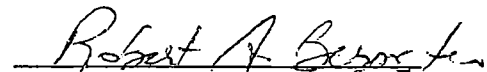
38. The assertion by the Plaintiff that this Defendant, as disclosed agent, is liable in breach of contract or for tortious interference with contractual relations is not supportable under South Carolina law or any reasonable argument for extension thereof.

39. The assertion of the present action by the Plaintiff is a violation of S.C. Code Ann. §15-36-10 et seq. and rule 11, South Carolina Rules of Civil procedure, and has caused damages to this Defendant.

#7 40. By reason of the foregoing, this Defendant is entitled to an award of damages equal to the costs, expenses and attorneys fees incurred in defending the present action.

WHEREFORE, having fully responded to the allegations of the Amended Complaint and Counterclaimed thereon, this Defendant prays that the same be dismissed, and that it be granted judgment against the Plaintiff for all costs, expenses and attorneys fees incurred in defending the allegations hereof.

BERNSTEIN & BERNSTEIN, P.A.



Robert A. Bernstein
5418-B Rivers Avenue
North Charleston, SC 29406-6129
(843) 529-1111; (843) 529-0035 (Fax)
ATTORNEYS FOR DEFENDANT
THE COMMERCIAL COLLECTION
CORPORATION OF NEW YORK, INC.

December 13, 2011

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2011-CP-43-1418

Berry, Quackenbush & Stuart, P.A.,)
)
Plaintiff,)

-vs-

REPLY

BEI Sensors & Systems Company, Inc.)
d/b/a BEI Duncan Electronics and The)
Commercial Collection Corporation of)
New York, Inc.,)
)
Defendants.)

The Plaintiff, Berry, Quackenbush & Stuart, P.A., responding to the Answer to Amended Complaint and Counterclaim of the Defendant, Commercial Collection Corp. of New York, Inc. ("Commercial"), dated December 13, 2011, would show this Honorable Court the following:

FOR A FIRST DEFENSE

1. Each and every allegation of the Counterclaims not hereinafter admitted or explained is hereby denied, and strict proof thereof is demanded.

2. The Plaintiff specifically denies the allegations contained in Paragraphs 24, 25, 26, 27, 28, 29, 30, 31, 33, 38, 39 and 40 of the Answer to Amended Complaint and Counterclaim and demands strict proof thereof.

FOR A SECOND DEFENSE

3. The actions and/or inactions of Commercial relevant to the facts of this case operate as a waiver of the claims of Commercial against the Plaintiff.

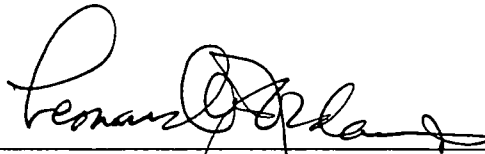
FOR A THIRD DEFENSE

4. Commercial interfered with the Plaintiff's legal services and/or prevented the Plaintiff from performing and completing its legal services as contemplated by the subject contract, such being asserted as a defense and/or bar to the claims of Commercial.

FOR A FOURTH DEFENSE

5. The Counterclaims of Commercial are barred, in whole or in part, because of Commercial's participation in the breach of the subject contract.

WHEREFORE, having fully replied to the Counterclaims, the Plaintiff prays that the same be dismissed and that the relief sought by the Plaintiff's Amended Complaint be granted.



Leonard R. Jordan, Jr.
BERRY, QUACKENBUSH & STUART, P.A.
1122 Lady Street, 5th Floor
Post Office Box 394
Columbia, South Carolina 29202



Columbia, South Carolina
January 4, 2012

Attorneys for Plaintiff

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF SUMTER)

Docket No.: 11-CP-43-1418

Berry, Quackenbush & Stuart, P.A.,)

Plaintiff,)

vs.)

NOTICE OF MOTION AND MOTION
FOR SUMMARY JUDGMENT

BEI Sensors & Systems Company, Inc.,)

d/b/a BEI Duncan Electronics and The)

Commercial Collection Corp. of)

New York, Inc.,)

Defendants.)

TO: BERRY, QUACKENBUSH & STUART, P.A. AND ITS ATTORNEY, LEONARD R. JORDAN, JR., and ALL DEFENDANTS OF RECORD:

YOU WILL PLEASE TAKE NOTICE that as soon as counsel may be heard, the undersigned, as counsel for Defendant BEI Sensors & Systems Company, Inc., d/d/a BEI Duncan Electronics ("BEP") will move before the Presiding Judge, Sumter County Court of Common Pleas, for an Order pursuant to S.C. R. Civ. P. 56, granting summary judgment in its favor on all of Plaintiff's claims against it on grounds that it is entitled to judgment as a matter of law because Plaintiff's allegations do not set forth a recognized cause of action under South Carolina law. Specifically, Plaintiff law firm is suing the Defendants because Defendants would not allow Plaintiff law firm to file suit against a commercial debtor, when any recovery against the commercial debtor would have been speculative.

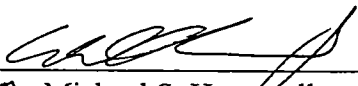
This Motion is based on the pleadings, discovery to date including the attached Affidavit of Richard Wilkins (with Exhibit A), the attached Plaintiff's Responses to Requests to Admit and such other evidence as may be presented to this Court.

This Defendant respectfully requests that this Court grant Summary Judgment in its favor, and hereby preserves its rights to pursue all remedies available pursuant to S.C. Code Ann. § 15-36-10.

Florence, South Carolina

July 18th, 2012

TURNER, PADGET, GRAHAM & LANEY, P.A.

BY: 

Michael S. Hopewell
319 South Irby Street
Post Office Box 5478
Florence, SC 29502-5478
(843) 662-9008

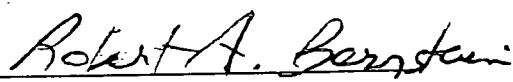
Attorneys for Defendant BEI

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SUMTER	)	CASE NUMBER 2011-CP-43-1418
	)	
Berry, Quackenbush & Stuart, P.A.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	NOTICE OF MOTION AND MOTION
	)	FOR SUMMARY JUDGMENT
BEI Sensors & Systems Company, Inc.,	)	
d/b/a BEI Duncan Electronics and The	)	
Commercial Collection Corporation	)	
of New York, Inc.,	)	
	)	
Defendants.	)	
_____	)	

TO: LEONARD R. JORDAN, JR., ESQUIRE, ATTORNEY FOR THE PLAINTIFF:

YOU WILL HEREBY TAKE NOTICE that on the tenth day following service hereof, or as soon thereafter as they may be heard, the attorneys for the Defendant Commercial Collection Corporation of New York, Inc. will move before this Honorable Court for an Order granting Summary Judgment, pursuant to Rule 56, South Carolina Rules of Civil Procedure. This Motion is based upon the affidavits of Frank Vecchio and Richard Wilkins, and the pleadings on file herein.

BERNSTEIN & BERNSTEIN, P.A.


 Robert A. Bernstein
 Post Office Box 20519
 Charleston, SC 29413-0519
 (843) 529-1111; (843) 529-0035 (fax)
 ATTORNEYS FOR THE DEFENDANT
 COMMERCIAL COLLECTION
 CORPORATION OF NEW YORK, INC.

November 19, 2012

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF SUMTER)

Docket No.: 11-CP-43-1418

Berry, Quackenbush & Stuart, P.A.,)

Plaintiff,)

vs.)

AFFIDAVIT OF RICHARD WILKINS

BEI Sensors & Systems Company, Inc.,)

d/b/a BEI Duncan Electronics and The)

Commercial Collection Corp. of)

New York, Inc.,)

Defendants.)

Personally appeared before me, the undersigned having been duly sworn, deposes and says as follows:

1. I am the controller for Defendant BEI Sensors & Systems Company, Inc. ("BEI"). I work and reside in the State of California. I am over eighteen (18) years of age and have personal knowledge of the facts contained in this Affidavit. Attached to this Affidavit as "Exhibit A" is a copy of my company's discovery responses in this lawsuit, which includes a complete set of the documents in our possession relating to and supporting the facts below.

2. BEI Sensors and Systems Company is manufacturer and distributor of electronic sensor products used in a variety of commercial and industrial applications. BEI Duncan Electronics is a trade name under which BEI Sensors markets certain products.

3. In May 2008, BEI entered into a Distributor Agreement with Fluid Power of the Carolinas ("Fluid Power") in Pinewood, South Carolina for Fluid Power to sell BEI products. (See BEI0001). From October 2008 to May 2009, Fluid Power purchased products from BEI on

thirty-three (33) separate invoices at a total price of Twenty-nine Thousand Three Hundred Sixty-six and 16/100 (\$29,366.16) Dollars. (BEI0013). Fluid Power never made any payments on these invoices.

4. On September 2, 2009, BEI received a letter from Fluid Power dated August 31, 2009 addressed to "Dear Supplier" which asked for additional time to make payments due to financial hardships experienced by Fluid Power. (BEI0045).

5. By November 2009, BEI had not received any payments from Fluid Power so it retained a collection agency, The Commercial Collection Corporation of New York "CCCNYS"), to attempt collection of the debt from Fluid Power. (BEI0046).

6. Within a month, John Chotkowski of CCCNY informed us that Fluid Power was only willing to pay One Hundred and No/100 (\$100.00) Dollars toward the debt owed. (BEI00

7. On January 28, 2010, I approved the decision to write off the debt for accounting purposes (BEI0014) and pursue legal action against Fluid Power. On February 12, 2010, BEI terminated its distribution agreement with Fluid Power.

8. In May 2010, BEI Sensors, acting by and through BEI's collection agent, CCCNY, retained the law firm of Berry Quackenbush & Stuart, P.A. to pursue legal remedies against Fluid Power to collect the unpaid debt.

9. In January 2011, I received a call from Attorney Leonard R. Jordan, Jr. of Berry Quackenbush about the debt. He proposed that he file two suits against Fluid Power: one to pursue judgment for the debt and a second suit to invalidate a property transfer by Fluid Power. I did not authorize him to file either suit.

10. On August 26, 2011, I received an email from Attorney Jordan requesting that I sign a Representation Agreement. (BEI0095 & BEI0132-0134). He also indicated that CCCNY had agreed to waive its commission and remove itself from the matter. I did not sign the proposed Representation Agreement.

11. On September 7, 2011, I emailed Attorney Jordan directly and informed him that I did not wish to sign his Representation Agreement but agreed to process an outstanding invoice for a title search. (BEI0093 & BEI0131). BEI paid the firm's outstanding invoice for \$181.12.

12. Mr. Jordan replied and implied that BEI had already settled the debt with Fluid Power. He also indicated that he had filed the present action. (BEI000092).

13. I immediately replied and informed Attorney Jordan that BEI had not settled the debt with Fluid Power. (BEI00091).

14. Attorney Jordan then informed me in an email that he did not believe me and stated:

When I do something on principle, I do not concern myself with making the right economic decision; I just want the other side to conclude that it is not a good thing to do to try to screw me over – as is the case here. I will therefore take delight from making the defense of my suit as costly as I can to BEI.

(BEI0091). In the same email, Attorney Jordan offered that his law firm would purchase the Fluid Power debt from BEI. I did not respond to the attorney at that point.

15. On September 13, 2011, Attorney Jordan emailed me again and requested that I either expressly accept or reject his offer to "buy" the debt. He further stated:

Assuming you do no[t] accept my offer, there will be no favors done by me at this point. My suit has been filed. The next step is to get the defendants served. While this suit may not result in a large recovery, I will take away a special feeling of accomplishment knowing that your defense has been expensive to you.

(BEI0090).

16. BEI was served with this Complaint on October 7, 2011 and I had no further contact with Attorney Jordan.

17. I never agreed to Attorney Jordan's offer to purchase the Fluid Power Debt and never authorized him to file suit against Fluid Power, which he did anyway.

18. BEI never agreed to retain Berry Quackenbush law firm outside of the initial engagement through CCCNY.

19. BEI has never settled the outstanding debt with Fluid Power.

FURTHER AFFIANT SAYETH NOT.

SWORN TO AND SUBSCRIBED BEFORE)

ME this 13 day of July 2012.

attached

Notary Public for California
My Commission Expires: _____

)
)
)
)
)

Richard J. Wilkins

Richard Wilkins

CALIFORNIA JURAT WITH AFFIANT STATEMENT

- ☒ See Attached Document (Notary to cross out lines 1-6 below)
☐ See Statement Below (Lines 1-5 to be completed only by document signer[s], *not* Notary)

1 _____
2 _____
3 _____
4 _____
5 _____
6 _____

Signature of Document Signer No. 1 _____ Signature of Document Signer No. 2 (if any) _____

State of California

County of Santa Barbara

Subscribed and sworn to (~~or affirmed~~) before me on this

13th day of July, 2012, by
Date Month Year

(1) Richard Wilkins
Name of Signer

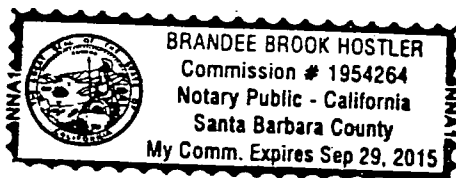
proved to me on the basis of satisfactory evidence
to be the person who appeared before me (.) ~~X~~

(and

(2) _____
Name of Signer

proved to me on the basis of satisfactory evidence
to be the person who appeared before me.)

Signature Brandee Brook Hostler
Signature of Notary Public



Place Notary Seal Above

OPTIONAL

*Though the information below is not required by law, it may prove
valuable to persons relying on the document and could prevent
fraudulent removal and reattachment of this form to another document.*

Further Description of Any Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

**RIGHT THUMBPRINT
OF SIGNER #1**
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**RIGHT THUMBPRINT
OF SIGNER #2**
Top of thumb here

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF SUMTER)

Docket No.: 11-CP-43-1418

Berry, Quackenbush & Stuart, P.A.,)

Plaintiff,)

vs.)

DEFENDANT BEI SENSORS &
SYSTEMS COMPANY, INC. D/B/A

BEI Sensors & Systems Company, Inc.,)
d/b/a BEI Duncan Electronics and The)
Commercial Collection Corp. of)
New York, Inc.,)

BEI DUNCAN ELECTRONICS'
ANSWERS TO PLAINTIFF'S
FIRST SET OF INTERROGATORIES

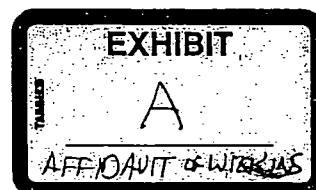
Defendants.)

TO: LEONARD R. JORDAN, JR., ATTORNEY FOR THE PLAINTIFF:

Pursuant to Rule 33 of the South Carolina Rules of Civil Procedure, the Defendant, BEI Sensors & Systems Company, Inc. d/b/a BEI Duncan Electronics, hereby answers the Plaintiff's Interrogatories as follows:

RESERVATION OF RIGHTS

1. This Defendant specifically reserves and does not waive any rights to pursue and be heard on any and all defenses set forth in its Answer to the Complaint.
2. This Defendant specifically reserves and does not waive any objections which may be appropriate to the Interrogatories.
3. This Defendant specifically reserves and does not waive any objections which may otherwise be available to it and further states that no Answer should be deemed as an admission of relevancy, materiality or admissibility of any Answer or document produced. It further reserves the right to amend or supplement its Answer, if appropriate.



GENERAL OBJECTIONS

This Defendant objects to responding to any interrogatory or request for production that seeks information which constitutes confidential attorney-client communication or which falls within the scope of Rule 26(b)(3) or which exceed the scope of discovery otherwise provide by the South Carolina Rules of Civil Procedure or by statute or common law.

ANSWERS TO INTERROGATORIES

1. Give the names and addresses of persons known to the party or its counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

Answer:

- (a) Rick Wilkins
7230 Hollister Ave.
Goleta, CA 93117

There are no known written or recorded statements from this witness. Mr. Wilkins was the controller for BEI Sensors who communicated with Defendant Commercial Collection Corporation and Attorney Leonard Jordan, Jr. He would be expected to testify regarding the Fluid Power account and his dealing with the Co-Defendant and Plaintiff.

- (b) Leonard R. Jordan, Jr.
Berry Quackenbush & Stuart, P.A.
112 Lady Street
Columbia, SC 29202

There are no known written or recorded statements from this witness. Mr. Jordan is the attorney from the Plaintiff law firm who communicated with Defendant Commercial Collection Corporation and BEI Sensors. He would be expected to testify as to his handling of the matter and his communications with the Defendants.

- (c) Frank Vecchio
Commercial Collection Corporation of NY
P.O. Box 288
Tonowanda, NY 14150

There are no known written or recorded statements from this witness. Mr. Vecchio was the primary contact at Defendant Commercial Collection Corporation. He would be expected to testify as to his involvement and his communications with the Plaintiff and BEI Sensors.

- (d) Mike Baker
Fluid Power of the Carolinas
P.O. Box 278
Pinewood, SC 29125

There are no known written or recorded statements from this witness. Mr. Baker was a principal at the debtor company and would be expected to testify as to Fluid Power's account with BEI Sensors. Specifically, it would be expected that Mr. Baker would testify that Fluid Power did not resolve its debt with BEI Sensors/Duncan Electronics.

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claim or defense of the case.

Answer:

All documents related to the Fluid Power account and the collection process are attached as BEI00001 through BEI00135.

3. List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case.

Answer:

This Defendant has not identified any expert witnesses for use at trial but reserves the right to do so.

4. For each person known to the party or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

Answer:

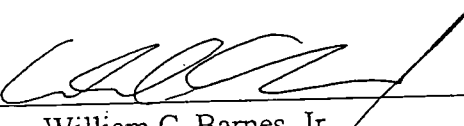
See Answers to Interrogatory 1 above.

This Defendant reserves the right to supplement these Answers to Interrogatories as information becomes available.

Florence, South Carolina

May 22nd, 2012

TURNER, PADGET, GRAHAM & LANEY, P.A.

BY: 
William C. Barnes, Jr.
Michael S. Hopewell
319 South Irby Street
Post Office Box 5478
Florence, S.C. 29502-5478
(843) 662-9008

Attorneys for Defendant,
BEI Sensors & Systems Company, Inc. d/b/a
BEI Duncan Electronics

STATE OF CALIFORNIA)

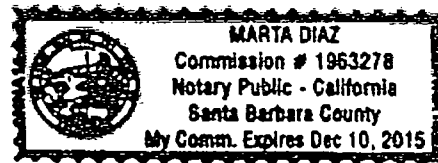
COUNTY OF SANTA BARBARA)

VERIFICATION

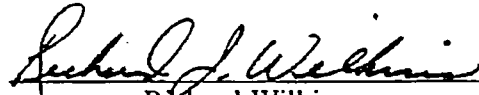
PERSONALLY appeared before me, Richard Wilkins, who being first duly sworn, deposes and says that he is the Controller for Defendant BEI Sensors & Systems Company, Inc. d/b/a BEI Duncan Electronics, and that the foregoing Answers to Interrogatories are true of his own knowledge, except those allegations stated to be upon information and belief, and as to those, deponent believes them to be true.

SWORN TO AND SUBSCRIBED BEFORE))

ME this 17 day of May 2012.))




Notary Public for California
My Commission Expires: 12.10.15


Richard Wilkins

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)
)
Berry, Quackenbush & Stuart, P.A.,)
)
Plaintiff,)
)
vs.)
)
BEI Sensors & Systems Company, Inc.,)
d/b/a BEI Duncan Electronics and The)
Commercial Collection Corp. of)
New York, Inc.,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS

Docket No.: 11-CP-43-1418

DEFENDANT BEI SENSORS &
SYSTEMS COMPANY, INC. D/B/A
BEI DUNCAN ELECTRONICS'
RESPONSES TO PLAINTIFF'S
FIRST REQUESTS TO PRODUCE

TO: LEONARD R. JORDAN, JR., ATTORNEY FOR THE PLAINTIFF:

Pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, the Defendant, BEI Sensors & Systems Company, Inc. d/b/a BEI Duncan Electronics, hereby responds to the Plaintiff's First Requests to Produce as follows:

1. Produce a comply copy of the Defendant's file involving the subject matter.

Response:

See attached, Bates Stamp identified as BEI0001 – BEI0135.

2. Produce copies of any and all documents which you consulted or utilized in answering the Plaintiff's First Set of Interrogatories to Defendant, BEI Sensors & Systems Company, Inc. d/b/a BEI Duncan Electronics ("Interrogatories"), served herewith.

Response:

See attached, Bates Stamp identified as See BEI0001 – BEI0135.

3. Produce copies of any and all documents identified in your answers to the Interrogatories.

Response:

See attached, Bates Stamp identified as BEI0001 – BEI0135.

4. Produce copies of any and all communication and/or correspondence exchanged between the Defendant and the Plaintiff.

Response:

See attached emails and documents exchanged between Rick Wilkins and Leonard Jordan, BEI0060 – BEI0135.

5. Produce copies of any and all communication and/or correspondence exchanged between the Defendant and the Defendant commercial relating, directly or indirectly, to the subject account.

Response:

See attached BEI0046-BEI0050.

6. Produce any and all documents concerning or relating to the amount due on the alleged debt owed to the Defendant by Fluid Power of South Carolina, Inc.

Response:

See attached invoices and account BEI0013-BEI0059.

7. Produce any and all documents concerning or relating to all payments, credits, charges, fees and interest on the alleged debt.

Response:

See BEI0013 – BEI0016.

8. Produce an account history covering the subject account from inception to present.

Response:

See BEI0001 – BEI0045.

9. Produce the account history of any other accounts maintained by the Defendant having to do with Fluid Power of the Carolinas, Inc. or any of its affiliates, which history reflects a payment, credit or write-off applied after January 1, 2010.

Response:

None.

10. Produce any and all documents demonstrating or evidencing the Defendant's attempts to collect the subject debt owed by Fluid Power of the Carolinas, Inc.

Response:

None, other than the documents produced.

11. Produce any and all correspondence, communications and documents exchanged between the Defendant and Fluid Power of the Carolinas, Inc. concerning the debt owed to the Defendant by said debtor.

Response:

See BEI0012 and BEI0045.

12. Produce any and all documents, including those the Defendant intends to introduce as exhibits at trial, or at any hearing or motion, concerning, relating to, supporting, verifying or relevant to any allegation and/or claim contained in the Plaintiff's Amended Complaint or the Defendant's Answer.

Response:

This Defendant has not yet identified specific trial exhibits but reserves the right to introduce all relevant evidence at trial or at any hearing or other proceeding of record. Defendant will notify Plaintiff of its trial exhibits in accordance with the South Carolina Rules of Civil Procedure.

Florence, South Carolina

TURNER, PADGET, GRAHAM & LANEY, P.A.

May 22, 2012

BY: 

William C. Barnes, Jr.
Michael S. Hopewell
319 South Irby Street
Post Office Box 5478
Florence, S.C. 29502-5478
(843) 662-9008

Attorneys for Defendant,
BEI Sensors & Systems Company, Inc. d/b/a
BEI Duncan Electronics

Pages marked with Bates Stamp pages BEI0001-0011 have been omitted by agreement of the parties as irrelevant to the appeal.



VIA FEDERAL EXPRESS

February 12, 2010

Fluid Power of the Carolinas
108 West Clark Street
Pinewood, SC 29125
Attn: Michael W. Baker, Vice President

Re: **Distributor Agreement between BEI Sensors and Systems Company, Crouzet North America Division ("Crouzet") and Fluid Power of the Carolinas ("Fluid Power") dated July 21, 2008 (the "Distribution Agreement")**

Dear Mr. Baker:

After careful consideration, Crouzet has elected to terminate the Distribution Agreement effective thirty (30) days from the date of this letter. In accordance with Section 15 of the Agreement, this notice will serve as official notice of termination.

Kindly remit the past due amounts equal to \$29,366.16 immediately upon receipt of this letter. If we do not receive said amount within thirty (30) days of the date of this letter, we will have no choice but to explore our legal remedies.

If you have any questions regarding this letter, please contact my office.

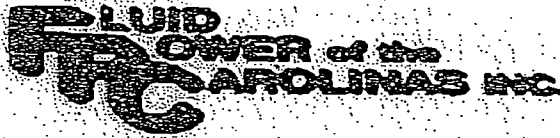
Sincerely,

David Foster
National Sales Manager
David.foster@cstsensors.com
Office: 619-210-1581

BEI Duncan Electronics - Crouzet
170 Technology Drive
Irvine, CA 92618
PHONE: 800-677-5311
FAX: 800-677-3865
EMAIL: customer.service@crouzet-usa.com
WEB: www.crouzet-usa.com

BEI0012

Pages marked with Bates Stamp pages BEI0013-0044 have been omitted by agreement of the parties as irrelevant to the appeal.



August 31, 2009

Mike Baker
FPC Corporation
P.O. Box 278
Pinewood, SC 29125

Dear Supplier

The last few years have been tough on our industry and especially on the smaller independent distributors like ourselves. Bank loan payments, bankruptcies, non-payment from customers, bank credit lines erased, all have played havoc on maintaining our existence.

At Fluid Power of the Carolinas, we have tried to keep up with the higher insurance cost, expenses, keeping people employed when we just could not afford to keep them on and it has almost killed our business. I said almost.

We have formed a partnership that we feel will help our cash flow in a few short months. We know we have not been able to pay our limits down, but this letter is to insure you we will pay our bill. We know our payments over the last few months have not been what our history shows, but we want you to know that we will pay our bill down to the very last cent.

Thank you for at least reading this far down without tearing this letter up. It has been a grueling, humbling, rewarding last year, and we now are seeing a small light at the end of the tunnel. We only ask for a little time to get back on our feet.

Kindest Regards,

Mike Baker
FPC

RECEIVED

SEP 02 2009

DUNCAN

P.11/1

To: 949 453 2700

8034527005

SEP-02-2009 12:09 From: FLUIDPOWER

BE10045

THE COMMERCIAL COLLECTION CORPORATION
OF NEW YORK



OLD-FASHIONED SERVICE • CUSTOMIZED PROGRAMS
21ST CENTURY VISION

November 17, 2009
607043
Your Ref. Nr.: 03*19548

Cheryl Enriquez
BEI Duncan Electronics Div.*
170 Technology Drive West
Irvine, CA 92618-2401
USA

Fluid Power of the Carolinas Inc

Balance: \$27,600.00

Thank you for referring this account to us. We are proceeding in accordance with your instructions.

For your own protection we suggest you refer any contact from your customer to us. Payments received may either be phoned in, emailed or faxed.

Sincerely,

John Chotkowski
jchotkowski@commercialcollection.com
Account Executive

THE COMMERCIAL COLLECTION CORP. OF NY
www.commercialcollection.com



FULL SERVICE NATIONAL AND INTERNATIONAL COMMERCIAL COLLECTIONS
34 SEYMOUR ST., TONAWANDA, NY 14150 • MAIL TO P.O. BOX 288, TONAWANDA, NY 14151-0288
716.213.1100 • TOLL FREE: 800.873.5212 • FAX: 800.873.5211
ASSOCIATE OFFICES IN KENTUCKY, GEORGIA, FLORIDA
WWW.COMMERCIALCOLLECTION.COM

BE10046

THE COMMERCIAL COLLECTION CORPORATION
OF NEW YORK



OLD-FASHIONED SERVICE • CUSTOMIZED PROGRAMS
21ST CENTURY VISION

November 17, 2009
Our #607043
Your Reference #: 03*19548
Balance \$27,600.00

Ms. Cheryl Enriquez
BEI Duncan Electronics Div.*
170 Technology Drive West
Irvine, CA 92618-2401

Re: Fluid Power of the Carolinas Inc
Pinewood, SC 29125

Dear Cheryl:

Thank you very much for giving us a chance to work this account for you. Also, thanks for taking the time to discuss this matter with me. As you explained, if the debtor requires further information regarding the debt, I should contact Gerardo Romo at the Shared Services Division in Mexico.

I have spoken with Robin at Fluid Power, and she immediately acknowledged the debt in full. She then relayed to me what I am certain is a familiar tale of woe concerning her current financial situation. She alleges that she has new contracts in place, but it will take time to realize cash from those contracts. I advised her that time is not a luxury which she enjoys at this point and that she must find a way to come up with payment against the balance. It is along these lines that I will continue with my aggressive pursuit, and I fully anticipate having a further update for you shortly.

Cheryl, should you have any questions or comments, please do not hesitate to contact me.

Sincerely,

THE COMMERCIAL COLLECTION CORP. OF NEW YORK


John Chotkowski
Vice President Collections/Ext. 225
jchotkowski@commercialcollection.com
JC/cm



FULL SERVICE NATIONAL AND INTERNATIONAL COMMERCIAL COLLECTIONS
34 SEYMOUR ST., TONAWANDA, NY 14150 • MAIL TO: P.O. BOX 288, TONAWANDA, NY 14151-0288
716.213.1100 • TOLL FREE 800.873.5212 • FAX 800.873.5211
ASSOCIATE OFFICES IN KENTUCKY, GEORGIA, FLORIDA
WWW.COMMERCIALCOLLECTION.COM

BEI0047



Fw: Fluid Power
Cheryl Enriquez to: Gerardo Romo

01/29/2010 01:35 PM

as promised.



DOC_20100129134546.PDF

— Forwarded by Cheryl Enriquez/BEI/CST on 01/29/2010 01:32 PM —

From: Cheryl Enriquez/BEI/CST
To: Rick Wilkins/BEI/CST@CST
Date: 01/28/2010 08:10 PM
Subject: Fw: Fluid Power

We spoke of this on Monday. They are only willing to pay a paltry \$100.00 for the \$29k they owed. I will send out the email to Lynn tomorrow to ask who to send this to in legal.

This is just the write off to clean the aging.

Thanks

— Forwarded by Cheryl Enriquez/BEI/CST on 01/28/2010 08:07 PM —

From: Gerardo Romo/CRY
To: Cheryl Enriquez/BEI/CST@CST
Date: 01/28/2010 04:05 PM
Subject: Fluid Power

Hi Cheryl.

Please find attachment below.

Write Off Sheet and Invoices.

Regards,

Gerardo Romo | AR | BEI Sensors and Systems | Crouzet
170 Technology Dr. | Irvine, CA 92618 | (Office: 619-210-1542 | (Fax: 619-710-8542
* Email: Gerardo.Romo@crydom.com



20100129154636971.pdf 20100129155457479.pdf

BEI0048



Fw: Fluid Power
Cheryl Enriquez to Rick Wilkins

01/28/2010 08:10 PM

We spoke of this on Monday. They are only willing to pay a paltry \$100.00 for the \$29k they owed. I will send out the email to Lynn tomorrow to ask who to send this to in legal.

This is just the write off to clean the aging.

Thanks

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From: Gerardo Romo/CRY
To: Cheryl Enriquez/BEI/CST@CST
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Subject: Fluid Power

Hi Cheryl.

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Write Off Sheet and Invoices.

Regards,

Gerardo Romo | AR | BEI Sensors and Systems | Crouzet
170 Technology Dr. | Irvine, CA 92618 | (Office: 619-210-1542 | (Fax: 619-710-8542
• Email: Gerardo.Romo@crydom.com



20100129154636971.pdf 20100129155457479.pdf

BEI0049

03*19548/ Fluid Power of the Carolins (607043)

John Chotkowski

to:

cheryl.enriquez@beiduncan.com

12/17/2009 12:58 PM

Show Details

History: This message has been forwarded.

Cheryl, These folks are claiming a miniscule payment of \$100.00 to you folks. Obviously, this is not acceptable you folks. Obviously, this is not acceptable and I am thinking suit would be a better option. Do you have a would be a better option. Do you have a personal guarantee against any of the principals? any of the principals?

John Chotkowski

Vice President - CCCNY

800-873-5212 ext. 225

Cell - 716-598-5001

file://C:\Documents and Settings\enriquez\Local Settings\Temp\notesEA312D\~web59

01/29/2010

BEI0050

Pages marked with Bates Stamp pages BEI0051-0059 have been omitted by agreement of the parties as irrelevant to the appeal.

From: Rick Wilkins/BEI/CST
To: "Leonard R. Jordan Jr." <LJordan@BQSLaw.com>
Date: 09/07/2011 08:23 AM
Subject: RE: FW: Fluid Power of the Carolinas, Inc.

Leonard, After reviewing your contract and realizing that there is a very small chance that you will collect this outstanding receivable, I have decide not to sign your agreement. I will process your invoice you sent which will be include in the check run tomorrow so you will receive the check early next week.

Regards, Rick

BEI SENSORS

Richard WILKINS | Controller
BEI Sensors - 7230 Hollister Ave - Goleta, Ca. 93117 - USA
Tel: 805-968-0782 Ext 263 | Mobile: 925-595-0665
E-mail: Rick.Wilkins@beisensors.com | Web: <http://www.beisensors.com/>

CST

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Please consider the environment before printing this e-mail

From: "Leonard R. Jordan Jr." <LJordan@BQSLaw.com>
To: <Rick.Wilkins@beisensors.com>
Date: 09/06/2011 01:02 PM
Subject: RE: FW: Fluid Power of the Carolinas, Inc.

9/6/11

I remind you about the statute of limitations.



Leonard R. Jordan, Jr.

Berry Quackenbush & Stuart, P.A.
1122 Lady St., 5th Floor (29201)
P.O. Box 394
Columbia, SC 29202
Telephone 803-779-2650
Direct Dial 803-255-0650
Facsimile 803 255-0179
E-mail ljordan@bqslaw.com
www.bqslaw.com

From: Rick.Wilkins@beisensors.com [mailto:Rick.Wilkins@beisensors.com]
Sent: Wednesday, August 31, 2011 1:20 PM
To: Leonard R. Jordan Jr.
Subject: Re: FW: Fluid Power of the Carolinas, Inc.

Leonard, have not forgotten about you, just very busy give me to next week.

Rick

Regards.

BEI SENSORS

Richard WILKINS | Controller
BEI Sensors - 7230 Hollister Ave - Goleta, Ca. 93117 - USA
Tel: 805-968-0782 Ext 263 | Mobile: 925-595-0665
E-mail: Rick.Wilkins@beisensors.com | Web: <http://www.beisensors.com/>



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Please consider the environment before printing this e-mail

From: "Leonard R. Jordan Jr." <LJordan@BQSLaw.com>
To: <rick.wilkins@beisensors.com>
Date: 08/31/2011 07:42 AM
Subject: FW: Fluid Power of the Carolinas, Inc.

8/31/11

Reminder.



Leonard R. Jordan, Jr.

Berry Quackenbush & Stuart, P.A.

1122 Lady St., 5th Floor (29201)

P.O. Box 394

Columbia, SC 29202

Telephone 803-779-2650

Direct Dial 803-255-0650

Facsimile 803-255-0179

E-mail ljordan@bqslaw.com

www.bqslaw.com

From: Leonard R. Jordan Jr.
Sent: Friday, August 26, 2011 9:38 AM
To: 'rick.wilkins@beisensors.com'
Subject: Fluid Power of the Carolinas, Inc.

8/26/11

Mr. Wilkins, please see the attached Representation Agreement. Please let me know if you have any questions or comments.

I have communicated with the attorney for Commercial Collections, and he has informed me, via email, that his client will remove itself completely from this matter and will waive any commission, subject to your company and me signing a release of Commercial, which is in form satisfactory to Commercial.

Under the circumstances, including the long delays and my having to file two suits, and with Commercial Collections waiving its share of any recovery, I feel the proposed contingency fee arrangement is quite appropriate. I hope you will agree.

I remind you of the urgency of this matter due to the statute of limitations. I ask that you take steps to finalize the Representation Agreement as soon as possible.

I will, of course, want you to execute the Agreement (when in final form) and send it back to me. I will also want your company to reimburse me, without further delay, for the costs advanced over 6 months ago, as reflected in the attached bill.

Thank you.



Leonard R. Jordan, Jr.

Berry Quackenbush & Stuart, P.A.

1122 Lady St., 5th Floor (29201)

P.O. Box 394

Columbia, SC 29202

Telephone 803-779-2650

Pages marked with Bates Stamp pages BEI0063-0067 have been omitted by agreement of the parties as irrelevant to the appeal.

From: Rick Wilkins/BEI/CST
To: "Leonard R. Jordan Jr." <LJordan@BQSLaw.com>
Date: 09/07/2011 11:20 AM
Subject: RE: FW: Fluid Power of the Carolinas, Inc.

Leonard, I understand your disappointment, however, I feel your company has been working to collect these funds, unfortunately we have been unsuccessfully in collecting any money over the last 2 years. Continuing this relationship will only cost your organization and mine without being able to collect any funds. Please note we have written this account off at least 2 years ago.

I want you to understand and believe me that BEI has not collected any funds from Fluid Power. If you are basing your case on the belief that we have settled with the debtor you definitely need to reconsider your suit against BEI.

Regards, Rick

BEI SENSORS

Richard WILKINS | Controller
BEI Sensors - 7230 Hollister Ave - Goleta, Ca. 93117 - USA
Tel: 805-968-0782 Ext 263 | Mobile: 925-595-0665
E-mail: Rick.Wilkins@beisensors.com | Web: <http://www.beisensors.com/>

CST

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Please consider the environment before printing this e-mail

From: "Leonard R. Jordan Jr." <LJordan@BQSLaw.com>
To: <Rick.Wilkins@beisensors.com>
Date: 09/07/2011 09:17 AM
Subject: RE: FW: Fluid Power of the Carolinas, Inc.

9/7/11

Very curious response. Notwithstanding that, as you say, there is "a very small chance" of collection, you have an attorney who thinks the debt is collectable and who is willing to try to collect the debt on a contingency-fee basis (so your only exposure is limited to out-of-pocket expenses). It therefore makes no sense to simply write-off the debt—unless the debt has already been compromised with the debtor. As you know, the pending suit, which I have filed against BEI, asserts that it is my belief that BEI settled with the debtor after referring this case to me; and your reply today seems to me to confirm that this belief has merit. Unless you reconsider, I will proceed to serve and continue with the pending suit against BEI.

I want to be clear with regard to the statute of limitations. BEI has been notified that the debt may be barred to some extent by the running of the statute of limitations, if the debt against Fluid Power is not pursued through litigation within the next two weeks. It will be this firm's position that any effect which the statute of limitations has on the ability to collect the debt owed by Fluid Power will not affect the debt owed by BEI to this firm. In other words, we will assume that the debt against Fluid Power is fully collectable and would be collected in full notwithstanding the statute of limitations.



Leonard R. Jordan, Jr.

Berry Quackenbush & Stuart, P.A.

1122 Lady St., 5th Floor (29201)

P.O. Box 394

Columbia, SC 29202

Telephone 803-779-2650

Direct Dial 803-255-0650

Facsimile 803-255-0179

E-mail ljordan@bqslaw.com

www.bqslaw.com

From: Rick.Wilkins@beisensors.com [<mailto:Rick.Wilkins@beisensors.com>]

Sent: Wednesday, September 07, 2011 11:23 AM

To: Leonard R. Jordan Jr.

Subject: RE: FW: Fluid Power of the Carolinas, Inc.

Leonard, After reviewing your contract and realizing that there is a very small chance that you will collect this outstanding receivable, I have decide not to sign your agreement. I will process your invoice you sent which will be include in the check run tomorrow so you will receive the check early next week.

Regards. Rick

BEI SENSORS

Richard WILKINS | Controller

BEI Sensors - 7230 Hollister Ave - Goleta, Ca. 93117 - USA

Tel: 805-968-0782 Ext 263 | Mobile: 925-595-0665

E-mail: Rick.Wilkins@beisensors.com | Web: <http://www.beisensors.com/>

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Pages marked with Bates Stamp pages BEI0070-0071 have been omitted by agreement of the parties as irrelevant to the appeal.

Under the circumstances, including the long delays and my having to file two suits, and with Commercial Collections waiving its share of any recovery, I feel the proposed contingency fee arrangement is quite appropriate. I hope you will agree.

I remind you of the urgency of this matter due to the statute of limitations. I ask that you take steps to finalize the Representation Agreement as soon as possible.

I will, of course, want you to execute the Agreement (when in final form) and send it back to me. I will also want your company to reimburse me, without further delay, for the costs advanced over 6 months ago, as reflected in the attached bill.

Thank you.



Leonard R. Jordan, Jr.

Berry Quackenbush & Stuart, P.A.

1122 Lady St., 5th Floor (29201)

P.O. Box 394

Columbia, SC 29202

Telephone 803-779-2650

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<<<<Berry, Quackenbush & Stuart P.A.>>>>

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Pages marked with Bates Stamp pages BEI0073 have been omitted by agreement of the parties as irrelevant to the appeal.

From: Rick Wilkins/BEI/CST
To: Leonard R. Jordan Jr. <LJordan@BQSLaw.com>
Date: 09/12/2011 06:33 PM
Subject: Fw: Fluid Power of the Carolinas, Inc.

Leonard, the email below is in response to your email sent on September 12, 2011 my response has not changed.

Do me a favor before you start another law suit call Fluid Power and ask them if they have sent BEI any money. Also if you have been working to collect this money over the last 2 years I would expect that Fluid Power would have advised you that they paid us so you would not continue to call on them to collect these funds. Now that I think about it maybe you were not putting forth much effort in collecting this money.

Give them call.

Regards. Rick

BEI SENSORS

Richard WILKINS | Controller
BEI Sensors - 7230 Hollister Ave - Goleta, Ca. 93117 - USA
Tel: 805-968-0782 Ext 263 | Mobile: 925-595-0665
E-mail: Rick.Wilkins@beisensors.com | Web: <http://www.beisensors.com/>

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Please consider the environment before printing this e-mail

— Forwarded by Rick Wilkins/BEI/CST on 09/12/2011 06:24 PM —

From: Rick Wilkins/BEI/CST
To: "Leonard R. Jordan Jr." <LJordan@BQSLaw.com>
Date: 09/07/2011 11:20 AM
Subject: RE: FW: Fluid Power of the Carolinas, Inc.

Pages marked with Bates Stamp pages BEI0075-0080 have been omitted by agreement of the parties as irrelevant to the appeal.

From: Rick Wilkins/BEI/CST
To: "Leonard R. Jordan Jr." <LJordan@BQSLaw.com>
Date: 09/13/2011 06:20 AM
Subject: Re: FW: Fluid Power of the Carolinas, Inc.

Leonard, I have nothing else to say.

Have a good day

From: "Leonard R. Jordan Jr." [LJordan@BQSLaw.com]
Sent: 09/13/2011 08:11 AM AST
To: Rick Wilkins
Subject: RE: FW: Fluid Power of the Carolinas, Inc.

9/13/11

I find it interesting that you have not responded directly to my offer to buy the subject debt (see below). That is probably a strategic ploy on your part, to later claim that you never received the offer. I therefore send it to you again, and I ask that you expressly accept or reject the offer. If you reject it, and you want to try to convince me that your decision has some economic advantage to your company, I encourage you to do so.

Assuming that you do not accept my offer, there will be no favors done by me at this point. My suit has been filed. The next step is to get the defendants served. While this suit may not result in a large recovery, I will take away a special feeling of accomplishment knowing that your defense has been expensive to you.



Leonard R. Jordan, Jr.
Berry Quackenbush & Stuart, P.A.
1122 Lady St., 5th Floor (29201)
P.O. Box 394
Columbia, SC 29202
Telephone 803-779-2650

Direct Dial 803-255-0650
Facsimile 803 255-0179
E-mail ljordan@bqslaw.com
www.bqslaw.com

From: Leonard R. Jordan Jr.
Sent: Wednesday, September 07, 2011 3:44 PM
To: 'Rick.Wilkins@beisensors.com'
Subject: RE: FW: Fluid Power of the Carolinas, Inc.

9/7/11

It's not disappointment, it's principle. Your company referred this collection matter to this firm, through its agent, Commercial Collections. Through no fault of this firm, the matter was not pursued, although this firm made regular contact with Commercial Collections. Between BEI and Commercial, there was a complete absence of cooperation and good faith.

Your requesting that I believe you is difficult in light of your own actions and inactions. Why would you not want to pursue the collection of this debt under the circumstances unless BEI has cut a deal with the debtor? How could I not be suspicious of BEI? So you wrote-off the account 2 years ago—that's before you sent it for collection. Please explain how that is relevant?

When I do something on principle, I do not concern myself with making the right economic decision; I just want to make the other side conclude that it is not a good thing to do to try to screw me over—as is the case here. I will therefore take delight from making the defense of my suit as costly as I can to BEI.

* * * * *

I'll tell you what. Upon reflection, since BEI has written-off the debt anyway, my firm will buy the debt from BEI for an amount equal to 25% of the recovery received. How about that? My firm will cover all the collection costs and will pay BEI one-quarter of the recovery, if any. 25% of something is potentially a lot more than zero. BEI will have to assign the debt to my firm's designee and agree to assist and be fully cooperative and supportive in any action to recover the debt. What do you say? A refusal to accept this offer will make it obvious to all that BEI has cut a deal with Fluid Power. In light of the statute of limitations, this offer is only available for acceptance until noon on Friday, 9/9/11.



Leonard R. Jordan, Jr.
Berry Quackenbush & Stuart, P.A.
1122 Lady St., 5th Floor (29201)
P.O. Box 394
Columbia, SC 29202
Telephone 803-779-2650
Direct Dial 803-255-0650
Facsimile 803 255-0179
E-mail ljordan@bqslaw.com
www.bqslaw.com

From: Rick.Wilkins@beisensors.com [<mailto:Rick.Wilkins@beisensors.com>]
Sent: Wednesday, September 07, 2011 2:20 PM
To: Leonard R. Jordan Jr.
Subject: RE: FW: Fluid Power of the Carolinas, Inc.

Leonard, I understand your disappointment, however, I feel your company has been working to collect these funds, unfortunately we have been unsuccessfully in collecting any money over the last 2 years. Continuing this relationship will only cost your organization and mine without being able to collect any funds. Please note we have written this account off at least 2 years ago.

I want you to understand and believe me that BEI has not collected any funds from Fluid Power. If you are basing your case on the belief that we have settled with the debtor you definitely need to reconsider your suit against BEI.

Regards. Rick

BEI SENSORS

Richard WILKINS | Controller
BEI Sensors | 7230 Hollister Ave - Goleta, Ca. 93117 - USA
Tel: 805-968-0782 Ext 263 | Mobile: 925-595-0665
E-mail: Rick.Wilkins@beisensors.com | Web: <http://www.beisensors.com/>

CST

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Please consider the environment before printing this e-mail

From: "Leonard R. Jordan Jr." <LJordan@BQSLaw.com>
To: <Rick.Wilkins@beisensors.com>
Date: 09/07/2011 09:17 AM
Subject: RE: FW: Fluid Power of the Carolinas, Inc.

9/7/11

Very curious response. Notwithstanding that, as you say, there is "a very small chance" of collection, you have an attorney who thinks the debt is collectable and who is willing to try to collect the debt on a contingency-fee basis (so your only exposure is limited to out-of-pocket expenses). It therefore makes no sense to simply write-off the debt—unless the debt has already been compromised with the debtor. As you know, the pending suit, which I have filed against BEI, asserts that it is my belief that BEI settled with the debtor after referring this case to me; and your reply today seems to me to confirm that this belief has merit. Unless you reconsider, I will proceed to serve and continue with the pending suit against BEI.

I want to be clear with regard to the statute of limitations. BEI has been notified that the debt may be barred to some extent by the running of the statute of limitations, if the debt against Fluid Power is not pursued through litigation within the next two weeks. It will be this firm's position that any effect which the statute of limitations has on the ability to collect the debt owed by Fluid Power will not affect the debt owed by BEI to this firm. In other words, we will assume that the debt against Fluid Power is fully collectable and would be collected in full notwithstanding the statute of limitations.

BRs

Leonard R. Jordan, Jr.

Berry Quackenbush & Stuart, P.A.
1122 Lady St., 5th Floor (29201)
P.O. Box 394
Columbia, SC 29202
Telephone 803-779-2650
Direct Dial 803-255-0650
Facsimile 803 255-0179
E-mail ljordan@bqslaw.com
www.bqslaw.com

From: Rick.Wilkins@beisensors.com [mailto:Rick.Wilkins@beisensors.com]
Sent: Wednesday, September 07, 2011 11:23 AM
To: Leonard R. Jordan Jr.
Subject: RE: FW: Fluid Power of the Carolinas, Inc.

Leonard, After reviewing your contract and realizing that there is a very small chance that you will collect this outstanding receivable, I have decide not to sign your agreement. I will process your invoice you sent which will be include in the check run tomorrow so you will receive the check early next week.

Regards, Rick

BEI SENSORS

Richard WILKINS | Controller
BEI Sensors - 7230 Hollister Ave - Goleta, Ca. 93117 - USA
Tel: 805-968-0782 Ext 263 | Mobile: 925-595-0665
E-mail: Rick.Wilkins@beisensors.com | Web: <http://www.beisensors.com/>

CST

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Please consider the environment before printing this e-mail

From: "Leonard R. Jordan Jr." <LJordan@BQSLaw.com>
To: <Rick.Wilkins@beisensors.com>
Date: 09/06/2011 01:02 PM
Subject: RE: FW: Fluid Power of the Carolinas, Inc.

9/6/11

I remind you about the statute of limitations.



Leonard R. Jordan, Jr.

Berry Quackenbush & Stuart, P.A.

1122 Lady St., 5th Floor (29201)

P.O. Box 394

Columbia, SC 29202

Telephone 803-779-2650

Direct Dial 803-255-0650

Facsimile 803-255-0179

E-mail ljordan@bqslaw.com

www.bqslaw.com

From: Rick.Wilkins@beisensors.com [mailto:Rick.Wilkins@beisensors.com]

Sent: Wednesday, August 31, 2011 1:20 PM

To: Leonard R. Jordan Jr.

Subject: Re: FW: Fluid Power of the Carolinas, Inc.

Leonard, have not forgotten about you, just very busy give me to next week.

Rick

Regards.

BEI SENSORS

Richard WILKINS | Controller

BEI Sensors - 7230 Hollister Ave - Goleta, Ca. 93117 - USA

Tel: 805-968-0782 Ext 263 | Mobile: 925-595-0665

E-mail: Rick.Wilkins@beisensors.com | Web: <http://www.beisensors.com/>



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Please consider the environment before printing this e-mail

From: "Leonard R. Jordan Jr." <LJordan@BQSLaw.com>

To: <rick.wilkins@beisensors.com>

Date: 08/31/2011 07:42 AM

Subject: FW: Fluid Power of the Carolinas, Inc.

8/31/11

Reminder.



Leonard R. Jordan, Jr.

Berry Quackenbush & Stuart, P.A.

1122 Lady St., 5th Floor (29201)

P.O. Box 394

Columbia, SC 29202

Telephone 803-779-2650

Direct Dial 803-255-0650

Facsimile 803 255-0179

E-mail ljordan@bqslaw.com

www.bqslaw.com

From: Leonard R. Jordan Jr.

Sent: Friday, August 26, 2011 9:38 AM

To: 'rick.wilkins@beisensors.com'

Subject: Fluid Power of the Carolinas, Inc.

8/26/11

Mr. Wilkins, please see the attached Representation Agreement. Please let me know if you have any questions or comments.

I have communicated with the attorney for Commercial Collections, and he has informed me, via email, that his client will remove itself completely from this matter and will waive any commission, subject to your company and me signing a release of Commercial, which is in form satisfactory to Commercial.

Under the circumstances, including the long delays and my having to file two suits, and with Commercial Collections waiving its share of any recovery, I feel the proposed contingency fee arrangement is quite appropriate. I hope you will agree.

I remind you of the urgency of this matter due to the statute of limitations. I ask that you take steps to finalize the Representation Agreement as soon as possible.

I will, of course, want you to execute the Agreement (when in final form) and send it back to me. I will also want your company to reimburse me, without further delay, for the costs advanced over 6 months ago, as reflected in the attached bill.

Thank you.



Leonard R. Jordan, Jr.
Berry Quackenbush & Stuart, P.A.
1122 Lady St., 5th Floor (29201)
P.O. Box 394
Columbia, SC 29202
Telephone 803-779-2650
Direct Dial 803-255-0650
Facsimile 803-255-0179
E-mail ljordan@bqslaw.com
www.bqslaw.com

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<<<<Berry, Quackenbush & Stuart P.A.>>>>

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under federal or state law. If you have received this communication in error, please notify us immediately by replying to this email and by deleting the original message and any copies. Thank you.

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Pages marked with Bates Stamp pages BEI0090-0098 have been omitted by agreement of the parties as irrelevant to the appeal.

From: "Leonard R. Jordan Jr." <LJordan@BQSLaw.com>
To: <Rick.Wilkins@beisensors.com>
Date: 09/10/2011 06:05 AM
Subject: RE: FW: Fluid Power of the Carolinas, Inc.

9/10/11

Your lack of response has confirmed my suspicions. I will be proceeding with the lawsuit I have filed against BEI and others.

Will you accept service or should I run up additional costs, which I will expect BEI to reimburse?



Leonard R. Jordan, Jr.

Berry Quackenbush & Stuart, P.A.

1122 Lady St., 5th Floor (29201)

P.O. Box 394

Columbia, SC 29202

Telephone 803-779-2650

Direct Dial 803-255-0650

Facsimile 803-255-0179

E-mail ljordan@bqslaw.com

www.bqslaw.com

From: Leonard R. Jordan Jr.
Sent: Wednesday, September 07, 2011 3:44 PM
To: 'Rick.Wilkins@beisensors.com'
Subject: RE: FW: Fluid Power of the Carolinas, Inc.

9/7/11

It's not disappointment; it's principle. Your company referred this collection matter to this firm, through its agent, Commercial Collections. Through no fault of this firm, the matter was not pursued, although this firm made regular

Pages marked with Bates Stamp pages BEI0100-0127 have been omitted by agreement of the parties as irrelevant to the appeal.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

REPRESENTATION AGREEMENT

THIS AGREEMENT ("Agreement") is entered into by and between BEI SENSORS & SYSTEMS COMPANY, INC. D/B/A BEI DUNCAN ELECTRONICS ("Client") and BERRY, QUACKENBUSH & STUART, P.A. ("Attorney").

WITNESSETH:

1. MATTER. Client hereby retains and employs Attorney for representation in collecting a debt owed to Client by Fluid Power of the Carolinas, Inc.
2. SCOPE AND DUTIES. Attorney shall provide those legal services reasonably required to represent Client and shall take reasonable steps to keep Client informed of progress and to respond to Client's inquiries. Client shall be truthful with Attorney, cooperate with Attorney, keep Attorney informed of developments, abide by this Agreement, pay Attorney's bills on time, and keep Attorney advised of Client's address, telephone number and whereabouts.
3. AUTHORITY. Client hereby grants to Attorney full power and authority to do and perform all acts on Attorney's part which may be necessary or appropriate to its representation of Client, except that Attorney shall not enter into any agreement with respect to settlement of Client's claim without Client's consent.
4. PRIOR REPRESENTATION. Client acknowledges that no other attorney has previously or now represents Client in connection with this matter.
5. BEST EFFORTS. Attorney agrees to utilize its best efforts in the representation of Client, to advise Client in advance before taking any action which might seriously affect Client's interest, and to keep Client fully informed of all significant developments in the case.
6. COSTS. Attorney is authorized to pay or incur liability for all costs and expenses, which it may deem necessary, and for the proper representation of Client. It is understood that costs and expenses necessary for representation of Client will be advanced by Attorney on behalf of Client and will be reimbursed promptly by Client to Attorney. Costs may include, but are not limited to, title abstractor fees, filing fees, service of process, release of records, photocopying, long distance telephone calls, postage, facsimiles, photographs, investigation fees, witness fees, expert witness fees, transcripts, depositions, travel, and any other reasonable expenses which Attorney may deem necessary or appropriate in this case. Client will receive from time-to-time from Attorney billing statements reflecting the total amount due and owing for costs incurred.
7. STATEMENTS. After costs and expenses exceed the aforesaid retainer, Attorney shall send Client periodic statements for costs incurred. Client shall pay Attorney's statements within ten (10) business days after each statement's date which will be submitted to client after receipt of such statements.

8. TWOLAWSUITS. Attorney anticipates having to institute two (2) lawsuits against the debtor in trying to collect the debt.

9. CONTINGENT ATTORNEY'S FEE. Client agrees to pay Attorney, as compensation for professional services, a reasonable fee in the amount and under the terms herein set forth:

- (a) The attorney's fee, which is contingent upon recovery, will be equal to 45% of the amount recovered from settlement or judgment, which fee shall be deducted before any other amount is deducted, including costs.
- (b) In the event no money is recovered on this claim, Attorney shall receive no fee for its services, but Client shall remain fully responsible for payment of all costs incurred.
- (c) In the event there is a recovery, the aforesaid fee shall be determined and deducted before any other amount is deducted, including costs.

10. COUNTERCLAIM. If a Counterclaim is served by an adverse party, Attorney agrees to defend Client against such claim for affirmative relief, and Client agrees to compensate Attorney for such services at Attorney's hourly rate of \$225.00 per hour. This is an additional, non-contingency attorney's fee.

11. LIEN. Client hereby grants Attorney a lien on any and all claims or causes of action that are the subject of Attorney's representation under this Agreement. Attorney's lien will be for any sums due and owing to Attorney at the conclusion of Attorney's services. The lien will attach to any recovery Client may obtain, whether by arbitration award, judgment, settlement or otherwise.

12. APPEAL. The terms of this Agreement do not apply to an appeal. If there is an appeal, either by Client or by the opposing party, this Agreement shall be renegotiated.

13. AMENDMENT. Any amendment, modification, continuation or restatement of this Agreement shall be made in writing, signed by Client and Attorney, and the same shall be attached hereto. Until modification hereof is made, the terms of this Agreement shall continue as set forth herein. Any representation of Client by Attorney in any collateral or other matter or cause of action shall be controlled by a separate Representation Agreement unless otherwise agreed to in writing and signed by both Client and Attorney.

14. ARBITRATION OF DISPUTES. In the event a dispute arises over the amount due to Attorney under this Agreement, Client may submit the matter for arbitration before the South Carolina Bar's Resolution of Fee Disputes Board and that, should Client fail to make application to utilize this service within thirty (30) days after such dispute arises, Attorney may conclude that Client does not desire to utilize arbitration and may institute other means of collecting the amounts billed and unpaid, including by litigation.

15. JURISDICTION; VENUE. Client acknowledges that this Agreement, which provides for services by attorneys to be performed in the State of South Carolina, is subject to and governed by the laws of the State of South Carolina. Client and Attorney acknowledge and agree that any action to construe or enforce this Agreement shall be filed in Richland County, South Carolina.

16. ACKNOWLEDGEMENT. Client acknowledges, by execution hereof, that Client has read this Agreement in its entirety, that each provision contained in this Agreement is understood and that Client is aware that this Agreement is a binding contract between Attorney and Client.

17. EFFECTIVE DATE. This Agreement will take effect when Client has returned a signed copy of this Agreement to Attorney, but its effective date will be retroactive to the date Attorney first provided services on behalf of Client.

EXECUTED effective this ____ day of August, 2011.

**BEI SENSORS & SYSTEMS COMPANY, INC.,
D/B/A BEI DUNCAN ELECTRONICS**

By: _____

Its: _____

BERRY, QUACKENBUSH & STUART, P.A.

By: _____

Its: _____

U:\Stephanie\Jordan Misc\Fluid Power #268,0002\Fee Representation Agreement.wpd

BERRY, QUACKENBUSH & STUART P.A.

1122 Lady Street, 5th floor
PO BOX 394
COLUMBIA, SC 29202-0394
Telephone # (803) 779-2650
Fax # (803) 799-3954
Tax I.D. # 57-0787770

Frank Vecchio
BQS vs. Commercial Collection Corp. of NY
BILL BQS NOW
PO Box 288
Tonawanda NY 14150

Page: 1
February 16, 2011
Client Matter # 8268-0002B
Invoice No: 157972

BEI Duncan Elec. vs. Fluid Power of the Carolinas
#607043

DISBURSEMENTS

Title Company Services	162.50
copy charge	14.60
Postage	2.34
telephone charges	1.68
TOTAL DISBURSEMENTS	181.12
AMOUNT DUE THIS INVOICE	181.12
TOTAL AMOUNT DUE	<u>\$181.12</u>

Please send all payments to:
PO BOX 394 Columbia, SC 29202-0394. Thank you.

BEI0131

Pages marked with Bates Stamp pages BEI0132-0135 have been omitted by agreement of the parties as irrelevant to the appeal.

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

Berry, Quackenbush & Stuart, P.A.,

Plaintiff,

v.

BEI Sensors & Systems Company, Inc.,
d/b/a BEI Duncan Electronics and The
Commercial Collection Corporation
of New York, Inc.,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NUMBER 2011-CP-43-1418

AFFIDAVIT OF FRANK J. VECCHIO

Personally appeared before me, Frank J. Vecchio, who being first duly sworn, deposes and says:

1) I am a citizen and resident of Niagara County, New York, I am the Legal Supervisor for Commercial Collection Corp of N.Y., Inc., and I have actual authority to execute this affidavit on behalf of Commercial Collection Corp. of N.Y., Inc.

2) Commercial Collection Corp. of N.Y., Inc. is a corporate financial management company operating in Tonawanda, New York, providing financial collection and management services.

3) In November 2009, BEI Sensors, Inc. contracted with Commercial Collection Corp. of N.Y., Inc. to attempt to collect a debt owed to BEI Sensors, Inc. by Fluid Power of the Carolinas, Inc., a company in Sumter County, South Carolina.

4) Commercial Collection Corp. of N.Y. was unable to collect the balance owed by Fluid Power of the Carolina, Inc. to BEI Sensors, Inc.

5) In May, 2010, Commercial Collection Corp. of N.Y., specifically acting as agent for BEI Duncan Electronics Division, sent a letter to Berry, Quackenbush & Stuart whereby BEI Duncan Electronics Division offered to retain Berry, Quackenbush & Stuart at specific contingency fee rates to collect the debt owed by Fluid Power of the Carolinas, Inc. to BEI Sensors, Inc.; a true and correct copy of the said letter is attached to this affidavit as Exhibit "A".

6) On May 19, 2010, Berry, Quackenbush & Stuart accepted the case under the terms upon which it was offered.

7) Berry, Quackenbush & Stuart was unable to collect the balance due BEI Sensors, Inc. by Fluid Power of the Carolinas, Inc., and recommended two suits against Fluid Power of the Carolinas, Inc. to collect the balance claimed; one lawsuit to collect the balance due, and a second lawsuit to contest an alleged fraudulent transfer.

8) Acting as agent for BEI Sensors, Inc., Commercial Collection Corp. of N.Y. communicated the proposed lawsuit recommendations to BEI Sensors, Inc.

9) Representatives of BEI Sensors, Inc. declined to pursue litigation to collect the balance due from Fluid Power of the Carolinas, Inc.

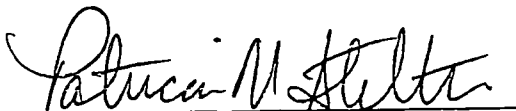
10) The file of Commercial Collection Corp. of N.Y. reflects that on August 1, 2011, the Plaintiff sent the attached letter to Robert Bernstein, attorney for Commercial Collection Corp. of N.Y., agreeing to dismiss it from the pending litigation if the Plaintiff received a letter from Commercial Collection Corp. of N.Y. on its letterhead acknowledging that it was acting solely as an authorized agent for Defendant BEI Sensors, Inc. in offering the case to the Plaintiff for collection, and acknowledging that it had informed BEI Sensors, Inc. of the pending statute of limitations issue regarding the claim against Fluid Power of the Carolinas, Inc.; a true and correct copy of the letter from the Plaintiff is attached hereto as Exhibit B to this affidavit.

11) Thereafter, Commercial Collection Corp. of N.Y. provided the Plaintiff with a letter on its letterhead confirming that it was acting solely as an authorized agent for Defendant BEI Sensors, Inc. in offering the case to the Plaintiff for collection, and acknowledging that it had informed BEI Sensors, Inc. of the pending statute of limitations issue.

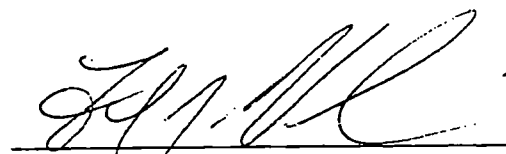
12) After Commercial Collection Corp. of N.Y. complied with the Plaintiff's conditions for dismissing it from the present suit, the Plaintiff failed and refused to dismiss Commercial Collection Corp. of N.Y. from the present litigation.

FURTHER DEPONENT SAYETH NOT.

Sworn and Subscribed before me
this 19 day of November, 2012



Notary Public for the State of New York;
My Commission Expires:



Frank J. Vecchio

PATRICIA M. STELTER
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
My Commission Expires Nov 7, 2013

Commercial Collection Corp. of NY

PO Box 288

Tonawanda, NY 14150

Phone: 716-213-1100 - Toll Free 1-800-873-5212

Fax: 1-800-873-5211

Internet Address: WWW.Commercialcollection.com

Berry Quackenbush & Stuart
PO Box 394
Columbia, SC 29016

Your name was selected from the The General Bar, Inc Law List. Claimant has authorized us as its agent to forward to you the enclosed claim for collection on the rates and conditions stated.

Creditor: BEI Duncan Electronics Div.
Vs. Debtor Fluid Power of the Carolinas Inc
108 West Clark Street
Pinewood, SC 29125

Our File: 607043 Total: \$27,600.00

We are very pleased to send this claim to your attention. If for any reason you cannot handle or if the claim is worthless, you may feel free to return it immediately.

If you deem legal action necessary, please give us all pertinent facts so that we can promptly pass them along to the creditor for his consideration.

Lastly, we would appreciate your not incurring costs of any type until client authorizes such.

We would appreciate your acknowledgement and report by: June 1, 2010
Please send your acknowledgement to: Kim Ingold – kingold@commercialcollection.com

COMMISSIONS CONTINGENT UPON COLLECTION

20% on the first	\$ 300.00
18% on the next	\$1,700.00
13% on the excess over	\$2,000.00

Suit fee – 10% per CLLA rates

Returned merchandise will be charged at 1/2 normal rate based on value.

Frank Vecchio Ext. 229
Legal Department Supervisor
THE COMMERCIAL COLLECTION CORP. OF NY
fvecchio@commercialcollection.com
www.commercialcollection.com

BERRY, QUACKENBUSH & STUART, P.A.
A PROFESSIONAL ASSOCIATION
Attorneys and Counselors at Law

1122 LADY STREET, 5th FLOOR (29201)
POST OFFICE BOX 394
COLUMBIA, SOUTH CAROLINA 29202-0394

LEONARD JORDAN, JR.
Direct Dial (803) 255-0650
E-mail ljordan@bqslaw.com

Telephone (803) 779-2650
Facsimile (803) 799-3954
www.bqslaw.com

August 1, 2011

Robert A. Bernstein, Esquire
Attorney at Law
P.O. Box 20519
Charleston, South Carolina 29413-0519

RE: Berry, Quackenbush & Stuart, P.A. vs. BEI Sensors & Systems Company, Inc.
d/b/a BEI Duncan Electronics, et al.
Case No.: 2011-CP-43-1418

Dear Bobby:

Enclosed for your information is a copy of the Summons and Complaint, which was filed on July 29, 2011.

This correspondence is not intended to and shall not constitute service of the enclosed pleadings.

The purpose of this letter is to inform you that I would be willing to dismiss Commercial Collection Corp. of NY ("Commercial") as a defendant and, also, to dismiss Fluid Power of the Carolinas, Inc. ("Fluid") as a defendant, on the following conditions:

1. Commercial confirms to me, on its letterhead, that its involvement in this matter was on behalf of BEI Sensors & Systems Company, Inc. d/b/a BEI Duncan Electronics ("BEI"), which had specifically authorized Commercial to act as its agent to retain an attorney to collect the debt owed to BEI by Fluid by litigation, if necessary; and

2. Commercial confirms to me, on its letterhead, that BEI has been made aware of the statute of limitations, which may, in the near future, affect the ability to collect the subject debt by litigation, and that BEI has, knowingly, instructed Commercial that a collection action should not be instituted against Fluid.

Please advise me, by August 9, 2011, whether or not the above-stated conditions will be met.

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

Berry, Quackenbush & Stuart, P.A.

Plaintiff,

-vs-

BEI Sensors & Systems Company, Inc.
d/b/a BEI Duncan Electronics and The
Commercial Collection Corporation of
New York, Inc.,

Defendants.

RECORDED
2012 DEC 13 PM 3:49

IN THE COURT OF COMMON PLEAS

CASE NO.: 2011-CP-43-1418

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

**AFFIDAVIT OF
LEONARD R. JORDAN, JR.**

1. I am a licensed attorney in private practice in the State of South Carolina and employed by the law firm of Berry, Quackenbush & Stuart, P.A.

2. My involvement in connection with this matter began in May 2010, when I was approached by the Defendant, Commercial Collection Corporation of New York, Inc. ("CCC"), to collect a debt due to the Defendant, BEI Sensors & Systems Company, Inc. d/b/a BEI Duncan Electronics ("BEI"), on a contingency fee basis.

3. Following my acceptance of the referral on the basis proposed by CCC, I began taking steps to try to collect the debt owed to BEI by Fluid Power of the Carolinas, Inc. ("Fluid Power"), a corporation doing business in Sumter County, South Carolina.

4. Although hindered by a distinct lack of cooperation by CCC and, presumably, by BEI, I persevered to investigate the matter, request information and make strategy suggestions from May 2010 to February 2011.

5. Ultimately, my strategy for collection of the debt involved two (2) suits: one a routine collection suit to obtain a money judgment against Fluid Power; and one under the Statute of Elizabeth to invalidate a 2009 deed whereby Fluid Power conveyed to its sister company, MLR

Fluid Power, Inc., several parcels of real property without adequate consideration.

6. During a telephone conference on February 8, 2011, Rick Wilkins of BEI instructed me to proceed with my strategy to collect the debt owed by Fluid Power; and in a follow-up telephone conference on April 20, 2011, Mr. Wilkins confirmed his instructions that I file the two suits.

7. Contrary to Mr. Wilkins' Affidavit, it is clear from numerous emails that I was authorized by him to file two (2) suits, to wit:

a. Emails from Frank Vecchio to Rick Wilkins on January 3 and January 6, 2011: "We have given counsel the green light to go forward on this one, per your instructions."

b. Email from Frank Vecchio to me on March 23, 2011: "I just left another message for Rick at client to have him approve the additional rate and also sign and return the verification for suit."

c. Email from me to Frank Vecchio on April 20, 2011: "Frank, I just spoke with Rick Wilkins. He said 'the ball is in your court' and that he has been waiting on you to send something (?) to him. Please call Rick to see what it is that he needs and, if at all possible, send it to him so he can sign-off on my proceeding with these matters. Thank you."

d. Letter from Frank Vecchio to Rick Wilkins dated August 1, 2011: "This file was placed with us November 16, 2009. We sent it to the firm, Berry, Quackenbush & Stuart, P.A. and subsequently you authorized them to sue Fluid Power. After that authorization, our requests for court costs and affidavits were not responded to."

e. Letter from Frank Vecchio to Rick Wilkins dated August 24, 2011: "As you know, counsel has repeatedly indicated that this account should be sued and that BEI had given him authorization to do so."

8. At no time prior to his Affidavit (dated July 13, 2012) did Mr. Wilkins make

any attempt to clarify that the emails and my expressed understanding were mistaken and that it was his position that neither suit was authorized; although he was aware that it was my (and CCC's) understanding that I had been instructed to file two suits, that I had prepared two Complaints and that I kept pressing to receive the executed Verifications to attach to the Complaints in preparation for filing the two suits.

9. On February 8, 2011, following receipt of instructions from Mr. Wilkins to institute two (2) suit, I ordered an examination of the title to the Fluid Power properties and drafted a Lis Pendens and two (2) Complaints.

10. The Complaints were sent by me to Frank Vecchio at CCC on February 15, 2011, for approval as to content and to obtain the execution of Verifications by BEI.

11. After numerous attempts to obtain approval of the content of the Complaints and to obtain the executed Verifications extending from the latter part of February through May 2011, I was informed on June 7, 2011, that BEI had elected not to sue Fluid Power.

12. After 13 months of working on this matter, and even after BEI specifically instructed me to proceed with the strategy of filing two (2) suits, BEI, without cause, effectively called it quits (terminated its contract with the Plaintiff) even though its collection attorney (the Plaintiff) was willing to proceed on a contingency fee basis.

13. The costs advanced for the title examination in the amount of \$181.12, which were billed on February 16, 2011, remained outstanding until after this suit was filed.

14. BEI finally remitted payment of said bill in September 2011, after it had received a copy of the suit papers in this suit, which was filed on July 29, 2011.

15. Mr. Vecchio agreed with my assessment that BEI had settled with Fluid Power. (Email from Frank Vecchio to me on June 17, 2011: "... I believe he worked out something directly with the debtor.")

16. In an effort to salvage all the work done on behalf of BEI, I, on September 7, 2011, suggested to Rick Wilkins a final resolution: that my firm would buy the debt from BEI, cover all the collection costs and pay BEI 25% of any recovery (see my email to Rick Wilkins on September 7, 2011).

17. This suggestion, which was rejected by Mr. Wilkins on or about September 13, 2011, had another purpose: to demonstrate that BEI had some reason, other than a conclusion that the debt was uncollectible, to decide to close its file rather than to continue to try to collect the debt with no risk.

18. I still believe it is likely that BEI closed its file because it had reached an accommodation, financial or otherwise, with Fluid Power.

19. Eighteen months later, Fluid Power remains open for business,¹ and its sister company, MLR Fluid Power, Inc., apparently still owns the business property (formerly owned by Fluid Power.)²

20. I remain convinced that I could have collected the debt had I been given the opportunity to file one or both of the suits, which I had been directed, and was prepared, to file.

21. I also believe that, but for the actions and inactions of CCC, BEI may not have decided to quit on collecting the debt owed by Fluid Power and that such actions and inactions of CCC, which delayed and hindered the Plaintiff's collection efforts rather than facilitating such efforts, as was its duty as the agent of BEI, actually interfered with and sabotaged the Plaintiff's collection efforts.

22. From May 2010 through May 2011, CCC unprofessionally and unreasonably

¹According to information received through Hoovers, a Dunn & Bradstreet company, Fluid Power has 25 employees and has annual sales of \$2,900,000. See Hoover's report attached hereto as Exhibit "A."

²Lots 7, 8, 9, 11, 12 and 13 of Block "L" on a plat of THE TOWN OF PINEWOOD, Sumter County Tax Parcel Nos. 168-10-02-009, 011 and 012. See Deed and Plat attached hereto collectively as Exhibit "B."

failed to respond to approximately 35 of the approximately 50 emails sent by the Plaintiff to CCC requesting information and assistance with regard to this matter.

23. The Plaintiff is entitled to compensation for the reasonably anticipated attorney's fees.

24. Such compensation should be based upon the expectation upon which the Plaintiff's acceptance of the contingency-fee contract was forwarded or, at least, based upon *quantum meruit* or restitution.

25. Such compensation should be the obligation of BEI and CCC jointly and severally.

FURTHER AFFIANT SAYETH NAUGHT.



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(803) 779-2650
Attorneys for Plaintiff

SWORN to and subscribed before me
this 22nd day of December, 2012



(L.S.)

Notary Public for South Carolina

My Commission Expires: 08/01/2016

U:\StephanieJordan Misc\Fluid Power.BEI Sensors 8268.0002\Affidavit of Leonard R. Jordan, Jr

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas
W. Jeffrey Young, Presiding Judge

Berry, Quackenbush & Stuart, P.A.,.....Appellant,
v.

BEI Sensors & Systems Company, Inc., d/b/a BEI Duncan Electronics and The Commercial
Collection Corporation of New York, Inc.,.....Defendants,

Of Whom The Commercial Collection Corporation of New York, Inc. is the.....Respondent.

CERTIFICATE OF COUNSEL

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



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ATTORNEY FOR APPELLANT

Columbia, South Carolina
October 14, 2013

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM SUMTER COUNTY

Court of Common Pleas

W. Jeffrey Young, Presiding Judge

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SC Court of Appeals

Berry, Quackenbush & Stuart, P.A.,.....Appellant,
v.

BEI Sensors & Systems Company, Inc., d/b/a BEI Duncan Electronics, and The Commercial
Collection Corporation of New York, Inc.,.....Defendants,

Of Whom The Commercial Collection Corporation of New York, Inc. is theRespondent.

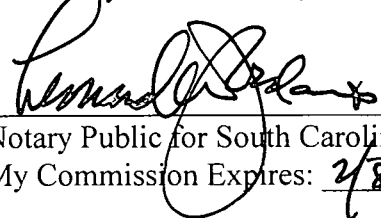
CERTIFICATE OF SERVICE BY MAIL

I, Stephanie Arnold, hereby certify that I have this 1st day of November, 2013, served
copies of the Record on Appeal, the Brief of Appellant and the Reply Brief upon the Respondent's
attorney, Robert A. Bernstein, Esquire, postage prepaid, at the address indicated below:

Robert A. Bernstein, Esquire
Attorney at Law
P.O. Box 20519
Charleston, South Carolina 29413-0519


Stephanie Arnold

SWORN to and subscribed before me
this 1st day of November, 2013

 (L.S.)
Notary Public for South Carolina
My Commission Expires: 2/8/23