

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT
Case Type: 14. Other Civil

Diamond Staffing, LLC,
Plaintiff,

Judge:
Court File No.:

v.

COMPLAINT

TempWorks Management Services, Inc.,
individually and d/b/a TMS Staffing, TempWorks
Software, Inc., and DDE, Inc.,
Defendants.

Plaintiff Diamond Staffing, LLC (“Diamond Staffing” or “Plaintiff”), for its Complaint against Defendants TempWorks Management Services, Inc. (“TempWorks Management”), individually and doing business as TMS Staffing (“TMS Staffing”), TempWorks Software, Inc. (“TempWorks Software”), and DDE, Inc. (“DDE”), states and alleges as follows:

INTRODUCTION

1. In this action Diamond Staffing seeks to recover damages for the repudiation and breach of contract by TempWorks Management of the Asset Purchase Agreement (“Purchase Agreement”) entered into between them and made effective September 16, 2013 and the Promissory Note for the sale of Plaintiff’s business (“Promissory Note”) dated September 16, 2013.
2. A true and correct copy of the Purchase Agreement is attached as **Exhibit A**.
3. A true and correct copy of the Promissory Note is attached as **Exhibit B**.
4. A true and correct copy of the Bill of Sale and Assignment (“Bill of Sale”) between the parties is attached as **Exhibit C**.

PARTIES AND JURISDICTION

5. Diamond Staffing is a Minnesota limited liability company with its principal place of business situated in the City of Richfield, County of Hennepin, State of Minnesota. Before entering into the sale of its business operations to TempWorks Management through the parties' Purchase Agreement, Diamond Staffing was in the business of staffing and temporary employment placement.

6. TempWorks Management is a Minnesota corporation with its principal place of business address located at 3140 Neil Armstrong Boulevard #205, Eagan, Minnesota 55121.

7. TMS Staffing is an entity operating under an assumed name with a principal business address located at 3140 Neil Armstrong Boulevard #205, Eagan, Minnesota 55121. On information and belief, TMS Staffing is an affiliate of TempWorks Management. On further information and belief, TMS staffing operated under a different name prior to assuming the TMS Staffing name.

8. TempWorks Software is a Minnesota corporation with a principal business address located at 3140 Neil Armstrong Boulevard #205, Eagan, Minnesota 55121.

9. DDE is a Minnesota corporation with a principal business address located at 3140 Neil Armstrong Boulevard #205, Eagan, Minnesota 55121.

10. Under the Purchase Agreement, the parties agreed that any action to enforce the terms and conditions of the Purchase Agreement shall be brought in a Minnesota court of competent jurisdiction.

11. The Court also has personal jurisdiction over the Defendants in this case and, pursuant to Minn. Stat. § 484.01(1), jurisdiction over the subject matter of this action.

12. Venue is proper in the Fourth Judicial District because a substantial part of the events at issue in this lawsuit took place in Hennepin County, which comprises the Fourth Judicial District. In addition, the Defendants hold their principal places of business in Hennepin County and conduct substantial business in the County.

FACTUAL ALLEGATIONS

13. Diamond Staffing is a career recruiting and staffing company incorporated in 2013. From its beginning, Warren Clayton, Roy Abrego, and Martin Cheatham have been its owners and operators.

14. TempWorks Software, individually and through its wholly owned and operated subsidiaries, including TempWorks Management, TMS Staffing, and DDE, provides staffing, software, accounting, management, funding, and payroll services to recruiting and staffing companies.

15. Gregg Dourgarian is the founder, chairman, and CEO of TempWorks Software. On information and belief, Gregg Dourgarian is also the owner of TempWorks Software and TempWorks Management.

16. On information and belief, David Dourgarian is the CEO of TempWorks Management, the owner of TMS Staffing, and the CEO and owner of DDE.

17. On information and belief, John Reid was the general legal counsel for TempWorks Software, TempWorks Management, TMS Staffing, and DDE.

Defendants' Intermingled Corporate Entities

18. TempWorks Management, TempWorks Software, TMS Staffing, and DDE are all operated jointly under the TempWorks name by common ownership and management. The

principal business address for each corporate entity is the same, and, during all relevant times, each entity is owned and managed by Gregg Dourgarian and/or David Dourgarian.

19. Neither TempWorks Management nor DDE have a website for their respective businesses. TempWorks Software's website (www.TempWorks.com) is instead the website whereby Defendants advertise not only the services of TempWorks Software, but also TempWorks Management and TMS Staffing. On information and belief, DDE is a non-functioning business entity that Defendants do not operate and for which Defendants do not advertise.

20. Defendants TempWorks Management, TempWorks Software, and DDE operate as though they are the same entity. For example, the Asset Purchase Agreement between the parties contemplates provisions that must be satisfied by TempWorks Management, despite DDE being the purchaser. (*See, e.g.*, Article 4.1 (c) of the Purchase Agreement) ("Employment Agreement. All office staff, shall have entered into employment and non-compete agreements with *TempWorks Management Services Inc.*") (emphasis added).

21. Gregg Dourgarian and David Dourgarian operate and otherwise treat TempWorks Management, TempWorks Software, TMS Staffing, and DDE as a single business entity with a single purpose and not as separate entities.

22. During all relevant times herein, Gregg Dourgarian and David Dourgarian used TempWorks Management, TempWorks Software, TMS Staffing, and DDE in concert to enable fraudulent and illegal behavior.

23. On information and belief, there are no employees of DDE. At the time of the Purchase Agreement, the DDE entity was administratively dissolved by the Office of the Minnesota Secretary of State and has since been administratively dissolved since June 9, 2015. See attached **Exhibit D**.

24. On information and belief, there are no employees of TempWorks Management. Instead, TempWorks Software employees act on behalf of TempWorks Management and invoice their services to TempWorks Management.

Negotiations for Sale of Diamond Staffing Assets

25. On or about June 2013, Plaintiff elected to sell its business assets and entered into a brokerage relationship with Sunbelt Business Brokers in order to secure a buyer for the sale.

26. There were numerous buyers interested in the purchase of Diamond Staffing's assets, but TempWorks Management attracted the attention of Diamond Staffing's owners with an opening verbal offer of approximately \$900,000.00.

27. Following the opening verbal offer, TempWorks Management expressed its intent to purchase and acquire all business assets, goodwill, and properties of Diamond Staffing by way of a Letter of Intent dated July 29, 2013 ("Letter of Intent"). See attached **Exhibit E**.

28. Per the Letter of Intent, TempWorks Management proposed to purchase Diamond Staffing assets in exchange for a reduced purchase price of \$700,000.00, to be paid with an initial down payment of \$135,000.00, followed by five (5) yearly payments of \$115,000.00. The Letter of Intent appears to have a mathematical error because the total payments exceed the reduced purchase price. The total purchase price with the above payment terms would be \$710,000.00.

29. Further, per the Letter of Intent, TempWorks Management wished to perform a due diligence review of Diamond Staffing's assets, including review of Diamond Staffing's customer information and lists, this data being quintessential to Diamond Staffing's value as a company.

Formation of Purchase Agreement and Sale

30. On formation of the Purchase Agreement, the owners of Diamond Staffing were only represented by a broker but were not represented by legal counsel.

31. John Reid, general legal counsel for TempWorks Management, drafted the Letter of Intent, the Purchase Agreement, the Promissory Note, and the Bill of Sale.

32. Prior to closing, John Reid altered the Purchase Agreement to reflect DDE, Inc. as the buyer, rather than TempWorks Management.

33. Provisions of the purchase documents include reference by DDE, Inc. to terms that must be fulfilled by TempWorks Management.

34. DDE, Inc. was administratively dissolved at the time by the Office of the Minnesota Secretary of State on September 16, 2013 when it entered into the Purchase Agreement with Diamond Staffing.

35. Additionally, the Purchase Agreement and Promissory Note was changed to reflect a purchase price of \$400,000.00, down significantly from the previously negotiated \$710,000.00 purchase price.

36. As a condition of the Purchase Agreement between Diamond Staffing and DDE, TempWorks Management agreed to employ the principals of Diamond Staffing.

37. The week prior to the closing of the sale, on or about September 12, 2013, David Dourgarian, John Reid, and two agents of TempWorks Software arrived at the business office of Diamond Staffing under the guise of performing a review of Diamond Staffing's assets.

38. While at the offices of Diamond Staffing on or about September 12, 2013, David Dourgarian, John Reid, and two agents of TempWorks Software illegally downloaded Diamond Staffing's customer lists, customer data, and business records from its electronic database, thereby obtaining possession of the majority of the value of Diamond Staffing's assets.

39. On information and belief, Plaintiff later discovered that David Dourgarian, John Reid, and the agents of TempWorks Software, in addition to downloading the customer data as

described above, had also altered Diamond Staffing's accounts so that the profit from the next payroll would have been transferred to TempWorks Software.

40. Having already obtained the valuable assets of Diamond Staffing, Defendants were free to change the terms of the sale to their advantage.

41. At the closing of September 16, 2013, Defendants made payment of \$65,000.00 to Diamond Staffing.

42. However, on September 25, 2013, attorney John Reid sent an e-mail on behalf of DDE and TempWorks Management to the owners of Diamond Staffing outlining TempWorks Management's refusal to pay any of the amounts due and owing under the Purchase Agreement and Promissory Note.

43. On information and belief, TempWorks Management has never had employees and had not resolved nor undertaken to accommodate hiring of new employees.

44. Defendants subsequently terminated the employment agreements with the principals of Diamond Staffing entered into under the Purchase Agreement.

COUNT I
Breach of Contract

45. The Purchase Agreement and Promissory Note constitute valid and binding contracts between DDE and Diamond Staffing.

46. Diamond Staffing materially performed the obligations under the parties' Purchase Agreement necessary to demand performance from Defendants.

47. Despite Diamond Staffing's full performance under the contract, Defendants paid only the first installment under the Purchase Agreement.

48. Defendants have likewise failed, refused, and/or neglected, without justification, to pay the remaining balance of the Purchase Agreement and Promissory Note to Diamond Staffing.

49. Defendants, as joint actors, have accordingly breached and are in default under Purchase Agreement and Promissory Note and have likewise failed to cure such default.

50. Under paragraph 4 of the Purchase Agreement, in the event of default on the Promissory Note, Diamond Staffing may at any time declare all obligations under the Promissory Note immediately due and payable.

51. Under paragraph 8.4 of the Purchase Agreement, the parties agreed that in the event of default, the prevailing party shall be entitled to recover reasonable attorney's fees and costs incurred in pursuing legal action. Further, under the same paragraph, any sums not paid when due shall accrue interest at the rate of eight percent (8%) per annum.

52. As a result of Defendants' breach of the Purchase Agreement and Promissory Note, Diamond Staffing has suffered significant monetary losses and other damages in excess of \$50,000.00 plus reasonable attorney's fees, costs, and disbursements, the exact amount to be determined at trial.

COUNT II
Unjust Enrichment

53. Defendants have been conferred a substantial benefit for their acquisition of the entire business assets of Diamond Staffing.

54. Defendants have knowingly accepted the entire value of Diamond Staffing's business assets and have appreciated its benefits, which is considerably more than they have paid.

55. Further, Defendants unlawfully acquired the assets of Diamond Staffing by converting them prior to the closing of their sale, giving Defendants an unfair and inequitable advantage over the less savvy principals of Diamond Staffing.

56. On information and belief, Defendants have derived value from the assets of Diamond Staffing. On further information and belief, DDE, having obtained the assets of Diamond

Staffing, transferred the assets to TempWorks Management, TempWorks Software, or TMS Staffing.

57. For Defendants to retain the value of Diamond Staffing's assets without payment for its true value under these circumstances would be inequitable.

58. As a direct and proximate result of Defendants' wrongful conduct, Diamond Staffing has and continues to suffer damages in an amount in excess of \$50,000.00, plus reasonable attorney's fees, costs, and disbursements, the exact amount to be determined at trial.

COUNT III
Fraud – Inducement

59. Defendants, acting in concert, represented facts to Plaintiff, as referenced in the paragraphs above, in an effort to convince and deceive the principals of Diamond Staffing that DDE was an active business entity that had the independent financial capability to purchase the assets of Diamond Staffing.

60. Further, Defendants represented facts to the principals of Diamond Staffing that as part of the sales transaction they would be employed by TempWorks Management with the knowledge that TempWorks Management is neither equipped to hire employees nor had made any resolution or action to structure TempWorks Management to hire employees.

61. Defendants' representations described above were material misrepresentations to Diamond Staffing regarding the nature of its business and the intermingled entities with which Diamond Staffing was doing business, and by making these misrepresentatives, Defendants induced the principals of Diamond Staffing to enter into the Purchase Agreement with DDE.

62. At the time of the representations, Defendants and their representatives knew them to be false or made them without specific knowledge as to whether they were true or false.

63. Defendants made the above representations with the intent to induce Diamond Staffing to act in reliance upon them.

64. Diamond Staffing reasonably and in good faith relied on Defendants' representations in the Purchase Agreement.

65. As a direct and proximate result of Defendants' fraudulent representations and Plaintiff's reliance thereon, Diamond Staffing has and continues to suffer damages in an amount in excess of \$50,000.00, plus reasonable attorney's fees, costs, and disbursements, the exact amount to be determined at trial.

COUNT IV
Conversion

66. At the time Defendants performed the due diligence review of Diamond Staffing's assets, Diamond Staffing was the owner of the data regarding its customers, customer lists, and other business records.

67. Without legal justification or authorization, Defendants jointly acted to intentionally take the above data and the final payroll draw from Diamond Staffing so as to substantially weaken Diamond Staffing's position in the sales transaction and for the sole benefit of Defendants.

68. On information and belief, Defendants continue to utilize Diamond Staffing's assets and/or have derived benefit from them to their personal and business benefit.

69. Defendants have failed, refused, and/or neglected to return the data and assets and have deprived Diamond Staffing of its value despite Diamond Staffing's demand for the return of the same.

70. Defendants willfully interfered with Diamond Staffing's property in order to obtain a business advantage and have exercised complete dominion and control over it.

71. As a direct and proximate result of Defendants' conversion of Diamond Staffing's property, Diamond Staffing has and continues to suffer damages in excess of \$50,000.00, plus reasonable attorney's fees, costs, and disbursements, the exact amount to be determined at trial.

COUNT V
Civil Theft – M.S.A. Sec. 604.14
(Alternative to Count IV)

72. Diamond Staffing was the owner of the data and access to the payroll draw taken by David Dourgarian, John Reid, and the TempWorks Software employees or agents on or about September 12, 2013.

73. Defendants TempWorks Management, TempWorks Software, David Dourgarian, and John Reid took the money and property, as described above, without authorization or justification.

74. On information and belief, the taking of Diamond Staffing's property was done at the direction of David Dourgarian and John Reid.

75. Defendants TempWorks Management, TempWorks Software, TMS Staffing, John Reid, and David Dourgarian misappropriated Diamond Staffing's data and funds without permission or consent from Plaintiff.

76. Defendants along with David Dourgarian continue to retain property that rightfully belongs to Diamond Staffing.

77. Under Section 604.14 of the Minnesota Statutes, a person who steals personal property from another is civilly liable to the owner of the property for its value when stolen plus punitive damages of either \$50.00 or up to 100 percent of its value when stolen, whichever is greater. The filing of a criminal complaint, conviction, or guilty plea is not a prerequisite to liability under this section.

78. As a direct and proximate result of Defendants' intentional theft, Diamond Staffing has and continues to suffer damages in excess of \$50,000.00, plus reasonable attorney's fees, costs, and disbursements, the exact amount to be determined at trial.

COUNT VI
Conspiracy

79. TempWorks Management, TempWorks Software, and DDE have either contracted with or provided services to Diamond Staffing.

80. As a result, TempWorks Management, TempWorks Software, and DDE each had access to all of Diamond Staffing's confidential information, including but not limited to Diamond Staffing's pricing information, sales leads, client notes, client information, and associate information.

81. Defendants conspired together to obtain and misappropriate Diamond Staffing's confidential customer, sales, pricing, and client information.

82. Defendants conspired together to utilize Diamond Staffing's customer, sales, pricing, and client data to further their tortious acts, including conversion, fraud, and breach of contract.

83. On information and belief, Defendants have profited and continue to profit as a result of Defendants' own illegal acts.

84. As conspirators, each Defendant is liable to Diamond Staffing for the damages caused by the other co-conspirators' wrongful conduct, including any consequential, punitive, or statutory damages resulting therefrom.

85. As a direct and proximate result of Defendants' conspiratorial acts referenced in this Complaint, Diamond Staffing has suffered and continues to suffer damages in an approximate

amount in excess of \$50,000.00, statutorily permitted punitive damages, reasonable attorney's fees, costs, and disbursements, the exact amount to be determined at trial.

WHEREFORE, Plaintiff Diamond Staffing prays for judgment against Defendants as follows:

- A. Judgment in favor of Plaintiff and against Defendants on all counts;
- B. Leave to amend to add a claim for punitive damages;
- C. An award of actual damages and restitution in excess of Fifty Thousand Dollars (\$50,000.00), plus statutorily provided punitive damages, the exact amount to be determined at trial;
- D. An award of pre-judgment and post-judgment interest as provided by law;
- E. An award of reasonable attorney's fees, costs, and disbursements; and
- F. For such further relief as the Court concludes is appropriate.

Dated: September 24, 2015



Lucas D. Wilson, #391339

WILSON LAW, LLC

Matthew L. McMullen, #393270

Jordan A. Kolinski, #393196

KOLINSKI & MCMULLEN, LLC

3109 Hennepin Avenue South

Minneapolis, Minnesota 55408

Telephone: 612 977 3180

Facsimile: 612 827 3564

lucas@wilson-law.com

ATTORNEYS FOR PLAINTIFF

ACKNOWLEDGMENT

The undersigned hereby acknowledges that costs, disbursements, and reasonable attorney's and witness fees may be awarded pursuant to Minnesota Statutes, Section 549.211, to the party against whom the allegations in this pleading are asserted.

Dated: September 24, 2015

A handwritten signature in black ink, appearing to read "Lucas D. Wilson", is written over a horizontal line.

Lucas D. Wilson