

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF TENNESSEE
AT GREENEVILLE**

IN RE:

WEATHERSFIELD MANAGEMENT, LLC)
f/k/a/ ACCUFORCE STAFFING SERVICES,)
LLC,)
Debtor-in-Possession.)

CASE NO. 09-52756
Chapter 11

WEATHERSFIELD MANAGEMENT, LLC,)
)
Plaintiff/Counter-Defendant)

vs.)

Adv. Proceeding No. 2-10-ap-05012

TEMPWORKS SOFTWARE, INC.,)
)
Defendant/Counter-Plaintiff)

RESTATED AND AMENDED COMPLAINT

Comes now Weathersfield Management, LLC, Debtor-in-Possession (“Debtor”), by and through counsel, and files this Restated and Amended Complaint pursuant to Rule 15, Fed. R. Civ. P. and Rule 7015, Fed. R. Bankr. P.

1. Debtor filed a petition for relief under Chapter 11 of the Bankruptcy Code, bearing Docket No. 09-52756.

2. This is a core proceeding under 28 U.S.C. § 157(b)(2)(1). Venue is proper pursuant to 28 U.S.C. § 1409.

3. Defendant TempWorks Software, Inc. (“TempWorks”) is a corporation organized and existing under the laws of the State of Minnesota with its principal place of business located at 3140 Neil Armstrong Boulevard, Suite 205, Eagan, Minnesota 55121. Upon information and belief, it is registered to do business in the State of Tennessee.

4. The Plaintiff is engaged in the business of providing temporary staffing services. An integral part of its business involves the payment of temporary personnel and related tax obligations.

5. On or about July 15, 2004, the Defendant entered into a Subscription License Agreement with the Plaintiff for a product known as "TempWorks Software." The software was used by the Plaintiff for the operation of its business until late December of 2009. Specifically, the software was used to perform payroll and accounting functions and to produce documents necessary for tax reporting and filing.

6. The Plaintiff paid the Defendant in excess of \$700,000 since the date of the contract.

7. The Plaintiff had sales in excess of \$100,000,000 since the date of the contract and paid millions of dollars in payroll and related taxes. The Plaintiff relied upon the information provided by the Defendant's software with respect to its payment of necessary tax obligations.

8. The Internal Revenue Service has assessed or is prepared to assess fines and penalties against the Plaintiff because of improper information and forms generated by the Plaintiff's software. For example, the total gross wages on the FORMS 941 and 940 do not match the total gross wages on the FORMS W-2 and W-3. This has caused the Social Security Administration in some instances to reject the FORMS W-2 and W-3 and delay filing of the FORMS until the matter is corrected. Penalties and interest have been assessed because deposits do not match the information on the payroll tax returns. The Plaintiff has become aware that deposits for some employees were made during the course of the year under one EIN, but after

the end of the year, those same wages were reported on FORMS W-2 and W-3 under a different business EIN number.

9. After the Plaintiff filed its bankruptcy petition, the Defendant engaged in activities designed to “punish” the Plaintiff for filing bankruptcy, which had the effect of breaching its contract with the Plaintiff, interfering with the Plaintiff’s property, and preventing the Plaintiff from effectively addressing the issues with the IRS, all in violation of the automatic stay provisions of 11 U.S.C. § 362. As a result of the Defendant’s actions, the Plaintiff terminated its relationship with the Defendant. Since then, the Defendant has refused to provide access to the software that contains the Plaintiff’s data and has engaged in other actions that interfered with the Plaintiff’s property rights and which prevented the Plaintiff from being able to search reports in order to correct information previously provided to the IRS.

10. Specific inquiries were made by the Plaintiff’s comptroller, Bill Sleuss, for TempWorks to provide information from the TempWorks software and from its employees regarding the 2006 and 2007 taxes. The information TempWorks provided was inconsistent with previous information it had provided and simply continued the Defendant’s obstruction of the Plaintiff’s attempts to resolve the issues with the IRS.

11. Upon information and belief, after the Plaintiff filed its bankruptcy petition, the Defendant loaded a Trojan on to the software, which placed expiration dates into the software. At the end of the month when the Plaintiff was trying to perform payroll functions, it could not do so because the Defendant’s software would simply shut off. The Defendant would then demand payment of fees before it would resume the software. The fees demanded by the Defendant to resume the software were in excess of the normal charges. The Defendant’s

actions constitute post-petition breaches of its contract with the Plaintiff and interference with the Plaintiff's property rights, all in violation of the automatic stay.

12. The Plaintiff has requested that the Defendant allow it access to the software in order to address the IRS issues. The Defendant has not only refused to provide access to the software but has also actively prohibited the Plaintiff from accessing and understanding the data, such that the Plaintiff has yet to be able to pull necessary information from the software in order to try to respond to the IRS regarding the discrepancies in the information provided to the IRS. The Defendant's actions constitute post-petition breaches of its contract with the Plaintiff and interference with the Plaintiff's property rights, all in violation of the automatic stay.

13. Upon information and belief, the Defendant fired one of its employees when it learned that the employee was trying to assist the Plaintiff in gaining access to its data and with the various problems the Plaintiff was having with the Defendant's software. The Defendant's actions interfered with the Plaintiff's property rights and were in violation of the automatic stay.

14. Upon information and belief, the Defendant accessed confidential information contained within the Plaintiff's database and illegally removed the data contained therein, constituting a post-petition breach of contract and interference with the Plaintiff's property rights, all in violation of the automatic stay.

15. In sum, the Defendant's actions after the Plaintiff filed for bankruptcy constituted post-petition breaches of its contract with the Plaintiff in violation of the automatic stay provisions of 11 U.S.C. § 362. As a result, the Plaintiff has sustained damages, including but not limited to, the fines and penalties assessed by the IRS; damages from the interference with the Plaintiff's property rights, the full extent of which cannot be known until discovery is completed; and attorney fees.

WHEREFORE, the Plaintiff seeks a judgment in this matter in an amount to be determined by the evidence presented at trial and to include attorney fees and costs. The Plaintiff also seeks such other relief to which the Court may deem it entitled.

Respectfully submitted, this the 25th day of August, 2011.

/s/ Kristi M. Davis
Kristi M. Davis
Attorney for Weathersfield Management, LLC
HODGES, DOUGHTY & CARSON, PLLC
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Restated and Amended Complaint was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the court's electronic filing system. Said parties are:

Robert L. Vance, Esq.
P.O. Box 900
Knoxville, TN 37901-0900

This 25th day of August, 2011.

HODGES, DOUGHTY & CARSON

By: /s/ Kristi M. Davis
Kristi M. Davis (BPR # 019487)