

FILED

MAR 20 P 4: 21

ORLEANS PARISH CIVIL DISTRICT COURT

CIVIL DISTRICT COURT

STATE OF LOUISIANA

NO.: 2007-3665

SECTION 15

DIVISION B

ACTIVE SOLUTIONS, L.L.C. AND SOUTHERN ELECTRONICS SUPPLY, INC.

versus

DELL, INC., THOMAS H. WELCH, JR., AND STEVE RENEKER

FILED: _____

DEPUTY CLERK

PETITION FOR DAMAGES

NOW INTO COURT, through undersigned counsel, come plaintiffs, Active Solutions, L.L.C. ("Active Solutions") and Southern Electronics Supply, Inc. ("Southern Electronics"), who respectfully file this Petition against defendants, Dell Inc., upon representing as follows:

1.

Active Solutions, L.L.C. is a domestic limited liability company domiciled in New Orleans, Louisiana.

2.

Southern Electronics Supply, Inc. is a domestic corporation domiciled in New Orleans, Louisiana.

3.

Defendant, Dell Inc., on information and belief, is a foreign corporation licensed to do and doing business in the State of Louisiana with its principal place of business located in Austin, Texas.

4.

Defendant, Thomas H. Welch, Jr., on information and belief, is a Vice President in the Legal Department of Dell, Inc., and a resident of Round Rock, Texas.

5.

Defendant, Steve Reneker, on information and belief, is "Business Development Manager, Public Safety & Criminal Justice, Dell State and Local Government," for Dell, Inc., and a resident of Round Rock, Texas.

6.

On or about July 19, 2004, Southern Electronics finalized a contract ("Contract") between itself and the City of New Orleans ("City") to provide surveillance equipment, technology and design as well as installation of the same, pursuant to the City Wide Surveillance Camera Project.

7.

Southern Electronics was awarded the Contract after a February 2004 Request for Proposal bid process.

8.

Active Solutions was subcontracted by Southern Electronics - and specifically referenced in the proposal - to provide project engineering and system integration and was primarily responsible for the overall system design and performance.

9.

Shortly after entering into the contract with the City, Southern Electronics and Active Solutions were approached by defendant Dell.

10.

In letters to both Southern Electronics (dated August 21, 2004) and Active Solutions (dated August 6, 2004), Steve Reneker, an officer of defendant Dell and on behalf of Dell, expressed great interest in the plaintiffs' systems stating, "I look forward to expanding Dell's Public Safety and Criminal Justice vertical and working on future opportunities in partnership with Southern Electronics Supply [Active Solutions], to assist in growing your business."

11.

On July 20, 2004, Brian C. Fitzpatrick, President of Active Solutions, L.L.C., signed a Standard Non-Disclosure Agreement drafted by defendant, Dell. This Non-Disclosure Agreement was subsequently signed by Thomas H. Welch, Jr., an officer of defendant Dell.

12.

On July 21, 2004, Ignace A. Perrin, III, President of Southern Electronics Supply, signed a Standard Non-Disclosure Agreement drafted by defendant, Dell. This Non-Disclosure Agreement was subsequently signed by Thomas H. Welch, Jr., an officer of defendant Dell.

13.

These Non-Disclosure Agreements (“NDAs”) were duplicates of one another, each containing the same terms and provisions and the effective date of both being August 1, 2004.

14.

The parties entered into these NDAs for the express purpose of protecting Confidential Information.

15.

Section 4A of the NDA, titled “Confidential Information,” defines Confidential Information as “product and roadmap information, marketing plans, financial/pricing information, customer and vendor related data, services/support and other business information including, but not limited to software, strategies, plans, techniques, drawings, designs, specifications, technical or know-how data, research and development, ideas, inventions, patent disclosures that may be disclosed between the parties whether in written, oral, electronic, website-based, or other form. This agreement also includes Confidential Information acquired during any facilities tours.”

16.

Section 6 of the NDA, titled “Protection Period and Return of Information,” states that “[u]nless the parties otherwise agree in writing, a Recipient’s duty to protect Confidential Information expires three (3) years from the date of disclosure.”

17.

Section 14 of the NDA, titled “Remedies,” states that “each party acknowledges that damages for improper disclosure of Confidential Information may be irreparable; therefore, the injured Party may be entitled to seek equitable relief, including injunction and preliminary injunction, in addition to all other remedies available at law or in equity.”

18.

Dell had nothing to do with installing cameras in the City of New Orleans before or at the time they signed the NDAs with the plaintiffs.

19.

Representatives of Southern Electronics and Active Solutions met and communicated with representatives of Dell in anticipation of becoming the provider for Dell's Public Safety Sector not only for the City of New Orleans, but nationwide.

20.

At these meetings and in communications with Dell, Southern Electronics and Active Solutions discussed, in detail, the products and infrastructure of combined camera systems that could be placed on existing telephone poles and/or street lamps and remotely monitored.

21.

In addition, plaintiffs' representatives described the manner in which the products and camera sites could be used as wireless access points and utilized in any number of ways.

22.

The discussions described above occurred privately and the matters discussed therein constituted Confidential Information as contemplated by the NDAs.

23.

In February of 2007, then Chief Technology Officer for the City of New Orleans, Mark Kurt, at a public works meeting, stated that the cameras used for the City Wide Surveillance Camera Project were being purchased through Dell.

24.

Defendant Dell, through contracts implementing the products, systems, plans and designs developed by plaintiffs, has breached its agreement with plaintiffs and has caused, and will continue to cause, irreparable harm to Southern Electronics and Active Solutions.

25.

The products, systems, plans and designs developed by the plaintiffs and improperly utilized by the defendants, without the plaintiffs' permission or knowledge, are worth millions of dollars and have the potential to be worth millions more.

26.

Upon information and belief, Dell has earned millions of dollars as a direct breach of the aforementioned NDAs.

FIRST CAUSE OF ACTION - BREACH OF CONTRACT

27.

Plaintiffs adopt by reference and incorporate all previous allegations in all preceding paragraphs as if fully set forth herein.

28.

As set forth above, Dell entered into an agreement with the plaintiffs wherein they consented not to divulge any Confidential Information.

29.

Through contracts implementing the confidential products, systems, plans and designs developed by the plaintiffs, Dell has breached its obligation to plaintiffs.

30.

Dell is liable for its breach of contract for the following, non-exclusive list of damages:

- a. The start up costs associated with the anticipation of further business with Dell, as contemplated by the letters from Steve Reneker to the plaintiffs; and
- b. The loss of future business and contracts as a result of Dell's breach.

31.

In addition and/or in the alternative, defendants breached the contract in bad faith so that they are liable to the plaintiffs for all damages, foreseeable or not, that are a direct consequence of their breach.

SECOND CAUSE OF ACTION - UNFAIR TRADE PRACTICES

32.

Plaintiffs adopt by reference and incorporate all previous allegations in all preceding paragraphs as if fully set forth herein.

33.

The Louisiana Unfair Trade Practices and Consumer Protection Law, L.S.A.-R.S. 51:1401, *et seq.*, prohibits unfair or deceptive methods, acts or practices in trade or commerce.

34.

Defendants have engaged in unfair and deceptive trade practices for the purpose and with the effect of manipulating the crime surveillance product, system, planning and design market in New Orleans and elsewhere. As a direct consequence of such unlawful trade practices by the defendants, plaintiffs have been and continue to be damaged, including the loss of revenues not only in New Orleans but elsewhere.

35.

Defendants, through their actions, have engaged in unfair trade practices in an attempt to disrupt and impair the business dealings of the plaintiffs.

36.

An injunction prohibiting defendants from engaging in further unfair and unlawful trade practices is appropriate under the circumstances.

THIRD CAUSE OF ACTION - UNJUST ENRICHMENT

37.

Plaintiffs adopt by reference and incorporate all previous allegations in all preceding paragraphs as if fully set forth herein.

38.

Plaintiffs assert that defendant Dell has been unjustly enriched by their breach of contract.

39.

Without the Confidential Information provided to Dell by the plaintiffs, defendant Dell, would have been unable to secure contracts and implement the products, systems, plans and designs

developed by the plaintiffs and currently being utilized by the City and nationwide and would thus not have been paid for said implementation.

FOURTH CAUSE OF ACTION - TORTIOUS INTERFERENCE

40.

Plaintiffs adopt by reference and incorporate all previous allegations in all preceding paragraphs as if fully set forth herein.

41.

Subject to Section 6 of the NDAs, defendants had an obligation to abide by the provisions of the NDA and protect any Confidential Information relative to its dealings with the plaintiffs for at least three (3) years from the date of disclosure.

42.

Defendants, Thomas H. Welch, Jr., and Steve Reneker, were fully aware of, and willfully and intentionally interfered with, the terms and conditions of the NDA in sharing Confidential Information.

43.

There was no justification for defendants, Thomas H. Welch, Jr., and Steve Reneker, to breach the NDAs.

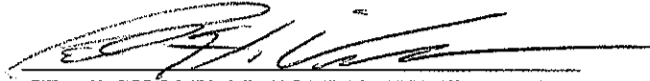
44.

The willful and intentional acts of defendants proximately caused actual damage to the plaintiffs in the form of lost revenues and lost business both in the City of New Orleans and elsewhere throughout the United States and the world.

WHEREFORE, plaintiffs Southern Electronics and Active Solutions, pray that, after due proceedings be had, there be judgment rendered herein in their favor and against defendants Dell Inc., Thomas H. Welch, Jr., and Steve Reneker declaring defendants to be liable and indebted unto plaintiffs, for all damages as are just and reasonable under the circumstances, including treble damages under the Louisiana Unfair Trade Practices Act, as well as for judicial interest from the date

of judicial demand. Plaintiffs further pray for all other and extra relief that may be just and reasonable under the circumstances of this matter.

Respectfully submitted,



GLADSTONE N. JONES, III (#22221)
LYNN E. SWANSON (#22650)
PAUL H. VILLALOBOS (#22881)
JONES, VERRAS & FREIBERG, L.L.C.
601 Poydras Street, Suite 2655
New Orleans, Louisiana 70130
Telephone: (504) 523-2500
Telecopier: (504) 523-2508
Counsel for Plaintiffs