FILED

ORLEANS PARISH 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, *ET AL.*

FILED:_____   _____
                                                   DEPUTY CLERK

FIFTH AMENDED AND SUPPLEMENTAL 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") (collectively, "Plaintiffs"), who respectfully file this Fifth Amended and Supplemental Amended Petition for Damages, by incorporating *in extenso* its original Petition for Damages filed on April 20, 2007, its First Amended and Supplemental Petition filed on April 30, 2007, its Second Amended and Supplemental Petition filed on October 3, 2007, its Third Amended and Supplemental Petition filed on March 24, 2008, and its Fourth Amended and Supplemental Petition filed on August 4, 2008,

1.

By adding the following paragraphs immediately after Paragraph 83 of the Fourth Amended and Supplemental Petition for Damages:

83(a).

Defendant Drake, individually and on behalf of the City of New Orleans, NetMethods, Imagine and Veracent, promised Plaintiffs that they would be timely paid for their work and paid all past due amounts owed pursuant to the Contract . Plaintiffs reasonably relied on those promises and continued to install cameras for the City despite the fact that the City was past due on many payments owed to Plaintiffs for work completed. Because of Plaintiffs' reliance on those promises, Plaintiffs are still owed significant sums for work completed pursuant to the Contract.

83(b).

In addition, defendant Drake, individually and on behalf of the City of New Orleans, NetMethods, Imagine and Veracent, promised Plaintiffs that Drake and the aforementioned defendants would work with Plaintiffs to share information related to prospective opportunities for additional sales of Plaintiffs' System and would include Plaintiffs in any and all business development discussions, including further discussions with the Dell Defendants. Plaintiffs reasonably relied on those promises and forwarded Drake proprietary and confidential information related to their System's specifications and pricing. Plaintiffs also reasonably relied on Drake to facilitate additional discussions with the Dell Defendants and provided Drake with confidential pricing information to provide to the Dell Defendants. Because of these promises, the Plaintiffs did not independently work to further the relationship with the Dell Defendants and focused their own efforts on installation of the System in New Orleans rather than outside marketing opportunities. However, these promises were wholly false and Drake, NetMethods, Imagine and Veracent failed to include Plaintiffs in any additional discussions with Dell or any other prospective business opportunities and took those opportunities for their own benefit after copying Plaintiffs' System and representing it as their own.

83(c).

On July 8, 2004, defendant Drake in the name of Imagine Consulting, an non-existent entity, arranged a meeting with Plaintiffs, Dell, and St. Pierre and Drake as "Imagine Consulting." At that meeting, Drake and St. Pierre promised to team and/or partner with Plaintiffs and Dell with regards to the marketing and sale of Plaintiffs' System. Defendant Drake also promised Plaintiffs that he would facilitate the relationship with Dell on behalf of Plaintiffs and "Imagine Consulting." Plaintiffs reasonably relied on these promise which were wholly false.

83(d).

In addition, in April 2005, defendant Drake, on behalf of defendant NetMethods, promised Plaintiffs that Drake, St. Pierre, Imagine and NetMethods "do not intend to do anything without Active and/or Southen (*sic*)" with regards to the marketing and sales of Plaintiffs' System. Plaintiffs reasonably relied on this promise which was wholly false."

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2.

By amending the Eighth Cause of Action, including Paragraphs 112 through 116, of the Fourth Amended and Supplemental Petition for Damages to read as follows:

112.

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

113.

The City entered into a Contract with Plaintiffs which specified that a minimum of two hundred and forty (240) cameras would be purchased from and installed by Plaintiffs.

114.

Plaintiffs were prevented, by delay in scheduling by the City and the City Employee Defendants and by refusing to timely pay Plaintiffs in accordance with the Contract, from installing the minimum number of cameras guaranteed by the Contract, causing damage to Plaintiffs.

114(a).

Plaintiffs also continued to install cameras for the City of New Orleans despite being owed significant amounts under the Contract based upon the promises of payment made by defendant Drake on behalf of the City of New Orleans, causing damage to Plaintiffs.

115.

Because of their primary commitment to the City Contract, in reliance on the Contract minimums and because of the promises from defendants Drake, St. Pierre, City of New Orleans, NetMethods, Imagine and Veracent, Plaintiffs chose not to aggressively pursue and undertake other business opportunities including but not limited to with the Dell Defendants. Plaintiffs were damaged as a result.

115(a).

In reliance on promises made by defendants Drake and St. Pierre regarding teaming and/or partnering with Plaintiffs and Dell with regards to the marketing and sale of Plaintiffs' System and Drake's promises to be facilitator of that relationship, Plaintiffs provided Drake and/or St. Pierre

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with confidential and proprietary information regarding their System and did not independently pursue the relationship with Dell. Plaintiffs were damaged as a result.

<center>115(b).</center>

In addition, in reliance on those promises made by defendants Drake, St. Pierre, NetMethods, Imagine and Veracent and believing that those defendants were marketing and pursuing additional business opportunities on Plaintiffs' behalf, Plaintiffs provided those defendants with confidential and proprietary information regarding their System; forwarded those defendants information on potential business opportunities and did not aggressively pursue other business opportunities. Plaintiffs were damaged as a result.

<center>116.</center>

The City and the City Employee Defendants are liable under theories of promissory estoppel/detrimental reliance for the following, non-exclusive list of damages:

a.   The loss of present business and contracts as, specifically but not limited to the failure of the City to abide by its Contract minimums and make full payment on work completed by Plaintiffs;

b.   The loss of additional business opportunities Plaintiffs could have undertaken;

c.   The loss of business opportunities with Dell;

d.   The loss of additional business opportunities which were obtained by defendants Imagine, NetMethods and Veracent, including but not limited to City of New Orleans and City of Baton Rouge, after those defendants promised Plaintiffs that they would pursue additional business opportunities both on Plaintiffs' behalf and in conjunction with Plaintiffs.
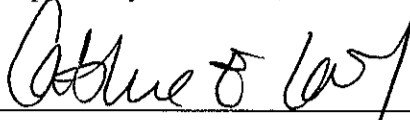
<center>3.</center>

By adding the following paragraph immediately after Paragraph 186 of the Fourth Amended and Supplemental Petition for Damages.

<center>187.</center>

Plaintiffs re-allege and incorporate the foregoing facts alleged herein by reference and each and every cause of action as set forth in the Fourth Amended and Supplemental Petition for Damages.

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Respectfully submitted,

(signature)

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing upon all known counsel of

record by electronic mail, facsimile and/or U.S. Mail on this 7ᵗʰ day of October, 2008.

(signature)

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