

Harris County - County Civil Court at Law No. 2

CAUSE NO. _____

DIVERSE CAPITAL, LLC

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IN THE COUNTY COURT

VS.

NO. _____

MAKANA LEADERSHIP ACADEMY, LLC;
and JACOB FLANDRO POPE

HARRIS COUNTY, TEXAS

PLAINTIFF’S ORIGINAL PETITION

1. PARTIES.

Plaintiff is DIVERSE CAPITAL, LLC (“Plaintiff”). Defendants are MAKANA LEADERSHIP ACADEMY, LLC; and JACOB FLANDRO POPE (“Defendant”).

2. SERVICE.

Defendant(s) may be served at:

MAKANA LEADERSHIP ACADEMY, LLC

JACOB FLANDRO POPE

3. VENUE.

Venue is proper in this court because this is where the contract was signed, where the Plaintiff resides, where the parties agreed, or where the events giving rise to Plaintiff’s claims occurred. TEX. CIV. PRAC. & REM. CODE §§ 15.002(a), 15.035(b). This Court may also have jurisdiction and venue over this claim pursuant to TEX. CIV. PRAC. & REM. CODE §§ 15.092(a) and 15.094 because it arises out of a contract performed in this county, the parties agreed to venue here, or the cause of action arose in this county.

4. FACTS.

Plaintiff is a corporation that purchases future receipts from companies like Defendant. In so doing, the parties execute a Payment Rights Purchase and Sale Agreement (the "Agreement"). The Agreement provides that, in return for the purchase amount, Plaintiff is entitled to receive a percentage of Defendant's future sales or receipts. Thus, Plaintiff is permitted to debit from Defendant's bank account a percentage of the daily estimated receipts, and Defendant is required to deposit those receipts into that specific bank account. By entering into the Agreement, Defendant understands that it is responsible for ensuring the daily payment amount is available in its bank account, and is liable to Plaintiff for any rejected electronic check or debit attempt.

Plaintiff has complied with its part of the Agreement by paying the purchase amount to Defendant. Despite this, Defendant has defaulted on its obligations under the Agreement. Specifically, daily debits from Defendant's bank account have failed or been rejected. Further, Plaintiff has reason to believe that Defendant has either blocked Plaintiff from debiting from the bank account, rejected debits attempted by Plaintiff, or deposited its receipts into a different bank account.

5. FIRST CAUSE OF ACTION - BREACH OF CONTRACT.

Defendant defaulted in its obligations under the Payment Rights Purchase and Sale Agreement. Despite Defendant's promises, daily debits from Defendant's bank account have failed or been rejected. In addition, if Defendant has blocked Plaintiff from its bank account, rejected Plaintiff's attempted debits, or deposited Defendant's receipts into a different bank account, these constitute additional grounds for breach of contract. Due to Defendant's breach of the Agreement, and pursuant to terms listed in that Agreement, additional charges and other fees are due and owing to Plaintiff. Defendant's breach has damaged Plaintiff in the amount of \$21,900.00. Plaintiff has applied all just and lawful offsets, credits and payments to Defendant's account. In addition,

Plaintiff has made timely demand on Defendant to pay the amounts due and owing, but Defendant has not done so. In addition, if Defendants attempted to settle this matter by signing a settlement agreement, they broke that agreement. This constitutes an additional cause of action for breach of contract.

6. SECOND CAUSE OF ACTION - CONVERSION

Plaintiff and Defendant entered into an account purchase transaction as defined under Tex. Fin. Code § 306.001. By the terms of the Agreement, Plaintiff took an ownership interest in Defendant's future sales and receipts. By Defendant's actions, Plaintiff has been denied access to its property. Defendant has wrongfully converted Plaintiff's property and should be held accountable for doing so. Plaintiff has been damaged by Defendant's actions.

7. THIRD CAUSE OF ACTION - GUARANTY

The Agreement signed by Defendant contains a Personal Guaranty. Under that Guaranty, Defendant JACOB FLANDRO POPE ("Guarantor") personally guaranteed all obligations under the Agreement. Therefore, Guarantor is liable for any and all breaches arising under the Agreement, as well as damages resulting therefrom.

8. REQUEST FOR ATTORNEY'S FEES.

Defendant's default has made it necessary for Plaintiff to employ the undersigned attorney to file suit. Plaintiff requests a reasonable fee of at least \$5,500.00 for the attorney's services rendered in this case. Plaintiff is entitled to recover attorney's fees pursuant to the terms of the Agreement and the provisions of Chapter 38 of the TEX. CIV. PRAC. & REM. CODE. Further, Anh H. Regent is designated as an expert on attorney's fees.

9. REQUEST FOR ADMISSIONS.

Pursuant to the TEXAS RULES OF CIVIL PROCEDURE, Defendant is requested to admit the truth of each of the matters listed below. Responses to these Requests for Admission are due 50 days after service of the request. Please admit that:

1. Plaintiff and Defendant entered into a Payment Rights Purchase and Sale Agreement (the "Agreement").
2. At the time Defendant signed the Agreement, Defendant understood that Plaintiff would be making daily debits from a single bank account held by Defendant (the "Bank Account").
3. At the time Defendant signed the Agreement, Defendant understood that the Bank Account is the same bank account that Defendant designated on documents turned into Plaintiff.
4. At the time Defendant signed the Agreement, Defendant understood that it was required to deposit all future receipts or sales into the Bank Account.
5. At the time Defendant signed the Agreement, Defendant understood that it was not permitted to deposit any future receipts or sales into a bank account other than the Bank Account.
6. At some point after signing the Agreement, Defendant deposited funds from receipts or sales into a bank account other than the Bank Account.
7. Defendant JACOB FLANDRO POPE personally guaranteed the Agreement.
8. Defendant presently owes Plaintiff the amount of \$21,900.00.
9. Defendant has breached the Agreement.
10. Plaintiff made demand on Defendant before filing suit for payment of the amount due at that time.
11. Plaintiff has applied all just and lawful offsets to the Defendant under the Agreement.

10. REQUEST FOR DISCLOSURES.

Pursuant to Rule 194, Plaintiff requests the following disclosures from Defendant:

- (a) the correct names of the parties to the lawsuit;
- (b) the names, addresses, and telephone numbers of any potential parties;
- (c) the legal theories and, in general, the factual bases of the responding party's claims or defenses (the responding party need not marshal all evidence that may be offered at trial);
- (d) the amount and any method of calculating economic damages;
- (e) the name, address, and telephone number of persons having knowledge of relevant facts, and a brief statement of each identified person's connection with the case;
- (f) for any testifying expert:
 - (1) the expert's name, address, and telephone number;
 - (2) the subject matter on which the expert will testify;
 - (3) the general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, or if the expert is not retained

by, employed by, or otherwise subject to the control of the responding party, documents reflecting such information;

(4) if the expert is retained by, employed by, or otherwise subject to the control of the responding party:

- (A) all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony; and
- (B) the expert's current resume and bibliography;

- (g) any indemnity and insuring agreements described in Rule 192.3(f);
- (h) any settlement agreements described in Rule 192.3(g);
- (i) any witness statements described in Rule 192.3(h);
- (j) in a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills that are reasonably related to the injuries or damages asserted or, in lieu thereof, an authorization permitting the disclosure of such medical records and bills;
- (k) in a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills obtained by the responding party by virtue of an authorization furnished by the requesting party.

Responses to this Request for Disclosures are due 50 days after service of the request.

11. PRAYER.

WHEREFORE, Plaintiff prays that—

- A. Defendant be cited to appear and answer herein;
- B. Plaintiff be granted judgment for the amount due, along with post judgment interest;
- D. Plaintiff be granted judgment for all costs of court;
- E. Plaintiff be awarded reasonable attorney's fees, with interest; and
- F. Plaintiff be granted such other and further relief, special or general, legal or equitable, as Plaintiff may be shown to be justly entitled.

Respectfully Submitted,

By: /s/ Anh H. Regent

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