

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

NBD INTERNATIONAL, INC.)	CASE NO. 5:09 CV 0921
241 Myrtle Street)	
Ravenna, Ohio 44266)	JUDGE JOHN R. ADAMS
)	
Plaintiff,)	
)	
v.)	<u>FIRST AMENDED COMPLAINT</u>
)	
ROBERT CARHART AKA LEROY)	
CARHART dba A.C.C.O.N.)	
1002 West Mission Ave.)	
Bellevue, NE 68005-3944)	
)	
and)	
)	
LEROY CARHART AKA ROBERT)	
CARHART dba A.C.C.O.N.)	
1002 West Mission Ave.)	
Bellevue, NE 68005-3944)	
)	
Defendants.)	

Now comes Plaintiff, NBD International, Inc. (hereinafter "NBD" or "Plaintiff"), by and through its counsel, and for its Complaint against Defendant, Robert Carhart aka LeRoy Carhart dba A.C.C.O.N. ("Defendant R. Carhart") and Defendant, LeRoy Carhart aka Robert Carhart dba A.C.C.O.N. (Defendant L. Carhart") (collectively "Defendants"), states as follows:

COUNT ONE

1. That Plaintiff NBD is an Ohio corporation.
2. That Defendant R. Carhart and Defendant L. Carhart are doing business in Nebraska.
3. That, on January 17, 2009, Plaintiff NBD entered into a Work Authorization to Proceed ("the Authorization") with Defendants.
4. That a true and accurate copy of the Authorization ("the Authorization") is attached hereto as Exhibit A.

5. That on February 3, 2009, Plaintiff NBD entered into a Service Contract ("the Agreement") with Defendants.
6. That a true and accurate copy of the Agreement is attached hereto as Exhibit B.
7. That the Plaintiff NBD's Rate Schedule is attached hereto as Exhibit C.
8. That the Agreement provides that jurisdiction and venue for this dispute exist in the State of Ohio and the courts of Summit County, respectively. Exhibit B, par. 10.
9. That Plaintiff NBD has fully performed according to the terms of the Agreement and Authorization despite significant difficulty locating subcontractors.
10. That as a result of Plaintiff NBD's efforts, Defendants have already been paid in excess of \$100,000, (possibly \$200,000) by Pharmacist Mutual Insurance Co. and State Farm Mutual Insurance Company for business personal property.
11. That Defendants have failed to pay Plaintiff NBD for the services and materials provided.
12. That Defendants have breached the Agreement and Authorization.
13. That Defendants are liable for the debts.
14. That Plaintiff NBD is entitled to recover from Defendants an amount in excess of One Hundred Thousand Four Hundred Forty Dollars (\$100,000.00) pursuant to the terms of the Agreement.
15. That Plaintiff NBD is also entitled to its reasonable attorney fees and other related costs and expenses from Defendants.

COUNT TWO

16. That Plaintiff NBD realleges and reavers the allegations in the foregoing paragraphs.
17. That Plaintiff NBD conferred a benefit upon Defendants.
18. That Defendants had knowledge of the benefit provided by Plaintiff NBD.
19. That Defendants have retained and/or transferred the benefit, and therefore it would be unjust to permit Defendants to not pay for this benefit.

20. That Plaintiff NBD stayed on the project due to repeated assurance and promises that payment would be made.
21. That equity requires that Defendants be held liable for unjust enrichment.

COUNT THREE

22. That Plaintiff NBD realleges and reavers the allegations in the foregoing paragraphs.
23. That a dispute exist between the parties to this action as to whether Defendants are liable to Plaintiff NBD for payments required by the Agreement and Authorization and/or the value of the service rendered pursuant to the Agreement and Authorization.
24. That this Court has jurisdiction to enter a declaratory judgment as to the liability of Defendants to Plaintiff NBD.

Wherefore, Plaintiff NBD International, Inc. respectfully requests judgment against Defendants as follows:

1. For compensatory damages in an amount in excess of One Hundred Thousand Dollars (\$100,000.00);
2. For prejudgment and post-judgment interest;
3. For reasonable attorney fees, cost and expenses;
4. For a declaratory judgment as to the liability of Defendants to Plaintiff; and
5. For all other relief which this Court deems equitable and just.

Respectfully submitted,

/s/ Donald W. Davis, Jr.

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Counsel for Plaintiff NBD International, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was filed electronically this 1st day of July 2009. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Also a copy of the foregoing was sent via regular U.S. Mail to Robert Carhart, aka LeRoy Carhart, 1002 West Mission Ave. Bellevue, NE 68005-3944 and via telecopier at 402-291-4643.

/s/ Donald W. Davis, Jr.