

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

JUN 15 2001

H&S REHABILITATIVE TREATMENT SERVICES, INC.,)
)
)
Plaintiff,)
)
vs.)
)
DA VINCI MOTION GRAPHICS, L.L.C.,)
)
)
Defendant.)

PATRICIA PRESLEY, COURT CLERK
by _____
Deputy

Case No. CJ-99-2540

AMENDED PETITION

Plaintiff, H&S Rehabilitative Treatment Services, Inc. ("H&S"), for its petition against Defendant da Vinci Motion Graphics L.L.C. ("da Vinci") alleges and states as follows:

1. Plaintiff H&S is an Oklahoma corporation.
2. Defendant da Vinci is, upon information and belief, a limited liability company existing under the laws of the State of Oklahoma.
3. All of the events relevant and necessary to the resolution of this matter occurred in Oklahoma County, Oklahoma.

BACKGROUND

4. On approximately October 23, 1997, H&S and da Vinci entered into two agreements; a "Proposal for Work" which set forth the work to be performed by da Vinci and the compensation to be paid by H&S, and a "Nondisclosure Agreement" which stated that da Vinci would not disclose certain information, which is owned by H&S, without prior approval. The Nondisclosure Agreement also obligated da Vinci to return to H&S all of the "Proprietary Information and products (including all copies thereof)" upon notice from H&S. The Nondisclosure Agreement states that "[i]n no event shall da Vinci be deemed to have acquired any right or interest in or to any Proprietary

Information and/or products, and all such Proprietary Information and/or products shall remain the sole property of H&S."

5. Pursuant to the Proposal for Work, da Vinci agreed to adapt certain existing H&S client application software to a software program capable of producing a system which could be accessed by health care providers through the internet. Moreover, the Proposal for Work indicates that H&S owns the software and system created by da Vinci. The Proposal for Work clearly states that H&S holds "the copyright for all source code, graphics and material produced for this project". Da Vinci also agreed to provide a virtual server with database and web-hosting capabilities. In providing the service as the web-site host, da Vinci agreed to gather information inputted by health care providers from the system and provide that information to H&S in report form at specified times.

6. Until March 31, 1999, da Vinci provided service to H&S. H&S has always paid da Vinci for its services pursuant to the Proposal for Work.

7. In February of 1999, da Vinci proposed that the agreement with H&S for service be changed. Da Vinci informed H&S that it intended to expand its business using the H&S adapted software. In March of 1999, da Vinci notified H&S of its intent to stop providing services under the Proposal for Work.

8. H&S, pursuant to the agreements signed by the parties, owns any and all copyright to the software which da Vinci was intending to use without H&S' permission. After H&S pointed out to da Vinci that it did not own the software, the system, or the copyright therein, da Vinci agreed to return to H&S the physical items that were originally in the possession of H&S, or that were purchased by H&S for use in this project, as required by the Nondisclosure Agreement.

9. The agreements signed by the parties also require da Vinci to return all "Proprietary Information" provided to it by H&S. Da Vinci has refused to return all of Proprietary Information, stating that it does not know what that term means. However,

the Nondisclosure Agreement clearly defines Proprietary Information as including, "but not limited to, product concepts, processes, software programs, software source documents, source codes, customer lists, patient data, financial information, and combinations of any of the foregoing." Nevertheless, da Vinci has refused to return all of the required information, including but not limited to the software "configuration file" and "chron jobs".

10. H&S has hired a new company, The Rock Island Group ("Rock Island"), to act as the web-site host for its software. It was H&S' understanding that da Vinci would return to H&S the software, all physical property owned by H&S, and the proprietary information and products. H&S, through the services of Rock Island, would then be able to run the system which could be accessed by healthcare providers and Rock Island to produce the reports that H&S must be able to produce in order to comply with the contracts that it has with its customers.

11. However, H&S has learned that da Vinci has not provided all of the information, which is owned by H&S, that is necessary in order to access or run the system. Da Vinci has purposefully not returned this information and items to H&S, and has not allowed Rock Island access to such, knowing that H&S will not be able to service its customers and comply with its contracts without such access. Moreover, H&S has learned that da Vinci failed to develop the type of software and system that was required pursuant to the Proposal for Work.

12. Additionally, da Vinci, early in March was in contact with Intergritis, a known client of H&S, attempting to sell services which utilize the software and system owned by H&S in violation of its agreements with H&S.

FIRST CAUSE OF ACTION

Breach of Proposal for Work Agreement

13. For its first cause of action, H&S adopts and incorporates paragraphs 1 through 12.

14. Da Vinci, in failing to create and provide the type software and system which was the subject of the Proposal for Work, has breached its Proposal for Work contract with H&S.

15. As a result of da Vinci's breach of the Proposal for Work, H&S has suffered and will continue to suffer damages. As a result of the breach, H&S has had to hire a new consultant and perform much work to the system and software which would not have been necessary if da Vinci had developed the software and system required by the Proposal for Work. H&S is entitled to recover damages for all the damages that it has suffered and will suffer as a result of da Vinci's breach of the Proposal for Work.

SECOND CAUSE OF ACTION

Injunction Prohibiting Actions Contrary to Proposal for Work Agreement

16. For its second cause of action, H&S adopts and incorporates paragraphs 1 through 15.

17. Da Vinci, in treating the software and system adapted from the H&S software and system as its own, has breached its Proposal for Work contract which clearly states that the software and system, including the information used to create both, is owned by H&S.

18. As a result of da Vinci treating the software and system in manner inconsistent with H&S' ownership, H&S is entitled to an injunction prohibiting da Vinci from treating the software and system as its own by attempting to market the software and system or by attempting to sell da Vinci's services by using the software and system, or in any other manner inconsistent with H&S' ownership.

THIRD CAUSE OF ACTION

Breach of Nondisclosure Agreement

19. For its first cause of action, H&S adopts and incorporates paragraphs 1 through 18.

20. Da Vinci, in disclosing or offering to disclose Proprietary Information to third parties, has breached its Nondisclosure Agreement with H&S which states that "it shall not use, publish, disseminate, copy or disclose . . . any Proprietary Information for any purpose."

21. Da Vinci, in treating the software and system, which includes Proprietary Information, adapted from the H&S software and system as its own, has breached its Nondisclosure Agreement which clearly states that it will not use the Proprietary Information.

22. Da Vinci, in failing to return all of the Proprietary Information which it is required by Agreement to return to H&S, has breached its Nondisclosure Agreement with H&S.

23. As a result of da Vinci's breach of the Nondisclosure Agreement, H&S has suffered and will continue to suffer damages. As a result of the breach, H&S may lose existing customers and may not be able to comply with all of its existing contracts. H&S is entitled to recover damages for all the damages that it has suffered and will suffer as a result of da Vinci's breach of the Nondisclosure Agreement.

FOURTH CAUSE OF ACTION

Injunction Requiring Return of Proprietary Information

24. For its second cause of action, H&S adopts and incorporates paragraphs 1 through 23.

25. Da Vinci, in failing to return all of the Proprietary Information which it is required by Agreement to return to H&S, has breached its Nondisclosure Agreement with H&S. The language of the Nondisclosure Agreement clearly requires the return of all Proprietary Information and defines Proprietary Information as including, "but not limited to, product concepts, processes, software programs, software source documents, source codes, customer lists, patient data, financial information, and combinations of any of the foregoing."

26. As a result of da Vinci not returning the Proprietary Information, H&S is entitled to an injunction requiring da Vinci to return all Proprietary Information as required by the Nondisclosure Agreement to H&S.

FIFTH CAUSE OF ACTION

Claim for Violation of the Uniform Trade Secrets Act

27. For its Fifth Cause of Action, H&S adopts and incorporates paragraphs 1 through 26.

28. The above-described acts of da Vinci constitute misappropriations of H&S's trade secrets and violation of the Uniform Trade Secrets Act as codified at 78 O.S. §85 et seq.

29. H&S is entitled to injunctive relief pursuant to 78 O.S. §87 to enjoin da Vinci from further misappropriation of H&S' trade secrets. In addition, H&S is entitled to recover damages from da Vinci pursuant to 78 O.S. §88, such damages to include both the actual loss caused by da Vinci's misappropriation and the unjust enrichment to da Vinci as a result of its misappropriation.

30. The actions of da Vinci in misappropriating H&S' trade secrets were willful and malicious. Accordingly, H&S is entitled to recover exemplary damages pursuant to 78 O.S. §88(B) in an amount not to exceed twice the actual damages awarded.

31. H&S is entitled to recover a reasonable attorney's fee pursuant to 78 O.S. §89.

WHEREFORE, Plaintiff H&S prays that:

1. Da Vinci be liable for damages in excess of \$10,000 for its breach of the Proposal for Work;

2. Da Vinci be liable for damages in excess of \$10,000 for its breaches of the Nondisclosure Agreement;

3. Da Vinci be enjoined from treating the software and system as its own by attempting to market the software and system or by attempting to sell da Vinci's

services by using the software and system or in any other manner inconsistent with H&S's ownership;

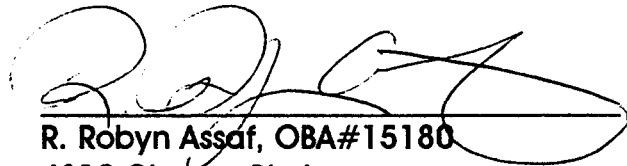
4. Da Vinci be ordered to return all Proprietary Information to H&S as required by the Nondisclosure Agreement;

5. Actual damages in an amount in excess of \$10,000.00 for violation of the Uniform Trade Secrets Act;

6. Exemplary damages in an amount not to exceed twice the amount of the actual damages awarded for willful and malicious misappropriation of trade secrets pursuant to the Uniform Trade Secrets Act;

7. Da Vinci be ordered to pay the attorney's fees of H&S; and

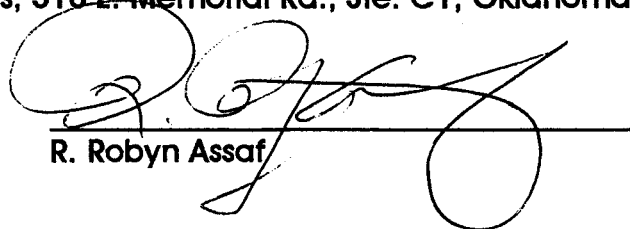
8. Da Vinci be liable and responsible for any other relief that the Court might find appropriate.



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405/557.0777 facsimile
ATTORNEY FOR PLAINTIFFS

CERTIFICATE OF MAILING

I hereby certify that on the 15 day of June 2001, a true and correct copy of the above and foregoing document was mail, postage prepaid to Richard Klinge, and Shawn Roberts, Richard Klinge & Associates, 510 E. Memorial Rd., Ste. C1, Oklahoma City, OK 73114.



R. Robyn Assaf