

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

INSURED ADVOCACY GROUP, LLC,

Plaintiff,

v.

PCG CLAIMS, LLC,

Defendant.

Civil Case No.

COMPLAINT

COMPLAINT

The Plaintiff, INSURED ADVOCACY GROUP, LLC (“Plaintiff” or “IAG”), by and through undersigned counsel, sues PCG CLAIMS, LLC (“Defendant” or “PCG”) and alleges:

INTRODUCTION

1. This is a case involving a factoring company, IAG, and its customer, PCG. PCG signed an agreement with PMC Funding 2021 LLC, a Texas limited liability company (“PMC Funding”) which assigned its rights under that agreement to the factoring company IAG. PCG has failed to comply with the terms of the agreement. IAG now brings this suit to enforce its rights as to the agreement and for the return of its funds from PCG.

I. THE PARTIES

2. Plaintiff IAG is, and at all times material to this Complaint was, a Texas limited liability company located at 7 Bryant Park, New York, NY 10018-3700.

3. The sole member of IAG is Schroder FOCUS II Holdings, L.P. (“Schroder”). None of the general or limited partners of Schroder are citizens of Florida.

4. Upon information and belief, Defendant is a Tennessee limited liability company, formerly known as Principal Claims Group, LLC, located at 2000 Mallory LN STE 130 PMB 239, Franklin, TN 37067-8231, Attention: Scott Jamison. Upon information and belief, the members of PCG are Justin Willits, Curtis Phillips, Jacob “Jake” Holt, and Scott Jamison, and each of the foregoing members are residents of the state of Tennessee.

5. Defendant PCG provides services relating to managing loss insurance claims to various customers, including property damage estimating services, appraisals, expert witnesses, and building consultants, and insurance umpires (collectively, the “Services”). In consideration for the Services, customers execute an assignment of benefits (an “AOC”) or a letter of protection for claims that the customer may have against an insurer or other responsible party for the costs incurred by the customer in connection with the applicable property damage including, but not limited to, the costs incurred by the customer to PCG for the Services.

II. JURISDICTION AND VENUE

6. This is an action for damages in excess of \$75,000 exclusive of interest and costs.

7. Subject matter jurisdiction is proper in this Court under 28 U.S.C. § 1332 because complete diversity of citizenship exists between IAG and PCG, and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

8. Personal jurisdiction over PCG and venue is proper in the Southern District of New York because PCG expressly agreed to subject itself to the jurisdiction of any federal court in the State of New York and waived any objection to venue in connection with any dispute arising under the signed, written agreement with PMC Funding and assigned to IAG, which is the subject of this action.

III. STATEMENT OF FACTS

A. IAG's Relationship With PCG

9. PCG sold some of its accounts to PMC Funding. On or about June 10, 2022, PCG executed a First Party Claims Non-Recourse Sale and Assignment Agreement (a "Purchase Agreement") with PMC Funding. A true and correct copy of the Purchase Agreement is attached hereto as Exhibit "A" and is incorporated herein by reference. The purchase documents executed in connection with the Purchase Agreement, including two Purchase Addenda, a rider to PCG claims, and a UCC-1 financing statement (collectively, the "Purchase Documents") are attached hereto as Exhibit "B" and is incorporated herein by reference.

10. Under the Purchase Documents, PMC Funding purchases the right to receive insurance proceeds paid for claims made by an insured arising in connection with property damage ("Proceeds") and related interest with respect to a client's right to receive and protect the interest of both client and PMC Funding in those Proceeds.

11. After the Purchase Documents were executed, PMC Funding assigned its rights under the Purchase Documents to IAG.

12. Following execution of the Purchase Documents, and as expressly requested by PCG, on or about June 10, 2022, IAG paid, and PCG accepted, the sum of \$774,250.84 ("Purchase Funds") for the purchase and sale of certain of certain accounts ("Accounts") and proceeds.

B. PCG's Involvement with MMA

13. The Accounts purchased by IAG consist of approximately \$729,925.00 in invoices for repair and replacement cost estimates (the "Estimates") prepared by PCG at the request of the law firm McClenny, Mosely & Associates PLLC ("MMA").

14. PCG contracted with MMA through a Master Services Agreement dated April 28, 2022, wherein MMA hired PCG to provide the Estimates for the claims pursued by MMA on behalf of insureds, and MMA agreed to pay for the Estimates through MMA's entitlement to attorney's fees and costs in connection with the insured's cases against insurance carriers. A true and correct copy of such Master Services Agreement is attached hereto as Exhibit "C" and incorporated by reference herein.

15. After purchasing the Accounts, MMA was accused of perpetrating an organized scheme to defraud the very insureds for whom the Estimates were prepared.

16. The allegations and the subsequent Orders of the United States District Courts for the Eastern and Western Districts of Louisiana and the Louisiana Department of Insurance would prove fatal for the collections of the Accounts.

17. On October 21, 2022, U.S. District Judge James D. Cain, Jr. of the United States District Court for the Western District of Louisiana issued a stay (the "October 2022 Order") of over 1,400 Hurricane Laura and Hurricane Delta lawsuits filed by MMA as the Court found that there were: (1) filings by MMA for plaintiffs that had already settled lawsuits; (2) duplicate lawsuits filed; and (3) filings for damage to property that is outside the typical geographical area where reported damage was caused by Hurricanes Laura and Delta. A true and correct copy of the October 2022 Order is attached hereto as Exhibit "D" and incorporated by reference herein.

18. Based on the October 2022 Order, IAG requested PCG's cooperation to collect payments for the invoices and estimates IAG purchased. PCG did not comply with this request. A true and correct copy of emails evidencing IAG's requests to PCG to collect such payments is attached hereto as Exhibit "E" and incorporated by reference herein.

19. On February 17, 2023, the Louisiana Insurance Commissioner issued a Cease and Desist Order to MMA and its principals, which states that MMA and its principals participated in a fraudulent scheme, wherein MMA filed lawsuits on behalf of insureds when in fact MMA was representing estimators such as PCG rather than the insured property owners.

20. On March 2, 2023, the United States District Court for the Eastern District of Louisiana stayed over 600 Hurricane Ida cases filed by MMA pursuant to a recommendation from Chief Magistrate Judge Michael B. North. U.S. District Chief Judge Nannette Jolivette Brown entered the Order to stay the claims based on Judge North's findings in *Franatovich v. Allied Trust Insurance Co.*, Civ. No. 22-cv-2552 c/w 22-cv-4927 ("*Franatovich*") that MMA had filed lawsuits on behalf of persons they did not and do not represent and that MMA had sent over 800 false letters of representation to insurance carriers claiming to represent named insured when, in fact it represented estimators such as PCG. The attached order staying the cases is attached hereto as Exhibit "F" and incorporated herein by reference.

21. On March 4, 2023, MMA and all of its lawyers were suspended from practicing law in the Western District of Louisiana. The attached order suspending MMA and its lawyers is attached hereto as Exhibit "G" and incorporated herein by reference.

22. On March 13, 2023, Luis Carter, III, individually and on behalf of similarly situated individuals, filed a class action lawsuit against, among others, MMA and H. William Huye (an office managing partner of MMA) in the 21st Judicial District Court for the Parish of Tangipahoa under case number 20230000821 ("*Carter Complaint*"). A true and correct copy of the Carter Complaint is attached hereto as Exhibit "H" and incorporated herein by reference.

23. The Carter Complaint alleges that MMA conspired in the "improper solicitation of employment for MMA's economic benefit." Carter Complaint at 17.

24. On March 16, 2023, Chief Magistrate Judge Michael B. North entered an order (the “March 2023 Order”) in the *Franatovich* claim wherein Judge North described the fraud committed by MMA. A true and correct copy of the March 2023 Order is attached hereto as Exhibit “I” and incorporated herein by reference.

25. Through admitted evidence and MMA’s own statements on the record, Judge North stated that MMA would instruct estimators, and not the insured, execute a 33% contingency-fee agreement with MMA, with MMA as counsel and the estimator as its client. MMA then sent a letter of representation to the insurance carrier stating among other things, “Please be advised that McClenny Moseley & Associates, PLLC has been retained by Trichia Franatovich (hereafter, “Client”) as legal counsel for their [sic] above referenced insurance claim.” Exhibit I at 12. Despite not being retained by the insured, MMA sent a LOR without a retention letter to the carrier, invoked appraisal after the insured elected representation by another firm, and filed a lawsuit after acknowledging they did not represent her and promising they would help unwind that appraisal.

26. Judge North found that MMA had violated FED. R. CIV. P. 11 solely on MMA’s “inexplicable decision to file a federal lawsuit on behalf of Plaintiff knowing at all times they did not represent her and even acknowledging same to Plaintiff’s Counsel months before filing that lawsuit.” Exhibit I at 15.

27. On August 22, 2023, U.S. District Judge James D. Cain, Jr. of the United States District Court for the Western District of Louisiana entered an order (the “August 2023 Order”) against MMA ordering that MMA, the individual attorneys of the firm, and all related parties are **not entitled to any attorney fees, costs, and/or expenses.** A true and correct copy of the August 2023 Order is attached hereto as Exhibit “J” and incorporated herein by reference.

28. The August 2023 Order and the multiple preceding orders unequivocally demonstrate the Estimates to be uncollectable.

29. In addition to the court orders set forth above, the Federal Bureau of Investigation (FBI) announced in June 2024 that it is investigating insurance fraud by MMA and asked for victims and individuals with relevant information to come forward. The FBI's announcement notes that MMA may have been assisted by Apex. A true and correct copy of the FBI's information form for victims to file reports and a news article regarding such announcement are attached hereto as Exhibit "K" and incorporated herein by reference.

IV. CAUSES OF ACTION

A. Applicable Law.

30. Sections 9.1.1 and 9.1.5 of the Purchase Agreement provide that such agreements shall be enforced in accordance with the internal laws of the State of Texas.

31. Under Texas law, a claim for breach of contract requires the following elements: (1) there is a valid, enforceable contract; (2) the plaintiff performed, tendered performance of, or was excused from performing its contractual obligations; (3) the defendant breached the contract; and (4) the defendant's breach caused the plaintiff injury.¹

32. To recover for the breach of an express warranty, a plaintiff must prove: (1) an express affirmation of fact or promise by the seller relating to the goods; (2) that such affirmation of fact or promise became a part of the basis of the bargain; (3) that the plaintiff relied upon said affirmation of fact or promise; (4) that the goods failed to comply with the affirmations of fact or

¹ *Turner v. Ewing*, 625 S.W.3d 510 (Tex. App. 2020).

promise; (5) that the plaintiff was injured by such failure of the product to comply with the express warranty; and (6) that such failure was the proximate cause of plaintiff's injury.²

33. Failure of consideration occurs when, due to a supervening cause after an agreement is reached, the promised performance under a contract fails.³ Rescission is an “undoing” of a contract and is used as a substitute when monetary damages would be inadequate.⁴

B. Breach of Contract (Count One).

34. PCG breached the Purchase Agreement. The Purchase Agreement is a valid, enforceable contract. IAG performed under Purchase Agreement by paying PCG for the Accounts as set forth in the Purchase Documents. IAG has suffered injury as a result of PCG's breach in the form of monetary loss in an amount not less than \$774,250.84. IAG is entitled to recover for damages caused by PCG's breach of contract.

35. PCG further breached the Purchase Agreement by violating its requirement to repurchase accounts. Section 7 of the Purchase Agreement provides that Plaintiff has the right to require PCG to repurchase any account sold to Plaintiff in the event that PCG is in breach of any warranty or representation and warranty with respect to such account.

36. Although the Purchase Agreement does not require IAG to give any notice of default or opportunity to cure such default, on or about March 25, 2024, IAG sent PCG a notice of default and made demand for immediate repayment of all amounts owed under the Purchase Agreement. A true and correct copy of the notice of default and demand letter is attached hereto as Exhibit “L” and incorporated herein by reference.

² *Great Am. Prod. v. Permabond Int'l, a Div. of Nat'l Starch & Chem. Co.*, 94 S.W.3d 675 (Tex. App. 2002) (citing *Morris v. Adolph Coors Co.*, 735 S.W.2d 578, 587 (Tex.App.-Fort Worth 1987, writ ref'd n.r.e.)).

³ *City of The Colony v. N. Texas Mun. Water Dist.*, 272 S.W.3d 699, 733 (Tex. App. 2008).

⁴ *Id.* at 732.

37. As of the date hereof, PCG has not made such repayment. In the alternative, PCG sold Accounts to IAG in exchange for payment of \$774,250.84 from IAG to PCG. Those Accounts have been deemed legally uncollectible, rendering the Accounts worthless. PCG does not get to keep IAG's money, and IAG is entitled to rescission of the contract and return of its funds.

C. Breach of Express Warranty (Count Two).

38. PCG breached numerous express warranties in the Purchase Agreement. PCG provided express affirmations of the Accounts, including: (1) that PCG had good and marketable title to each Account and that each Account was transferred free and clear of any lien, claim, or encumbrance pursuant to Section 3.1.6 of the Purchase Agreement; (2) that PCG had good and marketable title, free and clear of any lien, claim or encumbrance, to the AOC being sold pursuant to Section 3.1.7 of the Purchase Agreement; (3) that each Account was originated in compliance with all local, state, and federal laws pursuant to Section 3.1.10 of the Purchase Agreement; (4) that IAG would have good and marketable title to each Account pursuant to Section 3.1.18 of the Purchase Agreement; and (5) that PCG had all legal rights to pursue collection on Accounts pursuant to Section 3.1.19 of the Purchase Agreement.

39. The foregoing affirmations became a part of the basis of the Purchase Agreement.

40. IAG relied upon the foregoing affirmations.

41. The Accounts failed to comply with the foregoing affirmations as set forth above.

42. IAG was injured by the failure of the Accounts to comply with the warranties, as the Accounts that IAG purchased were uncollectible.

43. The failure of the express warranties of the Accounts was the proximate cause of IAG's injury.

D. Rescission for Failure of Consideration (Count Three).

44. The consideration given by PCG under the Purchase Documents was entirely based on the value of the Accounts.

45. Due to the fraud by MMA discovered after execution of the Purchase Documents, the Accounts become uncollectible and no longer have any monetary value.

46. There is a total failure of the consideration given by PCG, and rescission of the Purchase Documents is an appropriate remedy.

V. PRAYER

47. All conditions precedent to the filing of this action have been performed, have occurred, or have been waived.

48. WHEREFORE, Plaintiff, INSURED ADVOCACY GROUP, LLC, prays that this Court enter a judgment in its favor and against the Defendant, in the amount of \$774,250.84 plus all other damages, attorney's fees, costs, and such other and further relief as shall be just and equitable.

Dated: July 22, 2024

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