

STATE OF WISCONSIN

CIRCUIT COURT

BROWN COUNTY

VHC, INC.,

Plaintiff,

Case No. 19CV903

v.

TISSUE TECHNOLOGY, LLC,

Defendant.

**ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIM
OF DEFENDANT, TISSUE TECHNOLOGY, LLC**

NOW COMES the defendant, Tissue Technology, LLC, by its attorneys, Terschan, Steinle, Hodan & Ganzer, Ltd., by Michael J. Ganzer, and as and for its answer and affirmative defenses, alleges and shows to the Court as follows:

1. Answering paragraph 1 of the Complaint, this answering defendant admits the allegations contained therein.
2. Answering paragraph 2 of the Complaint, this answering defendant admits the allegations contained therein.
3. Answering paragraph 3 of the Complaint, this answering defendant admits the allegations contained therein.
4. Answering paragraph 4 of the Complaint, this answering defendant is without information sufficient to form a belief as to the truth of the allegations and therefore denies the same.
5. Answering paragraph 5 of the Complaint, this answering defendant admits the allegations contained therein.

6. Answering paragraph 6 of the Complaint, this answering defendant is without information to ascertain the truth or falsity of the allegation and therefore denies the same.

7. Answering paragraph 7 of the Complaint, this answering defendant is without information sufficient to form a belief as to the truth of the allegations and therefore denies the same.

8. Answering paragraph 8 of the Complaint, this answering defendant is without information sufficient to form a belief as to the truth of the allegations and therefore denies the same.

9. Answering paragraph 9 of the Complaint, this answering defendant denies the allegations contained therein.

10. Answering paragraph 10 of the Complaint, this answering defendant denies the allegations contained therein.

11. Answering paragraph 11 of the Complaint, this answering defendant denies the allegations contained therein.

12. Answering paragraph 12 of the Complaint, this answering defendant denies the allegations contained therein. No such filing appears with the Wisconsin Department of Financial Institutions.

13. Answering paragraph 13 of the Complaint, this answering defendant admits the allegations contained therein.

14. Answering paragraph 14 of the Complaint, this answering defendant denies the allegations contained therein.

15. Answering paragraph 15 of the Complaint, this answering defendant denies the allegations contained therein.

CLAIM FOR RELIEF – I
BREACH OF CONTRACT

16. This answering defendant realleges and reincorporates herein as if fully set forth all of the preceding admissions and denials.

17. Answering paragraph 17 of the Complaint, this answering defendant denies the allegations contained therein.

18. Answering paragraph 18 of the Complaint, this answering defendant admits the allegations contained therein.

19. Answering paragraph 19 of the Complaint, this answering defendant denies the allegations contained therein.

CLAIM FOR RELIEF – II
REPLEVIN OF PERSONAL PROPERTY

20. This answering defendant realleges and reincorporates herein as if fully set forth all of the preceding admissions and denials.

21. Answering paragraph 21 of the Complaint, this answering defendant denies the allegations contained therein.

22. Answering paragraph 22 of the Complaint, this answering defendant denies the allegations contained therein.

23. Answering paragraph 23 of the Complaint, this answering defendant denies the allegations contained therein.

24. Answering paragraph 24 of the Complaint, this answering defendant denies the allegations contained therein.

AFFIRMATIVE DEFENSES

1. As and for its first affirmative defense, this answering defendant alleges that no money is owed or due to VHC as a result of the Notes described in the Complaint.

2. As and for its second affirmative defense, this answering defendant alleges that the security offered to Nicolet National Bank was endorsed in a restrictive fashion such that it could not be transferred to VHC.

3. As and for its third affirmative defense, this answering defendant alleges that the plaintiff has not perfected a security interest.

4. As and for its fourth affirmative defense, this answering defendant alleges the plaintiff has failed to state a claim upon which relief can be granted.

5. As and for its fifth affirmative defense, this answering defendant alleges the plaintiff has failed to join a necessary party.

6. As and for its sixth affirmative defense, this answering defendant alleges the doctrine of estoppel applies.

7. As and for its seventh affirmative defense, this answering defendant alleges the actions of the plaintiff were in breach of the defendant's contract rights with Nicolet Bank.

8. As and for its eighth affirmative defense, this answering defendant alleges the doctrine of illegality applies.

9. As and for its ninth affirmative defense, this answering defendant alleges the doctrine of waiver applies.

COUNTERCLAIM

NOW COMES the defendant, Tissue Technology, LLC, by its attorneys, Terschan, Steinle, Hodan & Ganzer, Ltd., by Michael J. Ganzer, and as and for its counterclaim, alleges and shows to the Court as follows:

1. Defendant-counterclaimant Tissue Technology, LLC, on or about September 20, 2006, entered into a written agreement with ST Paper, LLC for the purchase of the paper mill located in Oconto Falls, Wisconsin which included an agreement entitled, Amended and Restated Sales & Marketing Agreement (hereinafter Sales & Marketing Agreement) whereby Tissue Technology, LLC was deemed the exclusive representative of ST Paper, LLC.

2. As its exclusive representative of ST Paper, LLC, Tissue Technology, LLC was empowered to solicit offtake agreements for the purchase of ST Paper's products. In particular, the defendant-counterclaimant secured long-term contracts between ST Paper, LLC and SCA Tissue North America, LLC, an international company with a substantial production facility in Neenah, Wisconsin for the purchase of virtually all of ST Paper's production thereby entirely fulfilling its part of the contract.

3. Despite the foregoing, ST Paper, LLC failed and refused to pay Tissue Technology, LLC money it owed pursuant to the terms of the Sales & Marketing Agreement and there is now in excess of \$20 million owed.

4. On or about April 25, 2007, Tissue Technology, LLC assigned its interest in the Sales & Marketing Agreement, together with any commissions due thereunder, to Nicolet National Bank for the purpose of securing certain debts owed by Tissue Technology, LLC to Nicolet Bank.

5. The amounts owed to Nicolet Bank by Tissue Technology, LLC were substantially less than the amounts owed pursuant to the terms of the Sales & Marketing Agreement.

6. Inter alia, Nicolet Bank failed and refused to take action to collect on the Sales & Marketing Agreement from ST Paper, LLC.

7. Tissue Technology, LLC made many demands of Nicolet Bank to commence suit and/or work with the plaintiff in monetizing the Sales & Marketing Agreement inasmuch as there were substantial sums owed and the debt owed to Nicolet National Bank was a relatively small portion thereof.

8. Tissue Technology, LLC initiated a lawsuit against Nicolet National Bank in Brown County Circuit Court to force collection of the Sales & Marketing Agreement. After initiation of said lawsuit, and without the knowledge of Tissue Technology, LLC, VHC purchased the Sales & Marketing Agreement from Nicolet Bank in approximately December 2018.

9. The assignment to Nicolet Bank specifically stated that the Sales & Marketing Agreement was to be returned to Tissue Technology, LLC upon payment of the debt.

10. Upon information and belief, VHC, Inc. paid said debt and Nicolet National Bank thereafter assigned and/or sold the Sales & Marketing Agreement to VHC, Inc. without the permission of either Tissue Technology, LLC or ST Paper, LLC and contrary to the explicit terms of the assignment to Nicolet National Bank.

11. Despite the foregoing, and despite due demand having been made of the plaintiff to return the Sales & Marketing Agreement to Tissue Technology, LLC, plaintiff VHC has failed and refused to surrender the Sales & Marketing Agreement.

FIRST CAUSE OF ACTION -
BREACH OF CONTRACT

12. Tissue Technology, LLC realleges and reincorporates herein as if fully set forth all of the preceding allegations.

13. The afore-described actions of VHC, Inc., in combination with Nicolet National Bank, are in breach of the Agreement Tissue Technology, LLC had with Nicolet Bank that required return of the Sales & Marketing Agreement upon payment of said debt.

14. In so doing, VHC, Inc. breached its duties under the contract to Tissue Technology, LLC, and had done so in combination with Nicolet National Bank, and has thereby caused significant financial damage to Tissue Technology, LLC in excess of \$20 million.

15. VHC, Inc. had a duty to Tissue Technology, LLC, including its duty to assure the appropriate reassignment of the contract rights in the Sales & Marketing Agreement and failed to do so in breach of the contract rights of Tissue Technology, LLC.

16. VHC, Inc. has breached its contractual duties to Tissue Technology, LLC thereby entitling Tissue Technology, LLC to damages in an amount exceeding \$20 million.

SECOND CAUSE OF ACTION -
INTENTIONAL INTERFERENCE OF CONTRACT RIGHTS

17. Tissue Technology, LLC realleges and reincorporates herein as if fully set forth all of the preceding allegations of this counterclaim.

18. VHC, Inc., despite the express language of the Sales & Marketing Agreement, purchased the Agreement from Nicolet National Bank, and despite due demand, is holding on to said contract.

19. Tissue Technology, LLC had a contractual relationship with Nicolet National Bank.

20. VHC, Inc. interfered with that relationship when it purchased the Sales & Marketing Agreement despite the language prohibiting same on the assignment to Nicolet Bank.

21. The actions of VHC, Inc. were intentional.

22. As a result of the intentional interference described above, Tissue Technology, LLC has suffered damages in excess of \$20 million.

23. VHC, Inc. was not justified or privileged to interfere with those contract rights.

24. VHC, Inc. claims it has a security interest in the contract, yet, no security rights are evident or perfected as displayed by the State of Wisconsin Department of Financial Institutions online listing.

25. The actions of VHC, Inc. were malicious and/or in intentional disregard of the rights of Tissue Technology, LLC thereby entitling Tissue Technology, LLC to punitive damages as allowed by Wis. Stats. §895.043(3).

THIRD CAUSE OF ACTION – CONVERSION

26. Tissue Technology, LLC realleges and reincorporates herein as if fully set forth all of the preceding allegations of this counterclaim.

27. The actions of VHC, Inc., converting the Sales & Marketing Agreement for its own and sole benefit, was done in derogation of the rights of Tissue Technology, LLC.

28. VHC, Inc., by taking possession of the Sales & Marketing Agreement, despite due demand having been made for the return thereof, intended thereby to permanently deprive Tissue Technology, LLC (and its creditors) of property owned by Tissue Technology, LLC.

29. As a result of the conversion of the Sales & Marketing Agreement, defendant VHC, Inc. is indebted to the plaintiff for compensatory and punitive damages.

FOURTH CAUSE OF ACTION – NEGLIGENCE

30. Tissue Technology, LLC realleges and reincorporates herein as if fully set forth all of the preceding allegations of this counterclaim.

31. The actions of VHC, Inc., in obtaining and refusing to return the Sales & Marketing Agreement, was in derogation of the rights of Tissue Technology, LLC, the breach of duties owed to Tissue Technology, LLC, which has caused damage to the company in an undetermined amount.

32. In the event, for any reason, it would be determined that the actions of VHC were not intentional, as an alternative cause of action, the actions of VHC, Inc. breached its duty of due care owed to the owner of the Sales & Marketing Agreement, Tissue Technology, LLC, thereby causing damage to Tissue Technology, LLC in an undetermined amount.

WHEREFORE, Tissue Technology, LLC demands judgment dismissing the complaint and against the plaintiff in an amount exceeding \$20 million, punitive damages in an undetermined amount, actual attorney's fees, the costs and disbursements of this action, and such other and further relief as the Court deems just.

Dated this 8th day of August, 2019.

TERSCHAN, STEINLE, HODAN & GANZER, LTD.
ATTORNEYS FOR DEFENDANT

ELECTRONICALLY SIGNED BY MICHAEL J. GANZER

P.O. ADDRESS:

309 NORTH WATER STREET
SUITE 215
MILWAUKEE, WI 53202
414-258-1010