

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

EQUAL EMPLOYMENT	:	Case No. RWT-07-CV-2612
OPPORTUNITY COMMISSION,	:	
	:	[Judge Roger W. Titus]
Plaintiff,	:	[Magistrate Judge Charles B. Day]
	:	
v.	:	
	:	<u>ANSWER OF THIRD-PARTY</u>
BLOCKBUSTER INC.,	:	<u>DEFENDANT VENTURI STAFFING</u>
	:	<u>PARTNERS TO THIRD-PARTY</u>
Defendant and Third-Party	:	<u>COMPLAINT</u>
Plaintiff	:	
	:	
v.	:	
	:	
VENTURI STAFFING PARTNERS,	:	
	:	
Third-Party Defendant.	:	

For its Answer to the Third-Party Complaint, Third-Party Defendant Venturi Staffing Partners (“Venturi”) states as follows:

THE PARTIES

1. Venturi admits that Blockbuster, Inc. ("Blockbuster") is a Delaware corporation and that Blockbuster operated a Distribution Center in Gaithersburg, Maryland (the "Gaithersburg facility"). Venturi is without knowledge or information sufficient to form a belief as to whether Blockbuster currently operates a Distribution Center in Gaithersburg.

Accordingly, this allegation is denied.

2. Venturi admits that it is a Delaware corporation and that Venturi has done business in the State of Maryland and in other jurisdictions. Venturi is without knowledge or

information sufficient to form a belief as to whether it "was continuously doing business in the State of Maryland" during "all relevant times." Accordingly, this allegation is denied.

JURISDICTION AND VENUE

3. Venturi incorporates by reference its responses to Paragraphs 1-2 of the Third-Party Complaint.

4. Paragraph 4 of the Third-Party Complaint states a legal conclusion to which no response is required. To the extent that a response is deemed necessary, Venturi denies the allegations contained in Paragraph 4 of the Third-Party Complaint.

5. Paragraph 5 of the Third-Party Complaint states a legal conclusion to which no response is required. To the extent that a response is deemed necessary, Venturi denies the allegations contained in Paragraph 5 of the Third-Party Complaint.

6. Paragraph 6 of the Third-Party Complaint states a legal conclusion to which no response is required. To the extent that a response is deemed necessary, Venturi denies the allegations contained in Paragraph 6 of the Third-Party Complaint.

7. Paragraph 7 of the Third-Party Complaint states a legal conclusion to which no response is required. To the extent that a response is deemed necessary, Venturi denies the allegations contained in Paragraph 7 of the Third-Party Complaint.

BACKGROUND

8. Venturi incorporates by reference its responses to Paragraphs 1-7 of the Third-Party Complaint.

9. Venturi is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 9. Accordingly, these allegations are denied.

10. Venturi admits that it entered into a Services Agreement ("Agreement") with Blockbuster with an effective date of June 1, 2004. A true and accurate copy of portions of the Agreement is attached hereto as Exhibit 1 (with confidential and trade secret information redacted to the extent not currently pertinent to the case). The Agreement is a document in writing that speaks for itself and any characterization thereof in Paragraph 10 of the Third-Party Complaint is denied.

11. Venturi denies the allegations contained in Paragraph 11 of the Third-Party Complaint. Venturi specifically denies that Blockbuster satisfied the condition precedent for indemnification established by section 9.5 of the Agreement, which required Blockbuster to timely and properly inform Venturi of any claim or proceeding against Blockbuster that may be covered under the purported indemnity obligations of the Agreement.

12. Venturi is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 12 of the Third-Party Complaint. Accordingly, these allegations are denied.

13. Venturi admits the allegations contained in Paragraph 13 of the Third-Party Complaint.

14. Paragraph 14 of the Third-Party Complaint states a legal conclusion to which no responsive pleading is required. Venturi is without knowledge or information sufficient to form a belief as to the meaning of "[a]t all times relevant to this lawsuit." To the extent that a response is deemed necessary, Venturi denies the allegations contained in Paragraph 14 of the Third-Party Complaint.

15. Venturi admits that Express Personnel hired temporary contractors and assigned them to the Gaithersburg facility. Venturi denies the remaining allegations in Paragraph 15 of the Third-Party Complaint.

16. Venturi admits that the Charging Parties were hired by Express Personnel and assigned to the Gaithersburg facility by Express Personnel. Venturi is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 16. Accordingly, these allegations are denied.

17. Paragraph 17 of the Third-Party Complaint states a legal conclusion to which no responsive pleading is required. To the extent that a response is deemed necessary, Venturi denies the allegations contained in Paragraph 17 of the Third-Party Complaint.

18. Paragraph 18 of the Third-Party Complaint states a legal conclusion to which no responsive pleading is required. To the extent that a response is deemed necessary, Venturi admits that Express Personnel was a statutory employer of the Charging Parties. Venturi is without knowledge or information sufficient to form a belief as to the truth of the allegation that Express Personnel was a statutory employer of the alleged class members. Accordingly, Venturi denies this allegation. To the extent the allegations in Paragraph 18 are intended to allege or imply that no other entity was also a statutory employer of the Charging Parties and the alleged class members, the allegations are denied.

19. Venturi admits that Express Personnel was responsible for the wages, taxes, and insurance, and other employment obligations of its employees, including the Charging Parties. Venturi is without knowledge or information sufficient to form a belief as to the truth of the allegation that Express Personnel was responsible for the wages, taxes, and insurance, and other

employment obligations of the alleged class members. Accordingly, Venturi denies this allegation. Venturi denies all other allegations in Paragraph 19 of the Third-Party Complaint not specifically admitted in the first sentence of this response to Paragraph 19.

20. Venturi is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 20 of the Third-Party Complaint. Accordingly, these allegations are denied.

21. Venturi admits that Express Personnel's office manager, Cynthia "Cinnie" Brown, took a role in some of the administration and working arrangements of the temporary personnel assigned to the Gaithersburg facility. Venturi denies all other allegations in Paragraph 21 of the Third-Party Complaint.

22. Venturi admits that, as part of her duties, Ms. Brown would have received, processed, and investigated employee concerns and complaints, including complaints of sexual, racial and national origin, and retaliatory harassment and discipline brought to her attention. Venturi denies all other allegations in Paragraph 22 of the Third-Party Complaint.

23. Venturi admits that Express Personnel was responsible, as warranted, for discipline and termination of employment of its employees who were assigned to the Gaithersburg facility. Venturi denies all other allegations in Paragraph 23 of the Third-Party Complaint.

24. Venturi admits the allegations contained in Paragraph 24 of the Third-Party Complaint.

25. Venturi admits that Plaintiff EEOC filed a complaint against Blockbuster on or about September 26, 2007. The EEOC's complaint is a document in writing that speaks for itself

and any characterization thereof in Paragraph 25 of the Third-Party Complaint is denied.

Blockbuster's response to the EEOC's complaint is contained in Blockbuster's answer to the complaint, which is a document in writing that speaks for itself and any characterization thereof in Paragraph 25 of the Third-Party Complaint is denied.

26. Venturi admits the allegations contained in Paragraph 26 of the Third-Party Complaint.

27. Venturi admits the allegations contained in Paragraph 27 of the Third-Party Complaint.

28. Venturi admits that Blockbuster did not receive indemnification from Venturi based on the EEOC's claims. Venturi denies the remaining allegations in Paragraph 28 of the Third-Party Complaint. Venturi specifically denies that Blockbuster satisfied the condition precedent for indemnification established by section 9.5 of the Agreement, which required Blockbuster to timely and properly inform Venturi of any claim or proceeding against Blockbuster that may be covered under the purported indemnity obligations of the Agreement.

COUNT ONE - INDEMNIFICATION

29. Venturi incorporates by reference its responses to Paragraphs 1-28 of the Third-Party Complaint.

30. Venturi denies the allegations contained in Paragraph 30 of the Third-Party Complaint.

31. Venturi admits that it subcontracted with Express Personnel. Venturi denies the remaining allegations contained in Paragraph 31 of the Third-Party Complaint.

32. Venturi denies the allegations contained in Paragraph 32 of the Third-Party Complaint. Venturi specifically denies that Blockbuster satisfied the condition precedent for indemnification established by section 9.5 of the Agreement, which required Blockbuster to timely and properly inform Venturi of any claim or proceeding against Blockbuster that may be covered under the purported indemnity obligations of the Agreement.

33. Venturi denies the allegations contained in Paragraph 33 of the Third-Party Complaint.

Plaintiff's WHEREFORE Paragraph and Prayer for Relief do not contain any factual allegations to which Venturi is required to respond; however, Venturi denies that Blockbuster is entitled to any relief whatsoever.

Venturi denies each and every allegation of the Third-Party Complaint that is not specifically admitted herein.

DEFENSES

Further answering and by way of defense, Venturi answers Blockbuster's Third-Party Complaint as follows:

FIRST DEFENSE

Blockbuster's Third-Party Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

Blockbuster's claim is barred because the contractual provision upon which it is based is unenforceable because it violates public policy and/or the Fair Notice Doctrine.

THIRD DEFENSE

Blockbuster's claim is barred pursuant to the doctrines of estoppel, waiver, laches, and unclean hands.

FOURTH DEFENSE

Blockbuster claim is barred by Blockbuster's failing to have met conditions precedent, as reflected in Exhibit 1, including but not limited to the condition precedent of timely and proper notice set forth in section 9.5 of the Agreement.

FIFTH DEFENSE

All or part of Blockbuster's claim is barred by applicable statutes of limitations.

SIXTH DEFENSE

This Court lacks jurisdiction to adjudicate Blockbuster's claim and/or venue is improper.

SEVENTH DEFENSE

Blockbuster's claim is moot.

EIGHTH DEFENSE

Blockbuster's claim is not ripe.

NINTH DEFENSE

Blockbuster may have failed to join one or more indispensable parties.

TENTH DEFENSE

Blockbuster has failed to mitigate and/or reasonably avoid the consequences of any damages for which indemnification is sought.

ELEVENTH DEFENSE

Venturi's obligations, if any, are limited by the existence of other entities' obligations of indemnification or insurance.

TWELFTH DEFENSE

Venturi is entitled to a setoff of amounts owed to and/or received by Blockbuster in connection with the controversy at issue.

THIRTEENTH DEFENSE

Blockbuster's claim is barred by its failure to attach the contract at issue (even in redacted form, so as not to reveal confidential information).

FOURTEENTH DEFENSE

Blockbuster's claim fails to state a real controversy or justiciable issue.

FIFTEENTH DEFENSE

Blockbuster's claim is barred by its material breach of the Agreement.

SIXTEENTH DEFENSE

Venturi reserves the right to supplement its Answer with additional defenses.

Respectfully submitted,

/s/ Eric Hemmendinger
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CERTIFICATE OF SERVICE

I hereby certify that on January 16, 2009, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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