

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION
Civil Action No. 4:11-cv-00059-FL

SIRSI CORPORATION d/b/a
SIRSIDYNIX,

Plaintiff,

MOTION TO DISMISS,

v.

CRAVEN-PAMLICO-CARTERET REGIONAL
LIBRARY SYSTEM,

Defendant.

MOTION TO DISMISS

Rule 12(b)(6) Motion to Dismiss

1. Plaintiff filed a breach of contract claim alleging that Defendant entered into a Master Software License and Services Agreement (hereinafter “Master Agreement”) with Plaintiff and then breached the terms of the Master Agreement.
2. The alleged Master Agreement appears to be comprised of three separate and distinct multipage documents entitled;
 - a. Master Software License and Services Agreement, (Exhibit A)
 - b. Schedule 1: Sirsi Dynix Quote, (Exhibit B)
 - c. SAAS Schedule. (Exhibit C)
3. Exhibits B and C appear to be incorporated by reference into Exhibit A, which in turn comprises what appears to be the integrated Master Agreement.

4. Plaintiff further alleges that “after entering into the Master Agreement with SirsiDynix, CPC Regional asked to delay implementation of the Symphony system due to funding issues. SirsiDynix agreed to these delays.” (Comp. Paragraph 9)
5. Plaintiff fails to allege a date upon which the Master Agreement was to have been implemented by the Parties or the date upon which performance of the Master Agreement was to have been rendered by the parties.
6. The Master Agreement contains a defined term entitled the “Go Live Date” which purports to be the date which prescribes the beginning of the alleged Contract.
7. The Go Live Date is defined by Plaintiff twice in the Master Agreement, as either;
 - a. the date on which the SirsiDynix Software is placed into operational use for normal daily business, including searching the public access catalog and circulating materials; or; (Exhibit B)
 - b. the date on which the SirsiDynix Software is available for operational use for normal daily business, including searching the public access catalog and circulating materials. (Exhibit C)
8. Plaintiff’s two definitions of a “Go Live Date” conflict with one another and are irreconcilable.
9. Neither definition prescribes an actual date for either party’s performance and the Master Agreement is devoid of any terms defining the date for performance.
10. The Go Live Date never occurred.
11. Under the first definition of Go Live Date, the Symphony software was never “placed” into

service by the parties, therefore no contract could have commenced.

12. Plaintiff's Complaint fails to allege that there was a meeting of the minds on a date for performance of the contract.
13. Defendant never paid for and Plaintiff never installed its Symphony software (the software contemplated in the Master Agreement hereinafter referred to as "Symphony") on Defendant's server, therefore it was never "placed" into service and therefore a condition precedent to the formation of the contract never occurred.
14. Additionally, Plaintiff alleges that it agreed to "delay" implementation of the Master Agreement due to funding issues.(Comp. paragraph 9)
15. Plaintiff does not allege the time frame for the alleged delayed implementation.
16. Plaintiff fully acknowledges that at the time it allegedly entered into the Master Agreement it knew Defendant did not have sufficient funds for to purchase Symphony.
17. Plaintiff alleges facts sufficient for this court to determine that the delay was for an indeterminate duration continuing indefinitely until the Library's funding issues were resolved.
18. Plaintiff does not allege that the funding issues were resolved or that it revoked its agreement to delay the implementation.
19. A document purporting to be a contract, and which does not state a date certain for the parties to perform and which does not contain a timeframe within which to perform is illusory and is not a contract.
20. Plaintiff alleges that the first time it notified Defendant of the alleged breach of the Master Agreement was on February 14, 2011, approximately two years after Defendant allegedly

entered into the Contract.

21. Plaintiff has not alleged facts sufficient to establish that the Parties had a meeting of the minds on a date for performance of the Contract, therefore Plaintiff cannot establish a breach of contract.
22. Plaintiff has not alleged facts sufficient to establish that Defendant owes damages due to a breach of contract.
23. The Master Agreement is void for vagueness in that;
 - a. The Parties never agreed upon a date for implementation of the contract;
 - b. The Plaintiff admittedly agreed to an indefinite delay of implementation of the contract.
24. The Master Agreement is void in that it contains a conflicting definition of the term “Go Live Date” which is a material term in the Master Agreement.
25. As a matter of law and based solely on the Complaint, it is impossible to determine when or if a valid contract was formed, when performance of the contract was due by the parties, and when or if an actual breach occurred.
26. The conflicting definitions of the Go Live Date are irreconcilable, create multiple possible times for performance of the contracts, and are indefinite.
27. The conflicting Go Live Dates must be construed against the Plaintiff.
28. The conflicting Go Live Dates, the fact that no actual performance date was set, and Plaintiff’s agreement to indefinitely suspend perform, prevented the parties reaching a meeting of the minds on implementation of the Master Agreement, therefore no contract was formed.
29. Because there was never a Go Live Date, according to the Plaintiff’s definition of the term,

the Contract complained upon was never performed by either party, and the executed documents of the Master Agreement never constituted a binding contract between the parties.

30. Because the Plaintiff has failed to allege facts sufficient for this Court to infer a valid Contract was formed Plaintiff cannot prove a breach of contract, and has therefore failed to state a claim upon which relief can be granted.

WHEREFORE, Defendant respectfully urges this Court to;

1. Dismiss Plaintiff's Complaint with prejudice.
2. Award no judgment to Plaintiff.

This the 17 day of June, 2011.

THE BETTIS LAW FIRM, PLLC
Attorney for Defendant

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