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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

**HUDSON HIGHLANDS VETERINARY
MEDICAL GROUP, P.C.**

Plaintiff,

- against -

**VETERINARY EQUIPMENT &
TECHNOLOGY SUPPLY, LLC,
RONALD F. SASSETTI, and FIRST UNION
COMMERCIAL CORPORATION, n/k/a WACHOVIA
BANK,**

**DEFENDANT'S
ANSWER WITH
AFFIRMATIVE
DEFENSES &
COUNTERCLAIMS**

05 – CV - 6661
(CM) (GAY)

Defendants Veterinary Equipment & Technology Supply, LLC (“VETS”) and Ronald F. Sassetti (“Sassetti”) (collectively referred to as “Defendants”), by their attorneys Nixon Peabody LLP, as and for their Answer to plaintiff’s Complaint (the “Complaint”), hereby alleges upon information and belief as follows:

1. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1 of the Verified Complaint.
2. Admit the allegations contained in Paragraph 2 of the Verified Complaint.
3. Admit the allegations contained in Paragraph 3 of the Verified Complaint.
4. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 of the Verified Complaint.

5. Admit the allegations contained in Paragraph 5 of the Complaint.
6. Admit the allegations contained in Paragraph 6 of the Verified Complaint.
7. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 7 of the Verified Complaint.
8. Admit the allegations contained in Paragraph 8 of the Verified Complaint.
9. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 9 of the Verified Complaint.
10. Admit the allegations contained in paragraph 10 of the Verified Complaint.
11. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 11 of the Verified Complaint.
12. Defendants repeat each and every denial as to each and every allegation contained in paragraph 12 of the Verified Complaint.
13. Deny the allegations contained in paragraph 13 of the Verified Complaint.
14. Deny the allegations contained in paragraph 14 of the Verified Complaint.
15. Defendants repeat each and every denial as to each and every allegation contained in paragraph 15 of the Verified Complaint.
16. Deny the allegations contained in paragraph 16 of the Verified Complaint.
17. Deny the allegations contained in paragraph 17 of the Verified Complaint.
18. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 18 of the Verified Complaint.
19. Deny the allegations contained in Paragraph 19 of the Verified Complaint.
20. Defendants repeat each and every denial as to each and every allegation contained in paragraph 20 of the Verified Complaint.

21. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 21 of the Verified Complaint.

22. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 22 of the Verified Complaint.

23. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 23 of the Verified Complaint.

24. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 24 of the Verified Complaint.

25. In response to the allegations set forth in the "WHEREFORE" clause of the Complaint, defendants deny that plaintiff is entitled to judgment against defendants or to any of the relief sought therein.

26. Deny each and every other allegation in the Complaint not otherwise addressed herein.

FIRST AFFIRMATIVE DEFENSE

27. Plaintiff has failed to state a cause of action upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

28. Plaintiff's claims are the result of their own conduct and should either be dismissed or reduced in proportion to the degree of plaintiff's comparable fault.

THIRD AFFIRMATIVE DEFENSE

29. Plaintiff's claims may be barred, in whole or in part, by the principles of waiver, estoppel, laches and/or unclean hands.

FOURTH AFFIRMATIVE DEFENSE

30. The actions complained of by plaintiff were caused in whole, or in part, by third parties.

FIFTH AFFIRMATIVE DEFENSE

31. The relief sought herein is barred to the extent that Plaintiff has failed to take reasonable steps to mitigate its damages.

SIXTH AFFIRMATIVE DEFENSE

32. Plaintiff's claims are barred, in whole or in part, by the applicable statutes of limitations.

SEVENTH AFFIRMATIVE DEFENSE

33. Defendant breached no duty, if any, owed to Plaintiff.

EIGHTH AFFIRMATIVE DEFENSE

34. Defendants hereby give notice that they intend to rely upon such other defenses that may become available or apparent during the course of discovery and thus reserve the right to amend their Answer to assert such defenses.

NINTH AFFIRMATIVE DEFENSE

35. Plaintiff is not entitled to attorneys' fees.

AS AND FOR DEFENDANTS' FIRST COUNTERCLAIM
(Breach of Contract)

36. On or about January 31, 2003, defendant VETS and Sasseti entered into an contract with plaintiff whereby plaintiff was to purchase a GE SFX or RFX Rad/Fluoro System ("Rad/Fluoro System") with attachments from defendants.

37. While in the process of procuring the Rad/Fluoro System for plaintiff, in or about April of 2003, the defendants procured and installed a new Summit Radiographic System ("Summit") for plaintiff to use on a temporary basis.

38. The Summit system enabled plaintiffs to continue operating their business while all parties waited for the Rad/Fluoro System to be procured.

39. Upon completion of the Rad/Fluoro System, plaintiff refused to allow a representative from defendants to take measurements of the location where the Rad/Fluoro System was to be installed in preparation for installation.

40. The taking of the measurements was critical and essential to defendants' ability to deliver and install the Rad/Fluoro System. Plaintiff's refusal to allow the inspection of the room where the Rad/Fluoro System was to be installed made delivery and installation impossible.

41. Thereafter, plaintiff refused to accept delivery of and/or to allow defendants to install the Rad/Fluoro System.

42. Defendants are now in possession of a Rad/Fluoro System that was specially fabricated for plaintiff's needs. It is a unique system that is not easily re-sellable in the relevant marketplace.

43. Defendants have made efforts to re-sell the Rad/Fluoro System but to date have been unsuccessful.

44. Plaintiff has also refused to return the Summit system that was installed by defendants and was to be used on a temporary basis by plaintiff at no charge.

45. While plaintiff received the benefit of the Summit system at no charge, it cost the defendants \$22,000 to procure and install the Summit system.

46. Plaintiff's use of the Summit system has extended for a significant period of time beyond what was contemplated by the parties.

47. Plaintiff has refused to return the Summit system.

48. Plaintiff's refusal to accept delivery of the Rad/Fluoro System and continued refusal to return the Summit system is a breach of the parties' contract.

49. As a result of plaintiff's breach, defendants VETS and Sassetti have been harmed in an amount no less than \$22,000.

AS AND FOR DEFENDANTS' SECOND COUNTERCLAIM
(Quantum Meruit)

50. In or about April 2004, defendants procured and installed a new Summit Radiographic System ("Summit") for plaintiff to use on a temporary basis.

51. At the time the Summit system was installed, it was expected that plaintiff would only need to use the Summit system until the Rad/Fluoro System was ready to be installed.

52. Upon completion of the Rad/Fluoro System, plaintiff refused delivery and precluded defendants from completing installation.

53. As a result, plaintiff is still in possession and continues to use the Summit system with defendant receiving no compensation.

54. Plaintiff's continued use of the Summit system beyond the period contemplated by the parties has resulted in a depreciation in value to the Summit system and has prevented defendants from offering it to other customers.

55. Plaintiff has and continues to receive the benefits of its free use of the Summit system without any compensation to defendants.

56. As a result of plaintiff's breach and refusal to return the Summit system, defendants have suffered additional damages in an amount to be determined at trial.

WHEREFORE, defendants Veterinary Equipment & Supply, LLC and Ronald F. Sassetti respectfully request that the Complaint, and all remaining causes of action therein contained be dismissed in its entirety, and that this Court grant to defendants judgment on their

Counterclaims, with interest, costs, and attorney's fees, together with such other and further relief as to this Court may seem just and proper.

Dated: July 25, 2005
Garden City, New York

NIXON PEABODY LLP

By: 

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