IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

VCA Professional Animal Laboratory, Inc., a California corporation, doing business as Antech Diagnostics,  
Plaintiff,  

vs.  
VetMed Consultants, Inc., an Arizona corporation; and Dr. Thomas Arch Robertson and Jane Doe Robertson, husband and wife,  
Defendants.

I. NATURE OF THE CASE

A. Plaintiff’s Statement of the Case

Plaintiff, VCA Professional Animal Laboratory, Inc., dba Antech Diagnostics (“Antech”) is a veterinary laboratory that provides veterinary diagnostic and clinical laboratory services to veterinarians and animal hospitals. On March 1, 2010, Antech entered into a written Lab Services Agreement with Vet Med Consultants, Inc. (“Vet Med”), a veterinarian hospital located in North Phoenix, and its owner/operator, Dr. Thomas Arch Robertson (“Robertson”).

Pursuant to the terms of the parties’ Lab Services Agreement, Vet Med and Robertson agreed to utilize Antech as the exclusive provider of Laboratory Services to Vet Med and Robertson for a period of five years, commencing on March 1, 2010,
and continuing through February 28, 2015. Vet Med and Robertson further agreed that they would utilize Antech’s services to the minimum amount of at least $48,000 per year, and that Vet Med and Robertson would be liable to Antech for that minimum average annual amount should they fail to do so.

In addition, and as part of the Lab Services Agreement, Antech also loaned Vet Med and Robertson $35,000, repayable with interest at a rate of 7% per annum. However, that loan would be forgiven if Defendants fully complied with all provisions of the Lab Services Agreement, including payment of the Minimum Average Annual Fee, compliance with the exclusivity provisions, and timely payment of all invoices for Laboratory Services rendered.

Shortly after execution of the Lab Services Agreement, Antech delivered the $35,000 loan to Vet Med and Robertson, and the parties thereafter performed pursuant to the provisions of the Lab Services Agreement for approximately 14 months. However, on or about April 29, 2011, Vet Med and Robertson notified Antech that they considered the parties’ Lab Services Agreement to be terminated, and that they would no longer perform thereunder. Since that time, Vet Med and Robertson have failed and refused to utilize Antech’s Laboratory Services or otherwise perform any of the terms of that agreement, other than repayment of the $35,000 loan.

B. **Defendant’s Statement of the Case**

Before the parties entered into the contract at issue, one of Antech's salesmen represented to Vet Med that Vet Med would be able to purchase a particular type of software from a third party vendor in the near future. According to Antech, such software would have allowed Ved Med's existing computer system to communicate with Antech's system. In reliance upon such representation, Vet Med entered into a contract with Antech ("Contract") and purchased approximately fifty-five thousand dollars ($55,000.00) worth of equipment. Vet Med would not have entered into the
contract with Antech had it not been led to believe that the software would become
available shortly after Vet Med executed the contract.

During contract negotiations, Robertson proposed a few changes to the
Contract. All proposed changes were rejected. In addition to the terms of the
Contract described in Antech's statement of the case, the Contract states that in the
event Vet Med purchases a minimum amount of yearly services from Antech and
otherwise complies with the terms of the Contract, one-fifth (1/5) of the above
described loan would be forgiven every year. The Contract also contains a section
entitled "Default." Such section states that in the event Vet Med breaches the
Contract by utilizing the services of another provider, Antech is entitled to declare
the balance of the loan, excluding amounts forgiven in prior years, immediately due
and payable. The default section does not provide Antech with any other remedies.
The Contract states that it is governed by California law without regard to the choice
of law provisions thereof.

The promised software was never developed. Without such software, Vet
Med was forced to enter the same patient information into two different computer
systems in order to use Antech's services. Not only did this create a substantial
administrative burden, it also increased the opportunity for, and the number of
instances of, human error.

After Vet Med had been using Antech's services for approximately one year,
its principal, Robertson, joined a professional association that has a contract with
Antech. Pursuant to such contract, Vet Med became entitled to a discount from
Antech as soon as Robertson joined such association. Robertson requested, but never
received, such discount.

During the first year the Contract was in effect, Vet Med purchased the
minimum amount of Antech's services, and one-fifth of the loan was forgiven. After
using Antech's services for approximately fourteen (14) months, the promised
software was still not available and Vet Med had no reason to believe it would
become available in the near future. Robertson contacted Antech and explained the situation. Antech employee Darin Nelson informed Robertson that as long as the outstanding balance of the loan was repaid, Vet Med had the right to stop using Antech’s services. Vet Med began utilizing the services of one of Antech’s competitors because such competitor was able to supply software that allowed Vet Med’s computer system to communicate with the competitor’s computer system.

After Vet Med began utilizing the services of Antech’s competitor but before Vet Med repaid the outstanding balance of the loan, Robertson was contacted by the President of Antech, namely Josh Drake ("Drake"). Drake claimed that Vet Med owed more than the outstanding balance of the loan.

Thereafter, Vet Med wrote a check made payable to Antech which conspicuously stated that it constituted payment in full for Vet Med’s account with Antech. Such check was for $39,080.14, which represented payment for the full original amount of the loan plus 10% interest (as opposed to the 7% provided in the Contract), without deduction for the portion of the loan that was forgiven at the end of the first year of the Contract. Such check was mailed to Antech along with a cover letter stating that the check represents payment in full for any and all amounts Vet Med owes to Antech. Vet Med mailed the check and letter to Antech at the payment address listed on all of Antech’s invoices, and Antech negotiated the check. A couple of weeks later, Vet Med received a letter from Antech acknowledging that it received Vet Med’s check but denying that it constituted payment in full. Antech never tendered repayment of the $39,080.14.

II. ELEMENTS OF PROOF

A. Plaintiffs’ Claims

The Lab Services Agreement between Antech and Defendants expressly provides that it is to be governed by California law. The cause of action for damages for breach of contract under California law is comprised with the following elements:
1. The existence of a contract,
2. Plaintiff's performance or excuse for nonperformance,
3. Defendant's breach of the agreement, and
4. Resulting damages to Plaintiff.


Under California law, a contract may be breached by non-performance, by repudiation, or by a combination of the two. *Central Valley General Hospital v. Smith*, (2008) 162 Cal. App. 4th 501, 513, 75 Cal. Rptr. 3d 771, 781. Where the parties' contract is of an on-going nature, so that the parties' respective performances are expected to continue for a specified duration of time, and one party breaches that contract before the expiration of its term, the aggrieved party may either await the other's complete performance, or elect to treat the renunciation as an immediate and total breach of the agreement, and sue immediately for damages. *Romano v. Rockwell International, Inc.*, (1996) 14 Cal. 4th 479, 489-490, 59 Cal. Rptr. 2d 20, 25-26; *Lambert v. Commonwealth Land Title Insurance Co.*, (1991) 53 Cal. 3d 1072, 1078, 282 Cal. Rptr. 445. Antech has elected to treat Defendants' renunciation of the Lab Services Agreement as a total breach.

The measure of damages for breach of contract under California law is the amount that will compensate the party aggrieved “For all of the detriment approximately caused thereby, or which, in the ordinary course of things, would be likely to result therefrom.” California Civil Code § 3300.

Thus, in an action for damages resulting from the repudiation of a contract, the Plaintiff may recover all damages that it has suffered thereby, both present damages and prospective damages in the form of profits that would have been realized from the future performance of the agreement. *Coughlin v. Blair* (1953), 41 Cal. 2d 587, 598, 262 P.2d 305, 311.
B. Defendant’s Defenses

1. Accord and Satisfaction

Under California law, a valid accord and satisfaction occurs if: (1) a person tenders an instrument as full satisfaction of a claim in good faith; (2) the amount of the claim was unliquidated or subject to a bona fide dispute; (3) the claimant obtained payment of the instrument; and (4) the claimant failed to tender repayment of the amount of the instrument within ninety days after payment of the instrument. Cal. Com. Code § 3311.

2. Contract Interpretation

In determining whether the contract limits Antech's remedy to repayment of the outstanding balance of the loan, the contract must be interpreted in a fashion that gives effect to the intention of the parties at the time the contract was made. Cal. Civ. Code, § 1636. To the extent the contract is ambiguous, it should be interpreted against the drafter of the contract. Cal. Civ. Code, § 1654; Hunt v. Superior Court, 81 Cal.App.4th 901, 97 Cal.Rptr.2d 215 (2000).

3. Impracticality

A party's performance under a contract is excused where: (1) after the contract is made, (2) through no fault of such party (3) the party's performance is made impractical by the occurrence or non-occurrence of an event (4) which was a basic assumption on which the contract was made. Maudlin v. Pacific Decision Sciences Corporation, 137 Cal.App.4th 1001, 40 Cal.Rptr.3d 724 (2006).

III. FACTUAL AND LEGAL ISSUES GENUINELY IN DISPUTE

A. The amounts due and owing for future services that would have been performed under the Lab Services Agreement.

B. Whether Defendants’ repayment of the loan constituted an accord and satisfaction.

C. Whether the contract limits Antech's remedy to recovery of the outstanding balance of the loan.
D. Whether Defendants' performance under the contract is excused by the doctrine of impracticality.

IV. JURISDICTIONAL BASIS OF THE CASE

The parties agree that this Court's jurisdiction is based on diversity of citizenship, pursuant to 28 U.S.C. § 1332, in that Antech is a resident of California, and all Defendants are residents of Arizona.

Defendants contend that there is less than $75,000.00 in dispute. However, Defendants believe that a motion to dismiss for lack of jurisdiction is unlikely to succeed, and therefore will not seek dismissal for lack of jurisdiction.

V. PARTIES

All parties have been served, and all parties that have been named as Defendants herein have filed an answer with the Court.

VI. PARTIES NOT SUBJECT TO THE COURT’S JURISDICTION

There are no parties to this action who are not subject to the Court’s jurisdiction.

VII. DISPOSITIVE PRE-TRIAL MOTIONS

A. Plaintiff's Statement

Defendants have raised the defense of accord and satisfaction based upon their repayment of Antech’s $35,000 loan. Plaintiff intends to file a Motion for Summary Judgment to strike that defense as soon as it has had an opportunity to conduct discovery into that issue.

B. Defendants' Statement

After Plaintiff has a fair opportunity to conduct discovery, Defendants intend to file a motion for summary judgment on the issues of (1) accord and satisfaction and (2) the contractual limitations on the remedies available to Plaintiff.

VIII. REFERRAL TO MAGISTRATE JUDGE

The parties do not believe that the case is suitable for reference to a master or to a United States Magistrate Judge.
IX. RELATED CASES

The parties are not aware of any related cases pending in front of other judges of this Court or before other courts.

X. TIMING OF DISCLOSURES

Due to the upcoming holidays, the schedules of counsel for the parties and the fact that the parties made extensive informal disclosures during the case management conference, the parties request the Court to allow them until December 21, 2011 to make the initial disclosures required by Rule 26(a), FRCP, and the parties have so stipulated between themselves.

XI. PROPOSED DEADLINES FOR:

A. Discovery


B. Filing Dispositive Motions

The parties propose a deadline for the filing of dispositive motions of October 12, 2012.

C. Disclosure of Expert Testimony

The parties propose that, consistent with the approach set forth in Rule 26(a)(2)(c), FRCP, that the parties simultaneously disclose the identities of their expert witness(es) and produce their expert report(s) on April 6, 2012, with all rebuttal reports being due by May 11, 2012.

D. Pre-Trial Disclosures

Plaintiff believes that a deadline for making final pre-trial disclosures established by Rule 26(a)(3), FRCP, is adequate. Defendants believe that any evidence disclosed after the applicable discovery deadline should be inadmissible.
E. Final Pre-Trial Conference

The parties propose that this case may be set for a final pre-trial conference on or after January 14, 2013.

XII. SCOPE OF DISCOVERY

The parties believe that there is no need for special orders to be entered with regard to the manner or timing of the discovery in this action.

XIII. SUGGESTED CHANGES TO DISCOVERY

A. Plaintiff's Position

Because of the scope of the issues involved in this matter, and the need for Plaintiff to conduct discovery and investigation into how Defendants have been having their Laboratory Services Performed since their repudiation of the Lab Services Agreement with Antech, which may necessitate taking discovery from the third parties with whom Vet Med has subsequently contracted for those services, there is a significant likelihood that more than 10 depositions will be required, and Plaintiff reserves the right to request more than the presumptive number of depositions in the event that they are needed.

Likewise, because of the scope and complexity of the factual issues involved in this case, Plaintiff does not believe that the presumptive limit of 25 interrogatories will be sufficient in this action, and Plaintiff requests that the limit on the number of interrogatories that may be propounded by the parties in this action be increased to 50 interrogatories.

B. Defendant's Position

Defendants believe that no changes to the limitations imposed by Rules 30, 31 and 33, Federal Rules of Civil Procedure are necessary, and that Plaintiff will agree with this proposition after it has the opportunity to begin conducting discovery
XIV. **TRIAL DATE AND LENGTH**

The parties believe that this case will be ready for trial 60 days after the Court’s ruling on dispositive motions, and they anticipate that the trial will require 6 - 7 trial days.

XV. **JURY TRIAL**

Antech has requested trial by jury in its Complaint, and that request has not been contested by Defendants.

XVI. **PROSPECTS FOR SETTLEMENT**

The parties have agreed to confer further, in good faith, to explore the possibility of mediating this dispute, either before a private mediator or another United States District Court Judge or Magistrate Judge, once they have conducted sufficient discovery to assure that they are fully informed with regard to the scope of their claims and defenses.

XVII. **CLASS ACTIONS**

This case is not a class action.

XVIII. **COMPLEX TRACK CONSIDERATION**

The parties do not believe that this case presents any unusual, difficult, or complex problems that would require this case to be placed on the complex track for case management purposes.

XIX. **OTHER MATTERS**

The parties are not aware of any other matters at this time that would aid the Court in resolving this dispute in a just, speedy, and inexpensive manner.

RESPECTFULLY SUMITTED this 23rd day of November, 2011.

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