

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

FILED

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ENVIRONMENTAL ENERGY SERVICES, INC.)

Plaintiff)

VS.)

CYLENCHAR LIMITED,
DR. PETER J. HURLEY)

Defendants)
_____)

U.S. DISTRICT COURT
BRIDGEPORT, CONN
Civil Action No.: _____
311CV0039 JCH

COMPLAINT

Nature of Complaint:

This diversity action seeks damages from and an injunction against the defendants based on fraudulent misrepresentations made by defendants which induced plaintiff to perform services and expend extensive funds for the benefit of defendants during the period commencing April 1, 2010. Plaintiff's claims for relief are based on unjust enrichment, breach of partnership agreement, fraudulent misrepresentations, and violation of the Connecticut Unfair Trade Practices Act.

Jurisdiction and Venue:

1. Jurisdiction in this Court is based on diversity of citizenship between the parties and an amount in controversy in excess of \$75,000, exclusive of interest and costs, all pursuant to 28 U.S.C. §1332(a)(2).

2. Venue in this District is proper based on plaintiff's principal place of business

being located in Connecticut, and based on defendants activities relating to this action being conducted at plaintiff's place of business in Connecticut, at other locations in Connecticut and elsewhere in the United States. The defendants made serial misrepresentations to the plaintiff in Connecticut designed to induce performance in Connecticut and elsewhere, all of which delivered valuable benefits to the defendants both within and outside Connecticut for which the defendants paid nothing.

Parties:

3. The plaintiff, Environmental Energy Services, Inc. ("EES"), is a Connecticut corporation with its principal place of business at 5 Turnberry Lane, Sandy Hook, CT 06482.

4. The defendant, Cylenchar Limited ("Cylenchar"), is a new business start-up company registered in England and Wales (Registered No. 5036987), formed by Dr. Peter J. Hurley, with its offices originally at Cas Gwent Chambers, Welsh Street, Chepstow Gwent, NP165LN, United Kingdom, but since removed to 11 Maple Grove, Huddersfield, West Yorkshire HD22FG, United Kingdom, the home of Peter J. Hurley.

5. The defendant, Dr. Peter J. Hurley ("Hurley"), has invented and applied for patents relating to removing mercury from power station exhaust gases. He lives at 11 Maple Grove, Huddersfield, West Yorkshire HD22FG, United Kingdom. On information and belief, Hurley and his family members are the sole owners of Cylenchar.

Statement of Facts:

6. EES was formed in 1992 to provide innovative combustion engineering services and fuel treatment products to utilities and industries throughout North America. Its guiding

purpose is to reduce the harmful emissions that can have destructive consequences for the environment. While initially concentrating on oil-fired utility companies, starting in 2004 EES significantly expanded its product line and target market to include coal fired utilities, which still represent about 50% of all electricity generated in the United States.

7. EES's fuel treatment products serve several different functions, including making the boiler more efficient (thus reducing the amount of greenhouse gases produced to generate the same amount of electricity) and separately eliminating contaminants (in the exhaust gases and in the ash which is used in the manufacture of other products). EES's engineers diagnose issues at each customer's facility and develop a fuel treatment and delivery system unique to that customer's requirements.

8. The marketing of a new fuel treatment product is a particularly long process in the utility industry, which is slow to adopt new technologies until they are proven, or required by governmental authorities, and it generally involves a trial or series of trials at the utility's facility before the first commercial order for the fuel treatment product is made. The time period between first presentation and the execution of a commercial order often exceeds a year.

9. From 2005 to 2008 EES marketed a technology for the removal of mercury from coal fired utility exhaust gasses pursuant to an exclusive license from Solucorp Industries, Ltd. ("Solucorp") to whom Hurley had assigned his United States Patent relating to such technology ("Hurley Patent #1"). EES succeeded in arranging three different trials of the Hurley Patent #1 technology with major coal-fired utility companies in the United States.

10. In 2008 Solucorp terminated the license relating to Hurley Patent #1. As a result EES lost its rights to market the technology embodied in Hurley Patent #1.

11. During this period, EES became acquainted with Hurley.

12. In the same time period, Hurley was developing a second generation technology for elimination of mercury from coal-fired utility exhaust gases. This second generation technology was subsequently embodied, first in provisional patent applications made in January and February of 2008, and finally in U.S. Patent Application 12362049, filed in January, 2009 (“Hurley Patent #2”).

13. Knowing of the cancellation of EES’s license from Solucorp and that EES had already made extensive and successful efforts to market Hurley Patent #1, Hurley suggested to EES that EES could partner with him on his new improved technology. In September, 2008 Hurley and EES representatives met at the Cornell Club in New York and commenced negotiations relating to the formation of a joint venture between EES and an entity to be formed by Hurley for purposes of financing and marketing the technology embodied in Hurley Patent #2.

14. Hurley formed defendant Cylenchar to be the other party to the proposed joint venture. A memorandum of understanding relating to the formation of a joint venture between Cylenchar and EES to promote Hurley Patent #2 technology in North America and the rest of the world was executed on December 8, 2008 (the “MOU”).

15. The MOU provided (a) a joint venture vehicle would be formed in the United Kingdom, to be owned sixty percent (60%) by Cylenchar and forty percent (40%) by EES, (b) for its 60% interest in the English joint venture company, Cylenchar would make a cash contribution of \$2 million, grant an “exclusive worldwide and royalty-free license” to use the Hurley Patent #2 technology, and provide technical expertise and assistance, (c) for its 40% interest in the English joint venture company, EES would provide “all management, engineering, sales and

marketing services, support and assistance”, and (d) the definitive Joint Venture Agreement was to be executed and delivered by January 31, 2009 unless that time limit was mutually extended by Cylenchar and EES.

16. Operating in good faith, upon execution of the MOU, EES immediately commenced a program of marketing the Hurley Patent # 2 technology in the United States. These efforts included making presentations to its existing customers who were already using one or more of EES fuel treatment products and to new potential coal-fired utility customers, and presenting the technology at several key industry trade shows. Because the Hurley Patent # 2 technology was a completely new technology, EES had to “start from scratch”, going back to some of the same customers that had participated in trials relating to Hurley Patent #1, and to new customers. EES expended large sums on its marketing efforts.

17. There were two mutually agreed extensions of the deadline for the execution of the joint venture agreement and the formation of the formal joint venture, one of which occurred after the deadline had already passed. The last extension set the deadline for execution of the joint venture agreement at March 31, 2010.

18. Other than the extensions of the deadline, defendant Hurley never entered into any negotiations concerning the terms of the proposed joint venture after December, 2008. Hurley never raised any funds to contribute to the proposed joint venture and did not fulfill his commitment to have Cylenchar make the promised cash contribution. Neither Hurley nor Cylenchar contributed any funds to EES with respect to its marketing efforts for the Hurley Patent #2 technology. In fact, many times, at Hurley’s request, EES paid significant portions of Hurley’s expenses while he was in the United States to attend trade shows or other sales

presentations.

19. Commencing with the pre-MOU negotiations between Hurley and EES, and continuing during EES marketing efforts, at trade shows and otherwise, Hurley came to the United States several times, and visited with EES at its plant/office in Sandy Hook, CT, and was entertained in Connecticut by EES representatives. During these trips and in other communications Hurley continually represented to EES representatives that EES and Hurley would “get rich” from the Hurley Patent #2 technology.

20. Shortly before the expiration of the MOU, on February 10, 2010, with Hurley’s active encouragement, EES contracted with Southern Research Institute (“SRI”) an independent testing organization in Birmingham, Alabama, to test the Hurley Patent #2 technology to see if it actually worked in a full size coal boiler (“SRI Test”).

21. With the cost of the SRI Test expected to top \$300,000, EES set about to find financing. EES introduced the Hurley Patent # 2 technology to Connecticut investors with whom EES was acquainted who saw a possible application of the Hurley Patent # 2 technology to the cement industry in which they participated. The Connecticut investors made an investment in EES part of which was intended to provide EES with the funds necessary to perform the SRI Test.

22. Because the last extension of the MOU was to end on March 31, 2010, and because it became clear that the SRI Test would not be conducted before the middle of April, 2010, EES sought a further extension of the MOU to December 31, 2010. When Hurley did not respond to EES’s specific request, the MOU expired by its terms on March 31, 2010.

23. Knowing that the MOU had expired, Hurley continued to encourage EES to

proceed with the SRI Test and in early April as part of the preparations for the SRI Test, Hurley demanded that EES execute a document which purported to give Cylenchar exclusive rights to the SRI Test results.

24. Hurley traveled to the United States and participated with EES in the SRI Test which took place in Birmingham, Alabama during the period April 22-30, 2010, with all of Hurey's expenses being paid by EES at Hurley's request.

25. During the SRI Test procedures, Hurley repeated statements he had been making to EES personnel since marketing efforts began to the effect that "we will all get rich" based on the Hurley Patent #2 technology, and at the SRI Test Hurley made a point of showing EES personnel pictures of the yacht he was going to purchase with his portion of the profits.

26. The SRI Test demonstrated almost instantaneously that the Hurley Patent # 2 technology was very effective in reducing mercury emissions in the exhaust gases, a major advance in clean energy technology, and proved for the first time the hypothesis concerning the effectiveness of the Hurley Patent # 2 technology that Hurley and Cylenchar had been touting since prior to the execution of the MOU.

27. On April 20, 2010 (essentially at the same time that the SRI Test was being conducted) the United States Patent Office informed Hurley that the claims of the Hurley Patent #2 had been allowed, making the ultimate issuance of Hurley Patent #2 in August 2010 primarily an administrative event from that point forward.

28. SRI provided Hurley and Cylenchar with the results of the successful SRI Test.

29. On May 7, 2010, just seven days after the very successful SRI Test, Hurley took two actions:

- (a) Hurley finally assigned Hurley Patent # 2 to Cylenchar, and
- (b) Hurley emailed EES the following message: “Therefore, to create a blank canvas from which we can both possibly work in the future, we are formally terminating the Memorandum of 8 December 2008.” This statement confirmed that the MOU had elapsed as of March 31, 2010 and that Hurley had no intention of extending it retroactively.

30. EES was confused by the May 7 email since while EES was aware that the MOU had expired by its terms on March 31, 2010, it also knew that one of the prior extensions of the MOU had occurred after the fact. Furthermore, EES did not understand the meaning of “create a blank canvas” when only a few days before, during the SRI Test itself Hurley again made the representation to EES that they would both “get rich” on the Hurley Patent # 2 technology, the same representation he had been making while the MOU was in existence.

31. While EES did not endorse Hurley’s “blank canvas” position, EES did made several requests of Hurley seeking the terms of the new partnership for EES’s participation in the Hurley Patent # 2 technology profits proposed by the May 7 email and by Hurley’s actions in arranging for, participating in, and making representations at, the SRI Test.

32. Hurley never responded to any of EES’s requests.

33. Meanwhile, in good faith EES continued to market the Hurley Patent # 2 technology. By July 2010, EES was arranging for an in-plant trial of the Hurley Patent # 2 technology with one of the largest coal fired utility companies in the United States (“Trial Customer”), and as part of this effort presented Hurley with a nondisclosure agreement (“NDA”). Hurley demanded a change in the choice of law provision in this NDA (to English law from Texas law) which EES was able to obtain from the Trial Customer.

34. Finally, when EES presented the NDA with Hurley's requested change for signature by Hurley and Cylenchar, on July 26, 2010, Hurley reversed position and refused to sign the NDA and sent a "CEASE AND DESIST" email to EES indicating that EES was to undertake no further efforts in regard to the Hurley Patent # 2 technology.

35. EES has complied with the CEASE AND DESIST demand from Hurley and terminated its efforts to bring the Hurley Patent #2 technology to market. However, in light of the significant efforts it put into marketing the Hurley Patent # 2 technology, its reputation with its customers, including the Trial Customer, has been and will continue to be tarnished by having to discontinue its efforts.

36. Since the July 26, 2010 CEASE AND DESIST email, Hurley and Cylenchar have not communicated with EES, but on information and belief, Hurley and Cylenchar continue to exploit the marketing efforts and test results undertaken by EES on their behalf.

37. On information and belief, having excluded EES completely from any relationship to Hurley Patent #2, Hurley and Cylenchar continue to attempt to persuade EES's Connecticut investors to participate in exploiting Hurley Patent #2 in the cement industry while circumventing any role for EES.

First Claim for Relief: Unjust Enrichment:

38. EES repeats and realleges paragraphs 1 through 37 above.

39. Following the expiration of the MOU, Hurley and Cylenchar have been unjustly enriched at the expense of EES by the receipt and continued benefit of the SRI Test results and the marketing efforts for the Hurley Patent #2 technology to the coal-fired utility industry in the United States.

Second Claim for Relief: Breach of Partnership Agreement:

40. EES repeats and realleges paragraphs 1 through 37 above.

41. In enlisting the performance by EES following expiration of the MOU on March 31, 2010, defendants Cylenchar and Hurley created a partnership with EES to exploit the Hurley Patent # 2, all based upon the representation and understanding that there would be an equitable sharing of the profits from this venture.

42. EES performed all of the obligations requested of it in connection with this partnership, and the defendants have benefitted from all of the activities of EES in this connection.

43. By notification dated July 26, 2010 and thereafter, however, the defendants have obstructed and prohibited any further performance by EES in connection with the new partnership, and they have failed and refused to remit to the plaintiff any portion of the profits generated and to be generated in connection with this venture.

44. The plaintiff EES has sustained economic loss arising out of the breach by the defendants of their partnership obligations.

Third Claim for Relief: Fraudulent Misrepresentation:

45. EES repeats the allegations set forth in paragraphs 1 through 37 above.

46. Commencing in April, 2010, Hurley and Cylenchar made the following representations to, or withheld information from EES, and took the following actions which taken together constituted fraudulent misrepresentations and inducements to EES to take actions and spend its own funds and marketing expertise and performance for the sole benefit of defendants:

(a) In early April, 2010, knowing that the MOU had expired and that EES had arranged the financing to pay for the SRI Test, Hurley encouraged EES to complete the SRI Test which EES had contracted for in February. This included Hurley's travelling (at EES's expense) from England to the test site in Birmingham, Alabama and participating in the SRI Test alongside EES.

(b) While at the SRI Test in the April 20-30, 2010 time period, Hurley and Cylenchar failed to inform EES that he had no intention of extending the MOU, and to the contrary continued to treat EES as a partner in a venture to exploit the Hurley Patent #2 technology.

(c) Hurley, as part of his comments to the effect that both he and EES would "get rich" in connection with the exploitation of the Hurley Patent # 2 technology, went so far as to show EES representatives pictures of the yacht he was going to purchase with his share of the collective profits. Hurley and the EES representatives celebrated the successful results of the SRI Test.

(d) In his May 7, 2010 email Hurley's "blank canvas" language constituted a further representation that EES and the defendants were still partners, and induced EES to continue its marketing efforts, including its intense efforts directed toward the Trial Customer.

47. Each of the foregoing representations or omissions were false and misleading and were known to be such when made or were undertaken with reckless disregard of the truth.

48. The following actions all demonstrate that despite the representations made by the defendants, Hurley and Cylenchar never had any intention of permitting EES to participate in the profits to be received from Hurley Patent #2, and that the conduct identified above constituted materially false and misleading representations intended to induce EES to pay for the SRI Test (including expenses of Hurley) and to continue its marketing efforts for the Hurley Patent # 2

technology:

- (a) encouraging EES to arrange for the SRI Test while simultaneously demanding sole ownership of the SRI Test results as part of the arrangements for that test;
- (b) treating EES as a *defacto* partner during the SRI Test;
- (c) formally “terminating” the expired MOU almost immediately after the combined good news of the successful SRI Test and the allowance of the Hurley Patent # 2 patent claims;
- (d) waiting to transfer Hurley Patent #2 to Cylenchar until after the MOU had expired and been formally terminated;
- (e) offering a “blank canvas” partnership opportunity in Hurley’s May 7, email, and then refusing to enter into any discussions with EES concerning the terms of such partnership;
- (f) refusing to execute the Trial Customer NDA and sending the July 26, 2010 cease & desist email to EES;
- (g) refusing to communicate with EES after sending the July 26 cease & desist email;
- (h) on information and belief, approaching EES’s Connecticut investors to participate with Cylenchar in exploiting the Hurley Patent # 2 for the cement industry without informing EES;
- (i) on information and belief, replacing EES as a partner in Cylenchar’s offering documents.

49. EES relied upon the misrepresentations by the defendants and has been damaged by

- (a) its substantial investments in the marketing of the Hurley Patent # 2 technology and in arranging and paying for the SRI Test,
- (b) the adverse affect on EES’s reputation with its customers and potential customers because of the requirement to withdraw from marketing the Hurley Patent # 2 technology, and

(c) being deprived of its interest in the profits to be obtained by the exploitation of the Hurley Patent # 2 technology.

Fourth Claim for Relief: Breach of Connecticut Unfair Trade Practices Act:

50. EES repeats the allegations set forth in paragraphs 1 through 37 above.

51. At all relevant times, defendants Hurley and Cylenchar were actively engaged in trade and commerce in Connecticut and elsewhere in the United States, including their activities of entering into business arrangements intended to exploit the Hurley Patent #2 technology. Hurley and Cylenchar engaged in unfair and deceptive practices by making the fraudulent misrepresentations and omissions in communications to EES as described above in order to induce EES to perform marketing services and to arrange the SRI test for the sole benefit of the defendants, but as soon as the positive SRI test results were achieved, to take advantage of the performance by EES while simultaneously pursuing measures to eliminate EES from the benefits of its own performance.

52.. At all relevant times prior to July 26, 2010, defendants Hurley and Cylenchar represented themselves as having a bona fide intention to have EES participate in the venture to market and distribute the Hurley No. 2 Patent if only EES would continue the expenditures and marketing efforts the defendants had requested.

53. EES has suffered an ascertainable loss of money as a result of the unfair and deceptive acts by Hurley and Cylenchar.

54. EES is entitled to an accounting of the world-wide profits derived and to be derived from the Hurley Patent # 2 technology to facilitate a proper division of those profits in the interest of compensating plaintiff for its losses.

55. In order to protect EES from the deceptive and unjust exploitation of the Hurley Patent No. 2 by third parties, EES is entitled to an injunction against the transfer or licensing of rights to Hurley Patent No. 2 by Hurley and Cylenchar.

56. The conduct of the defendants constitutes unfair and deceptive trade practices in violation of Connecticut General Statutes §42-110a, *et seq.*

57. The plaintiff is mailing a copy of the complaint in this matter to the Attorney General and the Commissioner of Consumer Protection of Connecticut, all as required by Connecticut General Statutes §42-110g(c).

Prayer for Relief:

WHEREFORE, the plaintiff demands the following relief:


1. Compensatory damages in an amount not less than \$500,000;
2. Interest;
3. Its costs of action;
4. Exemplary damages under Connecticut common law;
5. Attorneys' fees pursuant to Connecticut General Statutes §42-110g(d);
6. An injunction barring Hurley, Cylenchar, and their employees, agents, successors, and assigns from transferring or licensing the rights to Hurley Patent No. 2 to any party other than the plaintiff;
7. Punitive damages pursuant to Connecticut General Statutes §42-110g(a); and
8. Such other relief as may be applicable in law or in equity.

Demand for Trial by Jury:

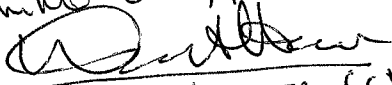
The plaintiff demands a trial by jury as to all issues amenable to jury trial in this action.

PLAINTIFF:

ENVIRONMENTAL ENERGY SERVICES, INC.

By: 
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 Herner & Associates, LLC
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*Demand for Jury Trial
 Plaintiff demands a trial by jury.*

*Environmental Energy Services, Inc
 By 
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