

SUFFOLK, ss.

SUPERIOR COURT

ROBERT A. SHAHEEN,)
)
 Plaintiff,)
)
 v.)
)
 DANIEL H. BATHON, JR.,)
)
 Defendant.)

June 29, 2004
Filed
Peter
Antoniak
Assistant Clerk

Civil Action No. 04-1846 BLS

ANSWER

The defendant Daniel H. Bathon, Jr. ("Bathon") hereby responds to the allegations contained in plaintiff Robert A. Shaheen's ("Shaheen") Complaint as follows:

1. Bathon admits, upon information and belief, the allegations contained in paragraph 1 of the Complaint.
2. Bathon admits the allegations contained in paragraph 2 of the Complaint.
3. Bathon admits that the document attached as Exhibit A to the Complaint is a true and accurate copy of a document executed by both parties, states that the document speaks for itself, denies any and all allegations contained in paragraph 3 of the Complaint that are inconsistent with or contrary to the terms of that document, and denies the remaining allegations of paragraph 3.
4. Bathon admits, upon information and belief, that the merger between Accordance and Software.com, Inc. took place. Bathon denies any and all remaining allegations contained in paragraph 4 of the Complaint.
5. Bathon denies the allegations contained in paragraph 5 of the Complaint.

6. Bathon admits that he sent a letter to Shaheen on or about October 1, 2002, and that enclosed with that letter was a document entitled "Share Delivery Agreement." Further answering, Bathon states that the documents speak for themselves, denies any and all allegations contained in paragraph 6 of the Complaint that are inconsistent with or contrary to the terms of those documents, and denies the remaining allegations of paragraph 6.

7. Bathon denies the allegations contained in paragraph 7 of the Complaint.

8. Bathon denies the allegations contained in paragraph 8 of the Complaint.

9. Bathon denies the allegations contained in paragraph 9 of the Complaint.

10. Bathon denies the allegations contained in paragraph 10 of the Complaint.

COUNT I

11. Bathon repeats and incorporates by reference his answers to the allegations contained in paragraphs 1 through 10, inclusive, of the Complaint.

12. Bathon denies the allegations contained in paragraph 12 of the Complaint.

13. Bathon denies the allegations contained in paragraph 13 of the Complaint.

14. Bathon denies the allegations contained in paragraph 14 of the Complaint.

15. Bathon denies the allegations contained in paragraph 15 of the Complaint.

COUNT II

16. Bathon repeats and incorporates by reference his answers to the allegations contained in paragraphs 1 through 15, inclusive, of the Complaint.

17. Bathon denies the allegations contained in paragraph 17 of the Complaint.

18. Bathon denies the allegations contained in paragraph 18 of the Complaint.

19. Bathon denies the allegations contained in paragraph 19 of the Complaint.

20. Bathon denies the allegations contained in paragraph 20 of the Complaint.

COUNT II

21. Bathon repeats and incorporates by reference his answers to the allegations contained in paragraphs 1 through 20, inclusive, of the Complaint.

22. Bathon denies the allegations contained in paragraph 22 of the Complaint.

23. Bathon denies the allegations contained in paragraph 23 of the Complaint.

24. Bathon denies the allegations contained in paragraph 24 of the Complaint.

COUNT IV

25. Bathon repeats and incorporates by reference his answers to the allegations contained in paragraphs 1 through 24, inclusive, of the Complaint.

26. Bathon denies the allegations contained in paragraph 26 of the Complaint.

27. Bathon denies the allegations contained in paragraph 27 of the Complaint.

28. Bathon denies the allegations contained in paragraph 28 of the Complaint.

COUNT V

29. Bathon repeats and incorporates by reference his answers to the allegations contained in paragraphs 1 through 28, inclusive, of the Complaint.

30. Bathon denies the allegations contained in paragraph 30 of the Complaint.

31. Bathon denies the allegations contained in paragraph 31 of the Complaint.

32. Bathon denies the allegations contained in paragraph 32 of the Complaint.

33. Bathon denies the allegations contained in paragraph 33 of the Complaint.

COUNT VI

34. Bathon repeats and incorporates by reference his answers to the allegations contained in paragraphs 1 through 33, inclusive, of the Complaint.

35. Bathon lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 35 of the Complaint.

36. Bathon denies the allegations contained in paragraph 36 of the Complaint.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Each count of Shaheen's Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Bathon states that to the extent that he had any obligations to Shaheen, such obligations have been fully, completely and properly performed in every respect.

THIRD AFFIRMATIVE DEFENSE

Shaheen's claims are barred by the principles of laches, waiver, estoppel, ratification, and unclean hands.

FOURTH AFFIRMATIVE DEFENSE

Shaheen's claims are barred by the principles of accord and satisfaction and release.

FIFTH AFFIRMATIVE DEFENSE

Bathon states that to the extent that there were any contractual agreements between the parties, Shaheen's claims are barred, in whole or in part, by Shaheen's failure to perform pursuant to such contractual agreements.

SIXTH AFFIRMATIVE DEFENSE

Bathon states that to the extent that there were any contractual agreements between the parties, Shaheen's claims are barred by his failure to perform conditions precedent under such contractual agreements.

SEVENTH AFFIRMATIVE DEFENSE

Bathon states that to the extent that there were any contractual agreements between the parties, Shaheen's claims are barred, in whole or in part, because Shaheen acted in bad faith in discharging his obligations owed to Bathon under such contractual agreements.

EIGHTH AFFIRMATIVE DEFENSE

Shaheen's claims fail for lack of consideration.

NINTH AFFIRMATIVE DEFENSE

Shaheen's claims are barred, in whole or in part, because Shaheen failed to mitigate or avoid the damages he claims.

TENTH AFFIRMATIVE DEFENSE

Shaheen's claims are barred, in whole or in part, because Bathon complied with any and all contractual agreements that may have existed between the parties.

ELEVENTH AFFIRMATIVE DEFENSE

Bathon hereby gives notice that he intends to rely upon such other defenses as may become available or apparent during the course of discovery and thus reserves his right to amend this list to assert such defenses.

REQUEST FOR RELIEF

WHEREFORE, Bathon requests that this Court:

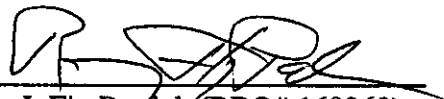
- (i) dismiss the Complaint in its entirety with prejudice;
- (ii) enter judgment in Bathon's favor;
- (iii) award Bathon his costs and reasonable attorneys' fees; and
- (iv) award Bathon such other and further relief to which he may be entitled.

JURY DEMAND

Bathon hereby demands a trial by jury.

DANIEL H. BATHON, JR.,

By his attorneys,



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Sarah C. Kellogg (BBO# 637530)
Joshua C. Rowland (BBO# 655906)
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Dated: June 30, 2004

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the
above document was served upon the
attorney of record for each other party
by mail-hand on

June 29, 2004
