

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

2010 JAN 15 P 2:29

ACUSHNET COMPANY,)
v.)
Plaintiff,) Civil Action No. 10 CV 48
WASHINGTON GOLF CENTERS, INC., and)
CHARLES CHAY,)
Also Known As Chongsun Chay,)
Defendants.) Jury Demanded

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COMPLAINT

Plaintiff Acushnet Company, by its attorneys, Duane Morris LLP, files its complaint against defendant Washington Golf Centers, Inc. and Charles Chay, as known as Chongsun Chay, and alleges as follows:

NATURE OF THE CASE

1. This is an action for compensatory damages arising from the breach by defendant Washington Golf Centers, Inc. ("Centers") of multiple contracts for the purchase of golf equipment.

2. Plaintiff Acushnet Company ("Acushnet") is a manufacturer and supplier of golf equipment, including, but not limited to, the Titleist, FootJoy and Cobra brands. Defendant Centers is a retailer of golf merchandise. For purposes of this case, Acushnet supplied Titleist, FootJoy and Cobra products to Centers. Centers has an outstanding balance in excess of \$123,443.14, not including post-Complaint interest, fees, and costs.

3. Defendants Charles Chay ("Chay" or "Guarantor") personally guaranteed debt incurred by Centers to Acushnet by contract dated March 17, 1993.

THE PARTIES

4. Acushnet is a corporation organized and existing under the laws of the State of Delaware and having its principal place of business located at 333 Bridge Street, Fairhaven, Massachusetts, 02719.

5. Upon information and belief, Centers is a corporation organized and existing under the laws of the Commonwealth of Virginia and having its principal place of business at 2625 Shirlington Road, Arlington, Virginia, 22206.

6. Upon information and belief, Chay resides at 12025 New Dominion Parkway in Reston, Virginia.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction of this action pursuant to 28 U.S.C. § 1332(a)(2) in that the matter in controversy exceeds \$75,000.00, exclusive of the interest and costs, and is between citizens of different states.

8. Venue is proper in this District pursuant to 28 U.S.C. § 1391(a) because Defendants reside in this District and pursuant to 28 U.S.C. § 1391(c) because a substantial part of the acts or omissions giving rise to the claim occurred in this District.

FACTUAL BACKGROUND

9. Acushnet is a manufacturer and supplier of golf equipment and, most pertinently, of Titleist, FootJoy and Cobra products.

10. Centers is a retailer of golf merchandise at various locations within the territorial jurisdiction of the Eastern District of Virginia.

11. Acushnet has engaged in continuing and regular commerce of golf equipment for the past seventeen (17) years, and most likely prior to 1993.

12. On November 2, 2006, Centers provided an updated Application for Direct Account Status with Acushnet and agreed to the terms therein (the "Direct Account Status Agreement"). Acushnet accepted Centers' application and granted Centers Direct Account Status.

13. Since Acushnet's acceptance of the Application for Direct Account Status, the parties have continued to engage in regular commerce of golf equipment.

14. Since Acushnet's acceptance of the Application for Direct Account Status, Centers submitted numerous purchase orders for Titleist and FootJoy equipment from Acushnet. Each purchase order was governed by the terms of the Direct Account Status Agreement.

15. From April 1, 2009 through the present, Centers submitted numerous purchase orders to Acushnet. For these orders, Acushnet sent Centers invoices. Centers has not made full payment on over 150 invoices or the purchase orders to which the invoices relate.

16. The value of the unpaid invoices range in value from approximately \$14 to approximately \$9,360. The total outstanding principal balance on all of the invoices is \$119,966.94. Interest accumulated on the principal to date totals \$3,476.20, for a total amount due of \$123,443.14.

17. Acushnet has made several attempts to work with Centers to facilitate payment of the debt. By email dated December 30, 2009, Centers stated that it could not and would not make payment on the outstanding, unpaid invoices. Defendant Chay was copied on this correspondence between Centers and Acushnet.

18. Much of the debt owed by Centers is months overdue.

19. Pursuant to the terms of the Direct Account Status Agreement, Defendant agreed to pay Acushnet a service charge of the lesser of 1.5% per month or the highest lawful rate in the event of delinquency (the "Service Charge").

20. Pursuant to the terms of the Direct Account Status Agreement, Defendant is liable for any costs associated with Acushnet's collection of sums due, including reasonable attorney fees.

21. The Direct Account Status Agreement is governed by the law of the Commonwealth of Massachusetts without regard to the principles of conflicts of law.

22. Chay agreed to guarantee any debt incurred by Centers to Acushnet by contract dated March 17, 1993 (the "Guarantee").

23. Guarantor agreed to guarantee Centers debt jointly and severally.

24. Guarantor waived any right to notice of nonpayment of Centers or Acushnet's efforts to collect unpaid sums.

25. Guarantor has not given written notice terminating or modifying the Guarantee to Acushnet.

26. Guarantor is liable for all costs, expenses, and attorneys fees incurred by Acushnet to collect any debt owed by Centers.

27. The Guarantee is governed by the law of Massachusetts.

FIRST CLAIM FOR RELIEF
(Breach of Contract)

28. Acushnet repeats and realleges the allegations of paragraphs 1 through 27 above as if fully set forth herein.

29. Defendant Centers is required to pay for the goods they ordered pursuant to the terms of the Direct Account Status Agreement .

30. Defendant Centers is delinquent in excess of \$123,443.14 not including post-Complaint interest, fees, and costs for the goods they ordered and received from Acushnet.

31. By refusing to make prompt payment for the goods pursuant to the terms of the Direct Account Status Agreement , Defendant Centers has breached the contract.

32. By reason of the foregoing, Defendant Centers should be ordered to pay compensatory damages of no less than \$123,443.14 plus continuing interest due, collection costs, and reasonable attorneys' fees.

SECOND CLAIM FOR RELIEF
(Guarantee)

33. Acushnet repeats and realleges the allegations of paragraphs 1 through 32 above as if fully set forth herein.

34. Defendant Chay guaranteed any debts Centers incurred through orders with Acushnet.

35. Because Centers is delinquent by in excess of \$123,443.14 not including post-Complaint interest, fees, and costs for the goods they ordered and received from Acushnet, and because Chay guaranteed that debt, Chay is personally liable for that debt.

36. By reason of the foregoing, Chay should be individually ordered to pay compensatory damages of no less than \$123,443.14 plus continuing interest due, collection costs, and reasonable attorneys' fees.

WHEREFORE, plaintiff demands judgment as follows:

- (1) compensatory damages not less than \$123,443.14;
- (2) pursuant to the terms of the Direct Account Status Agreement Defendants owe

Acushnet a service charge of the lesser of 1.5% per month or the highest lawful rate in the event of delinquency;

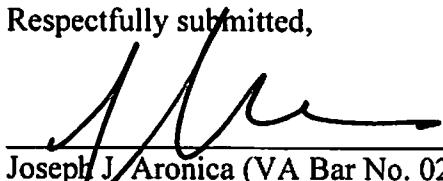
- (3) pursuant to the terms of the Direct Account Status Agreement, Defendants owe Acushnet for all costs associated with the collection of the requested account, including reasonable attorney fees; and
- (4) the costs and disbursements of this action, and such other and further relief as the Court deems proper.

Plaintiff demands a trial by jury.

Dated: Washington, D.C.
January __, 2010

DUANE MORRIS LLP

Respectfully submitted,



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