

ORIGINAL

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

FILED IN CLERK'S OFFICE  
U.S.D.C. Atlanta

JAN 15 2010

JAMES N. HATTEN, Clerk  
By: *[Signature]* Deputy Clerk

XEROX CORPORATION, a New York )  
corporation, )

Plaintiff, )

v. )

Civil Action No.

ATLANTA MARKETING SOLUTIONS, )  
INC., a Georgia corporation, )  
PAULETTE E. RAKESTRAW and )  
JEFFREY S. BRADDOCK, )

Defendants. )

1 10-CV-0130

-001

VERIFIED COMPLAINT

COMES NOW Xerox Corporation, a New York corporation  
("Plaintiff," "Xerox" "Lessor"), by and through its attorneys,  
files its Verified Complaint for breach of lease, on account and  
for damages, as follows:

Parties

1.

Plaintiff Xerox is a New York corporation, qualified to do  
business in Georgia, with its principal place of business  
located at 100 Clinton Avenue, South, Rochester, New York 14644.

2.

Defendant Atlanta Marketing Solutions, Inc. is a Georgia  
corporation ("Atlanta Marketing" or "Lessee") whose registered

agent is Charles Black, 231 Maxham Road, Suite 100, Austell, Cobb County, Georgia 30168. Atlanta Marketing's principal place of business is located at 500-B McNeel Industrial Boulevard, Powder Springs, Cobb County, Georgia 30127-5340.

3.

Defendant Paulette E. Rakestraw ("Rakestraw") is an individual resident of the State of Georgia and an officer of Atlanta Marketing. Rakestraw may be served at 391 Quail Ridge Road, Hiram, Paulding County, Georgia 30141-2208 or at Atlanta Marketing's place of business.

4.

Defendant Jeffrey S. Braddock ("Braddock") is an individual resident of the State of Georgia. Braddock may be served at 391 Quail Ridge Road, Hiram, Paulding County, Georgia 30141-2208, or at Atlanta Marketing's place of business.

5.

This Court has jurisdiction over the subject matter of this Complaint based on diversity of citizenship pursuant to the provisions of 28 U.S.C. § 1332, and the amount in controversy exceeds the sum of \$75,000.00.

6.

This Court has jurisdiction over the persons of all Defendants.

7.

Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a).

**COUNT ONE - BREACH OF CONTRACT  
(Against Lessee Atlanta Marketing)**

8.

By Equipment Lease Agreement dated March 14, 2006, including Addenda (hereinafter the "Lease") Xerox, as lessor, leased certain equipment and provided certain services to Defendant Atlanta Marketing, as Lessee. A true and correct copy of the Lease is attached hereto as Exhibit "A" and made a part hereof.

9.

Atlanta Marketing executed the Lease in conjunction with and for consideration of, among other things, Atlanta Marketing's operation of a commercial marketing and printing business.

10.

Pursuant to the Lease, Xerox, as the owner, leased to Atlanta Marketing the following personal property (hereinafter the "Equipment"):

- a) iGen110F Digital Production Press (Serial Number CC9150977); and
- b) iGen Creo Server (Serial Number HMH032831).

11.

The Lease calls for minimum monthly lease payments for the Equipment (\$10,801.40 + \$2,492.02 = \$13,293.42) and maintenance payments (\$400.00) in the total amount of \$13,693.42 (exclusive of sales tax) per month as required to be paid during the 60 month term thereof.

12.

Atlanta Marketing failed to pay to Xerox in full the payments due under the Lease commencing on or about April 1, 2008.

13.

Paragraph number 12 of the General Terms of the Second Maintenance Agreement provides, in pertinent part, as follows:

12. DEFAULT & REMEDIES; LATE CHARGES & COLLECTION COSTS.

A. For any payment not received by Xerox within ten (10) days of the due date as set forth herein, Xerox may charge, and you agree to pay, a late charge equal to the higher of five percent (5%) of the amount due or \$25 (not to exceed the maximum amount permitted by law) as reasonable collection costs.

B. You will be in default under this Agreement if (1) Xerox does not receive any payment within fifteen (15) days after the date it is due . . . . If you default, Xerox, in addition to its other remedies (including the cessation of Basic Services), may require immediate payment, as liquidated damages for loss of bargain and not as a penalty, of: (a) all amounts then due, plus interest on all amounts due from the due date until paid at the rate of one and one-half percent (1.5%) per month . . . . (b) the remaining Minimum Lease Payments in the Agreement's

term less any unearned finance, maintenance, and supply charges (as reflected on the lessor's books and records); (c) a reasonable disengagement fee calculated by Xerox that will not exceed fifteen percent (15%) of the amount in (b) above (said amount is available from Xerox upon request); and (d) all applicable Taxes . . . . In addition, if you default under this Agreement, you agree to pay all of the costs Xerox incurs to enforce its rights against you, including reasonable attorneys' fees and actual costs. [Exhibit A hereto, p. 6, ¶ 12.]

14.

Thus, the Lease provides that upon an event of default (as defined therein) Xerox may declare any and all payments due thereunder immediately due and payable, which Xerox has done. As of December 9, 2009 the principal amount of \$751,212.90 in lease and maintenance payments, including a disengagement fee, but excluding interest and late fees, was due and owing under the Lease. A summary of Xerox invoices for amounts past due and owing under the Lease and on account is attached hereto as Exhibit "B" and made a part hereof.

15.

By way of letter dated December 17, 2009 (the "Demand Letter"), Xerox provided notice of default under the Lease and made written demand on Defendant Lessee for payment of amounts due and owing under the Lease. A true and correct copy of the Demand Letter, along with the certified mail receipts, is attached hereto as Exhibit "C" and made a part hereof. Defendant Lessee has persisted in its default and failed and

refused to make any payment of amounts due and owing under the Lease as demanded by Xerox in the Demand Letter.

16.

Lessee Atlanta Marketing has failed and refused to make any payment of any amounts due and owing as provided in the Lease.

17.

Atlanta Marketing is in breach of and default under the Lease for the reasons, among others, set forth herein.

18.

Plaintiff Xerox has performed all of its contractual obligations under the Lease and has satisfied any and all conditions precedent to Atlanta Marketing's contractual obligations to Xerox.

19.

Due to Atlanta Marketing's failure and refusal to make payments of amounts as and when due under the Lease, Atlanta Marketing is indebted to Plaintiff as follows:

- a) Under the Lease base lease, maintenance and usage payments in the total principal amount due of \$751,212.90;
- b) Late fees equal to 5% of the amounts due; and
- e) Interest at the rate of 1.5% per month or 18% per annum is provided in the Lease.

20.

Unpaid interest continues to accrue at the rate of 18% per annum on the unpaid principal balances.

21.

Atlanta Marketing's breaches and defaults under the Lease as set forth above have directly and proximately caused damages to Xerox in the amounts set forth herein.

**COUNT TWO—AMOUNTS DUE ON ACCOUNT  
(Against Lessee Atlanta Marketing)**

22.

The averments of paragraphs 1 through 21 of this Complaint are hereby restated and re-alleged as if fully set forth herein.

23.

Xerox has provided certain goods and supplies, including but not limited to toner, and fuser fluid to Lessee in connection with the operation and use of the Equipment.

24.

Lessee has accepted said goods, supplies and services, which have been billed by Xerox to Lessee on account.

25.

Lessee has refused and failed to make payment to Xerox for amounts due on account. Accordingly, Lessee is indebted to Xerox on open account in the principal amount of \$67,457.05, as

of December 9, 2009, plus interest. See summary of invoices attached hereto as Exhibit "B."

26.

Atlanta Marketing has failed and refused to make any payment of the amount due on account as provided in the Demand Letter.

**COUNT THREE - BREACH OF CONTRACT**  
**(Against Guarantors Rakestraw and Braddock)**

27.

Paragraphs 1 through 26 are realleged and incorporated herein by reference.

28.

Defendants Rakestraw and Braddock (collectively "Guarantors") personally signed and delivered to Xerox a continuing Guaranty in connection with the Lease (the "Guaranty"). A true and correct copy of the Guaranty is attached hereto as Exhibit "D" and made a part hereof.

29.

Under the Guaranty, the Guarantors unconditionally guaranteed and promised to pay to Xerox all current and future obligations of Atlanta Marketing, which may at any time be due to Xerox by Atlanta Marketing, including those pursuant to the Lease and/or on account.



30.

The obligations of Guarantors under the Guaranty are primary and independent of the obligation of Atlanta Marketing, and a separate action or actions may be brought and executed against the Guarantors under the Guaranty. Further, the Guaranty shall continue until all obligations of Atlanta Marketing are fully satisfied, and is binding on the heirs, executors, administrators, successors and assigns of Guarantor.

31.

Guarantors received the Demand Letter, but have failed to pay any monies to Xerox under or pursuant to the Guaranty.

32.

Guarantors are in breach of and default under the Guaranty by reason of their failure to pay to Xerox those sums of monies that are due and owing to Xerox under and pursuant to the Lease and on account, which sums total \$818,669.95 in principal as more particularly set forth above.

33.

Xerox has performed all of its contractual obligations to the Guarantors and Xerox have satisfied any and all conditions precedent to Guarantors' contractual obligations to Xerox.

34.

Guarantors' breaches and defaults under the Guaranty, as set forth above, have directly and proximately caused damages to Xerox in the amounts set forth herein.

**COUNT FOUR - ATTORNEYS FEES AND COSTS  
(Against All Defendants)**

35.

Paragraphs 1 through 34 are realleged and incorporated herein by reference.

36.

Under the terms of the Lease Atlanta Marketing agreed to pay all costs of collection, including reasonable attorneys' fees, costs and expenses, which may be incurred in enforcing Xerox's rights thereunder.

37.

Under the terms of the Guaranty Guarantors agreed to pay to Xerox reasonable attorneys fees and all costs and expenses incurred in collecting payments from Atlanta Marketing or enforcing the Guaranty.

38.

To the extent it has not already done so, in accordance with O.C.G.A. § 13-1-11 and applicable law, this will serve as Plaintiff's written notice to Defendants that Plaintiff intends to and shall enforce the provisions of the Lease and the

Guaranty relative to the payment of attorneys' fees and costs in addition to the payment of principal and interest. This will also notify Atlanta Marketing and Guarantors that they have ten (10) days from the date of receipt of this notice to pay \$818,669.95 in principal, without incurring attorneys' fees or costs. If Atlanta Marketing and/or the Guarantors will pay said sum in full before the expiration of such 10 days, then the obligation to pay attorneys' fees shall be void and no court shall enforce the agreement to pay attorneys' fees.

39.

Plaintiff has incurred costs, including attorneys' fees, in connection with enforcing Plaintiff's rights and Defendants' obligations under the terms of the Lease and the Guaranty.

40.

The misfeasance and wrongful conduct of Defendants evidence such bad faith, vexatiousness, stubborn litigiousness, and has caused Plaintiff unnecessary trouble and expense that such conduct on the part of Defendants entitles Xerox to recover its reasonable costs and expenses, including, but not limited to, attorneys' fees, incurred in connection with this action, pursuant to O.C.G.A. §13-6-11.

41.

As a result of Defendants' breaches of and defaults, Plaintiff has been damaged and suffered losses for which Defendants are liable to Plaintiff as compensatory damages.

WHEREFORE, Plaintiff Xerox demands judgment against Defendants Atlanta Marketing and the Burke Estate, jointly and severally, and in its favor as follows:

(a) For amounts due under the Lease in the principal amount of \$751,212.90, plus 5% late fees and interest accruing at the rate of 18% per annum, and other amounts due and to come due under the Lease, pursuant to Count One of Plaintiff's Complaint.

(b) For amounts due on open account in the principal amount of \$67,457.05, plus interest pursuant to Count Two;

(c) The principal amount of \$818,669.95, past due under the Guaranty, plus interest accruing at the rate of 18% per annum, and other amounts due and to come due under the Guaranty, pursuant to Count Three of Plaintiff's Complaint.

(d) All costs of collection, including reasonable attorneys' fees, costs and expenses incurred by Xerox pursuant to Count Four of Plaintiff's Complaint; and

(e) For such other and further relief as is appropriate.

Dated this 15<sup>th</sup> day of January, 2010.

KUTAK ROCK LLP

By Gregory R. Crochet

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BRADDOCK, )

Defendants. )

**VERIFICATION**

Personally appeared Charles J. Corrigan, who, having been duly sworn, states and affirms  
as follows:

1. I am a Senior Litigation Specialist of Xerox Corporation, a New York corporation  
and am authorized to make this Verification on behalf of same;

2. The facts contained in the foregoing Verified Complaint are true and correct to  
the best of my personal knowledge, except where alleged upon information and belief.

By: *Charles J. Corrigan*

Title: SENIOR LITIGATION SPECIALIST

Sworn to and subscribed before me  
this 8<sup>th</sup> day of January, 2010.

*Anita Louise McGovern*  
Notary Public

My Commission Expires: May 26, 2010

