

**IN THE DISTRICT COURT OF TEXAS COUNTY
STATE OF OKLAHOMA**

TEXAS COUNTY
FILED

SEP 19 2023

M. RENEE ELLIS
COURT CLERK
By MA Deputy

MEMORIAL HOSPITAL OF TEXAS COUNTY)
AUTHORITY d/b/a MEMORIAL HOSPITAL)
OF TEXAS COUNTY)

Plaintiff,

vs.

RADSOURCE IMAGING TECHNOLOGIES,)
INC., *a foreign corporation*,)

Defendant.

Case No. CJ-2023-42

PETITION

COMES NOW, the Plaintiff, Memorial Hospital of Texas County Authority d/b/a Memorial Hospital of Texas County (“Hospital”) and for its causes of action against Defendant RadSource Imaging Technologies, LLC, allege and state as follows:

1. Plaintiff Memorial Hospital of Texas County Authority d/b/a Memorial Hospital of Texas County, a community hospital public trust authority located in Texas County, State of Oklahoma.
2. Defendant RadSource Imaging Technologies, Inc., is a foreign corporation, incorporated under the laws of the State of Missouri, with its principal place of business in Missouri.
3. The agreements, acts, and omissions underlying these causes of action were executed, or took place, in Texas County, Oklahoma.
4. Jurisdiction and venue are proper in the District Court of Texas County, Oklahoma.

FACTUAL BACKGROUND

Plaintiff adopts and incorporates the allegations contained in paragraphs 1 through 4 herein.

5. At all times relevant, Defendant operated a medical equipment business at 8121 N.W. 97th Terrace, Kansas City, Missouri, 64153.

6. On or about October 12, 2020, Hospital and Defendant entered into a certain Purchase Contract (“Purchase Contract”) whereby Hospital purchased a Siemens Espree18CH Wide Bore MRI machine (“the Machine”) for \$495,000.00.

7. The Purchase Contract included “Installation, Warranty, and Applications,” and a “Turnkey Install,” (collectively “Warranty”) which included the installation of a “Chiller from used system... New pipe, Insulate, glycol, and connect.”

8. Hospital paid Defendant \$9,393.80 for the Warranty.

9. The Purchase Contract also included a twelve (12) month “Parts Warranty,” which included labor provided by Defendant during normal work hours.

10. On or about April 26, 2021, the Machine was first placed into service at the Hospital thus beginning the twelve (12) month warranty period agreed upon by the Parties.

11. On or about October 12, 2020, the parties also entered into an “SE-Platinum Service Contract” (“Service Contract”) for thirty-six (36) months, wherein Defendant agreed to provide “Corrective Service, Planned Maintenance Inspections and replacement parts” to the Machine.

12. On or about August 6, 2021, the Machine “quenched” while performing an MRI scan on a patient,¹ and Defendant’s employees arrived on or about August 10, 2021, where it was discovered that the chiller, a device within the Machine designed to keep internal temperatures within a safe range of tolerance, was defective and malfunctioning.

¹ “Quench” is the term denoting the process whereby the temperature rises in the magnet coil windings of an MRI machine, which reduces the magnetic field and produces heat, causing the liquid helium to become gaseous. Such events may cause severe and irreparable damage to the Machine, and potentially deadly risk to individuals around the quenching Machine.

13. The Machine's malfunction causing the quench was covered by the Warranty included in the Purchase Contract and/or the Service Contract (collectively "Agreements").

14. The malfunctioning and defective chiller caused the Machine to be inoperable until on or about August 24, 2021.

15. On or about September 22, 2021, Hospital's employees discovered that the Machine quenched for a second time in the middle of the night, and Defendant was notified of the quench.

16. The malfunctioning Machine was again inoperable until October 2, 2021.

17. The Machine's malfunction was covered by the Warranty included in the Agreements.

18. In November 2021, Plaintiff's ability to perform brain scans ceased, and Defendant's directives and actions have failed to alleviate this deficiency.

19. On or about June 14, 2022, the Machine quenched again for a third time, as a result of a Cold Heat compressor malfunction.

20. The Machine's malfunction was covered by the Warranty included in the Agreements.

21. Defendant has failed to provide an analyst or engineer to ascertain the cause of quench or otherwise provide assistance in maintenance or repair of the Machine.

22. Out of necessity and at great cost, Hospital has hired third parties to review and repair the Machine.

23. On June 14, 2022, Hospital contacted Defendant about Hospital's concerns regarding the Machine's repeated failures and malfunctions.

24. On June 23, 2022, after receiving no response from Defendant, Hospital sent Defendant a follow up email requesting that Defendant advise the best course of action for curing the Machine's defects.

25. On the same day, Defendant sent Hospital an email advising that Defendant would offer no more assistance on the malfunctioning Machine, or provide necessary cryogenes for the machine to function, without payments of outstanding balances for previous maintenance and repair on the same components that caused the third quench.

26. As a result of Defendant's failure to make the necessary repairs to the Machine, Hospital was forced to file insurance claims in an attempt to cover its losses.

27. Hospital's insurance carrier assigned an engineer to review Hospital's losses but has been unable to adequately evaluate the causes of the Machine's quenches as a result of Defendant's failure to provide the necessary information regarding the quenches.

COUNTS I & II – BREACH OF CONTRACT

Plaintiffs adopt and incorporate the allegations contained in paragraphs 1 through 27 herein.

28. Defendant provided a defective and faulty Machine to Hospital.

29. Defendant also failed to adequately install the Machine and, including but not limited to, the chiller, cooling lines, and Cold Heat compressor, and further failed to repair and maintain the same in accordance with the Purchase Contract and Service Contract.

30. Defendant's actions and omissions constitute a material breach of the Agreements.

31. As a direct result of Defendant's breaches of the Agreements, Plaintiff suffered, and continues to suffer, substantial damages through lost revenue, and inability to perform essential healthcare services for its patients.

COUNT III – BREACH OF EXPRESS WARRANTY

Plaintiff adopts and incorporates the allegations contained in paragraphs 1 through 31 herein.

32. The Purchase Contract included the Warranty, whereby Defendant expressly warranted that Defendant would provide a Chiller, with new piper, insulate, glycol, and connect, as well as a Parts Warranty lasting for twelve (12) months after purchase.

33. The Parts Warranty also expressly included twelve (12) months of labor, supplied by Defendant, during normal working hours.

34. Defendant has failed to repair, replace, or otherwise address the defects in the Parts covered by the Warranty.

35. Defendant has failed to supply parts and labor, as covered in the Warranty,

36. As a result of Defendant's breach of express warranty, Plaintiff has suffered damages in excess of ten thousand dollars (\$10,000.00).

COUNT IV – BREACH OF IMPLIED WARRANTY

Plaintiff adopts and incorporates the allegation contained in paragraphs 1 through 36 herein.

37. By selling the Machine to Authority, Defendant impliedly warranted that the Machine and its component parts were free from material defects, constructed in a good and workmanlike manner, and reasonably fit for Plaintiff's intended use as an MRI machine.

38. The Machine is not free from material defects, constructed in a good and workmanlike manner, and reasonably fit for Plaintiff's intended use as an MRI machine.

39. As a result of Defendant's breach of implied warranty, Plaintiff has suffered damages in an amount in excess of ten thousand dollars (\$10,000.00).

COUNT V – NEGLIGENCE

Plaintiff adopts and incorporates the allegations contained in paragraphs 1 through 39 herein.

40. The parties entered into the aforementioned Agreements on October 12, 2020.

41. Defendant had a duty to Plaintiff to install and maintain the Machine properly.

42. Defendant breached its duty to Plaintiff by negligently failing to install and maintain the Machine in a professional and workmanlike manner.

43. The negligence of Defendant caused Plaintiff to suffer damages in an amount in excess of ten thousand dollars (\$10,000.00).

COUNT VI – FRAUD

Plaintiff adopts and incorporates the allegations contained in paragraphs 1 through 43 herein.

44. The parties entered into the Agreements on October 12, 2020.

45. Defendant concealed or failed to disclose that the Machine was faulty, poorly constructed and/or contained material defects in its workmanship and component parts, facts material to the transaction.

46. Defendant had a duty to disclose the defects in workmanship and component parts in the Machine and Defendant breached its duty to disclose said defects in order to deceive Authority and induce Authority into purchasing the Machine.

47. Plaintiff did not know of the material defects in workmanship and component parts of the Machine, and but for Defendant's concealment of, or failure to, disclose said defects, Plaintiff would have not proceeded with the transaction or would have proceeded differently had it been aware of the concealed of undisclosed defects.

48. As a result of its actions and omissions, Defendant committed fraud.

49. Defendant's fraudulent actions have caused Plaintiff to incur damages in excess of ten thousand dollars (\$10,000.00).

COUNT VII – UNJUST ENRICHMENT

Plaintiffs adopt and incorporate the allegations contained in paragraphs 1 through 49 herein.

50. Defendant failed to properly install, repair, and maintain the machine in accordance with the Agreements.

51. Despite Defendant's failures, Defendant collected a total of \$566,622.54 from Plaintiff pursuant to the Agreements.

52. As a result of Defendant's fraud, breach, and negligence, Plaintiffs have spent many hours and thousands of dollars repairing and/or otherwise curing defects which Defendant should have avoided or addressed prior to the sale of the Machine.

53. To allow Plaintiff to pay for defects caused by Defendant would result in an injustice to Plaintiff while unjustly enriching Defendant.

54. Defendant's unjust enrichment necessitates the reimbursement of Plaintiff for its expenses related to repairing or otherwise curing said defects.

WHEREFORE, premises considered, Plaintiff prays for judgment in its favor and against Defendant and requests this Court award Plaintiff damages for Defendant's breach of contract and warranties as well as damages resulting from Defendant's negligence, fraud, and unjust enrichment together with pre-judgment interest, court costs, attorney's fees, and any further relief the Court deems just and equitable.

Respectfully submitted,

Justin D. Meek

Justin D. Meek, OBA #21294
Benjamin R. Grubb, OBA #31569
Logan T. Turner, OBA #33629
DEWITT PARUOLO MEEK, PLLC
P.O. Box 138800
Oklahoma City, Oklahoma 73113
jmeek@46legal.com
bgrubb@46legal.com
lturner@46legal.com

-and-

Cory Hicks, OBA #19482
Field & Hicks, PLLC
108 N. E. 5th Street; P. O. Box 1347
Guymon, OK 73942
Phone (580) 338-6503
coryhicks@fieldandhicks.com

Attorneys for Plaintiffs

**ATTORNEYS' LIEN CLAIMED
JURY TRIAL DEMANDED**