



IN THE SUPERIOR COURT FOR THE STATE OF DELAWARE

FERADYNE OUTDOORS, LLC, and)
OUTDOOR PRODUCT INNOVATIONS)
ACQUISITION, LLC)

Plaintiffs.)

v.)

DANIEL B. REASER SR., individually,)
and as trustee of the DANIEL B. REASER)
SR. TRUST, OUTDOOR PRODUCT)
INNOVATIONS, INC., and RHINO)
TREESTANDS LLC,)

Defendants.)

C.A. No. N23C-03-173 AML CCLD

**REDACTED – PUBLIC
VERSION FILED APRIL
19, 2023**

COMPLAINT

FeraDyne Outdoors, LLC (“FeraDyne”) and Outdoor Product Innovations Acquisition, LLC (“OPIA,” and together with FeraDyne, the “Plaintiffs”), by and through undersigned counsel, hereby aver as follows:

Introduction

1. This Complaint concerns acts by Defendants to conceal the true financial condition of their company to induce Plaintiffs into executing an asset purchase agreement. Defendants then materially breached the express terms and representations and warranties of that agreement.

2. In October 2022, OPIA entered into an asset purchase agreement (the “APA”) with Defendants to acquire the assets of Outdoor Product Innovations, Inc.

(“OPI”). After the close of the transaction, Plaintiffs discovered irregularities and inconsistencies between OPI’s financial performance before and after closing. Plaintiffs then discovered that Defendants had engaged in improper accounting and other unscrupulous business practices prior to the parties’ execution and closing of the APA that misstated the true performance and liabilities of OPI. These improper practices were only revealed to Plaintiffs after they took possession of OPI’s assets.

3. Defendants implemented these improper business practices at OPI prior to October 2022, when the asset purchase agreement was signed. Among other things, Defendants failed to disclose at least [REDACTED] in unpaid invoices for transportation and warehouse storage costs that OPI incurred prior to the close of transaction. As a direct result of these improper accounting and other business practices, OPI’s financial statements, upon which Plaintiffs relied, were false and misleading.

4. Because Defendants intentionally understated OPI’s liabilities and overstated its EBITDA, with the intent to have Plaintiffs rely on those statements, Plaintiffs formed a belief that a fair purchase price for OPI’s assets was at least [REDACTED] *more* than they would otherwise have been willing to pay. Notably, the parties agreed that the purchase price would be calculated using a multiple of [REDACTED] x EBITDA.

The Parties

5. Plaintiff FeraDyne is a Delaware limited liability company with its principal place of business in Superior, Wisconsin. FeraDyne is the sole member of OPIA.

6. Plaintiff OPIA is a Delaware limited liability company formed for the purpose of acquiring assets of OPI. On behalf of, and at the direction of FeraDyne, OPIA purchased assets of OPI pursuant to the October 24, 2022 APA.

7. Defendant OPI is an Ohio corporation with its principal place of business in Elyria, Ohio.

8. Defendant Daniel B. Reaser Sr. is an individual residing in Ohio. Under the APA: Daniel B. Reaser Sr. was the “Representative of the Sellers and Owners.” On information and belief, Daniel B. Reaser Sr. is the trustee of the Daniel B. Reaser Sr. Trust, dated January 23, 2011, as amended.

9. The APA defines “Sellers” as OPI and Rhino Treestands LLC. The APA defines “Owners” as Daniel B. Reaser, Sr. and the Daniel B. Reaser Sr. Trust, dated January 23, 2011, as amended.¹

10. Defendant Rhino Treestands LLC is an Ohio limited liability company with its principle place of business in Elyria, Ohio.

¹ Plaintiffs refer to the Sellers, Owners, and Representative of the Sellers and Owners collectively as “Defendants” throughout the Complaint.

Jurisdiction and Venue

11. This Court has jurisdiction over this matter pursuant to 10 Del. C. § 541. Additionally, all the parties to the APA have consented and agreed to the jurisdiction and venue of this Court. Section 9.11(b) of the APA provides that [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Still further, Section 9.11(a) of the APA provides that

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

12. Further, the parties agreed that service of process through [REDACTED]
[REDACTED]
[REDACTED] APA §
9.11(b).

Factual Background

B. The Asset Purchase Agreement

13. In October 2022, OPIA entered into the APA on behalf of, and at the direction of FeraDyne. A copy of the APA is attached at Exhibit A and

incorporated herein. FeraDyne formed OPIA specifically to acquire the assets of OPI.

14. The APA was negotiated by FeraDyne and OPIA, on the one hand, and by Defendants, on the other. FeraDyne is an intended beneficiary of the APA, as it would obtain the benefit of OPIA's acquisition of OPI's assets, and also the burden of funding OPIA's purchase. In reliance upon Defendants' representations concerning the financial condition, operating results, income and expenses of the business, FeraDyne, through OPIA, agreed to pay Defendants [REDACTED] in cash at closing, subject to certain adjustments, for the assets of OPI. APA § 1.6(a). Plaintiffs also agreed to pay Sellers [REDACTED] through a Promissory Note. APA § 1.6(b).

C. The Parties Agreed To Calculate Purchase Price Using a [REDACTED]x Multiple of EBITDA

15. Prior to the closing of the transaction, Plaintiffs engaged in due diligence regarding OPI's assets. During diligence, Defendants made numerous representations regarding the assets, liabilities, and operations of OPI.

16. Plaintiffs calculated the price they were willing to pay for the assets of OPI, based on a multiple of the business's earnings before interest, depreciation, taxes and amortization ("EBIDTA"), as represented by Defendants. The parties agreed that the purchase price would be calculated using a [REDACTED]x multiple (*i.e.*, [REDACTED] x EBITDA).

17. The APA also specifically prescribes the use of the [REDACTED]x multiple of EBITDA for determining any impairment to the value of the Purchased Assets. For example, Section 1.6(e) of the APA, “[REDACTED]” provides that

[REDACTED]

[REDACTED]

[REDACTED].

18. The parties also negotiated and agreed to a remedy for OPI’s under-disclosed liabilities, post-closing. Section 1.6(e) expressly provides that [REDACTED]

[REDACTED]

[REDACTED]:

[REDACTED]

APA, § 1.6(e) (emphasis added).

19. The APA makes clear (and Defendants do not dispute) that they owe Plaintiffs [REDACTED] as an Offset Amount for the [REDACTED] original Supplier Underpayment, under Section 1.6(e) of the APA.

D. Defendants Understated OPI's Liabilities, Impairing The Valuation Of Purchased Assets By An Additional [REDACTED]

20. Following the closing, for the first time, Plaintiffs learned that there was [REDACTED] in unpaid invoices from a third party, DHY Shipping, that had been remitted to OPI prior to closing but not disclosed to Plaintiffs.

21. What is more, Defendants clearly understood their obligation to disclose these liabilities, since it *had* disclosed to Plaintiffs [REDACTED] of open payables to DHY Shipping prior to the close of the transaction. Yet, Defendants failed to disclose the *additional* [REDACTED] of expenses incurred (*i.e.*, liabilities that were open and payable to DHY Shipping), as of the closing date of the transaction. Had this amount been disclosed in OPI's financial statements, the original valuation of the Purchased Assets would have been [REDACTED] *lower* based on the [REDACTED]x multiple of earnings.

22. Thus, Plaintiffs are entitled to set off of [REDACTED] as a result of the undisclosed DHY Shipping liabilities. *See* APA § 1.6(e).

E. Sellers Are Not Entitled To Further Payments Under The Promissory Note And Owe Plaintiffs Damages For Their Breaches of the APA

23. OPIA has already paid a portion of the [REDACTED] Promissory Note to Sellers. Additional set offs may also occur, as expressly provided in the APA.

24. Section 7.10 of the APA entitles Plaintiffs to [REDACTED]
[REDACTED] The total set off amount arising from the undisclosed DHY Shipping liabilities ([REDACTED]) now far eclipses the remainder of the Promissory Note and no further payments are due.

25. Further, the set off amount is greater than the remainder of the Promissory Note. Under Section 7.2 of the APA, Defendants owe Plaintiffs the difference as damages, based on their breaches of the express representations and warranties in Sections 2.7 and 3.1 of the APA.

26. Not only does Section 1.6(e) of the APA expressly contemplate an Offset Amount equal to the undisclosed liabilities, multiplied by the [REDACTED]x multiple of earnings, Section 7.2 of the APA *also* provides that Plaintiffs shall be entitled to indemnification for:

[REDACTED]

APA § 7.2(a).

27. In Section 2.7 “Financial Matters,” Defendants gave express and robust representations and warranties about the financial state of the business.

Specifically, they represented that:

[REDACTED]

APA § 2.7(a).

[REDACTED]

APA § 2.7(b).

These representations were made by “the Sellers and Owners . . . jointly and severally.” *Id.* (APA at Article II).

28. These representations were false. Defendants had failed to disclose at least [REDACTED] of unpaid invoices from third party, DHY Shipping, that had accrued prior to the close of the transaction.

29. Section 3.1 of the APA also provides that:

[REDACTED]

This representation was made by “the Owners . . . jointly and severally.” *Id.* (APA at Article III).

30. This representation was also false. Defendants had failed to disclose at least [REDACTED] of unpaid invoices from third party, DHY Shipping, that had accrued prior to the close of the transaction.

31. Moreover, indemnified “Losses” are broadly defined to include diminution in value (including as determined based upon a multiple of earnings) as well as attorneys’ fees:

[REDACTED]

APA at 42.

32. The APA is clear: where Defendants misrepresented OPI's financial statements by understating its liabilities, Plaintiffs would be expressly entitled to receive as damages, the [REDACTED] [REDACTED] in order to make it whole. APA §§ 1.6(e), 7.2(a), and definition of "Losses" at 42.

F. Post-Closing, Plaintiffs Became Aware of OPI's Accounting Irregularities

33. After the close of the transaction, Plaintiffs discovered that OPI's performance was materially different than had been represented before closing. This difference was not attributed to operational changes. Upon investigation, Plaintiffs became aware of improper accounting and other business practices in which Defendants had engaged prior to the parties' agreement. These practices were kept hidden from Plaintiffs throughout diligence.

34. As a direct result of these improper accounting and other business practices, OPI's financial statements were false, incomplete, inaccurate, and misleading. Defendants knew that Plaintiffs would rely on those misleading financial statements—in addition to the numerous additional representations Mr. Reaser and his agents made regarding the EBITDA and financial performance of the company—prior to the closing.

35. Specifically, Defendants knew that these financial statements would induce Plaintiffs into executing and closing under the APA. Defendants also knew

that the financial statements formed the basis for OPI's EBITDA, which was a material term of the APA and the consideration paid by Plaintiffs. Because Defendants understated OPI's liabilities and overstated its EBITDA, and calculation of the purchase price was made pursuant to a [REDACTED]x multiple of earnings, Plaintiffs paid Defendants *at least* [REDACTED] more than it would otherwise have been willing to pay for OPI's assets.

COUNT I
Declaratory Relief (against the Sellers, OPI and Rhino Treestands LLC)

36. Plaintiffs repeat and incorporate by reference the averments contained in each of the foregoing paragraphs of this Complaint, as if fully set forth herein.

37. Section 1.6(e) of the APA expressly contemplates an Offset Amount equal to the undisclosed liabilities, multiplied by the [REDACTED]x multiple of earnings. Section 7.10 of the APA also expressly contemplates that [REDACTED]

[REDACTED]

[REDACTED] Section 7.2 of the APA also provides that OPIA shall be entitled to indemnification for:

[REDACTED]

[REDACTED]

"Losses" are defined broadly to include, *inter alia*, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] APA at 42.

38. Based on each and all of the foregoing, Plaintiffs are entitled to a set off of at least [REDACTED] from the purchase price, which amount shall be a set off and/or deducted from the remainder of the Promissory Note. Plaintiffs are informed and believes that OPI contests that assertion.

39. Plaintiffs are entitled to, and request that this Court issue a declaratory judgment that they are entitled to a set off in an amount not less than [REDACTED], but in any event, an amount greater than amounts due under the Promissory Note.

COUNT II
Breach of Contract (against all Defendants)

40. Plaintiffs repeat and incorporate by reference the averments contained in each of the foregoing paragraphs of this Complaint, as if fully set forth herein.

41. In Section 2.7(a) of the APA, Defendants agreed and expressly represented and warranted that the financial statements of OPI, which it furnished to Plaintiffs, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

42. Section 2.7(b) of the APA also provides that [REDACTED]

[REDACTED]

██████████ These representations were made by “the Sellers and Owners . . . jointly and severally.” *Id.* (APA at Article II).

43. Defendants’ understatement of OPI’s liabilities, overstatement of OPI’s EBITDA, and reflection of substantially inflated revenue on OPI’s financial statements constituted breaches of these material terms and express warranties, among others, of the APA.

44. OPIA has complied in all material respects with its obligations under the APA.

45. As a direct and proximate result of Defendants’ breaches of the Agreement, Plaintiffs paid at least ██████████ more for the assets of OPI than they would otherwise have paid. Put differently, the diminution in value (as determined by the agreed-upon ██████x multiple of earnings), is ██████████ for the undisclosed DHY Shipping liabilities.

46. Plaintiffs request that judgment be entered against Defendants, jointly and severally, for breach of contract and an award of direct and consequential damages, plus attorneys’ fees, costs, and pre- and post-judgment interest.

COUNT III

Breach of Contract (against Owners, Daniel B. Reaser, Sr., individually, and as trustee for the Daniel B. Reaser Sr. Trust, dated January 23, 2011, as amended)

47. Plaintiffs repeat and incorporate by reference the averments contained in each of the foregoing paragraphs of this Complaint, as if fully set forth herein.

48. The APA defines “Owners” OPI as Daniel B. Reaser, Sr. and the Daniel B. Reaser, Sr. Trust, dated January 23, 2011.

49. Section 3.1 of the APA provides that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] This representation was made by “the Owners . . . jointly and severally.” *Id.* (APA at Article III). Therefore, under the APA, contractual liability extends to Daniel B. Reaser, Sr., individually, and as trustee for the Daniel B. Reaser, Sr. Trust, dated January 23, 2011.

50. Defendants’ understatement of OPI’s liabilities, overstatement of OPI’s EBITDA, and reflection of substantially inflated revenue on OPI’s financial statements constituted breaches of this material term and express warranty, among others, of the APA.

51. OPIA has complied in all material respects with its obligations under the APA.

52. As a direct and proximate result of Owners' breaches of the Agreement, Plaintiffs paid at least [REDACTED] more for the assets of OPI than they would otherwise have paid. Put differently, the diminution in value (as determined by the agreed-upon [REDACTED]x multiple of earnings), is [REDACTED] for the undisclosed DHY Shipping liabilities.

53. Plaintiffs request that judgment be entered against Defendants for breach of contract and an award of direct and consequential damages, plus attorneys' fees, costs, and pre- and post-judgment interest.

COUNT IV

Breach of Contract -- Indemnification (against all Defendants)

54. Plaintiffs repeat and incorporate by reference the averments contained in each of the foregoing paragraphs of this Complaint, as if fully set forth herein.

55. In Section 7.2 of the APA, Defendants expressly agreed to indemnify OPIA for [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] APA § 7.2.

56. The APA also defines indemnified Losses to include, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] APA at 42.

57. As described in the foregoing paragraphs, Defendants breached the express representations and warranties in Sections 2.7 and 3.1 of the APA when it submitted false, incomplete, inaccurate, and misleading financial statements.

58. Upon discovery of Defendants' improper accounting practices, Plaintiffs provided written notice to Defendants of its claim for indemnification under Section 7.2 of the Agreement. Defendants rejected that claim in written correspondence dated March 3, 2023. Plaintiffs sent further correspondence to OPI regarding its claims on March 16, 2023.

59. OPIA has complied in all material respects with its obligations under the APA.

60. As a direct and proximate result of Owners' breaches of the Agreement, Plaintiffs paid at least [REDACTED] more for the assets of OPI than they would otherwise have paid. Put differently, the diminution in value (as determined by the agreed-upon [REDACTED]x multiple of earnings), is [REDACTED] for the undisclosed DHY Shipping liabilities.

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CERTIFICATE OF SERVICE

I, David G. Holmes, hereby certify that on this 19th day of April, 2023, I caused a true and correct copy of the *Redacted-Public Version of Complaint* to be served on the persons listed below in the manner indicated:

VIA FILE & SERVEXPRESS

Brett D. Fallon, Esq.
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/s/ David G. Holmes
David G. Holmes (No. 4718)

**RUGGED CROSS HUNTING BLINDS, LLC EX. 2027
IPR 2024-00291**