

CAUSE NO. _____

SWS RE-DISTRIBUTION COMPANY, INC.	§	IN THE DISTRICT COURT
	§	
	§	
	§	
<i>Plaintiff,</i>	§	DALLAS COUNTY, TEXAS
	§	
v.	§	
	§	
HARDAWAY PARTNERS, LLC and	§	160TH
PINNACLE BANK,	§	_____ JUDICIAL DISTRICT
	§	
<i>Defendants.</i>	§	

PLAINTIFFS' ORIGINAL PETITION

Plaintiff SWS Re-Distribution Company, Inc. ("SWS") files this Original Petition against Defendants Hardaway Partners, LLC and Pinnacle Bank, and in support thereof would respectfully show the following:

INTRODUCTION

1. This case arises from Defendant Hardaway Partners, LLC's ("Hardaway") breach of its contractual obligation to pay SWS more than \$29,000,000.00 for 10,000,000 KN95 masks. When Hardaway failed to pay as required by the parties' Purchase Agreement, SWS sought to draw on a \$10 million irrevocable letter of credit (the "Letter of Credit") that was issued by Defendant Pinnacle Bank ("Pinnacle") to secure Hardaway's payment under the Purchase Agreement. Pinnacle, however, wrongfully refused to honor SWS's demand in clear breach of the terms of the Letter of Credit. SWS brings this action to recover the significant damages it has suffered as a result of Hardaway's breach of the Purchase Agreement and Pinnacle's wrongful dishonor of SWS's demand under the Letter of Credit.

DISCOVERY CONTROL PLAN

2. Pursuant to Texas Rule of Civil Procedure 190.3, SWS intends to conduct discovery under a Level 2 Discovery Control Plan.

PARTIES

2. Plaintiff SWS Re-Distribution Company, Inc. is a Texas limited liability company with its principal place of business at 1440 LeMay Drive, Suite 104, Carrollton, Texas 75007. SWS is a 68-year old Native American owned distribution company, that generates nearly \$300 million in annual sales serving some of the most prominent food service companies in America, all from its home base in the State of Texas.

3. Defendant Hardaway Partners, LLC is a Texas limited liability company with a mailing address of 11816 Inwood Rd., Suite 201, Dallas, Texas 75244. Hardaway may be served with process via its registered agent, Basil Mitchell, at 11816 Inwood Rd., Suite 201, Dallas, Texas 75244.

4. Defendant Pinnacle Bank is a Tennessee bank corporation with its principal place of business at 150 3rd Avenue South, Suite 900, Nashville, Tennessee 37201. The Texas Secretary of State is Pinnacle's agent for service of process under TEXAS CIVIL PRACTICE & REMEDIES CODE § 17.044(b) because Pinnacle is a nonresident who engages in business in the State of Texas, but does not maintain a regular place of business or a designated agent for service of process in the State of Texas, and this suit arises from Pinnacle's business in the State of Texas.

JURISDICTION AND VENUE

5. This Court has personal jurisdiction over Hardaway because it is a Texas resident or entity and maintains a principal place of business in this State.

6. This Court has personal jurisdiction over Pinnacle because it does business in the State of Texas within the meaning of the Texas Long-Arm Statute, TEXAS CIVIL PRACTICE & REMEDIES CODE § 17.042(1). Pinnacle issued the Letter of Credit, which names SWS, a Texas resident, as the beneficiary and requires SWS to perform in the State of Texas by “fulfilling Purchase Order 20-003-575EM-085 between the Texas Department of Emergency Management and Eminent Commercial, LLC working as agent for Hardaway Partners, LLC.” SWS’s claims against Pinnacle arise from Pinnacle’s wrongful dishonor of SWS’s demand under the Letter of Credit.

7. Venue is proper in this Court under TEXAS CIVIL PRACTICE & REMEDIES CODE §§ 15.002(3) and 15.005 because Hardaway’s principal office in the State of Texas is located in Dallas County.

TEXAS RULE OF CIVIL PROCEDURE 47(c) DISCLOSURE

8. SWS seeks monetary relief over \$1,000,000.00 and all other relief to which it shows itself justly entitled.

FACTUAL BACKGROUND

9. As the COVID-19 pandemic began to wreak havoc in the United States, demand for protective masks increased dramatically, both among the general public and among state health and emergency management agencies.

10. In early April 2020, SWS and Hardaway entered into a Purchase Agreement, under which SWS agreed to supply 10 million KN95 masks to Hardaway, which Hardaway was to supply to the Texas Department of Emergency Management pursuant to Purchase Order 20-003-575EM-085.

11. Under the Purchase Agreement, Hardaway agreed to pay SWS \$2.32 per unit, or \$23,200,000.00 for the entire lot of masks.

12. On or about April 25, 2020, Hardaway agreed to increase the price per unit by \$0.60, which increased the total price for the entire lot of masks to \$29,200,000.00.

13. To secure Hardaway's payment under the Purchase Agreement, Hardaway "irrevocably authorize[d] SWS to draw on the [Letter of Credit] . . . and appoint[ed] SWS as its attorney-in-fact to authorize [Pinnacle] to make payment" pursuant to the Letter of Credit.

14. Pinnacle issued the Letter of Credit on April 16, 2020, naming SWS as the beneficiary. The Letter of Credit "is for an aggregate amount not to exceed a total of \$10,000,000.00 United States Dollars." The Letter of Credit provides: "This amount is available by the Beneficiary's draft(s) at sight drawn on Bank" and accompanied by an affidavit by or on behalf of SWS and the original of the Letter of Credit. The Letter of Credit expires on July 15, 2020.

15. There is no dispute that SWS performed under the Purchase Agreement. Indeed, in a June 8, 2020 letter to the Texas Department of Emergency Management, Hardaway admitted that SWS had fully performed and delivered the 10,000,000 masks as required by the Purchase Agreement.

16. On June 17, 2020, SWS made a demand on Hardaway for payment of the \$29,200,000.00 owed under the Purchase Agreement. Hardaway, however, failed to make any payment.

17. Accordingly, on June 25, 2020, SWS presented a sight draft and made a demand on Pinnacle to draw \$10,000,000.00 pursuant to the Letter of Credit, and presented all other

documents required to make such a draw in strict compliance with the terms of the Letter of Credit at Pinnacle's counter in Nashville, Tennessee.

18. Although the Letter of Credit expressly provides that Pinnacle "hereby agree[s] that all drafts drawn under and in compliance with the terms of this credit will be duly honored on delivery of documents specified if presented at our counters on or before the expiration indicated above," Pinnacle wrongfully refused to honor SWS's demand and draw under the Letter of Credit.

CLAIMS

A. Count I-Breach of Contract (Against Hardaway)

19. SWS repeats and incorporates by reference paragraphs 1-18 above as if fully set forth here.

20. SWS and Hardway entered into a valid and enforceable contract—namely, the Purchase Agreement.

21. SWS performed all of its obligations under the Purchase Agreement, and all conditions precedent have been performed or have occurred.

22. Hardaway breached the Purchase Agreement by failing to pay SWS as required under the Purchase Agreement.

23. Hardaway's breach has caused SWS damages in excess of \$29,200,000.00.

B. Count II-Wrongful Dishonor of Letter of Credit/Breach of Contract (Against Pinnacle)

24. SWS repeats and incorporates by reference paragraphs 1-23 above as if fully set forth here.

25. Pinnacle issued the Letter of Credit on April 16, 2020, naming SWS as the beneficiary. The Letter of Credit expires on July 15, 2020.

26. On June 25, 2020, SWS presented the original Letter of Credit and all other documentation in strict compliance with the Letter of Credit at Pinnacle's counters in Nashville, Tennessee.

27. Pinnacle wrongfully dishonored the Letter of Credit in breach of its obligations to SWS.

28. SWS has suffered damages in the amount of \$10,000,000.00 as a result of Pinnacle's wrongful dishonor of the Letter of Credit and breach of its contractual obligations to SWS.

C. Count III-Attorneys' Fees (Against Pinnacle)

29. SWS repeats and incorporates by reference paragraphs 1-28 above as if set forth fully here.

30. SWS is entitled to recover its reasonable attorneys' fees from Pinnacle pursuant to Chapter 38 of the TEXAS CIVIL PRACTICE AND REMEDIES CODE.

31. SWS has presented its claim to Pinnacle and Pinnacle has failed to tender performance.

JURY DEMAND

32. SWS demands a jury trial of its claims stated herein.

REQUEST FOR DISCLOSURE

33. Pursuant to Texas Rule of Civil Procedure 194, SWS requests that Defendants disclose the information or material described in Texas Rule of Civil Procedure 194.2.

PRAYER

34. For the reasons set forth herein, SWS respectfully requests that:
- a. Upon a final trial on the merits, SWS receive a judgment against Defendants for all actual and consequential damages, pre-judgment and post-judgment interest, and attorneys' fees and costs as requested herein; and
 - b. The Court award SWS all other and further relief, at law or in equity, to which SWS may show itself to be justly entitled.

Respectfully submitted,

/s/ Jamie R. Welton

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