

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS
MAY 03 2022
By: TAMMY H. DOWNS, CLERK
DEP CLERK
PLAINTIFF

CNH INDUSTRIAL CAPITAL
AMERICA LLC

v.

Case No. 4:22cv399-BSM

VENTURE EQUIPMENT, LLC; and
STEVE MERRITT

This case assigned to District Judge Miller
and to Magistrate Judge Miller
DEFENDANTS

VERIFIED COMPLAINT

Plaintiff CNH Industrial Capital America LLC, for its verified complaint against Venture Equipment, LLC, and Steve Merritt for breach of contract, fraud, and other relief (“Complaint”), states as follows:

Parties, Jurisdiction, & Venue

1. CNH Industrial Capital America LLC (“CNH”) is a limited liability company formed under the laws of the State of Delaware with its principal place of business located in Racine, Wisconsin. CNH changed its name from CNH Capital America LLC to CNH Industrial Capital America LLC effective February 28, 2014. CNH's sole member, CNH Industrial Capital LLC, is a Delaware limited liability company with its principal place of business located in Racine, Wisconsin. The sole member of CNH Industrial Capital LLC is CNH Industrial America LLC, a Delaware limited liability company with its principal place of business located in Racine, Wisconsin. The sole member of CNH Industrial America LLC is Case New Holland

Industrial, Inc., a Delaware corporation with its principal place of business in Racine, Wisconsin.

2. Defendant Venture Equipment, LLC (“Venture Equipment”) is an Arkansas limited liability company with its principal place of business in Searcy, Arkansas. Member-manager Steve Merritt (“Merritt”) is a citizen of White County, Arkansas.

3. Defendant Merritt is a citizen of White County, Arkansas, with his permanent residence located in Beebe, Arkansas.

4. This Court has jurisdiction over these proceedings pursuant to the provisions of 28 USC § 1332(a)(1) because there is complete diversity of citizenship between the parties to this action and the amount in controversy exceeds the sum of \$75,000.00 exclusive of interest and costs.

5. Venue is proper in this district pursuant to 28 USC § 1391 because all of the defendants reside in this district.

FACTS

Wholesale Financing and Security Agreement

6. Venture Equipment is an agricultural equipment dealership located in Searcy, Arkansas.

7. CNH is the captive finance company for CNH Industrial America LLC (“New Holland”) and finances the acquisition of agricultural and construction equipment fleets for sale or rental by New Holland dealerships throughout North America.

8. On or about February 10, 2011, Venture Equipment entered into a Wholesale Financing and Security Agreement (“WFSA”) with CNH. A true and correct copy of the WFSA is attached hereto and incorporated herein as Exhibit 1. Merritt executed the WFSA on behalf of Venture Equipment as the “Manager Member.”

9. Under the WFSA, in exchange for the extension of substantial sums of credit and other advances provided by CNH, Venture Equipment granted to CNH a security interest in, *inter alia*, all of its inventory, equipment, and other movable property obtained from or financed by CNH or its affiliates and subsidiaries, including all proceeds of such inventory and other moveable property (each, a “Secured Asset,” and collectively, the “Secured Assets”). See Exhibit 1, ¶ 3.

10. From 2011 and continuing through 2022, CNH provided and financed inventory and equipment for Venture Equipment pursuant to the WFSA.

11. Under the terms of the WFSA, Venture Equipment agreed that upon sale of any of the Secured Assets by Venture Equipment, Venture Equipment would immediately remit the proceeds to CNH to satisfy the outstanding balance of the Secured Asset. See Exhibit 1, ¶ 6.

12. Furthermore, under paragraph 6 of the WFSA, Venture Equipment agreed to hold all proceeds of Secured Assets in which CNH holds a first priority security interest “in express trust” for CNH. See Exhibit 1, ¶ 6.

13. Based on the terms of the WFSA, Venture Equipment agreed to repay all loans, credit and advances made to or on behalf of Venture Equipment by CNH.

14. CNH performed all of its obligations under the WFSA.

Retail Financing Agreement

15. Also on or about February 10, 2011, Venture Equipment entered into a Retail Financing Agreement (“RFA”) with CNH, whereby CNH agreed to provide customers of Venture Equipment the ability to obtain financing for the purchase or lease of equipment. A true and correct copy of the RFA is attached hereto and incorporated herein as Exhibit 2. Merritt executed the RFA on behalf of Venture Equipment as the “Manager Member.”

16. Under this program, Venture Equipment would enter into a contract with a customer and would then sell and assign all of its right, title and interest in and to the contract to CNH as well as all of the proceeds from the contract.

17. To this end, Venture Equipment granted to CNH a first priority security interest in the contracts with Venture Equipment customers, the goods, all supporting obligations and other rights and property related thereto, and all proceeds thereof, to secure all of Venture Equipment’s present and future obligations arising under the RFA or otherwise. See Exhibit 2, ¶ 5(d).

18. In the RFA, Venture Equipment and Merritt made presentment representations, warranties, and covenants relating to each Retail Contract and Transaction including without limitation that “All signatures on the Documentation are genuine, and any Person signing the Documentation has full legal Capacity to

execute the Documentation in the capacity indicated. Dealer and its Representatives have no actual knowledge of any fraud with respect to the Application, Contract or Retail Transaction.” See Exhibit 2, ¶ 9(a).

19. Venture Equipment and Merritt further represented that a “Retail Transaction involves the bona fide sale or lease of Goods or services by Dealer in the ordinary course of its business, in an arms-length transaction, and does not involve any cash advance to the Obligor or the purchase of any goods or services that cannot be purchased on credit under Applicable Law.” See Exhibit 2, ¶ 9(b).

20. Venture Equipment and Merritt also warranted that “There [was] no fact, nor any claim or defense available to the Obligor, that would in any respect impair the validity, enforceability, collectability, value, or marketability of the Contract, including, without limitation, any discount, allowance, setoff, counterclaim, bankruptcy, right of rescission, fraud, forgery, or lack of consideration” and that “There have been no false, misleading, or deceptive acts or practices by Dealer in connection with any Retail Transaction.” See Exhibit 2, ¶ 9(e).

21. Venture Equipment further agreed under the RFA that if any payment was made to the dealer by a customer related to a customer financing agreement, Venture Equipment would retain the payment in trust for CNH and would promptly remit the payment to CNH within five (5) business days. See Exhibit 2, ¶ 3(f).

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