

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:20-cv-

SOPRIS SYSTEMS, LLC,

Plaintiff

v.

FOLIO3 Software, Inc.

Defendant.

COMPLAINT

For its Complaint, Plaintiff Sopris Systems, LLC alleges as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action under 28 U.S.C. § 1332(a)(1) and (2) because this is a civil action between citizens of different states, and citizens of a State and citizens of a foreign state, and the matter in controversy exceeds \$75,000, exclusive of interest and costs.

2. Venue is proper in this District under 28 U.S.C. § 1391 because a substantial part of the events giving rise to the claim occurred in Colorado.

3. Further, the contract at issue between the parties provides disputes may be submitted to “any” United States Federal Court. (*See* Ex. A ¶ 12.3.)

PARTIES

4. Plaintiff Sopris Systems, LLC (“Sopris”) is a Colorado Limited Liability Company with its principal office street address of 7887 E. Belleview Ave., Suite 1100, Englewood, Colorado 80111.

5. Plaintiff has two members, (1) Laura Pfohl who is domiciled in and a citizen of Florida residing at 6578 N. 197th Pl., Jupiter, Florida, 33458, and (2) Sonata Software Ltd. which is a public limited company registered under the laws of the Republic of India. Its registered office is 208, T V Industrial Estate, 2nd Floor, S K Ahire Marg, Worli, Mumbai Maharashtra 400 030, India. Its corporate office is located at 1/4, APS Trust Building, Bull Temple Road, N. R. Colony, Bangalore Karnataka 560 004, India. Its stock trades on the National Stock Exchange of India under the symbol SONATSOFTW. As a public limited company, Sonata Software Ltd. is an incorporated entity under section 7 of India's Companies Act, 2013¹, and is therefore akin to a corporation in the United States.

6. Folio3 Software, Inc. is a California corporation having its principal place of business at 333 Twin Dolphin Drive, Redwood City, California 94065.

FACTS

7. Sopris and Folio3 are parties to an agreement dated March 14, 2014 (the "Agreement") pursuant to which Folio3 provided services relating to creating an application for IOS (iPhone, iPad), Android and Windows devices referred to as Mobile App for GeoSpec (the "App") including but not limited to creating source code, programs, systems, data and instructions to operate the app. (*See Ex. A*).

8. On July 18, 2014 the parties agreed to Work Order No. 2 pursuant to which Folio3 agreed to integrate Folio3's "Dynamics" into the App and further agreed to add "Edit functionality" to the App. (*See Ex. B at p. 1 ¶4 and p.8 ¶4; Work Order No. 2*)

¹ A copy of India's Companies Act, 2013 is available on the website for the Government of India, Ministry of Corporate Affairs, <http://www.mca.gov.in/MinistryV2/homepage.html>.

9. The parties agreed to share revenue from the App, 35% to Folio3 and 65% to Sopris. (See Ex. B at p. 1 ¶4 and p.8 ¶4; Work Order No. 2). All of Folio3's services including the App itself are referred to in the Agreement and here as "Work".

10. Sopris made multiple payments to Folio3.

11. A dispute arose between parties whereby Sopris demanded receipt of the Work before continuing to make payments, and Folio3 demanded payment before providing the Work.

12. The parties participated in an arbitration which resulted in an award against Sopris for failure to Folio3.

13. Based on the award, on June 24, 2019, Folio3 obtained a judgment in the amount of \$98,567.25 against Sopris in the District Court, City and County of Denver, Colorado in Case No. 2019CV32289.

14. On October 1, 2019 Sopris paid this amount by submitting it to the Court's Registry.

15. On January 8, 2020 the Denver Court increased the amount of the judgment to \$117,573.17 to include interest.

16. Sopris paid the judgment in full in early March 2020 and Folio3 acknowledged receipt of payment on March 6, 2020 by filing a Satisfaction of Judgment acknowledging receipt of \$117,573.17 from Sopris.

17. All Work is owned by Sopris.

18. Section 7.1 of the Agreement provides:

...all right, title, and interest, including copyright interests and any other intellectual property in and to the Work or any deliverables created by the Work, including but not limited to any programs, systems, data, or materials produced or provided by [Folio] alone or in combination with [Sopris] and/or its employees under this Agreement *shall be the property of [Sopris]*.

(See Ex. A, §7.1) (emphasis added).

19. Sopris has repeatedly demanded Folio3 deliver the Work to Sopris.

20. Folio3 has agreed to deliver the Work to Sopris.

21. Folio3 has failed to deliver the Work to Sopris.

22. In particular, Folio3 has failed to deliver to Sopris the IOS version of the App.

23. Folio3 demonstrated the IOS version of the App to Sopris throughout the development process, and when demonstrated to Sopris, the App was fully functioning.

24. It was later discovered IOS version of the App did not reside on Sopris' servers but instead on Folio3's servers.

25. Sopris does not have possession of the IOS version of the App.

26. Further, Folio3 without Sopris' authorization offered for sale and upon information and belief sold Sopris' App.

27. Also without Sopris' authorization Folio3 solicited at least one of Sopris' customers, Beacon Rail Leasing.

28. Section 8 of the Agreement prohibits Folio3 from engaging in unfair competition by among other things the "sale or unauthorized use or disclosure of [Sopris'] **Confidential Information**...including information concerning **customer lists**, marketing plans, and prospective customer lists...." (See Ex. A, §8) (emphasis added).

29. The Agreement defines Confidential Information in section 6 as "[Sopris'] **intellectual property**, that relates to existing and **future** products or services, designs, business plans, business opportunities...." (See Ex. A, §6.2) (emphasis added).

30. The Work and Sopris' customers constitute Confidential Information under the Agreement.

31. On May 31, 2016, Sopris received a general solicitation email from Folio3 in which Folio3 was attempting to sell software *using pictures of software that belongs to Sopris* under the Agreement. (See Ex. C, Email).

32. Specifically, on page 3 of Exhibit C under “Dynamics AX Mobile Solutions”, Folio’s email states the app includes “field services”.

33. The “field services” feature was part of functionality created by Folio3 for Sopris’ App pursuant to Work Order No. 2. (See Ex. C, Work Order No.2).

34. Folio3 has failed to share with Sopris any revenue it has received from the sale of the App.

35. In approximately September, 2019 Sopris learned that in 2018, Folio3 solicited at least one of Sopris’ customers, Beacon Rail Leasing.

36. Folio3 provided the following services to Beacon Rail:

Problem:

Beacon Rail Leasing wanted a mobile solution to tailor their workflows in AX in line to the specific needs of its employees.

The Solution:

Folio3 addressed this problem with its Dynamics AX Workflow Approvals mobile application. AX Workflow approvals app is a fully customizable mobile solution that provides approval capabilities for all workflow types in Microsoft Dynamics AX 2012 including purchase orders and purchase requisitions.

See Folio3’s website, <https://dynamics.folio3.com/beacon-rail/> (last accessed May 21, 2020).

37. Folio3 had access to Sopris’ customer lists.

38. Folio3 knew Beacon Rail was Sopris’ customer.

39. Nevertheless Folio3 solicited Beacon Rail.

40. Sopris has suffered losses of more than \$75,000, and continues to suffer losses, as a result of Folio3’s actions including but not limited to the lost value of Work including but not limited to the App and lost revenues from the App.

41. Section 11.1 of the Agreement provides that Folio3 agrees to indemnify Sopris from and against,

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