IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

Case No. 0:20-cv-60272

INNOVATIVE WEB VENTURES, INC.,

      Plaintiff,

v.

INTERNATIONAL BUSINESS MACHINES
CORPORATION,

      Defendant.

_____

COMPLAINT

Plaintiff Innovative Web Ventures, Inc. ("Plaintiff") sues defendant International Business Machines Corporation ("Defendant" or "IBM"), and alleges as follows:

THE PARTIES

1.   Plaintiff is a corporation organized and existing under the laws of the State of Florida with its principal place of business located in Broward County, Florida.

2.   Defendant is a corporation organized and existing under the laws of the State of New York with its principal place of business located in Armonk, New York. Defendant's agent for service of process is CT Corporation System, 1200 S. Pine Island Road, Plantation, FL 33324.

JURISDICTION AND VENUE

3.   This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(a) because the matter in controversy exceeds $75,000.00, exclusive of interest and costs, and is between citizens of different States.

4.   This Court has jurisdiction over Defendant because it has maintained sufficient

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minimum contacts with Florida such that the exercise of personal jurisdiction over it would not offend traditional notions of fair play and substantial justice. Further, Defendant is registered to and is doing substantial business in the State of Florida and maintains a registered agent in the State of Florida.

5.   Venue of this action is proper in this district because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this district.

BACKGROUND

6.   Plaintiff is an information-technology and web development company that provides licensed software and consulting services to its various clients. Plaintiff is the owner of a software set that has been 15+ years plus in its evolution at a cost that exceeds more than $5 million to date.

7.   In its current implementation, the software set contains numerous features that allow customers/licensees to conduct and automate various aspects of their business functions such as (but not limited to) registering new customers, rewarding/incentivizing users, and establishing promotional/marketing modules.

8.   Plaintiff modifies and licenses the software set to its customers to tailor the software to customer needs. In its current implementation, the software set is licensed/utilized by several commercial entities who in turn use the software to service tens of thousands of individual customers.

9.   Defendant is a multinational information technology company with operations in over 170 countries. Defendant produces and sells computer hardware, middleware and software, and   provides hosting and consulting   services in   areas   ranging   from mainframe computers to nanotechnology.

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10.   Defendant provides a cloud hosting service to Plaintiff for the Software. In basic terms, that means Defendant hosts the Software on its own high-power servers such that when Plaintiff licenses the Software to its customers, an actual copy of the Software is not transmitted to customers but rather they access the Software through Defendant's servers.

11.   Plaintiff does not retain a physical copy of the Software itself as development is performed through remote access to Defendant's servers. Plaintiff's developers make changes and updates to the Software in this manner which allows several developers to work on the Software at any given time and generally results in greater security as there is one central database (Defendant's servers) hosting the Software.

12.   On or about November 21, 2019, Defendant sent a letter to Bluebeam Holdings, LLC (Plaintiff's predecessor) stating that Defendant was in the final stages of transitioning out of legacy Verizon data centers (which is where the Software and data was hosted at the time).

13.   That letter stated that Defendant would cease to provide hosting services for the Software beyond January 31, 2020. The letter requested that Plaintiff make arrangements to migrate its software and data prior to January 31, 2020, but also recommended that Plaintiff utilize Defendant's own "IBM Cloud" service for its hosting.

14.   Both prior to and immediately following receipt of the November 21, 2019 letter, Plaintiff was working closely with Defendant's sales and development team to develop a solution for migrating the Software and data to Defendant's "IBM Cloud" service and for hosting thereon.

15.   In connection therewith, on or about November 25, 2019, Defendant sent Plaintiff a quotation for migration to and hosting on the "IBM Cloud" service. The quotation provided a quote of approximately $19,968.00 annually for the aforementioned services.

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16.   The next day – on November 26, 2019 – Plaintiff signed Defendant's "Firm Order Letter" which confirmed Plaintiff's agreement to the migration and hosting services.

17.   After signing the Firm Order Letter, Plaintiff was in constant communication with Defendant's sales and development team to ensure that the migration process was moving forward according to schedule. Plaintiff was repeatedly assured – in both written and oral communications – that everything was moving ahead according to schedule and that there were no issues with the migration.

18.   By mid-January 2020, Plaintiff was becoming increasingly worried about the January 31, 2020 deadline set forth in Defendant's notice of non-renewal. Plaintiff repeatedly reached out to Defendant's sales and development team to obtain an update on the migration status.

19.   On January 15, 2020, Defendant – through its representative Christian Ludtke – responded to Plaintiff via text message as follows:

> Got the code, request submitted
>
> And just got notification the data centers extension was pushed to end of feb and your account has been marked as "migrating" so we should have no issues

20.   Defendant represented that the migration deadline had been extended to end of February 2020 and that there were no issues with the prior January 31, 2020 deadline.

21.   Following the January 15, 2020 text message, Plaintiff stayed in communication with Defendant to make sure the migration process was still proceeding accordingly and that there were no issues with the migration. Plaintiff was repeatedly assured everything was proceeding as scheduled.

22.   For example, on January 27, 2020, Defendant's representative assured Plaintiff

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that the "migration team was being assembled" and that "all [was] progressing forward."

23.   Despite Defendant's repeated assertions, on Friday, February 7, 2020, all of Plaintiff's websites and access to Defendant's servers suddenly went offline/became unavailable. This included all of Plaintiff's customers' access to the servers and all implementations of the Software.

24.   Plaintiff spent the day on February 7, 2020 trying to get an answer from various representatives of Defendant. While Plaintiff was repeatedly assured that Defendant was trying to figure out what happened and would get back to Plaintiff, no explanation was provided.

25.   As it turns out, Defendant's representatives lied to Plaintiff when they represented that the migration deadline had been extended through end of February 2020. In reality, Plaintiff's account with Defendant was deactivated on or about February 1, 2020 and subsequently "decommissioned" on February 7, 2020.

26.   The "decommissioning" on February 7, 2020 was not an automated feature – a representative of Defendant had to enter the command which then resulted in the permanent deletion of all of Plaintiff's Software and data that was hosted on Defendant's servers. This was done intentionally notwithstanding numerous representations, statements, and written communications from Defendant that the migration process was ongoing and had been extended through the end of February 2020.

27.   Plaintiff is now left without another copy of the Software or its associated data as Defendant's actions resulted in the permanent deletion thereof. This means that approximately 15+ years of development were erased in an instant and tens of thousands of end-users are now wholly unable to utilize the Software as all access thereto has been cut off.

28.   To date, Defendant has been completely silent in responding to Plaintiff with

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