

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

HÉCTOR CARO WOODEN
PALLETS, INC. (also known as;
HC WOODEN PALLETS); HÉCTOR
CARO-RAMOS

Plaintiffs

vs.

CHEP USA; JOHN DOE; JANE ROE;
INSURANCE COMPANY XYZ

Defendants

CIVIL NUMBER: 05-2213 (JAF)

DIVERSITY OF CITIZENSHIP;
BREACH OF CONTRACT; DAMAGES

PLAINTIFFS DEMAND TRIAL BY JURY

COMPLAINT

TO THE HONORABLE COURT:

COMES NOW Plaintiffs, Héctor Caro Wooden Pallets, Inc. and Héctor Caro-Ramos, through the undersigned legal representation and very respectfully states and prays:

I. NATURE OF THE ACTION

1. This is an action seeking redress for the damages caused by defendant's breach of its several contracts with plaintiffs and its illegal termination of such contracts.

II. JURISDICTION AND VENUE

2. Jurisdiction is conferred upon this Court by Title 28 U.S.C. §§1332 since the parties are citizens of different states and the matter in controversy exceeds the amount of \$75,000.00, exclusive of interest and costs.

3. Venue properly lies in this District Court under 28 U.S.C. §1391(a)(2) since a substantial part of the events that give rise to the present complaint occurred within the Commonwealth of Puerto Rico.

4. Pursuant to the Seventh Amendment to the United States Constitution, Plaintiffs demand trial by jury as to all counts and/or causes action presented in the instant Complaint.

III. THE PARTIES

5. Plaintiff, Héctor Caro Wooden Pallets, Inc. (hereinafter referred to as "HC Wooden Pallets") is a corporation duly organized under the laws of the Commonwealth of Puerto Rico. Plaintiff, Héctor Caro-Ramos, is of legal age, single, and resident of Rincón, Puerto Rico, and is the President and sole shareholder of HC Wooden Pallets. HC Wooden Pallets stores, handles, washes, transports, and ships wooden pallets, containers, and other devices used for movement, storage, or transportation of goods, between others.

6. Defendant, CHEP USA (hereinafter referred to as "CHEP"), is a New York general partnership dedicated to the equipment pooling service. Its principal office is located at 8517 South Park Circle, Orlando, Florida and it conducts business within the territory of the Commonwealth of Puerto Rico.

7. John Doe and Jane Roe are unknown defendants whom participated in the facts and breach of contract as alleged herein.

8. Insurance Company XYZ is any insurance company that may have issued any policy that would cover any damages claim herein.

IV. THE FACTS

9. Around the year 1996, Plaintiff started a wooden pallets¹ operation and service business.

10. Around the year 1999, defendant entered Puerto Rico's market and it started doing business with a company called "Paleteras Unidas".

11. Around the month of August of 2000, CHEP approached plaintiff with the purpose of contracting his wooden pallets' services since CHEP was looking to expand its operations in Puerto Rico. Approximately on September 2000, Mr. Víctor Santiago, CHEP's Regional Manager, visited the plaintiff's location and facilities. Mr. Santiago told plaintiff that the facilities needed improvement and as a condition for CHEP to enter in a contractual relationship with plaintiff, the facilities had to be expanded. Plaintiff proceeded to build an 82' x 82' structure, and an office, and to asphalt the location.

12. Plaintiff began to service without a written contract. His services included picking-up the pallets at Wal-Mart and Sam' Stores throughout Puerto Rico, transporting them to his location, washing them and/or repairing them,

¹ Wooden pallets are the wood containers upon which the goods and merchandise of retail and wholesale stores are imported to Puerto Rico and upon which they are transported and distributed.

storing them, and shipping them. For each service, plaintiff was paid a fee per pallet.

13. On 2002, Victor Santiago, defendant's Regional Manager, brought to plaintiff several written contracts that were already signed by a CHEP official.

14. The contracts were written in the English language. Due to the fact, that plaintiff, Héctor Caro-Ramos, is not fluent in the English language, Mr. Santiago explained to him that the contracts would be renewed automatically and that CHEP could only terminate them previous the written notification as explained in the contracts.

15. CHEP requested more improvements and expansions of plaintiff's facilities. Due to this request, plaintiff had to buy more trucks, platforms, fork lifts, wagons, between others. In 2002, Plaintiffs expend around \$116,439.00 in equipment as requested by defendant. In 2003, Plaintiffs invested around \$200,042.00 in equipment as requested by defendant. Plaintiff also had to hire more employees, from three to twenty-five. As defendant requested, one of the employees would work exclusively with the CHEP's account. Moreover, defendant requested two work shifts. Consequently, plaintiffs had to hire more employees to be able to fulfill defendant's request.

16. Furthermore, plaintiffs had to acquire several insurance policies, among them, fire insurance at a cost of approximately \$60,000.00.

17. Later, defendant asked plaintiffs to build a structure with ceiling to storage the pallets. Due to this requirement, Plaintiff, HC Wooden Pallets, had to

invest \$302,400.00 in the acquisition of land lot of over three (3) acres. In order to acquire the land, Plaintiff took a commercial mortgage loan of \$250,000.00. Plaintiff, Héctor Caro-Ramos, had to give his personal guarantee to obtain the loan. The construction of the structure requested by defendant amounted to \$1.2 million dollars. Plaintiffs had to proceed with another loan. Plaintiff, Caro-Ramos, gave his personal guarantee for this loan too. Plaintiff, also, financed a \$200,000.00 tub-grinder to service defendant.

18. Defendant, also, contracted plaintiff to repair 200,000 stored pallets. Plaintiff would pick the wooden pallets up at Wal-Mart and Sam's Club stores, would repair them, paint them, store them, and ship them at defendant's request. Plaintiff, also, received a fee for the handling and inspection of the pallets.

19. Under the contracts, plaintiff got paid by volume. For example, defendant would pay plaintiff \$1.85 for each of the first ten thousand pallets, and \$1.65 for each pallet exceeding ten thousand. During the first two years of the contracts, plaintiff picked up the tab for the trash collection. Plaintiff paid \$40 per yard of trash.

20. Plaintiff always complied with all of his contractual obligations towards defendant. Defendant never complained to plaintiff of any breach or problem with his performance. As a matter of fact, defendant always gave plaintiffs the expectation of the continuation of the contracts, encouraging and

requesting plaintiffs to buy more equipment and make more improvements to the facilities.

21. The CHEP Repair Facility Agreement contained the following clause, which in its pertinent part reads:

8. Term of Agreement

A. The term of this Agreement shall commence as of the effective date set forth above provided that it is understood and agreed that operation (and payment pursuant to Schedule A) will not commence until Operator installs the Equipment and it is operational. Operator will provide Chep with at least ten (10) days prior notice.

B. Notwithstanding sub-paragraph A above, either Chep or Operator shall have the right to terminate this Agreement (i) upon a material breach by the other party of the [sic] any term or condition set forth in or established pursuant to this Agreement (including but not limited to operator's failure to repair rental stock in accordance with Chep's standards) which breach is not cured within 10 days after receipt of written notice specifying such breach, and (ii) immediately if a petition in bankruptcy is filed by or against the other party, if a receiver is appointed for the other party or its assets, or if the other party generally ceases paying its current obligations or makes an arrangement with its creditors (all considered to be "Bankruptcy"). A party entitled to terminate this Agreement pursuant to this Section 8. B shall give at least sixty (90)² days prior written notice ("Termination Notice") to the other of the termination.

22. The terms of agreement clause of the CHEP USA Depot/Repair Facility Operating Agreement, in its pertinent part, reads:

10. Terms of Agreement. This agreement shall be effective from the date hereof until terminated in accordance with any of the following:

² This is not a clerical mistake in the complaint. The agreement literally states "sixty (90) days prior written notice."

(a) Either CHEP or the Operator may terminate this Agreement, with or without cause, by not less than 365 days prior written notice delivered to the other party.

(b) Either CHEP or the Operator may terminate this Agreement upon a material breach of the terms set forth in or established pursuant to this Agreement by the other party, provided that the other party fails to cure such breach within 10 days after the receipt of written notice specifying such breach;

(c) CHEP may terminate this Agreement immediately if a petition in bankruptcy is filed by or against the Operator, if a receiver is appointed for the Operator or is [sic] assets, or if the Operator generally ceases paying its current obligations or makes an arrangement with its creditors; or

(d) At such time and from time to time that CHEP issues any new written policies or procedures pursuant to this Agreement and the Operator cannot or will not comply with such policies and procedures, the Operator may terminate this Agreement, by written notice delivered not more than 10 days after its receipt of such policies and procedures, such termination to be effective not less than 120 days after delivery of such notice; provided that if no notice of termination is delivered, then the Operator shall be deemed to have accepted such policies and procedures.

23. The termination clause of the CHEP USA Depot Agreement, in its pertinent part, establishes:

5. Terms of Agreement. This agreement shall be effective from the date hereof until terminated in accordance with any of the following:

A. Either CHEP or the Operator may terminate this Agreement, with or without cause, by not less than 120 days prior written notice delivered to the other party;

B. Either CHEP or the Operator may terminate this Agreement upon a material breach of the terms set forth in

or established pursuant to this Agreement by the other party, provided that the other party fails to cure such breach within 10 days after receipt or written notice specifying such breach;

C. CHEP may terminate this Agreement immediately if a petition in bankruptcy is filed by or against the Operator, if a receiver is appointed for the Operator or is [sic] assets, or if the Operator generally ceases paying its current obligations or makes an arrangement with its creditors; or

D. At such time and from time to time that CHEP issues any new written policies or procedures pursuant to this Agreement and the Operator cannot or will not comply with such policies and procedures, the Operator may terminate this Agreement, by written notice delivered not more than 10 days after its receipt of such policies and procedures, such termination to be effective not less than 120 days after delivery of such notice; provided that if no notice of termination is delivered, then the Operator shall be deemed to have accepted such policies and procedures.

24. The parties also engaged on a carrier contract.

25. Even though all the contracts established different periods prior written notice for the termination of the contracts with or without cause, defendant proceeded to terminate his contractual relationship with plaintiff in open violation of the agreements.

26. On July 9, 2004, representatives of defendant **verbally** informed plaintiffs that effective July 13, 2004 (in other words four [4] days later) CHEP was terminating all their contracts with them. They, further, informed plaintiffs that "Paleteras Unidas" would be replacing them.

27. Defendant had always given plaintiffs the expectation of the continuation of their contractual agreements. As a matter of fact, on June 10,

2004, a month before defendant's illegal termination of the agreements, CHEP contracted plaintiffs to grind the pallets. Due to this fact, two weeks later, plaintiffs purchased two new fork lifts at a price of \$60,000.00. If plaintiffs would have known that defendant was going to illegally terminate their contractual agreements within two weeks, they would not have bought the before mentioned fork lifts. On the contrary, defendant always represented to plaintiffs that their contractual relationship was going ongoing and continuing.

28. On July 12, 2004 a CHEP's representative, Daniel Cordero, sent plaintiff an e-mail confirming the termination of the contracts effective July 13, 2004.

29. On July 27, 2004, defendant sent plaintiff a "termination letter" giving him ninety (90) days notice pursuant to the contractual agreement. This letter, of course, was a sham, not only because defendant had previously verbally terminated the contracts effective July 13, 2004 in opened violation of the same the agreements, but also because the different agreements contained different termination written notice periods.

30. Defendant's illegal termination of its contracts has caused Plaintiffs serious economic harm and damages.

IV. FIRST CAUSE OF ACTION

31. The allegations contained in paragraphs 1 to 30 are re-alleged as if fully incorporated herein.

32. As stated herein, Plaintiff, HC Wooden Pallets, had several contracts with defendant. Each contract required a written termination notice period. In open violation of the contracts, defendant verbally terminated the same giving Plaintiffs only four days notice.

33. Such breach of contract has caused plaintiffs serious damages since at defendant's requests, Plaintiffs invested around \$2,000,000.00 to service defendant and fulfill their duties and obligations under the contracts.

34. As defendant's request, from the year 2002 to the year 2003, plaintiffs invested \$1,155,722.00 in improvements, land lots, construction, and purchase of equipments. As a matter fact, two weeks before the illegal verbal termination of the contracts, plaintiffs bought two fork-lifts at a price of \$60,000.00 due to the fact that defendant told them that their work volume was going to increase giving them an expectation of continuation of the contractual agreements.

35. As a direct result of defendant's breach of the contracts, plaintiffs have suffered serious economic damages as stated herein that are estimated in an amount no less than \$4,000,000.00.

V. SECOND CAUSE OF ACTION

36. The allegations contained in paragraphs 1 to 35 are re-alleged as if fully incorporated herein.

37. Plaintiff, HC Wooden Pallets' revenue for the year 2002 under defendant's contracts amounted to \$863,316.00. In the year 2003, the revenue

under defendant's contracts amounted to \$2,236.858. Up to the month of August 2004, the revenue under defendant's contracts totaled \$1,973.336.00.

38. Since defendant illegally terminated the contracts without the written due notice, plaintiffs are entitled to all the amounts it would have received under the contracts if defendant had not illegally terminated them. For example, one of the contracts required a 365 days termination notice; therefore, under such contract, plaintiff, HC Wooden Pallets, is entitled to compensation for whole the year of lost revenue.

39. As explained herein, it is requested from this Honorable Court to order defendant to pay to plaintiffs all the amounts of lost revenue due to the breach of the termination clause of the contracts to be determined by the evidence presented at trial.

VI. PUNITIVES DAMAGES

40. The allegations contained in paragraphs 1 to 39 are re-alleged as if fully incorporated herein.

41. For defendant's unlawful violation of its contractual obligations toward plaintiffs as described in this Complaint, Plaintiffs are entitled to punitive damages in an aggregate amount of no less than \$500,000.00 for each Plaintiff.

VII. ATTORNEYS' FEES, COSTS, AND INTERESTS

42. The allegations contained in paragraphs 1 to 41 are re-alleged as if fully incorporated herein.

43. It is respectfully requested from this Honorable Court to order defendant to pay all interests, costs, and attorneys' fees as prescribed by law.

WHEREFORE, Plaintiffs respectfully pray for this Honorable Court to enter judgment against Defendant, finding as true the facts as alleged herein and granting all the amounts of money requested herein plus costs, interests, and attorneys fees, and awarding any such other relief as the Honorable Court may deem necessary and proper.

RESPECTFULLY SUBMITTED.

In Aguada, Puerto Rico, this 18th day of November, 2005

s/ Heriberto Güivas-Lorenzo
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