

COMMONWEALTH OF MASSACHUSETTS

FRANKLIN, SS.

SUPERIOR COURT
DEPARTMENT OF THE TRIAL COURT
CIVIL ACTION NO.

RALPH O. HILLOCK and
AGD ROLL-OFF, INC.,

Plaintiffs

v.

ALLEN G. DAVIS,
BRUCE G. ROSEWARNE and
AFFORDABLE DUMPSTERS, INC.,

Defendants

**COMPLAINT AND DEMAND FOR
JURY TRIAL**

PARTIES

1. Ralph O. Hillock is a natural person with a residential address of 9 Vladish Avenue Turners Falls, Franklin County, Massachusetts ("Hillock").
2. Allen G. Davis is a natural person with a residential address of 36 Log Plain Road, Greenfield, Franklin County, Massachusetts ("Davis").
3. Bruce G. Rosewarne is a natural person with a residential address of 150 Millers Falls Road, Turners Falls, Massachusetts ("Rosewarne").
4. AGD Roll-Off, Inc. is a Massachusetts business corporation with a principal place of business at 9 Vladish Avenue, Turners Falls, Franklin County, Massachusetts ("AGD").
5. AGD is in the business of providing roll-off dumpsters to clients in the Franklin County Area of Massachusetts.
6. Affordable Dumpsters, Inc. is a Massachusetts business corporation with a business address of 150 Millers Falls Road, Turners Falls, Massachusetts ("Affordable Dumpster").
7. Davis and Rosewarne are directors of Affordable Dumpster.

FACTS

8. Hillock began working at AGD in 2017.

9. In September of 2019, Davis was the sole shareholder of AGD.
10. In September of 2019, Davis indicated to Hillock that he was interested in retiring.
11. In September of 2019, Davis offered Hillock the opportunity to purchase AGD.
12. At that time, Hillock was an employee of AGD.
13. Following Davis's offer to Hillock, the parties began discussion in earnest, ultimately agreeing on a price of \$350,000.00 for the issued and outstanding shares of AGD ("Stock"), along with all of its equipment, customers, customer lists, intellectual property, goodwill, and the like, as well as an agreement that Davis would not compete against Hillock/AGD for a period of 5 to 8 years once Hillock received all of the Stock.. ("First Agreement")
14. During the time the parties were negotiating the First Agreement, Davis indicated that Rosewarne, his accountant, would draft a purchase and sales agreement for the parties to memorialize the First Agreement in writing and that no attorneys were necessary.
15. In discussing the First Agreement, Hillock confirmed that Davis had agreed that one component of the First Agreement would be a non-compete for a period of 5-8 years and that the non-compete would be included in the written First Agreement.
16. Pursuant to the First Agreement, Hillock was to pay Davis \$150,000.00 over time from his share of AGD's profits in exchange for one-half of the Stock.
17. Pursuant to the First Agreement, Davis would continue to hold one-half of the Stock and remain an active principal of the company for five years from the First Agreement, at which time Hillock would pay the remaining \$200,000.00 for the remaining Stock.
18. Pursuant to the First Agreement Hillock was to pay Davis the remaining \$200,000.00 five years from the First Agreement, at which time Davis would convey the remaining one-half of the Stock to Hillock.
19. Despite Davis's representation that Rosewarne would draft a purchase and sales agreement, Rosewarne did not draft such a purchase and sales agreement to memorialize the First Agreement, and Davis and Hillock did not enter into a formal purchase and sales agreement relative to the First Agreement.
20. Despite Davis's representation that he would enter into a non-compete, and Rosewarne's confirmation of that fact and representation that he would draft a non-compete agreement, Rosewarne did not draft such agreement.
21. At all relevant times, Hillock relied on Davis and Rosewarne's representations relative to the First Agreement.

22. At all relevant times, Hillock believed Rosewarne was acting on behalf of both Davis and Hillock as it related to the First Agreement.
23. Despite the lack of a written purchase and sales agreement and pursuant to the First Agreement, Hillock began paying Davis \$3,000.00 per month toward the purchase price; ultimately paying the \$150,000.00, contemplating the First Agreement in full.
24. Following the First Agreement, Davis put Hillock's name on AGD's bank and other accounts.
25. Following the First Agreement, Davis did not endorse certificates for the Stock to Hillock as required by the First Agreement.
26. In approximately June of 2021, Hillock offered to pay the remaining balance of \$200,000.00 to Davis for the purchase of the company. Davis informed Hillock that if he wanted to purchase AGD, he would have to pay more because it was worth more now than in 2019.
27. In approximately June of 2021, Davis informed Hillock that he was under no obligation to sell AGD to Hillock pursuant to the terms of the First Agreement because there was no written contract.
28. In June of 2021, Davis informed Hillock that the price for AGD was now \$650,000.00 including the amount Hillock had previously paid for the Stock and the same terms and conditions as the First Agreement. ("Second Agreement").
29. In June of 2021, Davis informed Hillock that if Hillock left AGD, Hillock was not entitled to the buy back of his AGD Stock or the return of the \$150,000.00 Hillock had previously paid Davis.
30. The purchase price under the Second Agreement was the \$150,000.00 previously paid by Hillock, \$350,000.00 paid in cash at closing, and \$150,000.00 secured by a promissory note.
31. Having already invested \$150,000.00 in AGD, and having been told he was not entitled to the refund of his previously paid purchase price or a buy back of his portion of the Stock, Hillock agreed to the terms of the Second Agreement.
32. No new consideration was provided by Davis between the First and Second Agreement.
33. After reaching the Second Agreement, Hillock again asked Davis if it was necessary to have lawyers review and document the Second Agreement.
34. As was the case with the First Agreement, Davis again indicated that lawyers were not necessary and that Rosewarne would draft the necessary documents.

35. As part of the Second Agreement, Davis again represented that he would enter into a non-compete, and Rosewarne confirmed that fact, representing that he would draft a non-compete agreement. Rosewarne did not draft such non-compete agreement.
36. At all relevant times, Hillock relied on Davis and Rosewarne's representations relative to the Second Agreement.
37. At all relevant times, Hillock believed Rosewarne was acting on behalf of he and Davis as Rosewarne was AGD's accountant.
38. Rosewarne ultimately drafted a written memorialization of the Second Agreement, which Davis and Hillock executed.
39. Despite draft copies of the sales documents previously containing a written non-compete, Hillock learned post-closing that the non-compete had not been included in the final documents.
40. At all relevant times, Hillock relied on the oral representations of Davis and Rosewarne.
41. Hillock paid \$350,000.00 to Davis at closing on or about August 1, 2021.
42. Upon information and belief, no Stock certificates for AGD were endorsed to Hillock and no schedule of AGD's assets or inventory were provided at the time the parties closed on the Second Agreement.
43. Following closing on the Second Agreement, Hillock continued to run AGD from real property owned by Davis.
44. During the time Hillock was operating AGD from Davis's property, Davis regularly and routinely entered property rented exclusively to AGD, used AGD's tools and equipment for his own use, and limited AGD's hours of operations and took other actions designed to deprive Hillock of his benefit of the bargain. (the "Interference")
45. Because of the Interference, Hillock informed Davis that he was going to relocate AGD to a different physical location.
46. In response, Davis indicated that if Hillock moved AGD, he would open a new roll-off container business and directly compete with Hillock and AGD.
47. Davis further indicated that he would be willing to refund the \$350,000.00 paid under the Second Agreement, that he would keep the \$150,000.00 previously paid and that he and Hillock could run the business together.
48. Hillock informed Davis that the proposal was acceptable.

49. Davis then indicated that he would not refund the \$350,000.00 but wanted to keep the funds in the AGD's bank accounts from the date of purchase, and that Hillock stop making any payments from the account. Davis then changed his mind and instead of retaining AGD's bank account, he wanted \$20,000.00 for his pain and suffering, another \$20,000.00 from Hillock.
50. Hillock rejected this offer and moved AGD off Davis's property in February of 2022.
51. In 2022, AGD moved from Davis's property and Davis and Rosewarne formed Affordable Dumpster.
52. Affordable Dumpster has used AGD's intellectual property, mailing lists and the like for its own use.
53. Affordable Dumpster is the exact same business as AGD.
54. Affordable Dumpster has used AGD's personal property for its own use.
55. Affordable Dumpster has converted AGD's property for its own use, including but not limited to a certain fuel tank with the fuel stored therein, which Davis blocked AGD from use with a certain skid steer.
56. Affordable Dumpster has and continues to operate in the same geographical location as AGD.
57. Affordable Dumpster has and continues to solicit customers of AGD.
58. Affordable Dumpster has and continues to spread falsehoods about AGD among AGD's former customers.
59. Affordable Dumpster has on at least one occasion instructed AGD's customers not to pay AGD as Hillock owed Davis money.
60. On at least one occasion, Davis informed a current customer of AGD that Hillock ripped him off and stole money.
61. On at least one occasion, Davis informed a contract driver of AGD that he should quit working for AGD and that AGD would be filing bankruptcy.
62. On at least one occasion, Davis informed Hillock that he would stop interfering with AGD's customers if Hillock restarted payments under the promissory note provision of the Second Agreement.
63. On at least one occasion, Davis has confronted and berated Hillock at a transfer station used by both companies.

- 64. On at least one occasion, Davis took acts or actions to prevent AGD's access to a transfer station used by both companies.
- 65. As the result of Affordable Dumpster's conduct, AGD's business has declined.
- 66. To date, Davis has failed to provide Hillock with AGD's books, records or accounts.

CLAIMS

COUNT I

Declaratory Judgment Re: Interpretation & Enforcement of Contract (Hillock v. Davis)

- 67. Hillock incorporates each of the forgoing allegations as though each such allegation was fully set forth herein.
- 68. An actual controversy exists between Hillock and Davis concerning the validity and enforceability of the First Agreement, the validity and enforceability of the Second Agreement, and the validity and enforceability of any non-compete negotiated with regard to the First or Second Agreement.

COUNT II

Breach of Contract (Hillock v. Davis)

- 69. Hillock incorporates each of the forgoing allegations as though each such allegation was fully set forth herein.
- 70. An enforceable contract exists between Hillock and Davis for the purchase and sale of AGD.
- 71. Subject to the Court's declaration of Count I of this Complaint, Hillock has performed his obligations under either the First Agreement or the Second Agreement.
- 72. Subject to the Court's declaration as to Count I of this Complaint, Davis has breached his obligations under the First Agreement or Second Agreement.
- 73. As the result of Davis's breach, Hillock has been injured.

COUNT III

Unfair And Deceptive Trade Practices – M.G.L. c. 93A, § 11 (Hillock and AGD v. Affordable Dumpster, Davis and Rosewarne)

- 74. Hillock and AGD incorporate each of the forgoing allegations as though each such allegation was fully set forth herein.

75. At all relevant times, Hillock was engaged in the trade or commerce of providing roll-off container services.
76. At all relevant times, AGD was engaged in the trade or commerce of providing roll-off container services.
77. At all relevant times, Affordable Dumpster was engaged in the trade or commerce of providing roll-off container services.
78. At all relevant times, Davis was engaged in the trade or commerce of providing roll-off container services.
79. At all relevant times, Rosewarne was engaged in the trade of commerce of providing accounting and business services.
80. Drafting of contracts for the purchase and sale of a business constitutes the practice of law.
81. Advising individuals or entities as to the legal effect of contracts constitutes the practice of law.
82. As detailed above, Rosewarne agreed to draft certain legal documents relative to the sale of AGD.
83. As detailed above, Rosewarne provided Hillock legal advice relative to the First and Second Agreements.
84. The errors, acts and omissions as detailed herein above constitute an unfair or deceptive actor or practice under M.G.L. c. 93A § 11.
85. As the result of Affordable Dumpster, Davis and Rosewarne's actions, Hillock and AGD have been damaged.

COUNT IV

Conversion

(AGD v. Affordable Dumpster and Davis)

86. AGD incorporates each of the forgoing allegations as though each such allegation was fully set forth herein.
87. The acts of Davis as detailed herein above constitute Conversion.
88. As the result of Affordable Dumpster and Davis's Conversion of AGD's property, AGD has been injured.

COUNT V
Tortious Interference
(AGD v. Affordable Dumpster and Davis)

- 89. AGD incorporates each of the forgoing allegations as though each such allegation was fully set forth herein.
- 90. The acts of Affordable Dumpster and Davis as detailed herein above constitute Tortious Interference with a business or contractual relationship.
- 91. As the result of Affordable Dumpster and Davis's Tortious Interference, AGD has been injured.

COUNT VI
Negligent Misrepresentation
(Hillock v. Davis and Rosewarne)

- 92. Hillock incorporates each of the forgoing allegations as though each such allegation was fully set forth herein.
- 93. As detailed herein above during the purchase and sale of AGD, Davis and Rosewarne made certain representations to Hillock.
- 94. The representations made by Davis and Rosewarne to Hillock were designed to induce Hillock to, among other things, enter into an agreement to purchase AGD, and to forgo the use of legal counsel to review legal documents drafted by Rosewarne, and rely on documents drafted by Rosewarne.
- 95. Hillock was entitled as a matter of law to rely on the representations made by Davis and Rosewarne.
- 96. Hillock's reliance on Davis and Rosewarne's representations was reasonable.
- 97. As the result of Hillock's reliance on Davis and Rosewarne's representations, Hillock was injured.

COUNT VII
Fraudulent Misrepresentation
(Hillock v. Davis and Rosewarne)

- 98. Hillock incorporates each of the forgoing allegations as though each such allegation was fully set forth herein.
- 99. As detailed herein above during the purchase and sale of AGD, Davis and Rosewarne made certain representations to Hillock.

100. The representations made by Davis and Rosewarne to Hillock were designed to induce Hillock to, among other things, enter into an agreement to purchase AGD, and to forgo the use of legal counsel to review documents drafted by Rosewarne, and rely on documents drafted by Rosewarne.
101. Hillock was entitled as a matter of law to rely on the representations made by Davis and Rosewarne.
102. Hillock's reliance on Davis and Rosewarne's representations was reasonable.
103. As the result of Hillock's reliance on Davis and Rosewarne's representations, Hillock was injured.

COUNT VIII
Professional Negligence/Breach of Fiduciary Duty
(Hillock and AGD v. Rosewarne)

104. Hillock and AGD incorporate each of the forgoing allegations as though each such allegation was fully set forth herein.
105. As detailed herein above and at all relevant times, Rosewarne provided accounting and other professional services to Hillock, Davis, AGD and later to Affordable Dumpster.
106. At all relevant times, Rosewarne owed Hillock and later AGD, certain fiduciary duties including but not limited to duty of candor, good faith and loyalty.
107. As detailed herein above and at all relevant times, Rosewarne provided accounting and other professional services to Davis and later to Affordable Dumpster.
108. By providing accounting and other services to both Hillock and later AGD, while at the same time providing accounting and other professional services to Davis and Affordable Dumpster, Rosewarne breached his duties to Hillock and AGD.
109. Rosewarne drafted or agreed to draft certain documents in order to effectuate the First Agreement or Second Agreement.
110. Rosewarne negligently drafted such documents in that Hillock's and later AGD's interests were not adequately protected, and the agreement of the parties was not in fact memorialized.
111. The errors, acts and omissions of Rosewarne as detailed herein constitute negligence.
112. As the result of Rosewarne's negligence, AGD and Hillock have been injured.

COUNT IX
Civil Conspiracy
(Hillock v. Rosewarne and Davis)

- 113. Hillock and AGD incorporate each of the forgoing allegations as though each such allegation was fully set forth herein.
- 114. At all relevant times, Rosewarne knew that the conduct of Davis was designed to defraud Hillock.
- 115. At all relevant times as detailed herein, Rosewarne substantially assisted in or encouraged Davis's conduct.
- 116. As the result of Rosewarne and Davis's conspiracy, Hillock and AGD have been injured.

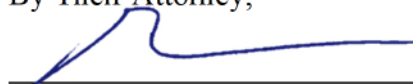
WHEREFORE, Hillock and AGD demand this Court:

- A. Order, adjudge, declare and enforce the rights of the parties as to the issues set forth in Count I of this Complaint including the interpretation and enforcement of the Parties Agreements and the Non-Competition Agreement; and
 - 1. Annul any valid contract based on Davis's misrepresentations and actions; or alternatively;
 - 2. Determine the validity of the First Agreement and/or Second Agreement; and thereafter;
 - 3. Interpret and enforce any valid and binding agreement of the Parties including any Non-Competition Agreement; and
 - 4. Make such declarations as are necessary to effectuate the Parties rights and obligations.
- B. Find that Rosewarne owed Hillock and AGD certain duties; and
- C. Find Rosewarne participated or substantially assisted in or encouraged Davis's tortious conduct; and
- D. Order Affordable Dumpster and Davis to disgorge revenue collected in violation of the Contractual and other obligations found pursuant to Count I; and
- E. Award Hillock and/or AGD damages in an amount sufficient to compensate each for breach of any binding Agreements or the tort claims brought herein; and

- F. Find that Affordable Dumpster, Davis and Rosewarne acting together or alone have violated M.G.L. c. 93A and double or treble Hillock and AGD's actual damages; and
- G. Award Hillock and AGD their fees, costs and expenses in bringing this suit; and
- H. Award of double or triple damages together with attorneys' fees and expenses pursuant to M.G.L. c. 93A, § 11.

PLAINTIFFS DEMAND A TRIAL ON ALL CLAIMS SO TRIALABLE.

Respectfully submitted,
The Plaintiffs, Ralph O. Hillock and
AGD Roll-Off, Inc.,
By Their Attorney,



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