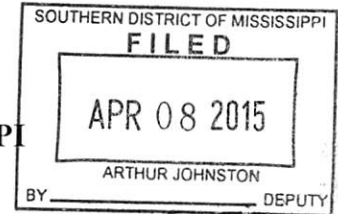


IN THE SOUTHERN DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION
Eastern



MISSISSIPPI POWER COMPANY

PLAINTIFF

VERSUS

CAUSE NO. *2:15cv 5014s-MTP*

GAW MINERS, LLC

DEFENDANT

COMPLAINT

COMES NOW, Defendant, Mississippi Power Company (“MPC” or “Plaintiff”), by and through undersigned counsel of record, Balch & Bingham LLP, and files this Complaint against Defendant, GAW Miners, LLC (“GAW” or “Defendant”), and would show unto this Honorable Court as follows:

PARTIES

1. Plaintiff, Mississippi Power Company, is a Mississippi corporation with its principal place of business located in Harrison County, Mississippi.
2. Defendant, GAW Miners, LLC, is a Delaware limited liability company with its principal place of business located in Wilmington, Delaware. GAW can be served through its Registered Agent, VCORP Agent Service, Inc., at 6917 Wrenwood Drive, Horn Lake, Mississippi 38637 or by any other means allowed by law.

JURISDICTION AND VENUE

3. Jurisdiction is proper in this Honorable Court pursuant to 28 U.S.C. § 1332 because there is complete diversity of citizenship between Plaintiff and Defendant. Additionally, the amount in controversy exceeds \$75,000.00, exclusive of cost and interest.

4. Venue is proper in this Honorable Court because the acts and omissions giving rise to this suit occurred, in whole or in part, in Lamar County, Mississippi.

FACTS

5. On or about September 29, 2014, the parties entered into a contract for electric service to be provided by MPC to GAW at its facility located at 117 Central Industrial Row, Purvis, Mississippi (the "Contract"). See the Contract, attached hereto as Exhibit "A".

6. In order to provide the electric service that was requested by GAW, MPC had to invest in the purchase of certain transformers and incur the cost of installing such transformers. The cost for MPC to install this equipment is was \$49,335.20, which is exclusive of the purchase price of the transformers and equipment (the "Installation Cost").

7. MPC began to provide electric service to GAW on or about October 15, 2014. Since that time, MPC has billed GAW on a monthly basis. To date, GAW has only made one payment to MPC for the electric service provided, despite MPC's monthly billing statements being sent to GAW.

8. On or about January 27, 2015, at the request of GAW, electric service to GAW's facility was disconnected. Due to GAW's failure to fulfill the one-year term of the Contract, MPC is entitled to recover from GAW the Installation Cost and the minimum monthly bill for the eight (8) remaining months on the Contract in the amount of \$73,493.48 (the "Minimum Monthly Amounts"), as is provided in the Contract.

9. At the time of disconnect, GAW owed MPC a total of \$223,818.61 for electric service provided to GAW's facility pursuant to the Contract (the "Past Due Balance"). To date, GAW has failed to satisfy any of the Past Due Balance.

10. Despite, MPC's demands for payment of the Installation Cost and the Past Due Balance, these amounts remain outstanding. *See* Demand Letter dated March 6, 2015, attached hereto as Exhibit "B"; *see also* GAW's Billing Statement, attached to Exhibit B as Exhibit "1" and referred to hereinafter as Exhibit "B-1".

11. Additionally, under the Contract MPC is entitled to the Minimum Monthly Amount for each of the eight months left on the term of the Contract or a total amount of \$73,493.48.

12. Due to these events, MPC has incurred damages in the total amount of \$346,647.29, plus interest, costs and attorneys' fees.

COUNT I

BREACH OF CONTRACT

13. MPC incorporates all previous paragraphs as if restated herein.

14. By GAW failing to make payments on a monthly basis for electric service provided by MPC, it is in breach of the Contract.

15. Additionally, by failing to complete the one-year term under the Contract, GAW is in breach of the Contract.

16. Due to GAW's breach of the Contract, MPC has suffered certain damages, including, but not limited to, the Installation Cost, the Monthly Minimum Amounts and the Past Due Balance.

COUNT II

UNJUST ENRICHMENT (ALTERNATIVELY)

17. MPC incorporates all previous paragraphs as if fully stated herein.

18. MPC has provided certain electric service and other services to GAW with the expectation of being compensated by GAW for such services.

19. To date, GAW has failed to compensate MPC for the services provided to GAW.

20. MPC has been damaged due to GAW's failure to pay for the services provided.

COUNT III

OPEN ACCOUNT (ALTERNATIVELY)

21. MPC incorporates all previous paragraphs as if fully stated herein.

22. MPC provided electric service to GAW with the expectation of being compensated for the provision of such service.

23. MPC made a demand for payment on March 6, 2015. *See* Exh. "B".

24. To date, GAW has failed to fully compensate MPC for the provision of such electric service, despite such demands made by MPC.

25. MPC has been damaged by GAW's failure to pay for the electric service provided.

WHEREFORE, PREMISES CONSIDERED, Plaintiff, Mississippi Power Company, respectfully requests that this Honorable Court enter a judgment in its favor and against Defendant, GAW Miners, LLC, for breaching the Contract and award all damages proven at the trial of this matter, including, but not limited to, the Installation Cost, the Monthly Minimum Amounts and the Past Due Balance for a total amount of \$346,647.29, plus all pre- and post-judgment interest, costs, and attorneys' fees or, in the alternative, MPC requests this Honorable Court to award all damages available to it under theories of unjust enrichment (*quantum meruit*) or for failure to pay on an open account.

Respectfully submitted, this 7th day of April, 2015.

MISSISSIPPI POWER COMPANY

BY: Balch & Bingham LLP

BY: 

Of Counsel

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