

IN THE SUPERIOR COURT OF FORSYTH COUNTY  
STATE OF GEORGIA

FORSYTH COUNTY GEORGIA  
FILED IN THIS OFFICE  
FEB 01 2010  
W. G. Allen  
CLERK SUPERIOR COURT

ESEATS, INC.

\_\_\_\_\_

PLAINTIFF

VS.

CIVIL ACTION NO.

10CV0257

ACTION SEATING, INC.

\_\_\_\_\_

DEFENDANT

SUMMONS

TO THE ABOVE NAMED DEFENDANT:

You are hereby summoned and required to file with the Clerk of Said Court and serve upon the Plaintiff's attorney, whose name and address is:

David C. Will  
ROYAL - WILL  
4799 Sugarloaf Parkway, Building J  
Lawrenceville, Georgia 30044

an answer to the complaint which is herewith served upon you, within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

This 1<sup>st</sup> day of February, 2010.

Greg G. Allen  
Clerk of Superior Court

By: Greg G. Allen  
Deputy Clerk

COPY

IN THE SUPERIOR COURT OF FORSYTH COUNTY

FORSYTH COUNTY GEORGIA  
FILED IN THIS OFFICE  
FEB 01 2010  
K. L. O'Connell  
CLERK SUPERIOR COURT

STATE OF GEORGIA

ESEATS, INC., )

Plaintiff, )

v. )

ACTION SEATING, INC., )

Defendant. )

CIVIL ACTION NO.

\_\_\_\_\_

COMPLAINT FOR SPECIFIC PERFORMANCE,

EQUITABLE RELIEF, AND DAMAGES

COMES NOW the Plaintiff, ESEATS, INC., and states for its complaint as follows:

1.

ESEATS, INC. is an Arizona corporation in good standing. It is a seller of tickets to sporting and other events and does business on the internet under the name ESEATS.COM.

2.

Defendant ACTION SEATING, INC. is a Georgia corporation with its principal place of business at 3245 Peachtree Parkway, Suite D-129, Suwanee, Forsyth County, Georgia 30024. It may be served by serving its Chief Executive Officer, Gene Hammett, at 3245 Peachtree Parkway, Suite D-129, Suwanee, Forsyth County, Georgia 30024.

3.

Defendant ACTION SEATING, INC. is subject to the personal jurisdiction of this Court.

4.

Venue is proper in this Court.

5.

This Court has subject matter jurisdiction over the claims asserted in this action.

6.

The Plaintiff is a member of the National Association of Ticket Brokers and ascribes to its Code of Ethics.

7.

The Plaintiff is an accredited business with the Better Business Bureau.

8.

Heretofore, the Plaintiff has enjoyed an excellent reputation.

9.

Defendant Action Seating, Inc. is engaged in the wholesale and retail sale of tickets to sporting events.

10.

Commencing on or about December 31, 2008 the Plaintiff entered into a series of transactions with the Defendant, by which the Defendant agreed to provide tickets to events at the XXI Winter Olympics to be held beginning on February 12, 2010, in Vancouver, British Columbia, Canada.

11.

The Defendant represented and repeatedly assured Plaintiff that it could provide the tickets to the Winter Olympic events.

12.

The Defendant's representations and promises were false.

13.

The Defendant knew that the Plaintiff would rely on its representations and assurances as to its ability to provide the Olympic tickets.

14.

In reliance on the Defendant's representations and assurances the Plaintiff, in turn, sold tickets to the Olympic games to its clients.

15.

The Plaintiff paid to the Defendant the sum of \$423,469.35 for Olympic tickets.

16.

The Defendant has failed to deliver the tickets it sold to the Plaintiff.

17.

The Plaintiff has made demand upon the Defendant, but the Defendant has refused to deliver the tickets or refund the monies paid by the Plaintiff.

18.

As a direct result of the Defendant's failure to deliver the tickets, the Plaintiff has been damaged.

19.

The Plaintiff's damages include general, special and consequential damages, including lost profits and damages to its reputation.

#### COUNT I

#### BREACH OF CONTRACT

20.

The allegations contained in paragraphs 1 – 19 are realleged as if set out in full herein.

21.

The Plaintiff and Defendant entered into a contract for the sale of tickets to the Winter Olympics.

22.

The Plaintiff paid the Defendant the sum of \$423,469.35 for the tickets.

23.

The contract entered between the parties required the Defendant to deliver the tickets in January 2010. The Defendant failed to do so.

24.

In the contract executed between the parties, the Defendant guaranteed “all tickets and will pay replacement cost if necessary for any tickets not delivered.”

25.

The Defendant breached the contract with the Plaintiff.

26.

The Plaintiff has been damaged as a result of the Defendant’s breach of contract.

27.

The Plaintiff is entitled to recover from the Defendant for the damages it has sustained, including lost profits.

## COUNT II

### SPECIFIC PERFORMANCE

28.

The allegations contained in paragraphs 1 – 27 are realleged as if set out in full herein.

29.

Time is of the essence under the contract between the parties.

30.

The damages being sought will not fully compensate the Plaintiff for the damages it has sustained and will continue to sustain caused by the Defendant's breach of the contract between the parties and Defendant's nonperformance.

31.

The Plaintiff has fully performed under the contract.

32.

Specific performance is necessary and appropriate under the circumstances of this case to provide relief to the Plaintiff, if and only if it can be awarded sufficiently ahead of the Olympic games for the tickets to be distributed to Plaintiff's customers in sufficient time for them to be used.

### COUNT III

#### MONEY HAD AND RECEIVED

33.

The allegations contained in paragraphs 1 – 32 are realleged as if set out in full herein.

34.

The Defendant received from the Plaintiff the total sum of \$423,469.35, which was paid to the Defendant in a series of transactions.

35.

The Defendant received the funds from the Plaintiff.

36.

The Defendant has failed to return the monies belonging to the Plaintiff.

37.

The Plaintiff is entitled to recover damages against the Defendant for money had and received.

COUNT IV

UNJUST ENRICHMENT

38.

The allegations contained in paragraphs 1 – 37 are realleged as if set out in full herein.

39.

In the alternative, should the Defendant contend that there was not a valid contract between the parties, the Plaintiff paid the Defendant a total of \$423,469.35, which was received by the Defendant.

40.

The Defendant received the funds sent by the Plaintiff.

41.

The Defendant is not entitled to keep the funds.

42.

The Defendant has failed to refund the funds, despite demand.

43.

The Defendant has been unjustly enriched by keeping and refusing to return the \$423,469.35 which belongs to the Plaintiff.

44.

The Plaintiff is entitled to recover against the Defendant for its unjust enrichment.

COUNT V

CONSTRUCTIVE TRUST

45.

The allegations contained in paragraphs 1 – 44 are realleged as if set out in full herein.

46.

The Defendant has been unjustly enriched by keeping and refusing to return \$423,469.35 belonging to Plaintiff.

47.

A constructive trust should therefore be imposed on said funds, and any and all property to which such funds have been converted, and Plaintiff prays that such a constructive trust be imposed.

COUNT VI

GEORGIA RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT

48.

The allegations contained in paragraphs 1 – 47 are realleged as if set out in full herein.

49.

The Defendant is an “enterprise” as that term is defined in O.C.G.A. § 16-14-3(6).

50.

The Defendant has engaged in a “pattern of racketeering activity” as that term is defined in O.C.G.A. § 16-4-3(8).

51.

As predicate acts, among the incidents of “racketeering activity,” the Defendant has engaged in two or more incidents of theft by deception (O.C.G.A. § 16-8-3) by obtaining



property of the Plaintiff by deceitful means or artful practices, among others, by promising performance of services which it did not intend to perform or knew would not be performed, said offenses being defined as “racketeering” in O.C.G.A. § 16-14-3(9)(A)(ix).

52.

As predicate acts, among the incidents of “racketeering activity,” the Defendant has engaged in two or more incidents of wire fraud (18 USC § 1343) by causing to be transmitted by wire, writings intended to defraud or to obtain money by means of false pretenses, representations and promises, said offenses being defined as “racketeering” activities by O.C.G.A. § 16-14-3(9)(A)(xxix).

53.

The Plaintiff has sustained damages as a result of Defendant’s pattern of racketeering activity.

54.

The Plaintiff is entitled to be awarded injunctive relief and damages against the Defendant as provided by O.C.G.A. § 16-4-6, including treble damages and attorneys fees.

COUNT VII

ATTORNEYS FEES

55.

The allegations contained in paragraphs 1 – 54 are realleged as if set out in full herein.

56.

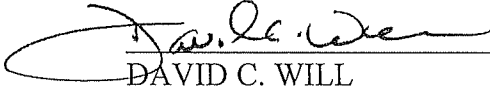
The Plaintiff was forced to hire an attorney and incur legal fees and expenses as a result of Defendant’s actions.

The Defendant has acted in bad faith, has been stubbornly litigious and has caused the Plaintiff unnecessary trouble and expenses so as to authorize the recovery of its attorneys fees and expenses of litigation under OCGA § 13-6-11.

WHEREFORE, having fully stated for its complaint, the Plaintiff prays that:

- a) process issue and the Defendant be served as provided by law;
- b) the Defendant be temporarily, preliminarily and permanently enjoined from engaging in racketeering activity;
- c) a constructive trust be imposed upon the monies belonging to the Plaintiff or to any property to which said monies have been converted;
- d) the Plaintiff have and recover damages of the Defendant for its breach of contract, specifically in the amount of \$423,469.35 or such other amount as proven at trial, lost profits, consequential damages, and special damages as shown at trial;
- e) damages, including treble damages under RICO;
- f) prejudgment and post-judgment interest as provided by law;
- g) attorneys fees and expenses of litigation under O.C.G.A. § 13-6-11 and under O.C.G.A. § 16-4-6;
- h) the Plaintiff be granted a trial by jury;
- i) judgment be entered in favor of the Plaintiff and against the Defendant;
- j) all costs of Court be cast upon the Defendant; and
- k) the Plaintiff be awarded such other and further relief as the Court deems just, proper and equitable.

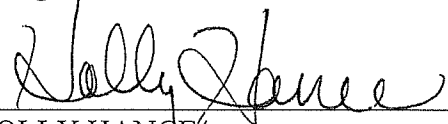
This 1<sup>st</sup> day of February, 2010.



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DAVID C. WILL

Georgia Bar # 760150



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HOLLY HANCE

Georgia Bar # 153092

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