

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
DEPARTMENT OF
THE TRIAL COURT

BROWN RUDNICK LLP,

Plaintiff,

v.

CHRISTOF INDUSTRIES GLOBAL GMBH

and

FMT US INC.,

Defendants.

Civil Action No.

21-2183

2021 SEP 24 P 12:30

SUFFOLK SUPERIOR COURT
CIVIL DEPARTMENT

COMPLAINT

This action arises out of the failure of Christof Industries GmbH, Austria (now Christof Industries Global GmbH) ("Christof") and FMT US Inc. ("FMT") to pay millions of dollars for legal services rendered to them at their express request by Brown Rudnick LLP ("Brown Rudnick"). As of the date of this complaint, Defendants owe Brown Rudnick nearly \$4,100,000 in unpaid legal fees, exclusive of statutory interest. In addition, when they fell behind on their payment obligations, in an effort to keep Brown Rudnick working on their behalf, FMT and Christof induced Brown Rudnick to enter into two amendments of their fee agreement with which FMT and Christof never intended to comply. Given FMT and Christof's unfair and deceptive trade practices, Brown Rudnick seeks treble damages with respect to the unpaid fees incurred after the date of parties' first amendment. In total, Brown Rudnick now seeks in excess of \$8,000,000, plus interest and attorneys' fees from the Defendants.

PARTIES

1. Plaintiff, Brown Rudnick LLP, is a Massachusetts limited liability partnership with a principal place of business at One Financial Center, Boston, Suffolk County, Massachusetts 02111. Brown Rudnick is an international law firm whose partners reside in several states, including Massachusetts.

2. Defendant, Christof Industries Global GmbH is an Austrian corporation with a principal place of business at Plabutscherstraße 115 8051 Graz, Austria. Christof Industries Global GmbH formerly was known and did business as Christof Industries GmbH, Austria.

3. Defendant, FMT US. Inc. is a South Carolina corporation with a principal place of business at 130 Satellite Blvd, Suwanee, GA, 30549, USA.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the Defendants pursuant to the terms of the engagement agreement Christof Industries GmbH, Austria (now Christof Industries Global GmbH) and FMT US. Inc. signed with Brown Rudnick on or about November 9, 2018 (the “Agreement”). Alternatively, this Court has jurisdiction over Christof and FMT pursuant to Massachusetts General Laws, ch. 223A § 3, because the Defendants transacted business in the Commonwealth by retaining, accepting, and benefitting from services rendered in Massachusetts by a law firm with a principal place of business in Massachusetts.

5. Venue is proper in Suffolk County pursuant to Massachusetts General Laws, ch. 223 § 1, because Brown Rudnick has its usual place of business in Boston. Venue is also proper in Suffolk County because pursuant to the terms of the Agreement, the parties agreed that any

action or proceeding relating to or arising out of the Agreement will be exclusively brought in a state or federal court in Massachusetts.

FACTS

Christof Industries Global GmbH (f/k/a Christof Industries GmbH, Austria) and FMT's Engagement of Brown Rudnick

6. Christof is an Austria-based multinational corporation which provides industrial plant construction and industrial services to businesses around the world.

7. FMT is a subsidiary of Christof which operates within the United States.

8. On or about August 17, 2017, FMT entered into a multimillion-dollar contract to serve as the installation contractor for the construction of an HDF/MDF plant. In connection with this agreement, Christof Industries GmbH, Austria executed a parent company guarantee.

9. During the course of its contract, a number of issues and disputes arose that ultimately resulted in FMT being wrongfully terminated from the project and the project owner calling upon Christof Industries GmbH, Austria's parent company guarantee.

10. On or about November 9, 2018, FMT and Christof Industries GmbH, Austria first retained Brown Rudnick in connection with the failed construction project.

11. At the end of October 2019, Christof Industries GmbH, Austria changed its name to Christof Industries Global GmbH.

12. Brown Rudnick provided legal services to FMT and Christof in connection with the prosecution and defense of an arbitration before the International Centre for Dispute Resolution (the "Arbitration"). All told, the Arbitration involved approximately \$100 million dollars of claims and counterclaims between the parties.

13. The terms of Brown Rudnick's engagement by and fee agreement with FMT and Christof were memorialized in a written engagement letter dated November 9, 2018. Of relevance here, the Agreement provided that Brown Rudnick would require payment of only one-half of its hourly rates on a current basis and would defer the payment of the remaining half until such time as a recovery was obtained in the Arbitration and paid by the Respondent. The Agreement also provided for a success fee on any recovery actually paid by the Respondent that varied between 20% and 40%, depending on the total amount recovered (the "Success Fee").

14. Over the next two and one-half years, Brown Rudnick provided extensive legal services to and at the request of FMT and Christof in connection with the prosecution and defense of the claims in the Arbitration.

15. At all phases of the lengthy arbitration, Brown Rudnick was in constant contact with both FMT and Christof with respect to strategy and provided multiple cost estimates with respect to the services provided.

16. FMT and Christof prevailed in the Arbitration. The Arbitration Panel determined that FMT incurred more than \$24.5 million in damages. After offsetting those damages against approximately \$20 million dollars in advanced contract payments that FMT received but had not yet earned during the construction project, and awarding FMT certain of its attorneys' fees and costs, the Arbitration Panel ordered a final award in favor of FMT and Christof in the amount of \$6,682,877.25 (the "Arbitration Recovery").

17. In addition to this recovery on their affirmative claims, the Arbitration Panel entered an order dismissing all counterclaims asserted against FMT and Christof, which counterclaims had asserted damages of approximately forty million dollars (\$40,000,000).

18. On or about July 7, 2021, FMT and Christof received payment from Respondent of the entire Arbitration Recovery, at which point certain fees that FMT and Christof owed to Brown Rudnick became immediately due.

Brown Rudnick's Efforts to Amicably Resolve the Fee Dispute

19. Early in the engagement, FMT and Christof fell into arrears in the payment of the legal services rendered by Brown Rudnick. By the fall of 2019, FMT and Christof failed to make timely payments of multiple Brown Rudnick invoices for legal services rendered. In early 2020, FMT and Christof were substantially in arrears. With a mediation scheduled, Brown Rudnick engaged in an effort to work with FMT and Christof with respect to bringing the arrearages current.

20. Brown Rudnick made repeated efforts to provide FMT and Christof with extended payment terms that would permit FMT and Christof to pay their debt over time.

21. On or about April 9, 2020, Wayne Dennison, a partner at Brown Rudnick, emailed FMT and Christof concerning their failure to timely pay certain invoices. In that correspondence, Mr. Dennison informed FMT and Christof that Brown Rudnick would stop work unless Christof and FMT either (1) recommitted in writing to the Agreement or (2) the parties reached a new agreement.

22. Thereafter, Brown Rudnick on the one hand, and FMT and Christof on the other, negotiated and entered into an amendment to the Agreement in April 2020 (the "April Amendment"). The purpose of the April Amendment was to establish the terms under which Brown Rudnick would continue to provide legal services to FMT and Christof.

23. However, FMT and Christof breached their obligations under the April Amendment by failing to make either the payments to Brown Rudnick or the election of payment terms required thereunder.

24. Given FMT and Christof's breach of the April Amendment, FMT and Christof induced Brown Rudnick into continuing to work and into entering into a second amendment to the Agreement (the "July Amendment" together with the April Amendment, the "Amendments"). The July Amendment expressly required the prompt review of Brown Rudnick's future invoices, the prompt notification of any concerns with those invoices, and the timely payment of those invoices.

25. Both Amendments were intended to reduce the clients' total payment obligation in consideration for the timely payment of arrearages. However, FMT and Christof failed to comply with the terms of either Amendment.

26. Specifically, each of the Amendments was predicated on FMT and Christof, by a date certain, (1) making specific payments of their outstanding fees and (2) making an election of one of two revised payment term structures. These conditions were expressly material terms to each of the Amendments.

27. Indeed, each Amendment expressly provided that if these material payments and/or election terms were not satisfied, the Amendment would be null and void and the original Agreement would "not be modified and [would] remain in full force and effect."

28. FMT and Christof breached both Amendments by failing to make the timely payments that were expressly agreed to be material terms of the parties' fee agreements.

29. Despite FMT's and Christof's repeated breaches of their obligations to make timely payments, Brown Rudnick at all times fulfilled its obligations under the Agreement,

including the vigorous and highly successful prosecution and defense of the claims and counterclaims in the Arbitration, all in accordance with the clients' direction. The Arbitration was held between September and October 2020 and a final award rendered in June 2021.

30. FMT and Christof have breached the Agreement by failing to pay Brown Rudnick the deferred fees and Success Fee in accordance with the terms of the Agreement. FMT and Christof also have breached the Agreement by failing altogether to pay Brown Rudnick for invoices rendered between February 24, 2021 and May 6, 2021. The total fees for which FMT and Christof are obligated to Brown Rudnick equal \$4,079,673.70.

31. Upon information and belief, FMT and Christof also knowingly and intentionally induced Brown Rudnick into entering into the Amendments of the Agreement in order to convince Brown Rudnick to continue performing work on their behalf but had no intention of fully complying with the payment terms of the Amendments.

32. As a result, Brown Rudnick incurred \$1,902,415.50 in deferred fees and \$80,909.25 in unpaid outstanding fees for work performed following the April Amendment.

33. Pre-judgment interest, at the legal rate of 12%, began accruing on July 7, 2021, the date FMT and Christof received payment of the Arbitration Recovery from the Respondent.

COUNT ONE: BREACH OF CONTRACT (FMT AND CHRISTOF)

34. Brown Rudnick repeats, realleges, and incorporates by reference each of the foregoing allegations as if fully set forth herein.

35. The Agreement is a valid and enforceable contract between FMT and Christof and Brown Rudnick for the provision of legal services to FMT and Christof.

36. Under the terms of the Agreement, FMT and Christof are required to pay Brown Rudnick for all attorneys' fees and other costs and expenses resulting from its representation of FMT and Christof, including the Success Fee.

37. Brown Rudnick has fully performed its obligations under the Agreement.

38. Brown Rudnick has delivered regular invoices to FMT and Christof itemizing its legal fees, costs, and expenses pursuant to the Agreement.

39. By failing to pay Brown Rudnick \$4,079,673.70 for attorneys' fees and associated costs and expenses, FMT and Christof breached the terms of the Agreement.

40. As a result of FMT and Christof's breach, Brown Rudnick has suffered damages in the amount of at least \$4,079,673.70, exclusive of statutory pre- and post-judgment interest and attorneys' fees pursuant to the Agreement.

COUNT TWO: VIOLATION OF MASS. GEN. LAWS C. 93A (FMT AND CHRISTOF)

41. Brown Rudnick repeats, realleges, and incorporates by reference each of the foregoing allegations as if fully set forth herein.

42. The parties are engaged in trade or commerce in the Commonwealth of Massachusetts within the meaning of M.G.L. C. 93A.

43. The parties are engaged in a commercial relationship arising from the Agreement and the Amendments.

44. As established by the allegations above, FMT and Christof engaged in unfair and deceptive trade practices in violation of M.G.L. C. 93A. §§ 2 and 11 in their dealings with Brown Rudnick. For instance, but without limitation: After failing to make payments as required by the Agreement, FMT and Christof knowingly and intentionally induced Brown Rudnick into entering into the Amendments in order to cause Brown Rudnick to continue performing work on

their behalf with no intention of fully complying with the terms of the Amendments by paying Brown Rudnick for legal services rendered pursuant to the Agreement or the Amendments.

45. Upon information and belief, FMT and Christof entered into the Amendments and caused Brown Rudnick to incur \$1,983,324.75 in legal fees following execution of the Amendments with no intention of paying the fees that they had then negotiated.

46. FMT and Christof's unfair and deceptive practices were knowing, willful, and intentional.

47. FMT and Christof engaged in the unfair and deceptive practices with the intent and purpose of causing harm to Brown Rudnick, and FMT and Christof's practices and conduct did in fact cause harm to Brown Rudnick, including without limitation, monetary loss.

48. FMT and Christof deliberately directed their unfair and deceptive practices at Brown Rudnick in the Commonwealth of Massachusetts, and FMT and Christof's wrongful conduct foreseeably caused Brown Rudnick substantial harm, including the loss of money and property, within the Commonwealth of Massachusetts. Accordingly, FMT and Christof's unfair and deceptive practices took place primarily and substantially in the Commonwealth, within the meaning of M.G.L. C. 93A.

49. Pursuant to G.L. c. 93A §§ 2 and 11, Brown Rudnick is entitled to an award of its actual damages, treble its actual damages, plus an award of its attorneys' fees, pre-judgment interest at the statutory legal rate of 12%, and costs.

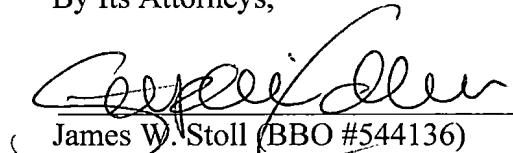
WHEREFORE, Brown Rudnick requests judgment against FMT and Christof, awarding Brown Rudnick the following relief:

- a) On Count 1, Compensatory damages in an amount to be proven at trial;
- b) On Count 1, Attorneys' fees incurred in this action;

- c) On Count 2, treble the actual damages caused by FMT and Christof's unfair and deceptive trade practices;
- d) On Count 2, Attorneys' fees incurred in this action;
- e) Pre- and post-judgment interest at the statutory legal rate of 12%;
- f) Any other and further relief as the Court may deem just and proper.

BROWN RUDNICK LLP

By Its Attorneys,



James W. Stoll (BBO #544136)

Stephanie P. Calnan (BBO# 699106)

Brown Rudnick LLP

One Financial Center

Boston, MA 02111

Telephone: 617 856.8200

Facsimile: (617) 856-8201

JStoll@brownrudnick.com

SCalnan@brownrudnick.com

Dated: September 24, 2021