

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KAPPA PRINTING GROUP, LLC,

Plaintiff,

vs.

ARCHIE COMIC PUBLICATIONS, INC.,

Defendant.

Civil Action No. 7:17-cv-7511__

ECF CASE

COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Kappa Printing Group, LLC (“Kappa”), by their undersigned counsel, as and for their Complaint against Defendant Archie Comic Publications, Inc. (“Archie”), alleges as follows:

NATURE OF THE ACTION

1. This is an action to collect on a debt of \$876,409.82, plus interest, that Archie incurred in purchasing printing services from Vanguard Graphics, LLC, d/b/a Vanguard Printing (“Vanguard”), from October 5, 2016, through July 31, 2017. Archie engaged Vanguard to print its comic books and other publications, and Archie has not disputed any of the invoices sent to it by Vanguard. On September 11, 2017, Kappa purchased from Vanguard the accounts receivable owed by Archie.

THE PARTIES

2. Kappa is a Pennsylvania limited liability company with its principal place of business in Fort Washington, Pennsylvania.

3. Archie is a New York corporation with its principal place of business in Pelham, New York.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a)

because this is an action between citizens of different states and the matter in controversy exceeds \$75,000, excluding interest and costs.

5. As a New York corporation that conducts business in New York, Archie is subject to personal jurisdiction in this Court. Venue is proper in this District because this dispute arises from events that took place in Westchester County, New York.

FACTS

The Debt

6. Archie is a comic book publisher that has published a wide array of titles since its founding in 1939.

7. On February 20, 2015, Archie submitted an application for credit to Vanguard Printing, LLC, seeking to engage Vanguard Printing, LLC, to print its comic books as well as other publications like coloring books. The application for credit was signed by Archie Chief Financial Officer William Mooar.

8. The “Credit Terms and Agreement” section of the application for credit stated that the applicant’s signature on the document “attests financial responsibility, ability and willingness to pay Vanguard Printing, LLC’s invoices within thirty (30) days from the date of invoice unless otherwise provided in writing.”

9. Archie also agreed to “prompt payment in accordance with Vanguard Printing’s terms, and acknowledge[d] [Vanguard’s] late charge of 1 1/2% per month (18% per annual on unpaid invoices).” In addition, Archie agreed “to pay any collection costs incurred, including reasonable attorney’s fees.”

10. In a letter to Mr. Mooar dated February 24, 2015, Vanguard Chief Financial Officer Steven H Smith wrote, “On behalf of Vanguard Printing, LLC, I would like to personally thank you for selecting us as your printing partner. I have reviewed your credit application and

based on my review Vanguard Printing, LLC is extending Archie Comic Publications, Inc. payment terms of Net 60 days for paper, balance Net 75 days from invoice date, with a credit limit of \$400,000.00.”

11. On March 13, 2015, Mr. Mooar acknowledged Archie’s acceptance of Vanguard’s terms by signing beneath an acceptance at the bottom of Mr. Smith’s letter that stated, “Archie Comic Publications, Inc. hereby agrees to the credits (sic) terms presented above.”

12. For each printing job that Archie submitted, Vanguard provided Archie with a pricing grid specifying the cost of the printing job.

13. From October 5, 2016, through July 31, 2017, Vanguard invoiced Archie for \$921,309.65 in printing services.

14. In accordance with Archie’s agreement to Vanguard’s late charges, each invoice stated that, “[i]f payment is not received within 5 business days of due date[,] interest will be charged at a rate of 18% annum. Interest will accrue daily.”

15. Archie accepted the printing services without complaint and has not disputed any of the invoices for any reason.

Purchase of the Accounts Receivable

16. On September 11, 2017, Kappa entered into an agreement with Vanguard through which it purchased the accounts receivable owed by Archie for the full amount of \$921,309.65.

17. As a result of the agreement, Vanguard legally assigned the accounts receivable of \$921,309.65, plus interest, to Kappa.

18. Kappa is the sole legal and beneficial owner of the accounts receivable, plus interest, owed by Archie.

19. Since Kappa’s purchase of the accounts receivable from Vanguard,

representatives of Kappa have engaged in correspondence with Archie regarding payment of the outstanding debt.

20. Since Kappa's purchase of the accounts receivable on September 11, 2017, Archie has paid \$44,899.83 to Vanguard, which is transferring the funds to Kappa. These payments reduced the principal amount owed to \$876,409.82.

21. Archie does not dispute its responsibility for the payment of \$876,409.82, nor does it dispute the amount owed.

22. With the addition of late charges at the rate of 1 1/2% per month, the total amount that Archie owes to Kappa is \$954,592.31 as of September 30, 2017.

23. Archie has agreed to eventually pay its debt to Kappa and has told Kappa that "[w]e will work this out."

24. As of September 30, 2017, Archie has not presented Kappa with a reasonable plan for the payment of the outstanding \$954,592.31.

COUNT I
(Account Stated)

25. Kappa re-alleges and incorporates by reference Paragraphs 1 through 24.

26. Kappa presented a statement to Archie showing an account of \$921,309.65 owed by Archie for printing services rendered by Vanguard.

27. Archie did not dispute this statement of account.

28. Archie accepted the statement of account as correct.

29. At the time it submitted an application for credit, Archie also agreed to pay late charges at a monthly rate of 1 1/2%.

30. Archie has made payments totaling \$44,899.83 to Vanguard.

31. Archie promised to pay the outstanding \$876,409.82, plus interest, currently owed to Kappa.

32. Archie has not paid the \$876,409.82, plus interest, owed to Kappa.

COUNT II
(Breach of Contract)

33. Kappa re-alleges and incorporates by reference Paragraphs 1 through 32.

34. In its application for credit and its acceptance of the credit terms acceptance letter, Archie agreed to Vanguard's pricing terms for printing services.

35. Vanguard properly invoiced Archie for \$921,309.65 in printing services from October 5, 2016 through July 31, 2017.

36. Archie accepted the printing services from Vanguard without complaint.

37. Archie has made payments totaling \$44,899.83 to Vanguard, leaving a principal balance of \$876,409.82.

38. By failing to pay the \$876,409.82, plus interest, owed for printing services, Archie breached its agreement to abide by Vanguard's pricing and payment terms for printing services.

COUNT III
(Quantum Meruit)

39. Kappa re-alleges and incorporates by reference Paragraphs 1 through 38.

40. Kappa pleads Count III in the alternative to Count II.

41. Vanguard performed printing services for Archie in good faith with the full expectation that it would be paid for these services.

42. Archie accepted Vanguard's printing services without complaint.

43. Vanguard expected Archie to compensate it for the printing services rendered at the price invoiced.

44. The \$921,309.65 that Vanguard invoiced Archie from October 5, 2016, through July 31, 2017, represents the reasonable value of the printing services rendered.

45. Archie continues to owe \$876,409.82, plus interest, for printing services provided by Vanguard.

DEMAND FOR RELIEF

WHEREFORE, Kappa prays for judgment against Archie and respectfully requests that the Court:

1. Award Kappa \$876,409.82, plus interest, in compensatory damages;
2. Award Kappa its collection costs, including reasonable attorneys' fees; and
3. Award Kappa such other and further relief as the Court may deem appropriate.

Dated: New York, New York
October 2, 2017

DRINKER BIDDLE & REATH LLP

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