

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

In re:

Panthera Enterprises, LLC,
Debtor.

Case No. 2:19-bk-00787
Chapter 11

Bill V. Neff, Sr.,
Plaintiff,

v.

Adv. Proc. No.

Panthera Enterprises, LLC and
Panthera Training, LLC,
Defendants.

COMPLAINT

Comes now Bill V. Neff, Sr., Plaintiff, by counsel, and for his complaint, avers and states as follows:

THE PARTIES

1. Plaintiff is a resident of Rockingham County, Virginia.
2. Defendant Panthera Enterprises, LLC, Debtor herein, is a foreign limited liability company licensed to do business in West Virginia and doing business in Hardy County, West Virginia.
3. Defendant Panthera Training, LLC is a foreign limited liability company licensed to do business in West Virginia and doing business in Hardy County, West Virginia.

4. Debtor Panthera Enterprises, LLC commenced the above referenced Chapter 11 proceeding on September 13, 2019.

5. Defendant Panthera Enterprises, LLC owns real property located at 2506 Fishpond Rd., Old Fields, Hardy County, West Virginia. Defendant Panthera Training, LLC is currently doing business on said realty pursuant to a lease with Debtor Defendant Panthera Enterprises, LLC.

JURISDICTION AND VENUE

6. This adversary proceeding is brought pursuant to 11 U.S.C §541 to establish title to personal property subject to a Contract of Sale dated July 23, 2015 between Plaintiff and Defendant Panthera Enterprises' predecessor, TenX Group LLC; for an order requiring Defendant Panthera Training, LLC to return such personalty to Plaintiff; and for an award of damages against Defendant Panthera Training, LLC for the fair rental value of Plaintiff's personal property.

7. The United States Bankruptcy Court for the Northern District of West Virginia has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§157 and 1334(e)(1). This adversary proceeding is a "core" proceeding to be heard and determined by this Court pursuant to 11 U.S.C. §157(b)(2)(A)(M) and (O). Venue is proper pursuant to 28 U.S.C. §1409.

8. The statutory and legal predicates for the relief sought herein are §541 of the Bankruptcy Code and Rule 7001(1), (7) and (9) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

GENERAL AVERMENTS

9. By deed dated August 21, 2013, TenX Group, LLC, acquired a 689.40 acre parcel of realty to located in Moorefield District, Hardy County, West Virginia. TenX Group acquired the realty for purposes of constructing and operating a facility to provide weapons and other training to security personnel under contracts with governmental agencies.

10. Plaintiff owns numerous mobile, prefabricated modular office units. Such units measure 12' by 60' and are transportable over public roads via wheeled undercarriages attached to each unit. The units are designed to be assembled with other units in various configurations to create temporary office facilities.

11. On July 23, 2015, Plaintiff entered into a Contract of Sale with TenX Group LLC whereby Plaintiff agreed to sell 38 of the mobile modular office units for use at TenX's Hardy County training facility. A copy of said Contract is attached as Exhibit A and incorporated herein by reference.

12. Pursuant to the Contract of Sale, the modular units were delivered to TenX's realty and assembled in "blocks" as defined in the Contract of Sale at three locations on the property. The location and configuration of these units is depicted on Exhibit B attached to the Contract of Sale.

13. The contract provides for a purchase price of \$810,000.00 payable in \$10,000.00 monthly installments commencing on August 1, 2015 and continuing until August 1, 2017. Beginning on August 1, 2017 and continuing through July 1, 2023, monthly payments of \$9,179.81 were owed Plaintiff by TenX under the contract.

14. The Contract of Sale contains no language granting and conveying title to the modular units to TenX. Rather, Paragraph 3(c) of the Contract for Sale provided:

Partial Release. \$23,709.11 will earn the release of a singular Modular Office. Modular Offices will be released in blocks as currently configured according to Exhibit B. The release of all Modular Offices within any specific block must be earned prior to the assignment of title from SELLER.

15. Effective December 19, 2016, LLC changed its name to Panthera Enterprises, LLC.

16. From August 11, 2015 through August 14, 2018, TenX and Defendant Panthera Enterprises, LLC made 13 payments totaling \$127,126.33 pursuant to the terms of the Contract of Sale.

17. That pursuant to a Commercial Lease Agreement with Defendant Panthera Enterprises, LLC dated June 1, 2018, Defendant Panthera Training, LLC took possession of Defendant Panthera Enterprises' Hardy County realty. Pursuant to a contract between Defendants Panthera Training and Panthera Enterprises dated June 1, 2018, Defendant Panthera Training assumed the operation of the training facility located on said realty. As a result, Defendant Panthera Training has, since June 1, 2018, had possession, custody, control and use of Plaintiff's personal property.

**COUNT I
(DECLARATORY RELIEF)**

18. Plaintiff restates the averments contained in Paragraphs 9 through 17 of this Complaint.

19. In Schedule A/B filed in this bankruptcy proceeding on September 27, 2019 (Doc 23), Defendant Debtor Panthera Enterprises, LLC claims that the modular office buildings at issue are its personal property.

20. That the terms of the Contract of Sale between Plaintiff and Defendant Debtor Panthera Enterprises did not convey title to the modular units upon the execution of said contract on July 23, 2015. Rather, said contract plainly and unambiguously provided title to the units would only be transferred in blocks as such units were assembled on Defendants' realty and then only after Defendant Panthera Enterprises had paid \$23,709.11 for each unit within such blocks.

21. That given the amount paid Plaintiff pursuant to the Contract of Sale, Defendant Panthera Enterprises has to date earned the right to request transfer of title to no more than five of the 38 units that are the subject of the Contract of Sale.

22. That Defendant Panthera Enterprises has not identified any block of modular units for which it believes it has earned the right to acquire title as provided for in Paragraph 3(c) of the Contract the Sale.

23. That despite the unambiguous language contained in the Contract of Sale, Defendants refuse to acknowledge that Plaintiff has title to the modular units.

Wherefore, Plaintiff prays that this Court declare the rights of the parties regarding title to the modular units that are the subject of the July 23, 2015 contract between Plaintiff and Defendant Debtor Panthera Enterprises, LLC; that the Court declare that Plaintiff has title to said units; and for such other and further relief as the Court deems appropriate.

COUNT II
(COMMON LAW DETINUE AND RECOVERY OF PROPERTY PURSUANT TO
WEST VIRGINIA CODE §55-6-1, ET SEQ.)

24. Plaintiff restates the averments contained in Paragraphs 9 through 17 of the Complaint.

25. Plaintiff has requested that Defendant Panthera Training, LLC acknowledge Plaintiff's ownership of the modular office units in Defendant Panthera Training's possession. Defendant Panthera Training has refused to do so and further has advised that it will not allow Plaintiff to take possession of the units. Moreover, despite using the units to operate its business, Defendant Panthera Training has refused to pay Plaintiff the fair rental value of such units.

26. That Defendant Panthera Training has no ownership interest in or other right that permits it to retain possession of the modular office units at issue.

27. That Plaintiff is the owner of the modular office units presently located on realty leased by Defendant Panthera Training from Defendant Panthera Enterprises and Plaintiff is entitled to immediate possession of the property.

Wherefore, Plaintiff prays that judgment be entered in its favor and against Defendant Panthera Training, LLC; that the Court find that Defendant Panthera Training, LLC is in wrongful possession of said modular office units; that Plaintiff has the right to immediate possession of the same; and for such other and further relief as the Court deems appropriate

**COUNT III
(UNJUST ENRICHMENT)**

28. Plaintiff restates the averments contained in Paragraphs 9 through 17 and 24 through 27 of the Complaint.

29. That since June 1, 2018, Defendant Panthera Training, LLC has had the exclusive possession, use and benefit of Plaintiff's modular office units.

30. That from June 1, 2018 to the present, Defendant Panthera Training, LLC has paid Plaintiff nothing for the use of such units, thereby receiving and retaining benefits in the form of the use of Plaintiff's personal property in furtherance of Defendant Panthera Trainings' business operations, which benefit in justice and equity belong to Plaintiff, all of which unjustly enriches Defendant Panthera Training.

31. That the fair rental value of Plaintiff's property is at least \$10,000.00 per month.

Wherefore, Plaintiff prays that judgment be entered in its favor and against Defendant Panthera Training, LLC; that Plaintiff be awarded damages in an amount equal to the value of the benefit received by Defendant Panthera Training for its use of Plaintiff's property from June 1, 2018 to the present; and for such other and further relief as the Court deems appropriate.

Bill V. Neff, Sr.,
Plaintiff, by Counsel.

Dated: February 12, 2020

/s/ William J. Leon
William J. Leon (WV Bar# 2182)
William J. Leon, LC
1200 Dorsey Ave., Suite III
Morgantown, WV 26501
304.554.3880
jay@jayleonlaw.com