

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

EAGLE MOON HEMP, LLC, a New Mexico Limited
Liability Company,

Plaintiff,

CIV No. 1:22-cv-170

ISOLATE EXTRACTION SYSTEMS, INC., a Colorado
Corporation,

Defendant.

**COMPLAINT TO RESCIND CONTRACT FOR MISREPRESENTATION,
TO RECOVER DAMAGES FOR MISREPRESENTATION AND FOR RESTITUTION**

Eagle Moon Hemp, LLC, through its undersigned attorneys, states its Complaint as follows:

PARTIES AND JURISDICTION

1. The Plaintiff Eagle Moon Hemp, LLC brings this action to rescind a contract by which it purchased isolate extraction machinery from the Defendant Isolate Extraction Systems, Inc., to recover damages for misrepresentation and violations of the Colorado Consumer Protection Act, and for restitution.

2. The Plaintiff, Eagle Moon Hemp, LLC (“EMH”) is a New Mexico limited liability company with its principal place of business located in New Mexico.

3. The Defendant Isolate Extraction Systems, Inc. (“IES”) is a Colorado business corporation with its principal place of business located in Colorado.

4. There is complete diversity between the parties and the amount in controversy is in excess of \$75,000. This Court therefore has jurisdiction of this case pursuant to 28 U.S.C. § 1332, and personal jurisdiction over the parties.

FACTUAL ALLEGATIONS

5. EMH is engaged in the business of growing hemp, extracting distillates from hemp, selling hemp distillates, and manufacturing and selling products containing hemp distillates.

6. IES manufactures and offers for sale to the public machinery that can extract distillates from hemp, including a high capacity machine known as the CDMH 200-2x-2f extraction machine. (“High Capacity Extraction Machine”).

7. During early 2019, representatives of EMH, Zachary Penn (“Penn”) and Preston Tharp (“Tharp”), met with a sales representative of IES, John Knight (“Knight”), to discuss the capabilities of the extraction machines manufactured by IES, the appropriateness of those extraction machines for use in EMH’s business, and the possible purchase of IES extraction machines by EMH. Knight made the following material representations of fact regarding the High Capacity Extraction Machine (“Representations”):

A. That the High Capacity Extraction Machine was the best extraction machine in the world, and could reliably process one thousand pounds of hemp per day;

B. That IES had already manufactured several of the High Capacity Extraction Machines;

C. That a High Capacity Extraction Machine was in service and performing successfully at a hemp processing facility in Oklahoma; and

D. That the High Capacity Extraction Machine would be delivered and installed within ninety (90) days from the date EMH signed an agreement to purchase the machine.

8. Knight made the representations as IES's agent, in the course of IES's business, knowing and intending that EMH would rely on the Representations in deciding whether to enter into a contract to purchase a High Capacity Extraction Machine for use in EMH's business.

9. Penn and Tharp asked Knight if they could view the High Capacity Extraction Machine that Knight represented was in service in Oklahoma, but Knight represented to Penn and Tharp that the owner of the machine was very protective of its operations and would not permit a competitor to view its operations.

10. On January 28, 2019, EMH, in reasonable and justifiable reliance on the Representations, agreed to purchase, and signed a contract to purchase, a High Capacity Extraction Machine from IES for the amount of \$1,450,000, plus additional amounts for a service plan, training, and crating. A true and correct copy of the contract ("Sales Agreement") is attached as Exhibit A.

11. In February 2019, IES prepared and signed a second contract which contains the same terms and conditions stated in Sales Agreement, under which IES sold, and EMH purchased, in addition to the High Capacity Extraction Machine, a smaller capacity extraction machine for the amount of \$340,000. Upon information and belief, EMH never signed the second Sales Agreement.

12. Despite IES's representation that the High Capacity Extraction Machine would be delivered and installed within ninety (90) days from the date EMH signed an agreement to purchase the machine, IES did not deliver the machine until October 2019.

13. From the date of the installation of the High Capacity Extraction Machine through February 2021, the High Capacity Extraction Machine was inoperable more than fifty percent of the time. Mitch Vander Wall (“Vander Wall”), IES’s customer support manager, acknowledged in a January 15, 2021 email to Tim Morales (“Morales”) of EMH, that IES had recorded twenty-nine formal warranty “cases” for the machine, and “certainly more requests for support.”

14. Although IES attempted to remedy the High Capacity Extraction Machine’s multiple defects in February and March 2021, it was unable to get the machine working as IES represented it would before EMH purchased the machine.

15. By email dated Wednesday, May 5, 2021, Morales informed Vander Wall that EMH had decided to ship the High Capacity Extraction Machine back to IES, and that EMH was going to begin disassembly of the machine for shipping. Following that communication, Vander Wall asked if EMH wanted IES to re-sell the machine for EMH. Vander Wall then forwarded a proposed consignment agreement to Morales, which was entirely one-sided in favor of IES, and completely unacceptable to EMH.

16. EMH has not used, and has not been able to use, the High Capacity Extraction Machine since March 2021. The machine is worthless to EMH and is taking up needed space in EMH’s facility.

17. EMH has given notice to IES that it has rescinded the Sales Agreement, and demanded that IES take possession of the High Capacity Extraction Machine and return the purchase price to EMH. IES has refused to do so.

COUNT I
RESCISSION FOR MISREPRESENTATION

18. EMH incorporates the Factual Allegations by reference as though set forth in detail here.

19. IES's Representation that the High Capacity Extraction Machine was the best extraction machine in the world, and could reliably process one thousand pounds of hemp per day was not true when made.

20. Upon information and belief, IES's Representations that IES had already manufactured several High Capacity Extraction Machines, that a High Capacity Extraction Machine was in service and performing successfully at a hemp processing facility in Oklahoma, and that the High Capacity Extraction Machine would be delivered and installed within ninety (90) days from the date EMH signed an agreement to purchase the machine, were not true when made.

21. IES either negligently, or intentionally with the intent to deceive EMH, made the untrue Representations in order to induce EMH to enter into the Sales Agreement.

22. EMH reasonably and justifiably relied on the Representations to its detriment in entering into the Sale Agreement.

23. EMH is entitled to rescission of the Sales Agreement and return of the purchase price (\$1,450,000), and the amounts paid by EMH for a service plan (\$90,625), for start up and training (\$3,000) and for crating (\$1,500).

WHEREFORE, EMH requests the Court enter an order confirming EMH's rescission of the Purchase Agreement, and ordering IES to return the full amount of the purchase price of the High Capacity Extraction Machine, including additional charges, to EMH, that the Court award

interest on the full amount of the purchase price from the date of payment by EMH, and that the Court grant such other and further relief as is appropriate under the circumstances.

COUNT II
DAMAGES FOR MISREPRESENTATION

24. EMH incorporates the Factual Allegations and the allegations of Count I by reference as though set forth in detail here.

25. As a direct and proximate result of EMH's reliance of the IES's false Representations, EMH, has suffered damages, including, but not limited to the amounts EMH paid to purchase the High Capacity Extraction Machine, loss of business, and the loss of productive time of EMH's employees.

26. IES made the false Representations with reckless disregard of the rights of EMH.

WHEREFORE, EMH requests an award of compensatory damages in an amount to be proven at trial, an award of punitive damages, and such other and further relief as is appropriate under the circumstances.

COUNT III
VIOLATIONS OF COLORADO CONSUMER PROTECTION ACT

27. EMH incorporates the Factual Allegations and the allegations of Counts I and II by reference as though set forth in detail here.

28. Under the Colorado Consumer Protection Act, Colo. Rev. Stat. Ann. § 6-1-101, et seq. ("CCPA") a person engages in a deceptive trade practice when, in the course of the person's business, the person, either knowingly or recklessly, makes a false representation as to the characteristics or benefits of goods, or represents that goods of a particular standard, quality, or

grade, if he knows or should know that they are of another. Colo. Rev. Stat. Ann. § 6-1-105(e) and (g).

29. By making the false Representations referenced above, IES engaged in deceptive trade practices as defined in the CCPA.

30. EMH, as a consumer of the IES's High Capacity Extraction Machine, has standing to assert claims against IES under the CCPA.

31. As a direct and proximate result of IES's deceptive trade practices, EMH, has suffered damages, including, but not limited to the amounts EMH paid to purchase the High Capacity Extraction Machine, loss of business, and the loss of productive time of EMH's employees.

32. IES made the false Representations with reckless disregard of the rights of EMH.

WHEREFORE, EMH requests an award of compensatory damages in an amount to be proven at trial, an award of treble damages, its costs and attorney fees, and such other and further relief as is appropriate under the circumstances.

COUNT IV
RESTITUTION- UNJUST ENRICHMENT

33. EMH incorporates the Factual Allegations and the allegations of Counts I, II and III by reference as though set forth in detail here.

34. At EMH's expense, IES obtained a benefit consisting of the money that EMH paid for the High Capacity Extraction Machine under circumstances that would make it unjust for IES to retain the benefit of its receipt of those funds without returning those funds to EMH.

WHEREFORE, EMH requests the Court to award restitution of the funds that EMH paid for the High Capacity Extraction Machine, and for such other and further relief as is appropriate under the circumstances.

Respectfully submitted,

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