

Comco Plastics in bitter lawsuit with former VP

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Comco Plastics Inc. is suing a former vice president of sales, his wife, the company they started and a former supplier, in part for allegedly conspiring to steal business from the contract manufacturer and raw materials distributor.

The defendants, meanwhile, have filed counterclaims.

The lawsuit filed in a U.S. District Court in New York says that before the former sales manager, Timothy E. Butler of De Graff, Ohio, resigned from Comco in May 2014, he was competing directly with his employer through a company he formed called Plastic Stock Shapes LLC and through a sales role he had with the supplier, Apexco-PPSi LLC, a thermoplastic stock shape manufacturer in Horsham, Penn.

The suit claims Butler allegedly diverted actual and potential sales from Comco to his competing company while he was on Comco's payroll. The lawsuit also alleges he caused Comco to sell raw materials to his company below market price and to overpay for products

purchased from Apexco.

The lawsuit seeks in excess of \$75,000 and mentions two potential Comco sales losses totaling \$574,185. Comco, of Woodhaven, N.Y., also says Butler violated confidentiality agreements and is asking the court to prohibit the defendants from using any confidential or proprietary information and trade secrets.

The defendants deny the claims, which include breach of fiduciary duty, breach of the duty of loyalty, theft of corporate opportunity, theft of trade secrets, unfair competition, conversion, unjust enrichment and computer fraud.

The counterclaim filings, meanwhile, include Butler suing for more than \$1 million in damages for unpaid wages, overtime and business expenses for himself and possibly other current and former Comco employees under the New York Labor Law and Fair Labor Standards Act. His counterclaim says he was earning \$41 an hour.

Apexco is suing for damages of at least \$153,025, allegedly for payments Comco owes for goods, including 30,000 pounds of acetal.

Comco denies the counterclaims, saying Butler was a salaried employee at the company's Ohio site and isn't protected by the New York Labor Law. Comco also says Butler lacks any basis for a class claim because he had no predecessors to make up the class and other sales employees aren't "similarly situated" with the additional responsibilities he had for supervision, management and strategic planning.

In addition, Comco says it has paid in full all amounts owed to Apexco.

The lawsuit was filed in July, but Comco issued a press release about it on Oct. 28 "to make it clear to its customers and suppliers" that Comco is not involved in any way with Butler, his wife, Rhonda Butler, their company, or Apexco.

The press release, which coincided with the annual International Association of Plastics Distribution conference in Chicago that ended Oct. 30, also says Butler abused his Comco position and is exploiting customer relationships that Comco developed at significant time and expense.

"Plastics is a very large industry but the stock shapes side of it — the non-molding side of it — is a relatively small industry," Comco CEO and President Michael French said in a telephone interview.

"I think across the value stream and individual companies, we must be able to rely on the rules of ethical commerce and non-compete agreements should be honored as should non-disclosures. I believe the message is Comco will not stand idly by when former employees or a supplier uses our proprietary information to compete against us."

Defense attorney Leo K. Barnes, who represents the Butlers and their business, said in telephone and email interviews that the lawsuit is a "David and Goliath type of spite suit," particularly a court request seeking to ban Timothy Butler for working directly or indirectly for any business similar to or complimentary to Comco for 12 months.

Barnes said Plastic Stock Shapes is a viable but inactive corporation and that Timothy Butler is employed by Apexco.

"This lawsuit is a desperate attempt by a desperate individual, Michael French, to stop a family man from earning a living for his wife and child," Barnes said. "Mr. Butler was the most recent of a slew of Comco associates who voluntarily resigned from Comco after Comco failed to maintain health insurance; bounced company checks; and after employees were continually harassed by Comco's suppliers as a result of Comco's failure to pay supplier invoices. In a thinly-veiled effort to suppress the free market, Comco filed a lawsuit for breach of a putative non-competition agreement; however, the non-competition agreement that founds the lawsuit is unenforceable as a matter of law."

Apexco's attorney couldn't immediately be reached for comment.

Comco's attorney, Frank J. Monteleone, called Barnes' comments "truly pathetic" in an email that also says the lawsuit "extensively details Butler's egregious violations" and is supported by extensive documentation of stolen customer lists, price lists and other confidential information.

"Instead of providing any substantive response or denial of these documented facts, Butler resorts to complete fabrications to divert attention from the facts," Monteleone said.

The plaintiff's attorney also said Butler's alleged wage and hour complaints in his counterclaim are frivolous and are complete fabrications.

In court filings, both sides dispute the period of Butler's employment. The counterclaim says Butler started working for Comco in approximately 2002. Comco says he was a sales manager and company officer from Jan. 2, 2012 until May 16, when he resigned. Prior to that, Butler was a regional sales manager for Nytef Plastics Inc. going back to August 2001. Nytef was a Comco affiliate business sold in July 2013 to Polymer Industries of Henagar, Ala.

"Similarly, the claim of a 'slew' of Comco employees resigning from Comco, the allegations of bounced checks and the rest, are transparent attempts to smear my client," Monteleone said. "These assertions are all total falsehoods without a shred of truth to them, in addition to being completely irrelevant to any issue. This case will be decided on facts, not falsehoods, slander or innuendo."

Barnes said he has 1099 statements that show Butler was mischaracterized as an independent contactor from 2008-11. He also said Comco can't point to any lost sales.

"Their only basis of damages is their claim that they want half a year's salary back," Barnes said. "They were not able to articulate a single instance of a loss of an account. Their case is absolutely a loser. It will be thrown out factually and legally and we'll have a monetary recovery on the counterclaim. What's going to happen is Comco is going to write a check to Mr. Butler."