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PEGGY A. SEMPRIMOZNIK

SUPERIOR COURT OF WASHINGTON IN AND FOR LINCOLN COUNTY

WOLFKILL FEED & FERTILIZER CORPORATION, a Washington corporation,

Plaintiff.

NO. 15-2 00023-4

COMPLAINT

V.

TRANSMESSIS COLUMBIA PLATEAU, LLC, a Delaware limited liability company; DAMON PISTULKA, an individual; LOUIS SOUMAS, an individual; JOSEPH ROZELLE; an individual; CHRISTOPHER EFIRD; an individual; and JANE AND JOHN DOES 1-10,

Defendants.

COMES NOW the Plaintiff, Wolfkill Feed & Fertilizer Corporation ("Wolfkill"), by and through its counsel of record, Lukins & Annis, P.S., and hereby claims and alleges the following:

I. PARTIES

- 1.1 Wolfkill is a Washington corporation that transacts business in Lincoln County, Washington.
- 1.2 Defendant Transmessis Columbia Plateau, LLC ("<u>TCP</u>") is a Delaware limited liability company that transacts business in Lincoln County, Washington.

COMPLAINT: 1

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- 1.3 Defendant Damon Pistulka is the Chief Executive Officer of TCP who resides and transacts business in the State of Washington.
- 1.4 On information and belief, Defendant Louis Soumas is the Chief Executive Officer of Evergreen Renewable, LLC and a Director of TCP who resides and transacts business in the State of Washington.
- 1.5 Defendant Joseph Rozelle is the Chief Financial Officer for TCP and transacts business in the State of Washington.
- 1.6 On information and belief, Defendant Christopher Efird is the Chief Executive Officer of Access Global Investments, LLC and a Director of TCP who transacts business in the State of Washington.

II. JURISDICTION AND VENUE

- 2.1 This Court has original jurisdiction over the above-entitled matter pursuant to RCW 2.08.010.
- 2.2 This Court has personal jurisdiction over Defendants and venue is proper in Lincoln County, Washington under 4.12.025.

III. FACTUAL BACKGROUND

- 3.1 TCP was formed by way of a reported joint venture between Evergreen Renewable, LLC and Access Global Investments, LLC.
- 3.2 At all times material hereto, TCP operated an oilseed crushing and biodiesel production company located in Odessa, Washington.
- 3.3 Through processing TCP converts canola seed into saleable biodiesel, canola oil and canola meal.
- 3.4 On November 13, 2013, Wolfkill entered into a credit relationship with TCP to supply it with canola seed to process in its Odessa facility.

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- 3.5 Defendant Damon Pistulka signed the Wolfkill Application for Commercial Credit ("Credit Application") as CEO for TCP.
- 3.6 At the time Defendant Pistulka signed the Credit Application, he listed TCP's primary lender as AMCI Finance, TCP's annual gross income as \$49,000,000, and TCP's annual net income as \$3,800,000.
- 3.7 Unbeknownst to Wolfkill, the information Defendant Pistulka supplied via the Credit Application was false.
- 3.8 In reliance upon Defendant Pistulka's false credit information, Wolfkill approved TCP's Credit Application and started delivering canola seed to the Odessa, Washington facility.
- 3.9 Beginning in April 2014, TCP ceased paying for the canola seed it received from Wolfkill. In fact, in a few short months, TCP accepted and processed more than \$1.6 million dollars worth in canola seed supplied by Wolfkill that it did not pay for.
- 3.10 Despite promising payment to Wolfkill to induce continued canola seed deliveries, TCP never paid Wolfkill. As of the end of July, 2014, TCP owes Wolfkill \$1,685,928.64 on its unpaid invoices.
- 3.11 On information and belief, TCP chose to divert its revenues to pay its officers and directors varying levels of compensation, including Defendant Pistulka, Defendant Joseph Rozelle, Defendant Christopher Efird, Defendant Louis Soumas and potentially other entities owned or controlled by these individuals.

IV. CAUSES OF ACTION

FIRST CAUSE OF ACTION - BREACH OF CONTRACT

4.1 Wolfkill reincorporates the preceding paragraphs and allegations as if fully set forth herein.

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- 4.2 Pursuant to the Credit Application and the related documents or agreements, Wolfkill and TCP have a contractual relationship giving rise to express contractual covenants and obligations owed by TCP to Wolfkill, as well as the implied duty to act in good faith and in accord with fair dealing.
- 4.3 TCP is in breach of contract and has violated and continues to violate the Credit Application and related covenants, obligations or agreements with Wolfkill by, among other things, failing to pay for canola seed ordered, delivered and accepted by TCP.
- 4.4 In addition to the breach of express contractual covenants, obligations and duties set forth in the Application, TCP is in breach of the implied covenant of good faith and fair dealing by failing to perform its contractual obligations in good faith.
- 4.5 As a direct and proximate cause of TCP's breaches of contract and violations of the covenant of good faith and fair dealing, Wolfkill has suffered damages in an amount to be proven at trial.
- 4.6 The individual defendants are vicariously liable for the liability of TCP.

 Defendants Pistulka, Rozelle, Efird and Soumas did not maintain separate personalities at the time the TCP was accepting and not paying for Wolfkill canola seed deliveries. As a result, Defendants Pistulka, Rozelle, Efird, Soumas and potentially others should not be shielded by the corporate veil of TCP.
- 4.7 At times pertinent to this action, TCP was undercapitalized and its debts and liability greatly exceeded its assets and any attempt to collect a judgment against TCP would be futile.
- 4.8 If the foregoing allegations, acts and omissions of TCP and the individual defendants were treated solely as those of TCP and not attributed to the personal liability of the individual defendants, an inequitable result will result.

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COMPLAINT: 4

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SECOND CAUSE OF ACTION – NEGLIGENT / INTENTIONAL MISREPRESENTATION

- 4.9 Wolfkill reincorporates the preceding paragraphs and allegations as if fully set forth herein.
- 4.10 Defendants made material misrepresentations and/or omissions of existing facts to Wolfkill, concerning, among other things, TCP's financial status and credit worthiness, which were done negligently and/or with the intent to deceive and defraud Wolfkill.
- 4.11 Defendants intended that Wolfkill rely on the material misrepresentations or omissions, which Wolfkill did rely upon to its detriment. Further, Defendants knew or should have known that Wolfkill would rely on the material misrepresentations or omissions and would suffer damages as a result.
- 4.12 As a direct and proximate cause of Defendants' negligent or intentional misrepresentations or omissions, Wolfkill has suffered damages in an amount to be proven at trial.

THIRD CAUSE OF ACTION - DECLARATORY RELIEF

- 4.13 Wolfkill realleges the preceding paragraphs and allegations as if each was fully set forth herein and further alleges as follows:
- 4.14 There is a justiciable controversy between the parties and a judgment declaring the rights, status or legal relationships of the parties will terminate the controversy.
- 4.15 This Court should issue a judgment declaring that the individual defendants, above-named, are personally and vicariously liable for the debts and obligations owed to Wolfkill by TCP.

V. PRAYER FOR RELIEF

WHEREFORE, Wolfkill prays for judgment against Defendants, jointly and severally, as follows:

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- 1. For an award for damages in an amount to be proven at trial;
- 2. For an award of pre- and post-judgment interest;
- 3. For a judgment declaring that the corporate veil of TCP be disregarded and that the individual defendants as above-named or as subsequently added into this lawsuit are personally and vicariously liable for the debts and obligations of TCP.
- 4. For an award of reasonable attorneys' fees and costs pursuant to applicable statutes, the parties' agreement, common law, and pursuant to the Court's equitable powers; and
 - 5. For such other and further relief as may be just and equitable. DATED this **24** day of September, 2014.

LUKINS & ANNIS, P.S.

MICHAEL O. FRANKLIN

WSBA #34213

Attorneys for Plaintiff

COMPLAINT: 6

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