

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

SimCrest, Inc.,

Plaintiff,

v.

LS Retail ehf,

Defendant.

Civil Action No. 3:12-cv-2030

JURY TRIAL DEMANDED

ORIGINAL COMPLAINT

SimCrest, Inc. (“SimCrest” or “Plaintiff”) files this Original Complaint against LS Retail ehf (“LS Retail” or “Defendant”). SimCrest alleges as follows:

NATURE OF THE ACTION

1. SimCrest is in the business of marketing and selling enterprise resource planning software to small to medium size businesses. This software streamlines a business by providing a unified platform for the various departments that typically operate within a business, e.g., sales, distribution, warehouse, etc. LS Retail provides point-of-sale software, but it does not typically market directly to the end-user customer, i.e., the businesses using its software. Instead, LS Retail forms partner agreements with companies like SimCrest, and markets its software through those partner agreements. Around October 2011, SimCrest reached out to LS Retail to discuss forming a partner agreement that would enable SimCrest to market its own enterprise resource planning software in conjunction with LS Retail’s point-of-sale software. These discussions culminated in a contract between SimCrest and LS Retail around December 2011. Under this contract, SimCrest and LS Retail joined into a partnership agreement whereby SimCrest would be responsible for sales and marketing activities, and, to the extent that those activities were

successful, LS Retail would provide its software alongside SimCrest's software. SimCrest performed under this contract and was engaged in direct discussions with six potential clients. One of these potential clients, Freshfields Farms, agreed in principle to a deal with SimCrest. SimCrest informed LS Retail of its success with Freshfields Farms, but one week later, LS Retail contacted Freshfields Farms and told Freshfields Farms that there would not be any relationship between SimCrest and LS Retail and that SimCrest could not provide LS Retail's point-of-sale software. SimCrest believes that LS Retail still sold its software, but through one of SimCrest's competitors, Archerpoint. LS Retail's breach of contract has resulted in significant losses to SimCrest, and SimCrest continues to suffer significant losses as a result of LS Retail's breach.

PARTIES

2. SimCrest is a privately held corporation organized under the laws of the State of Texas, and has its principal place of business at 700 Central Expressway South, Suite 310, Allen, Texas 75013. As described above, SimCrest is in the business of marketing and selling enterprise resource planning software to small to medium size businesses.

3. LS Retail is an alien corporation organized under the laws of Iceland, and has its principal place of business at Hofdatun 2, 105 Reykjavik, Iceland.

JURISDICTION AND VENUE

4. This Court has diversity jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(2). There is complete diversity between the parties, as SimCrest is a citizen of the State of Texas and Defendant is a citizen and/or subject of Iceland, and the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

5. This Court has personal jurisdiction over Defendant. Defendant regularly conducts and transacts business in the State of Texas, throughout the United States, and within

the Northern District of Texas. For example, LS Retail contracted with SimCrest within the State of Texas, and, more specifically, within the Northern District of Texas. LS Retail purposefully directed its activities at the State of Texas and at residents of the State of Texas when it sent its employees, including Carsten Wulff—an officer of LS Retail—to Texas to attend the Microsoft Convergence 2012 conference and to meet with Mr. John Stevens (one of SimCrest’s owners) in furtherance of the wrongful conduct complained of herein. LS Retail purposefully directed multiple communications (e.g., emails and telephone calls) into the State of Texas and at residents of the State of Texas in furtherance of the wrongful conduct described in more detail herein.

6. The actions undertaken by Defendant that form the subject of this Original Complaint occurred, in whole or in part, within the State of Texas. Furthermore, SimCrest has been damaged within the State of Texas, including within the Northern District of Texas, and at all relevant times, Defendant has known that SimCrest is a Texas corporation and has known that SimCrest would suffer injury within the State of Texas and the Northern District of Texas as a result of the conduct complained of herein, including but not limited to Defendant’s intentional acts aimed at SimCrest within the State of Texas.

7. Venue is proper in the Northern District of Texas, at a minimum, pursuant to 28 U.S.C. § 1391(a), because a substantial part of the events or omissions giving rise to this lawsuit occurred in the Northern District of Texas and/or because Defendant is subject to personal jurisdiction in the Northern District of Texas. Venue is also proper in the Northern District of Texas pursuant to 28 U.S.C. § 1391(c)(3), as Defendant is an alien entity.

FACTS

8. SimCrest incorporates the foregoing paragraphs by reference as if fully set forth

herein.

9. Founded in 2001, SimCrest is in the business of marketing and selling enterprise resource planning software to small to medium size businesses. SimCrest's software streamlines a business by providing a unified platform for the various departments that typically operate within a business, e.g., sales, distribution, warehouse, etc.

10. LS Retail provides point-of-sale software, but it does not typically market directly to the end-user customer, i.e., the businesses using its software. Instead, LS Retail forms partner agreements with companies like SimCrest, and markets its software through those partner agreements.

11. Around October of 2011, SimCrest reached out to LS Retail to discuss forming a partner agreement which would enable SimCrest to market its own enterprise resource planning software in conjunction with LS Retail's point-of-sale software.

12. These discussions culminated in a contract between SimCrest and LS Retail around December of 2011.

13. Under this contract, SimCrest and LS Retail joined into a partnership agreement whereby SimCrest would be responsible for sales and marketing activities, and, to the extent that those activities were successful, LS Retail would provide its software alongside SimCrest's software.

14. SimCrest performed under this contract and was engaged in direct discussions with six potential clients.

15. One of these potential clients, Freshfields Farms, agreed in terms to a deal with SimCrest.

16. SimCrest informed LS Retail of its success with Freshfields Farms.

17. Roughly one week later, LS Retail contacted Freshfields Farms and told Freshfields Farms that there would not be any relationship between SimCrest and LS Retail and that SimCrest could not provide LS Retail's point-of-sale software.

18. LS Retail still sold its software, but through one of SimCrest's competitors, Archerpoint.

19. This breach of contract has resulted in significant losses to SimCrest, and SimCrest continues to suffer significant losses as a result of LS Retail's breach.

COUNT ONE
(BREACH OF CONTRACT)

20. SimCrest incorporates the foregoing paragraphs by reference as if fully set forth herein.

21. The contract between SimCrest and LS Retail constitutes a valid contract.

22. SimCrest performed at all times as required under the contract.

23. LS Retail materially breached the contract by, at a minimum, refusing to provide its software under the terms of the partnership agreement.

24. SimCrest suffered damages as a result of LS Retail's breach of the Agreement.

COUNT TWO
(PROMISSORY ESTOPPEL)

25. SimCrest incorporates the foregoing paragraphs by reference as if fully set forth herein.

26. LS Retail made a promise to SimCrest to provide its software in the event that SimCrest successfully marketed its and LS Retail's software.

27. SimCrest reasonably and substantially relied on this promise to SimCrest's detriment.

28. SimCrest's reliance was foreseeable by LS Retail.

29. Injustice can be avoided only by enforcing LS Retail's promise.

30. SimCrest has suffered and continues to suffer damages as a result of LS Retail's breach of its promise to SimCrest.

JURY DEMAND

31. SimCrest hereby demands a trial by jury on all issues so triable.

PRAYER FOR RELIEF

SimCrest requests that the Court enter judgment in its favor as follows:

- A. Enter an injunction prohibiting LS Retail, and its officers, directors, agents, servants, employees, attorneys, licensees, successors, and assigns, and those in active concert or participation with any of them, from further capitalizing on SimCrest's marketing and sales efforts for LS Retail's own benefit;
- B. Awarding actual damages to SimCrest, which total an amount in excess of \$400,000, exclusive of fees and costs;
- C. Ordering Defendant to disgorge any monies, gains, profits, and/or advantages that are attributable to SimCrest's marketing and sales activities or any of the acts complained of herein;
- D. Awarding SimCrest punitive, exemplary damages, and/or treble damages to the extent provided by law;
- E. Awarding SimCrest its attorney's fees;
- F. Awarding SimCrest its costs of court;
- G. Awarding SimCrest prejudgment and post-judgment interest at the highest rate allowed by law on the damages awarded; and

H. Granting SimCrest such other and further relief as the Court may deem just and equitable.

DATED: June 26, 2012

Respectfully submitted,

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