

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

XEROX CORPORATION,

Plaintiff,

- vs -

CONDUIT GLOBAL, INC.,

Defendant.

COMPLAINT

Civil Action No.: _____

JURY TRIAL DEMANDED

Plaintiff Xerox Corporation (“Xerox”), by and through its attorneys, Nixon Peabody LLP, as and for its Complaint against Defendant Conduit Global, Inc. (“Conduit”), alleges upon information and belief as follows:

SUMMARY OF ACTION

1. This action arises out of Conduit’s material breaches of its contractual obligations under an Outsourcing Agreement with Xerox to host and manage a telephony solution that enables Xerox customer support, which is critical to Xerox’s business in the United States. In March 2020, Conduit suffered a ransomware-based security incident that resulted in a catastrophic failure of all of the services it was then providing to Xerox. This incident crippled Xerox’s ability to communicate with its customers and partners and persisted for weeks as Conduit failed to restore services to an acceptable level. The failures adversely impacted nearly every aspect of the Xerox customer experience, including technical support, repair, supply ordering, and billing support.

2. As more fully described below, Conduit breached the parties’ contract by, among other things: (i) failing to implement sufficient security protocols to protect the networks necessary to meet its obligations to provide critical services essential to Xerox’s businesses in a safe, secure, continuous and reliable manner; (ii) failing to provide the contractually required

services it agreed to perform; (iii) failing to design and implement appropriate, adequate and effective business continuity/disaster recovery plans; and (iv) failing to timely mitigate the impact of the security breach, leading to an extended and devastating impact on Xerox's customer support capabilities.

3. Following Conduit's incurable and material breaches, Xerox terminated the parties' contract based upon Conduit's failures, which frustrated the essential purpose of the contract, and Conduit's failure to meet contractually prescribed service levels that warranted termination for cause. However, Conduit has refused to accept or recognize the validity and effectiveness of Xerox's notice of termination.

4. Xerox seeks a declaration from the Court that its notice of termination, including termination for cause, was proper, valid and effective and that it does not have any obligation to make any further payments to Conduit, including payment of any termination fee. Xerox also seeks damages for the harm caused by Conduit's material breaches of the parties' contract.

PARTIES

5. Xerox is a corporation organized and existing under the laws of the State of New York with its principal place of business located at 201 Merritt 7, Norwalk, CT 06851-1056.

6. Conduit is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 3400 Bath Pike, Bethlehem, PA 18017.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(1) because the amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs, and the action is between citizens of different States.

8. This Court has subject matter jurisdiction over this action for declaratory relief pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure.

9. There is an actual justiciable controversy within the meaning of 28 U.S.C. § 2201 between Xerox and Conduit regarding the parties' rights and obligations under their contract, including whether Conduit materially breached the parties' contract, and the validity and effectiveness of Xerox's notice of termination based upon those breaches and failures, as well as Conduit's demand for the payment of a termination fee.

10. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) and (3). A substantial part of the events or omissions giving rise to Xerox's claim described below occurred in the Western District of New York. In the alternative, Conduit is subject to personal jurisdiction within the Western District of New York.

11. In addition, the parties expressly agreed to venue in this District and waived any objection to venue in this District in the contract upon which this action is based.

FACTUAL BACKGROUND

12. On or about September 30, 2016, Xerox and Conduit entered into an Outsourcing Agreement, with multiple Schedules, Appendices and Attachments (together with change orders and statements of work referred to as the "Outsourcing Agreement"), pursuant to which Conduit agreed to provide certain technology and services supporting Xerox's customer support services

subject to certain terms and conditions that were more particularly described in the extensive Schedules, Appendices and Attachments to the Outsourcing Agreement.¹

13. In Schedule 2 to the Outsourcing Agreement (the “Managed Services Technology SOW”), Conduit agreed to provide, *inter alia*, customer service call center support and other extensive IT-related services to Xerox as part of Conduit’s “Core Routing and Telephony Solution.”

14. The Outsourcing Agreement required Conduit, in Section 13, to achieve or exceed certain Service Levels, as those were defined and set out in the Schedules of the Outsourcing Agreement.

15. Conduit acknowledged and agreed, in Section 13.2b of the Outsourcing Agreement, that “its failure to meet a Critical Service Level may have a material adverse impact on the business and operations of” Xerox.

16. In Schedule 7a to the Outsourcing Agreement, Conduit agreed that its failure to achieve certain Service Levels prescribed in that Schedule shall give rise to a “Service Level Termination Event” providing Xerox with the right to terminate the Outsourcing Agreement for cause.

17. In short, the parties bargained for Conduit’s obligation to provide Xerox secure, reliable, consistent, continuous Services that met or exceeded agreed Service Levels.

¹ All capitalized terms used but not defined herein shall have the meaning given to them in the Outsourcing Agreement.

18. This obligation was critical to Xerox's ability to provide reliable, consistent and continuous call center support to its customers, which is an essential element of Xerox's relationships with its customers, its reputation, and the functioning of its businesses.

19. Part of the parties' bargain was that Conduit would implement and maintain an effective business continuity/disaster recovery process to provide an immediate response and subsequent prompt recovery from any unplanned technology service interruption to avoid disruption to the Xerox customer call center services that Conduit knew were a critical and essential component of Xerox's business.

A. Conduit Suffers a Catastrophic Security Breach and Service Level Outage.

20. According to a report commissioned by Conduit, on the morning of March 20, 2020, Conduit identified a critical security breach on its networks.

21. Specifically, a "malicious threat actor" had gained access to Conduit's networks and mass-deployed ransomware that encrypted files on the network and rendered many of Conduit's systems inoperative (the "Security Breach").

22. Upon information and belief, the Security Breach was caused, at least in part, by Conduit's failure to implement adequate security measures. These failures included, but were not limited to, Conduit's failure to use multi-factor authentication and its use of insufficient endpoint security and intrusion detection.

23. As a result of Conduit's failures, the threat actor was able to dwell in Conduit's IT environment undetected for a sufficient period of time to allow it to cripple all of Conduit's data centers globally.

24. As a result of the Security Breach, Xerox's businesses were immediately impacted. For example, Xerox agents could not log into Conduit's system to take customer calls

and Xerox customers and partners could not contact Xerox by telephone, including those in need of repairs, managed print services, and billing support, as well as those looking to order supplies.

25. Conduit's catastrophic failure to implement an effective business continuity and/or disaster recovery plan to promptly and effectively recover from the Security Breach exacerbated Xerox's damage.

26. Conduit's systems remained largely inoperable and nonfunctional in critical respects for weeks. For several days, Xerox service and support telephone lines were completely or nearly completely inaccessible, crippling Xerox's ability to communicate with customers and partners.

27. Conduit did not restore service to the functionality it had agreed to provide to Xerox until April 20, a month after the outage began.

28. As confirmed in a report provided by Conduit, the Security Breach and its failure to recover promptly resulted in at least 16 Critical Service Level Failures (as defined in the Outsourcing Agreement) during March and April 2020, well above the maximum 11 Critical Service Level Failures allowed over any rolling 12-month period, providing Xerox with the right to terminate the Outsourcing Agreement for cause.

29. The Security Breach, along with Conduit's failure to implement a business continuity and/or disaster recovery plan to allow for a prompt recovery from the service outage, deprived Xerox of the benefit of its bargain, frustrated the essential purpose of the Outsourcing Agreement, and constituted a complete and irremediable material breach by Conduit of its obligations under the Outsourcing Agreement.

30. The breaches by Conduit were incurable and could not be remedied.

B. Xerox Terminates Schedule 2 to the Outsourcing Agreement Based On Conduit's Material Breaches of the Parties' Agreement.

31. Section 29.1 of the Outsourcing Agreement provides a right of termination for cause:

Without prejudice to any other rights or remedies it may have, either Party may, by giving written notice to the other Party, immediately terminate this Agreement and/or any applicable statement of work, in whole or in part, (as of a date specified in the notice of termination) if the other Party commits a material breach of this Agreement, which, if such material breach is committed by [Conduit] is not cured within 60 days after being requested to do so by written notice specifying the material breach complained of and expressly referring to the right to terminate under this Section.

32. On August 7, 2020, Xerox notified Conduit that it was terminating Schedule 2 to the Outsourcing Agreement and all related contract documents, including but not limited to all Schedules, Appendices, Attachments, Change Orders, and SOWs based on each of: (1) the occurrence of multiple Service Level Termination Events; (2) incurable breaches and failures by Conduit such as Conduit's material failure to have in place a business continuity plan sufficient to mitigate the impact of the Security Breach that caused an extended Service outage resulting in significant negative impacts to Xerox's business; and (3) the frustration of the essential purpose of the Outsourcing Agreement as a whole due to Conduit's material and irremediable breaches (the "August Termination Notice").

33. The August Termination Notice advised Conduit that Xerox expected that the Termination Effective Date would be February 28, 2021.

34. Conduit purported to reject the August Termination Notice and failed and refused to participate in providing Termination Transition Assistance Services following the termination, in violation of its obligations under the Outsourcing Agreement.

C. Xerox Provides Conduit with Notice of a Conditional Termination Without Cause.

35. Xerox requested Termination Transition Assistance Services as contemplated by the Outsourcing Agreement but Conduit failed and refused to provide these services, or any assistance, and also refused to name an Exit Manager and to engage in Exit Plan development, both as required by the Outsourcing Agreement.

36. Although Xerox had advised in the August Termination Notice that it expected the Termination Effective Date would be February 28, 2021, Xerox was later forced to revise that date due to Conduit's failure to provide Termination Transition Assistance Services to ensure a smooth transition and to manage, facilitate, and cooperate with Xerox to achieve a successful transfer of Services to another provider, as the Outsourcing Agreement required.

37. As a result of Conduit's refusal to manage, facilitate, and cooperate to achieve a smooth and successful transition, on or about November 23, 2020, Xerox was forced to revise and extend its expected Termination Effective Date from February 28, 2021, to June 1, 2021.

38. Section 29.2 of the Outsourcing Agreement also provides a right of termination without cause:

Without prejudice to any other rights or remedies it may have, either Party may terminate this Agreement for its convenience and without cause effective either June 1, 2021 or June 1, 2022; however, [Xerox] must provide [Conduit] at least one hundred eight [sic] (180) days' written notice prior to the respective effective termination date . . . In the event [Xerox] terminates this Agreement without cause effective June 1, 2021, [Xerox] agrees to pay [Conduit] a termination fee equal to five million four hundred thousand dollars (\$5,400,000).

39. On November 23, 2020, Xerox provided notice to Conduit that if a court of competent jurisdiction found that the August Termination Notice was invalid, improper, or otherwise ineffective, Xerox would exercise its right to terminate Schedule 2 to the Outsourcing

Agreement and all related contract documents, including but not limited to all Schedules, Appendices, Attachments, Change Orders, and SOWs, for its convenience and without cause, effective June 1, 2021, pursuant to Section 29.2 of the Outsourcing Agreement (the “November Conditional Termination Notice”).

40. The November Conditional Termination Notice expressly provided that “such termination for convenience and without cause is intended to be effective *if and only if* the August Termination is held to be improper.” (emphasis added.)

41. The August Termination Notice has never been held to be invalid, improper or otherwise ineffective.

42. Nonetheless, on February 17, 2021, Conduit sent Xerox an invoice purporting to seek payment of a \$5.4 million Termination Fee, which would be due only if the termination was without cause under Section 29.2 of the Outsourcing Agreement.

43. Xerox sent timely notice on March 19, 2021, that it disputes the Termination Fee invoice because its August Termination Notice is valid and effective and Xerox properly terminated the Outsourcing Agreement pursuant to that notice, including for cause.

44. Moreover, the November Conditional Termination Notice was expressly stated to be effective only if the August Termination Notice is held to be invalid, improper or otherwise ineffective.

45. Conduit has persisted in demanding payment of the Termination Fee without regard to the express terms of the November Conditional Termination Notice.

FIRST CAUSE OF ACTION
(Declaratory Judgment)

46. Xerox repeats and re-alleges each and every allegation in Paragraphs 1 through 45 of this Complaint as if fully set forth herein.

47. Xerox and Conduit are parties to the Outsourcing Agreement, which was a valid and enforceable contract.

48. At all relevant times, Xerox acted in accordance with the Outsourcing Agreement and performed all of its obligations thereunder.

49. Conduit breached and defaulted on its obligations under the Outsourcing Agreement by, among other things, failing to implement sufficient security measures to guard against the Security Breach, failing to meet the agreed Service Levels, and failing to implement an adequate and effective business continuity/disaster recovery plan.

50. Conduit's breaches, defaults and failures described above were material and incurable and frustrated the essential purpose of the Outsourcing Agreement.

51. In addition, Conduit's breaches and failures described above resulted in Service Level Termination Events that provided ample basis for Xerox to terminate the Outsourcing Agreement, including Schedule 2, for cause.

52. There is presently a justiciable controversy between Xerox and Conduit and a judicial declaration regarding the validity and effectiveness of the August Termination Notice is necessary and appropriate at this time.

53. As a result of the foregoing, Xerox is entitled to a judgment declaring that the August Termination Notice is proper, valid and effective and that it does not owe any further amounts, including a Termination Fee, to Conduit.

SECOND CAUSE OF ACTION
(Breach of Contract)

54. Xerox repeats and re-alleges each and every allegation in Paragraphs 1 through 53 of this Complaint as if fully set forth herein.

55. Xerox and Conduit were parties to the Outsourcing Agreement, which was a valid and enforceable contract.

56. At all relevant times, Xerox acted in accordance with the Outsourcing Agreement and performed all of its obligations thereunder.

57. Conduit breached and defaulted on its obligations under the Outsourcing Agreement by, among other things, failing to implement sufficient security measures to guard against the Security Breach, failing to meet the agreed Service Levels, and failing to implement an adequate and effective business continuity/disaster recovery plan.

58. Conduit's material breaches and defaults caused Xerox significant harm and injury to its businesses in an amount to be proven at trial, and believed to be greater than \$2.5 million.

DEMAND FOR JURY TRIAL

59. Xerox demands a trial by jury of all issues so triable.

WHEREFORE, Plaintiff Xerox Corporation demands:

- (1) An Order declaring the August Termination Notice was proper, valid and effective;
- (2) An Order declaring that Xerox has no obligation to pay a Termination Fee to Conduit;
- (3) A judgment against Conduit awarding money damages, in an amount to be determined at trial, for its material breaches of the Outsourcing Agreement; and
- (4) Such further relief as the Court deems just and proper.

Dated: July 2, 2021
Rochester, New York

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