

# Environmental Services Firms: Federal Court Addresses Dispute Arising Out of Joint Marketing Agreement



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A United States District Court (N.D. Ohio) (“Court”) in an October 14th Order addressed a dispute arising out of a Confidentiality and Non-Disclosure Agreement (“NDA”) and Memorandum of Understanding (“MOU”) involving two environmental service firms. *See Emerald Environmental Services v. 7G Environmental Compliance Management*, WL 4482511.

The Court considered arguments involving allegations that one of the firms interfered with the other’s client relationships, in violation of their agreements.

Emerald Environmental Services (“Emerald”), plaintiff, and 7G Environmental Compliance Management (“7G”), defendant, are both environmental compliance businesses specializing in servicing companies that operate gas and refueling stations, providing underground storage tank (“UST”) inspection services. Emerald also provides wastewater removal and storage.

## The NDA and Client A

The two parties in 2019 began exploring the possibility of a joint venture to provide complimentary services to clients. The parties executed an NDA that could only be modified in writing. It would terminate automatically after 180 days unless extended by the parties.

The NDA and related provisions read as follows:

- 19. NO OBLIGATION. NO PARTY HAS AN OBLIGATION TO DISCLOSE CONFIDENTIAL INFORMATION UNDER THIS AGREEMENT. THIS AGREEMENT IS NOT INTENDED TO, AND DOES NOT, (A) CONSTITUTE AN AGREEMENT OF EITHER PARTY TO PERFORM DUE DILIGENCE, NEGOTIATE, OR CONSUMMATE A TRANSACTION OR TO ENTER INTO ANY BINDING AGREEMENT OR COMMITMENT WITH RESPECT TO A TRANSACTION, OR (B) CONTAIN ALL MATTERS UPON WHICH AGREEMENT WOULD HAVE TO BE REACHED WITH RESPECT TO A TRANSACTION IN ORDER TO MAKE A BINDING AGREEMENT OR COMMITMENT. A BINDING AGREEMENT OR COMMITMENT WITH RESPECT TO A TRANSACTION, WILL RESULT IF AND ONLY IF THE PARTIES EXECUTE A DEFINITIVE WRITTEN AGREEMENT, AND EACH OF THE PARTIES MAY DECLINE TO EXECUTE SUCH AN AGREEMENT FOR ANY OR NO REASON, IN EACH PARTY’S SOLE AND ABSOLUTE DISCRETION...
- 12. Integration. No prior or contemporaneous written or oral agreement(s) between the Parties with respect to the subject matter hereof shall be binding upon either Party. This Agreement constitutes

the sole and entire understanding and agreement between the Parties with respect to the subject matter hereof...

- 13. Modification. This Agreement may be modified only in a writing signed by both Parties.

Around the time of the expiration of the NDA, Emerald was awarded a contract for UST services for Client A. Emerald subcontracted a portion of the work to 7G. No contract was ever signed with Client A.

### **The MOU**

The parties executed a binding MOU twenty one days after the NDA expired. They agreed to jointly market services and work toward long-term agreements (“LTA”s) to service clients. The MOU referenced and incorporated the now-expired NDA. No LTAs were engaged prior to August 12, 2020.

### **Client B**

Emerald and Client B engaged in a discussion for services. In September 2021, Emerald and 7G jointly prepared a proposal, dividing services between the two companies. However, representatives of the companies disagreed on the proper structure of the business agreement between Emerald, 7G, and Client B.

A back-and-forth exchange of emails ensued between Emerald and 7G representatives. The Emerald representative believed the new venture with Client B was executed under the authority of the MOU and incorporated NDA, 7G engaged in a contract with Client B separate from Emerald.

Emerald filed a judicial action against 7G in state court. 7G removed the case on the basis of diversity jurisdiction. The eight counts alleged included:

1. Fraud.
2. Breach of implied contract.
3. Breach of express contract.
4. Promissory estoppel.
5. Unjust enrichment/quantum meruit.
6. Tortious interference with business relations.
7. Breach of fiduciary duty.
8. Punitive damages.

The tort and quasi-contract claims involved an allegation the two parties had an implied agreement arising from the parties’ course of dealings for 7G to assign inspection services to Emerald and pay it a commission. In the breach of express contract claim, the plaintiff sought to recover as a third-party beneficiary to the agreement between 7G and Client B.

### **Summary Judgment**

The defendant moved for summary judgment of all claims arguing that the NDA and MOU were still in effect.

The Court granted summary judgment for the defendants on three of the counts:

- Breach of implied contract.

- Breach of express contract.
- The portion of the tortious interference claims relating to allegations that defendants tortiously interfered with Client A.

Summary judgment for all other claims was denied.

#### **Breach of Implied Contract**

The parties never came to a final understanding as to how long Emerald would have been entitled to commissions beyond the initial contract period. No meeting of the minds was established for commissions beyond the initial contract period. Therefore, was no enforceable implied contract. Defendants were held to be entitled to summary judgment to the extent that damages were sought related to commissions beyond the original anticipated contract with Client B.

#### **Breach of Express Contract**

Emerald alleged it was an intended third-party beneficiary to the contract between 7G and Client B. While Emerald is a subcontractor, nothing in the agreement was held to demonstrate a finding 7G and Client B entered into an agreement to benefit Emerald. Therefore, Emerald was deemed only an incidental beneficiary and defendants were entitled to summary judgment on the claim.

#### **Tortious Interference**

To prevail on a claim of tortious interference with business relationships, Emerald had to demonstrate:

1. A business relationship between Emerald and the clients.
2. The alleged wrongdoer's—7G's—knowledge thereof.
3. An intentional interference causing a breach or termination of the relationship between Emerald and the clients.
4. Damages resulting therefrom.

The Court separated the tortious interference claims as they related to Client A and Client B. It declined to grant summary judgment for Client B. However, it did grant summary judgment for the claims as they relate to Client A because any loss in business from Client A was the result of actions taken by Emerald, not by 7G.

A copy of the Order can be downloaded [here](#).