

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

JOSEPH W. VAN TREECK,	)
	)
Plaintiff,	)
	)
vs.	)
	)
THE CREAMERY CORPORATION	)
d/b/a MATANUSKA MAID DAIRY,	)
	)
Defendant.	)
_____ ) Case No. 3AN-07-11347 CI	

**FIRST AMENDED ANSWER**

Defendant, The Creamery Corporation d/b/a Matanuska Maid Dairy (hereinafter "Creamery Corp" or "Mat Maid") and answers the Complaint of plaintiff as follows:

1. Creamery Corp admits Joseph W. Van Treeck (hereinafter "Van Treeck") was a chief executive officer of The Creamery Corporation, but the remainder of the allegations contained in Paragraph 1 are denied.
2. Admitted.
3. Creamery Corp denies engaging in the conduct alleged for more than 20 years or with its precursors for more than 70 years and that it primarily operated within the Municipality of Anchorage. The remainder of the allegations contained in Paragraph 3 are admitted.
4. Creamery Corp admits it conducts business in part through a Board of Directors, but the balance of allegations contained in Paragraph 4 are denied.

5. Creamery Corp denies the Board of Agriculture and Conservation (the BAC) is a successor to the Agricultural Revolving Loan Fund. The remainder of the allegations in Paragraph 5 are admitted.

6. Creamery Corp admits Van Treeck was employed by The Creamery Corporation and that Van Treeck's contract subject to earlier termination terminated at the latest on June 30, 2007, if not earlier. The remainder of the allegations contained in Paragraph 6 are denied.

7. Creamery Corp denies Paragraph 7. The Agreement set out in its entirety, specifies the terms and conditions of its renewal and any obligations thereunder.

8. Creamery Corp denies the allegations in Paragraph 8 as stated.

9. Creamery Corp admits Van Treeck's contract was not renewed or extended, but the remainder of the allegations contained in Paragraph 9 are denied.

10. Creamery Corp without commenting on the precise date of termination of Van Treeck's contract, notes that the contract contains a noncompetition provision as fully set forth in the Agreement. The remainder of the allegations in Paragraph 10 are denied.

11. Creamery Corp admits its economic condition was discussed at various meetings. The remainder of the allegations contained in Paragraph 11 are denied.

12. Creamery Corp admits Van Treeck provided the Board a letter indicating his decision to voluntarily resign from employment and that the letter was dated on or about May 31, 2007, which letter speaks for itself. Van Treeck continued his duties as president and chief executive officer after May 31, 2007 for a period of time. The remainder of the allegations of Paragraph 12 are denied.

13. Creamery Corp is without sufficient information to admit the allegations contained in Paragraph 13 and as such they are denied.

14. Creamery Corp is without sufficient information to admit the allegations contained in Paragraph 14 and as such they are denied.

15. Creamery Corp is without information to admit the allegations contained in Paragraph 15 and as such they are denied.

16. Creamery Corp admits Exhibit 7 a June 15, 2007, letter was provided to Van Treeck. The remainder of the allegations in Paragraph 16 are denied.

17. Creamery Corp denies the allegations in Paragraph 17.

18. Creamery Corp admits Exhibit 8 is a letter dated on or about August 14, 2007, that was sent to Ms. Cole, but the remainder of the allegations in Paragraph 18 are denied.

19. Creamery Corp. admits that Exhibit 9 is a letter from Van Treeck, but denies the remainder of any allegations in Paragraph 19.

20. Denied.

21. Denied.

22. Denied.

23. Denied.

24. Denied.

25. Denied.

26. Creamery Corp admits that Exhibit 10 is a copy of a letter dated September 18, 2007, sent to Van Treeck explaining that he has no sums due or owing to him, that the contract is not in force, and that even if the purported contract were in force pursuant to the terms of that contract Van Treeck is entitled to nothing more than the sums he had been paid. All other allegations contained in Paragraph 26 are denied.

27. Reincorporates prior paragraphs and as such each allegation is admitted or denied as previously set forth in the Answer.

28. Denied.
29. Denied.
30. Denied.
31. Denied.
32. Denied.
33. Denied.
34. Denied.
35. Denied.
36. All allegations contained in the prayer for relief are denied.

**AFFIRMATIVE DEFENSES**

**First Affirmative Defense**

Plaintiff's complaint fails to state a claim against defendant upon which relief can be granted.

**Second Affirmative Defense**

If Plaintiff has suffered damages as alleged in the complaint, then such damages were the proximate result of the negligent and/or willful conduct and activities and/or omissions of Plaintiff or others and were not the result of any conduct or activity of Defendant.

**Third Affirmative Defense**

Plaintiff's claims are barred by Plaintiff's failure to satisfy his contractual conditions precedent.

**Fourth Affirmative Defense**

Plaintiff has failed to mitigate his alleged damages.

**Fifth Affirmative Defense**

Plaintiff's damages, if any, are caused by third parties or persons other than defendant.

**Sixth Affirmative Defense**

Plaintiff's claims are barred by offset and set-off.

**Seventh Affirmative Defense**

Plaintiff's claims are barred by unclean hands, fraud, and illegality.

**Eighth Affirmative Defense**

Plaintiff has failed to join a necessary and indispensable party.

**Ninth Affirmative Defense**

Plaintiff's contract expired of its own terms.

**Tenth Affirmative Defense**

Plaintiff resigned and quit, or in the alternative would have been fired for cause and breach of contract. Plaintiff could be terminated for no reason.

**Eleventh Affirmative Defense**

Plaintiff breached his contract.

Defendant reserves the right to assert additional affirmative defenses.

**COUNTERCLAIM**

Mat Maid, by and through its attorney of record, hereby files its counterclaim against plaintiff, Joseph W. Van Treeck, as follows:

1. Van Treeck served as president of Mat Maid and was an executive and officer of the corporation. As such, Van Treeck owed a fiduciary duty and obligation to Mat Maid.

2. Van Treeck knew Mat Maid had significant financial difficulties, yet failed to take action to curb unnecessary expenditures, maximize cash flow, and prevent financial losses and financial harm to Mat Maid.

3. Van Treeck caused and allowed Mat Maid to order over \$100,000 worth of equipment which Mat Maid never utilized in its operations to the financial detriment and harm of Mat Maid.

4. Van Treeck allowed Mat Maid to enter into advertising and marketing contracts which were unnecessarily expensive and incurred expenses which did not make business sense in light of the financial condition of Mat Maid.

5. Van Treeck failed to document agreements which has resulted in Mat Maid paying sums to settle claims to the financial harm and detriment of Mat Maid.

6. Van Treeck failed to limit company travel expenditure and allowed company employees to engage in excessive, expensive travel and incur unnecessary expenses and to incur personal expenses as business expenses. Van Treeck himself also incurred excessive travel expenses.

7. Even after the announcement of Mat Maid's ceasing of operations, Van Treeck allowed business travel to occur, which incurred unnecessary expenses and financial obligations for Mat Maid.

8. Van Treeck was directed to terminate an employee, Terry Clark, and rather than simply terminating the employee, Van Treeck misinformed the employee he was being layed off. This has created a lawsuit against Mat Maid by Terry Clark, who was directed by the Board to be terminated and who was not, in fact, layed off. Van Treeck's violations of his fiduciary duty and obligation to Mat Maid has caused Mat Maid to incur significant legal expenditures and be subject to a lawsuit by Clark. This insubordination by Van Treeck has caused financial damage to Mat Maid.

9. Van Treeck failed to take actions to minimize expenses and put into place business plans to prevent significant financial losses at Mat Maid.

**FIRST CAUSE OF ACTION  
(Breach of Contract)**

10. Mat Maid reincorporates the above paragraphs as though set forth herein.

11. Van Treeck breached his duty of good faith and fair dealing and other contractual obligations by the foregoing conduct.

12. Van Treeck breached his contractual obligations to Mat Maid with the foregoing conduct.

13. Van Treeck's breaches of contract have caused damages to Mat Maid in an amount to be determined at trial.

**SECOND CAUSE OF ACTION  
(Breach of Fiduciary Duty)**

14. Mat Maid reincorporates the above paragraphs as though set forth herein.

15. Van Treeck, as a corporate executive and officer of Mat Maid and due to his positions at Mat Maid, owed fiduciary duties to Mat Maid.

16. Van Treeck, through the foregoing conduct, breached his fiduciary duties to Mat Maid and these breaches caused damages to Mat Maid in an amount to be determined at trial.

WHEREFORE, Defendant prays for relief as follows:

1. The Plaintiff's Complaint should be dismissed, and the Plaintiff should be denied relief;
2. For a judgment for Mat Maid on its counterclaims and an award of damages in an amount to be proven at trial against Van Treeck.

3. For reasonable costs and attorney's fees incurred in the defense of this action, and post-judgment interest; and

4. For such other and further relief which the Court deems fair, just and equitable.

DATED at Anchorage, Alaska this 30th day of April, 2008.

BANKSTON GRONNING O'HARA  
Attorneys for Defendant The Creamery  
Corporation d/b/a Matanuska Maid Dairy

By: \_\_\_\_\_

Jon F. Givens  
AK Bar #9011072

I HEREBY CERTIFY that a true and correct copy of the foregoing (typed in Times New Roman 13) was mailed to the following attorney on the 30<sup>th</sup> day of April, 2008:

John E. Havelock, Esq.  
532 Christensen Drive, Suite 100  
Anchorage, AK 99501

\_\_\_\_\_  
Charlene Vozar