

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
(NEWARK VICINAGE)**

REED SMITH LLP

Formed in the State of Delaware

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UNITED WESTERN BANK,

Plaintiff,

v.

**ALLIED HEALTH CARE SERVICES,
INC. and CHARLES K. SCHWARTZ,**

Defendant.

NO.:

CIVIL ACTION

COMPLAINT

Plaintiff UNITED WESTERN BANK, by and through its counsel, Reed Smith LLP, hereby files this Complaint against Defendants ALLIED HEALTH CARE SERVICES, INC. and CHARLES K. SCHWARTZ, and in support thereof, states as follows:

PARTIES

1. Plaintiff United Western Bank (“Plaintiff” or “United Western Bank”) is a Federally chartered savings bank, with its principal place of business located at 700 17th Street, Suite 1550, Denver, Colorado 80202.

2. Defendant Allied Health Care Services, Inc. (“Defendant” or “Allied Healthcare”) is a New Jersey corporation with its principal place of business located at 89 Main

Street, Orange, New Jersey, 07050.

3. Upon information and belief, Allied Health is in the primary business of short to medium term equipment rentals to consumers and commercial entities.

4. Upon information and belief, Defendant Charles K. Schwartz (“Schwartz”), is a resident of the State of New Jersey, and is the President of Defendant Allied Healthcare.

JURISDICTION AND VENUE

5. This Court has original jurisdiction over this matter based upon diversity of citizenship pursuant to 28 U.S.C. § 1332. The amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

6. Venue is based upon 28 U.S.C. § 1391 since Defendants all reside in New Jersey, and upon information and belief, the equipment that is the subject of the lease agreement at issue in the instant action is located in New Jersey.

FACTS

The Master Lease Agreement

7. On or about April 28, 2009, Allied Health entered into a lease agreement with Global Vantage LTD. (“Global Vantage”) (the “Lease”), whereby Allied Health rented forty (40) Lifecare Products PLV 102 Home Care Ventilators (the “Equipment”). A true and correct copy of the Lease is attached hereto as Exhibit “A”.

8. The Lease was for a total financed amount of \$200,000.00, with a rental term of thirty-six (36) months. The first payment in the amount of \$6,900.00 was due on May 1, 2009, and subsequent rental payments in the amount of \$6,900.00 due on the same day monthly thereafter.

9. Allied Health made an advance rental payment in the amount of

\$13,900.00, consisting of the first and last rental payment.

10. The Lease also provides that, in the event any legal action is undertaken with respect to the Lease, the prevailing party in any such action shall be entitled to recover its costs and expenses, including, but not limited to reasonable attorney's fees and costs for the services rendered to such prevailing party.

11. The Lease is governed by the laws of the State of California.

12. Allied Health authorized its payments under the Lease to be made via direct payments (ACH Debits) from Allied Health's/Schwartz's bank account.

13. On May 1, 2009, Global Vantage entered into a written Bill of Sale and Assignment with United Western Bank, whereby, Global Vantage sold, transferred and assigned to United Western all of its rights, title and interest in the Lease (the "Assignment"). A true and correct copy of the Assignment is attached hereto as Exhibit "B."

14. On May 1, 2009, Schwartz, as President of Allied Health, acknowledged receipt of notice of the Assignment by Global Vantage to United Western Bank, and acknowledged that all lease payments and other sums due under the terms of the Lease were to be made to United Western Bank.

15. There is a UCC Financing Statement on file with the New Jersey Department of Treasury—Division of Revenue, whereby United Western Bank is a secured creditor of Allied Health. The UCC Financing Statement lists the Equipment as collateral. A true and correct copy of the UCC Financing Statement is attached hereto as Exhibit "C."

The Guaranty

16. On April 28, 2009, to induce Global Vantage to extend credit to Allied Health pursuant to the Lease, Schwartz executed a Continuing Guaranty of Lease (the "Guaranty"). A true and correct copy of the Guaranty is attached hereto as Exhibit "D."

17. Pursuant to the Guaranty, Schwartz unconditionally and absolutely guaranteed to Plaintiff the due and punctual payment and performance of all of Allied Health's present and future indebtedness and obligations under the Lease, and performance of all the terms, covenants and conditions of the Lease.

18. All amounts due by Allied Health under the Lease are payable by Schwartz to Plaintiff immediately on demand in the event of any default by Allied Health.

19. There is no limitation on Schwartz's liability under the Guaranty.

20. Pursuant to the Guaranty, Schwartz agrees to pay reasonable attorney's fees and all other costs and expenses which may be incurred by Plaintiff in any effort to collect or enforce the indebtedness or the Guaranty.

Allied Healthcare's Default for Non-payment

21. Beginning with the lease payment due on April 1, 2010, Allied Health failed to make the required monthly payments under the Lease. Attempts by United Western Bank to collect the payments via ACH Debits were unsuccessful.

22. Allied Health's failure to make the monthly rental payments constitutes a default under the Lease.

23. On or about June 7, 2010, an invoice for past due amounts, late fees, and insufficient funds fees was sent to Allied Health. A true and correct copy of the June 7, 2010 invoice is attached hereto as Exhibit "E."

24. On or about June 24, 2010, a demand letter was sent to Allied Health via certified mail/return receipt requested and regular mail, for \$167,746.00, which included the entire balance due under the Lease of \$165,601.00, and interest, late fees and other charges in the amount of \$2,145.00, and reimbursement for the collection fees and attorney's fees incurred by United Western Bank for the enforcement of the Lease.

25. Allied Health did not respond to United Western Bank's request for payment of the amount due under the Lease. Despite proper demand, Allied Health has failed and refused to pay the amounts due under the Lease.

**Allied Healthcare's Defaults for Failing to Identify the
Location of the Equipment**

26. Pursuant to the terms of the Lease, Allied Health was responsible for maintaining current and accurate records showing the location of all Equipment covered under the Lease at all times. Upon written request by Plaintiff, Allied Health was to report the location of the Equipment, and failure to do so, constitutes a breach of the Lease.

27. Upon information and belief, the Equipment that was leased and provided to Allied Health is in the possession and control of Allied Health and is located at Allied Health's place of business in Orange, New Jersey.

28. On or about June 24, 2010, a demand letter was sent to Allied Health which requested a list of the location of each piece of Equipment governed by the Lease and the name and contact information for the entity and/or person in possession of each piece of Equipment.

29. Despite proper demand, Allied Health has failed and refused to provide a list of the location of each piece of Equipment, and has failed and refused to return the Equipment.

COUNT I – BREACH OF CONTRACT
(Allied Health)

30. Plaintiff repeats and re-alleges each and every allegation contained in the preceding paragraphs of the Complaint as if same were fully set forth at length herein.

31. Pursuant to the Lease, Allied Health agreed to pay rental payments in the

amount of \$6,900.00 per month due on the first day of each month.

32. As of the date hereof, Allied Health has failed to pay all amounts due and owing for payments beginning April 1, 2010 through the present.

33. The payment defaults have occurred, are continuing, and have not been cured despite due demand.

34. United Western Bank has, at all times, fully and properly performed its obligations under the Lease and has performed all conditions precedent.

35. As a result of its failure to remit the monthly rental payments as required by the Lease, Allied Health has breached its contractual obligations.

36. To date, Allied Health has also refused to comply with its obligations under the Lease by failing to account for the location of the Equipment governed by the Lease.

37. As of the date hereof, Allied Health has not returned the Equipment.

38. As a result of Allied Health's refusals to honor its contractual obligations, Allied Health is, and continues to be, in default of the Lease, and all amounts due and owing are still outstanding and unpaid.

WHEREFORE, Plaintiff respectfully requests this Court to enter judgment against Allied Health for: (a) possession of the equipment United Western Bank leased to Allied Health as set forth in the Lease, as attached hereto as Exhibit A; (b) damages in the amount of \$167,746.00, plus interest and late fees, representing the amounts due under the Lease; (c) United Western Bank's expenses and attorneys' fees incurred in enforcing its rights against Allied Health; and (d) such other relief as this Court deems just and proper.

COUNT II – BREACH OF GUARANTY

(Schwartz)

39. Plaintiff repeats and re-alleges each and every allegation contained in the

preceding paragraphs of the Complaint as if same were fully set forth at length herein.

40. Pursuant to the Guaranty, Schwartz unconditionally and absolutely guaranteed payment and performance of all of Allied Health's obligations under the Lease.

41. As a result of Allied Health's default under the Lease, on or about June 24, 2010, a demand letter was sent to Schwartz, as guarantor, via certified mail/return receipt requested and regular mail, for \$167,746.00, which includes the entire balance due under the Lease of \$165,601.00, and interest, late fees and other charges in the amount of \$2,145.00, and reimbursement for the collection fees and attorney's fees incurred by United Western Bank for the enforcement of the Lease.

42. The June 24, 2010 demand letter also requested that Schwartz account for the location of the Equipment governed by the Lease.

43. Despite Plaintiff's demand, to date Schwartz has failed to provide any information as to the location of the Equipment.

44. As of the date hereof, Schwartz has not made the payments due under the Lease, and has not returned the Equipment.

WHEREFORE, Plaintiff respectfully requests this Court to enter judgment against Schwartz for: (a) possession of the equipment United Western Bank leased to Allied Health as set forth in the Lease, as attached hereto as Exhibit A; (b) damages in the amount of \$167,746.00, plus interest and late fees, representing the amounts due under the Lease; (c) United Western Bank's expenses and attorneys' fees incurred in enforcing its rights against Allied Health; and (d) such other relief as this Court deems just and proper.

COUNT III - REPLEVIN

45. Plaintiff repeats and re-alleges each and every allegation contained in the preceding paragraphs of the Complaint as if same were fully set forth at length herein.

46. As a result of the default of Allied Health under the Lease, Plaintiff has the right to repossess its Equipment in the possession of Allied Health, and take sole possession thereof.

47. As a result of Allied Health's default of the Lease, Allied Health has absolutely no right or interest in continuing to possess the Equipment supplied by Plaintiff.

48. Other than Plaintiff, no other person or entity is entitled to possession of the equipment supplied by Plaintiff.

49. The Lease provides that, in the event any legal action is undertaken with respect to the Lease, the prevailing party in any such action shall be entitled to recover its costs and expenses, including, but not limited to reasonable attorney's fees and costs for the services rendered to such prevailing party.

50. Pursuant to the Guaranty, Schwartz agrees to pay reasonable attorney's fees and all other costs and expenses which may be incurred by Plaintiff in any effort to collect or enforce the indebtedness or the Guaranty.

51. As a direct result of Allied Health's breach of the Lease and Schwartz's breach of the Guaranty, Plaintiff has incurred and will continue to incur costs and expenses, including attorney's fees, in its effort to repossess the Equipment.

WHEREFORE, Plaintiff respectfully requests this Court to enter an Order: (a) for possession of the Equipment supplied to Allied Health as set forth in the Lease; (b) restraining Allied Health and Schwartz and their respective agents, servants, employees or any other person acting by, through, on behalf of, in concert with Allied Health and/or Schwartz or under the direction of Allied Health and/or Schwartz, from moving, using or otherwise transporting the Equipment Plaintiff supplied to Allied Health; (c) for Plaintiff's expenses and attorneys' fees incurred in enforcing its rights against Allied Health and Schwartz; and (d) for such other relief as this Court deems just and proper.

COUNT IV – UNJUST ENRICHMENT

52. Plaintiff repeats and re-alleges each and every allegation contained in the preceding paragraphs of the Complaint as if same were fully set forth at length herein.

53. Allied Health and Schwartz have been unjustly and unlawfully enriched at the expense of Plaintiff by, inter alia, retaining possession of and using Plaintiff's Equipment for the benefit of their business without providing valuable consideration in return to Plaintiff.

54. As a direct and proximate result of such unjust enrichment, Plaintiff has incurred substantial damages, including all amounts owed by Allied Health and Schwartz, as well as lost monthly rent which could have and would have been gained by Plaintiff leasing the equipment to other entities, plus the depreciated value of the equipment, accrued and accruing interest, attorneys' fees, costs of suit and any other amounts owing to Plaintiff.

WHEREFORE, Plaintiff respectfully requests this Court to enter judgment against Allied Health and Schwartz for: (a) damages in an amount to be determined at trial, but in no event less than \$167,746.00, plus accrued and accruing interest and late fees; (b) Plaintiff's expenses and attorneys' fees incurred in enforcing its rights against Allied Health and Schwartz; and (c) such other relief as this Court deems just and proper.

//s//

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