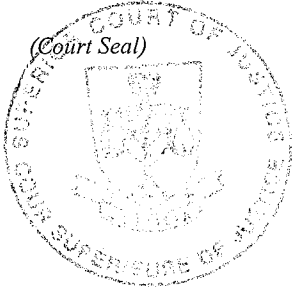


ONTARIO
SUPERIOR COURT OF JUSTICE

Court File No.

CV-17-572927

BETWEEN:



THE HSE GROUP OF COMPANIES INC.

Plaintiff

- and -

SALESFORCE.COM CANADA CORPORATION

Defendant

STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The Claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date

APRIL 6th, 2017

Issued by

Anthony Muller
Local Registrar

Address of
court office:

Superior Court of Justice 10th - AM -
393 University Avenue, 7th Floor
Toronto ON M5G 1R7

IE6
-AM

TO:

Salesforce.com Canada Corporation
10 Bay St #400,
Toronto, Ontario
M5J 2R8

CLAIM

1. The plaintiff, The HSE Group of Companies Inc. (“HSE”), claims against the defendant, Salesforce.com Canada Corporation (“Salesforce”):

- (a) Damages in the amount of CAD\$400,000 for breach of contract by Salesforce and/or on the basis of the unjust enrichment of Salesforce;
- (b) A declaration that HSE owes no further amounts to Salesforce in respect of the Salesforce Agreements, defined below, or otherwise;
- (c) prejudgment interest in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (d) postjudgment interest in accordance with section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (e) the costs of this proceeding on a substantial indemnity basis, plus all applicable taxes; and
- (a) Such further and other relief as to this Honourable Court may seem just.

A. THE PARTIES

2. HSE is a corporation established in September 2015 incorporated under the laws of the Province of Ontario, and maintains its head office in North York, Ontario. HSE previously operated under the name of Home Services Energy Inc. HSE offers customers a wide range of solutions for safer and more efficient homes including HVAC and air filtration systems. As a company in its first year of inception, HSE is heavily focused on growth opportunities, and

specifically on customer acquisition, development and retention and implementation of sales channel strategy.

3. Salesforce is a corporation organized and existing under the laws of Nova Scotia with its head office in Halifax, Nova Scotia. Salesforce advertises itself as a leader in customer relationship management solutions. Salesforce is a subsidiary of Salesforce.com Inc., a Delaware corporation that is publicly listed on the New York Stock Exchange.

4. Figur8 Cloud Solutions ULC (“Figur8”) is a custom computer programming service company, and is a preferred Salesforce subcontractor for the deployment of Salesforce CRM solutions.

B. THE HSE AGREEMENT WITH SALESFORCE

5. In early 2016, HSE entered into discussions with Salesforce regarding Salesforce customer relationship management (“CRM”) products and services. CRM is an industry term for the use of technology to manage, coordinate and analyze customer interactions with the goal of improving relationships with customers, assisting with customer retention and ultimately driving sales growth. Salesforce represents itself to offer “the world’s #1 CRM solution” which Salesforce touts as “the path forward for every part of your business”. HSE was looking to leverage Salesforce’s CRM solution to drive profit in HSE’s rapidly growing business.

6. On or around February 23, 2017, HSE requested CRM services from Salesforce under Order Form Q-00473346 (the “First Order Form”). Under the First Order Form, Salesforce was to provide a comprehensive package of CRM services, including set-up and customization of the applications, licensing of the software and ongoing support and administration (the “CRM Services”).

7. Under the First Order Form, the Contract Start Date was March 15, 2016, with a Contract End Date of March 14, 2017. Despite executing the First Order Form on February 23, 2017, there was little or no progress by Salesforce in implementing the CRM Services for HSE in the months that followed.

8. On or around June 2, 2016, Salesforce provided a revised quote in respect of CRM Services to revise the type of product license that would be provided by Salesforce, as Salesforce subsequently determined that it had not recommended the appropriate type of license for HSES. Order Form Q-00626191 was executed on or around June 3, 2016 (the "Second Order Form").

9. On or around June 9, 2016, HSE received correspondence from Salesforce with a new "correct" Order Form Q-00630067 (the "Final Order Form") to replace the Second Order Form (with the First Order Form, the "Salesforce Agreements").

10. HSE paid to Salesforce an up-front lump sum of approximately \$170,000 on or around June 6, 2016, prior to Salesforce delivering any CRM Services.

11. The Order Forms described above state on the back page that they are governed by the terms of the Salesforce.com Master Subscription Agreement (the "Master Subscription Agreement") found on the company's website.

12. HSE did not negotiate the terms of the Master Subscription Agreement and was required to accept the terms of the Master Subscription Agreement in order to receive the CRM Services.

C. HSE AGREEMENT WITH FIGUR8

13. On the specific advice and direction of Salesforce, HSE also entered into an agreement with Figur8 (the "Figur8 Agreement") on February 25, 2016. HSE retained Figur8 to deploy HSE's

Salesforce CRM solutions in three phases: (i) Design; (ii) Application Configuration & Deployment (Sales & Service Cloud); and (iii) Pardot Quick-Start. Figur8 was to provide these services to HSE on a time and materials basis.

D. SALESFORCE'S MATERIAL BREACHES OF THE AGREEMENT

14. Salesforce was required to provide HSE with the CRM Services under the Salesforce Agreements. To date, Salesforce has failed to deliver any functional product to HSE whatsoever. Salesforce has materially breached its obligations to HSE under the Salesforce Agreements, causing damage to HSE.

15. For months following HSE's execution of the First Order Form, Salesforce did not advance its provision of the CRM Services to HSE in any meaningful manner. Salesforce made various sporadic, token efforts to fulfill its obligations under the Salesforce Agreements, but continuously fell well short of its obligations.

16. HSE would repeatedly request that Salesforce take the necessary steps to move forward with the CRM Services for many months after HSE signed the First Order Form. In turn, Salesforce repeatedly made excuses for its non-performance, and continued to fail to deliver the CRM Services.

17. As noted above, following HSE's execution of the First Order Form, it came to the attention of Salesforce that it had incorrectly specified the services to be provided. The CRM Services specified in the First Order Form were far too complex and unnecessary for purposes that were outlined by HSE prior to executing the First Order Form. Salesforce therefore revised the CRM Services to be provided in the Second Order Form and then ultimately sent the Final Order Form

due to an “error” in the Second Order Form. The Second and Final Order Forms were executed in June 2016.

18. It was then not until August, 2016, that the Salesforce account representative in charge of the HSE account at that time scheduled a critical in-person orientation meeting, *i.e.* over two months later.

19. The Salesforce account representative then proceeded to cancel the meeting *after* the designated start time. The meeting had been scheduled weeks in advance, and HSE employees had not scheduled sales meetings during the time of the orientation in order to participate. This was known to the Salesforce representative prior to the meeting. As a result, numerous HSE employees lost valuable sales time.

20. In short, Salesforce failed to even schedule an orientation until months after the execution of the Final Order Form, and then cancelled the meeting with no notice whatsoever, leading to significant waste of time and cost.

21. This complete lack of Salesforce customer service was a pervasive trend. The Salesforce point-of-contact for the HSE account changed frequently, and the Salesforce representatives were habitually non-responsive. Critical deliverables would frequently not be provided when promised.

22. Any CRM Services that have been provided to HSE have not been properly installed nor have they been configured for HSE as required by the Salesforce Agreements and therefore are of no use to HSE. HSE has not been able to use any Salesforce CRM Services in any capacity since executing the First Order Form in February 2016.

23. Salesforce's misrepresentations in respect of the capabilities of its CRM Services have deprived HSE of the benefit of its bargain, inhibited HSE's growth during its critical early stage period, damaged the reputation of HSE in the eyes of customers and prospective customers, and wasted significant time and cost.

E. DAMAGES INCURRED BY HSE AS A RESULT OF SALESFORCE'S BREACHES OF CONTRACT

24. HSE paid approximately \$170,000 to Salesforce in June 2016, and has not received the CRM Services that Salesforce was required to perform under the Salesforce Agreements. HSE claims the return of all amounts paid to Salesforce under the Salesforce Agreements.

25. HSE specifically engaged Figur8, on Salesforce's advice and direction, to deploy Salesforce CRM Services. However, any services provided by Figur8 have been of no value to HSE without Salesforce fulfilling its obligations under the Salesforce Agreements.

26. HSE paid approximately \$45,000 to Figur8 for deployment of CRM Services that were dependent on the CRM Services that were to be provided by Salesforce and were never provided. HSE claims the return of all amounts paid to Figur8 under the Figur8 Agreement, which were funds that were completely wasted as a result of Salesforce's breaches of contract.

27. HSE also hired onto its staff a "Salesforce administrator" who was to manage the CRM Services that would be provided by Salesforce. The HSE Salesforce administrator attempted to facilitate the process of Salesforce setting up and configuring the CRM Services, with no success. HSE paid amounts to the Salesforce administrator for services that the Salesforce administrator was never able to provide due to Salesforce's failure to provide the CRM Services. The HSE

Salesforce specialist spent the majority of his time sitting around with nothing to do and was ultimately let go.

28. The failure of Salesforce to provide the CRM Services that it represented it could provide inhibited HSE's growth in the critical early stages of the company. Rather than facilitating customer relationships and increasing sales, the Salesforce Agreements diverted critical resources from HSE's growth, damages HSE's reputation with existing and potential customers, and wasted the time of many HSE individuals who are integral to HSE's forward momentum. Salesforce has caused HSE harm in the form of costs expended for no value during a period in which HSE has minimal cash flow, as well as lost business opportunities, profits and reputation.

29. At all material times, Salesforce was aware of the delays and deficiencies in its performance of the CRM Services and the cause of those delays and deficiencies. Salesforce failed to rectify its performance problem.

F. UNJUST ENRICHMENT

30. In the alternative, Salesforce has charged HSE significant amounts in respect of CRM Services that Salesforce did not provide. Salesforce has been unjustly enriched as a result of such amounts, and there is no juristic reason for Salesforce to retain amounts paid for services that it did not perform.

G. UNPAID INVOICES

31. HSE has received further invoices from Salesforce purporting to charge HSE for amounts in respect of the Salesforce Agreements.

32. Salesforce did not deliver the CRM Services as required by the Salesforce Agreements, and HSE has no liability to pay the amounts of these invoices because Salesforce failed to deliver the CRM Services provided in the Order Forms. These further invoices are in respect of CRM Services that Salesforce did not provide and HSE has never used.

H. AMOUNTS SOUGHT

33. As a result of the breaches of the Salesforce Agreements, HSE suffered the costs, losses, and damages claimed in the Statement of Claim, in the following amounts, with further amounts to be proven at trial:

- (a) \$170,000 in respect of amounts paid to Salesforce for CRM Services that were never provided under the Salesforce Agreements;
- (b) \$45,000, in respect of amounts paid by HSE to Figur8 for deployment of CRM Services that were dependent on the CRM Services that were to be provided by Salesforce and were never provided;
- (c) Amounts paid to the "Salesforce administrator" that was not able to provide any services to HSE, and all other costs incurred by HSE as a result of Salesforce's breaches of contract with amounts to be proven at trial.
- (d) Damages for lost profits, reputation, goodwill, with amounts to be proven at trial.

(Date of issue)

APRIL 6th, 2017

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**THE HSE GROUP OF
COMPANIES INC.**
Plaintiff

and

**SALESFORCE.COM CANADA
CORPORATION**
Defendant

Court File No:

CV-17-572927

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT TORONTO

STATEMENT OF CLAIM

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