

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION

GEIGER EXCAVATING, INC.                    )  
  )  
  Plaintiff,                    )  
  )  
v.    )  
  )  
ECLIPSE AVIATION CORPORATION            )  
  )  
  Defendants.                    )

Case No. 1:08CV0164PPS

AMENDED ANSWER TO COMPLAINT

1. Plaintiff Geiger Excavating, Inc., is an Indiana corporation with its principal place of business at 811 Airport North Office Park, Fort Wayne, Indiana 46825.

**Answer:** Admitted

2. Upon information and belief, Defendant, Eclipse Aviation Corporation, is a Delaware corporation with its principal place of business at 2503 Clark Carr Loop SE, Albuquerque, New Mexico 87106.

**Answer:** Admitted

3. Upon information and belief, Eclipse is a corporation which does business throughout the United States, including the State of Indiana.

**Answer:** Denied

4. On October 10, 2000, Geiger and Eclipse entered into an Escrow Agreement and a Deposit Agreement, true and accurate copies of which are attached to this Complaint as Exhibits “A” and “B” respectively.

**Answer:** Admitted

5. This Deposit Agreement secured a guaranteed delivery position of an Eclipse 500 jet to Geiger in exchange for a deposit.

**Answer:** Admitted

6. To date, Geiger has paid to Eclipse, a total of \$150,000.00 in deposits pursuant to the Deposit Agreement.

**Answer:** Admitted

7. The Deposit Agreement contains a provision permitting Geiger to cancel the Deposit Agreement and obtain a refund of its deposits “if FAA Part 23 certification of the Eclipse 500 jet occurs after June 30, 2004.”

**Answer:** The language in the deposit agreement speaks for itself. To the extent the allegations in paragraph 7 are inconsistent with the language in the document, paragraph 7 is denied.

8. Eclipse did not obtain the necessary FAA certification until late 2006.

**Answer:** Eclipse obtained the full Type Certification for the Eclipse 500 from the Federal Aviation Administration on September 30, 2006.

9. The Deposit Agreement provides that Eclipse and Geiger will enter into a Purchase Agreement for the Aircraft 180 days prior to delivery and that upon execution of the Purchase Agreement, Geiger must pay 60% of the final delivery price less its \$150,000 deposit.

**Answer:** Admitted

10. On April 11, 2008, Eclipse sent a letter to Geiger advising that unless Geiger paid an invoiced amount of \$773,762.40 by April 18, 2008, Eclipse will consider Geiger in default of the Deposit Agreement and will retain, as liquidated damages, Geiger's \$150,000 deposit.

**Answer:** Admitted

11. Eclipse's demand was based on an anticipated delivery date in September 2008.

**Answer:** Denied

12. Prior to April 18, 2008, Geiger confirmed with Eclipse that the anticipated delivery date had been moved back to October/November 2008. Despite this, Eclipse

refused to change the due date of the invoiced amount to be in compliance with the Deposit Agreement.

**Answer:** Denied. Eclipse advised Geiger that the anticipated delivery date would be October, 2008 which is 180 days from the date payment was due.

13. On April 18, 2008, Geiger, in compliance with the Deposit Agreement and given Eclipse's action, demanded a full refund of its \$150,000.00 deposit.

**Answer:** Denied

14. Despite demand, Eclipse has refused to refund Geiger's \$150,000 deposit.

**Answer:** It is admitted that Eclipse Aviation has refused to refund Geiger the one hundred and fifty thousand dollar (\$150,000.00) deposit.

15. Under the terms of the Deposit Agreement, the triggering event for the payment of the invoice (execution of a Purchase Agreement) has not occurred, thereby rendering Eclipse's April 11, 2008 notification to Geiger improper under the Deposit Agreement.

**Answer:** Denied

16. In addition, based on the actual scheduled delivery date, Eclipse's demand for payment was premature and thus Eclipse breached the Deposit Agreement.

**Answer:** Denied

17. Eclipse's improper demand for payment from Geiger constitutes a material breach of the Deposit Agreement.

**Answer:** Denied

18. The Deposit Agreement contains a provision permitting Geiger to cancel the Deposit Agreement and obtain a refund of its deposits "if FAA Part 23 certification of the Eclipse 500 jet occurs after June 30, 2004.

**Answer:** The language in the deposit agreement speaks for itself. To the extent the allegations in paragraph 18 are inconsistent with the language in the document, paragraph 18 is denied.

19. Eclipse did not obtain the necessary FAA certification until late 2006.

**Answer:** Eclipse obtained the full Type Certification for the Eclipse 500 from the Federal Aviation Administration on September 30, 2006.

20. On April 18, 2008, Geiger properly exercised its right to a refund of its \$150,000.00 deposit.

**Answer:** Denied

21. Eclipse has not refunded Geiger's \$150,000.00 deposit.

**Answer:** Admitted

22. Eclipse's refusal to refund Geiger's \$150,000.00 deposit constitutes a material breach of the Deposit Agreement.

**Answer:** Denied

23. As a result of Eclipse's material breaches of the Deposit Agreement, Geiger has suffered damages in the amount of \$150,000.

**Answer:** Denied

WHEREFORE, Defendant Eclipse Aviation Corporation prays that Plaintiff take nothing by way of its complaint.

#### AFFIRMATIVE DEFENSES

Comes now the Defendant, Eclipse Aviation Corporation, by counsel, and by way of its affirmative defenses to Plaintiff's Complaint allege and say as follows:

1. The defendant, Eclipse Aviation Corporation, does not have sufficient minimum contacts with the State of Indiana to be doing business within the State of Indiana. Therefore, it is not subject to the jurisdiction of this Court.

2. On September 30, 2006, Plaintiff was advised that Eclipse Aviation had received Part 23 Type Certificate for the Eclipse 500 from the Federal Aviation Administration and that, pursuant to the Aircraft Deposit Agreement, Plaintiff was required to increase its deposit from \$75,000.00 to \$150,000.00 by October 10, 2006. In

response to said notification, Plaintiff paid an additional \$75,000.00 to Eclipse Aviation Corporation.

3. Plaintiff, by making an additional deposit on the aircraft after being notified in September, 2006 of the FAA Part 23 certification of the Eclipse 500 Jet, has waived its right to cancel the deposit agreement and obtain a refund if said certification occurred after June 30, 2004.

4. On April 18, 2008, when Geiger's invoiced amount of \$773,762.40 was due, the anticipated delivery date for Plaintiff's plane was scheduled for the month of October, 2008 which is six months from the deposit deadline of April 18, 2008. By failing to pay the invoiced amount by April 18, 2008, the Plaintiff's deposits were forfeited pursuant to the terms of the Deposit Agreement.

5. Plaintiff, by its conduct, attempted to repudiate the contract prior to the April 18, 2008 deposit deadline and, therefore, was in breach of contract prior to that time.

WHEREFORE, Defendant prays that Plaintiff take nothing by way of its complaint.

Respectfully submitted,

**ROTHBERG LOGAN & WARSCO LLP**

By: /s/ Mark W. Baeverstad  
Mark W. Baeverstad # 3896 -02  
110 West Berry Street, Suite 2100  
Fort Wayne, Indiana 46802  
Phone: 260/422-9454 Fax 260/422-1622  
Email: *mbaeverstad@rlwlawfirm.com*