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ADMITTED IN KY AND WV

June 3, 2021

Linda C. Bridwell, Executive Director
Public Service Commission
P.O. Box 615
Frankfort, KY 40602

RE: Martin County Water District
PSC Case No. 2021-00154

Dear Ms. Bridwell:

Enclosed please find Notice of Filing Complaint filed on May 27, 2021 in the U.S. District Court, Eastern District of Kentucky, by Xylem Dewatering Solutions, Inc., against the Martin County Water District.

Thank you for your attention to this matter.

Very truly yours,

BRIAN CUMBO

BC/ld

Enclosure

cc: Martin County Water District
Hon. Mary Varson Cromer

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION


In the Matter of:

ELECTRONIC APPLICATION OF)
MARTIN COUNTY WATER DISTRICT)
FOR ALTERNATIVE RATE ADJUSTMENT)

CASE NO. 2021-00154

NOTICE OF FILING

Comes the Martin County Water District, by counsel, and hereby gives Notice of Filing of the attached Complaint filed on May 27, 2021 in the U.S. District Court, Eastern District of Kentucky, by Xylem Dewatering Solutions, Inc., against the Martin County Water District.



BRIAN CUMBO
COUNSEL FOR MARTIN COUNTY
WATER DISTRICT
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INEZ, KY 41224
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CERTIFICATE OF SERVICE

This will certify that a true and correct copy of the foregoing was emailed on this the 3 day of June, 2021, to the following:

Public Service Commission
P.O. Box 615
Frankfort, KY 40602
Ariel.Miller@ky.gov
Brittany.Koenig@ky.gov
Jesse.Fries@ky.gov
Nancy.Vinsel@ky.gov

Hon. Mary Varson Cromer
Appalachian Citizens' Law Center, Inc.
317 Main Street
Whitesburg, KY 41858
mary@appalachianlawcenter.org



BRIAN CUMBO

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
PIKEVILLE DIVISION**

XYLEM DEWATERING SOLUTIONS, INC.)	
)	
Plaintiff)	
vs.)	
)	Case No. _____
)	
MARTIN COUNTY WATER DISTRICT)	
)	
Defendant)	
_____)	

COMPLAINT

Plaintiff, Xylem Dewatering Solutions, Inc. (“Xylem”), for its Complaint against the Martin County Water District (“MCWD”) state as follows:

NATURE OF THE ACTION

1. This action arises out of the MCWD’s failure to pay Xylem for goods and services provided to MCWD at its water treatment and distribution facilities.

THE PARTIES

2. Xylem is a New Jersey corporation with its principal place of business in Rye Brook, New York. Thus, for purposes of federal diversity jurisdiction, Xylem is a citizen of New York and New Jersey. Xylem provides water treatment and distribution services to corporations and municipalities.

3. MCWD is a municipal water treatment and distribution provider organized and incorporated in Kentucky, with its principal place of business in Inez, Kentucky. Thus, for diversity purposes, it is a citizen of Kentucky. MCWD provides utility services to Martin County, Kentucky.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1332 because there is complete diversity of citizenship between the parties and the amounts in controversy exceeds \$75,000.00 exclusive of interest and costs.

5. This Court has personal jurisdiction over MCWD because of it conducts business in Kentucky, and their actions to avoid debts incurred in Kentucky. Further, MCWD has its principal place of business in Kentucky.

6. Venue is proper in this district because the events giving rise to the claim occurred in this district and because MCWD is subject to personal jurisdiction in this district.

STATEMENT OF FACTS

7. Starting in October 2018, Xylem began supplying MCWD with goods and services for its water treatment plant. MCWD's pumps that pull water from the river for treatment broke down. Xylem provided MCWD a temporary means to pull water from the river while MCWD's permanent pumps were repaired. Xylem provided rental pumps, control panels, wire, pipes, hoses, and fitting to MCWD so the MCWD could continue to supply water to its community while its various pumps were being repaired.

8. MCWD was regularly billed for its goods and services. Each and every invoice was due and payable upon receipt.

9. Xylem continued to provide goods and services to MCWD through August 2019. MCWD, despite accepting Xylem's goods and services, failed to pay for the same.

10. MCWD also retained Xylem's equipment left at the water treatment plant. MCWD damaged the equipment.

11. Xylem has demanded payment of the outstanding invoices and for the damaged

equipment. MCWD has failed to make any payment despite the promise to do so.

COUNT I – BREACH OF CONTRACT FOR NON-PAYMENT

12. To the extent not otherwise inconsistent with this Count I, Xylem hereby incorporates by reference the allegations previously set forth in this Complaint.

13. Xylem entered into a valid agreement with MCWD for Xylem to provide goods and services related to water treatment to MCWD in exchange for compensation by MCWD.

14. Xylem provided goods and services to MCWD in accordance with the agreement.

15. Without legal justification or excuse, MCWD materially breached the agreement by failing to pay sums due and owing to Xylem for the goods and services Xylem provided.

16. As a direct and proximate result of MCWD's breach of its agreement with Xylem, Xylem has suffered damages in that it has not been paid for the goods and services it provided.

17. Interest is accruing pursuant to the agreement and the law.

COUNT II-QUANTUM MERUIT

18. In the alternative to Count I, Xylem assert this claim for *quantum meruit*.

19. To the extent not otherwise inconsistent with this Count II, Xylem hereby incorporates by reference the allegations previously set forth in this Complaint.

20. Xylem provided goods and services to MCWD in good faith.

21. MCWD accepted those goods and services with knowledge that Xylem expected to be paid.

22. Xylem sues MCWD for the reasonable value of goods and services provided upon MCWD's promise to pay.

23. Xylem sues MCWD for the reasonable value of the goods and services provided upon MCWD's promise to pay.

24. The amount of \$93,739.10 is the reasonable value of the goods and services provided upon MCWD's promise to pay.

25. The foregoing amounts have been demanded of MCWD, which it has failed to pay.

COUNT III- UNJUST ENRICHMENT/CONSTRUCTIVE TRUST

26. To the extent not otherwise inconsistent with this Count III, Plaintiff hereby incorporates by reference the allegations previously set forth in this Complaint.

27. Xylem conferred a benefit on the MCWD by providing it with valuable goods and services.

28. Xylem's goods and services were rendered under circumstances pursuant to which MCWD knew, or reasonably should have known, that Xylem would expect to be compensated.

29. MCWD has wrongfully and intentionally withheld payments due to Xylem for the goods and services provided by Xylem.

30. By withholding payments from Xylem for the goods and services they received and retained, MCWD has been unjustly enriched.

COUNT IV – ACCOUNT STATED

31. To the extent not otherwise inconsistent with this Count IV, Xylem hereby incorporate by reference the allegations previously set forth in this Complaint.

32. Pursuant to the Agreements with Xylem, MCWD agreed to pay Xylem for the goods and services they supplied to MCWD.

33. Xylem delivered invoices for goods and services rendered by Xylem to MCWD.

34. MCWD has failed to dispute such invoices and have thus acquiesced to the correctness of the amounts invoiced and promised to pay Xylem such amounts.

35. However, MCWD has not paid Plaintiff all of the amounts invoiced.

36. Xylem is entitled to recover damages from MCWD in an amount to be proven at trial.

WHEREFORE, the Xylem requests the following relief:

1. That Xylem be awarded judgment against the MCWD;
2. That Xylem be award judgment for \$93,739.10, plus interest from September 22, 2020 at the statutory rate until the date of judgment, then at the statutory rate of interest from the date of judgment until the judgment is satisfied;
3. Judgment against MCWD in such amount that will fully and justly compensate Xylem for all its injuries and costs;
4. For pre-judgment and post-judgment interest as allowed by law;
5. For reasonable attorney's fees;
6. For all other just and proper relief to which Xylem may appear entitled.

RESPECTFULLY SUBMITTED,

LLOYD & MCDANIEL PLC
W. Scott Stinnett, 91964

/s/ W. Scott Stinnett
P.O. Box 23200
Louisville, Kentucky 40223
(502) 736-4518
sstinnett@lloydmc.com

Counsel for Xylem

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT
for the
Eastern District of Kentucky

XYLEM DEWATERING SOLUTIONS, INC.

Plaintiff(s)

v.

MARTIN COUNTY WATER DISTRICT

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) MARTIN COUNTY WATER DISTRICT
SERVE: JIMMY DON KERR
387 MAIN STREET
SUITE 140 INEZ, KY 41224

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 05/27/2021

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify):* _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: