

Montemayor may be made by delivering a copy of this Counterclaim to Pay Maloney, Jr. in accordance with the provisions of the Federal Rules of Civil Procedure.

3. Barbara Montemayor is a resident and citizen of Bexar County, Texas. Service of this Counterclaim may be made on Barbara Montemayor by delivering a copy of this Counterclaim to Pat Maloney, Jr., her attorney of record in this action, in accordance with the provisions of the Federal Rules of Civil Procedure.

4. This Court has jurisdiction over this matter because it is a compulsory counterclaim to the matters and claims asserted by the Plaintiffs.

5. Venue is proper in this district and this division in that Plaintiffs both reside in the Western District of Texas.

Background Facts

6. In an agreement dated as of December 15, 2000, Carlos and Barbara Montemayor agreed to sell 100% of the stock of Montemayor Y Asociados, Inc. to Don Coleman, Inc. (the "Agreement").

7. The Agreement provides for an initial payment to Carlos and Barbara Montemayor of \$1 million and possible further payments, depending on the financial success of the business of Montemayor Y Asociados, Inc. (the "Earn Out Payment").

8. The Agreement provides in section 1.6 that in the event of a disagreement between the buyers and the sellers over the financial results of Montemayor Y Asociados, Inc. as reflected in the financial statements prepared by the buyer, the parties shall submit the dispute to an accounting firm (the "Accounting Firm") for resolution and the decision of the accounting firm shall be final and binding on the parties. For purposes of the Agreement, Accounting Firm is defined as one of the "Big Five" accounting firms with an office in Dallas, Texas (or such other national accounting firm acceptable to

both Seller's Representative and Buyer).

9. Following its receipt of a disagreement from the Montemayors, Globalhue invoked the provisions of the Agreement, section 1.6.

10. The Montemayors initially refused to agree to any of the Big Five accounting firms acting to evaluate the disagreement over the financial statement results as prepared by Globalhue. The Montemayors eventually agreed to Greg Wolski of Ernst & Young serving to evaluate the dispute but then failed to proceed with providing information to Mr. Wolski and/or Ernst & Young for the evaluation and dispute resolution process set out in section 1.6 of the Agreement.

11. The Montemayors refused to follow the requirements of section 1.6 of the Agreement to obtain a resolution of the dispute which they allege in this action. By filing this action, the Montemayors have failed to comply with the condition precedent of section 1.6 and have breached the agreement.

Causes of Action

First Cause of Action-Declaratory Judgment

12. CounterPlaintiff reasserts and alleges the matters set forth in paragraphs 1-11 above as if set forth in their entirety.

13. The provisions of section 1.6 in the Agreement constitute a condition precedent to the filing of any suit or request for formal arbitration.

14. The Montemayors failure and refusal to participate in the dispute resolution process delineated in section 1.6 of the Agreement constitutes a breach of the Agreement.

15. The Montemayors failure and refusal to participate in the dispute resolution process delineated in section 1.6 of the Agreement also constitutes a bar to their filing suit or seeking formal arbitration.

16. As required by the provisions of the Texas Civil Practices and Remedies Code, 37.001, et seq,

and CounterDefendants over the applicable terms of the Agreement, and specifically whether Plaintiffs/CounterDefendants may pursue their claims by way of this lawsuit or formal arbitration without first fully participating in the dispute resolution process delineated in section 1.6 of the Agreement.

17. CounterPlaintiff, Globalhue requests that the Court enter a declaratory judgment in accordance with Texas Civil Practices and Remedies Code § 37.003 that full and complete compliance with the process set out in section 1.6 of the Agreement constitutes a condition precedent to the filing of any suit or request for formal arbitration. CounterPlaintiff further requests that the Court enter judgment dismissing Plaintiff/CounterDefendants' claims until such time as they have fully and completely complied with the process set out in section 1.6 of the Agreement.

Second Cause of Action-Attorney's Fees

18. CounterPlaintiff Globalhue reasserts and alleges the matters set forth in paragraphs 1-17 above as if set forth in their entirety.

19. CounterPlaintiff Globalhue is entitled to recover all reasonable and necessary attorney's fees incurred in pursuing the claims set out in the request for a declaratory judgment in accordance with the provisions of the Texas Civil Practices and Remedies Code § 37.009 from Plaintiffs/CounterDefendants Carlos Montemayor (the Estate of Carlos Montemayor) and Barbara Montemayor, jointly and severally.

WHEREFORE, Defendant/CounterPlaintiff Don Coleman Advertising, Inc. d/b/a Globalhue, prays that upon hearing and consideration, the Court enter a declaratory judgment in favor of Defendant/CounterPlaintiff which provides:

- a. That full and complete compliance with the process set out in section 1.6 of the Agreement constitutes a condition precedent to the filing of any suit or request for formal arbitration and dismissing Plaintiff/CounterDefendants' claims until such time

as they have fully and completely complied with the dispute resolution process set out in section 1.6 of the Agreement;

- b. An award to Defendant/CounterPlaintiff Globalhue of its reasonable and necessary attorney's fees;
- c. An award to Defendant/CounterPlaintiff Globalhue of its costs of court;
- d. An award to Defendant/CounterPlaintiff Globalhue of post judgment interest on the foregoing amounts at the highest rate permitted by law; and

Such other and further relief to which Defendant/CounterPlaintiff Globalhue is justly entitled or the Court deems proper.

Respectfully submitted,

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BY: 

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Attorneys for Defendants
Don Coleman Advertising, Inc. d/b/a Globalhue,
Don Coleman and Gaye L. Miller

CERTIFICATE OF SERVICE

I hereby certify that the above has been delivered by the method indicated on this the 30th day of August, 2007 to:

Tim Maloney
Paul Campolo
Law Offices of Maloney & Campolo, LLP
900 S.E. Military Drive
San Antonio, Texas 78214

Via telecopy

210-922-2200
210-923-1313 (fax)



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