

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

BESTGUY PROPERTY SERVICES LLC,

Plaintiff,

-against-

DONOVAN PROPERTY SERVICE INC.,
and ANTHONY DONOVAN a/k/a THOMAS
ANTHONY DONOVAN

Defendants.

Index No.: 650853/2022

**For the Issuance of an Arizona
Subpoena under Ariz. R. Civ. P.
45.1**

SUBPOENA DUCES TECUM

THE PEOPLE OF THE STATE OF NEW YORK

TO: FacilitySource, LLC also operating as CBRE, Inc.
2020 North Central Avenue, Suite 1200
Phoenix, Arizona 85004

GREETINGS:

WE COMMAND YOU THAT all business and excuses be laid aside, you produce at the offices of Bronster LLP, 156 West 56th Street, Suite 902, New York, New York 10019 on or before **October 10, 2022**, or any agreed to adjourned date, the following documents listed on the attached Schedule A that are in your custody. A copy of the Amended Complaint and Answer in this action are annexed hereto as Exhibit "1".

Failure to comply with this subpoena is punishable as a contempt of Court and shall make you liable to the person on whose behalf this subpoena was issued for a penalty not to exceed fifty dollars (\$50.00) and all damages sustained by your failure to comply.

Dated: New York, New York
September 1, 2022

BRONSTER LLP

By: _____


Don Abraham, Esq.

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New York, New York 10019

(212) 558-9300

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Attorneys for Plaintiff

To: Freeman Mathis & Gary, LLP
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Philadelphia, PA 19103-7401
215-219-0392
Attention: Nicholas J. Hubner, Esq.
Nicholas.hubner@fmglaw.com
Attorneys for Defendants

SCHEDULE A

SUBPOENA DUCES TECUM TO FACILITYSOURCE, LLC a/o/a CBRE, INC.

Production of documents should be made in compliance with the definitions and instructions below.

DEFINITIONS

1. *Communication.* “Communication” means any transmittal of information in the form of facts, ideas, or inquiries, whether orally, in writing or by electronic means such as e-mail or pager.

2. *Document.* The term “Document” means writings, e-mails, drawings, graphs, charts, photographs, phone records, and other data compilations from which information can be obtained, translated, if necessary, through detection devices into reasonably usable forms, including, without limitation, electronic or computerized data compilations. A draft of non-identical copy is a separate document within the meaning of this term.

3. *Parties.* The terms “plaintiff” and “defendant” as well as a party’s full or abbreviated name or a pronoun referring to a party mean the party, and where applicable, its officers, directors, employees, agents, representatives, partners, corporate parent, subsidiaries, predecessors, or affiliates.

4. *Concerning.* The term “concerning” shall mean relating to, referring to, describing, evidencing, or constituting.

5. *All/Each.* The term “all and “each” shall be construed as all and each.

6. *And/Or.* The connectives “and”, “or” and “and/or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of this request for production of documents all responses that might otherwise be construed to be outside of its scope.

7. *Number.* The use of the singular form of any word includes the plural and vice versa.

8. *Donovan Property.* References to “Donovan Property” means Donovan Property Service Inc. (the Defendant in this action), and its present or former officers, directors, partners, shareholders, employees, agents, subsidiaries, affiliates, predecessors, successors, parents, and divisions thereof, and any attorney or third party acting on its behalf.

9. *Anthony Donovan.* References to “Anthony Donovan” means Anthony Thomas Donovan a/k/a Thomas Anthony Donovan (a Defendant in this action) and any attorney or third party acting on its behalf.

10. *FacilitySource.* References to “FacilitySource” means FacilitySource, LLC a/o/a CBRE, Inc. and their present or former officers, directors, partners, shareholders, employees, agents, subsidiaries, affiliates, predecessors, successors, parents, and divisions thereof, and any attorney or third party acting on their behalf.

INSTRUCTIONS

11. If any of the requested documents cannot be produced, please produce responsive documents to the extent possible, specifying the reasons for your inability to produce the remainder and stating whatever information, knowledge or belief

you have concerning those documents not produced, including, without limitation, the circumstances of their destruction or disappearance.

12. For each document withheld from production under a claim of privilege, including attorney-client privilege or the work product doctrine, provide a statement setting forth as to each document:

- (a) The nature of the privilege asserted;
- (b) The name, title and affiliation of the author(s);
- (c) The name, title and affiliation of each person to whom the document was addressed;
- (d) The name, title and affiliation of each person to whom a copy of the document was provided;
- (e) The date of the document;
- (f) The number of pages;
- (g) A description of the nature and subject matter of the document in detail sufficient to identify the type of document and to explain the basis for the assertion of privilege; and
- (h) The location of the original and each copy of the document.

13. Responsive documents shall be produced in the manner in which they are maintained in the ordinary course of business. A request for a document shall be deemed to include a request for any and all file folders within which the document was contained, transmittal sheets, cover letters, exhibits, enclosures, and attachments to the document, in addition to the document itself.

14. Documents attached to each other should not be separated.

15. Documents not otherwise responsive to this document request shall be produced if such documents mention, discuss, refer to, or explain the documents that are called for by this request.

16. Each request for the production of documents shall be deemed to be continuing in nature and if at any time, additional documents come into your possession, custody or control or are brought to your attention, prompt supplementation of your response to those requests is required.

Documents Requested

1. All Communications (including emails) between Donovan Property and FacilitySource concerning payment and/or payment issues for snow and ice removal work performed in the State of New Jersey for the 2020-21 winter season for each of the stores and property addresses in New Jersey set forth in Schedule B below.

2. All Communications (including emails) between Anthony Donovan and FacilitySource concerning payment and/or payment issues for snow and ice removal work performed in the State of New Jersey for the 2020-21 winter season for each of the stores and property addresses in New Jersey set forth in Schedule B below.

3. All Documents concerning payment by FacilitySource to Donovan Property for snow and ice removal work performed in the State of New Jersey for the 2020-21 winter season for each of the stores and property addresses in the State of New Jersey set forth in Schedule B below.

SCHEDULE B

Client	Store Name	Address	City	State	Zip
Facility Souce	DTREE	505 Piaget Ave,	Clifton	NJ	07011
Facility Souce	DTREE	13 Washington Ave,	Belleville	NJ	07109
Facility Souce	DTREE	352 Central Avenue,	East Orange	NJ	07018
Facility Souce	FAMD	494 MARTIN LUTHER KING BLVD	East Orange	NJ	07018
Facility Souce	FAMD	142 3RD STREET	Elizabeth	NJ	07206
Facility Souce	FAMD	450 N BROAD STREET	Elizabeth	NJ	07208
Facility Souce	FAMD	550 S BROAD STREET	Elizabeth	NJ	07202
Facility Souce	FAMD	438 E JERSEY ST,	Elizabeth	NJ	07206
Facility Souce	T-Mobile	2199 Fletcher Ave	Fort Lee	NJ	07024
Facility Souce	FAMD	453 MAIN ST,	Hackensack	NJ	07601
Facility Souce	VSI	312 Washington st	Hoboken	NJ	
Facility Souce	T-Mobile	2836 Kennedy Blvd	Jersey City	NJ	07306
Facility Souce	Pep Boys	2958 JFK Blvd	Jersey City		
Facility Souce	FAMD	360 Martin Luther King JR. Dr.,	Jersey City	NJ	07305
Facility Souce	FAMD	504 Bergen Ave,	Jersey City	NJ	07304
Facility Souce	DTREE	125 Essex Street,	Maywood	NJ	07607
Facility Souce	T-Mobile	149 Market Street	Newark	NJ	07102
Facility Souce	FAMD	976 BERGEN STREET	Newark	NJ	07112
Facility Souce	DTREE	189 Springfield Avenue,	Newark	NJ	07103
Facility Souce	FAMD	131 Clinton Ave.,	Newark	NJ	07112
Facility Souce	DTREE	100 Franklin Ave,	Nutley	NJ	07110
Facility Souce	T-	276 Main Street	Orange	NJ	07050

Source	Mobile				
Facility					
Source	FAMD	605 SCOTLAND ROAD	ORANGE	NJ	07050
Facility					
Source	PepBoys	234 Scotland	Orange	NJ	
Facility					
Source	VSI	E 137 Rt 4 W	Paramus	NJ	07652
Facility					
Source	FAMD	215 WASHINGTON PL,	PASSAIC	NJ	07055
Facility					
Source	DTREE	37 W Broadway,	Paterson	NJ	07505
Facility					
Source	FAMD	181 STRAIGHT STREET	Paterson	NJ	07501
Facility					
Source	FAMD	7 E WESTFIELD AVE,	ROSELLE PARK	NJ	07204
Facility	T-		West New		
Source	Mobile	5717 Bergenline Ave	York	NJ	07093
Facility					
Source	DTREE	117 Kinderkamack Rd,	Park Ridge	NJ	07656

EXHIBIT 1

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

BESTGUY PROPERTY SERVICES LLC,

Plaintiff,

-against-

DONOVAN PROPERTY SERVICE INC.,
and ANTHONY DONOVAN a/k/a THOMAS
ANTHONY DONOVAN

Defendants.

Index No.: 650853/2022

AMENDED COMPLAINT

Plaintiff, BestGuy Property Services LLC (“Plaintiff” or “BestGuy”), by and through its attorneys, Bronster LLP, as and for its Amended Complaint against defendants Donovan Property Service Inc. (“Donovan Property”) and Anthony Donovan a/k/a Thomas Anthony Donovan (“Donovan”) (collectively “Defendants”), alleges as follows:

NATURE OF THE ACTION

1. This is a breach of contract and an account stated action to recover the sum of \$238,132.71, the aggregate amount of all outstanding invoices owed by Defendants to BestGuy. Defendants subcontracted BestGuy to perform commercial snow removal and de-icing work at commercial properties of Defendants’ customers at various locations in New Jersey. BestGuy submitted 55 invoices for the snow removal work and de-icing work it performed for the Defendants in the 2020-2021 winter season pursuant to its subcontract agreement with Defendants. The 55 invoices totaled \$357,7171.71 for the work performed, but Defendants only made six payments to BestGuy from February 11, 2021 to July 9, 2021 amounting to a total of \$119,585.00. This left a balance due to BestGuy in the amount of \$238,132.71. Despite due demand for payment, and acknowledgement by Defendants that they owe money to BestGuy for

the work it performed, and despite repeated promises by Defendants that payment would be forthcoming, Defendants have failed to pay the \$238,132.71 due to BestGuy.

2. Additionally, Defendants failed to pay BestGuy significant sums of money due for the work BestBuy performed in the 2019-2020 winter season. The number of unpaid invoices for the 2019-2020 winter season is yet to be determined.

PARTIES, JURISDICTION, AND VENUE

3. BestGuy is a New Jersey Limited Liability Company with its office located at 280 North Midland Avenue, Building S1, Saddle Brook, New Jersey 07663.

4. Upon information and belief, Donovan Property is a Delaware Corporation with its headquarters located at 306 Pleasant Avenue, New York, New York 10035.

5. Upon information and belief, despite having its principal headquarters in New York State, and despite operating its business activities in New York and New Jersey, Donovan Property is not authorized to do business in the State of New York or the State of New Jersey.

6. Upon information and belief, Donovan is an individual who operates his snow removal and de-icing business operations from the location he owns at 306 Pleasant Avenue, New York, New York 10035.

7. Upon information and belief, despite performing his work in New York and New Jersey, Donovan incorporated Donovan Property in Delaware and never obtained authorization for Donovan Property to do business in New York and New Jersey.

8. Upon information and belief, Donovan uses Donovan Property in New York and New Jersey as a front for Donovan to conduct his personal snow removal and de-icing business and to fraudulently evade creditors.

9. Upon information and belief, Donovan exercises complete control and dominion over Donovan Property and in doing so Donovan deliberately undercapitalizes Donovan Property, co-mingles funds of Donovan and Donovan Property, fails to maintain corporate formalities for Donovan Property, all the for the improper and fraudulent purpose of evading the creditors of Donovan and to avoid paying Donovan’s vendors, such as BestGuy, who perform snow removal and de-icing work for Donovan.

10. By reason of the foregoing, Donovan and Donovan Property should be viewed as one entity, and Donovan should be liable for the contractual obligations of Donovan Property.

11. Jurisdiction and venue are appropriate in the State and County of New York as Defendant maintains its principal place of business in New York County, New York.

FACTS COMMON TO ALL CAUSES OF ACTION

12. In or about 2019, Defendants and BestGuy entered into an oral sub-contract agreement whereby BestGuy would perform commercial snow removal and de-icing services for Defendants’ customers that were in the State of New Jersey (the “Agreement”).

13. The terms of the Agreement were as follows. Defendants would provide BestGuy with a list of its customers in New Jersey that needed commercial snow removal and/or de-icing services. When a snow event occurred or was anticipated to occur, and snow removal and/or de-icing services were needed, BestGuy would perform the snow removal and/or de-icing services for each of the Defendants’ customers at the agreed upon price set by Defendants for each customer. When the work was completed by BestGuy, it would provide Defendants with an email or text confirmation that the work was performed by sending Defendants a photo of the completed work for each customer. The price for the work performed by BestGuy under the

Agreement was 80% of the price Defendants would bill its customer for the work performed, and Defendants would then keep the remaining 20% of the set price for themselves.

14. Pursuant to the Agreement, from September 2020 through September 2021 (the “2020-2021 Winter Season”) BestBuy performed substantial snow removal and de-icing services for Defendants, and at Defendants’ request, sent the Defendants 55 invoices detailing the work BestGuy performed and the amount due to BestGuy for that work (80% of the price charged by Defendants to its customer for each job performed). The total for these 55 invoices amounted to \$357,717.71. A copy of Customer Balance Detail Report that details the running aggregate receivables due and provides the dates of each invoice is annexed hereto as Ex. A, and is incorporated herein by reference.

15. The only payments BestGuy received for all the work it performed during the 2020-2021 Winter Season were as follows: (1) \$15,000 on February 11, 2021; (2) \$15,000 on February 26, 2021; (3) \$20,000 on March 5, 2021; (4) \$7,000 on April 27, 2021; (5) \$27,585 on May 25, 2021; and (6) \$35,000 on July 9, 2021. A summary list of these six wire payments are annexed hereto as Ex. B. These payments all add up to a total of \$119,585.00, leaving an unpaid balance for the work performed by BestGuy in the 2020-2021 Winter Season of \$238,132.71.

16. Defendants have acknowledged in writing the receipt of all the invoices and have admitted it owes money to BestGuy but has fabricated all sorts of excuses to delay and avoid payment.

17. BestGuy has made multiple demands for payment of the total \$238,132.71, and Defendants responded with promises that payment would be forthcoming, however, to date, except for the six wire payments set forth in Ex. B hereto, no payment was ever made for any of the outstanding invoices listed in Exhibit A hereto.

FIRST CAUSE OF ACTION
(Breach of Contract Against Defendants)

18. Plaintiff repeats and realleges the allegations contained in paragraphs “1” through “17” above as if set forth at length herein.

19. BestGuy has complied with all its obligations under the Agreement.

20. BestGuy has duly demanded payment of all unpaid invoices currently due and owing by Defendants under the Agreement in the amount of \$238,132.71 for the work BestGuy performed during the 2020-2021 Winter Season.

21. In breach of its obligations to pay BestGuy invoices for the snow removal and de-icing work it performed for Defendants, Defendants failed and refused to pay the full amount due and owing to BestGuy.

22. BestGuy has suffered monetary damages in an amount not less than \$238,132.71, plus 9% interest per annum commencing on the date of breach of each invoice due date, plus costs of suit.

SECOND CAUSE OF ACTION
(Account Stated against Defendants)

23. Plaintiff repeats and alleges each of the allegations contained in paragraphs “1” through “17”.

24. The invoices set forth in Ex. A hereto shows the amount due and owing to BestGuy in the aggregate amount of \$238,132.71.

25. Defendants had failed to object to any invoice listed in Ex. A, which was sent to Defendants in connection with the agreed to snow removal and de-icing work performed by BestGuy under the Agreement and during the course of their business dealings.

19. Despite receiving demand for payment, and after acknowledging the debt due, Defendants failed to pay or dispute any part of its outstanding balance due to BestGuy.

20. BestGuy has suffered monetary damages in an amount not less than \$238,132.71, plus 9% interest thereon, and costs of suit.

THIRD CAUSE OF ACTION
(Quantum Meruit and Unjust Enrichment against Defendants)

21. Plaintiff repeats and alleges each of the allegations contained in paragraphs “1” through “17”.

22. BestGuy provided substantial and valuable wines to Defendants, at Defendants’ request for making such purchases.

23. By failing to pay for the snow removal and/or de-icing services performed by BestGuy, Defendants were unjustly enriched.

24. As a direct result of the foregoing, Defendants are liable in *quantum meruit* and unjust enrichment for the reasonable value of the services it performed for Defendants in an amount to be determined at trial, but in no event less than \$238,132.71, plus 9% interest thereon, and costs of suit.

FORUTH CAUSE OF ACTION
(Breach of Contract Concerning the 2019-2020 Winter Season against Defendants)

25. Plaintiff repeats and alleges each of the allegations contained in paragraphs “1” through “17”.

26. BestGuy also performed significant snow removal and/or de-icing work for Defendants under the Agreement in the 2019-2020 winter season from in or about September 2019 to September 2020 (the “2019-2020 Winter Season”).

27. Best Guy complied with all its obligations under the Agreement for the work it performed in the 2019-2020 Winter Season.

28. Defendants breached its obligations to pay BestGuy for all the work it invoices for the snow removal and de-icing work it performed for Defendants in the 2019-2020 Winter Season.

29. BestGuy has suffered monetary damages in an amount to be determined at trial, plus 9% interest thereon, and costs of suit.

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

- A. In an amount not less than \$238,132.71, plus 9 % interest thereon, and costs of suit on the First Cause of Action;
- B. In an amount not less than \$238,132.71, plus 9% interest thereon, and costs of suit on the Second Cause of Action;
- C. In an amount not less than \$238,132.71, interest thereon, and costs of suit on the Third Cause of Action; and
- D. In an amount to be determined at trial, plus 9 % interest thereon, and costs of suit on the Fourth Cause of Action

Dated: New York, New York
June 29, 2022

BRONSTER LLP

By: _____

Don Abraham, Esq.

156 West 56th Street, Suite 902
New York, New York 10019
(212) 558-9300
Attorneys for Plaintiff

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

BESTGUY PROPERTY SERVICES LLC,

Plaintiff,

v.

**DONOVAN PROPERTY SERVICE, INC.,
et al.**

Defendant.

INDEX NO.: 650853/2022

**ANSWER TO AMENDED
COMPLAINT**

Defendants Donovan Property Service, Inc., and Anthony Donovan a/k/a Thomas Anthony Donovan, (collectively “Donovan”), by and through their attorneys Freeman Mathis & Gary, LLP, as and for their Answer to Plaintiff’s, Bestguy Property Services, LLC, Complaint aver and allege as follows:

FIRST: Deny each and every allegation and conclusion of law, to the extent a response is required, contained in paragraphs “1”, “2”, “4”, “5”, “6”, “7”, “8”, “9”, “10”, “12”, “13”, “14”, “16”, “17”, “18”, “19”, “20”, “21”, “22”, “23”, “24”, “25”, “19” (sic), “20” (sic), “21” (sic), “22” (sic), “23” (sic), “24” (sic), “25” (sic), “26”, “27”, “28”, and “29”.

SECOND: Deny any knowledge or information sufficient to form a belief as to the allegations contained in paragraphs “3”.

THIRD: The allegations contained in paragraph “11” were addressed via stipulation of the parties (NYSECF Doc. No. 7).

FOURTH: In response to paragraph “15” Defendants admit only that Plaintiff has been paid in full and is otherwise satisfied for any work performed and denies any and all remaining allegations and conclusions of law contained therein.

AS AND FOR A FIRST SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE

FIFTH: Plaintiff has been paid in full for all services that were timely and properly performed or provided.

AS AND FOR A SECOND SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE

SIXTH: Plaintiff's damages, if any, should be diminished to the extent plaintiff failed to mitigate its damages or otherwise perform proper services.

AS AND FOR A THIRD SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE

SEVENTH: Plaintiff's acceptance of prior payment by defendant(s) constitutes an accord and satisfaction thereby precluding plaintiff's claim for damages.

AS AND FOR A FOURTH SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE

EIGHTH: Plaintiff's claim for damages at this late date constitutes laches and therefore said claim for damages should be denied.

AS AND FOR A FIFTH SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE

NINETH: Plaintiff has failed to name other necessary parties to the litigation.

AS AND FOR A SIXTH SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE

TENTH: Plaintiff has failed to state a claim upon which relief may be granted.

AS AND FOR A TENTH SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE

ELEVENTH: Any payment allegedly due to Plaintiff was conditioned upon receipt of payment in full from defendants' customer and Plaintiff expressly waived any right or claim to payment which was not first paid in full to defendants.

AS AND FOR AN ELEVENTH SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE

TWELFTH: Plaintiff's speculative, uncertain and/or contingent damages, if any, have not accrued and are not recoverable.

WHEREFORE, the Defendants Donovan Property Service, Inc., and Anthony Donovan
a/k/a Thomas Anthony Donovan, demand:

- (1) judgment dismissing the plaintiff's complaint, with costs;
- (2) judgment in defendants' favor on defendants' counterclaims, with costs;
- (3) that the ultimate rights of the parties be determined as and between themselves,

together with the costs and disbursements of this action.

Dated: August 22, 2022
Philadelphia, PA

FREEMAN MATHIS & GARY, LLP

By: s/Nicholas J. Hubner
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