

STATE OF VERMONT

SUPERIOR COURT
CHITTENDEN UNIT

CIVIL DIVISION
DOCKET NO. _____

Hanksville Hemp, LLC,
Plaintiff,

v.

VT/CBD Labs, LLC,
Defendant

COMPLAINT

NOW COMES Hanksville Hemp, LLC, ["Hanksville Hemp"] which states for its Complaint the following:

1. Plaintiff, Hanksville Hemp is a Vermont LLC with its principal place of business in Fletcher, VT, 05444 and farming operations in Huntington, Vermont.
2. Defendant, VT/CBD Labs, LLC ["VT/CBD Labs"] is a Vermont LLC with its principal place of business in Winooski, Vermont.
3. As a practical matter, VT/CBD Labs is managed by Jeffry Knight, a resident of Florida, who makes all business decisions of any significance for the company.
4. On or about March 21, 2019, Hanksville Hemp and VT/CBD Labs entered into a contract.
5. The contract called for VT/CBD Labs to supply 32,000 seeds/seedlings/germinated seedlings of industrial hemp to Hanksville Hemp at a cost of \$32,000. The cost was later reduced to \$21,905 because of VT/CBD Labs' inability fully to perform.
6. In exchange for the germinated plants/seeds Hanksville Hemp agreed that VT/CBD Labs would be Hanksville Hemp's exclusive processor for its hemp crop in 2019.

7. The contract called for Hanksville Hemp to deliver hemp with a CBD content at or above 8%.
CBD is an abbreviation of the word cannabidiol. CBD is one of the many compounds found in the hemp plant, but CBD has no psychoactive effects.
8. At the end of the 2019 growing season, on September 16, 2019, samples of hemp taken by Defendant VT/CBD Labs from Hanksville Hemp's crop tested at 18.33% and 12.42% for CBD.
9. Hanksville Hemp's hemp was certified organic hemp, which increased its market value, although it increased the burden on the Plaintiff to produce it.
10. Hanksville Hemp harvested its 2019 organic hemp crop and the last delivery of hemp from Hanksville Hemp was completed in Winooski on October 23, 2019.
11. The final dried weight of Hanksville Hemp's hemp was 6,989 pounds.
12. Hanksville Hemp's 2019 crop [collectively referred to as "biomass"] was accepted by VT/CBD Labs without reservation.
13. VT/CBD Labs did not provide any funding for Hanksville Hemp's harvest. All planting, cultivation and harvest costs were paid by Hanksville Hemp.
14. In fact, Hanksville Hemp's operating costs and harvest costs were completely paid for by the principals of Hanksville Hemp, to their economic damage, as set forth herein. Plaintiff's costs were facilitated by business loans arranged, as many Vermont farmers do, through Yankee Farm Credit.
15. Per their contract with VT/CBD Labs, Hanksville Hemp agreed to be in what VT/CBD Labs called its "Farming Partners Payment Program." This meant:
 - a. Hanksville Hemp "allow[ed] VT/CBD Labs to dry the biomass extract the CBD to produce CBD Isolate, and sell the Isolate at a fair market rate after processing."

- b. "Each Farmer in the payment program [gets] an equal share of the 50% contribution¹ by VT/CBD Labs in the form of a check each week. For example, if the gross revenue is \$500,000 per week, then the Farming Partners fund will have a \$250,000 contribution by VT/CBD Labs. If the Farming Partners payment program consists of 20 members, each member would receive a \$12,500 payment for the week."
 - c. "All Fanners receive an equal dispersement [sic] from the Farming Partners fund weekly."
 - d. "As smaller Famers get paid off, the remaining Farmers will receive a larger percentage of the Farming Partners fund each week."
 - e. "Farmers will continue to get weekly payments until they are paid in full for their portion of CBD Isolate extracted from their biomass that has been sold by VT/CBD Labs."
16. VT/CBD Labs agreed in the contract unconditionally to dry Hanksville Hemp's 2019 crop, extract CBD, produce CBD Isolate, and sell the Isolate at a fair market rate after processing.
17. CBD isolate is pure CBD, that is, cannabidiol and nothing else.
18. VT/CBD Labs processed Hanksville Hemp's biomass and dried it.
19. VT/CBD Labs processed Hanksville Hemp's crop by chopping it into small pieces, which changed its characteristics to make it less easy to sell to other intermediaries and then dried the hemp in a commercial dryer at a temperature that was too high.
20. Drying hemp at too high a temperature will reduce the CBD content. This fact was called to the attention of VT/CBD Labs by Hanksville Hemp, when it became aware of the temperature at which the drying was being conducted. Notwithstanding this notice by Hanksville Hemp,

¹ By agreement, Hanksville Hemp agreed to a 60/40% split instead of a 50/50% division.

VT/CBD Labs either ignored the message or was unable to configure the dryer properly to dry hemp at a proper temperature.

21. As a result of processing and improper drying, the CBD content of Hanksville Hemp's hemp was markedly reduced. Testing in May and August, 2020, revealed that the CBD level in Hanksville Hemp's hemp after processing and drying was below the 8% required by the contract.
22. Notwithstanding the terms of the contract that called for VT/CBD Labs to produce and sell CBD Isolate, Mr. Knight at some point after October 23, 2019, decided unilaterally to produce CBD Distillate from farmer biomass and sell it instead of CBD Isolate.
23. CBD distillate is an extraction of many compounds from the hemp plant, including CBD and including other cannabinoids.
24. As set out below, however, VT/CBD Labs never produced any CBD Isolate or Distillate.
25. VT/CBD Labs acted deceptively. After taking delivery of Hanksville Hemp's 2019 crop, VT/CBD Labs tried to change the terms of the contract with Hanksville Hemp and other famers.
26. For example, VT/CBD Labs tendered a new contract to farmers in November, 2019, even though Hanksville Hemp and other farmers had already performed. Hanksville Hemp refused to sign it.
27. In another example, Payment terms under the contract contemplated frequent, periodic payments to farmers, including Hanksville Hemp and Hanksville Hemp's financial security depended on getting a revenue stream after the 2019 crop was sold. *Viz:*
 - a. VT/CBD Labs agreed to pay Hanksville Hemp up to 50% of the revenue generated weekly from all of its CBD Isolate sales.

- b. Hanksville Hemp was to share in the weekly revenue generated by sales of CBD from biomass comingled from deliveries from all farmers under contract to VT/CBD Labs, as set out in the parties' agreement.
- c. Mr. Knight stated in a letter to Hanksville Hemp and other Vermont farmers dated September 16, 2019, "This was the original deal that you all signed that will pay you on a monthly basis based upon the sales of extracts by VT-CBD Labs."
- d. Notwithstanding Mr. Knight's foregoing statement about "monthly" payment, according to the contract, Hanksville Hemp "was to get weekly payments until ... paid in full for their portion of CBD Isolate extracted from their biomass that has been sold by VT/CBD Labs."

28. No payments, weekly or monthly, were made by VT/CBD Labs, which did not communicate openly with Hanksville Hemp, and, when it did, VT/CBD Labs did so deceptively.

29. For example, on November 16, 2019, Julia Pearl, an agent of VT/CBD Labs, wrote to Hanksville Hemp,

"Our large extraction system is being installed and that will increase our production to over 50,000 pounds per week. We are hoping this system is finalized in the coming weeks. We are still aiming to have sales starting in December and distribute the first farmer payments shortly thereafter."

30. This November 16, 2019, statement was deceptive because no biomass had been processed at all and there were no sales. Ms. Pearl had, just before writing the November 16, 2019 communication, orally informed Hanksville Hemp that there had been no sales and VT/CBD Labs did not know when it would make sales.

31. By letter to Hanksville Hemp dated March 18, 2020, Defendant's agent, Julia Pearl wrote,

"We understand you and many of our Farming Partners are under pressure, for loan payments, and debts regarding the 2019 Hemp Grow season. We appreciate your continued patience in our payment schedules. As you know many factors have played a role, especially with being in the Hemp market, which continuously

changes. Our goal is to start making partial payments to our Farming Partners come April 2020.”

32. Ms. Pearl’s March 18, 2020, letter implied that sales of CBD Isolate or Distillate had been made, otherwise, there would be no sales proceeds from which to “start making partial payments.” This was a deceptive statement because VT/CBD Labs had made no sales and was holding Hanksville Hemp’s hemp in its warehouse.
33. Notwithstanding Ms. Pearl’s March 18, 2020, letter, VT/CBD Labs did not make any payments, partial or otherwise, to Hanksville Hemp.
34. Although VT/CBD Labs said that it hoped to start making payments in April, 2020, the Defendant never provided any information to Hanksville Hemp after March 18, 2020, about its sales nor about its intention to begin revenue-sharing payments with Hanksville Hemp or any other farmers.
35. Meanwhile, Hanksville Hemp’s business loans became past due.
36. On May 8, 2020, Hanksville Hemp, asked, through counsel, for an accounting of sales of CBD Isolate or Distillate and asked for revenue-sharing payments to begin.
37. In response, VT/CBD Labs stated, through counsel, that it in reality it had made no sales of any stored biomass, nor any CBD isolated or distilled from warehoused biomass. This was confirmed by letter from counsel for Hanksville Hemp dated June 16, 2020.
38. All of Hanksville Hemp’s biomass is said still to be stored by VT/CBD Labs in Winooski.
39. VT/CBD Labs has, by its actions, kept Hanksville Hemp’s 2019 crop, and the hemp of other Vermont farmers, in its warehouse indefinitely in order to sell it or products derived from it when there is a favorable market to do so.
40. VT/CBD Labs has no present plans to sell Hanksville Hemp’s 2019 crop or to sell any products derived from it.

41. The quality of Hanksville Hemp's 2019 crop, already damaged by drying improperly, will continue to deteriorate during prolonged storage.

WHEREFORE, HANKSVILLE HEMP PLEADS IN THE ALTERNATIVE:

1. VT/CBD Labs, has, by keeping Hanksville Hemp's 2019 crop until it could get what it considers to be a favorable price for the hemp or products derived from it, by chopping and homogenizing the biomass, by drying it too hot and changing its CBD content and by treating it as its own asset instead of selling it or products derived from it, converted Hanksville Hemp's 2019 crop and must, therefore, pay a reasonable price for the product as it existed when the conversion took place.
2. VT/CBD Labs has breached its contract and must pay damages for the breach.
3. On June 8, 2020, Hanksville Hemp, through counsel, sent VT/CBD Labs a letter asking for assurance of contract performance. The letter stated in part:

Please provide assurance in writing that VT/CBD Labs will perform its obligations under the contract by selling hemp produced its farmers and distributing revenue in accordance with the contract with Hanksville Hemp. Please provide a timetable for sales to start and distribution of funds to begin.
4. VT/CBD Labs never responded in writing to this letter. According to 9A V.S.A. 609(4), the failure to respond constituted a repudiation of the contract between VT/CBD Labs and Hanksville Hemp.
5. VT/CBD Labs has, by its conduct with the property of Hanksville Hemp and its pattern of deceptive communication, acted unfairly and deceptively. Hanksville Hemp is entitled to no less than three times the value of its 2019 crop, plus attorney's fees and costs, all as provided for by Title 9, chapter 63 of the Vermont Statutes.

WHEREFORE, HANKSVILLE HEMP PRAYS THE COURT:

1. Declare that VT/CBD Labs has repudiated the contract, converted Hanksville Hemp's 2019 crop and must pay the fair market value for it, set such amount from the evidence and enter judgment in favor of Hanksville Hemp; or
2. Award Hanksville Hemp damages consisting of revenue-sharing proceeds due to Hanksville Hemp under its contract, if VT/CBD Labs has had sales of CBD distillate, isolate or hemp; and
3. Enter judgement in its favor, together with attorney's fees, exemplary damages as provided by statute and costs, and all other such relief as to which Hanksville Hemp is entitled in law or in equity.

DATED at Burlington, Vermont this 6th day of October, 2020.

HANKSVILLE HEMP, LLC

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