

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

APPLIED ENERGY TECHNOLOGIES, INC.

Plaintiff

Case No.: _____

vs.

Hon. _____

SOLAR LIBERTY ENERGY SYSTEMS, INC. Magistrate Judge _____

Defendant.

JURY TRIAL DEMANDED

Thomas N. Young (P22656)
Christopher G. Darrow (P67196)
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Attorneys for Plaintiff
Applied Energy Technologies, Inc.

COMPLAINT

NATURE OF THE LAWSUIT

1. This is an action for defamation and a declaratory judgment, pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, that Plaintiff Applied Energy Technologies, Inc. has not breached a non-disclosure agreement.

PARTIES

2. Plaintiff Applied Energy Technologies, Inc. (“AET”) is a company organized and existing by virtue of the laws of the State of Michigan with its principal place of business at 9537 Sandpiper Lane, Saline, Michigan 48176.

3. AET is a startup engineering company that is in the business of, among other things, designing and manufacturing “racking systems” to support solar panels that are used to provide electricity at homes, business, and other locations.

4. AET has most of its operations in the metropolitan Detroit area. AET plans to expand its operations and employ currently unemployed automotive workers in the renewable energy industry, including employing people in the areas of engineering, human resources, sales, purchasing, and administrative functions. AET has purchased manufacturing equipment and will be manufacturing its solar panel racking system in Michigan.

5. Defendant Solar Liberty Energy Systems, Inc. (“Defendant”) is a company organized and existing by virtue of the laws of the State of New York with its principal place of business in Williamsville, New York 14221.

6. Defendant is a distributor and installer of renewable energy technologies, including solar panels for use on buildings.

7. On its web site, the Defendant advertises that although it is headquartered in “Buffalo, New York,” it “has a presence throughout North America.”

JURISDICTION AND VENUE

8. Defendant signed the “Confidentiality and Non-Disclosure Agreement” that is attached as Exhibit A (hereinafter “NDA”). The NDA provides that any lawsuit alleging breach of the NDA by AET shall be brought in AET’s “home jurisdiction.” (NDA at ¶ 4, Ex. A.)

9. Subject matter jurisdiction is proper under 28 U.S.C. § 1332 because the citizenships of the parties are diverse and the amount in controversy exceeds the sum of \$75,000 exclusive of interest and costs.

10. This Court has personal jurisdiction over the Defendant because the Defendant has minimum contacts with Michigan and this judicial district.

11. Venue is proper in this district because the Defendant resides within this judicial district within the meaning of 28 U.S.C. § 1391(c) and/or because a substantial part of the events giving rise to the claims occurred in Michigan. The Defendant agreed to venue in this judicial district by the terms of the NDA which is at issue in this case. (NDA at ¶ 4, Ex. A.)

FACTS

12. On November 17, 2008, Aaron Faust and Adam Harris, then employees of Latitude Energy Structures, LLC (“Latitude”), made a sales visit to the Defendant to see if there was an opportunity for Latitude to design and sell products to the Defendant. At the November 17, 2008 meeting, Defendant told the Latitude employees that there was an opportunity for Latitude to design and supply a generic ballasted racking system that would hold solar panels on the roof of a building.

13. At the November 17, 2008 meeting and in a subsequent telephone call on November 19, 2008, the Defendant set general specifications and design goals that Latitude would need to achieve in designing a ballasted solar panel racking system. It was up to Latitude to design a product that met Defendant’s specifications and was acceptable to the Defendant.

14. After the November 17, 2008 meeting, Latitude assigned its engineers John Harberts and John Klinkman to design a generic ballasted solar panel racking system that met the Defendant’s specifications.

15. Mr. Harberts and Mr. Klinkman are accomplished engineers who have been named inventors on at least fifteen issued patents, including U.S. Patent Nos. 7,441,679; 7,497,651; 7,431,485; 7,156,593; 7,040,849; D533,130; D538,136; D552529; D508,889; D509,471; 6,135,472; 7,458,490; 7,377,674; 6,761,295; and D574,096.

16. Mr. Harberts and Mr. Klinkman conceived and created designs for solar panel racking systems.

17. In order to keep ownership of its proprietary designs for the ballasted solar panel racking systems, Latitude requested that the Defendant sign its standard NDA that is attached as Exhibit A.

18. Both the Defendant and Latitude signed the NDA. Exhibit A contains a complete and accurate copy of the NDA signed by the Defendant and Latitude.

19. On December 13, 2008, Latitude presented four different design concepts for ballasted solar panel racking systems that were conceived by John Harberts and John Klinkman to the Defendant. At this meeting, the Defendant expressed interested in one of the design concepts. Based on the Defendant's interest, Latitude created a prototype of the design.

20. On February 10, 2009, Defendant's employee Nathan Rizzo visited Latitude in Port Huron, Michigan to view Latitude's prototypes, product packaging, and Latitude's manufacturing facility.

21. Based on information and belief, on or about February 13, 2009, Latitude went out of business and/or filed for bankruptcy due to the general state of the automotive industry in which it was involved.

22. On February 17, 2009, former Latitude employees John Harberts, Aaron Faust, and John Klinkman visited the Defendant and informed the Defendant of their plan to form a

new company to continue to manufacture and sell the designs developed by John Harberts and John Klinkman. Defendant indicated that it might be interested in becoming an investor in the new company being proposed and requested that Harberts, Faust, and Klinkman submit a proposal.

23. On February 23, 2009, Defendant, through its President Adam Rizzo, telephoned Aaron Faust and stated the Defendant could not become an investor in the proposed new company because it was having financial issues.

24. On March 17, 2009, Applied Energy Technologies Inc. ("AET") was formed and presently exists as a Michigan corporation. All rights and ownership in the former Latitude designs and inventions for the solar panel racking systems have been assigned to AET. All rights and benefits in the NDA that was owned by Latitude have been assigned to AET.

25. On or about March 17, 2009, a telephone conference occurred between AET employee Aaron Faust and the Defendant's employee Nathan Rizzo. On the telephone call, Nathan Rizzo said that the Defendant would not use AET as a supplier of solar panel racking systems. Nathan Rizzo said that the Defendant had decided to use a solar panel racking system designed and manufactured by a different supplier. In response, Mr. Faust said that AET was moving forward with purchasing manufacturing equipment to produce its racking system and that AET would be offering the racking system for sale to third parties.

26. On March 17, 2009, the Defendant's President Adam Rizzo sent two emails to AET stating that the Defendant provided proprietary information to Latitude and that if AET disclosed the Defendant's proprietary information, then the Defendant would file a lawsuit to enforce the NDA and seek damages and injunctive relief.

27. On April 24, 2009, AET's attorney faxed a letter to the Defendant. The letter stated that AET did not believe that it had used any of Defendant's proprietary information in the design of the solar panel racking system it would be offering for sale. AET's attorney requested that the Defendant identify what it considered to be its proprietary information so that AET did not inadvertently use or disclose the information. AET's attorneys requested that the Defendant respond to its letter within two weeks time or it would consider the matter closed.

28. Between May 11, 2009 and May 16, 2009, AET and Defendant attended the American Solar Energy Society's National Solar Conference ("ASES Conference"). At the conference and tradeshow, AET displayed its solar panel racking system in a display booth.

29. At the ASES Conference, on or about May 15, 2009, while AET's Vice President of Sales was talking to a prospective customer, the Defendant's President Adam Rizzo approached the potential customer and told the prospective customer not talk to AET because AET stole the Defendant's proprietary design. Mr. Rizzo intentionally made the accusations and defamatory comments so that the potential customer would not purchase AET's solar panel racking system.

30. Based on information and belief, the Defendant communicated to other third parties at the ASES Conference that AET had stolen the Defendant's proprietary designs.

31. On May 15, 2009, Defendant's attorney sent a letter in response to the letter sent by AET's attorneys on April 24, 2009. Defendant's President Adam Rizzo also hand delivered a copy of the letter to AET at AET's display booth at the ASES Conference. In this letter, the Defendant accused AET of violating the NDA by misappropriating and/or disclosing the Defendant's proprietary designs in AET's solar panel racking system. The letter demanded that "AET IMMEDIATELY CEASE AND DESIST from any and all further dissemination and

disclosure of Solar Liberty's proprietary solar panel roof ballast design rack, including, but not limited to, its immediate removal of any such material from the American Solar Energy Society's National Solar Conference. . . ." When delivering the letter, Mr. Rizzo said that AET stole the Defendant's proprietary designs and that he was going to sue AET and John Harberts and Aaron Faust, personally, if AET did not stop offering its solar panel racking system for sale.

32. On May 16, 2009, the Defendant's President Adam Rizzo again came to Defendant's display booth on at least two separate occasions. Mr. Rizzo yelled that AET had stolen the Defendant's proprietary designs. Mr. Rizzo also yelled that the Defendant was going to sue AET and Aaron Faust and John Harberts, personally. Mr. Rizzo intentionally yelled his defamatory accusations and threats in such a manner so that all of the potential customers viewing AET's display would hear his accusations and would not purchase AET's solar panel racking system.

33. In response to the Defendant's defamatory comments on May 16, 2009, AET asked Adam Rizzo to leave the AET display booth and stop defaming AET in front of its potential customers. AET employee John Harberts took a photograph of Adam Rizzo at AET's display booth as evidence.

34. Defendant's defamatory accusations at the ASES Conference became so belligerent and disruptive that AET requested the organizers of the ASES Conference to monitor AET's display booth. The ASES Conference organizers ordered Mr. Rizzo to stay away from AET's display booth and warned him that if he did not, he would be escorted out of ASES Conference.

35. AET has invested approximately \$400,000 in manufacturing equipment and other expenses to produce its solar panel racking system.

CAUSES OF ACTION

COUNT I – DECLARATORY JUDGMENT THAT AET HAS NOT BREACHED THE NDA

36. AET hereby incorporates by reference the allegations set forth in the previous paragraphs.

37. The Defendant has alleged that AET has breached the NDA by misappropriating and disclosing the Defendant's proprietary designs for a solar panel racking system by displaying and offering for sale the AET solar panel racking system.

38. Defendant has demanded that AET immediately cease and desist from displaying the AET solar panel racking system because the system incorporates proprietary information covered by the NDA.

39. Contrary to the Defendant's allegations, AET's solar panel racking system does not incorporate the Defendant's proprietary information as defined by the NDA.

40. Pursuant to 28 U.S.C. § 2201 *et seq.* and other appropriate law, AET requests a declaratory judgment that it has not violated the NDA and may continue to sell the AET solar panel racking system.

COUNT II – DEFAMATION

41. AET hereby incorporates by reference the allegations set forth in the previous paragraphs.

42. Defendant has made false and defamatory statements concerning AET, including accusations and representations that AET stole the Defendant's proprietary designs.

43. Defendant has made an unprivileged publication of the false defamatory statements to a third party.

44. Defendant intentionally and negligently made the false statements.

45. Defendant's statements were defamation per se and AET has been and will continue to be damaged by the Defendant's statements.

PRAYER FOR RELIEF

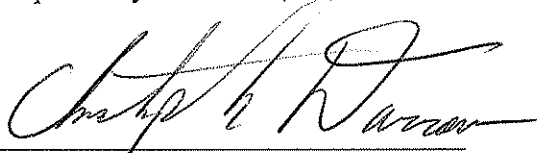
WHEREFORE, Plaintiff prays for the following relief:

- A. A declaratory judgment that AET has not violated the NDA and that AET may continue to sell its solar panel racking system;
- B. An order setting forth the Defendant's proprietary information that is covered by the non-disclosure agreement;
- C. An award of statutory and actual damages, attorney's fees, and costs;
- D. A preliminary and permanent injunction preventing the Defendant from defaming AET and its employees; and
- E. An award of such additional relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial on all claims to which it is entitled.

Respectfully submitted,



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Attorneys for Plaintiff Applied Energy Technologies, Inc.

Dated: May 21, 2009