

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

RESOURCE RECOVERY SYSTEMS, LLC  
AND FCR, LLC,

Plaintiffs,

vs.

Case No.  
Hon.

CITY OF ANN ARBOR,

Defendant.

---

Michael P. Hindelang (P62900)  
Andrew M. Pauwels (P79167)  
Honigman Miller Schwartz and Cohn LLP  
2290 First National Building  
660 Woodward Avenue  
Detroit, MI 48226-3506  
(313) 465-7412  
Attorneys for Plaintiffs

---

**COMPLAINT**

Plaintiffs Resource Recovery Systems, LLC and FCR, LLC (collectively, “ReCommunity”), by and through their attorneys, bring this action against the City of Ann Arbor (“Ann Arbor” or the “City”) and in support thereof, allege as follows:

1. ReCommunity provided effective and reliable recycling services to the City for over 20 years, and had a contract to do so for nearly five more years. During this time, the City received millions of dollars in payments from ReCommunity as part of an agreement to share in profits and losses from recycling operations. But, after commodity prices turned sharply lower, the City realized that it may have to honor its contractual obligation to ReCommunity and share in the worsening market by paying its share of the losses. Rather than honor its obligations, the City manufactured pretextual allegations in an attempt to get out of the contract and refused to make required payments to ReCommunity. Ultimately, the City acted without legitimate basis (and without even arranging for a new operator for the City's only recycling facility) and demanded that ReCommunity immediately cease to provide recycling services and vacate the facility. The City did so without regard for the profound harm it caused to ReCommunity, to recycling efforts in the City, or to ReCommunity's other customers. As a result of Ann Arbor's breach of the contract, ReCommunity has been severely damaged, suffering not only its lost profits under the contract, but significant reputational damages, damages under third-party agreements, and other damages. ReCommunity thus commences this action to address the substantial harm caused by the City's abrupt and wrongful breach.

**THE PARTIES, JURISDICTION AND VENUE**

2. Resource Recovery Systems, LLC (“Resource Recovery Systems”) is a limited liability company organized and existing under the laws of the State of Delaware, with an office and principal place of business at 809 West Hill Street, Charlotte, North Carolina 28208.

3. FCR, LLC (“FCR”) is a limited liability company organized and existing under the laws of the State of Delaware, with an office and principal place of business at 809 West Hill Street, Charlotte, North Carolina 28208.

4. FCR and Resource Recovery Systems are collectively the successors in interest to Resource Recovery Systems, Inc.

5. FCR is the sole member of Resource Recovery Systems.

6. The sole member of FCR is ReCommunity Holdings II, Inc., a corporation organized and existing under the laws of the State of Delaware, with an office and principal place of business at 809 West Hill Street, Charlotte, North Carolina 28208. Accordingly, Plaintiffs FCR and Resource Recovery Systems are citizens of Delaware and North Carolina for purposes of diversity jurisdiction.

7. Ann Arbor is a Michigan municipal corporation organized and existing under the laws of the State of Michigan.

8. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332, because there is complete diversity of citizenship among the parties and the amount in controversy exceeds \$75,000.

9. This Court has personal jurisdiction over Defendant Ann Arbor, because Ann Arbor, as a Michigan municipal corporation, is a citizen of the state of Michigan.

10. Venue is appropriate pursuant to 28 U.S.C. § 1391(b)(1) because Ann Arbor resides in this district.

11. Alternatively, venue is proper pursuant to 28 U.S.C. § 1391(b)(2) because a substantial majority of events giving rise to the claims occurred within this jurisdiction.

## **GENERAL ALLEGATIONS**

### **Formation and Amendment of the Contract**

12. On November 1, 1993, Ann Arbor and Resource Recovery Systems, Inc. entered into the Operating and Management Contract (the “Contract”)<sup>1</sup> to manage the City’s recycling facility and its transfer station (collectively, the “Plant”).

---

<sup>1</sup> The Contract, as amended, is in the possession of Ann Arbor.

13. For over 20 years, the parties worked cooperatively under the Contract to operate the Plant to the benefit of both parties and the citizens of Ann Arbor.

14. Originally scheduled to expire in October 2016, the Contract was amended ten times from 1995 to 2010, including an extension of the Contract through September 21, 2021.

15. In those amendments, the designated counterparty to the City was amended to reflect the changing corporate structure of Resource Recovery Systems, Inc., with the final amendment being entered into between the City and “FCR LLC d/b/a RRS, Inc.”

### **The Contract Terms and Revenue Sharing**

16. Pursuant to the Contract, Ann Arbor owned the Plant and all of its equipment, and ReCommunity operated the Plant.

17. While the City owned the Plant, ReCommunity arranged for general maintenance and repairs and was to be reimbursed by the City for certain of those costs when funds were available.

18. Although the Plant was primarily established to process the City’s recycling, Ann Arbor encouraged ReCommunity to enter into third-party contracts and process recycling of materials from other parties, both public and private.

19. Both parties financially benefited from ReCommunity's agreements with third parties, as the City received a portion of ReCommunity's revenues.

20. Pursuant to Section 6.02 of the Contract, as set forth in Amendment No. 8, the parties set a threshold of \$54.00 per ton as a "Trigger Price" for revenue sharing.

21. When Net Revenue, as defined in the Contract, was more than the Trigger Price, Ann Arbor received revenue sharing of 80%+ on recycled tons from the City and 30%+ on recycled tons from third parties.

22. Conversely, if Net Revenue was less than the Trigger Price, the difference (the "Net Negative Amount") would be added to the amounts Ann Arbor owed to ReCommunity.

23. In addition, as Ann Arbor officials acknowledged in October 2014, Ann Arbor promised to be responsible for all of ReCommunity's costs attributable to the transport of third-party materials to the Plant.

24. The City's contractual right to over 30% of the profits from recycling third-party materials thus led the City to encourage ReCommunity to enter into third-party contracts.

25. Prior to executing such agreements, ReCommunity relied on Ann Arbor's promise that it would be permitted to seek third-party materials to be recycled at the Plant.

26. ReCommunity obtained third-party contracts, notified the City in writing on a monthly basis of such third-party arrangements, processed materials pursuant to those contracts, and ultimately paid Ann Arbor approximately \$1.8 million in revenue sharing payments since January 2011 from the sale of third-party recyclables.

27. However, due to falling commodity prices, revenues per ton recently fell short of the Trigger Price, shifting the historical flow of payments (from ReCommunity to the City) in the opposite direction.

28. Due to this shift, Ann Arbor owed Net Negative Amounts of \$183,566.33 to ReCommunity as of July 2016.

29. Ann Arbor has yet to pay this amount.

30. ReCommunity has made several efforts to work with the City to amend the Contract and address the City's financial concerns, sending the City multiple proposals to amend the Contract.

31. Ann Arbor has failed to respond to these submissions. Instead, the City engaged a consultant to help it find a way to avoid its obligations to ReCommunity under the Contract.

### **Purchase of a New Baler**

32. During the past several years, ReCommunity made substantial efforts to repair and maintain the Plant's baler.

33. A baler is a critical component of the recycling process, which is used to compact and “bale” recyclables for transport.

34. The Plant’s baler had a history of malfunctioning and ultimately delaying the Plant’s recycling process, costing ReCommunity significant amounts to repair it.

35. The baler had further effects on ReCommunity’s ability to effectively and reliably operate the Plant.

36. As a result, beginning in 2014, ReCommunity sought the City’s approval to fund a new baler.

37. The City repeatedly refused to acquire or fund a new baler but nevertheless blamed ReCommunity for its frequent breakdowns, which occurred as recently as June 16, 2016 and June 22, 2016.

38. Finally, after months of refusals, the City approved the purchase of a new baler at the end of June 2016.

39. To avoid a costly and prolonged shutdown of the Plant, ReCommunity expedited the purchase and installation of the new baler at a cost in excess of \$550,000 under the City’s assurance that ReCommunity would operate the new baler at the Plant.

40. The City subsequently confirmed that it was responsible for the entire purchase price of the baler.



**Dispute over Plant Conditions**

41. As commodity prices continued to fall, the City began alleging safety violations at the Plant and criticizing ReCommunity's management in a transparent attempt to manufacture a basis for escaping the Contract.

42. For instance, on March 30, 2015, the City's public services administrator, Craig Hupy, publicly questioned ReCommunity's ability to perform to the City's standards.

43. The City's concerns were refuted by an independent review, which found that the Plant's equipment was overall in good operating condition.

44. As the monthly Net Negative Amounts continued to accrue, the City caused the Fire Department and various other inspectors to visit the Plant, where they reported purported violations, including such inconsequential issues as dirty lights, cardboard on the ground, and trash on the site.

45. On April 21, 2016, owing nearly a quarter million dollars of Net Negative Amounts, the City sent ReCommunity a letter citing an alleged breach of Section 4.01 of the Contract based on the fact that ReCommunity sourced materials from certain third parties. Ann Arbor wrongly claimed that it had not approved of these third-party agreements, the tonnages were beyond the Plant's capacity, and the materials were causing safety violations and concerns.

46. The City had previously accepted payments from ReCommunity for its share of revenues from these third-party contracts, raising its newfound objections only when faced with its contractual obligations to pay the Net Negative Amounts.

47. In addition to the increasingly frequent inspections of the Plant, Ann Arbor began a letter-writing campaign intended to support its baseless claims that ReCommunity was failing to fulfill its obligations under the Contract.

**The City Purports to Identify Default Conditions But Does Not Declare an Event of Default**

48. On June 10, 2016, Ann Arbor sent ReCommunity a letter titled “Notice of Default and of Opportunity to Cure; Safety Deficiencies.” The City alleged “numerous, serious safety violations and/or deficiencies.”

49. The City claimed that it “could invoke its right under Subsection 12.02(c) of the contract to terminate the contract....”

50. The City did not terminate the Contract, however, noting that “[n]otwithstanding the foregoing, the City is willing to give ReCommunity an opportunity to correct the identified safety deficiencies, to implement an appropriate mode of operation to prevent recurring safety problems, including implementation of proper procedures to prevent injuries, and to continue operations.”

51. Ann Arbor's June 10, 2016 letter did not declare an Event of Default under Section 12.02 or otherwise terminate the Contract.

52. ReCommunity responded to Ann Arbor's June 10, 2016 letter and notified the City that ReCommunity had made every effort to immediately remedy the alleged safety violations.

53. However, ReCommunity clarified that the bulk of the City's complaints presented no danger to life and health and were instead "housekeeping in nature."

54. ReCommunity's letter even confirmed that no Event of Default had been declared, and the Contract had not been terminated.

**ReCommunity Notifies The City of Its Default**

55. On June 13, 2016, ReCommunity sent Ann Arbor a letter informing the City of an Event of Default by the City pursuant to Section 12.03 of the Contract.

56. In particular, ReCommunity identified the City's "persistent and repeated failure" to pay the amounts due under the revenue sharing portion of the Contract.

57. ReCommunity informed Ann Arbor that its continued failure to correct the default within 30 days would force ReCommunity to seek an appropriate remedy.

58. On June 28, 2016, Ann Arbor responded to ReCommunity's June 13, 2016 letter, denying that it was in default for failure to pay.

59. The City insisted that ReCommunity had miscalculated the amounts owed between the parties by deducting from its total revenue ReCommunity's costs for transporting materials to the Plant from third parties.

60. However, as previously noted, Ann Arbor had already acknowledged that it would be responsible for such costs in October 2014.

61. In addition, on July 1, 2016, ReCommunity informed the City of its prior consent to such costs in 2014 and 2015.

62. ReCommunity cited the fact that the Contract itself provides that "Net Revenues" include "[d]irect costs of the Contractor or its affiliates associated with the acquisition price of any Recyclable Materials."

63. As a result, the Contract allowed ReCommunity to deduct the costs associated with transporting materials from third parties to the Plant, thereby nullifying Ann Arbor's claims that it was not in default.

64. ReCommunity explained that it was willing to renegotiate the terms of the Contract but that, in its current form, the City remained in default for \$183,566.33.

65. Under Section 12.03 of the Contract, ReCommunity is not required to declare an Event of Default. Rather, the Contract specifies when an Event of Default by the City exists.

66. ReCommunity did not waive this Event of Default.

**The City Increases Its Letter Writing Campaign, and ReCommunity Terminates the Contract**

67. On June 22, 2016, ReCommunity sent Ann Arbor a letter explaining that many of the problems and alleged safety violations the City identified resulted from the baler's constant malfunctions.

68. In addition, ReCommunity informed the City that it had terminated two significant third-party contracts to address the City's concerns.

69. ReCommunity confirmed that it had taken other steps to prevent any further deficiencies.

70. Notwithstanding ReCommunity's efforts to allay the City's concerns, commencing at the end of May 2016, Ann Arbor, or its consultants, made almost daily inspections of the Plant in an effort to claim pretextual safety violations.

71. Finally, despite (or perhaps in response to) the City's own default, the City sent ReCommunity a letter on July 7, 2016, purporting to terminate the Contract.

72. The City claimed to invoke Section 12.02(c) of the Contract, allowing it to declare an Event of Default without providing ReCommunity a further opportunity to cure its alleged deficiencies.

73. The City, however, still did not declare an Event of Default and instead informed ReCommunity that the Contract was terminated effective 2 a.m. on July 11, 2016.

74. Even if the City had declared an Event of Default, Section 12.02(c) was inapplicable, as it applies only in the event of “[r]epeated *substantial* defaults or breaches” by the contractor.

75. As described above, the purported defaults cited by the City were pretextual and could not rise to the level of “substantial” defaults.

76. Ann Arbor ordered ReCommunity to cease all services at the Plant and barred its 64 employees from entering the facility.

77. Ann Arbor claimed that ReCommunity had been on notice since June 10, 2016, despite the fact that the City had failed to “declare an Event of Default” or terminate the Contract with 30 days additional notice pursuant to Section 12.02 of the Contract.

78. Unlike an Event of Default by the City, the Contract expressly required the City to provide ReCommunity an additional 30-day period after the

declaration of an Event of Default before any termination of the Contract became effective, which is different than the existence of conditions of default.

79. The City never did so.

80. Accordingly, the earliest that the City could lawfully terminate the Contract is August 6, 2016, 30 days after the July 7, 2016 letter.

81. Although Ann Arbor failed to adhere to the termination requirements of the Contract, the City barred ReCommunity from entering the Plant and providing its recycling services to the City.

82. The City provided its July 7, 2016 letter to ReCommunity after 4 p.m. on Thursday, July 7, leaving it only one business day (Friday) to address its third-party contracts, its employees and contractors, its various vendors, and numerous other commercial relationships.

83. Following the City's failed attempt to terminate the agreement, ReCommunity terminated the Contract by letter dated July 19, 2016.

**Count I – Breach of Contract (Failure to Pay)**

84. Paragraphs 1 through 83 are repeated and re-alleged as if fully set forth herein.

85. Ann Arbor has failed to pay the Net Negative Amount, which totals \$183,566.33 through July 2016.

86. ReCommunity provided Ann Arbor with notice of an Event of Default, pursuant to Section 12.03 of the Contract, on June 13, 2016.

87. This notice period expired on July 13, 2016.

88. ReCommunity terminated the Contract by letter dated July 19, 2016.

89. Upon ReCommunity's termination of the Contract, Ann Arbor agreed to make all payments that are due and payable to ReCommunity, "consequential damages incurred by [ReCommunity] in connection with the termination, including reasonable cancellation charges," and "a one-time lump sum payment of Five Hundred Thousand Dollars (\$500,000)."

90. ReCommunity has been damaged by the City's conduct, suffering: (a) loss of payments owed under the Contract; (b) lost profits under the Contract; (c) lost profits under the third-party contracts; (d) reputational damages; (e) expenses in connection with the termination; (f) legal and other professional fees; and (g) other costs attributable to the City's conduct.

WHEREFORE, ReCommunity respectfully requests that this Court (1) grant judgment in its favor and against Ann Arbor in the full amount to which it is entitled; (2) award ReCommunity its damages, plus interest, costs and attorneys' fees; and (3) award ReCommunity any further relief this Court deems necessary and just.



**Count II – Breach of Contract (Wrongful Termination)**

91. Paragraphs 1 through 83 are repeated and realleged as if fully set forth herein.

92. Under the Contract, Ann Arbor can identify “conditions of default” if it believes that ReCommunity is in default.

93. The City purported to give notice of alleged “conditions of default” on June 10, 2016.

94. The Contract requires that the City provide a 30-day period to cure such conditions, unless certain conditions are met rendering a cure impracticable.

95. The City invited ReCommunity to cure the deficiencies identified in the June 10, 2016 letter.

96. If the City wishes to terminate the Contract, the process is delineated in Section 12.02.

97. Following the expiration of a cure period (or immediately if cure is impracticable), the Contract requires that the City “declare an Event of Default and terminate this Contract on thirty (30) Days additional written notice to [ReCommunity], without a further opportunity for [ReCommunity] to cure the default.”

98. The City never declared an Event of Default.

99. Ann Arbor has breached the Contract by claiming to terminate the agreement without adhering to its terms.

100. Subject to Section 12.02, Ann Arbor must provide ReCommunity with 30 days additional written notice once it has declared an Event of Default before terminating the Contract.

101. As a result, Ann Arbor's July 7, 2016 letter (at best) initiated the 30-day notice, which will end on August 6, 2016.

102. Ann Arbor has therefore materially breached the Contract by barring ReCommunity from continuing its recycling services at the Plant and barring its employees from entering the facility.

103. As a direct and proximate cause of Ann Arbor's material breach of the Contract, ReCommunity has been damaged.

104. ReCommunity has been damaged by the City's conduct, suffering: (a) loss of payments owed under the Contract; (b) lost profits under the Contract; (c) lost profits under the third-party contracts; (d) reputational damages; (e) expenses in connection with the termination; (f) legal and other professional fees; and (g) other costs attributable to the City's conduct.

WHEREFORE, ReCommunity respectfully requests that this Court (1) grant judgment in its favor and against Ann Arbor in the full amount to which it is entitled; (2) award ReCommunity its damages, plus interest, costs and attorneys'

fees; and (3) award ReCommunity any further relief this Court deems necessary and just.

**Count III – Promissory Estoppel**

105. Paragraphs 1 through 83 are repeated and realleged as if fully set forth herein.

106. During the course of the business relationship and beyond the language of the Contract, Ann Arbor encouraged ReCommunity to enter into third-party contracts to process their recycling at the Plant.

107. Indeed, the parties formed an agreement through which both could financially profit based on ReCommunity's engagement of third-party contracts.

108. ReCommunity relied on Ann Arbor's promises that ReCommunity could process the recycling for third parties at the Plant.

109. Ann Arbor's promises were confirmed by its actions, through which the City not only encouraged the processing of third-party materials at the Plant, but also continued to accept the revenue share generated from such third-party tons when commodity prices exceeded the Trigger Price.

110. Finally, the parties reached an agreement at the end of June 2016 regarding the purchase and installation of a new baler, which ReCommunity purchased for \$550,000 in reliance on Ann Arbor's promises that ReCommunity would continue to operate the baler at the Plant.

111. As a direct and proximate result of Ann Arbor's breach of promises, upon which ReCommunity relied, ReCommunity has been damaged.

WHEREFORE, ReCommunity respectfully requests that this Court (1) grant judgment in its favor and against Ann Arbor in the full amount to which it is entitled; (2) award ReCommunity its damages, plus interest, costs and attorneys' fees; and (3) award ReCommunity any further relief this Court deems necessary and just.

#### **Count IV – Unjust Enrichment**

112. Paragraphs 1 through 83 are repeated and realleged as if fully set forth herein.

113. Ann Arbor has reduced ReCommunity's economic interests and taken those interests for itself by failing to pay the amounts owed to ReCommunity and preventing ReCommunity from complying with its third-party contracts.

114. As a result, Ann Arbor has received a significant financial benefit from ReCommunity.

115. Ann Arbor's retention of this wrongfully-obtained financial benefit is inequitable.

WHEREFORE, Plaintiffs respectfully requests that this Court (1) grant judgment in its favor and against Ann Arbor in the full amount to which it is entitled; (2) award ReCommunity its damages, plus interest, costs and attorneys' fees; and (3) award ReCommunity any further relief this Court deems necessary and just.

fees; and (3) award ReCommunity any further relief this Court deems necessary and just.

Respectfully submitted,

HONIGMAN MILLER SCHWARTZ AND  
COHN LLP  
Attorneys for Plaintiffs

By: /s/ Michael P. Hindelang  
Michael P. Hindelang (P62900)  
Andrew M. Pauwels (P79167)  
2290 First National Building  
660 Woodward Avenue  
Detroit, MI 48226-3506  
(313) 465-7412

Dated: July 27, 2016