

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
MUNICIPAL DEPARTMENT, FIRST DISTRICT

JOHN GILBODY, RAPHAEL ZILCH,
ERIK HOHLER, ROMMY HENLEY,
SEAN BERNHARDT, KIM MITCHELL,
EDWARD STOROZUK, JOHN DARBY,
HENRY ZUMBRUN, DAN GOSSETT and
BRIAN SHERMAN, et al

Plaintiffs,

v

JOHN A POPADIUK, indv and d/b/a
ZIDWARE, INC , MICHELLE POPADIUK,
indv and d/b/a ZIDWARE, INC , and
ZIDWARE, INC , an Illinois Corporation,
Defendants

2015 M1 110181

THIRD AMENDED COMPLAINT

NOW COME the Plaintiffs JOHN GILBODY RAPHAEL ZILCH ERIK HOHLER ROMMY HENLEY SEAN BARNHARDT KIM MITCHELL EDWARD STOROZUK JOHN DARBY HENRY SUMBRUN DAN GOSSETT BRIAN SHERMAN JOE NEWHART CHRISTOPHER WRIGHT MICHAEL ENGEL GAVIN WONG ALIAN MUELLER RICHARD STUHLSTATZ STEPHAN MULLER MARK WILLIAMS JR RONALD BARBAGALLO TREVOR GRAW and JUSTIN KELLY by and through thier attorneys ZANE D SMITH & ASSOCIATES LTD and complaining of the Defendants JOHN A POPADIUK indv and d/b/a ZIDWARE INC MICHELLE POPADIUK indv and d/b/a ZIDWARE INC and ZIDWARE INC an Illinois Corporation states as follows

COUNT I

1 That at all times material herein Defendant John A Popadiuk was a resident of the County of Cook, State of Illinois

2 That at all times material herein Defendant Michelle Popadiuk was a resident of the County of Cook State of Illinois

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3004

NA 011 110181 13
4448

15 SEP 22 PM 2 43

1 110181 13
4448

3 That at all times material herein Defendant Zidware Inc was an Illinois Corporation

4 That Plaintiff John Gilbody entered into an Agreement (‘ AGREEMENT) with Defendants for the purchase of a Ben Heck s Zombie Adventureland custom pinball machine and a Magic Girl custom pinball machine (*Copies of all documents in Plaintiff s possession supporting Plaintiff s claim are attached hereto as Exhibit 1*)

5 That Plaintiff John Gilbody paid Defendants a total of \$20 245 00

6 That despite receiving payments from Plaintiff John Gilbody in the amount of \$20 245 00 Defendants have failed to perform under the Agreement

7 That as a direct result of Defendants failure to perform under the Agreement Plaintiff John Gilbody was damaged

WHEREFORE Plaintiff JOHN GILBODY respectfully requests this Court enter judgment in favor of Plaintiff JOHN GILBODY and against the Defendants JOHN A POPADIUK, indv and d/b/a ZIDWARE INC MICHELLE POPADIUK indv and d/b/a ZIDWARE INC and ZIDWARE INC an Illinois Corporation in the amount of Twenty Thousand Two Hundred Forty Five and no/100 (\$20 245 00) Dollars plus attorney s fees and costs and such other relief that this Court deems just

COUNT II

1 – 7 Plaintiff restates the allegations contained in Paragraphs 1 through 7 of Count I as the allegations in Paragraphs 1 through 7 of Count II as though fully set forth herein

8 That because of Defendants failure to perform under the Agreement Plaintiff John Gilbody is entitled to the return of the \$20 245 00 deposit

9 Defendants took the \$20,245 00 deposit and have converted same to their own use

10 That Plaintiff John Gilbody has demanded the return of the \$20 245 00 deposit

11 That despite Plaintiff John Gilbody s demand for the immediate return of the \$30 000 00 deposit Defendants refuse to return the money to Plaintiff John Gilbody

12 Defendants refusal to return the \$20 245 00 deposit is willful wanton and malicious and justifies the awarding of punitive damages

WHEREFORE Plaintiff JOHN GILBODY, respectfully requests this Court enter judgment in favor of Plaintiff JOHN GILBODY and against Defendants JOHN A POPADIUK

indv and d/b/a ZIDWARE INC MICHELLE POPADIUK indv and d/b/a ZIDWARE INC and ZIDWARE INC an Illinois Corporation in an amount to be proven at trial and for such other relief that this Court deems just

COUNT III

1 – 12 Plaintiff restates the allegations contained in Paragraphs 1 through 12 of Count II as the allegations in Paragraphs 1 through 12 of Count III as though fully set forth herein

13 That as a direct result of Defendants refusal to return the \$20 245 00 deposit Defendants have been unjustly enriched and have benefited at the direct expense of Plaintiff WHEREFORE Plaintiff JOHN GILBODY respectfully requests this Court enter judgment in favor of Plaintiff JOHN GILBODY and against Defendants JOHN A POPADIUK indv and d/b/a ZIDWARE INC MICHELLE POPADIUK indv and d/b/a ZIDWARE INC and ZIDWARE, INC an Illinois Corporation in an amount to be proven at trial and for such other relief that this Court deems just

COUNT IV

1 That at all times material herein Defendant John A Popadiuk was a resident of the County of Cook State of Illinois

2 That at all times material herein Defendant Michelle Popadiuk was a resident of the County of Cook State of Illinois

3 That at all times material herein Defendant Zidware Inc was an Illinois Corporation

4 That Plaintiff Raphael Zilch entered into an Agreement (AGREEMENT) with Defendants for the purchase of a Ben Heck s Zombie Adventureland and a Alice in Wonderland custom pinball machine (*Copies of all documents in Plaintiff s possession supporting Plaintiff s claim are attached hereto as Exhibit 2*)

5 That Plaintiff Raphael Zilch paid Defendants a total of \$6 895 00

6 That despite receiving payments from Plaintiff Raphael Zilch in the amount of \$6 895 00 Defendants have failed to perform under the Agreement

7 That as a direct result of Defendants failure to perform under the Agreement Plaintiff Raphael Zilch was damaged

WHEREFORE Plaintiff RAPHAEL ZILCH, respectfully requests this Court enter judgment in favor of Plaintiff RAPHAEL ZILCH and against the Defendants JOHN A

POPADIUK indv and d/b/a ZIDWARE INC MICHELLE POPADIUK indv and d/b/a ZIDWARE INC and ZIDWARE INC an Illinois Corporation in the amount of Six Thousand Eight Hundred Ninety Five and no/100 (\$6 895 00) Dollars plus attorney s fees and costs and such other relief that this Court deems just

COUNT V

1 – 7 Plaintiff restates the allegations contained in Paragraphs 1 through 7 of Count IV as the allegations in Paragraphs 1 through 7 of Count V as though fully set forth herein

8 That because of Defendants failure to perform under the Agreement Plaintiff Raphael Zilch is entitled to the return of the \$6 895 00 deposit

9 Defendants took the \$6 895 00 deposit and have converted same to their own use

10 That Plaintiff Raphael Zilch has demanded the return of the \$6 895 00 deposit

11 That despite Plaintiff Raphael Zilch s demand for the immediate return of the \$6 895 00 deposit Defendants refuse to return the money to Plaintiff Raphael Zilch

12 Defendants refusal to return the \$6 895 00 deposit is willful wanton and malicious and justifies the awarding of punitive damages

WHEREFORE Plaintiff RAPHAEL ZILCH respectfully requests this Court enter judgment in favor of Plaintiff RAPHAEL ZILCH and against Defendants JOHN A POPADIUK indv and d/b/a ZIDWARE INC MICHELLE POPADIUK indv and d/b/a ZIDWARE INC and ZIDWARE INC an Illinois Corporation in an amount to be proven at trial and for such other relief that this Court deems just

COUNT VI

1 – 12 Plaintiff restates the allegations contained in Paragraphs 1 through 13 of Count V as the allegations in Paragraphs 1 through 12 of Count VI as though fully set forth herein

13 That as a direct result of Defendants refusal to return the \$6 895 00 deposit Defendants have been unjustly enriched and have benefited at the direct expense of Plaintiff Raphael Zilch

WHEREFORE Plaintiff, RAPHAEL ZILCH respectfully requests this Court enter judgment in favor of Plaintiff RAPHAEL ZILCH and against Defendants JOHN A

277 That Defendants created a blog as a means to communicate with purchasers of the Ben Heck s Zombie Adventureland custom pinball machine such as Plaintiff

278 That on October 14 2014 Defendants posted the following to the blog

New news here We were able to solidify an ongoing working arrangement with Mission Pinball and Fast Pinball guys from Seattle last week

279 That the statement contained in the October 14 2014 blog was false

280 That the statement contained in the October 14 2014 blog was known to be false by Defendants at the time it was made

281 That the false statement contained in the October 14 2014 blog was made with the intent to deceive and defraud the purchasers of the Ben Heck s Zombie Adventureland custom pinball machine including Plaintiff

282 That Plaintiff actually and justifiably relied on the false statement contained in the October 14 2014 blog and was damaged as a direct and proximate result of the false statement contained in the October 14 2014 blog in an amount according to proof

283 That the false statement contained in the October 14 2014 blog was made with oppression fraud and malice

284 That on October 23 2014 Defendants posted the following to the blog

We have set a date to show magic girl on a rug for mid december and I will work on the raza schedule and report back soon which will be after that

285 That the statement contained in the October 23 2014 blog was false

286 That the statement contained in the October 23 2014 was known to be false by Defendants at the time it was made¹

287 That the false statement contained in the October 23 2014 blog was made with the intent to deceive and defraud the purchasers of the Ben Heck s Zombie Adventureland custom pinball machine including Plaintiff

288 That Plaintiff actually and justifiably relied on the false statement contained in the October 23 2014 blog and was damaged as a direct and proximate result of the false statement contained in the October 23, 2014 blog in an amount according to proof

289 That the false statement contained in the October 23 2014 blog was made with
oppression fraud and malice

290 That on January 17 2015 Defendants posted the following to the blog

Currently still on track to show a fully built Zombie
Adventureland game in February John
Popadiuk

291 That the statement contained in the January 17, 2015 blog was false

292 That the statement contained in the January 17 2015 blog was known to be false
by Defendants at the time it was made

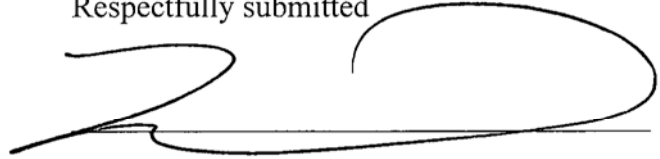
293 That the false statement contained in the January 17 2015 blog was made with
the intent to deceive and defraud the purchasers of the Ben Heck s Zombie Adventureland
custom pinball machine including Plaintiff

294 That Plaintiff actually and justifiably relied on the false statement contained in the
January 17, 2015 blog and was damaged as a direct and proximate result of the false statement
contained in the January 17 2015 blog in an amount according to proof

295 That the false statement contained in the January 17 2015 blog was made with
oppression fraud and malice

WHEREFORE Plaintiffs JOHN GILBODY ERIK HOHLER ROMMY HENLEY
RAPHAEL ZILCH SEAN BERHNARDT KIM MITCHELL EDWARD STOROZUK JOHN
DARBY HENRY SUMBRUN DAN GOSSETT BRIAN SHERMAN JOE NEWHART
CHRISTOPHER WRIGHT MICHAEL ENGEL, GAVIN WONG ALAIN MUELLER
RICHARD STUHLSATZ STEPHAN MULLER MARK WILLIAMS, JR RONALD
BARBAGALLO TREVOR GRAW and JUSTIN KELLY and each of them respectfully
requests this Court enter judgment in their favor and against Defendants JOHN A POPADIUK
indv and d/b/a ZIDWARE INC MICHELLE POPADIUK indv and d/b/a ZIDWARE INC
and ZIDWARE INC , an Illinois Corporation in an amount to be proven at trial and for such
other relief that this Court deems just

Respectfully submitted

A large, stylized handwritten signature in black ink, appearing to be 'Zane D. Smith', written over a horizontal line.

Zane D Smith

ZANE D SMITH & ASSOCIATES LTD
415 N La Salle Street Suite 501
Chicago Illinois 60654
(312) 245 0031

CERTIFICATE OF SERVICE

I Patricia A Meinke a non attorney on oath state that I served the foregoing document to all attorneys of record by placing a true and correct copy of same in the U S Mail located at 400 N LaSalle Chicago Illinois on September 22 2015 before the hour of 5 00 P M with proper postage prepaid Under the penalties of perjury I certify that the above statements set forth herein are true and correct

A handwritten signature in black ink, appearing to be 'Patricia A. Meinke', written over a horizontal line.

Patricia A Meinke

PURCHASE AGREEMENT — CONFIDENTIAL

Ben Heck's
ZOMBIE
ADVENTURELANDTM
Pinball in 3D

BHZA Custom Pinball Machine Design

Date May 1 2012

Prepared by Zidware Inc (the Company)
John A Popadiuk Jr President
c/o 722 Chestnut Court
Bartlett IL 60103
(224) 532 0639
pop@zidware.com

Prepared for

John Gilbody (BHZA#2)
1 Rookwood Close
Hook Hampshire
RG27 9EU United Kingdom



Agreement

This Purchase Agreement was prepared to describe certain features or aspects of the Ben Heck's Zombie Adventureland™ pinball machine project and to specify certain terms and conditions relating to the purchase of the game from Zidware Inc. (the Company) by the Purchaser. By signing this agreement, you, the Purchaser, acknowledge the terms and conditions contained herein and agree to abide by them.

Project Overview

The project involves the creation of a full-sized custom pinball machine called Ben Heck's Zombie Adventureland™, including both a Limited Edition and a Special Cointaker Edition (collectively, BHZA), made in a 1990's style of form, fit, and function. The pinball machine will have gameplay that will be simple, fun, and built with a combination of new ideas and components re-styled by the clever hand of professional pinball designer John A. Popadiuk, Jr. with the added creativity and hackspertise of Ben Heckendorn.

The Pinball Team

John A. Popadiuk, Jr. is a celebrated pinball designer, vintage pinball collector, mobile software developer, and bagatelle historian with many years immersed in the world of pinball. Some of his designs include Bally's Theatre of Magic, Marvel Heroes vs. Villains, World Cup Soccer, Star Wars: Episode I, and Circus Voltaire.

John has a thorough knowledge of pin game mechanics, construction, traditional pinball ideals, and team building philosophies. His retro style and hands-on approach to creation allows for a unique merging of the old and new to be explored and incorporated into the BHZA pinball game alongside fellow modding genius and pin geek Ben Heck and other talented designers, artists, and creative engineers required to create a quality custom pinball.

The Timeline

Ben Heck's Zombie Adventureland™ pinball will follow a normal pinball development schedule of approximately 14 months at a minimum. You are invited to visit the design team in the studio, when appropriate, to view the progress and see the current full-size hand-made pinball mockups, mechanisms, art, and designs that have been created to date. The Company will use its reasonable best efforts to complete this custom project in a reasonable amount of time as stated herein. Any compressions, delays, or extensions to the planned schedule will be communicated in a timely manner.

Art Direction & Theme

The Ben Heck's Zombie Adventureland™ pinball machine will have a classic pinball look and play similar to the pinball machines created in the 1990s by John A. Popadiuk, Jr. with specific emphasis on hip atomic 1960's retro zombie amusement park theme. The online trailer was created to capture the "verve" or general game concept.

Pinball Game Features

The Ben Heck's Zombie Adventureland™ pinball machine will have an innovative feature list presented in a ground-up pinball design, including many never-before-seen pinball designs. Some of the basic features planned to be included at this time are located here on the website:

<http://pinballinventor.org/benheck/>

Other details will be finalized as the game design process progresses, and all such details are subject to modification or change at the sole discretion of the Company.