

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

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BRONX OVERALL ECONOMIC  
DEVELOPMENT CORP.,

Plaintiff,

-against-

SMITH ELECTRIC VEHICLES CORP.,

Defendant.

Index No.: \_\_\_\_\_

Date Filed: \_\_\_\_\_

Plaintiff designates Bronx  
County as the place of trial

**SUMMONS**

The basis of the venue is  
Plaintiff's principal place  
of business.

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***You are hereby summoned*** to answer the Verified Complaint in this action and to serve a copy of your answer, or, if the Verified Complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorneys within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: Garden City, New York  
April 6, 2015

MORITT HOCK & HAMROFF LLP  
*Attorneys for Plaintiff*

By:       /s/ Robert S. Cohen        
Robert S. Cohen  
Julia Gavrilo  
400 Garden City Plaza  
Garden City, New York 11530  
(516) 873-2000

TO: Smith Electric Vehicles Corp.  
12200 N.W. Ambassador Drive  
Kansas City, Missouri 64163

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

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BRONX OVERALL ECONOMIC  
DEVELOPMENT CORP.,

Index No.: \_\_\_\_\_  
Date Filed: \_\_\_\_\_

Plaintiff,

-against-

**VERIFIED  
COMPLAINT**

SMITH ELECTRIC VEHICLES CORP.,

Defendant.

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Plaintiff, Bronx Overall Economic Development Corp. ("Plaintiff" or "BOEDC"), by and through its attorneys, Moritt Hock & Hamroff LLP, as and for its Complaint against the Defendant Smith Electric Vehicles Corp. ("Defendant" or "Smith Electric") herein, respectfully alleges as follows:

**PARTIES**

1. Plaintiff is a domestic not-for-profit corporation duly incorporated under the laws of the State of New York, with its principal place of business at 851 Grand Concourse, Bronx, New York 10451.
2. Upon information and belief, Defendant is a foreign corporation authorized to conduct business within the State of New York and maintains its principal place of business at 12200 N.W. Ambassador Drive, Kansas City, Missouri 64163.
3. BOEDC is engaged in the business of, among other things, assisting businesses to start-up and/or relocate to Bronx County and, in doing so, maximizing employment opportunities for Bronx residents.

**AS AND FOR A FIRST CAUSE OF ACTION**  
**(Breach of Promissory Note)**

4. BOEDC repeats, reiterates and realleges the allegations contained in Paragraphs 1 through 3 with the same force and effect as more fully set forth at length herein.

5. On or about July 24, 2012, BOEDC extended a loan in the amount of \$1,000,000.00 (the "Loan") to Smith Electric.

6. Smith Electric sought the Loan to provide collateral for a line of credit to be issued to its New York landlord.

7. In consideration for the Loan, Smith Electric, as borrower, executed and delivered to BOEDC a certain promissory note dated July 24, 2012 (the "Note"). A true and accurate copy of the Note is annexed hereto as Exhibit A and is incorporated herein by reference.

8. BOEDC is the holder of the Note.

9. Pursuant to the Note, commencing on September 1, 2012 and on the first day of each and every month thereafter to and including August 1, 2017, Smith Electric was required to make monthly payments of \$2,500.00, representing interest only, to BOEDC.

10. Pursuant to the Note, the outstanding principal balance, all accrued and unpaid interest on the Loan as well as other charges then due and owing under the Note, were due on or before August 1, 2017.

11. Smith Electric defaulted under the Note by, *inter alia*, having failed to make its monthly payments to BOEDC due March 1, 2014 and each and every payment due thereafter under the Note.

12. In the event of a default, the Note provides that, at BOEDC's option, the outstanding principal balance under the Note becomes immediately due and payable, along with all accruing unpaid interest, late charges and other charges then due and owing.

13. In addition, in the event of a default, the Note provides that BOEDC may also elect to increase the interest rate otherwise applicable hereunder to six percent (6%) per annum in excess of the prime interest rate (the "Default Interest Rate") as reported in The Wall Street Journal at the time of default.

14. By reason of the foregoing, there is presently due and owing as of March 1, 2015, exclusive of attorneys' fees and costs, from Smith Electric to BOEDC under the Note the gross principal balance of \$1,000,000.00 plus late fees and accrued unpaid interest at the Default Interest Rate in the amount of \$100,208.00 for a total due and owing of 1,101,508.00 plus the sum of \$253.26 per day at the Default Interest Rate from March 1, 2015 until the date of judgment is entered and any other sums due under the Note.

**AS AND FOR A SECOND CAUSE OF ACTION**  
**(Breach of Security Agreement)**

15. BOEDC repeats, reiterates and realleges the allegations contained in Paragraphs 1 through 13 inclusive of the Complaint with the same force and effect as if more fully set forth at length herein.

16. In order to secure its obligations under the Note, Smith Electric as borrower, and BOEDC as lender, executed a certain Loan and Security Agreement (the "Security Agreement") dated July 24, 2012 (collectively, the "Loan Documents"). A true and accurate copy of the Security Agreement is annexed hereto as Exhibit B, and is incorporated herein by reference.

17. As set forth in the Loan Documents, Smith Electric was to lease and renovate to its purposes a building out of which it would run its new and first-ever East Coast manufacturing, assembly, distribution and service operation (the "Project") for use in the operations of Smith Electric at 275-295 Locust Avenue, Bronx, New York ("the Premises").

18. As set forth in the Security Agreement, projects financed with BOEDC funds must directly benefit residents of areas having United States postal zip codes which lie all or in part within the geographic boundaries of the New York Empowerment Zone (as defined in the Security Agreement - the "Zone").

19. The Security Agreement required Smith Electric to create jobs and hire employees that reside in the Zone.

20. To date, Smith Electric has not moved into the Premises.

21. Upon information and belief, Smith Electric is not moving into the Premises.

22. Smith Electric failed to create new jobs and employ any residents of the Zone.

23. Smith Electric defaulted under the terms of the Loan Documents by failing to create any new jobs and employ any new residents of the Zone.

24. The Security Agreement provides that in the event of a default, at BOEDC's option, the entire unpaid principal balance under the Note becomes immediately due and payable, along with all accruing unpaid interest and late charges.

25. By reason of the foregoing, there is presently due and owing as of March 1, 2015, exclusive of attorneys' fees and costs, from Smith Electric to BOEDC under the Note the gross principal balance of \$1,000,000.00 plus late fees and accrued unpaid interest at the Default Interest Rate in the amount of \$100,208.00 for a total due and owing of \$1,101,508.00 plus the sum of \$253.26 per day at the Default Interest Rate from March 1, 2015 until the date of judgment is entered and any other sums due under the Note.

**AS AND FOR A THIRD CAUSE OF ACTION**  
**(Repossession of Collateral)**

26. BOEDC repeats, reiterates and realleges the allegations contained in Paragraphs 1 through 23 inclusive of the Complaint with the same force and effect as if more fully set forth at length herein.

27. Pursuant to the terms and conditions of the Loan Documents, Smith Electric granted BOEDC a lien on all of Smith Electric's assets, located in New York State, other than intellectual property, as described in the Security Agreement (the "Collateral").

28. Smith Electric's default under the Note constitutes a default under the Security Agreement.

29. The Security Agreement provides that in the event of any default under the Loan Documents, BOEDC is entitled to possession of the Collateral.

30. By reason of the foregoing, BOEDC is entitled to immediate possession of the Collateral.

**AS AN FOR A FOURTH CAUSE OF ACTION**  
**(Repossession of Cash Collateral)**

31. BOEDC repeats, reiterates and realleges the allegations contained in Paragraphs 1 through 29 inclusive of the Complaint with the same force and effect as if more fully set forth at length herein.

32. Upon information and belief, Smith Electric maintains \$1,000,000.00 in an account with Webster Bank, National Association ("Webster Bank").

33. In light of Smith Electric's default under the Loan Documents, the Security Agreement provides that BOEDC is entitled to immediate possession of the Collateral, including, but not limited to, the Cash Collateral.

34. By reason of the foregoing, BOEDC is entitled to immediate possession of the Cash Collateral.

**AS AND FOR A FIFTH CAUSE OF ACTION**  
**(Attorneys' Fees and Costs)**

35. BOEDC repeats, reiterates and realleges the allegations contained in Paragraphs 1 through 34 inclusive of the Complaint with the same force and effect as if more fully set forth at length herein.

36. The Loan Documents provide, *inter alia*, that Smith Electric shall pay BOEDC, upon a default, all costs and expenses, including reasonable attorneys' fees and costs incurred by BOEDC in connection with the enforcement of the terms and conditions of the Loan Documents.

37. By reason of the foregoing, BOEDC is entitled to all such costs and expenses, together with attorneys' fees, as may be determined by this Court.

**WHEREFORE**, Plaintiff requests judgment against Defendant Smith Electric Vehicles Corp. as follows:

(i) on the first cause of action, in the amount of \$1,101,508.00, plus applicable interest at the Default Interest Rate;

(ii) on the second cause of action in the amount of \$1,101,508.00, plus interest at the Default Interest Rate;

(iii) on the third cause of action for repossession of the Collateral, and further ordering and directing the Defendant to immediately release and relinquish possession of said chattels forthwith;

(iv) on the fourth cause of action for turnover and possession of the Cash Collateral;

(v) on the fifth cause of action, for all its costs and expenses, together with such attorneys' fees as may be determined by the Court; and

(vi) all with interest, costs and expenses on all counts, together with such other and further relief as this Court deems just and proper.

Dated: Garden City, New York  
April 6, 2015

MORITT HOCK & HAMROFF LLP  
*Attorneys for Plaintiff*

By: /s/ Robert S. Cohen  
Robert S. Cohen  
Julia Gavrilov  
400 Garden City Plaza  
Garden City, New York 11530  
(516) 873-2000




**VERIFICATION**

STATE OF NEW YORK    )  
  ) ss.:  
COUNTY OF BRONX    )

MARLENE CINTRON, being duly sworn, deposes and says:

I, the undersigned, am the President of Bronx Overall Economic Development Corp. I have read the annexed Verified Complaint, know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters therein not stated upon knowledge, I believe them to be true. The basis of my knowledge, information and belief are the books, records, documents and memoranda in my file.

  
MARLENE CINTRON

 Sworn to before me this  
\_\_\_\_\_ day of April, 2015

  
Notary Public

NOTARY PUBLIC  
No. 04VA6161023  
Qualified in Bronx County  
Commission Expires Feb. 8, 2019