

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

LARRY WILLIAMS and LnL PUBLISHING, INC

Plaintiffs,

v.

GENESIS FINANCIAL TECHNOLOGIES, INC.,
GLEN LARSON and PETE KILMAN

Defendants.

CIVIL NO. 105/2012

**BREACH OF CONTRACT
INTENTIONAL MISREPRESENTATION
(FRAUD)
TRESPASS TO PERSONAL PROPERTY
TORTIOUS DESTRUCTION OF PROPERTY
VIOLATION OF 18 USC 1030
CIVIL CONSPIRACY TO VIOLATE 18 USC §1030,
TO DESTROY PERSONAL PROPERTY AND TO
COMMIT TRESPASS TO PERSONAL PROPERTY
CONVERSION OF INTELLECTUAL PROPERTY
RESTRAINING ORDER REQUEST**

**ACTION FOR DAMAGES
JURY TRIAL DEMANDED**

**DEFENDANTS' REPLY IN SUPPORT OF
MOTION TO DISMISS FOR IMPROPER VENUE
OR, IN THE ALTERNATIVE, FOR CHANGE OF VENUE**

COME NOW the Defendants Genesis Financial Technologies, Inc. ("Genesis"), Glen Larson ("Larson"), and Pete Kilman ("Kilman"), and respectfully submit their Reply in Support of Motion to Dismiss for Improper Venue pursuant to Fed. R. Civ. P. 12(b) (3), and Motion for Change of Venue pursuant to 28 U.S.C. § 1404(a), with supporting Memorandum of Law.

Introduction

This matter is before the Court on questions of venue under 28 U.S.C. § 1391(b)(2), and transfer under 28 U.S.C. § 1404(a). The Plaintiffs have filed a lengthy Opposition, along with a lengthy affidavit from Plaintiff Larry Williams ("Williams"). Weeding through the entirety of the Opposition, certain aspects of Plaintiffs' claims are now apparent.

Breach of Contract / Larry Williams Sentiment ("LW Sentiment")

According to Williams, 13 years ago (while living in California) Williams and Genesis jointly developed a "sentiment indicator", LW Sentiment, and agreed that Williams would be

entitled to fifty percent (50%) of the revenue received by Genesis from the software. (Williams Affidavit ¶¶ 6 – 8). Reading from the Complaint and Affidavit, Williams may, or may not, claim to be the owner of LW Sentiment:

1. Williams is the “originator” of LW Sentiment, a “joint project” with Genesis. (Complaint ¶ 3).

2. Williams allowed Genesis “to market their products at [his] seminars and lecture, including a sentiment indicator which [Williams and Genesis] jointly developed known as the LW Sentiment.” (Williams Affidavit ¶ 7, emphasis added).

3. The “data in the LW Sentiment is Plaintiff Williams’ intellectual property.” (Complaint ¶ 4).

Thus, Plaintiffs either claim an interest in a joint work (1. above), admit that Genesis owns LW Sentiment (2. above), or claim to own “the data in LW Sentiment” [sic] (3. above).

Breach of Contract / Fraud

Genesis does not dispute that it (verbally) agreed to share the revenue received from LW Sentiment. Rather, Genesis claims that it is entitled to credit against the obligation from a software package and seasonal tool provided to Williams. (See Exhibit 3 to Williams’ Affidavit). Williams states that this “attempt to renegotiate” occurred in 2012, while he lived in the Virgin Islands. (Williams Affidavit ¶ 15). Williams also claims that Genesis has misstated the number of LW Sentiment subscribers “throughout the agreement”, and that he is actually owed much more than \$449,327. He labels the (alleged) misstatements of subscribers as “fraud.”

18 U.S.C. § 1030
Computer Fraud and Abuse Act (CFAA)

With great drama, Plaintiffs state that Genesis “loaded a computer gun, aimed it at a U.S. Virgin Islands citizen in the U.S. Virgin Islands and shot his computer and his business.” (Opposition p. 18). Less dramatically, Williams states that “[As] I began my daily download from Genesis ... a malware program entered the computer and erased all the data...”. (Williams Affidavit ¶ 19). In fact, Williams (a free user of Genesis software) informed Genesis on Wednesday, September 19th that “after Friday’s download I will no longer use Genesis. I have no other data provider or software in the wings, but suspect something will work out ... will start on that now.” (See **Exhibit 3**, Email from Larry Williams to Glen Larson dated September 19, 2012). The next day, (Thursday, September 20, 2012) Mr. Williams, through counsel, revoked “all oral and/or written agreement which may still exist between himself and Genesis Financial Technologies.” (See **Exhibit 4**, Letter from Mr. Williams’ California counsel to Genesis).

On Friday, September 21, 2012, Mr. Williams’ premium level utilization of Genesis software was turned off, which took effect when Mr. Williams logged onto the Genesis server at the end of the day. Mr. Williams complained that he could no longer download market data, and declared “all ou[t] war.” (See **Exhibit 5**, Email from Larry Williams to Pete Kilman dated September 21, 2012).

Venue under 1391(b)(2)

Rather than identify events or omissions giving rise to the claim, Plaintiffs’ Opposition largely dwells on contacts with the forum, and tangential facts or events.

The test for determining venue is not “contacts” with a particular district, but rather the location of those “events or omissions giving rise to the claim ...”.

Although the statute no longer requires a court to select the “best” forum, the weighing of ‘substantial’ may at time seem to take on that flavor.

Cottman Transmission Systems, Inc. v. Martino, 36 F.3d 291, 294 (3rd Cir., 1994; citations omitted.)

[T]he current statutory language still favors the defendant in a venue dispute by requiring that the events or omission be substantial. Events or omissions that might only have some tangential connection with the dispute in litigation are not enough. Substantiality is intended to preserve the element of fairness so that a defendant is not haled into a remote district having no real relationship to the dispute.

Id. Viewed in this context, the events which can be said to have occurred in the Virgin Islands are insubstantial.

With respect to the contract claim, what “events giving rise to the claim” have the Plaintiffs identified? The best the Plaintiffs can do is to state that breach occurred “while the plaintiffs were here”, a non-responsive statement.

With respect to the “fraud” claim, there is simply no argument at all.

The analysis of the CFAA claim is different, but must be done in the context of actual events, as opposed to the inaccurate and exaggerated verbiage of the Plaintiffs’ opposition. Mr. Williams chose to discontinue his (free) use of the premium level Genesis¹ software. He followed that notice with a revocation of all agreements with Genesis. He then logged into the Genesis computer for one last daily market data download, and was denied. Given his express intentions to cease using the software, it is unclear how this caused any problem, much less the level of destruction that he now claims. Irrespective, the fact is that the event giving rise to the claim – discontinuance of the premium level access – occurred at the Genesis server in Colorado. The resulting effect on a laptop computer (which is inherently portable) is insubstantial.

¹ Basic level services, denominated “Silver”, remained functional.

With respect to the claim for “conversion of Intellectual/Personal Property”, the Plaintiffs do not identify *any* event or omission, much less a substantial one. Instead, the Plaintiffs emphasize Defendants’ “contacts” with the Virgin Islands, an irrelevant factor to this particular test.

Moreover, the Plaintiffs’ parsing of words, claiming to own “data in the LW Sentiment”, as opposed to claiming ownership of the copyright, is notable. Taking the statements of Plaintiffs quoted herein on page 2 at face value, the Plaintiffs have no cognizable claim related to LW Sentiment beyond their contract action.

At a minimum, it is apparent that substantial events occurred in Colorado.

1404(a) Transfer

To support their choice of venue, the Plaintiffs primarily rely upon the preference afforded of Plaintiffs’ choice of forum. “However, Plaintiff’s preference alone is not controlling. A plaintiff’s choice is neither dispositive of the analysis nor is it the only factor to be considered.” *Benjamin v. Esso Standard Oil Co.*, 2009 WL 2606374 at *4. (District Court of the Virgin Islands, 2009) (citation omitted). “Further, the plaintiff’s choice of forum should be afforded less weight when the central facts of the action occurred outside the chosen forum.” *Id.*, citing *Fortay v. University of Miami*, 1994 WL 62319 (D.NJ., 1994). As a general rule, the preferred forum is that which is the center of the accused activity. *Id.*, at *4. “The convenience of both party and non-party witnesses is probably the single most important factor in the analysis of whether a transfer should be granted.” *Id.*

Here, Plaintiffs identify Mr. and Mrs. Williams as the “key witnesses”, and state that they will “probably” hire two local experts, who at this point remain nameless. Plaintiffs also criticize Defendants for not identifying specific witnesses and testimony.

This is primarily a function of the stage of the case. The Plaintiffs make sweeping allegations that unquestionably indicate the need for testimony by multiple employees of Genesis, as well as subject matter expert witnesses. Genesis employees live and work in Colorado. Expert witnesses for Genesis will likely also live and work in Colorado, particularly as to any computer specialist. As well, it is clear that the central facts of the action occurred in Colorado, outside the chosen forum.

Conclusion

Plaintiffs have filed this action in a forum which imposes the greatest possible financial and logistical burden on Defendants, and in which few or no substantial events occurred. The Motion for transfer should be granted.

Dated: February 6, 2013

Respectfully Submitted,

s/Scott W. Johnson

Scott W. Johnson
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CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED THAT a true and exact copy of the foregoing REPLY IN SUPPORT OF MOTION TO DISMISS was served on this the 6th day of February 2013 upon:

Joel H. Holt
Joel H. Holt, Esq., PC
2132 Company Street
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Attorneys for Plaintiff

via: CM/ECF | Mail | Fax | Hand Delivery | Email

s/ Scott W. Johnson
Scott W. Johnson

From: larry <larry@ireallytrade.com>

Date: Wednesday, September 19, 2012 1:35 PM

To: Glen Larson <glarson@tradenavigator.com>

Subject: details

I have one open trade on in Gold. I am telling Chad to turn off the other systems and will do the same once the Gold is exited. After Fridays down load I will no longer use Genesis.

I have no other data provider or software "in the wings" but suspect something will work out...will start on that now.

Also after Friday please remove all references to me on your website and promotions and we will do the same.

respectfully

larry

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September 20, 2012

Via Facsimile & U. S. Mail

719-260-6113

Glenn Larsen

Genesis Financial Technologies, Inc.

4775 Centennial Blvd., Suite 150

Colorado Springs, CO 80919

Re: Williams adv. Genesis Financial Technologies

Our client: Larry Williams

Cease and Desist sale and use of Larry Williams' materials

Dear Mr. Larsen:

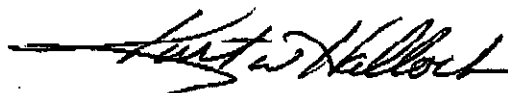
We are informed by Larry Williams that Genesis Financial Technologies is more than \$358,250.00 behind in royalty payments owed from Genesis for the sale of Mr. Williams' works.

Mr. Williams hereby revokes any oral and/or written agreement which may still exist between himself and Genesis Financial Technologies. Demand is hereby made that Genesis and you cease and desist in the use of Mr. Williams' name and the offer of his written works on www.genesisift.com and www.tradenavigator.com websites as well as in any other location. This includes the LW Sentiment Indicator which must not be provided to any one after September 30, 2012.

It is hereby demanded that you remove all references to Mr. Williams including the testimonial on the Genesis website. The Genesis website's "Trade Navigator Software Modules" and other offers reference at least 6 of Mr. Williams' publications. The offer and sale of these works without compensation to Mr. Williams constituted a violation of his copyrights and conversion of the income from the sale of Mr. Williams' intellectual property. Additionally, Mr. Williams' image is being used on these websites and must be removed. The now unauthorized use of his image is a violation of his right of publicity. Please immediately remove all offers of any such works.

If you have any questions or need more information, please feel free to contact me.

Very truly yours,
LAW OFFICE OF KURT W. HALLOCK



Kurt W. Hallock

EXHIBIT 4

From: larry [<mailto:larry@ireallytrade.com>]

Sent: Friday, September 21, 2012 5:03 PM

To: Pete Kilman

Subject: war or?

I cannot download data tonight I hope you can allow that. If not this is a sure sign of all our war, that can be avoided with allowing a download through tonight.

I have open positions and cannot follow them...do you really want responsibility for that?

larry



SPARKS WILLSON

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Kent H. Borges
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1936-2007

February 6, 2013

Clerk of the Court
US District Court of the
Virgin Islands - St. Croix
3013 Estate Golden Rock, Suite 219
St. Croix, VI 00820

via fax: 340-718-1563

Re: *Williams, et al. v. Genesis Financial Technologies, Inc., et al.*
Civil No. 105/2012

Dear Clerk:

Attached herewith is the Defendants' Reply in Support of Motion to Dismiss for Improper Venue Or, In the Alternative, for Change of Venue along with Exhibits marked 3, 4 and 5. We attempted to e-file this document using the newly issued login and password. All attempts (8) were unsuccessful with an error message that the password was incorrect. This occurred after close of business in the Virgin Islands, and therefore we could not request a corrected password. Accordingly, we are submitting this via facsimile with an electronic copy served on counsel today. We will contact the court in the morning with regard to this filing.

Yours truly,

SPARKS WILLSON BORGES
BRANDT & JOHNSON, PC

Scott W. Johnson

Attachment

cc via E-mail to counsel:

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cc: Tyrone Hodge via email: Tyrone_Hodge@vid.uscourts.gov