

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE  
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY

UNIVERSAL STRATEGY GROUP, )  
INC., )  
 )  
Plaintiff, )  
 )  
VS. )  
 )  
BRIAN DAVID HALSTEAD, )  
 )  
Defendant. )

NF  
NO. 16-15-BC

DAVIDSON COUNTY  
CHANCERY CLERK  
R.C. & M.

2016 SEP 26 PM 2:40

FILED

**(1) MEMORANDUM OF FINDINGS OF FACT AND CONCLUSIONS  
OF LAW AND ORDER GRANTING JUDGMENT FOR  
PLAINTIFF FOR RETURN OF ELECTRONIC DEVICES; AND  
(2) SCHEDULING ORDER**

On September 12-13, 2016, the Court conducted a trial to dispose of some, but not all of the issues in this case.

The issues that were tried were whether the Plaintiff Corporation or the individual Defendant, Brian David Halstead, is the owner of a laptop computer, iPad, smartphone (hereinafter referred to as the "Electronic Devices") which the Defendant had with him when he separated employment from the Plaintiff Corporation. Based upon the following findings of fact and conclusions of law, the Court determines that the Electronic Devices are owned by the Plaintiff, and must be returned after the personal content of the Defendant has been removed.

### **Ownership of Electronic Devices**

It is undisputed that the funds of the Plaintiff Corporation were used to buy the Electronic Devices. Under Tennessee law, that purchase placed ownership in the Plaintiff Corporation. To that, the Defendant presents two defenses which are related.

(1) The Defendant asserts that the Plaintiff Corporation gifted the Electronic Devices to the Defendant during his employment with the Plaintiff Corporation which gifting occurred when he put personal content on the Devices.

(2) The Defendant asserts that as the Chief Operating Officer of the Plaintiff, the Defendant made the gift to himself. Such gift-making decisions, the Defendant asserts, come within the explicit and implicit authority he had been accorded by the Plaintiff Corporation in his role as COO.

In support of the defense that the Plaintiff Corporation gifted the Electronic Devices to the Defendant, he presented the testimony of various witnesses that the Plaintiff Corporation had a custom and practice that computers purchased by the Plaintiff were, at times, gifted to employees.

The Court's analysis of this proof is that it is credible but does not support the Defendant's position because the circumstances of his case are so different.

The Court finds that the proof establishes that there was a practice of the Plaintiff to gift computers to employees but only after the computers had been scrubbed, overwritten and, in most cases, were older, outdated equipment. This proof is credible and consistent

with Plaintiff's business of maintaining the classified secrets of its clients and also preserving the Plaintiff's proprietary business practices and pricing that it has devoted time and resources to developing for years. In particular, the testimony of Mr. Music established this. And, while it appears, at times, that there may have been a few instances of inadvertent relinquishment by the Plaintiff of its used computer to employees without the foregoing measures of scrubbing, overwriting or antiquated equipment, these did not appear to be a practice but an exception due to inadvertence or gifts to lower level employees where the risk of dissemination of proprietary information did not exist.

This gifting of computers to employees is not, however, support for the Defendant's case because the circumstances are so different:

- The Defendant is a high-level, management employee with access to much propriety information, and
- the Electronic Devices were not wiped, scrubbed or overwritten by the Plaintiff before the Defendant asserted ownership and took control of the Devices.

The practice of the Plaintiff Corporation with respect to gifting computers to employees, the Court therefore finds, is not weighty proof to support the Defendant's defenses.

As to the Defendant's claim of his authority, on behalf of the Plaintiff Corporation, to gift these Electronic Devices to himself, the Court cites to the Restatement (Third) of Agency § 8.05 (2006):

An agent who has possession of property of the principal has a duty to use it only on the principal's behalf, unless the principal consents to such use. See § 8.06. This rule is a specific application of an agent's basic fiduciary duty

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stated in § 9.01. See § 8.01, Comment *b*, for discussion. The rule is also a corollary of a principal's right, as an owner of property, to exclude usage by others. An agent is subject to this duty whether or not the agent uses property of the principal to compete with the principal or causes harm to the principal through the use. An agent may breach this duty even when the agent's use is beneficial in some sense to the property or to the principal.

\* \* \*

Termination of an agency relationship does not end an agent's duties regarding property of the principal. A former agent who continues to possess property of a principal has a duty to return it and to comply with the management and record-keeping rules stated in § 8.12.

Additionally, Restatement (Second) of Agency § 39 (1958) that unless otherwise agreed, authority to act as an agent includes only the authority to act for the benefit of the principal.

The proof in this case is that there is no evidence that the CEO or shareholders of the Plaintiff Corporation knew or agreed to these self-dealing gifts of the Electronic Devices that the Defendant made to himself. Nor were the alleged gifts for the benefit of the Corporation. Further detracting from the defense that the Defendant had corporate authority to make these gifts to himself are tax returns, which were prepared by the tax attorney for the Plaintiff Corporation. These returns do not report that the Electronic Devices were gifted to the Defendant. Accordingly, the Court finds that the Defendant was not authorized to gift these Electronic Devices to himself, and he is not the owner of the Electronic Devices on his theory that he had the authority, as COO, to make these gifts.

Thus, the greater weight and preponderance of the evidence is that the Plaintiff owns the Electronic Devices.

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### **Content on Devices**

The proof reveals that the extent of authorization from the Corporation with respect to the Electronic Devices, is that the officers, the CEO, Mr. Slem, and the COO, the Defendant, were allowed to use the Plaintiff Corporation's computers and other electronic equipment not only for work but to put personal content on there. Allowing personal use of electronic devices benefitted the Plaintiff Corporation because it increased the likelihood that the Officers would work after hours at home and while on vacation. Also, the Plaintiff did not admit into evidence any policy, as some businesses have, that any content placed on company computers, including personal matters, becomes company property. Thus, the Court concludes that, while the Defendant does not own the Electronic Devices, because he was authorized to put his personal content on the Electronic Devices, he owns the content.

From the foregoing, the following orders are issued.

It is ORDERED that custody and possession of the Electronic Devices, presently in the custody of Logic Force, shall be turned over to the Plaintiff Corporation because it is the owner of those Devices.

With respect to damages, it is ORDERED that any claim of the Plaintiff to recover damages for loss of use of the Electronic Devices is dismissed with prejudice. There was no proof presented by the Plaintiff on damages for loss of use. All other claims for damages,

such as attorneys fees or punitive damages, are preserved for the trial of the remaining matters in this case in the event there is an overlap.


Further, because the Defendant owns the personal content on the Electronic Devices, measures must be taken to remove that personal content before the Devices are returned to the Plaintiff. The way that shall be accomplished is by entry of the following Protective Order.

Realizing that the parties may dispute what constitutes personal content on the Electronic Devices, it is ORDERED that the Defendant and Logic Force shall mark/identify what they contend is Defendant's personal content.

It is further ORDERED that Defendant's personal content, located on the Electronic Devices in the custody of Logic Force, shall be reviewed by Plaintiff's litigation counsel only. Neither the Plaintiff, any of its representatives, nor its Corporation Counsel may review the Defendant's personal content on the Electronic Devices in the custody of Logic Force. This shall remain in force until further order.

The process for the Defendant to identify personal content and Plaintiff's Counsel, only, to view that shall be completed by October 28, 2016. Any disputes over ownership of the content on the Electronic Devices shall be listed by Plaintiff's Counsel and filed under seal with the Court for an *in camera* review. Oral argument on any disputes over ownership of the content shall be conducted on November 17, 2016, at 9:00 a.m. along with setting discovery and potentially other deadlines. The Court will initiate the call.

With respect to any personal content that may have been turned over to the Plaintiff or Corporate Counsel prior to the September 12-13, 2016 trial, it is ORDERED that they shall return that to Plaintiff's Counsel to send to Defendant's Counsel.

  
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ELLEN HOBBS LYLE  
CHANCELLOR  
TENNESSEE BUSINESS COURT  
PILOT PROJECT

cc: Bryan K. Williams  
J. Alex Little  
Susan Neal Dickerson

 **MAILED** + faxed  
9/26/16