

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Real Good Technologies, LLC,

Plaintiff & Judgment
Creditor,

v.

Victory Solutions, LLC,

Defendant & Judgment
Debtor.

Action No. 1:17-cv-00149-DCN

**REAL GOOD TECHNOLOGIES, LLC'S REPLY IN SUPPORT OF
MAGISTRATE JUDGE PARKER'S REPORT & RECOMMENDATION**

Real Good Technologies, LLC respectfully submits the following reply in support of Magistrate Judge Parker's Report and Recommendation, and states as follows:

1. At the time that Victory Solutions filed its second Chapter 11 bankruptcy proceeding on September 27, 2018, *In re Victory Solutions LLC*, Bankr. Pet. No. 18-15798-(JPS), Real Good Technologies was in possession of the following property of Victory Solutions:

No.	Description of Property
1,049	New AASTRA 57IVoip Digital Phones and Related Accessories (Feet, Constitution, Power Supply and Cables)
30	Used Android LG Model ZNFLK430 Tablets

No.	Description of Property
13	Supermicro Rack Servers (1 marked “bad,” 1 marked “no response,” and 1 damaged case and damaged internal parts)
12	Portable Aero Cases Containing Supermicro Rack Server and a Switch
1	Portable Aero Case Containing Switch Only

See Pl. Real Good Technologies’ Report of Items Seized (ECF No. 119) (Dec. 7, 2017).

2. Victory Solutions had taken possession of this property as a result of this Court’s Order Seizure Order November 14, 2017. (ECF No. 116). *See also* Stipulation & Order Resolving Rule 2004 Mot. of & Granting Adequate Protection to Real Good Techs., LLC, No. 18-15798-jps (Doc. 30) (Bankr. N.D. Ohio) (Nov. 28, 2018).¹

3. On July 2, 2019, the United States Bankruptcy Court for the Northern District of Ohio entered the attached order dismissing the Chapter 11 proceedings in *In re Victory Solutions LLC*, Bankr. Pet. No. 18-15798-(JPS) (Bankr. N.D. Ohio) (July 2, 2019) (Doc. 79). The Bankruptcy Court found, among other things, that “Victory Solutions [was] not authorized to be a debtor, so the case may not be converted.” *Id.* In doing so the court overruled Real Good Technologies’ objection seeking to convert the matter to a Chapter 7. *Id.*

¹ While not directly part of these proceedings, it bears noting the Victory Solutions was in breach of the Adequate Protection Agreement during the pendency of the unauthorized Chapter 11 proceeding.

4. On July 8, 2019, Real Good Technologies filed a copy of the Bankruptcy Court's dismissal with this Court. *See* Notice of Bankruptcy Court's Order of Dismissal of Chapter 11 Bankruptcy Proceedings, Ex. A (July 8, 2019) (ECF No. 145). Real Good Technologies also filed a Motion Seeking an Order Compelling Victory Solutions to Return Certain Property That Has Been Revested Under 11 U.S.C. § 349(b)(3). (ECF No. 146).

5. As a result of the dismissal, under 11 U.S.C. § 349(b)(3), the property Real Good Technologies relinquished under terms of the adequate protection agreement "revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case under this title."

6. Thus, upon dismissal of the Chapter 11 proceeding, on July 2, 2019, the property identified in ¶ 1 above revested to Real Good Technologies under section (b)(3). *See* H.R. Rep. 95-595, at 338 (1977) ("Subsection (b) specifies that the dismissal reinstates proceedings or custodianships that were superseded by the bankruptcy case, reinstates avoided transfers, reinstates voided liens, vacates any order, judgment, or transfer ordered as a result of the avoidance of a transfer, and revests the property of the estate in the entity in which the property was vested at the commencement of the case."). *See also In re Steenstra*, 307 B.R. 732, 738 (B.A.P. 1st Cir. 2004) ("[O]nce the bankruptcy petition is dismissed, and the estate terminates, § 349(b)(3) provides that the former property of the bankruptcy estate revests in the entity which held the property prior to the commencement of the case."); *In re Lewis & Coulter, Inc.*, 159 B.R. 188, 190 (Bankr. W.D. Pa. 1993) ("The

effect of dismissal of a bankruptcy case is set forth at 11 U.S.C. § 349. Unless the court indicates otherwise, the general effect of an order of dismissal is to restore the status quo ante. It is as though the bankruptcy case never had been brought. The purpose of Section 349 is “to undo the bankruptcy case, as far as practicable, and to restore all property rights to the position in which they were found at the commencement of the case.” H. Rep. No. 595, 95th Cong., 1st Sess., 338 (1977); S. Rep. No. 989, 95th Cong., 2d Sess., 48-49; 1978 U.S. Code Cong. & Ad. News, 5787, 5834-35.”).

7. As Real Good Technologies acknowledged in its July 31 reply, “[t]o the extent the Internal Revenue Service’s liens take priority to Real Good’s prior possession, they should apply only to the property that is currently located in Cuyahoga County where the liens were recorded. O.R.C. § 317.09.” (ECF No. 150, at 2).

8. On August 12, 2019, this Court issued an Order requiring Victory Solutions to file an inventory by August 19, 2019. (ECF No. 152). Victory Solutions failed to timely comply with the Court’s Order and Real Good subsequently filed a show cause motion on September 3, 2019. (ECF No. 153). On the eve of the scheduled show cause hearing, Victory Solutions filed its Notice of Filing of Location of Equipment. (ECF No. 155).

9. In its Notice of Filing, Victory Solutions represented to this Court that the location of the property subject to the motion for revestment as of the dismissal date of the bankruptcy is as follows:

System Number	HQ's	CE's	TOTAL PHONES	CAMPAIGN STREET	CAMPAIGN CITY	CAMPAIGN STATE	CAMP ZIP
vv0051	1	0	10	5541 Fermi Ct.	Carlsbad	CA	92008
vv1157	0	1	2	120 Mason Drive	Canton	GA	30115
vv1142	0	1	8	7605 SE 27th Ste 204	Mercer Island	WA	98040
vv1190	0	1	6	7605 SE 27th Ste 204	Mercer Island	WA	98040
vv0194	1	0	10	5050 Rocklin Rd A-20	Rocklin	CA	95677
vv1074	0	1	3	44 Hartshorn Dr	Colts Neck	NJ	7722
vv1167	0	1	5	311 Bennington Pl	Canton	Ga	30115
vv1169	0	1	5	7605 SE 27th St Suite #204	Mercer Island	WA	98040
vv1077		1	8	1101 North Highland Street	Arlington	VA	22201
vv0069	1	0	12	124 W. Chestnut Street, #12	Jeffersonville	IN	47130
vv1168	0	1	6	44 Hartshorn Dr	Colts Neck	NJ	7722
vv1091	0	1	2	418 N. Cleveland St.	Albany	GA	31701
VV1136	0	1	0	2805 Chichester Lane	Fort Wayne	IN	46815
vv0033	1	0	7	4101 Grennbriar Suite #100	Houston	Texas	77098
ALL REMAINING	241	136	3291	19571 Progress Drive	Strongsville	OH	44136

(ECF No. 155, Ex. A).

10. Based counsel's reading and understanding of 11 U.S.C. § 349(b)(3) and O.R.C. § 317.09, the phones located outside of Cuyahoga County should revert by operation of law to Real Good Technologies.

11. Real Good Technologies has, as Magistrate Judge Parker notes in his Report and Recommendation, invited the Internal Revenue Service to participation in this matter. (ECF 179, at 5). As of the time of this filing, the Internal Revenue Service has not weighed in on the Report and Recommendation or otherwise taken a position contrary to what Real Good Technologies has argued and what Magistrate Judge Parker found to be appropriate.

For the reasons stated herein, Real Good Technologies respectfully requests that this Court adopt the Report and Recommendation and enter the attached proposed order which is being submitted in response to the Report and Recommendation.

Date: November 21, 2019

Respectfully submitted,

/s/ Michael L. Murphy

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Attorneys for Real Good Technologies, LLC

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Real Good Technologies, LLC's Reply In Support Of Magistrate Judge Parker's Report & Recommendation* was served upon the following through the Court's ECF system and further via email to the following:

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Counsel for Victory Solutions

And mailing to the following address:

Internal Revenue Service
P.O. Box 7346
Philadelphia, Pennsylvania 19101-7346
Re: Creditor Number 25671631

November 21, 2019

/s/ Michael L. Murphy
Michael L. Murphy (DC 480163)
BAILEY & GLASSER, LLP

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[PROPOSED] ORDER

Upon consideration of the Plaintiff Real Good Technologies, LLC's motion for revestment (ECF No. 146), the Report and Recommendation (ECF No. 214), and all other pleadings and proceedings heretofore and herein, and for good cause shown:

IT IS ORDERED that this Court adopts the Report and Recommendation and grants Plaintiff Real Good Technologies, LLC's motion for revestment (ECF No. 146).

IT IS FURTHER ORDERED that property listed in Victory Solutions' Notice of Filing of Location of Equipment (ECF No. 155) that is not located in Cuyahoga County shall be turned over to Real Good Technologies within thirty (30) days of the entry of this Order.

IT IS SO ORDERED.

Dated this _____ day of _____, 2019.

Honorable Donald C. Nugent
United States District Judge