

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

REAL GOOD TECHNOLOGIES, LLC	)	ACTION NO. 1:17-cv-00149-DCN
	)	
Plaintiff & Judgment Creditor	)	Judge Donald C Nugent
	)	
-vs-	)	Magistrate Judge Thomas M. Parker
	)	
VICTORY SOLUTIONS, LLC	)	<b><u>RESPONSE TO EXHIBITS, RESPONSE</u></b>
	)	<b><u>TO MOTION, AND EXPLANATION</u></b>
Defendant & Judgment Debtor	)	<b><u>FOR FAILURE TO TURNOVER</u></b>
	)	<b><u>PROPERTY</u></b>

Now comes the Defendant and responds to the Exhibits filed by Plaintiff, Responds to Plaintiff's Motion, Offers an Explanation for its Failure to Turnover Property and comments on appropriate sanctions.

Response to Exhibits

It is unclear to Defendant why substantially all of the Pleadings in the case should constitute Exhibits. These documents are part of the record and already before the Court. Therefore, Defendant has no objections to the Pleadings being before the Court. However, Defendant is unsure of the relevance of an advertisement advertising a new service which Defendant has proposed. As will be discussed below, Defendant has struggled and the mere fact that it is promoting a new product is wholly irrelevant to the question of whether it has complied with the Court's Order of December 18<sup>th</sup>.

Response to Motion

It is undeniable that Defendant has failed to turnover property. However, it is axiomatic that for an Order to be held in contempt of an Order, the Order must be clear and definite. In re: *Parker*, 368 BR86 (6<sup>th</sup> Cir BAP, 2007); *CFE Racing Prods, Inc vs BMF Wheels, Inc*. 793 F 3d 571

(6<sup>th</sup> Cir, 2015). The Order at issue, signed by this Honorable Court on December 18<sup>th</sup> and drafted by counsel for Plaintiff, requires Defendant to turnover the property listed in its Notice of Filing of Location of Equipment “that is not located in Cuyahoga County, Ohio” within thirty (30) days of the Order. What is unclear is whether the Order requires the turnover of the property as set forth in the Notice of Location, or the property that was not present in Cuyahoga County as of December 18<sup>th</sup>. Additionally, assuming that the property became subject to the IRS lien once it entered Cuyahoga County, it is unclear whether nevertheless, that property should be turned over. As an attachment to this Response (Exhibit B), Defendant will indicate what property was not in Cuyahoga County as of December 18<sup>th</sup>, as well as property of the Defendant not in Cuyahoga County. Defendant suggests that if the Court finds the Order clear and definite, the property to be turned over ought to be as of December 18, 2019. Defendant will make the property not in Cuyahoga County as of December 18, 2019 available at the office of its counsel on or before May 29, 2020.

#### Explanation for Failure to Turnover Property

In addition to being somewhat unsure what property should be turned over, as is indicated above, Defendant states that the time between December 18, 2019 and the present has been a tumultuous time for the company. All employees of the company, except one, has been laid off and therefore, it has been difficult to keep up with all of the work. Defendant offers this narrative by way of explanation and not by way of excuse.

#### Sanctions

If this Court should find that its prior Order was clear and unambiguous, Defendant suggests that, albeit tardy, it has substantially complied and therefore the value of any equipment not turned over, which this Court shall have determined should properly have been turned over,

should be paid to Plaintiff. Defendant has obtained an appraisal from Rosen & Company setting forth the value of its equipment. A copy of that appraisal is attached as Exhibit A. Based on the number of items owned by Defendant and the relative proportion of items not turned over, Defendant suggests that the appropriate value of those items was \$500.00 and Defendant suggests that payment of \$500.00 would be an appropriate sanction.

Respectfully submitted,

/s/ Glenn E. Forbes  
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FORBES LAW LLC  
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[crenzi@geflaw.net](mailto:crenzi@geflaw.net)

CERTIFICATE OF SERVICE

I hereby certify that on May 19, 2020, a true and correct copy of the Response to Exhibits, Response to Motion and Explanation for Failure to Turnover Property was served via the court's Electronic Case Filing System on these entities and individuals who are listed on the court's Electronic Mail Notice List:

Harry D. Cornett, Jr    [harry.cornett@tuckerellis.com](mailto:harry.cornett@tuckerellis.com)

Lydia M. Floyd    [lfloyd@prwlegal.com](mailto:lfloyd@prwlegal.com), [ecf@prwlegal.com](mailto:ecf@prwlegal.com)

Michael L. Murphy    [mmurphy@baileyglasser.com](mailto:mmurphy@baileyglasser.com), [crobinson@baileyglasser.com](mailto:crobinson@baileyglasser.com),  
[mkestnerclay@baileyglasser.com](mailto:mkestnerclay@baileyglasser.com)

/s/ Glenn E Forbes  
Glenn E. Forbes, Esq. (0005513)  
**FORBES LAW LLC**  
Attorney for Victory Solutions, LLC

**EXHIBIT B**

**SUPPLEMENTAL NOTICE OF LOCATION**

Equipment out of the county as of 12/18:

vv0051 & 10 Phones

vv1157 & 2 Phones

Equipment out of the county as of today:

vv1167 & 5 Phones

vv1136 & 0 Phones

**ROSEN & COMPANY, INC.**  
**AUCTIONS REAL ESTATE APPRAISALS**

2616 S. Green Road, Cleveland, OH 44122  
E-mail: [srosen@bidrosen.com](mailto:srosen@bidrosen.com) [www.rosenandcompany.com](http://www.rosenandcompany.com)  
(440) 519-1860 FAX: 888-593-4953

**APPRAISAL AGREEMENT**

This appraisal contract is by and between Rosen & Company, Inc. Appraisal Division, (Appraiser) and Shannon Burns, CEO, Victory Solutions, LLC, 19571 Progress Drive, Strongsville, OH 44149 (Client).

Whereas Client hereby employs Appraiser to evaluate the voice-over-IP handsets and related computer equipment assets of:

Company Name: Victory Solutions, LLC  
19571 Progress Drive.  
Strongsville, OH 44149

Contact: Shannon Burns

Phone Number: Phone: 216-539-0169  
Cell: 440-263-291

Evaluation requested: Fair Market Value Appraisal

The purpose of this appraisal: IRS proceedings

Appraisal fees are fixed at Three Thousand Eight Hundred dollars (\$3,800.00). A reasonable travel expense fee will be charged for on-site inspections over one hour drive from Cleveland, OH or that require air or other alternate transportation. Fees are computed on travel time, duration of site visits and in-office research time necessary to complete appraisal. Client agrees to furnish lists, paid vouchers, bills of sale, and any other pertinent information that appraisers may need, and to cooperate with appraisers in any way possible to facilitate this appraisal.

**NO APPRAISAL EVALUATIONS**, either written or verbal, **SHALL BE GIVEN** to the

**client, client associate or any lender**, until the invoice for this appraisal is paid in full with U.S. Funds. **Casheir's check or money order must be given to the appraiser upon arrival for on-site visit.** Funds must be cleared PRIOR to appraisal report being sent. PAYMENT IS NOT CONTINGENT UPON APPRAISAL EVALUATIONS.

Client shall receive one original of said appraisal report. No copies will be provided to anyone else without the client's express permission in writing indicating correct name and email or mailing address.

If client requires Appraiser or Rosen & Company, Inc.'s representative to appear in any court for testimony, expert witness fees shall be based upon Two Thousand Five Hundred Dollars (\$2,500.00) per day, or any part thereof, whether testimony is given or not, plus travel expenses.

This agreement shall be considered as being executed in Cleveland, Ohio and, should any litigation ensue, it shall be agreed that Cleveland, Ohio and the Courts in Cleveland, Ohio shall be the Courts of venue.

Executed this 19<sup>th</sup> day of November, 2019.

ROSEN & COMPANY, INC.

Appraisal Division

By: Marvin Schiff

Title: Principal

Client:

Name & Title:

Signature:  Shannon Butkus

Title: CEO

Address: 19571 Progress Drive

City, State: Strongsville, OH 44149

Phone No.: 216-539-0169

**Rosen & Company, Inc.**  
Auctions – Appraisals

**APPROACHES TO VALUE**

**MARKET APPROACH**

One of the three recognized approaches used in appraisal analysis, this approach involves the collection of market data pertaining to the subject assets being appraised. This approach is also known as the “Comparison Sales Approach.” The primary intent of the market approach is to determine the desirability of the assets and recent sales or offerings of similar assets being appraised. If the comparable sales are not exactly similar to the asset being appraised, adjustments must be made to bring them as closely in line as possible with the subject property.

**COST APPROACH**

One of the three recognized approaches used in appraisal analysis, this approach is based on the proposition that the informed purchaser would pay no more for a property than the cost of producing a substitute property with the same utility as the subject property. It considers that the maximum value of a property to a knowledgeable buyer would be the amount currently required to construct or purchase a new asset of equal utility as the subject property. It considers that the maximum value of a property to a knowledgeable buyer would be the amount currently required to construct or purchase a new asset of equal utility. When the subject asset is not new, the current cost must be adjusted for all forms of depreciation as the effective date of the appraisal.

**INCOME APPROACH**

One of the three recognized approaches used in appraisal analysis, this approach considers value in relation to the present worth of future benefits derived from ownership and is usually measured through capitalization of a specific level of income. This approach is the least common approach used in the valuation of machinery and equipment since it is difficult to isolate income attributable to such assets.

**DEPRECIATION**

Defined as the actual loss in value or worth of a property from all causes including those resulting from physical deterioration, functional obsolescence, and economic obsolescence.

**Physical Deterioration**

A form of depreciation where the loss in value or usefulness of an asset is attributable solely to physical causes such as wear and tear, and exposure to the elements.

**Functional Obsolescence**

A form of depreciation where the loss in value is due to factors inherent in the property itself and due to changes in design, or process resulting in inadequacy, over capacity, excess construction, lack of functional utility, or excess operating costs.

**Economic Obsolescence**

A form of depreciation or loss in value, caused by unfavorable external conditions. These can include such things as the economics of the industry, availability of financing, loss of material and labor sources, passage of new legislation, and changes in ordinances.

Rosen & Company, Inc.  
Auctions – Appraisals – Real Estate  
2616 South Green Road  
Cleveland, OH 44122

◆  
Members, Association of Machinery and Equipment Appraisers

Certificate of Values

Rosen & Company does

CERTIFY

That on the date given in this certificate, the herein described property of:

**Victory Solutions, LLC**  
**19571 Progress Drive**  
**Strongsville, OH 44149**

Was well and reasonably worth **\$42,200** on the basis of its Fair Market Value appraisal.

Effective Date: 21 Nov 2019

*Brad Goldstein*

Brad Goldstein  
srosen@bidrosen.com



Rosen & Company, Inc.  
Auctions – Appraisals – Real Estate  
2616 South Green Road  
Cleveland, OH 44122

◆  
Members, Association of Machinery and Equipment Appraisers

## CERTIFICATION

I certify that to the best of my knowledge and belief:

1. The statements of fact in this report are true and correct.
2. The reported analyses, opinions and conclusions are limited only by the reported assumption and the limiting conditions, and are my personal, unbiased, professional analyses, opinions and conclusions.
3. I have no present or prospective interest in the property that is the subject of this report; I have no interest or bias with respect to the parties involved.
4. My compensation is not contingent on an action or event resulting from the analyses, opinions or conclusions in, or use of, this report.
5. My analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the Association of Machinery and Equipment Appraisers Standards and Procedures of Professional Appraisal Ethics and Practice, and the Uniform Standards of Professional Appraisal Practice as promulgated by The Appraisal Standards Board of The Appraisal Foundation.
6. Personal on-site inspection of the property that is the subject of this report has been made unless otherwise stated.
7. No one provided significant professional assistance to the person signing this report unless otherwise stated.

Brad Goldstein

Brad Goldstein  
srosen@bidrosen.com

Effective date of this Appraisal: 21 Nov 2019

Date signed: 22 Nov 2019