

VIA UNITED STATES MAIL

July 27, 2020

Republican Committee of Allegheny County
Attn: Sam DeMarco, Chairman
100 Fleet Street, Suite 205
Pittsburgh, Pennsylvania 15220

**Re: Real Good Technologies, LLC v. Victory Solutions, LLC
Case No. 17-cv-00149
Default Judgment & Attachment**

Dear Mr. DeMarco:

By way of introduction, my name is Michael Murphy and I represent Real Good Technologies in the above-reference matter. My client obtained a default judgment against Victory Solutions on April 19, 2017.

In the process of trying to collection from Victory Solutions, we previously obtained an order deeming we had a property right in Victory Solutions' property that was present outside State of Ohio. The following

- Real Good Technologies obtained a default judgment against Victory Solutions on April 19, 2017. (ECF 16.)
- Defendant's second improper attempt at Chapter 11 bankruptcy was dismissed on July 2, 2019. (ECF 145.)
- At that time, Real Good Technologies moved to retest the property at issue on July 8, 2019. This was property that plaintiff previously seized by the U.S. Marshalls in November 2017 and was given back subject to an adequate protection agreement that Victory Solutions also breached. (ECF 146.)
- Plaintiff's motion was fully briefed (ECF 149, 150) and Magistrate Judge Parker ordered that Victory Solutions provide "an accounting showing the location of the subject property at the time the bankruptcy was dismissed." (ECF 152) (emphasis added.)

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- On September 3, 2019, after Defendant failed to respond to Magistrate Parker's Order, Plaintiff filed a motion to show cause. (ECF 153.)
- On September 30, 2019, on the eve of the first show cause hearing scheduled for October 1, Defendant filed its "Notice of Filing of Location of Equipment." (ECF 155.) Plaintiff agreed to discontinue the show cause hearing in light of the filing. (ECF 156.)
- On November 7, 2019, Magistrate Parker issued a Report & Recommendation stating, among other things: "I recommend that the Court GRANT RGT's motion seeking an order compelling VS to return certain property that has been revested under 11 U.S.C. § 349(b)(3). I further recommend that the Court require RGT to submit a proposed order identifying the specific property VS must return following RGT's review of the notice of the equipment's location (ECF Doc. 155) and RGT's confirmatory discovery. (See ECF Doc. 180 at 2.)" (ECF 214 at 3)
- On November 18, 2019, Victory Solutions filed an objection to Magistrate Parker's Report & Recommendation. (ECF 218.) The matter was fully briefed. (ECF 219, 221.)
- On December 18, 2019, this Court issued an Order adopting the Report & Recommendation. (ECF 223.) In that Order, the Court noted it "has carefully reviewed the Report and Recommendation and agrees with the findings set forth. The Report and Recommendation of Magistrate Judge Thomas M. Parker (ECF 214) is ADOPTED. The Court GRANTS RGT's Motion for Revestment (ECF 146) and orders that the property listed in Victory Solutions' Notice of Filing of Location of Equipment (ECF #155) that is not located in Cuyahoga County, Ohio be turned over to Real Good Technologies." (ECF 223.) The Court's Order set a 30-day deadline in which the respond to the Order. (ECF 224.) That 30-day period ran on January 17, 2020.
- On February 10, 2020, Plaintiff was again required to file a show cause motion seeking compliance with the Court's Order. (ECF 225.)
- The Court initially scheduled a show cause hearing for April 15 and postponed it in light of COVID-19 public health emergency declaration on March 13, 2020, and this Court's modified procedures in light of the pandemic.

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- Again, on the eve of a show cause hearing to discuss its non-compliance with the Court's Order, Defendant has now finally appeared to reportedly offer a "narrative by way of explanation and not by way of excuse." (ECF 227.) Real Good filed a reply the same day. (ECF 228.).
- The Court issued its order on May 20, 2020. (ECF 229.)

I have included copies of ECF 214, 223, 224, 229. If you're interested in seeing any of the other referenced documents, please don't hesitate to contact me and I will be happy to provide electronic copies.

The reason I am writing to you at this time is because it has come my attention that the Republican Committee of Allegheny County is currently in possession of VOIP phones that are both (1) the property of Victory Solutions and (2) outside the State of Ohio. It's also my understanding that RCAC obtained these VOIP phones through one of Victory Solutions' resellers called Kania Enterprises, whose principle is Rob Kania.

While our prior court order does not specifically pertain to the phones in your possession (unless they were on the list of seized property, which we have no way of knowing at this time), we intend to seek an order of attachment over the VOIP phones and servers in your possession under the precedent the district court established. Namely, that the IRS's substantial liens do not extend to property outside Cuyahoga County, Ohio. I'd appreciate the chance to speak with you prior to filing, but am confident that I have sufficient information at this time about RCAC's current arrangement surrounding the VOIP phones it obtained through Kania to move to attach the property.

To reiterate, at this time, we have no interest in the phones we believe you're in possession of at this time and you're not required to take any action at this time. We are, however, in the process of taking the necessary steps to enforce our client's rights under the court's rulings to collect on its default judgment.

Alternatively, we are evaluating our rights under Section 1309.607 of the Revised Code of Ohio to determine whether we can attach any accounts receivable related to the VOIP phones obtained from Victory Solutions through Kania Enterprises.

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I would appreciate the opportunity to speak with you about this issue and if you have any additional questions, please let us know.

Sincerely,



Michael L. Murphy
BAILEY GLASSER LLP

Attachments

cc: Glenn E. Forbes (via email)
Rob Kanina (via U.S. mail)

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

REAL GOOD TECHNOLOGIES, LLC,	)	Case No. 1:17-cv-00149
)	
Plaintiff,	)	JUDGE DONALD C. NUGENT
)	
v.	)	MAGISTRATE JUDGE
	)	THOMAS M. PARKER
VICTORY SOLUTIONS, LLC,)	
)	
Defendant.	)	<u>REPORT & RECOMMENDATION</u>
)	

This matter was referred to the undersigned for post judgment matters on August 9, 2019. [ECF Doc. 151](#). At the time of the referral, Plaintiff Real Good Technologies' ("RGT") motion seeking an order compelling defendant, Victory Solutions, LLC, ("VS") to return certain property that has re-vested under 11 U.S.C. § 349(b)(3) was pending. [ECF Doc. 147](#).

On July 18, 2019, VS filed a response to RGT's motion. [ECF Doc. 149](#). VS did not dispute the effect of the bankruptcy dismissal and applicable law as argued in RGT's motion. [ECF Doc. 149 at 1](#). However, VS argued that the relevant property was subject first to an IRS lien and, for that reason, requested that the court deny RGT's motion. On July 31, 2019, RGT filed a reply in support of its motion. [ECF Doc. 150](#). RGT asserted that only the property located in Cuyahoga county was subject to the IRS lien. RGT requested an order requiring VS to account for the relevant property and its location at the time the bankruptcy case was dismissed.

On August 12, 2019, the undersigned ordered Victory Solutions, LLC (“VS”) to file an accounting showing the location of the revested property at the time its bankruptcy case was dismissed. [ECF Doc. 152](#). VS was required to file the accounting on or before August 19, 2019.

On September 3, 2019, Real Good Technologies, LLC (“RGT”) filed a motion for a show cause order because VS had not complied with the court’s August 12 order. [ECF Doc. 153](#). The undersigned then certified the issue to the Court and scheduled a show cause hearing for October 1, 2019. [ECF Doc. 154](#). On September 30, 2019, VS filed a document showing the location of the relevant equipment that RGT seeks to recoup. [ECF Doc. 155](#). The court then cancelled the show cause hearing. [ECF. Doc. 156](#).

On October 18, 2019, VS filed an objection to garnishments filed by Real Good Technologies. [ECF Doc. 178](#). Once again, VS argued that RGT should not be permitted to collect on its judgment because “IRS liens are attached to every asset of a Tax Debtor.” It appears that nothing was collected on these garnishments and VS’s objection should be overruled as moot.

On October 23, 2019, after reviewing VS’s filing showing the location of the equipment ([ECF Doc. 155](#)), RGT filed a notice concerning pending motions. [ECF Doc. 180](#). RGT’s notice withdrew its motion to show cause but affirmed its motion for revestment ([ECF Doc. 146](#)), arguing it was ripe for ruling. RGT acknowledged that the Internal Revenue Service (“IRS”) may have a superior lien on the property it seeks to recoup from VS and served the IRS with a copy of its notice. Over two weeks have passed and the IRS has not sought to intervene in this case.

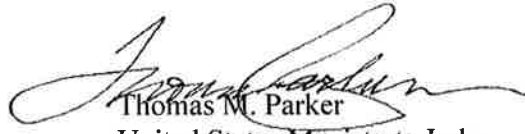
On October 28, 2019, VS filed a reply to RGT’s notice concerning motions. [ECF Doc. 182](#). VS argues that RGT should not be permitted to collect on its judgment by taking

possession of the revested property because of the IRS tax lien. VS does not cite any authority in support of this argument,¹ but argues that RGT has failed to address this argument. Neither party has provided the court with enough facts about the IRS's lien(s) or the applicable law to permit the court to determine the priority of the parties' interests in the property that RGT seeks to recoup. However, this much is clear: VS should not be permitted to use the IRS's lien against its property as a shield against other creditors. *See In re Vu-Rose*, No. 2:16-cv-09359-CAS, 2016 U.S. Dist. LEXIS 180007, (C.D. Cal. Dec. 28, 2016); citing *In re Bolden*, 327 B.R. 657, 667-68 (Bankr. C.D. Cal. 2005). RGT is aware of the IRS's lien and may ultimately be asked to answer to the IRS for property it collects from VS in this case. RGT has taken steps to notify the IRS of its collection attempts. ECF Doc. 180. VS should not be permitted to avoid RGT's collection attempts because another creditor holds a superior lien.

Because the IRS has not attempted to intervene in this case, despite being notified of RGT's collection attempts; because VS has not provided sufficient information to this court showing that RGT is not permitted to collect on its property due to an IRS lien; and because VS states no other defense to RGT's motion to revest, I recommend that the Court GRANT RGT's motion seeking an order compelling VS to return certain property that has been revested under 11 U.S.C. § 349(b)(3). I further recommend that the Court require RGT to submit a proposed order identifying the specific property VS must return following RGT's review of the notice of the equipment's location (ECF Doc. 155) and RGT's confirmatory discovery. (See ECF Doc. 180 at 2.)

¹ VS did cite authority in its initial response to RGT's motion seeking an order for return of property. ECF Doc. 149. However, the cases cited by VS were non-controlling and, very possibly, inapplicable to this case. In both of the out-of-state decisions cited by VS, the government had entered into the cases and argued that its liens took a priority over other creditors' interests. Here, the government has not entered into the case or attempted to execute upon its lien (to the Court's knowledge).

Dated: November 7, 2019


Thomas M. Parker
United States Magistrate Judge

OBJECTIONS

Any objections to this Report and Recommendation must be filed with the Clerk of Courts within fourteen (14) days after being served with a copy of this document. Failure to file objections within the specified time may waive the right to appeal the District Court's order. See *U.S. v. Walters*, 638 F.2d 947 (6th Cir. 1981). See also *Thomas v. Arn*, 474 U.S. 140 (1985), reh'g denied, 474 U.S. 1111 (1986).

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

REAL GOOD TECHNOLOGIES, LLC,	)	CASE NO. 1:17-CV-00149
)	
Plaintiff,)	
	)	JUDGE DONALD C. NUGENT
v.)	
	)	MAGISTRATE JUDGE THOMAS M.
	)	PARKER
)	
VICTORY SOLUTIONS, LLC,	)	<u>ORDER ADOPTING</u>
	)	<u>REPORT AND RECOMMENDATION</u>
Defendant.)	

This matter is before the Court upon the Report and Recommendation of Magistrate Judge Thomas M. Parker. (ECF #214). On November 18, 2019, Defendant Victory Solutions, LLC (“Victory Solutions” or “Defendant”) filed its Objections to the Magistrate’s Report (ECF #218). On November 21, 2019, Plaintiff Real Good Technologies (“RGT” or “Plaintiff”) filed its Reply in Support of the Report (ECF #219) and on December 11, 2019, Victory Solutions filed a Response to RGT’s Reply in Support. (ECF #221).

FACTUAL AND PROCEDURAL HISTORY

As set forth by the Magistrate Judge, the factual and procedural history of this case is as follows:

On July 18, 2019, Defendant Victory Solutions filed a Response (ECF #149) to Plaintiff Real Good Technologies’ Motion Seeking an Order Compelling Defendant to Return Certain Property That Has Been Revested Under 11 U.S.C. 349(b)(3) (ECF #146). Victory Solutions did not dispute the effect of the bankruptcy dismissal and applicable law as argued in Plaintiff’s Motion. (ECF #149). Defendant argued that the relevant property was subject first to an IRS lien and, for that reason, requested that the Court deny RGT’s Motion. On July 31, 2019, Plaintiff filed

a Reply in Support of its Motion. (ECF #150). Plaintiff asserted that only the property located in Cuyahoga County was subject to the IRS lien and requested an Order requiring Defendant to account for the relevant property and its location at the time the bankruptcy case was dismissed.

On August 12, 2019, the Magistrate Judge ordered Defendant to file an accounting showing the location of the revested property at the time its bankruptcy case was dismissed. (ECF #152). Victory Solutions was required to file the accounting on or before August 19, 2019. On September 3, 2019, Plaintiff filed a Motion for a Show Cause Order because Victory Solutions had not complied with the Court's August 12, 2019 Order. (ECF #153). The Court then certified the issue to the Court and scheduled a show cause hearing for October 1, 2019. (ECF #154). On September 30, 2019, Victory Solutions filed a document (ECF #155) showing the location of the relevant equipment that RGT seeks to recoup and the Court subsequently cancelled the show cause hearing. (ECF #156).

On October 18, 2019, Victory Solutions filed an objection to garnishments filed by RGT. (ECF #178). Once again, Victory Solutions argued that RGT should not be permitted to collect on its judgment because "IRS liens are attached to every asset of a Tax Debtor." On October 23, 2019, after reviewing Victory Solutions' filing showing the location of the equipment (ECF #155), RGT filed a notice concerning pending motions. (ECF #180). RGT's notice withdrew its Motion to Show Cause, but affirmed its Motion for Revestment (ECF #146), arguing it was ripe for ruling. RGT acknowledged that the Internal Revenue Service ("IRS") may have a superior lien on the property it seeks to recoup from Victory Solutions and served the IRS with a copy of its notice.

On October 28, 2019, Victory Solutions filed a Reply to RGT's notice concerning motions, arguing that RGT should not be permitted to collect on its judgment by taking possession of the revested property because of the IRS tax lien. (ECF #182). On November 7, 2019, Magistrate

Judge Thomas M. Parker filed his Report and Recommendation, recommending that the Court grant RGT's Motion Seeking an Order Compelling Victory Solutions to return the revested property. (ECF #214). Victory Solutions timely filed its Objections to the Report and Recommendation of the Magistrate Judge on November 18, 2019. (ECF #218). On November 22, 2019, the IRS filed a new lien in an amount of over \$45,000.

STANDARD OF REVIEW FOR MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

The applicable district court standard of review for a magistrate's report and recommendation depends upon whether objections were made to that report. When objections are made to a report and recommendation of a magistrate judge, the district court reviews the case *de novo*. Fed. R. Civ. P. 72(b)(3) provides this standard of review. It states, in pertinent part, the following:

The district judge must determine *de novo* any part of the magistrate's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

The text of Rule 72(b)(3) addresses only the review of portions of reports to which timely objections have been made; it does not indicate the appropriate standard of review for portions of the report to which no objections have properly been made.

DISCUSSION

The Court has reviewed *de novo* those portions of the Magistrate Judge's Report and Recommendation to which objections have been made. *See* FED. R. CIV. P. 72(b). The Court finds that Defendant's objections raise no arguments (factual or legal) that have not been fully addressed by the Magistrate Judge's Report and Recommendation.

Victory Solutions argues that the Magistrate Judge improperly analyzed the effect of a Federal Tax Lien. Here, Victory Solutions contends that a Federal Tax Lien attaches to all interests

of the tax payer in all property, real and personal, and the lien continues in place until the tax is paid. Defendant argues that the Federal Tax Lien overrides competing tax liens unless those liens were perfected prior to the Federal Tax Lien. (ECF #218). Finally, Victory Solutions contends that those cases relied upon by the Magistrate Judge are inapposite to the present matter.

Magistrate Judge Thomas M. Parker found that neither party to this matter has provided the Court with enough facts regarding the IRS's liens or the applicable law to permit the Court to determine the priority of the parties' interests in the property RGT seeks to recoup. Thus, this Court agrees with the Magistrate Judge's recommendation that Victory Solutions should not be permitted to use the IRS's liens against its property as a shield against other creditors.

CONCLUSION

The Court has carefully reviewed the Report and Recommendation and agrees with the findings set forth. The Report and Recommendation of Magistrate Judge Thomas M. Parker (ECF #214) is ADOPTED. The Court GRANTS RGT's Motion for Revestment (ECF #146) and orders that the property listed in Victory Solutions' Notice of Filing of Location of Equipment (ECF #155) that is not located in Cuyahoga County, Ohio be turned over to Real Good Technologies.

IT IS SO ORDERED.



DONALD C. NUGENT
Senior United States District Judge

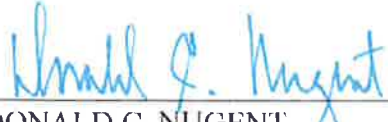
DATED: December 18, 2019

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

REAL GOOD TECHNOLOGIES, LLC,	)	CASE NO. 1:17-CV-00149
)	
Plaintiff,)	
	)	JUDGE DONALD C. NUGENT
v.)	
	)	MAGISTRATE JUDGE THOMAS M.
	)	PARKER
)	
VICTORY SOLUTIONS, LLC,)	
	)	<u>ORDER</u>
Defendant.)	

For the reasons stated in the Order Adopting Report and Recommendation filed contemporaneously herewith, the Report and Recommendation of Magistrate Judge Thomas M. Parker (ECF #214) is ADOPTED. Plaintiff Real Good Technologies, LLC's ("Plaintiff" or "RGT") Motion for Revestment (ECF #146) is GRANTED and the property listed in Defendant Victory Solutions, LLC's ("Defendant" or "Victory Solutions") Notice of Filing of Location of Equipment (ECF #155) that is not located in Cuyahoga County, Ohio shall be turned over to Plaintiff within thirty (30) days of the entry of this Order.

IT IS SO ORDERED.



DONALD C. NUGENT
Senior United States District Judge

DATED: December 18, 2019

MINUTES OF PROCEEDINGS NORTHERN DISTRICT OF OH

Real Good Technologies, LLC, Plaintiff & Judgment Creditor, v. Victory Solutions, LLC, Defendant & Judgment Debtor.	Date: October 1, 2019 ^{May 20, 2020} Judge Donald C. Nugent Court Reporter: None Case Number: 1:17 CV 00149
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Telephonic status held w/ all counsel participating
Counsel presented arguments on (P's) Motion to Show
Cause. Def has not turned over items pursuant to Court's
12/18/19 ORDER. Def says it is now prepared to turn
such items over to P.

All property to be turned over on or before 6/1/20
All counsel notified of this ORDER

Length of Proceeding: 15 minutes

/s/ Donald C. Nugent
United States District Judge

