

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SYMANTEC CORPORATION,

Plaintiff,

v.

LOGICAL PLUS, INC., *et al.*,

Defendants.

No. C 06-7963 SI

**ORDER GRANTING PLAINTIFF’S
MOTION TO SEVER DEFENDANT
LOGICAL PLUS, INC., AND TO
PARTIALLY LIFT STAY TO PROCEED
AGAINST ALL REMAINING SOLVENT
DEFENDANTS; SETTING SCHEDULE
ON SUMMARY JUDGMENT MOTION**

Plaintiff’s motion to sever defendant Logical Plus, Inc., and to partially lift the stay and renew its motion for summary judgment against the remaining solvent defendants is scheduled for a hearing on September 11, 2009. Pursuant to Civil Local Rule 7-1(b), the Court determines that the matter is appropriate for resolution without oral argument, and VACATES the hearing. For the reasons set forth below, the Court GRANTS plaintiff’s motion, LIFTS THE STAY as to defendants Joseph Chang, Yen Nelson Yu, and Shuttle Products, Inc., and sets a schedule for plaintiff’s motion for summary judgment.

DISCUSSION

On February 8, 2008, on the morning of the hearing on plaintiff’s motion for summary judgment against all defendants, defendant Logical Plus, Inc. filed for bankruptcy. By order filed February 20, 2008, the Court stayed this case due to Logical Plus’s bankruptcy filing, and denied plaintiff’s motion for summary judgment without prejudice. The Court ordered the Clerk to administratively close this case until the bankruptcy stay was lifted. The Court’s order also stated that if any party contended that the case could proceed against the non-bankrupt defendants, that party could file a motion to sever and partially lift the stay.

1 Plaintiff has now filed a motion to sever Logical Plus and to partially lift the stay in order to
2 proceed against defendants Joseph Chang, Yen Nelson Yu, and Shuttle Products, Inc. Plaintiff also
3 wishes to renew its summary judgment motion against these defendants. Plaintiff has submitted a
4 declaration from its attorney, Henry Gonzalez, stating that plaintiff filed a claim in the bankruptcy
5 proceedings in June 2008, but that those proceedings “have proceeded at virtually a standstill.”
6 Gonzalez Decl. ¶ 14. Plaintiff has submitted the docket from the bankruptcy proceedings showing that
7 on June 24, 2009, the Meeting of Creditors was continued for the sixteenth time. *Id.* ¶ 16, RJN Ex. 6
8 at 4.¹ Plaintiff argues that it must be permitted to proceed against the solvent defendants in order to
9 avoid prejudice and delay.

10 Defendants Chang, Yu and Shuttle Products, who are all represented by the same counsel,² have
11 filed an opposition to the motion, but the opposition only addresses Yu and Shuttle Products.
12 Defendants argue that Logical Plus cannot be severed because plaintiff alleges that Yu and Shuttle
13 Products are liable for infringement only by virtue of their connection with Logical Plus (by allegedly
14 providing e-mail addresses to Logical Plus), and thus Logical Plus is an indispensable party. Plaintiff
15 responds that defendants are all joint tortfeasors, and that joint tortfeasors are not indispensable and may
16 be severed.

17 Courts have discretion when ruling on motions to sever claims under Federal Rule of Civil
18 Procedure 21. *Coughlin v. Rogers*, 130 F.3d 1348, 1350 (9th Cir. 1997). “It is beyond peradventure
19 that joint tortfeasors are not indispensable parties in the federal forum.” *Lynch v. Johns-Mansville Sales*
20 *Corp.*, 710 F.2d 1194, 1198 (6th Cir. 1983) (holding bankruptcy filing of one defendant was not a basis
21 for staying action as to other joint tortfeasor defendants). Plaintiff is also correct that defendants may
22 be held jointly and severally liable for infringement. *See Fonovisa Inc. v. Cherry Auction, Inc.*, 76 F.3d
23 259, 264 (9th Cir. 1996). Accordingly, Logical Plus is not an indispensable party, and may be severed
24 from this case. The Court further finds that it is appropriate to lift the stay because given the state of
25 the bankruptcy proceedings, plaintiff would be prejudiced by a further complete stay of this case.

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27 ¹ The Court GRANTS plaintiff’s request for judicial notice. (Docket No. 66).

28 ² The same counsel also represents Logical Plus.

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CONCLUSION

For the foregoing reasons, the Court GRANTS plaintiff's motion to sever and partially lift the stay. (Docket No. 63). The Clerk shall reopen this case as to defendants Chang, Yu and Shuttle Products, Inc.

The Court will also deem plaintiff's motion for summary judgment as refiled as of the date of this order. (Docket No. 45). However, the Court directs the parties to submit supplemental briefing on the summary judgment motion specifically focusing on the liability of defendants Chang, Yu and Shuttle Products (as distinct from the liability of Logical Plus). Plaintiff shall file a supplemental brief no later than **September 25, 2009**, defendants shall file an opposition no later than **October 2, 2009**, plaintiff shall file a reply no later than **October 9, 2009**, and the Court will hold a hearing on the motion on **October 16, 2009 at 9:00 am**. The Court will also hold a case management conference on **October 16, 2009 at 3:00 pm**; the parties shall file a joint case management conference statement no later than **October 9, 2009**.

IT IS SO ORDERED.

Dated: September 8, 2009



SUSAN ILLSTON
United States District Judge