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E-Filed 7/29/2010

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

IQBAL HUSAIN,

Plaintiff,

v.

AMJAD KHAN, et al.,

Defendants.

And Related Counterclaims

Case Number C 06-07081 JF (HRL)

MEMORANDUM OF INTENDED
DECISION

The above-entitled action was tried to the Court on March 12 and 26, 2010. The Court heard the testimony of the parties and received documentary evidence. Having considered the parties' oral testimony and documentary evidence, the applicable law and the arguments of counsel contained in the post-trial briefing, the Court now issues this memorandum of intended decision. The purpose of the memorandum is to set forth the Court's view of the law and the evidence. Counsel for Plaintiff will be directed to prepare findings of fact and conclusions of law in conformity with this memorandum.

I. BACKGROUND

This case arises out of a failed joint venture and a subsequent settlement agreement

1 between the parties. Essentially, Plaintiff was to develop a telecommunications switching device
2 that was to be used by Defendant in a telephone network in Bangladesh. For reasons that are
3 disputed by the parties but largely irrelevant to the disposition of the instant case, the project did
4 not come to fruition. On January 1, 2006, the parties agreed to part ways. They agreed in writing
5 as follows:

- 6 1. The company costs will split [sic] equally by the parties until
January 31, 2006.
- 7 2. The intellectual property ownership will stay with both the parties.
All Hardware [sic] and software designs and design related materials
8 will be given to each other and or his nominee immediately.
- 9 3. Both parties will submit a detailed cost list of their own within 30 days.
These costs will be added and split in half to find each other's cost.
10 Whichever party is due, the other party will be responsible to pay such
amount.
- 11 4. Each party has the right to claim the ownership and continue progress
on the project.

12 (Exhibit 1).

13 On January 30, 2006, Plaintiff provided Defendant with an itemization of Plaintiff's out-
14 of-pocket expenses in the amount of \$161,710.31. Plaintiff later claimed an entitlement to salary
15 in the amount of \$175,000. On or about February 18, 2006, Defendant's accountant sent Plaintiff
16 an itemization of Defendant's costs in the approximate amount of \$117,000. The parties
17 subsequently exchanged emails and other correspondence disputing each other's cost figures and
18 were unable to reach agreement. Plaintiff alleges that Defendant has breached the settlement
19 agreement by failing to pay him half the difference in their respective expenses.

20 During the same time period, Defendant sent Plaintiff a prototype circuit
21 board—developed during the joint venture—that Plaintiff agreed to repair. Although the cost of the
22 repair itself was relatively modest, Plaintiff refused to return the board to Defendant until the
23 dispute over costs was resolved (Exhibit 49). In his counterclaims, Defendant alleges that
24 Plaintiff's refusal to return the board violated the settlement agreement, constituted conversion
25 and interference with economic advantage, and resulted in significant consequential damages.

26 **II. DISCUSSION**

27 **A. The Contract**

28 Several provisions of the parties' settlement agreement are ambiguous and require

1 judicial construction. Paragraph 1 provides that “the company costs will split [sic] equally by the
2 parties until January 31, 2006.” The parties dispute whether “the company costs” include
3 Plaintiff’s claimed salary expense of \$175,000. Based on the documents in the record and its
4 assessment of the parties’ testimony at trial, the Court finds by a preponderance of the evidence
5 that “company costs” do not include a salary for either party. There is no evidence that the joint
6 venture ever had paid a salary to either party prior to the date of the settlement agreement, nor is
7 there anything in the record suggesting that the parties had any specific salary figure in mind
8 when they agreed to split their costs. Rather, it appears that as he grew increasingly frustrated
9 with Defendant’s perceived failure to perform under the settlement agreement, Plaintiff came to
10 believe that he was entitled to compensation for his efforts on behalf of the joint venture.
11 Plaintiff’s subjective belief is insufficient either to support his proposed construction of the
12 contract or a claim for quantum meruit.

13 Paragraph 2 of the settlement agreement also is ambiguous. Defendant argues that the
14 word, “Hardware” in the second sentence is not modified by the phrase, “designs and design
15 related materials” and that accordingly the agreement gave him a contractual right to possession
16 of the circuit board that subsequently was retained by Plaintiff. Plaintiff contends that the
17 paragraph refers exclusively to “designs and design related materials, “ including those relating
18 to hardware. Based on the documents in the record and its assessment of the parties’ testimony
19 at trial, the Court finds by a preponderance of the evidence that Paragraph 2 refers exclusively to
20 “designs and design related materials.” The paragraph refers generally to intellectual rather than
21 tangible property. This finding is consistent with the Court’s observation in its order dated
22 March 31, 2009, denying Defendant’s motion for summary judgment, that “the settlement refers
23 to the sharing of intellectual property but does not refer to any physical hardware built by [the
24 joint venture].” *Id.*, at p. 7. It also is significant that Defendant did not send the board to Plaintiff
25 for repair until February 2006: there is no evidence that Defendant claimed or believed that he
26 was entitled to ownership or possession of any hardware as of the date of the settlement
27 agreement.

28 Finally, Paragraph 3 of the settlement agreement contains an ambiguity as to when the

1 parties were required to provide each other with their respective itemizations of costs. Plaintiff
2 claims that the “30 days” specified in the agreement ran from the date of the agreement, while
3 Defendant contends that this period began to run only after January 31, 2006, the date through
4 which the parties agreed to split their expenses. While Defendant’s interpretation is not
5 unreasonable in the abstract, the Court finds by a preponderance of the evidence that the actual
6 intention of the parties was that the itemizations were to be provided within thirty days after the
7 agreement was signed. The evidence establishes that Plaintiff clearly proceeded on this
8 assumption, sending Defendant not only his claimed costs but also the various design documents
9 referenced in Paragraph 2 before the end of January 2006. Moreover, although Plaintiff asked
10 expressly for Defendant’s itemization of costs in an email dated January 30, 2006, Exhibit 58,
11 Defendant never asserted, either at that time or subsequently, that the itemization was not due
12 until thirty days after January 31, or that the itemization Defendant ultimately provided on or
13 about February 18 was timely.

14 **B. Plaintiff’s Claim**

15 Plaintiff’s claimed costs, exclusive of his claim for a salary, total \$161,710.31. Plaintiff
16 concedes that Defendant is entitled to an offset \$51,650.00, leaving Plaintiff with a maximum net
17 claim for half of the difference, or \$55,030.16. Defendant both contests the legitimacy of
18 Plaintiff’s individual costs and claims substantial additional costs of his own. Plaintiff objects to
19 and moves to strike all of Defendant’s testimony with respect to this issue based on Defendant’s
20 failure to provide, either in discovery or at trial, any admissible evidence in support of his claims.

21 While it doubts that Plaintiff’s itemization of costs would pass muster under Generally
22 Accepted Accounting Principles, the Court nonetheless finds by a preponderance of the evidence
23 that the costs are within the bounds of reason and are sufficiently documented. To the extent that
24 there was a failure of proof with respect to any specific item, the Court concludes that Plaintiff is
25 entitled to the total amount claimed (exclusive of his claim for a salary) in quantum meruit. In
26 contrast, even assuming that Defendant’s oral testimony concerning his costs is admissible in the
27 absence of any contemporaneous records or other documentation, see F.R.E. 1002, and even
28 considering the written itemization produced by Defendant at trial (Exhibit 26), which Plaintiff

1 timely moved to exclude in light of Defendant's repeated failure to provide such an itemization
2 in discovery, the Court finds that Defendant has failed to provide any *credible* evidence of
3 expenses for which he is entitled to credit under the settlement agreement. Accordingly, the
4 Court will award contract damages to Plaintiff in the sum of \$55,030.16.

5 **C. Defendant's Counterclaims**

6 Defendant asserts counterclaims for breach of contract, conversion, and interference with
7 economic advantage. With respect to the first counterclaim, the Court finds that Defendant
8 himself breached the settlement agreement by failing to provide a timely itemization of costs and
9 failing to pay Plaintiff the amount to which Plaintiff was entitled. Consistent with the discussion
10 in part A, above, the Court also finds and concludes that Plaintiff had no contractual obligation to
11 return the circuit board to Defendant. Because Defendant did not perform his own obligations,
12 and because Plaintiff did not breach any material provision of the contract, Defendant is not
13 entitled to relief.

14 To prevail on his counterclaim for conversion, Defendant had to show that he had an
15 ownership interest in the circuit board. It is apparent from the record that when Defendant sent
16 the board to Plaintiff for repair he expected that it would be returned, and that Plaintiff's refusal
17 to return it was a form of self-help prompted by Defendant's perceived failure to perform under
18 the settlement agreement. However, these circumstances are immaterial to the factual and legal
19 question of ownership of the board. Defendant himself characterized the board as an asset
20 owned either by Plaintiff (Exhibit 49, p. 26) or by the joint venture (Exhibit 37). Because it finds
21 that Defendant failed to present sufficient evidence that he (as opposed to Plaintiff or the joint
22 venture) actually owned the board, the Court concludes that Defendant cannot prevail on his
23 conversion claim.

24 Finally, to the extent that Defendant's counterclaim for interference with economic
25 advantage is based upon Plaintiff's failure to return the circuit board, it fails for all of the reasons
26 discussed previously: without a legal entitlement to possession of the board, Defendant cannot
27 claim that he was damaged by Plaintiff's failure to return it. Moreover, as early as February 23,
28 even before Plaintiff told Defendant that the board would not be returned as long as the dispute

1 over costs was pending, Defendant stated that he did not need the board and would proceed
2 without it (Exhibit 49, p. 25). To the extent that this counterclaim is based on Plaintiff's
3 interactions and alleged non-cooperation with Defendant's engineers later in 2006, the Court
4 finds that Defendant failed to prove by a preponderance of the evidence either that Plaintiff acted
5 with the intent to disrupt an economic relationship between Defendant and a third party or that
6 Plaintiff's actions were the proximate cause of any cognizable injury to Defendant.

7 **III. DISPOSITION**

8 Plaintiff is entitled to judgment in the amount of \$55, 030.16 on his claim for breach of
9 contract. Plaintiff also is entitled to judgment in his favor on each of Defendant's counterclaims.
10 Counsel for Plaintiff is requested to prepare findings of fact and conclusions of law consistent
11 with this memorandum, together with a proposed judgment.

12
13 DATED: July 29, 2010

14 
15 JEREMY FOGEL
16 United States District Judge