

EXHIBIT C

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 CAPITOL RECORDS, LLC,

4 Plaintiff,

5 v.

12 Civ. 95 (RJS)

6 REDIGI, INC.; JOHN
7 OSSENMACHER; and LARRY
8 RUDOLPH, also known as
9 Lawrence S. Rogel,

Defendants.

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10 New York, N.Y.
11 December 2, 2013
12 6:10 p.m.

13 Before:

14 HON. RICHARD J. SULLIVAN,

District Judge

15 APPEARANCES

16 COWAN LIEBOWITZ & LATMAN
17 Attorneys for Plaintiff
18 BY: RICHARD S. MANDEL
19 JONATHAN Z. KING

20 ADELMAN MATZ
21 Attorneys for Defendant Redigi, Inc.
22 BY: GARY P. ADELMAN
23 SARAH M. MATZ

24 HAUSFELD, LLP
25 Attorneys for Defendants John Ossenmacher
and Larry Rudolph
BY: JAMES J. PIZZIRUSSO

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1 is somehow they didn't have enough personal involvement to be
2 individually liable. That's Mr. Mandel. I think Mr. Adelman
3 basically agreed with that, that that would be the issue. And
4 so that certainly I think would be relevant when we get to
5 summary judgment. Right now we are not at summary judgment.
6 We are at a motion to dismiss for the individual defendants.
7 They are seeking discovery with respect to other issues that
8 were not contested by Redigi, but I don't know, are they
9 estopped? I think part of it is a factual issue as to how much
10 of the individual defendants were involved in running the
11 Redigi litigation, right?

12 MR. MANDEL: I don't think there is much of a dispute
13 about that.

14 THE COURT: I don't know.

15 MR. MANDEL: They are the only witnesses who were
16 identified in initial disclosures. They are the people who
17 showed up at the preliminary injunction hearing, at every
18 deposition, at every mediation. When we asked to even identify
19 other shareholders, they objected and said it was irrelevant.
20 If there is anybody else who controlled this litigation, I
21 don't know who they are or where they were.

22 We certainly haven't heard anything but these two
23 people who founded this business. This was their brainchild.
24 They thought it was legal. They came in from the outset of the
25 case and submitted declarations explaining why a preliminary

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1 injunction shouldn't be issued. The company was found liable
2 on the basis of their testimony and only their testimony.

3 This, to me, is really a classic case of people who
4 participated actively. They are the only people who
5 participated on behalf of Redigi with the defense. There is
6 literally no other person I can think of who had any
7 involvement whatsoever.

8 THE COURT: That may be true. I don't know the answer
9 to that. But I'm talking about the specific issue under
10 Teltronics as to whether or not the individual defendants
11 should be estopped. You wouldn't take the position that a
12 30(b)(6) witness can then be added in a case and they are
13 estopped from asserting any defenses because having been
14 designated as a 30(b)(6) witness they are involved in the
15 litigation.

16 MR. MANDEL: Not entirely. I think if you look at the
17 couple of cases we cited, in both of them the courts talked
18 about the fact that they were the principal witness, that they
19 were there at the trial, that they had submitted declarations.
20 These are the kind of facts that the Court looked at in those
21 cases. If you look at our situation, these really were the
22 only two individuals who have been there from the outset.

23 THE COURT: It's not clear to me how the courts in the
24 cases you've cited were in the position to make those
25 pronouncements about the state of the record because the

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1 posture of the case wasn't such that I think it was in the
2 record. They kind of cherrypicked the circuit data and looked
3 at what some of the district court submissions and filings
4 were, but I don't know that that's dispositive on the issues.

5 MR. MANDEL: I think in this case I would like to hear
6 if there is somebody else who effectively controlled or
7 participated. They have never been identified.

8 THE COURT: I've got a lawyer for the individuals and
9 I've got a lawyer for the corporate defendant here, somebody
10 else who is running this company.

11 Who retained you, Mr. Adelman?

12 MR. ADELMAN: John Ossenmacher.

13 THE COURT: And who gives you direction now as to how
14 the corporate defendant should be pursuing this case? Don't
15 tell me the substance of communications, but the individual
16 who --

17 MR. ADELMAN: Primarily, we talked to John Ossenmacher
18 and Larry Rudolph.

19 THE COURT: Mr. Pizzirusso, what is the defense here
20 with respect to those individuals not joined at the hip with
21 the corporate defendant?

22 MR. PIZZIRUSSO: Certainly, your Honor. I understand
23 there is a history here and I have not been involved in that
24 history. I'm coming in as an outsider at the end of case when
25 Capital decided on the eve of trial that they wanted to name my

1 So why would your clients not be bound by that?

2 MR. PIZZIRUSSO: Mr. Adelman didn't represent my
3 clients at the time. They weren't named as defendants in the
4 litigation. Now that the Court has allowed an amendment and
5 they have brought in new counsel, may have new ideas or may
6 want to do things differently, I don't know why Redigi did the
7 things that they did. I don't know their strategy.

8 But my clients are now being asked to be joint and
9 severally liable for potentially millions of dollars. And they
10 have a due process right to take discovery, to find out what
11 the claims are being asserted against them and don't think that
12 they are bound by representations on behalf of people who did
13 not represent them personally, that no discovery is needed
14 here.

15 THE COURT: There is case law, slightly different
16 procedural context, though, that basically bars the principals
17 of a corporate defendant from asserting claims and making
18 arguments that were or could have been made by the corporate
19 defendant. You're familiar with those cases. You've seen
20 them, right?

21 MR. PIZZIRUSSO: I have seen the cases that Mr. Mandel
22 cited, and I agreed with your Honor's initial assessment that
23 they took place in generally different contexts than what we
24 have here.

25 THE COURT: They are different contexts, but it's not

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1 clear to me why the rationale would be any different at this
2 stage of this proceeding.

3 You are not asserting that somebody else is who ran
4 the litigation and somebody else is who is responsible for the
5 corporate defendant defending himself, right? Is there
6 somebody else?

7 MR. PIZZIRUSSO: There are other shareholders of the
8 company, your Honor. There is inside counsel. There aren't
9 just these two individuals. If Mr. Mandel wants to have some
10 additional discovery after he is saying that no additional
11 discovery is needed, we can go into that. I think we have got
12 to take the complaint that we have against us and respond to
13 that. He hasn't asserted any of these facts that he claims he
14 has that talk about how my clients have run the show from day
15 one and are really responsible here, and he has got this great
16 discovery record. I think it should have been in the
17 complaint. It wasn't. So now here we are on the, quote
18 unquote, eve of trial, the 11th hour, the close of discovery
19 and he is saying, you don't get any more discovery, you're
20 essentially liable. And we think that's prejudicial and we
21 think the complaint should be dismissed with prejudice, but, at
22 the very least, if not, he should have to replead and allow us
23 to answer.

24 But I do agree that the cases should be severed. We
25 could proceed right now against Redigi and go to trial and let