

EXHIBIT 16C

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

THE SCO GROUP, INC., : Case No. 2:04CV00139
:
Plaintiff, : Videotaped Deposition of:
:
vs. : TY MATTINGLY
:
NOVELL, INC., :
:
Defendant. :
:

January 19, 2007 - 9:23 a.m.

Location: SCO Group
355 South 520 West
Lindon, Utah 84042

COPY

Reporter: Teri Hansen Cronenwett
Certified Realtime Reporter, Registered Merit Reporter
Notary Public in and for the State of Utah

1 January 19, 2007

9:23 a.m.

2 P R O C E E D I N G S

3 VIDEOGRAPHER: This is the videotaped deposition of
4 Ty Mattingly being held in the offices of SCO Group in
5 Lindon, Utah on January 19th, 2007. The time is 9:23 a.m.
6 My name is Gavin Bohne, certified legal videographer for
7 Garcia & Love Reporting. The court reporter is Teri
8 Cronenwett, also with Garcia & Love Reporting. Will counsel
9 please state their appearances for the record and the witness
10 be sworn.

11 MR. BRAKEBILL: Ken Brakebill on behalf of Novell.

12 MR. NORMAND: Ted Normand for the SCO Group, Inc.

13 MS. BORUCHOW: Shasi Bach Boruchow for SCO.

14 MR. TIBBITTS: Ryan Tibbitts, general counsel for
15 the SCO Group.

16 TY MATTINGLY,

17 called as a witness at the instance of the plaintiff, having
18 been first duly sworn, was examined and testified as follows:

19 EXAMINATION

20 BY MR. NORMAND:

21 Q. Good morning, Mr. Mattingly.

22 A. Hello, Ted.

23 Q. Could you state your home address for the record?

24 A. 22 West 620 South, Orem, Utah, 84058.

25 Q. And have you been deposed before?

1 not successful there, but marrying two completely different
2 architectures --

3 Q. Uh-huh.

4 A. -- into a single elegant architecture that you
5 could now offer to people to create new applications on and
6 to move those installed bases along is a pretty complex task.
7 And ultimately I think Novell was successful in creating
8 those products, but in doing that, there was a lot of angst,
9 a lot of internal fighting, a lot of struggle with how you
10 position those different operating environments inside of
11 Novell.

12 Q. Was there a SuperNOS product that was actually
13 released by Novell?

14 A. No, no. We had -- I think we had some working, you
15 know, prototypes. We had a couple of different architectural
16 approaches that two different teams had created.

17 Q. Uh-huh.

18 A. One integrating them tightly and one kind of trying
19 to have them run side by side in a coexistence type of a
20 fashion, and ultimately we didn't take any of those to
21 market.

22 Q. When you first got wind of a potential sale of the
23 Unix assets, did you have a view as to whether it was a good
24 idea or a bad idea? Somewhere in the middle?

25 A. Well, you know, I would have to say that I joined

1 the company because I believed they were putting the
2 application development environment inside of NetWare. Unix
3 was that environment. It was just pure agony inside of the
4 company trying to work between, you know, Provo, Utah and
5 Summit, New Jersey.

6 And ultimately when we sold that, yeah, I felt like
7 it probably wasn't the best thing to do, but the big issue at
8 those times were, you know, you can only invest so many
9 dollars in so many different things. And you know, we had to
10 draw the line. We had to choose, and the belief was, we
11 couldn't take and market fully a NetWare, as well as market a
12 UnixWare, as well as market potentially an integrated
13 SuperNOS type of a product.

14 Q. Uh-huh.

15 A. So the strategy inside of the company was at the
16 highest of levels, which was Bob Frankenberg to say, Hey, we
17 need to find a home for this.

18 Q. And if you can recall at the time you first got
19 wind of this potential sale of the Unix assets, with whom
20 were you working at that point?

21 A. I was working for Duff Thompson.

22 Q. I take it you had occasion to discuss the issue of
23 a potential sale of the Unix assets with Mr. Thompson?

24 A. Amongst others.

25 Q. Who were the others?

1 A. Well, I mean, Bob Frankenberg obviously as the
2 chairman and CEO of the company. I mean, that's the type of
3 decision that goes up to his level. There were discussions
4 with people inside of the different product groups, as well
5 as other members of ultimately the deal team that were put
6 together that managed the divestiture.

7 Q. Who were some of the individuals in the product
8 groups that you have in mind, if you can recall?

9 A. Well, I think -- I think -- and I don't know who
10 was whose boss. But Richard King, I think, was the executive
11 vice president of the NetWare products division. Mike
12 DeFazio, I think was the -- I don't know if we called him the
13 senior or executive vice president of the Unix division.
14 Those would have been the primary product group executives
15 that we worked with.

16 Q. And you mentioned the deal team. Who was on the
17 deal team?

18 A. Well, from a corporate development perspective, I
19 was part of that deal team as the strategic relations person,
20 and then Ed Chatlos was my counterpart who was in the
21 corporate development side of Duff's organization. He was
22 also the person that was assigned as the corporate
23 development executive for the product group.

24 Q. Anyone else that you can recall who was on the deal
25 team?

1 forth concerning the legal provisions was taking place. Is
2 that right?

3 A. That's right.

4 MR. NORMAND: Objection to form.

5 Q. (By Mr. Brakebill) And you weren't involved in
6 that, correct?

7 MR. NORMAND: Objection to form.

8 A. Very superficially, maybe getting e-mails of where
9 the documents were, but I was not in the wordsmithing of the
10 back and forth of the detailed final contracting.

11 Q. (By Mr. Brakebill) And the strategy aspect that you
12 were referring to that you were involved in occurred before
13 that last two to three weeks, correct?

14 A. That's correct. And once again, that was all more
15 MOU, LOI term-sheet based, working with Ed Chatlos and the
16 SCO team, and Ed may have been working with the attorneys.
17 In fact, I'm sure he probably was. But once again, division
18 of labor, that was his role and responsibility.

19 Q. And the contract was executed on September 19,
20 1995. Is that right?

21 A. I assume that the contract is dated that. I don't
22 know when it was executed.

23 Q. After September 1995 when the contract was
24 executed, you moved on to other things. You weren't involved
25 in the Novell, Santa Cruz transaction any further, correct?

1 A. That's correct.

2 Q. Now, in terms of the high level business strategy
3 that you were involved in, that direction was coming to you
4 from Bob Frankenberg. Is that correct?

5 A. That's correct.

6 Q. And did you -- in terms of getting that strategy,
7 you were working I take it primarily with Bob Frankenberg.
8 Is that right?

9 A. Yeah, on the high level strategy. I mean,
10 remember, it would come down, and then we would work as a
11 team with the SCO team and the HP team trying to negotiate
12 that strategy so that it basically fit Novell's purposes.

13 Q. And you mentioned the name Duff Thompson this
14 morning. You did do some work with Duff Thompson, I take it?

15 A. That's correct. He was my boss after I left
16 working for Bob Frankenberg, so I reported to Duff.

17 Q. Is it fair to say that, based on your personal
18 knowledge, that Duff Thompson was not really involved in the
19 details of the Novell, Santa Cruz transaction?

20 MR. NORMAND: Objection to form.

21 A. You know, I would say that that's probably a fair
22 statement because the real detail guy in this was Ed Chatlos,
23 and of course, Ed and I were peers and reported to Duff. But
24 he was a general counsel and formerly with WordPerfect and
25 was the senior or executive vice president of corporate

1 development at Novell.

2 Q. (By Mr. Brakebill) And have you ever heard that
3 during this time frame of the Novell, Santa Cruz transaction
4 -- have you ever heard the phrase that Duff Thompson was
5 checked out?

6 A. I have.

7 Q. And what was your understanding of what that meant,
8 Duff was checked out during this period of time preceding the
9 Novell -- during the Novell, Santa Cruz transaction?

10 MR. NORMAND: Objection to form.

11 A. Well, Duff came into Novell and assumed that
12 position of, you know, senior executive over corporate
13 development, but he was not in the office that often and
14 participated in the senior executive level meetings inside of
15 Novell, as well as the senior executive level meetings when
16 we had high level meetings with, you know, maybe Alok Mohan
17 and Doug Michaels.

18 Q. (By Mr. Brakebill) Would you say it was commonly
19 known amongst the people who were working on the Novell,
20 Santa Cruz transaction that Duff was checked out?

21 MR. NORMAND: Objection to form.

22 A. Yeah. I would think that -- I would think that
23 generally people would have agreed with that sentiment.

24 Q. (By Mr. Brakebill) Did this issue come up at any
25 particular all-hands meetings that preceded the execution of

1 the deal?

2 MR. NORMAND: Objection to form.

3 A. It came up in meetings. I don't know if those
4 meetings were necessarily prior to, during or after the
5 divestiture of the Unix business to SCO, but it did come up
6 in forums.

7 Q. (By Mr. Brakebill) How do you recall it coming up
8 in forums?

9 A. Well --

10 Q. Do you have any specific examples?

11 A. Yeah. I think -- you know, I think probably the
12 most vivid recollection I have of this, that type of a public
13 discussion was in a all-hands vice-presidents-and-above
14 meeting we had out in San Jose with, you know, basically all
15 of the senior executives of the corporation. And everyone
16 was there, including folks that flew in from all over the
17 country, except for Duff. So he did not participate in that
18 meeting, and so that was a big topic of discussion at that
19 meeting.

20 Q. Now, the asset purchase agreement which was marked
21 as Exhibit 1 this morning, I believe your testimony this
22 morning was that maybe you had read it two or three days
23 before the execution.

24 A. Correct.

25 Q. Is it possible that you didn't read this before the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

STATE OF UTAH)
COUNTY OF SALT LAKE)

THIS IS TO CERTIFY that the deposition of TY MATTINGLY was taken before me, Teri Hansen Cronenwett, Certified Realtime Reporter, Registered Merit Reporter, and Notary Public in and for the State of Utah.

That the said witness was by me duly sworn to testify; that the testimony was reported by me in Stenotype, and thereafter transcribed by computer, and that a full, true, and correct transcription is set forth in the foregoing pages, numbered 4 through 108 inclusive.

I further certify that the original transcript of the same was delivered to the witness for reading and signature before a Notary Public, and to be returned within 30 days of the date hereon.

I further certify that I am not of kin or otherwise associated with any of the parties to said cause of action, and that I am not interested in the event thereof.

WITNESS MY HAND and official seal at Salt Lake City, Utah, this 25th day of January, 2007.

My commission expires:
February 6, 2007

Teri Hansen Cronenwett

Teri Hansen Cronenwett, CRR, RMR
License No. 91-109812-7801

