

STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
CIVIL ACTION NO: 08-CVS-06523

Richard A. Clemenzi, and  
Judith A. Siglin

Plaintiffs,

v.

Peter A. Freer,  
Unique Logic and Technology, Inc.,  
Joseph F. Freer,  
Freer Logic, LLC,  
ADHD Nanny, LLC, and  
Gwen Freer,

Defendants.

BRIEF

(Re: Plaintiffs' Motion to  
Place Complaint Under Seal)

### **Background**

Plaintiffs are significant shareholders in defendant corporation Unique Logic and Technology, Inc. (ULT). Following plaintiff Clemenzi's departure in September 2005 from ULT, plaintiffs requested financial reports from the corporation and plaintiffs received a copy of the 2004 annual tax returns of the corporation in November 2005. This initial document disclosure revealed apparent improper claims, accounting practices, and transactions by the corporation. Plaintiffs' reported in a letter dated December 6, 2005 some of these improper claims found in the 2004 tax returns to defendant Peter Freer, the CEO, president, and majority shareholder of ULT. Plaintiffs now know that shortly after defendant Freer received this letter, he entered simultaneously into an effort to illegally obtain plaintiffs' stock in ULT and an ongoing program to divert the business and assets of ULT to newly created firms owned exclusively by Peter Freer or Peter Freer

and his wife, Gwen Freer (defendants firms Freer Logic, LLC and ADHD Nanny LLC). Defendant Peter Freer disclosed the existence and scope of the some of the malfeasant efforts to divert the assets and business of ULT in a shareholder meeting in December 2006. Plaintiffs did not know of the coincidence of the separate malfeasant schemes until after the December 2006 disclosure. Defendant Peter Freer did send plaintiffs an annual financial statement for ULT in July 2007, but this statement only indicated a growing diversion of corporate assets.

### **Demand and Order**

On December 6, 2007, plaintiffs served defendants Peter Freer and Joseph Freer, the two directors of defendant corporation ULT, with an extensive demand for records and corrective action by the board. Some records were disclosed after a delay, but no records related directly to the already disclosed ongoing malfeasance were produced. In February 2008 plaintiffs filed a Motion in the Superior Court in Buncombe County to force defendant corporation ULT to produce the balance of the records demanded. Plaintiffs specifically cited pending litigation as one of the bases for their Motion. The Motion was heard in March 2008 by Judge Baker, and an order was eventually signed on August 1, 2008 following numerous attempts by defendants to limit the order. The Order also required plaintiffs not to release any information received pursuant to the Order to third parties other than experts assisting them with analysis of the information.

The August 1, 2008 Order required defendants to produce substantial accounting records for plaintiffs review immediately. However, the Order also failed to charge defendants with plaintiffs legal expenses in opposition to statute, which plaintiffs

attribute to defendants' malfeasance during the hearing on that matter. Plaintiffs filed a Rule 59 motion to ask review of that decision in light of the malfeasance and statutes.

### **Record Disclosures**

Defendants did disclose certain accounting records on September 10, 2008. However, specifically citing plaintiffs' pending Rule 59 motion as an excuse to not disclose the records cited by the Order, defendants purportedly made the documents release "with the intent to provide the accounting records necessary for all sides to initiate a valuation analysis" as stated in the cover letter attached to the records. Some of the records released September 10, 2008 met the demands of the August 1, 2008 Order, and some did not. Thus it is unclear to plaintiffs exactly how they are to treat these records with regard to the August 1, 2008 Order's requirement for non disclosure. Plaintiffs therefore intend to return to Judge Baker and obtain more precise instructions on how the ordered records must be handled in litigation, regardless of how they were disclosed. Plaintiffs will seek and hopefully obtain this ruling shortly in conjunction with their Rule 59 motion in that matter and will report the same to the Business Court as soon as it is available.

The records which were released, while not being nearly all the records that were ordered, confirmed plaintiffs worst fears that the malfeasance occurring in ULT is very extensive, and that it even began before plaintiff Clemenzi's departure from the company in September 2005. The fact that malfeasance began before Clemenzi's departure is even more troubling because Clemenzi was a board member of ULT and made numerous specific inquiries about the troubling items, only to have been directly lied to about the transactions involved. These transactions occurring while plaintiff Clemenzi was a

director of ULT are some of the transactions specifically cited in the complaint for which non disclosure must be considered.

### **Business Court Website**

Plaintiffs only recently discovered that the Business Court allows for public access to individual court records in ongoing actions via an unsecured internet link on its website. While plaintiffs, rightly or wrongly, perceived no problem in filing the Complaint citing specific transactions in the Buncombe County Courthouse, plaintiffs believe that the public access to individual case records on the Business Court's website raises the threshold as to just what is or is not an improper disclosure of transactions, regardless of their source. This raising of the threshold seems to plaintiffs to move the question past defendants' stated intent of releasing the records "to initiate a valuation analysis", and seems to plaintiffs to suggest caution and that a clear decision is required before the records are made public to that extent.

Plaintiffs original worry when requesting the Complaint be placed under seal (ex parte e-mail dated January 15, 2008) was that the case documents might be indexed by Google creating an extremely troubling degree of public access. Plaintiffs have since then done several experiments with Google, and have determined that Google does not index into documents which are held within a Zip file, as is the case on the Business Court's website. Therefore, plaintiffs original extreme fear of public disclosure through Google appears to have been presently unfounded. However, as plaintiff Clemenzi is a computer engineer and software developer, Clemenzi does know first hand that such indexing into the documents that are held in Zip files is readily possible with only a trivial amount of additional software by Google as he has written and deployed this sort

of software himself. Hence plaintiffs consider that the threat of such indexing still stands unless the court has made arrangements to the contrary with Google and the other web indexing services. Therefore, plaintiffs still hold their concern that the Business Court's public web accessibility for individual case records might create a disturbing indexing of the potentially confidential information beyond what plaintiffs believe should be allowed in any circumstance.

### **Conclusion**

In light of all of the above, plaintiffs ask that the Business Court file the Complaint in the present matter as placed under seal from public access. Plaintiffs furthermore ask that the file at the courthouse be ordered placed under seal pending clarification of Judge Baker's Order as stated above regardless of whether it was or was not secured immediately upon being filed. Plaintiffs further thus commit to seeking Judge Baker's clarification with regard to The Transactions and their handling in litigation, and plaintiffs will report back to the Business Court the results of that clarification as soon as it occurs.

Plaintiffs certify this brief complies with the requirements of Rule 15.8.

This 20th day of January, 2009.

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