

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

_____)	
TECH GLOBAL PARTNERS, INC.,)	
Plaintiff,)	
)	
v.)	C.A. No. 15-275-M
)	
QUANTUM DIGITAL CONNECTIONS,)	
INC., AND SCRIPTEL CORP.)	
Defendants.)	
_____)	

JURY INSTRUCTIONS

I. GENERAL INSTRUCTIONS

Now that you have heard all of the evidence and the arguments of counsel, it is my job to instruct you on the law that is applicable to this case.

A. PROVINCE OF THE COURT AND JURY

It is your duty as jurors to follow the law as I state it to you and to apply that law to the facts of the case, as you determine those facts to be from the evidence in this case. You are not to be concerned with the wisdom of any rule of law. You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole.

Further, nothing I say in these instructions and nothing that I have said or done during the trial is to be taken as an indication that I have any opinion about the facts of the case. I do not. It is not my role to determine the facts, that is your role.

You must perform your duties as jurors without bias or prejudice to any party. The law does not permit you to be governed by sympathy, prejudice, or public opinion. All parties — and the law — expect that you will carefully and impartially consider all the evidence, follow the law as it is now being given to you, and reach a just verdict, regardless of the consequences.

This case should be considered and decided by you as an action between persons of equal standing in the community, of equal worth, and holding the same or similar stations of life. All parties are entitled to the same fair trial at your hands. All parties stand equal before the law, and are to be dealt with as equals in a court of justice.

B. EVIDENCE IN THE CASE

In determining the facts of this case, you are to consider only the evidence that has been properly put before you. That evidence consists of the sworn testimony of witnesses and the exhibits that have been received into evidence. Evidence that the court admits is properly before you for your consideration; evidence that this Court has refused to admit is not a proper subject for your deliberations and you should not consider it when reaching a verdict. Admitted evidence will be available to you in the jury room during your deliberations.

The fact that the Court admitted evidence over objection should not influence you in determining the weight you should give such evidence. Nor should statements made by counsel, either for or against the admission of such evidence,

influence your determination of the weight you will give the evidence, if the evidence was admitted.

Certain things are not evidence, and you may not consider them in deciding what the facts are.

1. Arguments and statements by lawyers are not evidence. The lawyers are not witnesses. What they have said in their opening statements and closing arguments, and at other times, may help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from the way the lawyers have stated them, your memory controls.

2. Questions and objections by lawyers are not evidence. Attorneys have a duty to their clients to object when they believe a question is improper under the rules of evidence. You should not be influenced by the objection or by the Court's ruling on it.

3. Testimony that has been excluded is not evidence and must not be considered.

4. Anything you may have seen or heard when the court was not in session is not evidence. You are to decide the case solely on the evidence received at trial.

C. CREDIBILITY OF WITNESSES

You are the sole judges of the credibility of the witnesses and the weight their testimony deserves. In deciding the facts of this case, you may have to decide which

testimony to believe and which testimony not to believe. In considering the testimony of any witness, you may take into account:

1. the opportunity and ability of the witness to see or hear or know the things that witness testified about;
2. the witness' memory;
3. the witness' manner while testifying;
4. the witness' interest in the outcome of the case and any bias or prejudice the witness may have;
5. whether other evidence contradicted the witness' testimony; and
6. the reasonableness of the witness' testimony in light of all the evidence.

After making your own judgment, you may believe everything a witness says, or part of it, or none of it at all. Also, the weight of the evidence is not necessarily determined by the number of witnesses testifying. You may find that the testimony of a small number of witnesses is more credible than the testimony of a larger number of witnesses.

D. EVIDENCE – DIRECT AND CIRCUMSTANTIAL

There are two types of evidence. One is direct evidence – such as the testimony of an eyewitness. The other is indirect or circumstantial evidence – that is, the proof of a chain of circumstances pointing to the existence or non-existence of certain facts.

As a general rule, the law makes no distinction between direct and circumstantial evidence. You are simply required to find the facts in accordance with the preponderance of all the evidence in the case, both direct and circumstantial.

In your consideration of the evidence in this case, you are allowed to make reasonable inferences from witnesses' testimony and the admitted exhibits. Inferences are deductions that reason and common sense lead you to draw from facts that have been established by the evidence in this case. Inferences, however, may not be based on pure speculation or conjecture.

Let me give you an example of a reasonable inference. If your mailbox was empty when you left home this morning, and you find mail in it when you go home tonight, you may infer that the letter carrier delivered the mail. Now, obviously, you didn't see the letter carrier deliver the mail, but from the facts that the mailbox was empty this morning and it is filled tonight, you can properly infer that the letter carrier came by in the interim and delivered the mail. That is all that we mean by an inference.

E. BURDEN OF PROOF: PREPONDERANCE OF THE EVIDENCE

The burden is on the plaintiff in a civil action, such as this, to prove every essential element of its claims by a preponderance of the evidence. If the proof should fail to establish any essential element of Tech Global's claim by a preponderance of the evidence, then you should find for the Defendants on that

claim. The Defendants do not have any obligation to disprove that which Tech Global asserts or claims.

To establish by “a preponderance of the evidence” means to prove that something is more probably true than not true. In other words, if you were looking at opposite ends of a scale, the plaintiff’s evidence would have to make one end of the scale tip to its side.

When I say in these instructions that a party has the burden of proof on any proposition, I mean you must be persuaded, considering all the evidence in the case, that the proposition is more probably true than not true. This rule does not, of course, require proof to an absolute certainty or even to a near certainty.

II. CASE-SPECIFIC INSTRUCTIONS

A. BREACH OF CONTRACT

A contract is a legally enforceable promise or agreement made between two or more parties. To succeed on a claim for breach of contract, a party must prove three things:

- 1) the existence of a contract;
- 2) a breach of the terms of the contract by the other party; and
- 3) damages.

In this case, there is no question that a contract exists – the parties agree that the Agreement is a binding contract. The dispute that you must decide is did Quantum Digital breach the Agreement and if so, what damages, if any, did Tech Global suffer as a result of the breach.

You must determine whether Tech Global has substantially performed its contractual obligations under the Agreement. A party cannot prevail on a breach of contract claim unless it has substantially performed its promised obligations. Substantial performance is a fact-dependent inquiry, which you, as the factfinder, must determine based upon all relevant evidence before you.

B. ABANDONMENT

The parties to a contract, by mutual consent, may abandon the contract. Abandonment may occur through either the express or implied conduct of the parties. That is, abandonment may be inferred from how the parties conduct themselves in light of the surrounding circumstances. A contract will be treated as abandoned when one party acquiesces in the acts of the other party that are inconsistent with the existence of a contract. In order for you to find that a contract was abandoned, you must find that both Tech Global and Quantum Digital abandoned the contract. Quantum Digital has the burden of establishing abandonment by a preponderance of the evidence.

Abandonment dissolves the contract; however, any obligation prior to the abandonment, if any, will remain intact. Therefore, if you find that Tech Global and Quantum Digital abandoned the contract, then neither party will be liable for the obligations in the contract after the abandonment.

C. ALTER EGO

As a general matter, a corporation is legally separate from its owners or stockholders or other corporations. In this case, Tech Global claims that Quantum

Digital was Scriptel's mere instrument or tool—what the law calls an alter ego. In order for you to find that Quantum Digital is the alter ego of Scriptel, you must find that the corporate structure of Quantum Digital caused fraud or a similar injustice. Effectively, Tech Global must prove that Quantum Digital is a sham that exists for no other purpose than as a vehicle for fraud or a similar injustice. Fraud requires: (1) a false representation made by the defendant; (2) the defendant's knowledge or belief that the representation was false, or reckless indifference to the truth; (3) an intent to induce the plaintiff to act or to refrain from acting; (4) the plaintiff's action or inaction taken in justifiable reliance upon the representation; and (5) causally related damages to the plaintiff. In deciding whether to treat Quantum Digital as the alter ego Scriptel for purposes of fraud or a similar injustice, you should consider:

- (1) whether Quantum Digital was adequately capitalized;
- (2) whether Quantum Digital was solvent;
- (3) whether corporate formalities were observed;
- (4) whether the Scriptel siphoned company funds; and
- (5) whether the Quantum Digital functioned as a façade for the Scriptel.

Should you find that Tech Global proved this claim by a preponderance of the evidence, the law requires you to disregard the separate status of Quantum Digital and hold Scriptel legally responsible for Quantum Digital's acts.

D. DAMAGES

I will now turn to the question of damages.

By instructing you on damages, this Court does not intend to indicate that it is of the opinion that one side is liable to the other on the claim asserted in this litigation. You may only consider damages if you have found that Quantum Digital or Scriptel is liable to Tech Global based upon the instructions that I have given you.

1. PROOF OF DAMAGES

A party seeking damages must prove its actual, not hypothetical, damages. Damages are defined in the law as the amount of money that will compensate an injured party for the harm or loss sustained. In this case, damages are the amount of money that would put the prevailing party back in the financial position it would have been in if the other party did not breach the contract, or otherwise acted properly. The underlying rationale in awarding damages is to place a party in the position it would have been in if the other party had not breached the contract.

While damages do not need to be calculated or proved with mathematical exactitude, the law requires that a party must prove its damages based upon reasonable, probable and supportable numbers. The amount of damages sustained must be proven with a reasonable degree of certainty. Damages cannot be proven through speculation or factually unsupported assumptions. However, you should not refuse to award damages merely because the damages are difficult to determine.

If you find that a breach of the Agreement has occurred, you should award damages in an amount that has been proven with reasonable certainty. You must

confine your deliberations on damages to the actual evidence only, and you must not base your award of damages on any prejudices or conjecture.

2. NOMINAL DAMAGES

If you find that a breach has occurred, but that the amount of damages has not been proven with sufficient certainty, then you should award nominal damages in the amount of \$1.

3. ATTORNEY'S FEES

Should you determine that Tech Global Partners, Inc., is entitled to recover contract damages, you shall determine that Tech Global Partners, Inc., is entitled to recover costs, expenses, and attorney's fees in addition to other damages. Please note that the amount of costs, expenses, and attorney's fees, if to be included in any award, is to be determined by the judge, not the jury.

III. FINAL PROCEDURAL INSTRUCTIONS

Ladies and Gentleman, in a moment I will dismiss you so that you may commence your deliberations. However, before I do that, I need to give you some instructions about the procedures you must use in the course of your deliberations.


As I said at the beginning of my instructions, you must not allow prejudice, sympathy, or compassion to influence you in the course of your deliberations. That does not mean that you should approach this case in an intellectual vacuum. You are not required to put aside your experiences and observations in the ordinary, everyday affairs of life. Indeed, your experiences and observations in the ordinary, everyday affairs of life are essential to your exercise of reasonably sound judgment

and discretion in the course of your deliberations; and it is your right and duty to consider the evidence in light of such experience and observations.

During your deliberations, you must not communicate with or provide any information to anyone outside of the jury room by any means about this case. You may not use any electronic device or media, such as a cell phone, a tablet, or a computer. You may not communicate to anyone any information about this case or to conduct any research about this case until I accept your verdict. You can only discuss the case in the jury room with your fellow jurors during deliberations.

Now, in order for you to return a final verdict, your decision must be unanimous. That means that you cannot return a verdict unless and until all eight of you are in agreement as to the verdict.

Therefore, in the course of your deliberations and in your consideration of the evidence, you should exercise reasonable and intelligent judgment. It is not required that you yield your convictions simply because a majority holds to the contrary view, but in pursuing your deliberations you should keep your minds reasonably open so that you will not be precluded or prevented from achieving a unanimous verdict by mere stubbornness. Each vote of each juror is as important as the vote of any other juror, and you need not give up your sincerely held convictions simply because a majority holds to the contrary.

I am designating juror #1, as the Foreperson of this jury.  it will be your responsibility to organize the group and facilitate organized and healthy

deliberations. The Foreperson's opinion, voice, or vote, however, is no more meaningful than any other juror.

When you are in the jury room, you will be provided with the evidence that has been admitted in this case. It may take us a few minutes to gather it up, but as soon as we do, it will be brought to the jury room.

You will also be given a verdict form. When you have reached a verdict, the Foreperson will fill out that form and sign it. Once the verdict form is complete, you will inform the Court Security Officer.

[REVIEW OF VERDICT FORM]

If, in the course of your deliberations, you deem it necessary to be further instructed or assisted by the Court in any way, the Foreperson should reduce such request or question to writing, sign it, and give it to the Court Security Officer in whose charge you will now be placed. The Court Security Officer will then bring such written request to me and I, in consultation with the attorneys, will determine an appropriate response. Other than this method, please do not attempt to communicate privately or in any other way with the Court or with anyone outside the jury room.