

IN THE SUPREME COURT OF OHIO

ORIGINAL

State of Ohio, ex rel.
William D. Mason, Cuyahoga
County Prosecuting Attorney,

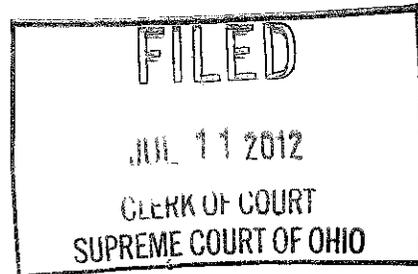
Relator,

vs.

Nancy Margaret Russo,
Judge, Cuyahoga County Court
of Common Pleas,

Respondent.

Case No. 2012-1128



NOTICE OF SUBSEQUENT COURT ACTION

Now comes Relator William D. Mason, by and through his undersigned assistant, and respectfully submits Notice of Subsequent Court Action, attaching Respondent's July 10, 2012 Journal Entries hereto as State's Exhibits 18, 19, 20, and 21, respectively. Respondent has stayed the underlying TRO litigation and discovery pending a decision by this Honorable Court.

Relator sought an immediate alternative writ in part because Respondent would have required Relator to submit discovery on July 9, 2012. That discovery deadline has been stayed pending a decision by this Honorable Court. Relator nevertheless maintains that an alternative writ should issue because (1) Respondent's decision granting a TRO enjoining the prosecutor from enforcing Ohio's gambling laws still exists, and (2) Relator's discovery obligation, while stayed, remains outstanding.

The attached journal entries contain the following subsequent court actions taken by Respondent since the Petition for Writ of Prohibition was filed on July 3, 2012:

1. State's Exhibit 18: Respondent's July 10, 2012 Journal Entry, which explains that Relator's Motion to Stay, which Relator filed before Respondent on July 9, 2011, is unopposed and granted, per agreement of the parties.
2. State's Exhibit 19: Respondent's July 10, 2012 Journal Entry, which documents Respondent's decision to allow intervention of additional plaintiff-intervenors, and which preserves the status quo pending a final decision by this Honorable Court concerning the underlying Petition for a Writ of Prohibition.
3. State's Exhibit 20: Respondent's July 10, 2012 Journal Entry which clarifies that Attorneys Don Marlarcik and Mark Schamel "are not counsel" in the TRO case, and "appeared in a limited capacity to provide the court with information regarding VS2 Software, at a prior hearing" and that "VS2 is [not] a party to this litigation."¹

¹*But see* State's Exhibit 10, attached to Relator's July 3, 2012 Petition, in which Michael Nelson, counsel for Nova Internet Café, asked Respondent to allow Mark Schamel, counsel for the criminal defendants in the related criminal case, to argue on behalf of Nova during the June 25, 2012 Hearing:

THE COURT: Mr. Nelson, I presume you want to go forward.

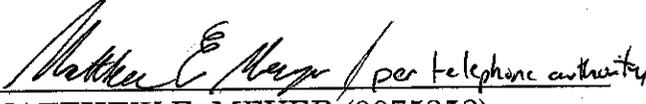
MR. NELSON: At this time, we are going to ask the court for permission --

Mr. Mark Schamel filed a Pro Hac Vice motion. He is going to argue the specifics regarding the actual software, its comparability,

4. State's Exhibit 21: Respondent's July 10, 2012 Journal Entry, in which Respondent clarifies, *nunc pro tunc*, that "counsel Malarcik and Schamel do not represent any party in this case, nor is VS2 a party to this case."

Respectfully submitted,

WILLIAM D. MASON
Cuyahoga County Prosecuting Attorney

 *per telephone authority* MJS (0082320)
MATTHEW E. MEYER (0075253)
Assistant Prosecuting Attorney
1200 Ontario St., 8th Floor
Cleveland, Ohio 44113
(216) 443-7821
(216) 443-7602 fax
mmeyer@cuyahogacounty.us email

and if there are any differences at all between it and the Gateway software that the court previously has allowed pursuant to its temporary order with non-VS2 software.

With the court's permission, Mr. Schamel will make our argument.

THE COURT: Is there anything, Ms. Flanagan, you want to say?

MS. FLANAGAN: Your Honor, we also would, Cyber Space Westlake, also would like Mr. Schamel to argue the software issue.

(State's Exhibit 10, attached to July 3, 2012 Petition for Writ of Prohibition, p. 88-89, emphasis added).



74574642

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

J&C MARKETING LLC
Plaintiff

Case No: CV-12-784234

Judge: NANCY MARGARET RUSSO

WILLIAM D MASON
Defendant

JOURNAL ENTRY

88 BANKRPT/C.O.A. STAY - FINAL

PER AGREEMENT OF PARTIES, THE MOTION TO STAY IS UNOPPOSED AND GRANTED. SEE PRIOR ORDERS.

Judge Signature

07/10/2012

- 88
07/10/2012

**STATE'S
EXHIBIT**
18

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IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO



J&C MARKETING LLC
Plaintiff

Case No: CV-12-784234

Judge: NANCY MARGARET RUSSO

WILLIAM D MASON
Defendant

JOURNAL ENTRY

COURT IS IN RECEIPT OF MOTIONS TO INTERVENE AND FOR TRO'S FROM THE FOLLOWING PLAINTIFFS; BLACK DIAMOND TECH, LLC, DBA CASH COW CYBER CAFE, CYBER HOT SPOT, LLC DBA CYBER HOT SPOT INTERNET CAFE, T&G KANIS LLC DBA LUCKY BREAK CAFE, SURF CITY, LLC DBA SURF CITY INTERNET CAFE, INTERNET PARADISE,LLC, EC WINNERS, INC., DBA WINNERS INTERNET SWEEPSTAKES CAFE, CIRCLE CAFE, LLC DBA TRIFECTA INTERNET CAFE, SURFSHOP LLC DBA THE SURFSHOP.

THE COURT HAS BEEN ADVISED BY COUNSEL FOR THE PLAINTIFFS, MOVANTS AND THE DEFENSE, THAT THE HEARING ON THESE MOTIONS IS WAIVED AND THE PARTIES/ENTITIES/PLAINTIFFS ABOVE ARE GRANTED INTERVENTION AND TRO'S; THE COURT INCORPORATES HEREIN ALL THE PREVIOUS PROCEEDINGS, PLEADINGS, ARGUMENTS, OBJECTIONS OF COUNSEL.

THE COURT ALSO NOTES THAT THE AGREEMENT OF THE PARTIES TO THIS ORDER DOES NOT CONSTITUTE A WAIVER TO ANY OBJECTIONS OR ARGUMENTS. BY AGREEING TO THIS COURT ORDER, ALL PARTIES SPECIFICALLY RESERVE ALL RIGHTS IN CONNECTION WITH THE LAWSUIT, AND SPECIFICALLY STATE THAT NO OBJECTION, ARGUMENT HAS BEEN WAIVED AND IS HEREBY PRESERVED FOR LATER CONSIDERATION, INCLUDING WITHOUT LIMITATION ALL RIGHTS REGARDING DISCOVERY AND THE MERITS OF THE ACTIONS OF ALL PLAINTIFFS AND THE DEFENDANTS. THIS INCLUDES THE DEFENSE CONTINUING OBJECTION TO THIS COURTS JURISDICTION TO ENTERTAIN THE UNDERLYING COMPLAINTS AND TRO'S.

THE PARTIES HAVE AGREED TO MAINTAIN THE STATUS QUO WITH ALL PLAINTIFFS, INCLUDING THOSE WHO ARE MENTIONED IN THIS SPECIFIC ENTRY, PENDING THE FINAL DECISION OF THE SUPREME COURT OF OHIO ON THE PENDING WRIT.

THE TRO'S ARE THEREFORE EXTENDED TO THESE NEW PLAINTIFFS AND THE COURT ORDERS THAT THEY MAY RE-OPEN, INCORPORATING HEREIN ALL THE FINDINGS, ORDERS, DATES AND JOURNAL ENTRIES PREVIOUSLY ISSUED, AND FURTHER FINDING THAT NO BOND IS REQUIRED OF THESE NEW PLAINTIFFS.

THE PARTIES FURTHER AGREE THAT THE PLAINTIFFS WHO ARE PARTIES TO THIS CASE MAY REMAIN OPEN AND DO BUSINESS UNTIL FURTHER ORDER OF COURT, BEING THE SUPREME COURT'S FINAL RULING ON THE ISSUES CONTAINED IN THE WRIT OF PROHIBITION. IN THE EVENT THE SUPREME COURT FINDS IN FAVOR OF THIS COURTS JURISDICTION, THE PARTIES AGREE THAT THE TROS WILL REMAIN IN FULL FORCE AND EFFECT THROUGHOUT THE DISCOVERY PROCESS AND UNTIL SUCH TIME AS THIS COURT ENTERS A RULING ON THE REQUESTS FOR PLAINTIFFS' MOTIONS FOR PRELIMINARY/PERMANENT INJUNCTIONS.

[Handwritten Signature]

Judge Signature

7/10/12

Date

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JUL 10 2012

GERALD E. FUERST, CLERK
By *[Handwritten Signature]* Deputy

STATE'S
EXHIBIT

07/10/2012

19



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**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

J&C MARKETING LLC
Plaintiff

Case No: CV-12-784234

Judge: NANCY MARGARET RUSSO

WILLIAM D MASON
Defendant

JOURNAL ENTRY

THE COURT CLARIFIES, WITH AGREEMENT OF ALL PARTIES, AND NO OBJECTIONS, THAT THE ATTYS DON MALARCIK AND MARK SCHAMEL ARE NOT COUNSEL IN THIS CASE, BUT APPEARED IN A LIMITED CAPACITY TO PROVIDE THE COURT WITH INFORMATION REGARDING VS2 SOFTWARE, AT A PRIOR HEARING; THAT HEARING DID NOT REQUIRE THE TAKING OF EVIDENCE ON THAT ISSUE, SEE TRANSCRIPT AND PRIOR JES; NEITHER OF THESE TWO COUNSEL REPRESENT ANY PARTY WHO IS INVOLVED IN THIS LITIGATION, NOR IS VS2 A PARTY TO THIS LITIGATION.

Judge Signature

07/10/2012

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**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

J&C MARKETING LLC
Plaintiff

Case No: CV-12-784234

Judge: NANCY MARGARET RUSSO

WILLIAM D MASON
Defendant

JOURNAL ENTRY

NUNC PRO TUNC FOR 7/10/12: THE COURT CLARIFIES THAT COUNSEL MALARCIK AND SCHAMEL DO NOT REPRESENT ANY PARTY IN THIS CASE, NOR IS VS2 A PARTY TO THIS CASE.

Nancy Margaret Russo

Judge Signature

07/10/2012

07/10/2012

**STATE'S
EXHIBIT**

21

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CERTIFICATE OF SERVICE

The undersigned has caused copy of the foregoing Notice of Subsequent Court Action to be served electronically and by U.S. Mail this 11th day of July, 2012 to counsel for Respondent, Robert P. Ducatman, Esq., North Point, 901 Lakeside Ave., Cleveland, Ohio 44114-1190.

Matthew E. Meyer / per telephone authority *MJS(0082390)*
MATTHEW E. MEYER (0075253)
Assistant Prosecuting Attorney