

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
LAS VEGAS, NEVADA

THE SCO GROUP, INC.,)	
)	Docket No. 2:04-CV-0237-RCJ-GWF
Plaintiffs,)	
)	
vs.)	
)	
AUTOZONE, INC.,)	
)	Las Vegas, Nevada
Defendants.)	September 22, 2008
)	9:19 p.m.

STATUS CONFERENCE

THE HONORABLE ROBERT C. JONES PRESIDING
JUDGE OF THE UNITED STATES DISTRICT COURT

COURT RECORDER:

ARACELI BARENG
U.S. District Court

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2:04-CV-00237-RCJ-GWF	SCO v. Autozone	10/22/08	Status
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APPEARANCES:

FOR THE PLAINTIFFS:

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FOR THE DEFENDANTS:

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1 LAS VEGAS, NEVADA MONDAY, SEPTEMBER 22, 2008

2 PROCEEDINGS BEGAN AT 9:19:30 A.M.

3 THE COURT: SCO versus AutoZone. S-C-O. Right.

4 Good morning.

5 MR. POCKER: Good morning, Your Honor.

6 THE COURT: Appearances, please.

7 MR. POCKER: Richard Pocker of Boies, Schiller and
8 Flexner on behalf of the plaintiffs in this matter, and with
9 me is Ryan Tibbits, the general counsel for the client,
10 plaintiff SCO.

11 MS. BIELINSKI: Good morning, Your Honor. Laura
12 Bielinski, with Brownstein Hyatt Farber Schreck. We're local
13 counsel for AutoZone.

14 THE COURT: Thank you.

15 We have had some movement in the case, so what can I
16 do then, or what should I do to close out our proceeding?

17 MR. POCKER: Well, Your Honor, if the Court is
18 apprized of the status report we submitted last Thursday, as
19 it is now, we yet do not have a final judgment in the Novell
20 litigation --

21 THE COURT: Mm-hmm.

22 MR. POCKER: -- up in the District of Utah.

23 THE COURT: Now in summary, of course, we have one
24 back in New Jersey that's stayed -- still stayed, or no?

25 MR. POCKER: In Delaware, there's one stayed -- the

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1 IBM --

2 THE COURT: Delaware.

3 MR. POCKER: -- litigation is stayed. And both of
4 those are now stayed, in addition --

5 THE COURT: But the main one that was going forward
6 in Utah, which was Novell?

7 MR. POCKER: Yes, sir.

8 THE COURT: In that one, give me the summary on the
9 record here.

10 MR. POCKER: Okay. Where that stands right now,
11 Your Honor, is that the Court had ruled -- made several
12 rulings on summary judgment back in 2007, then held a trial in
13 April of this year with respect to some of the remaining
14 claims and the damages amounts, so --

15 THE COURT: And basically it was Novell did not
16 transfer, still held --

17 MR. POCKER: They -- it --

18 THE COURT: -- the Linux -- the --

19 MR. POCKER: -- well, the -- with respect to the
20 copyright issues, that was decided adversely to SCO.

21 THE COURT: Mm-hmm.

22 MR. POCKER: And that will -- that was resolved in a
23 summary judgment and we'll be appealing that once we get a
24 final judgment. And then as to the issues regarding the Sun
25 and Microsoft licenses, there was a claim for \$30 million

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1 dollars in licence fees that --

2 THE COURT: By SCO?

3 MR. POCKER: By -- by Novell --

4 THE COURT: Mm-hmm.

5 MR. POCKER: -- to retrieve -- to get that back from
6 SCO. Ultimately the Judge ruled that it was \$2 million some
7 hundred thousand dollars instead --

8 THE COURT: Mm-hmm.

9 MR. POCKER: -- and that -- in the course of making
10 those rulings, the Court also issued additional findings which
11 will be part of this final judgment once it's entered.

12 Novell, in that litigation, has raised what they
13 consider to be bars to the issuance of a final judgment. One
14 of them is based on the issue of whether there will be a
15 constructive trust imposed upon SCO's assets to protect the
16 judgment, and we believe that's been resolved through some
17 tracing and a stipulation, and in all likelihood the
18 bankruptcy judge will just adopt that, if he hasn't done so
19 already.

20 The other issue had to do with some of the claims
21 that SCO made in the Novell case were stayed, pending
22 arbitration or based upon an arbitration clause --

23 THE COURT: Mm-hmm.

24 MR. POCKER: -- those were main stayed and Novell is
25 taking the position that because of those stayed claims, final

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1 judgment can't yet be entered up in Utah. We've taken a
2 contrary position, have offered to dismiss those. In any
3 event, in a nutshell, we're close to judgment up there, final
4 judgment, and at that point in time our client will appeal
5 that judgment.

6 We think it's important in the sense that the
7 issues resolved with respect to the copyright ownership for
8 the pre-1996 period are an issue that impacts this litigation
9 here, and a good number of the claims. And as a result,
10 rather than to duplicate effort and to run into massive
11 judicial inefficiencies, it's our position that perhaps the
12 Court should -- or, the Court definitely should continue the
13 stay in effect while we labor through that final judgment and
14 then the appeal.

15 THE COURT: Why shouldn't I lift it now and let
16 you proceed? I appreciate that there's still appeals, or
17 there may be appeals pending, but why shouldn't I lift it
18 now and require you to proceed here, based upon those
19 rulings?

20 MR. POCKER: Well, Your Honor, I believe that --
21 it's an efficiency argument, essentially. We believe that
22 there are very strong arguments with respect to the summary
23 judgment rulings especially, that the Court erred in
24 granting summary judgment on those copyright issues. If the
25 Tenth Circuit agrees, then this case down here will be a lot

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1 larger and more complex than a truncated version of this
2 case, if the Court were to move forward at this time, with
3 just the main claims that are not impacted by what happened
4 to Novell.

5 THE COURT: Mm-hmm.

6 MR. POCKER: And there are questions of --

7 THE COURT: Let me ask opposing counsel, do you see
8 any reason why I shouldn't lift the stay?

9 MS. BIELINSKI: Your Honor, we would submit that to
10 the Court's discretion.

11 THE COURT: Mm-hmm.

12 MS. BIELINSKI: I don't see any reason why --

13 THE COURT: Because you're talking about, Mr.
14 Pocker, several years hence, right?

15 MR. POCKER: It could be. I --

16 THE COURT: In the meantime this is an '04 case.

17 MR. POCKER: It could be 18 months.

18 THE COURT: Mm-hmm.

19 MR. POCKER: Maybe two years.

20 THE COURT: I'm going to lift the stay. I'm going
21 to lift it effective the end of this year, and require you to
22 proceed in this litigation here.

23 So I'll let you -- you know, that's enough time --
24 maybe not enough time, but enough time to get yourself on
25 pretty solid footing, short of the appeals in that other

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1 proceeding, and then I'm going to require you to go here.

2 If you'll -- if you claim -- of course, you -- you
3 may assert additionally that the Court there was in error, but
4 seek a judgment nevertheless, alternatively, and probably
5 we're going to be able to resolve most of that, I assume, by
6 way of summary judgment. And then of course if it turns out
7 that the Court there was wrong, we'll have to redo, no doubt
8 about it. But I think I've got to get this case off the dime
9 and move it towards conclusion.

10 MR. POCKER: Well, Your Honor, there are limited
11 issues as a compromise that we could proceed with --

12 THE COURT: Mm-hmm.

13 MR. POCKER: -- with respect to the open server
14 issues that don't impact those issues.

15 THE COURT: Mm-hmm.

16 MR. POCKER: We could have a -- if the Court were
17 willing to have, say, a 180 day period in which we could
18 engage in motion practice with respect to those claims, I
19 believe that would move this case forward while still allowing
20 for a period of time in which the results of Novell could be
21 clarified and we'd avoid a lot of duplication in the
22 litigation down here.

23 THE COURT: I'm going to lift the stay, end of this
24 year, entirely on the case, and require then that there be
25 discovery deadlines and motion deadlines, dispositive motion

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1 deadlines and ultimately a trial setting as well. I think
2 that will move the case.

3 MR. POCKER: So, Your Honor, it's effective January
4 1st, then --

5 THE COURT: Right.

6 MR. POCKER: -- the stay is lifted? And at that
7 point in time, you wish us to submit the discovery plan,
8 scheduling order, and --

9 THE COURT: I do

10 MR. POCKER: Alright.

11 THE COURT: And we'll have deadlines for that, and
12 dispositive motion and of course we'll set a trial date as
13 well. It will be out there. It doesn't mean you can't
14 continue it, but it will be out there as a deadline for you.

15 MR. POCKER: Alright. Thank you, Your Honor.

16 THE COURT: Okay. Thank you so much

17 MS. BIELINSKI: Thank you, Your Honor.

18 PROCEEDINGS CONCLUDED AT 9:26:35 A.M.

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CERTIFICATION

I (WE) CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE ELECTRONIC SOUND RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

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Zachary Lutz
TRANSCRIBER

10/29/08
DATE

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