

FILED

AUG 11 2003

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

1 STEVEN BEIGEL,)
 2)
 3 Plaintiff,)
 4 V.)
 5 KEVIN DWAN, an individual;)
 6 and KEVIN DWAN doing business)
 7 as BLUE TOOLS SOFTWARE; and)
 8 DOES 1 through 50, inclusive.)
 9 Defendants.)

No. C-02-3116-DLJ

ORDER

Following trial before this Court which concluded on July 16, 2003, this Court issued an Order setting forth Findings of Facts and Conclusions of Law as to this case on August 5, 2003. Judgment on the case was entered on August 5, 2003.

Pursuant to the Findings of Fact and Conclusions of Law stated above, and the provisions of California Corporations Code §§ 16801-16807, the Court hereby Orders dissolution, final accounting and winding up of the California general partnership known as Blueberry Software.

1. A general partnership known as Blueberry Software, with partners Steven Beigel and Kevin Dwan, has been in existence in California since on or about 1986. This general partnership is now dissolved by this Order.

2. The assets and liabilities of the general partnership, except for:

a. the computer software and software products known as Filtrix, including its associated copyrights, computer programs, source codes and coded instructions known as Blueberry Internal Format ("BIF"),

b. the domain name Blueberry, and the associated website at www.blueberry.com.

U.S. DISTRICT COURT
For the Northern District of California

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1 c. the Strategic Partnership Agreement dated July 12, 2000
2 between Arbortext, a Michigan corporation, and Blueberry
3 Software,

4 d. all accounts receivable from the contract between
5 Island Graphics and Blueberry Software, and

6 e. all accounts receivables from the contract between
7 Applix and Blueberry Software.

8 are hereby distributed pursuant to the agreement of the parties
9 to accept the accounting prepared by Darlene Elmore C.P.A.

10 which closes out the partnership books and balances the capital
11 accounts of the parties as of May 21, 2003. The parties have
12 agreed pursuant to this Final Accounting that Steven Beigel is
13 to pay Kevin Dwan the sum of \$2,671.00.

14 3. The fair market value of the Filtrix software described in
15 this Order is \$159,000.00. The fair market value of the
16 Strategic Partnership contract between Arbortext and Blueberry
17 Software is a substantial part of Filtrix and is included
18 within the stated value of \$159,000.00.

19 4. The fair market value of the domain name and the
20 www.blueberry.com website described in this Order is
21 \$20,000.00.

22 5. In order to realize the greatest economic benefit for both
23 partners at this time, the parties agree to the following
24 distribution and assignment of the partnership assets not
25 covered by the Darlene Elmore accounting:

26 a. the Filtrix Software, including all associated source
27 codes, computer programs, BIF instructions, and copyrights

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1 are transferred to Steven Beigel as sole owner. Because
2 of this assignment, the amount of \$79,500.00 (half the
3 present market value of Filtrix) is to be paid by Steven
4 Beigel to Kevin Dwan.

5 b. the domain name Blueberry, the website at
6 www.blueberry.com, and the business name Blueberry
7 Software are transferred to Steven Beigel as sole owner.
8 Because of this assignment, the amount of \$10,000.00 (half
9 the present market value of these assets) is to be paid by
10 Steven Beigel to Kevin Dwan.

11 c. the Strategic Partnership Agreement between Arbortext
12 and Blueberry Software is transferred to Steven Beigel as
13 sole owner. Any responsibility for future performance on
14 this contract will be the sole responsibility of Steven
15 Beigel. All royalty payments based on this contract are
16 to be shared equally by Steven Beigel and Kevin Dwan.
17 Payments to Kevin Dwan of royalty proceeds under this
18 contract are to be credited to the \$79,500.00 debt owed by
19 Steven Beigel to Kevin Dwan, up to the amount of
20 \$79,500.00. Any royalty payments made under the contract
21 after this debt is satisfied are to be shared equally by
22 Steven Beigel and Kevin Dwan.

23 d. the contract between Blueberry Software and Applix,
24 and the contract between Blueberry Software and Island
25 Graphics are each transferred to Steven Beigel as sole
26 owner. Any payment by either Applix or Island Graphics
27 which is based on these contracts, whether as an accounts
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1 receivable to Blueberry Software or any other obligation,
2 including any enforcement of the contract by a civil
3 lawsuit, is to be shared equally by Steven Beigel and
4 Kevin Dwan.

5 6. The parties agree that a present market value of any
6 goodwill associated with Blueberry Software cannot be
7 determined with sufficient accuracy to be included as part of
8 this dissolution and distribution Order.

9 7. The parties agree that the existing liability for the
10 unpaid balance of the MBMA credit card for Blueberry Software
11 will be paid by Steven Beigel.

12 8. The Court appoints Richard G. Blair, from the law offices
13 of Morgan Miller Blair, in Walnut Creek, California, to act as
14 Receiver in this case. It will be the duty of the Receiver to:

15 a. take initial possession of any royalty payments made by
16 Arbortext on the Strategic Partnership Agreement and then
17 disburse them according to this Order and in equal shares
18 to Steven Beigel and Kevin Dwan.

19 b. make a professional assessment of the advisability of
20 the pursuit of litigation to enforce the Applix contract
21 or the Islands Graphic contract. If litigation is found
22 advisable, the Receiver is to pursue such litigation. If
23 there are any proceeds realized from such enforcement, or
24 there are any payments made for accounts receivable on
25 either contract, the Receiver is to take initial
26 possession of any proceeds from these contracts and then
27 disburse them according to this Order and in equal shares
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CLARENCE J. BISHOP
For the Northern District of California

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to Steven Beigel and Kevin Dwan.

c. take any other action which is necessary to carry out the terms of this Order.

9. The parties are to meet and confer with the Receiver and agree to an appropriate mechanism to carry out this Order and to a method and amount of compensation, to include payment of costs and expenses, for the Receiver. Steven Beigel and Kevin Dwan are to share equally in the payments to be made to the Receiver.

10. In Order to ensure compliance with this Order, the Court will retain jurisdiction of this matter for one year from the date it is entered.

IT IS SO ORDERED

Dated: August 11, 2003


D. Lowell Jensen
United States District Judge