

AMERICAN ARBITRATION ASSOCIATION

BLUEBERRY SOFTWARE INC.)
)
 Claimant,)
 v.)
)
 PARAMETRIC TECHNOLOGY CORP.)
)
 Respondent.)
)

AAA No: 54 180 Y 01325 06
Case Manager: Hannah R. Cook
Arbitrator: Kathryn J. Humphrey

Blueberry's Reply to Parametric's Supplemental Response

Introduction

Parametric makes two points in it's response to Blueberry's supplemental submission. Point number one (1) makes the case for applying judgment according to FRCP rules (b) (6) and FRCP 56 and restates Parametric's logic regarding Fraudulent Concealment. Point number two (2) attempts to trivialize Blueberry's inability to proceed with its audit, characterizing it as a partnership disagreement. Both of these points are in error.

1. Parametric's claims for applying FRCP rules 12(b)(6) and 56.

In Section one (1) of Parametric's response, they claim that they are entitled to Judgment under FRCP 12(b) (6) and FRCP 56. In fact, Parametric is not entitled to Judgment under either of these FRCP rules. Parametric's arguments all relate to being in a court of law governed by the FRCP rules. Arbitration is not a court of law governed by FRCP rules.

If Arbortext had wanted and expected the FRCP to control any dispute between the parties, as drafters of the contract, they should never have required Arbitration. But they did. Therefore, this proceeding is governed by the AAA rules. Matters under

Arbitration are NOT covered by the FRCP. Parametric cited NO case to support its major argument that Rules 12 (b) (6) and 56 may be applied to matters in Arbitration. If Arbitrators were meant to address dispositive motions, there would be either rules to address these circumstances in the AAA rules themselves or a reference, perhaps to use the FRCP "when necessary." That is not the case.

2. Parametric's characterization of Blueberry's evidence submissions.

In Section two (2) of Parametric's response, Parametric implies that Blueberry was asked by this Arbitrator to submit an Order of the Court that precluded Blueberry from conducting an Audit of Arbortext. This is inaccurate. In the April 4, 2007 conference call, Blueberry made it clear to both the Arbitrator and Parametric's Counsel that no such Court Order existed. Blueberry stated that it was precluded from performing an Audit because Arbortext put pressure on a former Blueberry partner and the Court Appointed Receiver to force Blueberry to accept a buyout and not perform an Audit. Parametric also states that Blueberry did not submit any communication or direction from the Court. However, it is clear from the previously submitted Exhibits that the Receiver, Dick Blair was actively communicating with the Court and sought direction from the Court. Additionally, the Exhibits show that the Receiver also demanded at one point, despite permission from the Judge to proceed with the Audit, that Blueberry stop the Audit until the matter could be revisited yet again with Judge Jensen.

This was not merely a partnership disagreement, as Parametric characterizes it, but a concerted effort, initiated and sustained by Arbortext for over a year, to use a Court appointed Receiver to force a buyout upon Blueberry against its wishes in an effort to prevent an Audit and afterwards, to prevent the possibility of Arbitration. Even after the

first draft of the Audit Report was released in January of 2005, before the Final Report was issued in March of 2005, Arbortext still tried to get Blueberry to accept a buyout and once again brought the matter up with the Receiver, Dick Blair [EXHIBIT 1].

Afterwards, Blueberry had to engage in discussions over a period of several months with the Receiver, Blueberry's ex-partner and his attorney and explain and reiterate it's stance as to why Blueberry did not want to accept a buyout.

Parametric states that Blueberry did not have to perform an Audit and should have proceeded to Arbitration in a timely manner. Blueberry could not take any action without the tacit approval of the Receiver who reported to Judge Jensen. Blueberry is still in the Court's jurisdiction and is required to report the results of this Arbitration to the Receiver and the Court.

As for the issue of Fraudulent Concealment, Blueberry has presented ample evidence, which Parametric either chooses to ignore or mischaracterize. The existence of the Arbortext product Intermarket is a fact which reasonable minds cannot differ on. Yet Arbortext, and now Parametric, still continue to deny its existence, to conceal it. The evidence that the License Key Database does not in any way correspond to the Royalty Report or the Sales Database is also a fact which reasonable minds cannot differ on. These facts were discovered in February of this year in the Working Papers of Mark Robinson of Plante & Moran and presented by Blueberry to the Arbitrator and to Parametric.

Additionally, in January of 2006, nine months before Blueberry filed for Arbitration, Blueberry began to receive royalties from Parametric for a product called "Arbortext Architect". Parametric has previously stated that there were product name

changes on the Royalty Reports they issued, however this particular product's name has not changed and Blueberry never received any royalties for this product previously. When Blueberry began to examine this product, after receiving royalties for it from Parametric, it was clear that Blueberry's technology was indeed involved. This Covered Product was concealed from Blueberry for nearly six years and only discovered by Blueberry in January of 2006 [EXHIBIT 2-- Royalty Report from Parametric].

Conclusion

The contract between Arbortext/Parametric and Blueberry requires that Arbitration under the American Arbitration Association rules shall be the forum to settle disputes. When Blueberry initially filed for Arbitration, it was with the understanding that as Discovery was performed, there would be the possibility of adding to the claim. While it is true that Blueberry only later introduced Fraudulent Concealment to its claim, it was because some Discovery had occurred and Parametric had introduced its "Motion to Dismiss." It is unfortunate that these matters could not have been resolved prior to Parametric's acquisition of Arbortext however, this is due solely to Arbortext's failure to honor the contract clause that required Blueberry to be informed before an Acquisition took place. Blueberry requests that Parametric's Motion to Dismiss be denied and that this matter proceed to a full Arbitration hearing.

Respectfully Submitted,

Dated: May 3, 2007


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RICHARD G. BLAIR
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January 2, 2005

VIA FACSIMILE

Steven Beigel
995 Court Lane
Concord, CA 94518

Kevin Dwan
7244 Wilton Avenue
Sebastopol, CA 95472

Re: Blueberry Software Receivership
Our File No. 9512-001

Dear Steve and Kevin:

Attached is a transcription of a voicemail which David Peralta left today. I subsequently called him and briefly confirmed the voicemail.

I've also had a brief conversation with Claudia Rast, and she advises that there is a need for further audit work, and that the work may be completed by the end of next week.

Hopefully, we will be in a position, by the following week, to begin to make some judgments regarding the result of the audit and the wisdom of negotiating a buy-out with Arbortext. Obviously, a quantification of the results of the audit comes first.

Have a Happy New Year.

Very truly yours,

MORGAN MILLER BLAIR

RICHARD G. BLAIR

RGB:sn

Encl.

cc: Lawrence Bernheim w/encl.
Kenneth Pritikin w/encl.
Claudia Rast, Esq. w/encl.

MMB: 9512-001:384585:1

Exhibit 1
Page 1 of 2 pages



MEMORANDUM

TO: FILE/RGB 9512-001
VM FROM: DAVE PERALTA
DATE: January 2, 2005
RE: Beigel v. Dwan Receivership
SUBJECT: ARBORTEXT

Hi Dick, this is Dave Peralta from Arbortext. It's Tuesday the 28th. I understand your office is closed but hope you had a good Christmas holiday and hope you enjoy the New Year holiday as well. I'm in today, tomorrow and Thursday, so if you do pick up messages or if you're in, feel free to give me a call.

I was phoning you for, I guess, to kind of tell you where we're at in terms of the Blueberry arrangement. I mean, as it stands right now the audit has been completed for about a month now. They issued us a preliminary report just for feedback. They sent it to us and the Blueberry's attorney and I sent some small feedback back to the auditor. But in general, they basically indicated that everything had been done properly assuming the certain interpretation of the Agreement and they indicated that if two areas were interpreted differently, basically how you handle our E-3 revenue, and how you handle maintenance revenue, then additional royalties may be due. I think and our attorneys think that the two areas of interpretation are quite clear and certainly they haven't been disputed by Blueberry in the past so, from all I can ascertain the audit report was clean. So that leaves us in terms of the future, and we're at the point where we're gonna move to a new technology provided, to provide us what we need for the Blueberry code. And, we're gonna, I guess I'm interested in discussing with you, kinda one last chance to buy out Blueberry as we'd previously proposed to avoid any ill feelings or, you know, distraction on both sides going forward. But, absent our very near term decision on their part to accept a reasonable proposal, we're just gonna move forward and I think in relatively short order, their royalties stream will start to diminish. So if you could, please give me a call to discuss and I guess we can talk through how we might be successful in moving forward amicably. Thanks, Dick. My number is: 734-327-6859. Take care.

Blueberry Software
Royalty Report
02/06

ORDER NUMBER	CUSTOMER NAME	PARENT ITEM	ITEM DESCRIPTION	SHIPPED DATE	ORD QTY	USD AMOUNT	CALCULATED ROYALTY
2325233	AIR FRANCE	PKG-7108-F	Arbortext Architect	22-Dec-05	1	\$4,200.53	\$100.81
2326824	ASTELLAS PHARMA INCORPORATED	PKG-7108-F	Arbortext Architect	28-Dec-05	1	\$4,455.00	\$106.92
2333593	AVAYA INC.	PKG-7108-F	Arbortext Architect	14-Feb-06	1	\$4,950.00	\$119.80
2326083	BEARING POINT INCORPORATED	PKG-7108-F	Arbortext Architect	27-Dec-05	2	\$7,920.00	\$190.08
2321784	CARSWELL	PKG-7108-F	Arbortext Architect	18-Dec-05	1	\$4,950.00	\$119.80
2326602	CIRCLE SEAL CONTROLS INC.	PKG-7108-F	Arbortext Architect	9-Jan-06	1	\$4,950.00	\$93.16
2322624	DELL PRODUCTS LP	PKG-7108-F	Arbortext Architect	15-Feb-06	1	\$5,701.78	\$136.84
2333942	EDITIONS FRANCIS LEFEBVRE	PKG-7106-F	Arbortext Architect	30-Dec-05	1	\$5,834.07	\$140.02
2326516	EMES GMBH	PKG-7106-F	Arbortext Architect	8-Dec-05	1	\$4,955.00	\$106.92
23-9220	FEDERAL RESERVE BOARD	PKG-7106-F	Arbortext Architect	2-Mar-06	1	\$4,955.00	\$106.92
2335980	GLAXO SMITH KLINE	PKG-7106-F	Arbortext Architect	21-Dec-05	1	\$4,955.00	\$110.11
2321520	GLAXO SMITH KLINE	PKG-7106-F	Arbortext Architect	22-Feb-06	1	\$4,745.23	\$113.85
2334886	HYPERION SOLUTIONS	PKG-7106-F	Arbortext Architect	27-Dec-05	0	\$30.00	\$1.44
2326122	JOHNSON & JOHNSON PRD	PKG-7106-F	Arbortext Architect	22-Dec-05	1	\$4,455.00	\$106.92
2325032	JOHNSON & JOHNSON PRD	PKG-7106-F	Arbortext Architect	16-Nov-05	2	\$8,910.00	\$213.84
2318836	JOHNSON & JOHNSON PRD	PKG-7106-F	Arbortext Architect	24-Feb-06	0	\$136.00	\$3.73
2304740	KING PHARMACEUTICALS INCORPORATED	PKG-7106-F	Arbortext Architect	3-Feb-06	0	-\$80.00	-\$1.92
2326588	KING PHARMACEUTICALS INCORPORATED	PKG-7106-F	Arbortext Architect	2-Feb-06	1	\$4,701.42	\$112.83
2321490	KING PHARMACEUTICALS INCORPORATED	PKG-7106-F	Arbortext Architect	30-Dec-05	0	-\$399.47	-\$9.63
2327075	KONGSBERG MARITIME AS	PKG-7106-F	Arbortext Architect	6-Dec-05	1	\$5,250.66	\$125.02
2321603	KONGSBERG MARITIME AS	PKG-7106-F	Arbortext Architect	29-Dec-05	1	\$4,339.00	\$104.14
2326869	MASTERCARD INTERNATIONAL	PKG-7108-F	Arbortext Architect	29-Dec-05	1	\$167.00	\$4.01
2330445	MRG DOCUMENT TECHNOLOGIES	PKG-7108-F	Arbortext Architect	29-Jan-06	0	-\$167.00	-\$4.01
2330447	MRG DOCUMENT TECHNOLOGIES	PKG-7108-F	Arbortext Architect	6-Jan-06	0	-\$167.00	-\$4.01
2327863	MRG DOCUMENT TECHNOLOGIES	PKG-7108-F	Arbortext Architect	30-Dec-05	1	\$2,172.06	\$52.13
2326596	MRG DOCUMENT TECHNOLOGIES	PKG-7108-F	Arbortext Architect	22-Feb-06	0	-\$167.00	-\$4.01
2335116	NASA	PKG-7106-F	Arbortext Architect	22-Feb-06	1	\$4,598.00	\$110.11
2326132	NASA	PKG-7106-F	Arbortext Architect	27-Feb-06	1	\$4,950.00	\$119.80
2335515	OPEN TEXT CORPORATION	PKG-7106-F	Arbortext Architect	15-Mar-06	1	\$2,970.00	\$71.28
2337799	SANDIA NATIONAL LABS- CALIFORNIA	PKG-7106-F	Arbortext Architect	27-Feb-06	1	\$4,738.00	\$113.71
2336529	SOCIAL SECURITY ADMINISTRATION	PKG-7106-F	Arbortext Architect	18-Feb-06	3	\$14,414.50	\$345.71
2333126	STUDEC - PARIS	PKG-7106-F	Arbortext Architect	6-Dec-05	3	\$14,214.00	\$341.14
2320510	THE FLORIDA LEGISLATURE	PKG-7106-F	Arbortext Architect	30-Nov-05	1	\$4,723.50	\$112.86
2327338	UNITED STATES DEPARTMENT OF HOMELAN	PKG-7106-F	Arbortext Architect	31-Dec-05	0	-\$377.00	-\$9.05
2323953	UNITED STATES DEPARTMENT OF HOMELAN	PKG-7106-F	Arbortext Architect	29-Dec-05	1	\$4,738.00	\$113.71
2325041	WINDMOELLER & HOELSCHER	PKG-7106-F	Arbortext Architect	2-Mar-06	0	-\$150.00	-\$3.84
2336227	WORLD AIRWAYS INCORPORATED	PKG-7106-F	Arbortext Architect	1-Feb-06	1	\$4,455.00	\$106.92
2330957	WORLD AIRWAYS INCORPORATED	PKG-7106-F	Arbortext Architect		35		\$3,810.00

ORDER NUMBER	CUSTOMER NAME	PARENT ITEM	ITEM DESCRIPTION	SHIPPED DATE	ORD QTY	USD AMOUNT	CALCULATED ROYALTY
2338074	AT&T SERVICES INCORPORATED	PKG-7200A-F	Arbortext Publishing Engine - 1 Yr Term	14-Mar-06	0	\$9,803.00	\$81.86
2336115	AT&T SERVICES INCORPORATED	PKG-7200A-F	Arbortext Publishing Engine - 1 Yr Term	3-Mar-06	0	\$2,235.95	\$19.13
2336115	AT&T SERVICES INCORPORATED	PKG-7200A-F	Arbortext Publishing Engine - 1 Yr Term	3-Mar-06	0	\$11,484.77	\$95.67
2336304	AT&T SERVICES INCORPORATED	PKG-7200A-F	Arbortext Publishing Engine - 1 Yr Term	2-Mar-06	0	-\$3,781.72	-\$114.80
2335472	AT&T SERVICES INCORPORATED	PKG-7200A-F	Arbortext Publishing Engine - 1 Yr Term	27-Feb-06	1	\$13,781.72	\$114.80
2326747	WOLTERS KLUWER	PKG-7200A-F	Arbortext Publishing Engine - 1 Yr Term	1-Apr-06	0	-\$91,642.40	-\$762.55
2326749	WOLTERS KLUWER	PKG-7200A-F	Arbortext Publishing Engine - 1 Yr Term	1-Apr-06	0	\$91,542.40	\$762.55
2321825	WOLTERS KLUWER	PKG-7200A-F	Arbortext Publishing Engine - 1 Yr Term	30-Mar-06	0	\$94,407.02	\$786.41
2321825	WOLTERS KLUWER	PKG-7200A-F	Arbortext Publishing Engine - 1 Yr Term		1		\$922.67

ORDER NUMBER	CUSTOMER NAME	PARENT ITEM	ITEM DESCRIPTION	SHIPPED DATE	ORD QTY	USD AMOUNT	CALCULATED ROYALTY
2332624	DELL PRODUCTS LP	PKG-7200-F	Arbortext Publishing Engine	3-Feb-06	2	\$84,300.00	\$699.72
2336980	GLAXO SMITH KLINE	PKG-7200-F	Arbortext Publishing Engine	2-Mar-06	1	\$84,000.00	\$449.82
2327308	HEIDELBERGER DRUCKMASCHINEN AG	PKG-7200-F	Arbortext Publishing Engine	2-Jan-06	0	-\$1,254.89	-\$10.46
2327546	HEIDELBERGER DRUCKMASCHINEN AG	PKG-7200-F	Arbortext Publishing Engine	3-Jan-06	0	-\$1,254.89	-\$10.45
2327547	HEIDELBERGER DRUCKMASCHINEN AG	PKG-7200-F	Arbortext Publishing Engine	3-Jan-06	0	\$1,254.89	\$10.45
2327549	HEIDELBERGER DRUCKMASCHINEN AG	PKG-7200-F	Arbortext Publishing Engine	3-Jan-06	0	-\$1,779.50	-\$148.20

PROOF OF SERVICE

I, the undersigned, certify and declare as follows:

I am a citizen of the United States and over the age of eighteen years. I am not a party to this action. I am employed in the county where the delivery described below occurs and my business address is 1300 Clay Street, Suite 1000, Oakland, California 94612.

On the date indicated below, I caused to be served the following document(s):

BLUEBERRY'S REPLY TO PARAMETRIC'S SUPPLEMENTAL RESPONSE

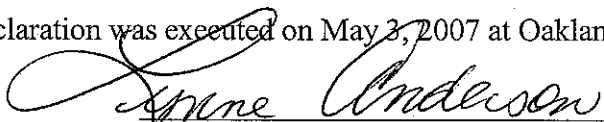
On the following party(ies) in this action:

A. Michael Palizzi, Esq.	Hannah R. Cook
K. Spano, Esq.	American Arbitration Association-Northeast
Miller, Canfield, Paddock & Stone, PLC	Case Management Center
150 West Jefferson, Ste. 2500	950 Warren Avenue
Detroit, MI 48226	East Providence, RI 02914
313.496.7645 (direct)	Toll Free: 866-293-4053
313.496.8454 (fax)	Direct Dial: (401) 431-4708
	Facsimile: (401) 435-6529

As follows:

<input checked="" type="checkbox"/>	BY MAIL (CCP §§ 1013A, et seq.) I am readily familiar with the practice of my employer for the collection and processing of correspondence for mailing with the United States Postal Service, by which correspondence is placed, in a sealed envelope, postage prepaid, in the designated station for outgoing mail, and is the same day delivered to the United States Postal Service. I served such envelopes following this practice.
<input type="checkbox"/>	BY HAND DELIVERY/PERSONAL SERVICE (CCP §§ 1011, et seq.) I caused said envelopes to be personally served.
<input type="checkbox"/>	BY EXPRESS SERVICE (CCP §§ 1913 (c)(d), et seq.) I caused said envelopes to be deposited with an express service carrier or Express Mail in accordance with the carrier's designated practice.
<input checked="" type="checkbox"/>	BY ELECTRONIC TRANSMISSION BY MARY TARANTINO

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on May 3, 2007 at Oakland, California.


Lynne Anderson