

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ELIOT I. BERNSTEIN, et al.

Plaintiffs,

-against-

APPELLATE DIVISION FIRST
DEPARTMENT DEPARTMENTAL
DISCIPLINARY COMMITTEE, et al.

Defendants
-----X

DOCKET NO:
07Civ11196 (SAS)
[rel. 07 Civ 09599]

MOTION IN
OPPOSITION TO ORDER

MOTION IN OPPOSITION TO STAY ORDER DATED MAY 09 2008 ~
REQUEST FOR CLARIFICATION OF ORDER

PLAINTIFFS, ELIOT I. BERNSTEIN, Pro se, individually and P. STEPHEN LAMONT, Pro se and Plaintiff BERNSTEIN on behalf of shareholders of Iviewit Holdings, Inc., Iviewit Technologies, Inc., Uview.com, Inc., Iviewit Holdings, Inc., Iviewit Holdings, Inc., Iviewit.com, Inc., Iviewit.com, Inc., I.C., Inc., Iviewit.com LLC, Iviewit LLC, Iviewit Corporation, Iviewit, Inc., Iviewit, Inc., and other John Doe companies (collectively, "Iviewit Companies"), and patent interest holders, move this honorable Court to clarify the Order dated May 9, 2008 in this case and in support state as follows:

REQUEST FOR CLARIFICATION OF ORDER

1. Plaintiffs are in receipt of your Order dated May, 9, 2008 ("Order"). Plaintiffs want to confirm our understanding of your Honor's Order, and reserve the right to oppose the Order if necessary. The Order states that the additional Defendants will be served after Your Honor rules on the pending motions to dismiss. That will start the time period for responsive pleadings. Plaintiffs assume this was ordered to allow the Court to maintain proper order and scheduling in this case, so that pending and anticipated

motions can be determined, resulting in the additional Defendants being served thereafter. Plaintiffs also assume that since the Court is not "Served", but instead the Amended Complaint was properly filed, that it is a Pleading, although not yet docketed and is part of the record as of this time. Plaintiffs filed the Amended Complaint which does not appear on the docket but other documents filed with it are and Plaintiffs want to clarify that the Amended Complaint constitutes a Pleading that will be formally docketed. As such, Plaintiffs can use it in responding to Defendant's motions and for other similar purposes.

2. Plaintiffs also assume that the additional Defendants will be served regardless of the outcome of the Motions practice, as many new Defendants have that status irrespective of the initially named Defendants based on their alleged actions and inactions as set forth in the Amended Complaint. Please respond to this Motion in Opposition to Order and confirm our understandings, whereby if correct they may save the Court having to review a more formal motion in opposition to the stay Order.

3. Where it appears from the attached letters (i) dated May 13, 2008 from Proskauer to Plaintiffs (Exhibit 1) (ii) Kent Anker letter dated May 14, 2008 to Plaintiffs (Exhibit 2) (iii) an email accepting the Amended Complaint from Greenberg Traurig, PA, on May 14, 2008 (Exhibit 3) (iv) an email accepting the Amended Complaint from Fried dated May 14, 2008 (Exhibit 4), that Proskauer, Greenberg, Anker and Fried also appear confused by the May 09, 2008 Order and appear to seek confirmation of their opinions of Your Honor's Order from Pro Se guys versus Your Honor, and, whereby Plaintiffs await an answer to this request for clarification before presuming to know any answers or taking any actions predicated on assumption regarding serving the Amended Complaint. Since some parties are accepting the sending of the copy of the Amended Complaint to Proskauer in response to their letter as service and some are refusing to be served the Amended Complaint copied them, pointing to the Order, and, where everyone on the carbon copy list of Proskauer's letter was sent the Amended Complaint as a courtesy copy in response to Proskauer's demand to be served, it is apparent that some parties are accepting this as service and some not and Plaintiffs are confused, like other counsel, if the Court's Order meant that both old and new Defendants were not to be served the Amended Complaint, etc.

4. Plaintiffs also requested to know if the Court will have the Marshal's Office serve the Amended Complaint on all old Defendants, due to the problems with the original service of the Complaint being lost and Defendants claiming they have been improperly served by the Marshal, due to mail problems caused by actions from other than Plaintiffs. Whereby certain Defendants in several cases have stated that they were not served all documents or incomplete service and these issues remain unresolved. That in the MOTION FOR PRO SE OFFICE TO COPY AND TRANSMIT AMENDED COMPLAINT TO U.S. MARSHAL'S OFFICE which in part was denied for the time being by Your Honor, that question remains unanswered but to clarify confusions, Plaintiffs again ask this Court to have the Marshal's service serve the old Defendants the Amended Complaint so that everyone is properly served at least one of the complaints, as well as, the new Defendants later servicing of the Amended Complaint by the Marshal's office at the Court's discretion. If the Court would like Plaintiffs to serve the old Defendants the Amended Complaint please issue clarification as it was unclear in the prior Order whether Plaintiffs should service such old Defendants and whereby the Affidavit of Service was contingent upon a Court decision regarding these matters. Whereby to facilitate Proskauer in the spirit of adversarial etiquette, a copy of the Amended Complaint was sent to Proskauer as demanded by Proskauer, to avoid burdening the Court with a formal request for clarification they claimed. A carbon copy was also sent to all those Defendants Proskauer carbon copied their letter too. Where in no way was this sending a copy intended to be servicing of the Amended Complaint inapposite of the Court Order but it appears that some Defendants felt that service was due and accepted it and others refused it?

5. That Plaintiffs' contacted the Pro Se desk whom claimed that it had to be served to old Defendants despite the Court Order and whereby Plaintiffs are more confused with this claim and await the answer to this Motion before sending service to any remaining parties and possibly violating the Court Order. Where the Pro Se desk also claimed that the Amended Complaint was not docketed and did not know why and could not confirm receipt, although other documents docketed by the Court were in the same package leaving Plaintiffs wondering if the Amended Complaint has been lost in the mail as was the Complaint.

WHEREFORE, based on the above, Plaintiffs request this Court provide clarification to the Order and if such interpretations offered by Plaintiffs are incorrect, allow Plaintiffs time to oppose the Order formally after clarification. Plaintiffs believe that the stay requested by Proskauer was premature and that after this Court reviews the filed Amended Complaint, the Court will order all Defendants to be served timely with the Court's schedule and direction, lifting any temporary stay at such time on both new and old Defendants or just new Defendants, as Proskauer's arguments to stay the service of the Amended Complaint were based on a draft amended complaint and all those arguments to stay are moot when viewed against the filed Amended Complaint.

Exhibit 1 – Proskauer Letter Dated May 13, 2008

PROSKAUER ROSE LLP

1585 Broadway
New York, NY 10036-6299
Telephone 212.969.3000
Fax 212.969.2900

SEATTLE
BOSTON
CHICAGO
LONDON
LOS ANGELES
NEW ORLEANS
NEWARK
PARIS
SAO PAULO
WASHINGTON

Joanna Smith
Attorney at Law

Direct Dial 212.969.3437
jfsmith@proskauer.com

May 13, 2008

By Fax and U.S. Mail

Eliot I. Bernstein
Iviewit Technologies, Inc.
39 Little Avenue
Red Bluff, CA 96080

P. Stephen Lamont
35 Locust Avenue
Rye, N.Y. 10580

Re: *Bernstein v. Appellate Division First Departmental Disciplinary
Committee, et al.*, Index. No. 07 CV 11196 (SAS)

Dear Sirs:

I write to inform you that we have not yet received your Amended Complaint which, pursuant to the Court's April 14, 2008 Order, was to be filed by May 12, 2008.¹ In that same Order, the Court ruled that "[n]otwithstanding the filing of the Amended Complaint, defendants' deadline to move to dismiss or file an answer remains May 30, 2008." It is our understanding that, pursuant to this Order, our motion to dismiss should address the allegations made in the Amended Complaint, rather than the original Complaint.

We are in receipt of the Court's May 9, 2008 Order addressing our request, made by letter of the same date, to file a motion to stay service of the Amended Complaint on the additional defendants not named in the original Complaint pending the Court's disposition of the motions to dismiss to be filed May 30, 2008. We presume that you are also in possession of that Order.

¹ The Court's Order stated that the Amended Complaint was to be filed no later than May 10, 2008, but because May 10, 2008 was a Saturday, pursuant to the Federal Rules of Civil Procedure, the deadline for filing the Amended Complaint would be the following Monday, May 12, 2008.

PROSKAUER ROSE LLP

Eliot I. Bernstein & P. Stephen Lamont

May 13, 2008

Page 2

Reading the two orders together, we believe that it was the Court's intention that Plaintiff serve the original defendants with the Amended Complaint, as it is necessary for us to receive that document in order to complete the motions to dismiss due May 30, 2008. Accordingly, we request that you serve us with the Amended Complaint (by fax followed by mail) as soon as possible.

If we do not receive the Amended Complaint by the close of business tomorrow, May 14, 2008, we will be forced to seek clarification from the Court. Your prompt attention to this letter would be appreciated.

Sincerely yours,



Joanna Smith

cc: Gregg M. Mashberg

Monica Connell, Esq.
Office of the New York State Attorney General
Counsel for the New York State Defendants

Kent K. Anker, Esq.
Lili Zandpour, Esq.
Friedman Kaplan Sciler & Adelman LLP
Counsel for the Foley Lardner LLP Defendants

John W. Fried, Esq.
Fried & Epstein LLP
Counsel for Defendant Joao

Stephen H. Hall
Office of the Virginia State Attorney General
Counsel for the Virginia Defendants

Exhibit 2 – Kent Anker Letter Dated May 14, 2008

Ellot Ivan Bernstein

From: P. Stephen Lamont [pstephen.lamont@verizon.net]
Sent: Wednesday, May 14, 2008 1:50 PM
To: Elliot I. Bernstein
Subject: FW: 07CIV11196: Amended Complaint Filed May 10, 2008

-----Original Message-----

From: Anker, Kent K. [mailto:kanker@fklaw.com]
Sent: Wednesday, May 14, 2008 4:43 PM
To: pstephen.lamont@verizon.net; Bridget Kellogg Smitha; Glenn T. T. Burhans, Jr. Jr.; johnwfried@fried-apstein.com; Monica Connell
Subject: RE: 07CIV11196: Amended Complaint Filed May 10, 2008

Dear Mr. Lamont,

Pursuant to my letter dated April 22, 2008, we do not consent to service by electronic mail. Furthermore, with regard to service of your amended complaint, I call your attention to the Court's orders dated May 9, 2008 and May 13, 2008 staying service of any amended complaint.

Sincerely yours,

Kent K. Anker
Friedman Kaplan Seiler & Adelman LLP
1633 Broadway, 46th Floor
New York, NY 10019
(212) 833-1100
(212) 833-1250 (fax)
www.fklaw.com

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Exhibit 3 – Greenberg Traurig Letter May 14, 2008

Ellot Ivan Bernstein

From: P. Stephen Lamont [pstephen.lamont@verizon.net]
Sent: Wednesday, May 14, 2008 12:51 PM
To: Elliot I. Bernstein
Subject: FW: 07CIV11196: Amended Complaint Filed May 10, 2008

-----Original Message-----

From: smithab@gtlaw.com [mailto:smithab@gtlaw.com]
Sent: Wednesday, May 14, 2008 3:49 PM
To: pstephen.lamont@verizon.net
Cc: BurhansG@gtlaw.com
Subject: RE: 07CIV11196: Amended Complaint Filed May 10, 2008

We accept, thanks.

Tax Advice Disclosure: To ensure compliance with requirements imposed by the IRS under Circular 230, we inform you that any U.S. federal tax advice contained in this communication (including any attachments), unless otherwise specifically stated, was not intended or written to be used, and cannot be used, for the purpose of (1) avoiding penalties under the Internal Revenue Code or (2) promoting, marketing or recommending to another party any matters addressed herein.

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From: P. Stephen Lamont [mailto:pstephen.lamont@verizon.net]
Sent: Wednesday, May 14, 2008 3:43 PM
To: Smitha, Bridget K. (Asscc-Tal-LT); Burhans Jr., Glenn T. (Shld-Tal-LT); johnwfried@fried-epstein.com; Monica Connell; kanker@fklaw.com
Subject: FW: 07CIV11196: Amended Complaint Filed May 10, 2008
Importance: High

Per the request of Joanna Smith of Proskauer, please take the electronic copy attached herein in lieu of facsimile, and please respond in kind as your acceptance of this electronic copy in lieu of facsimile.

Best regards,

P. Stephen Lamont
Former Chief Executive Officer (Acting)
Iviewit Holdings, Inc.
35 Locust Avenue
Rye, N.Y. 10580
Tel: 914-217-0038
Email: pstephen.lamont@verizon.net; pstephenlamont@att.blackberry.net
URL: www.iviewit.tv

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EXHIBIT 4 – Fried Letter Dated May 14, 2008

-----Original Message-----

From: "John W. Fried" <johnwfried@fried-epstein.com>

Date: Wed, 14 May 2008 20:05:21

To: <pstephen.lamont@verizon.net>

Cc: Bridget Kellogg Smitha <smithab@gtlaw.com>, "Glenn T. T. Burhans, Jr. Jr." <burhansg@gtlaw.com>, Monica Connell <monica.connell@oag.state.ny.us>, <kanker@fklaw.com>

Subject: Re: 07CIV11196: Amended Complaint Filed May 10, 2008

On behalf of Mr. Joao, we accept service of the amended complaint as an email attachment.

John W. Fried, Esq.
FRIED & EPSTEIN LLP
1350 Broadway, Suite 1400
New York, New York 10018
Telephone: (212) 268-7111
Facsimile: (212) 268-3110
Email: johnwfried@fried-epstein.com
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Attorney for Petitioners

Eliot I. Bernstein, Pro se

39 Little Avenue

Red Bluff, Cal. 96080

Tel.: (530) 529-4410

By:  _____

Eliot I. Bernstein

By: _____

P. Stephen Lamont

Attorney for Petitioners
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By: _____
Eliot I. Bernstein

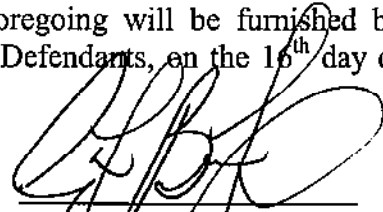
P. Stephen Lamont, Pro se
35 Locust Avenue
Rye, N.Y. 10580
Tel.: (914) 217-0038

By:  _____
P. Stephen Lamont

~~11~~ (2) 

AFFIDAVIT OF SERVICE

I hereby certify that a true and correct copy of the foregoing will be furnished by facsimile or email and/or U.S. Mail, per the requests of Defendants, on the 16th day of April 2008 on the Defendants.



Elior I. Bernstein, Pro se

P. Stephen Lamont, Pro se

EB
AFFIDAVIT OF SERVICE

I hereby certify that a true and correct copy of the foregoing was furnished by facsimile this th day of May 2008, to the aforementioned defendants.

P. Stephen Lamont
P. Stephen Lamont, Pro se

Eliot I. Bernstein, Pro se

EB
12/2
~~_____~~