

CAUSE NO. 199-00596-97

<p>DSC COMMUNICATIONS CORPORATION, <i>Plaintiff,</i></p> <p>v. EVAN BROWN, <i>Defendant,</i></p> <p>v. LANCE FLORES, <i>Intervenor/Plaintiff.</i></p>
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IN THE DISTRICT COURT OF

COLLIN COUNTY, TEXAS

199TH JUDICIAL DISTRICT

PETITION IN INTERVENTION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW THE INTERVENOR, LANCE FLORES ("the Intervenor"), pursuant to Rule 60 of the Texas Rules of Civil Procedure and files his petition to intervene seeking relief in law and equity and as grounds for intervention, incorporates by reference the pleadings of the parties in the above styled and numbered cause, and states as follows:

I.
FACTS SUPPORTING INTEREST IN SUBJECT MATTER

1. Intervenor is the Chief Executive officer of Cyber Automation Sciences, Inc., a Texas Corporation¹ and the majority stockholder of said corporation. In December of 1983 Intervenor transferred all technology rights of certain computer technology and additionally assigned limited intellectual property rights to Cyber of technology related to Artificial Intelligence, and code procedural techniques or mathematical algorithms, and maintains an intellectual property rights interest subject to the limits of assignment agreement.

2. On or about June of 1991, Intervenor attended the regularly scheduled meeting of the

¹ hereinafter "Cyber"

Dallas Unix Users Group, at the facilities of Hewlett-Packard at 3301 Royal Lane, Irving, Texas where he and Defendant, Evan Brown,² engaged in conversation concerning their respective professional work. Intervenor became informed, *inter alia*, that DSC was facing an extensive software code rewrite resulting from a new design standardization based on the Motorola MC680XX family of microprocessors in the DSC telecommunication switches. DSC's then existing hardware used the Zilog Z8000 microprocessor, thus, code development was done in Z8000 assembly code. Making a change in software design philosophy, DSC had chosen to standardize the software programs for their switch development on the 'C' programming language³ rather than continuing to develop programs in assembly⁴ code. Difficulty arose in the conversion because rather than translating the Z8000 assembly code to MC680XX assembly code, which would, for the most part, require a one-to-one translation of processor instructions,⁵ DSC chose to convert the Z8000 assembly code to a higher level programming language. During the conversation, Intervenor offered his services and the services of his company and associates which had experience in language conversion as well as

² Hereinafter "Mr. Brown," then, a senior level engineer/manager in the Software Tools development at DSC Communications Corporation, hereinafter "DSC".

³ The C language was originally developed on a small machine for the purpose of implementing the UNIX operating system, and although C is extensively used in its evolutionary forms, C++, for a wide range of applications the developmental influences of the languages strongly define the language characteristics which are illustrated by its i.) extremely small language size, ii.) loosely typed data structures, iii.) *de rigueur* modern control constructs (i.e. structured programming), iv.) bitwise control (i.e. binary manipulation), and v.) extensive pointer implementation, providing the ability to address specific areas of memory directly, much like Assembly level language.

⁴ A mnemonic coding scheme which establishes a one-to-one direct representation between the actual binary code of a given processing instruction and a mnemonic representation for the purpose of ease in human assembling of abstract binary instruction sets. (e.g. the instruction for a relative close branch by an offset value could be represented by *BRR A4* rather than a binary form such as *00110100 01111011 00010000 00000100*.)

⁵ Because of differences in processor architecture and exact instruction-to-instruction exchange is not possible in all instances as anomalies created by the different architectures would require specialized routines to be substituted for certain instructions. This is a relatively simple task. However, conversion from assembly to higher level languages such as C is extremely complex and is very difficult to automate because of the inferential knowledge or cognizance impressed by the engineer in the software routines which must be quantified in order to maintain the purpose of the particular routine or program.

proprietary techniques to solve similar problems. Intervenor indicated that a Cyber team of scientists and engineers could provide computer automated solution to aid or replace the vast majority of DSC's manual conversion efforts. Intervenor asked for an opportunity to present a plan if DSC was interested in automating their conversion. Mr. Brown responded and indicated that DSC would very likely be interested in pursuing the use of automated code conversion technology and engaging the services of the Intervenor and Cyber to aid the manual conversion efforts as DSC had no such technology in house and was not pursuing any development of language conversion technology.

3. Following the initial discussion with Mr. Brown at the Dallas Unix Users Group, Intervenor met frequently with Mr. Brown at the combined offices of Cyber and Digitech⁶ located at 4314 Sunbelt Drive, Addison, Texas.⁷ During the discourse with Mr. Brown at the Cyber/Digitech offices the Intervenor, Brian McMillin, and other associates (See Exhibit at 15-18) discussed the technologies, processes, procedures, and algorithms that would be proposed to DSC for the conversion of their binary/Assembly code to either C or C++ programming languages.

4. During the course of discussions with DSC, Intervenor met with Frederick L. Ross,⁸ then Senior Manager of the DSC Technology, at their corporate site located at 1000 Coit Road, Plano, Texas, to discuss the technology and set a meeting date for the presentation of a proposal by the Cyber group⁹ to the staffs of DSC and the Radio-Telephone Systems Group of Motorola Inc. located in Arlington Heights, Illinois.

5. On or about the first week of February, 1992, members of the Cyber group met on the

⁶ Then a wholly owned proprietorship of Brian McMillin ("Mr. McMillin")

⁷ Hereinafter, the "Cyber/Digitech offices."

⁸ Hereinafter, "Mr. Ross."

⁹ Heretofore representing the individuals and entities identified in Exhibit at 13-18, hereinafter representing same.

invitation of DSC at their facility located at 1000 Coit Road, Plano, Texas to propose a solution to the DSC manual code conversion issue. In attendance were several senior level engineering managers and engineers including Mr. Brown and Mr. Ross representing DSC. Also attending the presentation was Anthony Kram, Senior Staff Engineer of the Radio-Telephone Systems Group from Motorola Inc. whose offices were located at 1501 W. Sure Drive, Arlington Heights, Illinois. In the course of the Cyber group presentation and the discussion which followed the Cyber group presented copies of the slide presentation and engaged in lengthy and in-depth discourse of the technology that would be used, how it would be applied, procedures, organization of teams, costs of the DSC code evaluation, anticipated per-line cost of conversion, and benefits of burden sharing of the cost to convert common DSC code used by Motorola Inc. As a consequence of the presentation/discussion and extended discussion with Mr. Kram of Motorola, an additional offering was requested which would reflect the Motorola interest in the approximately four-and-one half million (4.5M) lines of DSC assembly (binary) code they used as an OEM.¹⁰ DSC also requested a copy of the Motorola proposal with an addendum setting forth the costs of converting approximately ten to fourteen million lines of DSC code. On or about February 14, 1992, printed proposals (*See Exhibit*) were delivered by United States Postal Service to Anthony Kram of Motorola, and Frederick L. Ross and Evan Brown of DSC Communications.

6. In the ensuing three months after the presentation, Motorola expressed interest in the conversion if DSC would join in the effort and share the cost of the conversion. DSC later responded stating that they were not interested in the automated conversion at that time and would complete the conversion by manual means. No further correspondence on this matter were continued by any party.

¹⁰ Original Equipment Manufacturer

7. In consideration of the foregoing it is clearly evident that:

a. neither Mr. Brown nor DSC developed technology to automate the conversion of binary (assembly level) code to 'C' language code otherwise described by DSC as the "Solution"¹¹ prior to the Cyber group disclosure of technologies and offer to provide conversion services;

b. that if Mr. Brown obtained, annexed, conceived, engineered, transmogrified, or otherwise developed an automated computerized translation/conversion program or technology or portion thereof to process and convert assembly (binary) code then such was the outcome of that information and intimate knowledge obtained from the Intervenor and/or the Cyber group and not DSC, thus, Mr. Brown has harmed and damaged the Intervenor the Cyber group not DSC;

c. that Mr. Brown's ability to develop the DSC Solution came about as direct outgrowth of the intimate knowledge divulged to him from the numerous meetings with the Cyber group and disclosure of certain proprietary processes, techniques, procedures and algorithms belonging to the Intervenor and/or the Cyber group;

d. that the knowledge and know-how to either use or develop the aforementioned technology or processes could only have been gained through Mr. Brown's exposure to the Cyber group's technologies and know-how and not through any resource available to him in the employ of DSC;

e. given that DSC had no technology nor ongoing development of a conversion program of its own related to the aforementioned technology or process prior to its relationship with the Intervenor and the Cyber group, it is clearly apparent that DSC has no claim whatsoever to the alleged intellectual property in the possession or known to Mr. Brown, and

f. if alleged Solution exists, for which upon the DSC claim is based, it is, *prima facie*, the

¹¹ See Plaintiff's Original Petition and Application for Injunctive Relief at 5, ¶ 11.

sole legal property of the Intervenor and the Cyber group;

g. that if Mr. Brown is forced to yield his knowledge of the Intervenor's and Cyber group's proprietary intellectual property or that which may be the outgrowth of same to DSC it would irreparably harm the Intervenor and unjustly enrich DSC;

h. that if Mr. Brown is not enjoined from disclosing, selling, assigning or otherwise transferring the Intervenor's and Cyber group's proprietary intellectual property and that which may be the outgrowth of same, the Intervenor and the Cyber group will suffer irreparable injury through the loss of proprietary intellectual property, innovation, ideas, and fruits of their labors which rightfully and lawfully belong to them; and,

i. that it appears that DSC itself, may, much like its claims made against Mr. Brown, be an inculpative actor in the unlawful and wrongful acquisition of the innovations and intellectual property of the Intervenor and the Cyber group by and through the actions those in the employ of DSC including but not limited to Mr. Brown.

III INTERVENOR'S FIRST CAUSE OF ACTION

Injunctive Relief

8. Intervenor incorporates by reference each and every fact and allegation contained in the foregoing paragraphs 1 through 7 as if fully copied and set forth at length herein.

9. Intervenor has no adequate remedy at law, save the intervention of the Court, for the potential harm and damage nor the permanent harm and continued damages that would be inflicted upon him should Mr. Brown divulge trade secrets and intellectual property or that which is the consequence of knowledge of same belonging to the Intervenor or the Cyber group to DSC or any other entity or person.

10. Pursuant to T.R.C.P Rule 680 and Tex. Civ. Prac. & Rem. Code §§65.001-65.045 Intervenor seeks injunctive relief under law and the principles of equity for those reasons set forth below;

a. That the Intervenor is entitled to relief demanded and all or part of the relief requires the restraint of the prejudicial acts of the Defendant BROWN and Plaintiff DSC;

b. that Defendant BROWN and Plaintiff DSC is performing or is about to perform or is procuring or allowing the performance of an act relating to the subject of this petition, in violation of the rights of the Intervenor, and that their acts would tend to render the judgment in that litigation ineffectual;

c. that the Intervenor is entitled to a writ of injunction under the principles of equity and the statutes of the state of Texas relating to injunctive relief;

d. that the Intervenor will suffer irreparable injury to his personal and intellectual property which is proprietary to him and Cyber and a trade secret integral to their ongoing research and development, and business;

e. that the said property belonging to the Intervenor and Cyber is threatened irrespective of any remedy at law.

11. Intervenor will suffer immediate and irreparable harm to his business and product development as a proximate result of Mr. Brown's actions and the efforts of DSC to obtain the proprietary intellectual property and trade secrets belonging to Intervenor and Cyber. Moreover, if Mr. Brown is not enjoined from disclosing, selling, assigning, or transferring the conversion processes and procedures as well as other technologies used in the conversion belonging to Intervenor, both Intervenor and the Cyber group will be deprived its right and ownership of those assembly (binary) code conversion processes, procedures, trade secrets and technologies.

12. Intervenor will suffer immediate and irreparable harm to his business and product development as a proximate result of Mr. Brown's disclosure of assembly (binary) code conversion processes, procedures, trade secrets and technologies to DSC Communications Corporation, whether if by voluntary disclosure or as may be ordered by this Court.

13. IN CONSIDERATION OF THE AFOREMENTIONED, Intervenor requests this Court quash or suspended or modify the portion of the Court's order entitled TEMPORARY INJUNCTION ORDER issued on 30 June, 1997, that orders Mr. Brown to disclose the Solution to DSC, and modify the order such that it prohibits the disclosure assembly (binary) code conversion processes, procedures, trade secrets and technologies or as may also known to this Court as the Solution to DSC; and, bind DSC to same prohibitions as Mr. Brown until such time as the ownership and rights of same can be determined.

IV. INTERVENOR'S SECOND CAUSE OF ACTION

Declaratory Judgement

14. Intervenor incorporates by reference each and every fact and allegation contained in the foregoing paragraphs 1 through 13 as if fully copied and set forth at length herein.

15. As described and set out in the foregoing and attached Exhibit it is clear upon the *prima facie* facts that the Intervenor and the Cyber group are legal owners and entitled to exclusive right to the said assembly (binary) code conversion processes, procedures, trade secrets and technologies or as may also known to this Court as the Solution¹² as well as any development or use of same by DSC including the work and development of Evan Brown on or off the campus of DSC. Furthermore, DSC is liable for any and all damages along with Evan Brown, jointly and severally for

¹² Hereinafter, the "Technology"

any unauthorized use, application, disclosure, sale, assignment, or transfer of the said property of Intervenor whether or not the actions of Mr. Brown, DSC, or other DSC employees were acted out purposely, with or without malice, or inadvertently.

16. Pursuant to the Tex. Civ. Prac. & Rem. Code, particularly the Declaratory Judgments Act, §37.001, Intervenor requests this Court enter a declaratory judgement establishing the following:

a. That DSC and Evan Brown while in their employ was not at the time nor prior to the presentation and disclosure, on or about February of 1992, by the Intervenor or Cyber to DSC of the Technology, engaged in the development of any technology, procedures, or process related to the conversion of assembly (binary) code to 'C' conversion.

b. that the Intervenor and Cyber are the exclusive owners and hold full legal title to the Technology;

c. that neither Mr. Brown nor DSC may disclose, sell, assign or transfer the Technology to anyone without first obtaining written permission of the Intervenor and Cyber;

d. that neither Mr. Brown nor DSC may continue to develop the Technology to anyone without first obtaining written permission of the Intervenor and Cyber; and,

e. that Mr. Brown and DSC must immediately inform and continue to inform Intervenor and/or Cyber of any breaches of confidentiality and identify any and all individuals and entities to whom the Technology has or may have been disclosed.

17. Pursuant to Texas law, Tex. Civ. Prac. & Rem. Code, particularly the Declaratory Judgments Act, Intervenor requests and award of costs of litigating this cause of action and for reasonable attorney fees for additional counsel should the advancement of this litigation deems it necessary.

V.
PRAYER

Relief Requested

18. WHEREFORE, THE FOREGOING PREMISES CONSIDERED, Intervenor requests that the Court, upon final hearing, enter judgement against DSC Comminations Corporation and Evan Brown for the following:

- a. That this Court quash or suspend or modify the Court's order entitled TEMPORARY INJUNCTION ORDER issued on 30 June, 1997, as set forth in paragraph 13 above;
- b. that Mr. Brown and DSC be cited to appear and show cause why this Court should not modify said order, and that on such hearing, the temporary injunction order be quashed, suspended or modified as more fully described in paragraph 13 above;
- c. Declaratory Judgment as set forth in paragraphs 16 through 16.e;
- d. Reasonable and necessary attorneys' fees in amount to be determined at trial as referenced in paragraph 17 above;
- e. Costs of suit incurred herein;
- f. Pre and post judgement interest as provided by law; and,
- g. Such other and further relief in law or equity to which the Intervenor may be justly entitled.

Respectfully submitted,

LANCE FLORES
6514 Ridgecrest 222
Dallas, Texas 75231
(214) 361-0358

Attorney for the Intervenor

CERTIFICATE OF CONFERENCE

I certify that a conference was held between the Intervenor and Eric W. Pinker, Counsel for the Plaintiff, DSC Communications, on the 14th of July, 1997 at the law offices of Lynn Stodghill Melsheimer & Tillotson, L.L.P., 750 N. St. Paul Street, Ste 1400, Dallas, Texas, to examine the pleadings and discuss the position of the Intervenor in this cause of action.

I further certify that a conference was held between the Intervenor and Eric Pearson, Asst. Counsel for the Defendant, Evan Brown, on the 16th of July, 1997 by telephone to inform Counsel of intention to intervene in the above styled and numbered cause of action.

Intervenor has made a diligent effort to examine the issues of the case but believes there has been insufficient dialogue between the parties at this time to resolve all issues pertaining to this suit. It is evident that the parties are unable to reach an agreement at this time and all issues are thus submitted the Court for resolution notwithstanding further efforts of the parties to resolve the issues of this case.

LANCE FLORES
Attorney for the Intervenor

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above Petition in Intervention was served on:

DSC Communications Corporation, through its attorney of record Michael P. Lynn, at Lynn, Stodghill, Melsheimer & Tillotson, 750 N. St. Paul Street, Ste 1400, Dallas, Texas, 75201, in accordance with the Texas Rules of Civil Procedure, Rule 21a on July 21, 1997.

Certified Mail No. P 099 680 521

Evan Brown, through his attorney of record Richard Sayles, at Sayles & Lidji, 4400 Renaissance Tower, Dallas, Texas, 75270, in accordance with the Texas Rules of Civil Procedure, Rule 21a on July 21, 1997.

Certified Mail No. P 099 680 522

LANCE FLORES
Attorney for the Intervenor

VERIFICATION

Affidavit

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

BEFORE ME, THE UNDERSIGNED AUTHORITY, personally appeared R. LANCE FLORES, the Intervenor in the above styled and numbered cause, who being duly sworn, stated that all the statements, facts, and allegations in the foregoing PETITION IN INTERVENTION are within his personal knowledge and are true and correct to the best of his knowledge and personal belief; AND, that the Exhibit attached hereto is an exact duplicate or facsimile of the records of Cyber Automation Sciences, Inc. kept in the regular course of business and that duplication of the records were made and attached this day.

Affiant

SWORN to under oath before me the _____ day of July, 1997, certified by me, witness my hand and official seal.

NOTARY PUBLIC, IN AND FOR THE STATE OF TEXAS

MY COMMISSION EXPIRES: _____