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By \_\_\_\_\_

CAUSE NO. 199-00596-97

DSC COMMUNICATIONS CORPORATION,  
*Plaintiff,*  
v.  
EVAN BROWN,  
*Defendant,*  
v.  
LANCE FLORES,  
*Intervenor.*

IN THE DISTRICT COURT OF  
  
COLLIN COUNTY, TEXAS  
  
199<sup>TH</sup> JUDICIAL DISTRICT

INTERVENOR'S RESPONSE TO DEFENDANT'S ANSWER

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, THE INTERVENOR, LANCE FLORES ("the Intervenor") to respond to the Defendant's Original Answer to Petition in Intervention of Lance Flores, denying same generally, and files the following response:

I.

Intervenor incorporates by reference Intervenor's Petition in Intervention (the "Petition in Intervention") and verified Exhibit ("Intervenor's Exhibit") attached thereto, and Plaintiff's First Amended Original Petition and Application for Injunctive Relief ("Plaintiff's Amended Petition").

II.

Defendant's Answer § II which states that Intervenor does not have the legal capacity to sue is so ambiguous and vague that Intervenor cannot reasonably frame a responsive pleading.

III.

Defendant's Answer § III specific plea that Intervenor is not entitled to recover in the capacity in which he sues is so ambiguous and vague that Intervenor cannot reasonably frame a responsive

pleading.

IV.

Defendant's Answer § IV affirmative plea alleging defense of the statute of limitations is insufficient as a matter of law and is factually insufficient for establishing the allegation, thus, does not constitute an affirmative defense.

V.

Defendant's Answer § V affirmative plea alleging defense of laches is insufficient as a matter of law and is factually insufficient for establishing the allegation, thus, does not constitute and affirmative defense.

VI.

Defendant's Answer § VI specific plea denying that conditions precedent to recovery have been performed or have occurred are so ambiguous and vague that Intervenor cannot reasonably frame a responsive pleading in that it fails to state facts that shows Intervenor has not pleaded generally the performance or occurrence of condition precedent, where Intervenor needs only prove performance of those conditions specifically denied by the defendant.

VII.

Defendant's Answer § VII affirmative plea alleging that Intervenor is not entitled to a restraining order or injunction is insufficient as a matter of law and is factually insufficient for establishing the allegation, thus, plea does not constitute and affirmative defense.

VIII.  
GENERAL DENIAL

Intervenor enters a general denial of matters pleaded by Defendant pursuant to the Texas Rules of Civil Procedure (TRCP), Rule 92, hereby.

VIII.  
RIGHT TO INTERVENE

1. The Intervenor has filed a written pleading as Intervenor/Plaintiff raising a claim arising from the same transaction and occurrences that has a common question of law and fact with the original claim pursuant to TRCP Rule 60.
2. Service by citation was not necessary pursuant to the TRCP Rule 60 as intervenor may serve a plea in intervention on the parties that are before the Court in the suit, thus, service may be rendered under TRCP Rule 21 and 21a.
3. Intervenor is a person who could have brought the same action, or any part thereof on his own.
  1. Plaintiff (DSC Comminations Corporation, hereinafter "DSC") alleges in its Plaintiff's Amended Petition at paragraph 11 that Defendant during his employ at "DSC, DSC committed time and resources to investigate alternative methods for translating its Z8000 code to high level source code, including the evaluation of third party technology capable of performing this type of language translation." Plaintiff continues further stating that Defendant Brown was "aware of , and was directly involved in, some of these investigations."
  2. Plaintiff also alleges in paragraph 12 of same said pleading, *ante*, that based on the knowledge procured during the investigation described, On April 19, 1996, Brown sent

a memo to Gamini Desoyza, his immediate supervisor, stating that he had developed a method of converting machine executable binary [such as Z8000] into higher level source code (&c.) ... Thus, during his employment by DSC, Brown conceived a computer solution which would make possible an automated translation of the computer code in old Z8000 language to the new C or C++ languages. This establishes that DSC believes that the Solution was invented or refashioned by Brown at sometime after the nexus of the Intervenor's technology proposal and the DSC investigation for the Solution.

3. Plaintiff claims (Plaintiff's Amended Petition at paragraph 12) that it (DSC), by virtue of an Employment Agreement, holds "'sole and exclusive' right to the Solution" referencing Plaintiff's Amended Petition Exhibit 1 at paragraph "B".
4. The Intervenor's verified Petition in Intervention clearly alleges and shows by virtue of the verified Petition in Intervention Exhibit that Intervenor has an individual justiciable interest in the suit:

1. The Petition in Intervention paragraph 2 establishes a nexus between the fact established in the Plaintiff's Amended Petition at paragraph 11 that DSC was seeking a solution for the conversion of Z8000 code to high-level source code from third party vendors and that the Intervenor and Cyber Automation Sciences, Inc. was a third party vendor involved in the investigation for the Solution. *et seq.*

"During the time that brown was employed by DSC, DSC committed time and resources to investigate alternative methods for translating its Z8000 code to high level source code, including the evaluation of third party technology capable of performing this type of language translation. Brown was aware of, and was directly involved in, some of these investigations."

[*emphasis added*]. (Plaintiff's Amended Petition, ¶ 11.)

2. Plaintiff's Amended Petition also sets forth value of the "Solution," thus, establishes the requisite *entitlement to some recovery* of TRCP Rule 60 expressed by the higher courts if the technology for the Solution is the intellectual property of the Intervenor.

"If DSC could develop a computer program which would automatically translate 'machine executable binary code,' such as the Z8000, to a 'high level source code,' such as C or C++, it would realize the reward of significant savings both in man hours and resources. Moreover, as both Brown and DSC knew, such an automated translation program would be worth many millions of dollars, because numerous other telecommunications and technology companies are similarly struggling to translate or convert their old computer codes into new computer code as efficiently as possible." (Plaintiff's Amended Petition, ¶ 9.)

3. "Plaintiff's Amended Petition admits that "the Solution is directly related to 'business, work, or investigations' of DSC [*emphasis added*]," which sets forth the premises that the Solution was acquired or may have been acquired by the investigative process through the unauthorized procurement of the trade secrets and technology belonging to a third party. (*Also i., supra*)
5. Therefore, given the nexus established between the Intervenor-Plaintiff, Defendant, and Plaintiff, the opportunity, proximity, that there had been no automated Solution prior to the Cyber proposal of its technology to DSC, that there is good reason to believe that the technology attributing to the Solution belongs to the Intervenor.
6. Further, since DSC alleges sole and exclusive right to that technology which may belong to the Intervenor which DSC has placed substantial value; Intervenor may be significantly harmed or damaged in this cause of action, thus, a justiciable interest in the

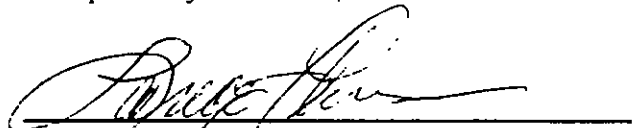
suit.

IX.  
JUDICIAL ECONOMY

As a matter of judicial economy, the severance, or striking of Intervenor's pleadings would only result in substantial complication and delay of a final resolution to this matter. Intervenor would be forced to initiate separate litigation and be joined to this cause of action or have the issues re-litigated in another court or removed from state court on a federal issue. To strike the Intervenor's pleadings serves no practical litigation purpose nor advance the ends of justice.

WHEREFORE, IN CONSIDERATION OF THE FOREGOING, Intervenor prays he continue and go forth to prosecute his cause of action and that upon trial hereof Defendant take nothing and that Intervenor recover his costs, and for such and other and further relief to which Intervenor may justly be entitled in either law or equity.

Respectfully submitted,



LANCÉ FLORES  
6514 Ridgecrest 222  
Dallas, Texas 75231  
(214) 361-0358  
liberty@anet-dfw.com

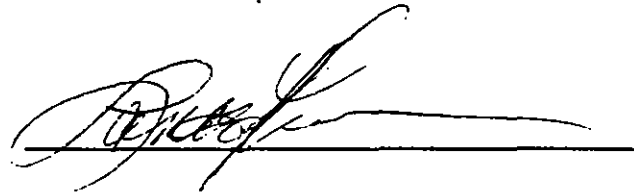
Attorney for the Intervenor

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the above entitled instrument was served on September 12, 1997 upon following parties:

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 by Certified Mail. Certified Mail No. P 099 680 523

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 099 680 524

A handwritten signature in black ink, appearing to read "Lance Flores", is written over a solid horizontal line.

LANCE FLORES  
Attorney for the Intervenor