

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE  
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY

UNIVERSAL STRATEGY GROUP, )  
INC., )

Plaintiff, )

VS. )

BRIAN DAVID HALSTEAD, )

Defendant. )

NF  
NO. 16-15-BC

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BRIAN DAVID HALSTEAD, in his )  
individual capacity and derivatively for )  
UNIVERSAL STRATEGY GROUP, )  
INC., )

Counter-Plaintiff, )

VS. )

UNIVERSAL STRATEGY GROUP, )  
INC., and TIMOTHY SLEMP, )

Counter-Defendants. )

CONSOLIDATED WITH

UNIVERSAL STRATEGY GROUP, )  
INC., )

Plaintiff, )

VS. )

BRIAN DAVID HALSTEAD, )

Defendant. )

NO. 17-136-BC

**MEMORANDUM AND ORDER: (1) GRANTING IN PART  
COUNTERDEFENDANT SLEMP'S MOTION FOR PARTIAL  
SUMMARY JUDGMENT; (2) GRANTING COUNTERPLAINTIFF  
HALSTEAD'S MOTION FOR PARTIAL SUMMARY JUDGMENT  
AND RULE 67.03 RELIEF; AND (3) CLARIFYING ESI BENCH RULING**

After conducting oral argument on Friday, December 8, 2017, and considering the law, the record and memoranda filed by Counsel, the Court grants in part Counterdefendant<sup>1</sup> Slem্প's September 29, 2017 motion for partial summary judgment.

It is ORDERED that Counterdefendant Slem্প's partial motion for summary judgment to dismiss **Count 2** of the January 27, 2017 Verified Amended Counterclaim (the "Counterclaim") is granted, and Count 2 is dismissed with prejudice for failure to state a claim. Counterplaintiff Halstead's claims of complete and total domination and control by Counterdefendant Slem্প of the Plaintiff Corporation to injure and harm Counterplaintiff Halstead, a shareholder and former officer of the same Plaintiff Corporation, are redressed under Tennessee law by a derivative action, minority shareholder oppression, and/or breach of fiduciary duty. The legal theory of piercing the corporate veil does not apply to alleged intracorporate wrongful conduct.

It is further ORDERED that Counterdefendant Slem্প's motion for partial summary judgment to dismiss **Count 5** of the Counterclaim is granted, and Count 5 is dismissed with prejudice for failure to state a claim. Taking the factual allegations of the Counterclaim as

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<sup>1</sup>Mr. Slem্প has been identified variously in filings as a "Counterdefendant" and also as a "Third-Party Defendant." For ease of reference herein, the Court uses the reference "Counterdefendant."

true for purposes of this Motion, and the undisputed material fact that the Plaintiff Corporation has full-time employees, is solvent, and is a going concern, and provides contracted services to various departments or agencies of the United States, *Halstead's Response to Slempp's Statement of Material Facts in Support of Motion for Partial Summary Judgment*, December 4, 2017, at ¶¶ 3 and 4, the Counterplaintiff has failed to meet the threshold of drastic circumstances such as insolvency or impasse to state a claim for relief of dissolution. As to the additional ground for dismissal of absence of a bond as required by Tennessee Code Annotated section 48-24-302(d), summary judgment is not granted on this basis. The Court reasons that if the dissolution claim were to proceed, the absence of a bond could be cured.

In granting partial summary judgment and dismissing Counts 2 and 5 of the Counterclaim, the Court finds that Tennessee Civil Procedure Rule 56.07 does not apply to delay ruling on the Motion. The above rulings granting summary judgment are based on failure to state a claim which additional discovery can not change or fix.

As to **Counts 3 and 4** of the Counterclaim, Counterdefendant Slempp's Motion for summary judgment is granted as to paragraph 32 (b), (c), (e), (f), (g), (h), (j), (r) and (s), and these subparagraphs are dismissed as acknowledged by the Counterplaintiff. As to the remainder of Counts 3 and 4, it is ORDERED that summary judgment is denied. While the Court does conclude as a matter of law that the one-year statute of limitations applies to claims of breach of fiduciary duty of an officer or director under Tennessee Code Annotated

section 48-18-601, the Motion to Dismiss is nevertheless denied as to Counts 3 and 4 for a combination of two reasons. At this juncture, before discovery has been taken, and because Counts 3 and 4 also allege breach of a shareholder's duty, the Counterplaintiff has not had the opportunity to determine all the incidents of wrongful conduct, the actors and times, and parse those between shareholder, and officer and director breaches to be able to defend against the Counterdefendant's claim of the bar of the statute of limitations. Further the benefit of preliminary summary judgment to narrow the issues for discovery is not present in this case because not at issue on summary judgment is the claim of shareholder breaches of fiduciary duty. That claim, then, is susceptible to discovery on the same underlying facts as the other breach of fiduciary duty claims at issue on summary judgment. Thus, even if the Court were to grant summary judgment on the other breach claims in Counts 3 and 4, discovery will nevertheless proceed on the same underlying facts on the shareholder breach of fiduciary duty claim.

With respect to Counterplaintiff Halstead's motion for partial summary judgment, it is granted, and it is ORDERED that (1) pursuant to Tenn. R. Civ. P. 56.04, partial summary judgment is entered on Count 1 of Mr. Halstead's amended counterclaim against the Plaintiff Corporation for breach of certain promissory notes in the amount of \$134,940.51; (2) pursuant to Tenn. R. Civ. P. 54.02, it is directed that entry of the partial summary judgment shall be as a final judgment; and (3) pursuant to Tenn. R. Civ. P. 63.07,

disbursement to Mr. Halstead of the \$134,940.51 deposited into court by the Plaintiff Company shall be made, without prejudice to Mr. Halstead's right to seek additional interest, and attorneys fees and costs Counterplaintiff Halstead also seeks as recovery under the promissory notes. This ruling is based upon the September 15, 2017 Notice of the Plaintiff Corporation that, "USGI's . . . deposit of money paid into Court on this date in the amount of One Hundred Thirty-Four Thousand Nine Hundred Forty and 51/100 Dollars (\$134,940.51) (the "Funds"), by means of Check No. 001676 drawn on the account of USGI and made payable to the 'Davidson County Clerk & Master of Court'. USGI would state and show that the Funds are voluntarily deposited and interplead with the Court by USGI, as counter-defendant, and that such funds constitute the full amount due and payable, including accrued interest, through September 15, 2017, to counter-plaintiff as Holder of the promissory notes which are the subject of the Amended Counterclaim of Defendant Brian David Halstead in this action." The Notice establishes that there are no genuine issues of material fact that \$134,940.51 is owed by the Plaintiff Corporation to the Counterplaintiff on the notes.

It is further ORDERED that pursuant to Tennessee Civil Procedure Rule 67.03 the funds held in the registry of the Court in this matter shall be disbursed to the Defendant upon the lapse of the customary 30 days from entry of this Order. Disbursement is justified because:

- as to these funds a final judgment has been entered;

- the funds constitute liquidated amounts payable on two promissory notes which matured four years ago;
- and the Plaintiff's entitlement to set-off has not been established.

Lastly, the Court is still drafting the order on the parties' ESI motions. The Court is taking extra time to try to nail down the ESI production in this case. There appears, however, to be some confusion on whether the December 18, 2017 deadline announced from the bench is a hearing and/or phone conference. It is not. It is ORDERED that the December 18, 2017 deadline is a filing deadline for the Plaintiff to file the affidavit of its IT consultant to support the assertion that communications of all USGI devices, including mobile/cell phones, are located, stored on and/or can be accessed through Plaintiff's main/central server. December 18, 2017 also is the deadline for Plaintiff to file its ESI search terms in the same standard Boolean search strings with limiting terms and time frames as Defendant Halstead has provided.

/s/ Ellen Hobbs Lyle  
ELLEN HOBBS LYLE  
CHANCELLOR  
BUSINESS COURT DOCKET  
PILOT PROJECT

cc by U.S. Mail, email, or efilng as applicable to:

Bryan K. Williams  
J. Alex Little  
W. Justin Adams  
John R. Jacobson  
D. Andrew Curtis

