

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

LARRY WILLIAMS and LnL PUBLISHING, INC

Plaintiffs,

v.

GENESIS FINANCIAL TECHNOLOGIES, INC.,
GLEN LARSON and PETE KILMAN

Defendants.

CIVIL NO. 105/2012

**BREACH OF CONTRACT
INTENTIONAL MISREPRESENTATION
(FRAUD)
TRESPASS TO PERSONAL PROPERTY
TORTUOUS DESTRUCTION OF PROPERTY
VIOLATION OF 18 USC 1030
CIVIL CONSPIRACY TO VIOLATE 18 USC §1030,
TO DESTROY PERSONAL PROPERTY AND TO
COMMIT TRESPASS TO PERSONAL PROPERTY
CONVERSION OF INTELLECTUAL PROPERTY
RESTRAINING ORDER REQUEST**

**ACTION FOR DAMAGES
JURY TRIAL DEMANDED**

**MOTION TO DISMISS FOR IMPROPER VENUE OR, IN THE ALTERNATIVE,
FOR CHANGE OF VENUE AND INCORPORATED MEMORANDUM OF LAW**

COME NOW, Defendants Genesis Financial Technologies, Inc. (“Genesis”), Glen Larson (“Larson”), and Pete Kilman (“Kilman”) and, pursuant to Federal Rule of Civil Procedure 12(b)(3) and 28 U.S.C. § 1404(a), hereby submit their Motion to Dismiss for Improper Venue or, in the Alternative, for Change of Venue and, in support hereof, state as follows.

I. INTRODUCTION & BACKGROUND FACTS

Simply put, Plaintiffs have brought this action in the wrong federal district court since no defendants are located in the District of the Virgin Islands, nor did a substantial part of the events allegedly giving rise to Defendants’ claims take place in the District of the Virgin Islands. Accordingly, Plaintiffs’ Complaint is properly dismissed in its entirety or, alternatively, transferred to the federal district court in and for the District of Colorado in which district, *inter alia*, all defendants and most witnesses and documents are located and the substantial part of the events and omissions giving rise to Plaintiffs’ claims occurred.

Larry Williams, et al. v. Genesis Financial Technologies, Inc., et al.

Civil No. 105/2012

Motion to Dismiss

Page 2 of 9

A. The Parties

i. *Plaintiffs*

The Plaintiffs in this action are Larry Williams (“Williams”), and LnL Publishing, LLC, a Virgin Islands limited liability company (“LnL”). Williams is presently a resident of the Virgin Islands, and a self-described international author and educator in the area of investment trading and forecasting. Complaint, ¶ 2 (“Compl.”). Williams conducts business as a proprietor in the state of Nevada, under the trade name Larry Williams CTI Publishing (“CTI”). See Larry Williams Email attached as **Exhibit 1**. Since 2000, until late July 2012, Defendants have physically corresponded with, and mailed payments to, CTI in Sparks, Nevada. Affidavit of Glen Larson, ¶ 6 (“Larson Aff.”) attached as **Exhibit 2**. The Complaint alleges that LnL is a successor in interest to certain of Williams’ intellectual property rights, including the right to receive certain payments. Compl. ¶ 5.

ii. *Defendants*

Defendants in this action are Genesis Financial Technologies, Inc., Glen Larson and Pete Kilman. Genesis is a Colorado corporation, with its principal place of business in Colorado Springs, Colorado. Compl., ¶ 6. Genesis creates and operates investment trading and analysis software and systems, including Tradenavigator. Larson is the owner of Genesis. Larson maintains residences in Colorado Springs, Colorado and Phoenix, Arizona, (Complaint, ¶ 7), and is a citizen of the State of Colorado. Larson Aff. ¶ 2. Pete Kilman is an employee of Genesis, and a resident of Colorado Springs, Colorado. Compl., ¶ 8.

Larry Williams, et al. v. Genesis Financial Technologies, Inc., et al.

Civil No. 105/2012

Motion to Dismiss

Page 3 of 9

B. The Claims

i. *Oral Contract*

Plaintiffs allege a verbal agreement to share revenues from Genesis' sale of software which was co-developed by Genesis and Williams. Compl., ¶¶ 13, 17. Plaintiffs further allege that in late 2010, Williams discovered that he was not being paid the agreed share of those revenues.¹ The software at issue, LW Sentiment, was developed, and the sharing agreement alleged by Williams reached, in or about 2000, years before Williams moved to the Virgin Islands. Larson Aff., ¶ 3.

ii. *Fraud*

Under the moniker "Intentional Misrepresentation, Fraud," Williams alleges that Genesis and Larson misstated to Williams the number of LW Sentiment subscribers, and that Williams has been damaged as a result. Compl., ¶¶ 38, 46.²

iii. *Trespass to Personal Property/18 U.S.C. § 1030*

Williams' remaining causes of action all derive from the same basic claims. Williams alleges that on September 21, 2012, when he logged into the Genesis server (located in Colorado Springs, Colorado), a "Trojan horse virus" entered his computer and erased data previously input into Genesis software on his computer. Williams claims that he has suffered "nearly incalculable damage" as a result. Compl., ¶¶ 50, 53.

¹ Genesis' payments have been historically—prior to August, 2012—made to CTI in Sparks, Nevada. Larson Aff., ¶ 6.

² Plaintiffs' Second Cause of Action, on its face, fails to state a claim upon which relief may be granted. Defendants will address this deficiency separately pursuant to the requirements of Federal Rule of Civil Procedure 12(h)(2).

Larry Williams, et al. v. Genesis Financial Technologies, Inc., et al.

Civil No. 105/2012

Motion to Dismiss

Page 4 of 9

II. MEMORANDUM OF LAW

A. **Venue is Improper in the District of the Virgin Islands, Therefore, the Complaint is Properly Dismissed**

The proper venue for this action is dictated by 28 U.S.C. § 1391(b)(1) and (2), which provide:

(b) Venue in general.—A civil action may be brought in—

(1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located;

(2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated[.]

Plainly, this action is not properly brought under 28 U.S.C. § 1391(b)(1) in the District of the Virgin Islands as all defendants reside in the State of Colorado.

Equally plainly, this action is not properly brought under 28 U.S.C. § 1391(b)(2) in the District of the Virgin Islands given the dearth of “events or omissions giving rise to the claim” alleged to have taken place in the United States Virgin Islands. It is not readily apparent that **any**—let alone a **substantial part**—of the alleged events and omissions took place in the United States Virgin Islands. Specifically, the verbal contract alleged by Williams was negotiated years before Williams moved to the Virgin Islands. Payments to Williams were sent from Colorado to Nevada, at Williams’ instruction, until shortly before this suit was filed. The “accountings” referred to in the Complaint were prepared and sent from Colorado. The computer server which Williams voluntarily accessed on September 21, 2012—and on previous occasions—is located and operated by Genesis employees in Colorado Springs, Colorado. The Complaint does not state the location of Williams’ laptop computer when he accessed Genesis’ Colorado server on September 21, 2012. However, to the extent that it may have been located in the United States

Larry Williams, et al. v. Genesis Financial Technologies, Inc., et al.

Civil No. 105/2012

Motion to Dismiss

Page 5 of 9

Virgin Islands at that time, its potential presence in the United States Virgin Islands is not “substantial” in light of the predominance of events which occurred in Colorado. *See Cottman Transmission Sys, Inc. v. Martino*, 36 F.3d 291, 295 (3d Cir. 1994). Additionally and importantly, the *Cottman* court explained that the statutory language of 28 U.S.C. § 1391(b)(2):

[F]avors the defendant in a venue dispute by requiring that the events or omissions supporting a claim be “substantial.” Events or omissions that might only have some tangential connection with the dispute in litigation are not enough. Substantiality is intended to preserve the element of fairness so that a defendant is not haled into a remote district having no real relationship to the dispute. . . . In most instances, the purpose of statutorily specified venue is to protect the defendant against the risk that a plaintiff will select an unfair or inconvenient place of trial.

Id. at 294 (internal citations and quotation marks omitted). Accordingly, under the facts at issue, in order “to preserve the element of fairness” so that Defendants are “not haled into a remote district having no real relationship to the dispute,” Plaintiffs’ Complaint is properly dismissed.

B. Venue is More Convenient in the District of Colorado, Therefore, This Case is Properly Transferred to that Forum

Alternatively, Plaintiffs’ Complaint is properly transferred to the District of Colorado. Importantly, the facts at issue demonstrate that this action would more conveniently proceed, and the interests of justice be better served, if it is litigated in the District of Colorado. *See* 28 U.S.C. § 1404(a) (“For the convenience of the parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district of division where it might have been brought.”); *see also Jumara v. State Farm Ins. Co.* 55 F.2d 873, 879-880 (3d Cir. 1995). A motion to transfer venue pursuant to 28 U.S.C. § 1404(a) is addressed to the sound discretion of the Court. *Long v. E.I. DuPont de Nemours & Co.*, 886 F.2d 628, 632 (3d Cir. 1989). As explained in *Kressen v. Fed. Ins. Co.*, 122 F. Supp. 2d 582 (D.V.I. 2000), the following factors may be considered:

Larry Williams, et al. v. Genesis Financial Technologies, Inc., et al.

Civil No. 105/2012

Motion to Dismiss

Page 6 of 9

1) [P]laintiff's choice of forum; 2) defendant's preference; 3) where the claim arose; 4) convenience to the parties; 5) convenience to witnesses-but only to the extent that the witnesses may actually be unavailable for trial in one of the fora; 6) location of books and records; 7) practical considerations that could make the trial easier, more expeditious, or less expensive; 8) congestion of possible fora; and 9) the familiarity of the trial judge with the applicable state law in diversity cases.

Id. at 589.

Applying the above factors in the instant case reveals that balance of convenience falls strongly in favor of the District of Colorado: To wit:

- Factor 1 (Plaintiffs' choice of forum): favors the District of the Virgin Islands.
- Factor 2 (Defendants' forum preference): favors the District of Colorado.
- Factor 3 (Where claims arose):
 - Contract claim – favors the District of Colorado.
 - Misrepresentation claim – favors the District of Colorado.
 - Trespass to Property and 18 U.S.C. § 1030, claim – the alleged triggering event, accessing the server, occurred in and favors the District of Colorado.
- Factor 4 (Convenience to parties): favors the District of Colorado.
- Factor 5 (Convenience to witnesses): nearly all of the witnesses in the action, with the exception of Williams, reside in Colorado (Larson Aff., ¶ 7) which favors the District of Colorado.

Notably, convenience to witnesses weighs heavily in making a decision to transfer venue.

Gonzalez v. Electronic Control Sys, Inc., 1993 WL 372217 (E.D. Pa., 1993).

- Factor 6 (Location of books and records): relevant books and records are located substantially in Colorado which favors the District of Colorado.

Larry Williams, et al. v. Genesis Financial Technologies, Inc., et al.

Civil No. 105/2012

Motion to Dismiss

Page 7 of 9

- Factor 7 (Practical considerations): given the predominance of witnesses and evidence in Colorado, this factor favors trial in the District of Colorado.
- Factor 8 (Congestion of possible fora): given the large case load of the District of the Virgin Islands, this factor favors the District of Colorado.
- Factor 9 (Familiarity of trial judge with state law):
 - Contract claim – Colorado law is likely to be applied and Virgin Islands law is not applicable, favors the District of Colorado
 - Misrepresentation – Colorado law is likely to be applied and Virgin Islands law is not applicable, favors the District of Colorado.
 - Trespass to property – Virgin Islands law is likely to be applied, favors District of the Virgin Islands.

Accordingly, as only Plaintiffs' choice and the applicable law in with regard to Plaintiffs' trespass to property claims favor the District of the Virgin Islands, Defendants' request to transfer this case to the District of Colorado is properly granted. *See Kressen*, 122 F. Supp. 2d at 590 (granting defendants' motion to transfer venue and explaining "In sum, the only relevant factor in favor of the Virgin Islands as the forum for Plaintiff's claim, is the fact that Plaintiff now resides in the Virgin Islands. This one fact is not enough to overcome the factors cited by Defendant in support of its argument for transfer. The Court, therefore, finds that the balance of convenience of the parties is strongly in favor of Defendants.").

III. CONCLUSION

This is an action that could and should have been filed in Colorado. Instead, Plaintiffs chose a forum which maximizes the expense and inconvenience to Defendants and which will exponentially complicate as well as raise the cost of defending this action. Crucially and

Larry Williams, et al. v. Genesis Financial Technologies, Inc., et al.

Civil No. 105/2012

Motion to Dismiss

Page 8 of 9

dispositively, Plaintiffs have brought this action in the wrong venue since no defendants are located in the District of the Virgin Islands, nor did a substantial part of the events allegedly giving rise to Defendants' claims take place in the District of the Virgin Islands. Accordingly, Plaintiffs' Complaint is properly dismissed in its entirety.

Alternatively, Plaintiffs' Complaint is properly transferred to the federal district court in and for the District of Colorado in which district, *inter alia*, all defendants and most witnesses and documents are located and the substantial part of the events and omissions giving rise to Plaintiffs' claims occurred. Of course, Plaintiffs can and will receive an expeditious and fair trial in the District of Colorado.

WHEREFORE, on the basis of the foregoing, Defendants, Genesis Financial Technologies, Inc., Glen Larson and Pete Kilman respectfully request that the Court dismiss Plaintiffs, Larry Williams and LnL Publishing, LLC's Complaint or, in the alternative, transfer the case to the federal district court in and for the District of Colorado, award Defendants the attorneys' fees and costs incurred in connection with this action, and award Defendants other such and further relief as the Court deems just and proper.

Respectfully Submitted,

Dated: January 4, 2012.

s/ Lisa Michelle Kömives
Ravinder S. Nagi
Lisa Michelle Kömives
BOLTNAGI PC
5600 Royal Dane Mall, Suite 21
St. Thomas, VI 00802
Telephone: (340) 774-2944
Facsimile: (340) 776-1639
rnagi@vilaw.com
VI Bar No.: 1034
lkomives@vilaw.com
VI Bar No.: 1171

Larry Williams, et al. v. Genesis Financial Technologies, Inc., et al.

Civil No. 105/2012

Motion to Dismiss

Page 9 of 9

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED THAT a true and exact copy of the foregoing MOTION TO DISMISS FOR IMPROPER VENUE OR, IN THE ALTERNATIVE, FOR CHANGE OF VENUE AND INCORPORATED MEMORANDUM OF LAW was served on this the 4th day of January 2013 upon:

Joel H. Holt
Joel H. Holt, Esq., PC
2132 Company Street
Christiansted, St. Croix
USVI 00820
Attorneys for Plaintiff

via: CM/ECF | Mail | Fax | Hand Delivery | Email

s/ Lisa Michelle Kömives
Lisa Michelle Kömives

EXHIBIT 1

From: ireallytrade@aweber.com [ireallytrade@aweber.com] on behalf of Larry Williams [larrywms@ireallytrade.com]
Sent: Tuesday, November 20, 2012 5:59 AM
To: Pete Kilman
Subject: TradeStation Is Done

It's finally done...

We have just completed getting my indicators into TradeStation and hammered out a real good deal for my followers in terms of data, software, and commission costs.

Commissions for \$4 or so (round turn) and TradeStation for free; pretty tough to beat. Plus live intra-day and end of day data on most all markets for \$20!

Read all the details by going here

<http://www.ireallytrade.com/indicators.html>

Larry

IMPORTANT: The risk of loss in trading futures, options, cash currencies and other leveraged transaction products can be substantial. Therefore only "risk capital" should be used. Futures, options, cash currencies and other leveraged transaction products are not suitable investments for everyone. The valuation of futures, options, cash currencies and other leveraged transaction products may fluctuate and as a result clients may lose more than the amount originally invested and may also have to pay more later. Consider your financial condition before deciding to invest or trade.
© Copyright 2012 LnL Publishing, LLC. All Rights Reserved.

Larry Williams CTI Publishing
910 Greg Street
Sparks, NV 89431
USA 800-800-8333

To unsubscribe or change subscriber options visit:

<http://www.aweber.com/z/r/?bKzMrKzstMzsLJxsTAXstEa0jGwsnAycbJw=>

▪

EXHIBIT 2

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

LARRY WILLIAMS and LnL PUBLISHING, INC

Plaintiffs,

v.

GENESIS FINANCIAL TECHNOLOGIES, INC.,
GLEN LARSON and PETE KILMAN

Defendants.

CIVIL NO. 105/2012

BREACH OF CONTRACT
INTENTIONAL MISREPRESENTATION
(FRAUD)
TRESPASS TO PERSONAL PROPERTY
TORTUOUS DESTRUCTION OF PROPERTY
VIOLATION OF 18 USC 1030
CIVIL CONSPIRACY TO VIOLATE 18 USC §1030,
TO DESTROY PERSONAL PROPERTY AND TO
COMMIT TRESPASS TO PERSONAL PROPERTY
CONVERSION OF INTELLECTUAL PROPERTY
RESTRAINING ORDER REQUEST

ACTION FOR DAMAGES
JURY TRIAL DEMANDED

AFFIDAVIT OF GLEN A. LARSON

I, Glen Larson, being over the age of 18, and having first been duly sworn upon oath, state as follows:

1. I am a defendant in the above entitled civil action. I am an owner and officer of Genesis Financial Technologies, Inc.
2. I have homes in Colorado and Arizona. I am a resident and citizen of Colorado, where I am registered to vote. I have a Colorado driver's license.
3. I have known Plaintiff Larry Williams since approximately 1994. During such time, Mr. Williams has resided in several places, including Australia. To my knowledge, he moved back to St. Croix approximately 2 years ago.
4. In or about 2000, we worked together to co-author the Larry Williams Sentiment Index ("LW Sentiment"). At that time an agreement was made to share the revenues received by Genesis from sales of LW Sentiment. To my knowledge, the agreement was negotiated over the

Larry Williams, et al. v. Genesis Financial Technologies, Inc., et al.
Civil No. 105/2012
Williams Affidavit
Page 2 of 2

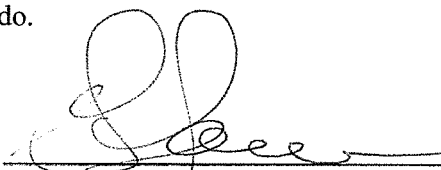
telephone, at which time Mr. Williams resided in California, and maintained a business address in Sparks, Nevada.

5. Subsequently, Genesis and Mr. Williams modified the Agreement. Under the modified agreement, Genesis developed a new software product, exclusively for Mr. Williams, from which Williams would, and did, receive significant financial benefit ("Indicator Analyst"). Genesis was to receive corresponding credit against sums due from sales of LW Sentiment. After receiving such benefit, Mr. Williams has repudiated the agreement.

6. Since the inception of the Agreement (and until August 2012), Genesis has made payments exclusively to CTI Publishing in Sparks, Nevada. Genesis has not entered into any agreement with LnL Publishing.

7. Most of the persons who would have knowledge of facts relevant to this case are located in Colorado. The computer server accessed by Mr. Williams in September 2012 is located in Colorado Springs, Colorado. Many or perhaps all of the witnesses who would be called by Defendants to testify at trial live in Colorado.

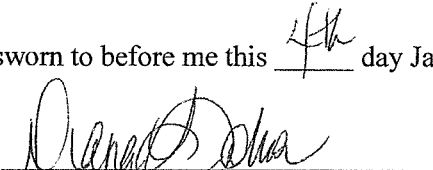
FURTHER, Affiant sayeth not.


GLEN LARSON

STATE OF ARIZONA)
) ss.
COUNTY OF Maricopa)

The foregoing affidavit was subscribed and sworn to before me this 4th day January, 2013 by Glen Larson.

My commission expires: 2/8/2013


Notary Public

(SEAL)

