

SIGNED.



Dated: September 22, 2010

James M. Marlara
JAMES M. MARLAR
Chief Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA**

<p>10 In re:</p> <p>11 FIRST MAGNUS FINANCIAL</p> <p>12 CORPORATION,</p> <p style="text-align: right;">Debtor.</p> <hr/> <p>13 LARRY LATTIG, LITIGATION</p> <p>14 TRUSTEE FOR THE FIRST MAGNUS</p> <p>15 LITIGATION TRUST,</p> <p style="text-align: right;">Plaintiffs,</p> <p>16 vs.</p> <p>17 STONEWATER MORTGAGE</p> <p>18 CORPORATION; et al.</p> <p style="text-align: right;">Defendants.</p> <hr/>	<p>) Chapter 11</p> <p>) No. 4:07-bk-01578-JMM</p> <p>) Adversary No. 4:09-ap-00211-JMM</p> <p>) MEMORANDUM DECISION</p> <p>) (Nathan Wright, Mark Yonan and Wright &</p> <p>) Yonan, PLLC Summary Judgment. Counts</p> <p>) 39-41, 43-49, 51, 52, 56 and 57.)</p>
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20 Before the court is the motion for summary judgment filed by Defendants Nathan
21 Wright, Mark E. Yonan and Wright & Yonan, PLLC (ECF No. 235). These individuals, and their
22 newly-created law firm Wright & Yonan, PLLC, were sued by the Plaintiff on the following counts,
23 under the following theories:

24 Count 39 Against Mr. Yonan. Alleging a RICO "enterprise," participated
25 in by Mr. Yonan to acquire Debtor's proprietary assets
26 (previously dismissed).

27 Count 40 Against Mr. Yonan. 18 U.S.C. § 1962(c) (previously
28 dismissed).

- 1 Count 41 Against Mr. Yonan, Wright & Yonan, PLLC and Mr. Wright.
2 Misappropriation of Debtor's assets, specifically its software.
- 3 Count 43 Against Mr. Yonan and Mr. Wright. Conversion of the Debtor's
4 property and breach of fiduciary duty.
- 5 Count 44 Against Mr. Yonan and Mr. Wright. Fraud (previously
6 dismissed).
- 7 Count 45 Against Wright & Yonan, PLLC. Unjust enrichment (same
8 acts).
- 9 Count 46 Against Wright & Yonan, PLLC. Constructive trust remedy.
- 10 Count 47 Against Mr. Yonan and Mr. Wright. Conspiracy (same acts).
- 11 Count 48 Against Wright & Yonan, PLLC. Aiding and abetting breach of
12 fiduciary duty.
- 13 Count 49 Against Wright & Yonan, PLLC. Misappropriation of the E-
14 Closer system.
- 15 Count 51 Against Mr. Wright. Breach of fiduciary duty in a scheme to
16 deprive Debtor of the E-Closer system.
- 17 Count 52 Against Mr. Wright. Fraud (previously dismissed).
- 18 Count 56 Against Wright & Yonan, PLLC. Civil conspiracy (same acts).
- 19 Count 57 Against Mr. Wright and Wright & Yonan, PLLC. Aiding and
20 abetting breach of fiduciary duty (same acts).

21 The Plaintiff has not responded to the motion for summary judgment by these Defendants.

22 Messrs. Wright and Yonan, as well as their new law firm, argue, in essence, that the
23 legal form which were offered to them by First Magnus' counsel, some of which were contained on
24 commercially-available software known as Worldox, were not proprietary to First Magnus, or if
25 they were, had no significant value. In addition, they were only offered copies, and the original
26 software remained with the Debtor.

27 On the value issue, which means "damages," the Plaintiff has produced nothing in
28 response to the motion to indicate how the Debtor was harmed by the events in question. It would

1 have been prudent for the Plaintiff to have produced at least one affidavit, from an attorney-expert,
2 that what was openly conveyed to Messrs. Wright and Yonan had value to the estate. But he failed
3 to do so.

4 Mr. Lattig, the Litigation Trustee and Plaintiff, has failed to demonstrate why
5 summary judgment should not be granted in favor of these Defendants.

6 Accordingly, the motion for summary judgment filed by Messrs. Wright and Yonan
7 and their new firm, Wright & Yonan, PLLC as to the claims presented against them in Counts
8 39-41, 43-49, 51, 52, 56 and 57 shall be GRANTED, and those claims shall be DISMISSED, with
9 prejudice. A separate judgment will enter, with Rule 54(b) language.

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11 DATED AND SIGNED ABOVE.

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13 COPIES to be sent by the Bankruptcy Notification
14 Center ("BNC") to all parties to this adversary proceeding.
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