

Legal Alert

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QUESTION: LAWYERS, GUNS AND MONEY DOWN IN KATY, TEXAS?

ANSWER: APPARENTLY IN TEXAS GUNS ARE FOR MONEY AND FACEBOOK IS FOR FIGHTING.

Witness the Showdown for Ownership of Social Media Accounts for a Gun Store and Shooting Range!

Jeremy Alcede and his wife, Sarah Alcede were selling guns and ammunition in Katy, Texas, using the name Tactical Firearms. Jeremy talked his friend, Steven Coe Wilson into investing \$2.2 million in Tactical Firearms. Tactical Firearms used the money to open the “finest indoor firing range in the country.” *In re CTLL, LLC*, 528 B.R. 359 (U.S. Bankr. Ct., S.D. Tex., 2015). They marketed the business with social media.

As the Tactical Firearms Twitter account summary bragged: “We are a local gun store with the best prices, knowledge, and customer service available. We are now home of the finest indoor shooting range in the country.” A gun-slinging marketer, Jeremy bragged in court: “I don’t mean to toot my own horn, but I’m a PR genius . . .”

Jeremy’s swagger didn’t sit well with everyone. Sarah divorced him. Steven accused Jeremy of “diverting cash” from the business and interfering with Steven’s management rights. Tactical Firearms “subsequently defaulted on several loans.” But who had their fingers on the Facebook and Twitter accounts?

When a Duel Breaks Out Over Guns, Money, and Twitter Call Your Lawyers!

Warren Zevon knew that guns and money were not enough when you “got stuck between a rock and a hard place” when you “took a little risk . . .” No, you also need lawyers! *See, Lawyers, Guns and Money* by Warren Zevon (1978).

Icon Bank of Texas was foreclosing on the gun shop and firing range. Steven was ready to pull the trigger on a state court receivership. Jeremy thought he got the drop on him by filing for a Chapter 11 bankruptcy reorganization.

Steven loaded up and got the court to approve a Plan of Reorganization that made him 100 percent owner of Tactical Firearms. Now he could call the shots!

You Can Take My Social Media When You Pry My Cold, Dead Fingers From the Keypad, . . . or a Bankruptcy Judge Holds Me in Contempt!

The court told Jeremy to “delivery possession and control” for the “passwords for the debtor’s social media accounts, including but not limited to Facebook and Twitter,” or

else. Jeremy stared down the barrel and refused and the court plugged him with contempt.

Jeremy fired back that all the social media accounts were his personal property and Tactical Firearms couldn't use them without violating his privacy. When the smoke cleared, the court found "that the reorganized Debtor is entitled to direct control of 100 percent of one Facebook page and one Twitter account . . ."

How Was Jeremy Brought to Justice?

The Bankruptcy Code defines "property of the estate" as "all legal or equitable interests of the debtor in property, as of the commencement of the case." 11 U.S.C. § 541. As of April 2015 no Texas state courts had "considered whether social media accounts are property interests." The bankruptcy judge "with one eye cocked on the broad scope of § 541," found "that business social media accounts are property interests."

The Tactical Firearms Facebook Page was found to be a business asset of Tactical Firearms and not the personal property of Jeremy. The Tactical Firearms Facebook Page was linked to the webpage for Tactical Firearms. The Status Updates posted on the Facebook Page were used to sell guns and ammunition.

The court also found that the Tactical Firearms Twitter account was a business account and not the personal property of Jeremy. Jeremy used the Twitter page to let his followers know that he was attending events such as the "Shot Show" and other gun shows.

The court noted that while Jeremy ran Tactical Firearms, it "was known for its marquee displaying messages promoting gun rights and criticizing President Barack Obama—no doubt with the objective of increasing gun and ammunition sales." For that reason, the claims by Jeremy that Facebook and Twitter political messages were personal, not business ricocheted. Messages such as: "Honk if you Support Open Carry/Don't Tread on Me" and "We Have Hit Barack Bottom/Go Vote Red" were intended to generate publicity for the business "in order to increase sales of guns and ammunition."

Don't Start a Shootout Over Social Media Rights or Other Intellectual Property Without Bringing Your Lawyer!

The court recognized "that the landscape of social media is yet mostly uncharted in bankruptcy." Still the court found that "the principles that have been developed to deal with the myriad forms of property passing through bankruptcy provide clear guidance as to how to treat such assets." Instead of a shotgun approach, the Judge analyzed the property rights and privacy interests of social media with the precision of a sniper in a well-targeted fourteen page opinion.

The court recognized Jeremy's black hat and was "confident that at the core of this dispute is a familiar story of a disgruntled former business partner attempting to stymie his former associate by seizing control of assets that do not belong to him." Jeremy had "stolen property of the reorganized" Tactical Firearms.

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