Mock Hearing
Leonard Skinard v Steven Python and Python Co.

Making a biopic of a rocker as legendary as Leonard Skinard is no small task, and it takes a large team. But that means when things go south, there are many people to blame: in e-discovery terms, there are many key custodians.

In this dispute, Skinard released the rights to make a movie of his life to auteur director Steven Python, and Skinard fronted $4M in upfront costs to finance the film which was supposed to be released in time for the 2020 anniversary of Skinard's first-ever public performance. Even though the contract did not require Python to generate monthly invoices, and was set up as a pure 'advance' to support the project, Skinard agreed to devote "half of his creative energy" each year to the project. But three years into the project, after drawing down $1.2M of the $4M advance, Python and his team don't yet have a single frame of film to show for all this 'work'. Skinard is convinced that Python has been lying to him about all the hours 'worked', as Python has released two other films since their agreement. As a result, Plaintiff Skinard brought a civil action for fraud, conspiracy, and breach of contract. Python is convinced he would be vindicated by the allegations that he 'never worked' on the project because he tracked all of his time on the Skinard project (for study by future film students, of course). But, it appears, those records have been lost.

Defendant Python's way of tracking this time was by having his personal assistant, Jem, who worked for him as an independent contractor he had located on the "UperAssistant" app, enter the time through "CalendarRocks," a free, proprietary calendaring app for creatives operated by a company based in the Netherlands. Jem had suggested the app to Python because another project did require Python to keep hours.

Jem accessed the mobile-only app through her personal phone using her "UperAssistant" credentials, and would enter the hours Python described to her each day; the app also had a function that would log calls she received from Python and add those hours to the tracking total if she deemed them to be related to the work on a given project. She printed a "project-end" total for another client that was a big hit with the studio executives.

Unfortunately, Python 'fired' Jem four months ago on very acrimonious terms – she had (intentionally, he thinks) brought him a double latte mocha instead of a double mocha latte during a key storyboarding session that totally destroyed his creative process for an entire day.

Three weeks after Jem stopped working for Python, she moved from UperAssistant to "SyftAdmin" and deleted her UperAssistant account. According to the CalendarRocks User Agreement, in order to reduce 'graveyard' accounts, if there is no activity for 30 days, the app sends a reminder to the user every week; after the fourth reminder, information is deleted from the system. CalendarRocks only accepts customer service inquiries from registered users through the app itself.

Both Parties want the data that may be contained in that App. Python thinks the data will vindicate him. Skinard thinks it will show Python to be a total fraud – he suspects Python told Jem to log time on his Project when he was seen at festivals and events promoting other films. Jem refuses to voluntarily reactivate her UperAssistant account credentials to help Python or Skinard. She is sick of them both – or may not be excited about uncovering evidence that would cause her to be added as a co-defendant in a lawsuit that includes a count for conspiracy to commit fraud.

A Rule 16 Conference was held two weeks ago before Judge Puck of the Sovereign District of Old York at which several additional discovery issues were addressed. Due to time constraints of the first

conference, the issue of the CalendarRocks data was postponed until this continued conference. Formal briefing has not proceeded, but the court asked the parties to state their positions in letter briefs:

- Plaintiff Skinard's view is that Defendant Python has spoliated data and should be subject to an adverse interest instruction because he did not instruct Jem to preserve the CalendarRocks data when she left the company. As early as the first year into the project, before Jem left, Skinard had berated Python many times about delays and had told him, "if this movie doesn't come out in time for this anniversary, I will hold you personally responsible for all the lost revenue that we'd be foregoing". While the complaint was not filed until after Jem had been fired, Skinard 'reasonably should have known' that those records should have been preserved.

- Defendant Python's view is that he cannot be subjected to an adverse inference because that would harm a party for the actions of a non-party. Neither Python nor Python Co. has the data at issue. If it even exists, it is 'owned' by CalendarRocks, and is controlled by Jem or UperAssistant, not by Python or Python Co. Python's failed attempt to convince Jem to access it evidences his lack of control.   Defendant thinks Plaintiff Skinard can simply subpoena Jem, CalendarRocks, or UperAssistant to get the data, and because they haven't yet done so, any talk of spoliation is premature. Adverse inference is particularly inappropriate because Defendant Python thinks the data will support his view of events; if anyone, he is the harmed party by Jem. He may yet bring action against her for breach of her duty to him for failing to alert him before she left about the data that could be lost if he took no action. Python also thinks the data is outside the scope of discovery anyway – since the data is already deleted, it would be beyond proportionality to require Python to go to another county and pay for data restoration when Python is perfectly capable of describing how much he worked on the project by offering sworn testimony on that point.