



COURT OF CHANCERY
OF THE
STATE OF DELAWARE

JOHN W. NOBLE
VICE CHANCELLOR

417 S. STATE STREET
DOVER, DELAWARE 19901
TELEPHONE: (302) 739-4397
FACSIMILE: (302) 739-6179

September 9, 2005

Alyssa M. Schwartz, Esquire
Richards, Layton & Finger
One Rodney Square
P.O. Box 551
Wilmington, DE 19899-0551

Edward B. Rosenthal, Esquire
Rosenthal, Monhait, Gross & Goddess, P.A.
919 Market Street, Suite 1401
P.O. Box 1070
Wilmington, DE 19899-1070

Re: Rockwell Automation, Inc. v. Kall
C.A. No. 526-N
Date Submitted: June 3, 2005

Dear Counsel:

This action was filed by Plaintiff Rockwell Automation, Inc., ostensibly to recover documents containing its confidential and proprietary information from Defendant Jonathan J. Kall following his dismissal as a Rockwell employee. Issues presented by this action have been resolved at different times.¹ Those decisions set forth the background of the dispute currently before the Court.²

¹ See, *Rockwell Automation, Inc. v. Kall*, 2004 WL 2065427 (Del. Ch. Dec. 15, 2004), and bench rulings of March 10, 2005, and June 3, 2005.

² The substantive dispute between Rockwell and Kall regarding his termination and Rockwell's acquisition of Kall's business is being litigated elsewhere. The issue which this Court now addresses perhaps would have been better (or, at least, more comprehensively) resolved there as well.

Rockwell has retrieved the computer hardware that it supplied to Kall. It can access the data and documents stored there, but that effort would allow inspection not only of its proprietary materials, but also of Kall's personal and perhaps privileged communications with others.³

The parties agreed in the Employment Agreement between them that disputes under that agreement which are not subject to arbitration would be brought in this forum. The Employment Agreement, at § 8.2, reflects the parties' understanding regarding the disposition of Rockwell's proprietary information upon Kall's termination. In short, it establishes Rockwell's right to exclusive possession. If Rockwell possesses the documents (to the exclusion of Kall), its concerns about unauthorized distribution may be assuaged. It, nonetheless, has the right to review its documents as obtained from Kall.

The Complaint did not seek the return of the computer equipment, but documents required to be returned to Rockwell are stored there. Thus, Rockwell is entitled to view them—as they were maintained by Kall. The Complaint, however, did not seek judicial authorization to review, or obtain access to, documents other

³ The Court does not consider the question of whether any privilege was waived by Kall when he used Rockwell's computers for the storage or transmittal of these materials.

than Rockwell's proprietary documents. Thus, the Court's involvement with documents other than Rockwell's proprietary documents is a matter of happenstance.⁴

In light of the Court's conclusion that (1) Rockwell is entitled to full access to its proprietary material stored in the computers and (2) it is not for the Court to determine whether Rockwell may obtain access to Kall's separate personal or privileged documents because that claim was not fairly framed by the Complaint, the Court's task is to formulate a practical resolution. This should be done with recognition that the other documents stored on the computers will likely be the subject of discovery proceedings before the tribunal addressing the substantive dispute between Kall and Rockwell.

Balancing these competing interests leads to the following solution. If Rockwell desires to review its proprietary documents stored in the computers, it

⁴ Kall argues that the Court lacks jurisdiction over the other documents because the parties did not agree that this venue would be used for those purposes. Yet, Kall cannot avoid his obligations under § 8.2 of the Employment Agreement simply by commingling Rockwell's proprietary documents with his own personal or privileged documents. The Court has the power—as agreed by the parties—to assure Rockwell's rights to its proprietary information under the Employment Agreement. If that involves incidental disposition of the parties' rights with respect to commingled documents other than Rockwell's proprietary documents, then that is simply a necessary consequence of Kall's decision to commingle the documents.

shall retain, at its expense, a third-party service provider to retrieve and review all documents. Those which are Rockwell's proprietary or confidential documents shall be turned over to Rockwell, together with a list identifying each document delivered to Rockwell.⁵ The service provider shall act to preserve all data and documents stored on the computer equipment and shall not make them available (except as provided in this letter opinion) to anyone else without (1) the agreement of Rockwell and Kall or (2) an order from a tribunal with jurisdiction over any dispute between Rockwell and Kall. This approach allows Rockwell access to the documents which it sought in its Complaint under the Employment Agreement, assures the preservation of the documents for future use, and provides a means for accessing the documents when that access is necessary within the context of further proceedings between Rockwell and Kall.

IT IS SO ORDERED.

Very truly yours,

/s/ John W. Noble

JWN/cap
cc: Register in Chancery-NC

⁵ This conclusion does not authorize any effort to gain access to any internet service provider.