

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

CHRISTOPHER KAUFMAN,)
individually and as trustee of the C.)
ALEXANDER KAUFMAN)
IRREVOCABLE GST EXEMPT)
TRUST dated December 4, 2008 and)
the CAROLINE C. KAUFMAN)
IRREVOCABLE GST EXEMPT)
TRUST dated December 4, 2008,)

Plaintiff,)

v.)

DNARx LLC, a Delaware limited)
liability company,)

Defendant.)

C.A. No. 2022-0968-KSJM

CHRISTOPHER KAUFMAN,)

Plaintiff,)

v.)

DNARx LLC, a Delaware limited)
liability company,)

Defendant.)

C.A. No. 2022-0982-KSJM

POST-TRIAL ORDER ENTERING SANCTIONS

1. The Court held trial on November 17, 2023, to address the merits of the claims of Plaintiff Christopher Kaufman (“Plaintiff”) in C.A. No. 2022-0982-KSJM (the “Loans Action”) and to address Plaintiff’s request for sanctions for litigation misconduct by DNARx LLC (“DNARx” or the “Company”) in both the Loans Action

and C.A. No. 2022-0968-KSJM (the “Documents Action”).¹ On December 29, 2023, the court issued a Post-Trial Memorandum Opinion entering judgment on the merits of Plaintiff’s claims in the Loans Action (the “Post-Trial Opinion”).² This Post-Trial Order resolves Plaintiff’s requests for sanctions. The court has expended a great deal of effort already in these actions addressing the Company’s litigation misconduct. So, this Order cuts to the chase.

2. The court finds DNARx in contempt for repeated and egregious misconduct in the Documents Action and the Loans Action, as further detailed in the Post-Trial Opinion and the Court’s September 18, 2023 rulings:³

a. Debs instructed DNARx personnel to ignore Plaintiff’s Demand for books and record unless and until Plaintiff filed suit, needlessly creating litigation costs and burdening Plaintiff and the court.⁴

b. DNARx misrepresented to the court the reasons for DNARx’s delay in responding to Plaintiff’s complaint in the Documents Action, stating inaccurately that the complaint was sent to a defunct email address.⁵

¹ Loans Action Dkt. 69; Documents Action Dkts. 51, 65, 82, 114. This Order cites to the trial record and adopts the citation conventions used in the Post-Trial Opinion. Loans Action Dkt. 96.

² Loans Action Dkt. 96.

³ Documents Action Dkt. 116 at 24:23–61:19 (Tr. of 9/18/23 Oral Arg. and Rul’gs of the Crt re: Omnibus Mots.) (“9/18/23 Rul’gs”).

⁴ JX-99 (10/18/22 email from Debs to Chan stating “[w]e will ignore this until and if they institute legal action”).

⁵ *Compare* JX-298 (11/10/22 email from Def.’s California counsel to Pl.’s counsel stating that the complaint was sent by DNARx’s registered agent to a “defunct email address” and thus not received until November 9, 2022) *with* JX-102 (October 31,

a. DNARx blew every court-ordered deadline for producing documents, including the March 31, 2023 deadline to produce all documents sought in the Documents Action,⁶ the July 31, 2023 extended deadline to produce all documents in the Documents Action established after the Receiver moved to show cause for DNARx’s failure to meet the March 31, 2023 deadline,⁷ and the October 9, 2023 deadline to correct deficiencies in the prior productions by producing DNARx’s scientific data and all documents and scientific data removed from DNARx’s laboratories under Debs’s orders, as required by the temporary restraining order in the Loans Action.⁸

b. DNARx blew the deadline that it selected, and the court ordered, for paying Plaintiff’s attorney’s fees and expenses. The court finds DNARx in contempt for violating the December 15, 2023 deadline to pay Plaintiff’s attorney’s fees.⁹

2022 email from registered agent transmitting Plaintiff’s filings to Chan’s operative DNARx email account).

⁶ Documents Action Dkt. 71 (Mar. 22, 2023 Order Entering Default Judgment And Appointing A Receiver) ¶¶ 19–20.

⁷ Documents Action Dkt. 84 (Tr. of 7/5/23 Status Conference re: Pl.’s Mot. for Def. Judgment and the Receiver’s Mot. for Order to Show Cause) at 13:6–11.

⁸ Loans Action Dkt. 55 (Oct. 5, 2023 Temporary Restraining Order) ¶ 5 (establishing Oct. 9, 2023 deadline to produce “any documents responsive to Plaintiff’s Demand for books and records that the Company has yet to produce, including all documents or scientific data removed from DNARx’s laboratories in response to Debs’s instruction to remove all ‘critical materials’ from DNARx’s laboratories”).

⁹ Documents Action Dkt. 78 (July 5, 2023 Order Shifting Plaintiff’s Fees And Costs); 9/18/23 Rul’gs at 61:10–18; Documents Action Dkt. 129 (12/18/23 Ltr. from Pl.’s Counsel re: Non-Payment of Fees); Documents Action Dkt. 130 (12/20/23 Ltr. from Receiver re: Status Update).

c. DNARx hid and destroyed and instructed its attorneys and employees to hide or destroy documents.¹⁰ Rather than comply with its discovery obligations, DNARx shut down both of DNARx's laboratories, removed all physical materials in the Company's California laboratory, placed those materials in storage, and euthanized all of DNARx's lab animals.¹¹ Debs later lied about this in a signed affidavit filed with the court, falsely claiming that no documents were concealed as a result of Debs's command that DNARx's laboratories be shut down.¹²

d. DNARx kept firing its attorneys to avoid its obligations¹³ and then blew the court-ordered deadlines for retaining successor counsel in the

¹⁰ *See, e.g.*, JX-113 (12/1/22 email from Debs to Def.'s instructing initial Delaware counsel to evidence); JX-177 (3/1/23 email from Debs instructing DNARx employees to "immediately . . . remove all DNARx's critical materials from both its San Francisco CA as well and Richmond VA laboratories" so that "[w]hen Mr Kaufman's lawyers are eventually able to gain access to our San Francisco and Richmond facilities, there will be no one and nothing there"); Ye Dep. Tr. at 15:14–25:6 (testifying that, after receiving Debs' instructions concerning evidence, she took everything from the lab and moved it to a self-storage facility); JX-151 (2/10/23 email from Def.'s counsel to Debs noting "the company's inability or unwillingness to provide what the court has already ordered"); JX-153 (same).

¹¹ JX-177 (3/1/23 email from Debs); Ye Dep. Tr. at 15:14–25:6.

¹² JX-209 ¶ 4 (Debs Aff.); *see also* JX-243 (10/22/23 email from Receiver to Def.'s counsel regarding document production deficiencies); JX-306 (11/9/23 email from Pl.'s counsel to Receiver regarding document production deficiencies).

¹³ *See, e.g.*, Documents Action Dkt. 28 (12/27/22 Mot. to Withdraw); Documents Action Dkt. 34 (Tr. of 12/30/22 Arg. on Mot. to Withdraw); Documents Action Dkt. 55 (2/13/23 Mot. to Withdraw); Documents Action Dkt. 69 (Tr. of 2/16/23 Arg. on Mot. to Withdraw); Loans Action Dkt. 8 (1/27/23 Mot. to Withdraw).

Loans Action, needlessly delaying proceedings and requiring additional motion practice.¹⁴

e. DNARx obstructed discovery by refusing to answer basic interrogatories concerning the existence, volume, and location of documents responsive to the Demand in the Documents Action, forcing Kaufman to file a motion to compel.¹⁵ DNARx refused to correct deficiencies even after the court granted Kaufman's motion to compel.¹⁶

f. DNARx lied in response to interrogatories in the Documents Action, misrepresenting (among other things) the facts regarding DNARx personnel's usage of personal email accounts and text messages to conduct business and the existence of documents related to DNARx's scientific experiments.¹⁷

g. DNARx lied in response to requests for admission and interrogatories in the Loans Action, misrepresenting the existence and amount of the Loans, the involvement of counsel in preparing responses to Plaintiff's

¹⁴ See, e.g., Loans Action Dkt. 10 (2/7/23 Order Granting Mot. to Withdraw) at modifications (stating the "DNARx shall retain successor Delaware counsel by February 16, 2023 or be subject to an entry of default"); Loans Action Dkt. 13 (2/17/23 Mot. for Default Judgment); Loans Action Dkt. 18 (6/7/23 Mot. for Default Judgment); Loans Action Dkt. 20 (7/6/23 Def.'s Counsel's Entry of Appearance).

¹⁵ See, e.g., JX-115 (12/14/22 responses and objections to discovery requests in the Documents Action); Documents Action Dkt. 27 (12/23/22 Mot. to Compel); Documents Action Dkt. 41 (1/25/23 Reply to Mot. to Compel); Documents Action Dkt. 50 (2/9/23 Order Granting Plaintiff's motion to compel); Documents Action Dkt. 53 (Tr. of 2/3/23 Arg. on Pl.'s Mot. to Compel).

¹⁶ 9/18/23 Rul'gs at 33:6–35:14.

¹⁷ JX-150 at 8–9.

requests for admission, and the reasons for DNARx's false denials of the requests for admission served by Plaintiff.¹⁸

h. Debs repeatedly evaded questions during his deposition in the Documents Action and his deposition in the Loans Action, refusing to answer legitimate questions, purporting to debate the meaning of well-understood words, and refusing to discuss allegedly "confidential" matters notwithstanding the existence of a confidentiality order in both actions.¹⁹

i. Debs admitted during his deposition that he caused DNARx to violate a motion to compel order because he had higher priorities.²⁰

j. Debs repeatedly made false and misleading statements under oath, including in both his depositions and in multiple affidavits and declarations filed with the court.²¹

¹⁸ Compare JX-156 (2/15/23 Responses to RFAs), JX-157 (2/16/23 email from Def.'s counsel to Chan re: responses to RFAs), and JX-158 (draft responses to RFAs) with Loans Action Dkt. 6 (12/15/22 Answer) ¶¶ 13–20 (admitting each tranche of the Loans identified in the complaint).

¹⁹ Feb. 10, 2023 Debs Dep. Tr. at 101:17–104:25 (not answering questions by refusing to understand commonly understood phrases), 108:1–110:16 (repeating that non-confidential information was strictly confidential), 142:13–144:25 (asking for definitions of common words); Oct. 24, 2023 Debs Dep. Tr. at 26:5–27:22 (refusing to answer the question), 56:10–57:23 (same), 141:7–142:10 (same).

²⁰ Feb. 10, 2023 Debs Dep. Tr. at 27:5–9.

²¹ Compare JX-209 (Debs stating in an affidavit that he did not instruct the destruction of documents) with JX-177 (Debs congratulating employees for fulfilling his "request" to remove critical materials and documents from DNARx's labs).

k. Chan made multiple false and misleading statements under oath in his depositions in the Documents Action and the Loans Action and in his February 16, 2023 response to Plaintiff's requests for admission.²²

l. Debs improperly threatened Kaufman's counsel with litigation and disciplinary referrals and further threatened to publish accusations that Plaintiff's counsel was complicit in the deaths of millions of people to gain leverage to bring an end to the Documents Action and the Loans Action.²³

m. Debs wrote to DNARx personnel that, after Kaufman prevailed on his initial motion for contempt sanctions, Kaufman needed to be "destroyed personally and professionally," and then gave a false story to DNARx personnel indicating that Kaufman had requested that the court appoint Kaufman as DNARx's CEO.²⁴

n. DNARx repeatedly violated the court's March 22, 2023 scheduling order in the Loans Action, including by (i) failing to timely serve written discovery responses, despite being granted an extension by Plaintiff; and (ii) failing to timely produce documents in response to Plaintiff's requests for

²² Feb. 10, 2023 Chan Dep. Tr. at 33:8–36:23 (misleading statements about use of certain emails), 63:11–64:23 (dishonesty on documents and meetings), 71:3–72:17 (obfuscating on the purchase of a vehicle for Debs with company funds).

²³ JX-151 (2/10/23 email from Debs to Pl.'s counsel and others); Trial Tr. at 72:1–74:12 (Kaufman); Oct. 23, 2023 Chan Dep. Tr. at 10:21–24.

²⁴ JX-172 (2/24/23 email from Debs to Handumrongkul re: "it became inevitable that Kaufman Will be expeditiously destroyed personally and professionally).

production, including producing multiple critical documents only after the depositions concluded.²⁵

o. DNARx obstructed the Receiver's efforts to fulfill his charge by providing inaccurate information concerning the status of its document production.²⁶

p. DNARx repeatedly refused to comply with the Receiver's demands and instructions, including commanding associates to ignore the Receiver, neither running requested search terms, nor providing records on weekly meetings,²⁷ and failing to meet the Receiver's May 26, 2023 deadline for production of all responsive documents.

3. Had the court not issued the Post-Trial Opinion, the litigation misconduct detailed above (and DNARx's failure to advance any defense to the Sanctions Motion) would have been sufficient to enter judgment in favor of Plaintiff in the Loans Action.²⁸

²⁵ Documents Action Dkt. 71; JX-215; JX-219; JX-213; JX-221; JX-222; JX;223; JX-225.

²⁶ Documents Action Dkt. 71 ¶¶ 19–20; JX-196 at 2 (5/24/23 Ltr. from Receiver documenting misstatements by DNARx regarding existence of additional documents responsive to the Demand); Chan Dep. Tr. at 44:2–46:21; 9/18/23 Rul'gs at 19:16–21 (DNARx arguing its production was complete at the September 17, 2023 hearing); Document Action Dtk. 125 at 14:15–17 (Tr. of 10/17/23 Oral Arg.) (DNARx arguing its production was complete at the October 18, 2023 hearing).

²⁷ *See, e.g.*, JX-189 (4/17/23 email from Debs to DNARx's tax advisor); JX-196 (5/24/23 Ltr. from the Receiver to counsel for DNARx).

²⁸ There are a lot of paths that lead to this conclusion. To name a few, DNARx did not timely respond to and obstructed discovery and therefore admitted its first set of requests for admission in the Loans Action. *See James v. Nat'l Fin. LLC*, 2014 WL 6845560, at *9 (Del. Ch. Dec. 5, 2014) ("A less final but still serious discovery sanction

4. DNARx is required to pay all as-yet-unshifted costs and attorney’s fees incurred in connection with the Documents Action and the Loans Action—except for any fees incurred in reviewing documents produced in response to the Demand for the purpose of conducting Plaintiff’s investigation as described in the Demand—within five calendar days of the court’s approval of Plaintiff’s forthcoming Rule 88 Affidavit. Plaintiff shall file said Rule 88 Affidavit within fourteen calendar days of this order.

5. DNARx’s litigation conduct warrants one of the most extreme sanctions available—dissolution.²⁹ The court warned DNARx that it would be dissolved if it

is the entry of an order under Rule 37(b)(2)(A) that deems designated facts to be established or which draws an inference as to a particular issue that is adverse to the party that failed to comply with its discovery obligations.”). Both Debs and Chan repeatedly made false statements under oath, and so DNARx could not have relied on their testimony to prove any facts. *TR Invs., LLC v. Genger*, 2009 WL 4696062, at *2 (Del. Ch. Dec. 9, 2009) (raising the defendant’s burden on its affirmative defenses and counterclaim as a response to the defendant’s “intentional violation of a clear judicial order and contempt” to “one level higher than would otherwise be applicable[,]” and finding that if the defendant relies on his own testimony he “will be unable to meet his burden of persuasion”). The multiple discovery failures give rise to adverse inferences as well. *Nat’l Fin.*, 2014 WL 6845560, at *9 (“Delaware decisions have granted adverse inferences in cases involving the spoliation of documents, where the evidence indicates that the party acted with a culpable mental state.” (citing cases)).

²⁹ The court may order the dissolution of a company “only upon a showing of gross mismanagement, positive misconduct by corporate officers, breach of trust, or extreme circumstances showing imminent danger of great loss to the corporation which, otherwise, cannot be prevented.” *Carlson v. Hallinan*, 925 A.2d 506, 543 (Del. Ch. 2006) (quoting *Chapman v. Fluorodynamics, Inc.*, 1970 WL 806, at *4 (Del. Ch. 1970)). Continued contempt of court and failure to comply with a receiver’s instructions are relevant to determine whether a business can carry on. *GMF ELCM Fund L.P. v. ELCM HCRE GP LLC*, 2019 WL 3713844, at *12–13 (Del. Ch. Aug. 7, 2019). This is one of the rare cases where dissolution is warranted. The business must be dissolved to preserve what value remains. The Receiver’s December 20, 2023

did not comply with the initial fee-shifting Order by December 15, 2023.³⁰ It did not comply with that Order. In the meantime, much of the work needed to dissolve DNARx has been done—according to the Receiver, “DNARx has exhausted its cash assets” and “no longer has funds available to pay employees, keep its laboratories open, or otherwise conduct business operations.”³¹ Plus, DNARx shut down all of its labs and terminated its ongoing experiments.

6. DNARx shall be dissolved as of the date of this Order, and DNARx’s affairs shall be promptly wound up by a receiver, serving as a liquidating trustee, under the direction of the court.

7. The court previously appointed Delaware Attorney Thad J. Bracegirdle to serve as Receiver in the Documents Action, and he did an exemplary job under the circumstances. If he is willing to serve in this role, he shall submit a form of order consenting to his appointment and enumerating the powers needed to carry out his charge.

letter, which informed the court that DNARx was no longer functioning and could not pay its vendors, substantiates the court’s concerns. Documents Action Dkt. 130.

³⁰ 9/18/23 Rul’gs at 61:6–18 (Sept. 18, 2023 telephonic argument and rulings of the court) (“Here is the deal. If the Company doesn’t want to face dissolution in a couple months, it needs to pay the fee order. And I’ll give them until December 15th to do so. The only reason why I am delaying is because I think that’s the best way to get Mr. Shindel’s firm paid. But if not paid by December 15th, I’ll save myself the effort of writing a post-trial decision and enter the sort of sanction that is the most extreme that our Court enters in cases like this. So I am holding the motion for additional sanctions and the motion for a lien effectively in abeyance until December 15th.”).

³¹ Documents Action Dkt. 130 at 1.

8. The court shall retain jurisdiction to interpret, construe, and enforce this order and any such other or further orders of the court. Additionally, the court shall reserve jurisdiction over this matter, including jurisdiction over any litigation claims in the name of or against DNARx, and to consider any applications that the receiver may make for the court's assistance in addressing any problems encountered by the receiver in performing its duties hereunder.

/s/ Kathaleen St. J. McCormick

Chancellor

Dated: December 29, 2023