

CAUSE NO. 199-596-97

DSC COMMUNICATIONS CORPORATION,

Plaintiff,

v.

EVAN BROWN,

Defendant.

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IN THE DISTRICT COURT OF

COLLIN COUNTY, TEXAS

199TH JUDICIAL DISTRICT

DEFENDANT'S OBJECTION TO TRIAL SETTING

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Defendant Evan Brown ("Brown") and files this Objection to Trial Setting, and would respectfully show the Court as follows:

I.

Plaintiff DSC Communications Corporation ("DSC") filed its Original Petition and Application for Injunctive Relief on April 24, 1997. On April 28, 1997, this Court entered an Amended Temporary Restraining Order. Pursuant to the Amended Temporary Restraining Order, DSC's application for a temporary injunction will be heard this Friday, May 2 at 9:00 a.m.

II.

Brown did not receive the Petition and Citation in this matter until Tuesday, April 29, 1997, when he found them attached to the door of his home. As such, Brown has been given only three (3) days notice of the hearing on DSC's application for a temporary injunction. Counsel for Brown realize that the injunction hearing is technically not a trial setting. Because DSC seeks to obtain through the injunction virtually all of the relief it could possibly hope to receive at the conclusion

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BY [Signature] DEPUTY

of this dispute, however, the hearing may have the same effect as a trial on the merits. For example, DSC seeks through the injunction to force Brown to disclose to DSC the full details of his idea (which DSC calls the "Solution"), relief to which DSC is entitled only in the event the Court determines that Brown's idea rightfully belongs to DSC. DSC also seeks through the injunction to prevent Brown from further developing or refining his idea. In short, the relief requested by DSC through the injunction will render the resolution of the underlying legal and factual issues moot by awarding DSC all of the relief it seeks in its Petition. With three days notice to Brown, DSC seeks not to preserve the status quo, but rather to resolve this entire case and achieve full and final relief at the injunction hearing. Given the broad sweep of the injunctive relief sought by DSC, if the Court grants such relief, the injunction hearing will have the same effect as a trial on the merits. For this reason, Brown feels compelled to file this Objection so that any error may be preserved for appellate review. *See, e.g., State Farm Fire & Casualty Co. v. Price*, 845 S.W.2d 427, 431-32 (Tex. App.--Amarillo 1992, writ dismiss'd)(party failed to preserve error for appellate review "[b]y failing to timely and specifically object to the first setting").

III.

Given the relief sought by DSC, the injunction hearing amounts to a trial on the merits in violation of Rule 237 of the Texas Rules of Civil Procedure. That Rule holds that a Defendant's answer day is the day set forth in the citation issued to him. In this case, Brown's answer day is May 26, 1997. By ruling on the injunction on May 2, 1997, this Court would be in violation of Rule 237. *See, e.g., Alcoholic Beverage Commission v. Wilson*, 573 S.W.2d 832, 835 (Tex. App.--Beaumont

1978, writ ref'd n.r.e.)("Any judgment rendered before the time at which a defendant is commanded by the citation to appear and answer is erroneous and must be set aside").

IV.

Given the relief sought by DSC, the injunction hearing also amounts to a trial on the merits in violation of Rule 245 of the Texas Rules of Civil Procedure. That Rule states that contested cases may be set for trial "with reasonable notice of not less than forty-five days to the parties . . ." Tex. R. Civ. P. 245; *see also Arkla v. Harris*, 846 S.W.2d 623, 628 (Tex. App.--Houston [14th Dist.] 1993, orig. proceeding). Because Brown received notice of the injunction hearing on April 29, 1997, only three (3) days before the hearing, the hearing violates the 45-day notice requirement of Rule 245.

V.

As set forth above, among the relief sought by DSC through the injunction is a requirement that Brown disclose the full details of his idea to DSC. Such a requirement would essentially deny Brown the opportunity to contest DSC's claims during a jury trial on the merits by altering -- not preserving -- the status quo so as to provide DSC with all the relief it could possibly achieve after trial. Moreover, requiring full disclosure would supply DSC relief it could only achieve if it demonstrated that the idea rightfully belongs to DSC and not Brown, the ultimate issue in this case. This issue, however, should be decided after a jury trial on the merits, not during an injunction hearing. Given the broad relief sought by DSC through the injunction, the injunction hearing will effectively deny Brown his constitutional and statutory right to a trial by jury. Rather than deciding

dispositive issues during the injunction hearing, this Court should leave such issues to the jury which will eventually hear this case so that Brown is not effectively denied his right to a jury trial.

VI.

This Objection is filed not for purposes of delay, but so that justice may be served.

WHEREFORE, PREMISES CONSIDERED, Defendant Evan Brown respectfully files this Objection and requests that the Court pass the current setting of the hearing on DSC's application for a temporary injunction as requested in Defendant's Motion for Continuance filed concurrently herewith.

Respectfully submitted,



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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon the attorneys of record of all parties to the above cause in accordance with Rule 21a, Texas Rules of Civil Procedure, on this 15th day of May, 1997.

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