

CAUSE NO. 199 596 97

DSC COMMUNICATIONS CORPORATION,

Plaintiff,

v.

EVAN BROWN,

Defendant.

§
§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT OF

COLLIN COUNTY, TEXAS

199TH JUDICIAL DISTRICT

RESPONSE IN OPPOSITION TO MOTION FOR DISQUALIFICATION AND MOTION FOR SANCTIONS

TO THE HONORABLE JUDGE OF SAID COURT:

DSC Communications Corporation ("DSC") files this its Response in Opposition to Motion for Disqualification and Motion for Sanctions, and would respectfully show the following:

I.

Introductory Statement

Brown's Motion for Disqualification is an unprecedented and outrageous act by a desperate man. Since the instant in which Brown and his attorneys became involved in this case, they have **known** that Judge Roach was a stockholder in DSC. Not only did DSC provide written notice of this fact to Brown, Judge Roach personally asked whether Brown had any objection to him sitting on this case. In a clear and unmistakable response, counsel for Brown responded "**we have no objections to the Court hearing the case anyway.**"

Now, after losing the Temporary Injunction hearing, after having his Motion to Fix Amount of Supersedeas Bond and Suspend Temporary Injunction Pending Appeal denied by the Trial Court,

after having his Motion for Stay of Temporary Injunction Order denied by the Court of Appeals, Brown has the audacity to object to Judge Roach hearing this case.

Brown's dilatory objection to Judge Roach is in bad faith and is offensive to all notions of fair play. Having lost the temporary injunction hearing, he now seeks to disqualify the judge before whom he lost. Such bad faith conduct by Brown and his attorney is sanctionable.

II.

Background Facts

1. On April 28, 1997, DSC presented its application for a Temporary Restraining Order against Mr. Evan Brown ("Brown"). Following DSC's presentation, Judge Roach entered the Amended Temporary Restraining Order in this case. During this hearing, Judge Roach advised DSC that he owned stock in DSC, and instructed DSC to advise Brown of this fact as soon as an attorney appeared in this case.

2. Thereafter, at approximately 4:45 p.m. on Tuesday, April 27, 1997, the undersigned counsel for DSC received a copy of Brown's Motion for Protective Order, which Brown set for hearing on the following day. In response to the receipt of this Motion, the undersigned counsel for DSC sent a letter to counsel for Brown advising Brown that "Judge Roach is a stockholder of DSC Communications Corporation." A true and correct copy of this letter, as well as the confirmation sheet evidencing transmittal is attached to the Affidavit of Eric W. Pinker as Exhibit "A."

3. Thereafter, on April 30, 1997, Brown voluntarily presented his Motion for Protective Order to the Court. In so presenting this Motion to the Court, Brown voluntarily accepted the jurisdiction of the Court.

4. At the conclusion of this April 30, 1997 hearing, the Court specifically asked the undersigned attorneys whether they had notified Brown's counsel, and then specifically asked counsel for Brown whether Brown objected to Judge Roach hearing the case:

THE COURT: Did you disclose to the other side what I instructed you to disclose?

MR. LYNN: We did.

THE COURT: Okay. Okay.

MR. LYNN: In writing by fax last night.

MR. DRAKE: It was not disclosed to the defendant as a court order. It was after close of business yesterday sent by fax to my office, after they'd already received the protective order, your Honor. **But we have no objections to the Court hearing the case anyway.**

THE COURT: Okay. I just want to be sure that we clearly understand here. It's not like it's a big deal to me, but it might be to somebody.

MR. DRAKE: Well, we would ask the Court that if the Court is the majority shareholder of DSC, that the Court take itself out.

THE COURT: Not even close.

MR. DRAKE: Okay.

Pinker Aff., Exhibit "B" (April 30, 1997 Statement of Facts, pp. 26:18 - 27:11) (emphasis added).

5. Thereafter, on May 2, 1997, the Court held a hearing on DSC's Application for a Temporary Injunction. Mr. Brown appeared in person and through counsel. Brown fully participated in the hearing, calling and examining witnesses, introducing and objecting to the introduction of evidence, and making arguments to the Court. At the conclusion of the hearing, the Court orally entered a temporary injunction in favor of DSC.

6. Thereafter, on May 13, 1997, the Court entered its written Temporary Injunction Order. Brown promptly filed a Motion to Fix Amount of Supersedeas Bond and Suspend Temporary Injunction Pending Appeal, which the Court denied on May 13, 1997.

7. Following the entry of the written Temporary Injunction Order, Brown filed a Motion for Protective Order, in connection with a dispute concerning the interpretation of the Order. Brown presented this Motion to the Court on May 15, 1997, and the Court granted the relief sought in the Motion.

8. Finally, on May 16, 1997, Brown filed his Motion for Disqualification, seeking to disqualify Judge Roach on the grounds that he owned stock in DSC -- a fact Brown knew about, accepted, and agreed to several weeks earlier.

9. At no time prior to May 16, 1997 did Brown make any objection to Judge Roach hearing the case. Brown has never filed a Motion to Recuse Judge Roach

III.

Discussion

Brown's dilatory objection to Judge Roach hearing this case on the grounds that he owns stock in DSC, particularly in view of Brown's long-standing knowledge of this fact and his affirmative consent to Judge Roach's involvement in this case, is meritless for at least two independent reasons.

A. Brown has Waived any Objection to Judge Roach's Involvement in this Case.

1. A "Financial Interest" is a Ground for Recusal, not Disqualification

The Texas Constitution provides that "No judge shall sit in any case wherein he may be interested, or where either of the parties may be connected with him, either by affinity or

consanguinity, within such degree as may be prescribed by law, or when he shall have been counsel in the case.” Tex. Const. art. V, § 11. While this general provision is found in the Constitution, its application and interpretation is left up to the courts and legislature.

In 1941, after the Texas Legislature gave the Supreme Court rule-making power in civil actions, the Supreme Court adopted the Texas Rules of Civil Procedure. *See* Govt. Code § 22.004. In adopting these rules, and in specifically adopting rule 18b in 1987, the Supreme Court interpreted and refined the term “interest.” Specifically, Rule 18b provides as follows:

(1) Disqualification. Judges shall disqualify themselves in all proceedings in which:

(b) they know that, individually or as a fiduciary, they have an *interest in the subject matter* of the controversy;

* * *

(2) Recusal. A judge shall recuse himself in any proceeding in which:

(e) he knows that he, individually or as a fiduciary, or his spouse or a minor child in his household, has a *financial interest* in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding.

Texas Rule of Civil Procedure 18b (emphasis added). By so adopting Rule 18b, the Supreme Court made a clear distinction between a more substantial “interest in the subject matter” and a “financial interest.” Indeed, the Supreme Court went on to define “financial interest” to mean “ownership of a legal or equitable interest, however small. . . .” *Id.*, Rule 18b (4)(d). Accordingly, stock ownership

is a “financial interest” as defined by Rule 18b (4)(d), and as such is grounds for recusal rather than disqualification.^{1/}

Consistent with this distinction, a host of courts have recognized that a “financial interest” alone does not constitute a ground for disqualification. *See Merendino v. Burrell*, 923 S.W.2d 258 (Tex. App. -- Beaumont 1996, writ denied) (counsel leasing office space from a trust set up for the benefit of the trial judge’s children, and for which the judge’s brother was trustee, was a ground for recusal, not disqualification); *Rocha v. Ahmad*, 662 S.W.2d 77 (Tex. App. -- San Antonio 183, no writ) (campaign contributions to a trial judge does not constitute a disqualifying interest); *Hidalgo County Water Improve. Dist. No. 2 v. Blalock*, 301 S.W.2d 593 (Tex. 1957) (sharing a pecuniary interest with the public at large was not a ground for disqualification).

2. Brown has Waived his Recusal Objection

As a ground for recusal rather than disqualification, it is well-settled that a party can **waive** the objection. *See Texas Rule of Civil Procedure 18b (5)* (“The parties to a proceeding may waive any ground for recusal after it is fully disclosed on the record.”). *See also Buchholts Independent School Dist. v. Glaser*, 632 S.W.2d 146, 148 (Tex. 1982) (finding that the moving party had waived their objection to the trial judge). Never has a waiver been more clear than in this case. The following exchange took place on the record on the first day Brown appeared in this case:

THE COURT: Did you disclose to the other side what I instructed you to disclose?

MR. LYNN: We did.

^{1/} DSC does not argue that the Rules conflict with or override the Constitution. Rather, DSC acknowledges the well-accepted rule that statutes and rules can more clearly define the rights and obligations set forth in broad terms by the Constitution. *See Few v. Charter Oak Fire Insurance*, 463 S.W.2d 424 (Tex. 1971) (leaving undisturbed the Constitutional definition of community property, while more clearly defining the management rights of each spouse).

THE COURT: Okay. Okay.

MR. LYNN: In writing by fax last night.

MR. DRAKE: It was not disclosed to the defendant as a court order. It was after close of business yesterday sent by fax to my office, after they'd already received the protective order, your Honor. **But we have no objections to the Court hearing the case anyway.**

Pinker Aff., Exhibit "B" (April 30, 1997 Statement of Facts, pp. 26:18 - 27:11) (emphasis added). *See also id.*, Exhibit "A" (DSC's April 29, 1997 facsimile to Brown's attorney, along with the facsimile confirmation page). Indeed, this exchange was *followed* by a series of motions filed by Brown, all of which necessarily invoked the jurisdiction and authority of Judge Roach. *See, e.g.*, Motion for Protective Order (filed April 29, 1997), Motion for Continuance (filed May 1, 1997), Motion to Fix Amount of Supersedeas Bond and Suspend Temporary injunction Pending Appeal (filed May 9, 1997), and Motion for Protective Order (Filed May 15, 1997). The filing of these motions constitute a further waiver by Brown of any objection to Judge Roach. Given this clear and unequivocal waiver by Brown, his effort to recuse Judge Roach, improperly labeled a disqualification, should be denied.^{2/}

While Brown cites several cases in his Motion, only one case stands for the proposition that stock ownership *alone* is a ground for disqualification. *See Pahl v Whitt*, 304 S.W.2d 250 (Tex. App. - El Paso 1957, no writ). DSC submits that the holding in *Pahl* has been overturned by the Supreme Court's adoption of Rule 18(b), which imposes a clear distinction between a more substantial interest that support disqualification, and a mere "financial interest" that will only support recusal. *Compare* Rule 18(b)(1) to Rule 18(b)(2).

^{2/} A judge's refusal to recuse is reviewed on appeal by an abuse of discretion standard. *See J-IV Investments v. David Lynn Machine, Inc.*, 784 S.W.2d 106, 107 (Tex. App. - Dallas 1990, no writ); *Petitt v. Laware*, 715 S.W.2d 688, 692 (Tex. App. -- Houston [1st Dist.] 1986, writ ref'd n.r.e.).

Moreover, while *Pahl* might have been good law (and good policy) forty years ago, rule 18b's implementation of the Constitutional provision concerning disqualification is imminently more viable and well thought through. Given the prolific surge in mutual fund ownership over the past fifteen (15) years, and in stock ownership in general, it is hard to imagine that many judges do not have an ownership interest in many (if not all) large companies. To disqualify all such judges due to ownership of a mutual fund would literally incapacitate the judicial system. As the Supreme Court has recognized in ruling on motions to disqualify, "[t]he Constitution does not contemplate that judicial machinery shall stop. If this is threatened the doctrine of necessity will permit the judge to serve." *Cameron v. Greenhill*, 582 S.W.2d 775, 776 (Tex. 1979)

The only other two cases cited by Brown are both factually distinguishable. In *Gulf Maritime Warehouse Co. v. Towers*, 858 S.W. 2d 556 (Tex. App. - Beaumont 1993), the trial judge was disqualified not because of stock ownership, but because his wife (1) owned stock in the Defendant company, (2) was employed in management at the Defendant company, and (3) she received a salary and other benefits from the Defendant company. The combination of all of these factors led to disqualification, not the mere ownership of stock, as suggested by Brown. Similarly, in *Templeton v. Gidings*, 12 S.W.2d 851 (Tex. 1889), the trial judge was disqualified from hearing a case involving a suit on a note, when the note was payable to a firm in which the judge was a member. The case did not involve stock ownership at all.

B. Brown is Judicially Estopped from Objecting to Judge Roach.

It is fundamental that "[a] party to a judicial proceeding is estopped to take a position in conflict with a stance in a prior judicial proceeding if the position prejudices the adverse party and the parties and issues are the same." *Eggers v. Hinckley*, 683 S.W.2d 473, 477-78 (Tex. App. --

Dallas 1984, no writ) (citing *Smith v. Chipley*, 16 S.W.2d 269, 276 (1929)). “Under the doctrine of judicial estoppel, as distinguished from equitable estoppel by inconsistency, a party is estopped merely by the fact of having alleged or admitted in his pleading in a former proceeding under oath the contrary to the assertion sought to be made.” *Washburn v. Associated Indemnity Corp.*, 721 S.W.2d 928, 932 (Tex. App. -- Dallas 1986, writ ref’d n.r.e) (citing *Long v. Knox*, 291 S.W.2d 292 (Tex. 1956)). Moreover, this doctrine of judicial estoppel is even stronger in cases such as this one, where “the prior inconsistent judicial position was taken in the same cause as distinguished from being a sworn position in some other prior proceeding.” *Washburn*, 721 S.W.2d at 932.

In this case, in response to the disclosure that Judge Roach owned stock in DSC, Brown unequivocally represented to the Court and to DSC that “**we have no objections to the Court hearing the case anyway.**” This representation was made in open court, on the record, and by an officer of the court -- Brown’s attorney, Mr. Drake. Brown is now bound by that judicial representation.

Moreover, while it is clear that reliance and injury are not elements of judicial estoppel, *see Washburn*, 721 S.W.2d at 932, DSC’s reliance on and subsequent injury from Brown’s representation could not be greater. Relying on Brown’s judicial representation that he had no objection to Judge Roach, DSC invested its time and resources to prosecute a temporary injunction proceeding in this court. Indeed, time was perhaps the most critical investment, as recognized by the Court in holding that DSC would sustain irreparable harm absent the entry of a temporary injunction. Now three weeks after representing that he had no objection to Judge Roach, and after DSC established its right to a temporary injunction requiring the immediate disclosure of the solution in order to prevent irreparable harm, Brown seeks to change his mind and start over again.

This is precisely the type of bad faith change in position that is made impermissible under the doctrine of judicial estoppel.

C. Request for Sanctions

Standing in open court on April 30, 1997, Brown responded to Judge Roach's disclosure of his stock ownership by stating "we have no objections to the Court hearing the case anyway." Now, after losing both the temporary injunction hearing and a host of efforts to stay enforcement of that Order, Brown wants to throw a trump card -- arguing that the Court never had power to hear this case in the first instance, notwithstanding his agreement and multiple invocations of the Court's jurisdiction. Such conduct is in bad faith, and is clearly sought in yet another attempt to delay implementation of the Temporary Injunction Order, and the disclosure required by that Order.

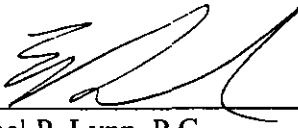
Pursuant to Texas Rule of Civil Procedure 215, DSC requests that the Court enter an order sanctioning Brown and his attorneys in the amount of \$10,000 for the filing of this bad faith and harassing Motion for Disqualification.

WHEREFORE, PREMISES CONSIDERED, DSC respectfully requests that the Court deny Brown's Motion for Disqualification and enter an order sanctioning Brown and his attorneys in the amount of \$10,000.

Respectfully submitted,

LYNN STODGHILL MELSHEIMER & TILLOTSON, L.L.P.

By: _____


Michael P. Lynn, P.C.
Texas Bar No. 12738500
Eric W. Pinker
Texas Bar No. 16016550
John T. Cox III
Georgia Bar No. 192530

750 North St. Paul Street
Suite 1400
Dallas, Texas 75201
(214) 981-3800 - Telephone
(214) 981-3839 - Telecopy

**ATTORNEYS FOR PLAINTIFF
DSC COMMUNICATIONS CORPORATION**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served, via hand delivery, upon counsel for Defendant Evan Brown, as identified below, on this the 19th day of May, 1997:

Via Hand Delivery

Steven E. Aldous, Esq.
Eric D. Pearson, Esq.
Sayles & Lidji, P.C.
1201 Elm Street, Suite 4400
Dallas, Texas 75270

Via Hand Delivery

Dale Drake, Esq.
110 East Davis, Suite 200
Post Office Box 1662
McKinney, Texas 75070-1662



Eric W. Pinker

30 A

LYNN STODGHILL MELSHEIMER & TILLOTSON, L.L.P.
ATTORNEYS AND COUNSELORS

DIRECT DIAL NUMBER:
(214) 981-3837

750 NORTH ST. PAUL STREET
SUITE 1400
DALLAS, TEXAS 75201
(214) 981-3800

OF COUNSEL
ROBERT E. GOODFRIEND, P.C.

ERIC W. PINKER

TELECOPIER: (214) 981-3839

April 29, 1997

By Telecopy - 972-548-8046

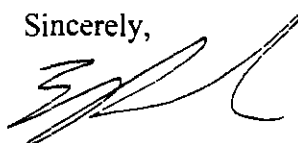
Dale Drake, Esq.
110 East Davis, Suite 200
P.O. Box 1662
McKinney, Texas 75070-1662

Re: Cause No. 199-596-97; *DSC Communications Corporation v. Evan Brown*

Dear Mr. Drake:

I have just tried to call you at the two phone numbers listed on your letterhead, but there was no answer to either phone call. I am writing in order to advise you, pursuant to the Court's request, that DSC advise Mr. Brown that Judge Roach is a stockholder of DSC Communications Corporation.

Sincerely,



Eric W. Pinker

EWP/bg

* * * COMMUNICATION RESULT REPORT (APR.29.1997 5:39PM) * * *

FILE MODE	OPTION	ADDRESS (GROUP)	TTI LSMT RESULT	PAGE
727 MEMORY TX		19725488046	OK	P. 2/2

REASON FOR ERROR

E-1) HANG UP OR LINE FAIL
E-3) NO ANSWER

E-2) BUSY
E-4) NO FACSIMILE CONNECTION

**LYNN
STODGHILL
MELSHEIMER &
TILLOTSON
L.L.P.**

**ATTORNEYS AND COUNSELORS
750 N. ST. PAUL STREET STREET, SUITE 1400
DALLAS, TEXAS 75201
TELEPHONE (214) 981-3800
TELECOPY (214) 981-3839**

TELECOPIER TRANSMISSION SHEET

DATE: April 29, 1997

TO: Dale Drake, Esq.

TELECOPY NO.: 972-548-8046

FROM: Eric W. Pinker

CAUSE NO. 199-00596-97

DSC COMMUNICATIONS CORPORATION (IN THE DISTRICT COURT
VERSUS (COLLIN COUNTY, T E X A S
EVAN BROWN (199TH JUDICIAL DISTRICT

 STATEMENT OF FACTS

A P P E A R A N C E S:

MR. MICHAEL LYNN
 MR. ERIC W. PINKER
 ATTORNEYS AT LAW
 Lynn Stodghill Melsheimer & Tillotson, L.L.P.
 750 N. St. Paul St., Suite 1400
 Dallas, Texas 75201
 214-981-3837

ATTORNEYS FOR PLAINTIFF

MR. DALE DRAKE
 ATTORNEY AT LAW
 McKinney, Texas

ATTORNEY FOR DEFENDANT

ALSO PRESENT:
 MR. JOHN STOOKESBERRY
 MR. WAYNE JONES

BE IT REMEMBERED that on the 30th day of April, 1997, the above styled and numbered cause came on for hearing before said HONORABLE JOHN R. ROACH, Judge presiding, and the following proceedings were had; to wit:

COPY

1 this case pending the final hearing.

2 And I do believe and I agree that the Court can make the
3 appropriate orders to maintain the confidentiality. I'd go
4 much further than has been recommended, though. I wouldn't
5 allow DSC to make any use of the information whatsoever,
6 except to apply for a patent, and to have it evaluated for the
7 purposes of applying for a patent.

8 And I recognize that you could find out something and
9 reverse engineer it and all that sort of thing, and you
10 wouldn't allow that to happen or anything.

11 But the point is, if I determine that the evidence will
12 support the position that DSC owns this property, then I'm
13 going to order it to be disclosed, and I -- and then we can
14 fight out the rest of it with a jury later, if you want to.

15 That's what we're going to do.

16 Now, let's get back to another point that's very
17 important.

18 Did you disclose to the other side what I instructed you
19 to disclose?

20 MR. LYNN: We did.

21 THE COURT: Okay. Okay.

22 MR. LYNN: In writing by fax last night.

23 MR. DRAKE: It was not disclosed to the
24 defendant as a court order. It was after close of business
25 yesterday sent by fax to my office, after they'd already

1 received the protective order, your Honor.

2 But we have no objections to the Court hearing the case
3 anyway.

4 THE COURT: Okay. I just want to be sure that
5 we clearly understand here. It's not like it's a big deal to
6 me, but it might be to somebody.

7 MR. DRAKE: Well, we would ask the Court that if
8 the Court is the majority shareholder of DSC, that the Court
9 take itself out.

10 THE COURT: Not even close.

11 MR. DRAKE: Okay.

12 THE COURT: Not even close.

13 MR. DRAKE: Well, your Honor, for the pendency
14 between now and Friday, if the amended temporary order at this
15 point compels Mr. Brown to disclose that information, can we
16 ask the Court to make a ruling at this point in open court
17 that states --

18 THE COURT: Right. I'm not going to require him
19 to disclose it, in spite of the Court's amended order, until
20 after the hearing on Friday, if at all. And I will give --
21 I'll give -- I want to litigate, I want the record to be
22 plain, and I want Mr. Brown to have the opportunity to
23 demonstrate, if he can, or DSC, that way, who owns this
24 property.

25 MR. LYNN: May I ask the Court, we have a -- we

CAUSE NO. 199 596 97

DSC COMMUNICATIONS CORPORATION

Plaintiff,

v.

EVAN BROWN,

Defendant.

§
§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT OF

COLLIN COUNTY, TEXAS

199th JUDICIAL DISTRICT

AFFIDAVIT OF ERIC W. PINKER

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

BEFORE ME, the undersigned Notary Public, on this day personally appeared Eric W. Pinker, who being duly sworn, on his oath stated as follows:

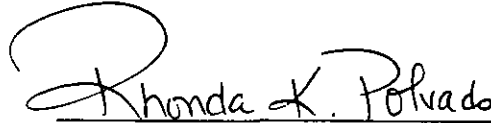
1. My name is Eric W. Pinker. I am over the age of 18 years, have never been convicted of a felony or a crime involving moral turpitude, and am competent to make this Affidavit. The matters and facts stated herein are within my personal knowledge and are true and correct.
2. I am an attorney duly licensed to practice law in the State of Texas. I am one of the attorneys of records for Plaintiff DSC Communications Corporation in this case.
3. Attached hereto as Exhibit "A" is a true and correct copy of an April 29, 1997 letter that I faxed to Dale Drake, counsel for Brown, along with the facsimile confirmation page. This letter was faxed on April 29, 1997, within one hour of receiving Brown's Motion for Protective Order by facsimile.
4. Attached hereto as Exhibit "B" is a true and correct copy an excerpt from the April 30, 1997 Statement of Facts in connection with the hearing on Brown's Motion for Protective Order.

FURTHER, AFFIANT SAYETH NOT.

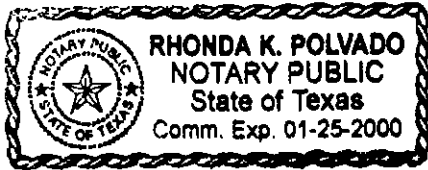


Eric W. Pinker, Affiant

SWORN TO AND SUBSCRIBED BEFORE ME by the said Eric W. Pinker on this 18th day of May, 1997.



Notary Public in and for the State of Texas



LYNN STODGHILL MELSHEIMER & TILLOTSON, L.L.P.
ATTORNEYS AND COUNSELORS

DIRECT DIAL NUMBER:
(214) 981-3837

750 NORTH ST. PAUL STREET
SUITE 1400
DALLAS, TEXAS 75201
(214) 981-3800

OF COUNSEL
ROBERT E. GOODFRIEND, P.C.
TELECOPIER: (214) 981-3839

ERIC W. PINKER

April 29, 1997

By Telecopy - 972-548-8046

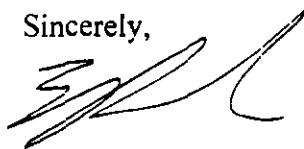
Dale Drake, Esq.
110 East Davis, Suite 200
P.O. Box 1662
McKinney, Texas 75070-1662

Re: Cause No. 199-596-97; *DSC Communications Corporation v. Evan Brown*

Dear Mr. Drake:

I have just tried to call you at the two phone numbers listed on your letterhead, but there was no answer to either phone call. I am writing in order to advise you, pursuant to the Court's request, that DSC advise Mr. Brown that Judge Roach is a stockholder of DSC Communications Corporation.

Sincerely,



Eric W. Pinker

EWP/bg

* * * COMMUNICATION RESULT REPORT (APR. 29. 1997 5:39PM) * * *

FILE MODE	OPTION	ADDRESS (GROUP)	TTI LSMT RESULT	PAGE
727 MEMORY TX		19725488046	OK	P. 2/2

REASON FOR ERROR

E-1) HANG UP OR LINE FAIL
E-3) NO ANSWER

E-2) BUSY
E-4) NO FACSIMILE CONNECTION

**LYNN
STODGHILL
MELSHEIMER &
TILLOTSON
L.L.P.**

**ATTORNEYS AND COUNSELORS
750 N. ST. PAUL STREET STREET, SUITE 1400
DALLAS, TEXAS 75201
TELEPHONE (214) 981-3800
TELECOPY (214) 981-3839**

TELECOPIER TRANSMISSION SHEET

DATE: April 29, 1997

TO: Dale Drake, Esq.

TELECOPY No.: 972-548-8046

FROM: Eric W. Pinker

CAUSE NO. 199-00596-97

DSC COMMUNICATIONS CORPORATION (IN THE DISTRICT COURT
VERSUS (COLLIN COUNTY, T E X A S
EVAN BROWN (199TH JUDICIAL DISTRICT

STATEMENT OF FACTS

A P P E A R A N C E S:

MR. MICHAEL LYNN
MR. ERIC W. PINKER
ATTORNEYS AT LAW
Lynn Stodghill Melsheimer & Tillotson, L.L.P.
750 N. St. Paul St., Suite 1400
Dallas, Texas 75201
214-981-3837

ATTORNEYS FOR PLAINTIFF

MR. DALE DRAKE
ATTORNEY AT LAW
McKinney, Texas

ATTORNEY FOR DEFENDANT

ALSO PRESENT:
MR. JOHN STOOKESBERRY
MR. WAYNE JONES

BE IT REMEMBERED that on the 30th day of April, 1997, the
above styled and numbered cause came on for hearing before
said HONORABLE JOHN R. ROACH, Judge presiding, and the
following proceedings were had; to wit:

COPY

1 this case pending the final hearing.

2 And I do believe and I agree that the Court can make the
3 appropriate orders to maintain the confidentiality. I'd go
4 much further than has been recommended, though. I wouldn't
5 allow DSC to make any use of the information whatsoever,
6 except to apply for a patent, and to have it evaluated for the
7 purposes of applying for a patent.

8 And I recognize that you could find out something and
9 reverse engineer it and all that sort of thing, and you
10 wouldn't allow that to happen or anything.

11 But the point is, if I determine that the evidence will
12 support the position that DSC owns this property, then I'm
13 going to order it to be disclosed, and I -- and then we can
14 fight out the rest of it with a jury later, if you want to.

15 That's what we're going to do.

16 Now, let's get back to another point that's very
17 important.

18 Did you disclose to the other side what I instructed you
19 to disclose?

20 MR. LYNN: We did.

21 THE COURT: Okay. Okay.

22 MR. LYNN: In writing by fax last night.

23 MR. DRAKE: It was not disclosed to the
24 defendant as a court order. It was after close of business
25 yesterday sent by fax to my office, after they'd already

1 received the protective order, your Honor.

2 But we have no objections to the Court hearing the case
3 anyway.

4 THE COURT: Okay. I just want to be sure that
5 we clearly understand here. It's not like it's a big deal to
6 me, but it might be to somebody.

7 MR. DRAKE: Well, we would ask the Court that if
8 the Court is the majority shareholder of DSC, that the Court
9 take itself out.

10 THE COURT: Not even close.

11 MR. DRAKE: Okay.

12 THE COURT: Not even close.

13 MR. DRAKE: Well, your Honor, for the pendency
14 between now and Friday, if the amended temporary order at this
15 point compels Mr. Brown to disclose that information, can we
16 ask the Court to make a ruling at this point in open court
17 that states --

18 THE COURT: Right. I'm not going to require him
19 to disclose it, in spite of the Court's amended order, until
20 after the hearing on Friday, if at all. And I will give --
21 I'll give -- I want to litigate, I want the record to be
22 plain, and I want Mr. Brown to have the opportunity to
23 demonstrate, if he can, or DSC, that way, who owns this
24 property.

25 MR. LYNN: May I ask the Court, we have a -- we

1 STATE OF TEXAS :

2 COUNTY OF COLLIN :

3 I, SHERI J. VECERA CSR/RPR, Official Court Reporter for
4 the 199th Judicial District Court in and for Collin County,
5 Texas, do hereby certify that the above and foregoing contains
6 a true and correct transcription of all the proceedings in the
7 foregoing styled and numbered cause, all of which occurred in
8 open court or in chambers and were reported by me.

9 I further certify that this transcription of the
10 proceedings truly and correctly reflects the exhibits, if any,
11 offered by the respective parties.

12 Witness my hand this the 30th day of April, 1997.

13

14


15

16

17

18

19


SHERI J. VECERA CSR NO. 3771
Official Court Reporter
199th Judicial District Court
Collin County, Texas

20 My CSR license expires: December 31, 1998
21 Business Address: 210 S. McDonald, Suite 434
McKinney, Texas 75069
22 Telephone Number: (214) 424-1460

23 TAXABLE COST: \$ 330.00 (EXPEDITED)
To be Paid By: Plaintiffs

24

25