

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 EVAN BROWN'S MOTION TO POSTPONE HEARING

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Defendant Evan Brown ("Brown") and files this Motion to Postpone Hearing, and would respectfully show the Court as follows:

I.

On July 23, 1997, Plaintiff DSC Communications Corporation ("DSC") filed DSC's Motion to Compel Interrogatory Responses and DSC's Motion for Protective Order and to Compel. These Motions were served on counsel for Brown by facsimile at approximately 6:08 p.m. on July 22, 1997, and were received by counsel for Brown on the morning of July 23, 1997.¹ The Motions have been set by counsel for DSC for hearing by this Court at 9:00 a.m. on Friday, July 25, 1997. For the reasons set forth below, Brown respectfully requests that the hearing on the Motions be postponed until a later date.

¹Regardless of when they were received, all documents served by telephonic document transfer after 5:00 p.m. local time are deemed served on the following day according to Texas Rule of Civil Procedure 21a. Therefore, service of the Motions on counsel for Brown is deemed to have occurred on July 23, 1997.

II.

On the afternoon of July 22, 1997, Eric Pinker, counsel for DSC, called the undersigned to discuss the Motions that DSC planned on filing. During the conversation, Pinker stated that he wished to have the Motions heard this week. The undersigned expressed that Richard Sayles, lead counsel in this matter, is out of town for the entire week and that Mr. Sayles would like to participate in the hearing on the Motions given their importance to the outcome of this case. The undersigned also informed Mr. Pinker that he was very busy this week on other matters and would be out the entire day on Thursday participating in a mediation. Finally, although not discussed with Mr. Pinker during the telephone conversation, counsel for Brown is unable to adequately prepare for this Friday's hearing because his client, from whom he needs to obtain an affidavit in support of a burdensomeness objection to one of the interrogatories at issue, is out of town for the remainder of the week. For the foregoing reasons, the undersigned requested that the hearing on DSC's Motions not be held until next week and informed Mr. Pinker that counsel for Brown would insist on their right to three (3) days notice of the hearing as provided by Texas Rule of Civil Procedure 21.

III.

Notwithstanding the foregoing, the undersigned received a facsimile from Mr. Pinker this morning which indicated that the hearing on the Motions had been set for 9:00 a.m. this Friday. Mr. Pinker's insistence on scheduling the hearing on DSC's Motions on less than three (3) days notice and on a date which is not convenient for Evan Brown or his counsel violates Texas Rule of Civil Procedure 21, the Texas Lawyer's Creed, and basic principles of common courtesy. Finally, with respect to DSC's Motion for Protective Order and to Compel, counsel for DSC has failed to

adequately confer with counsel for Brown prior to filing such Motion. During the telephone conversation set forth above which occurred on July 22, 1997, counsel for DSC stated that DSC was filing a motion to compel a response to interrogatory number 7 and a motion seeking to prevent Brown from taking the depositions of DSC representatives until Brown has made disclosure of his idea. At no time during the telephone conversation did counsel for DSC mention that DSC was also filing a motion to compel a more complete response to interrogatory number 2. Because counsel have not yet conferred regarding the portion of DSC's Motion for Protective Order and to Compel which seeks to compel a response to interrogatory number 2, it would be premature for the Court to rule on that issue.

IV.

Following the receipt of the letter from Mr. Pinker notifying counsel for Brown of the hearing on DSC's motions, the undersigned sent a letter attached hereto as "Exhibit A" to counsel for DSC in an attempt to resolve the matter without further Court intervention. Counsel for Brown also called counsel for DSC this afternoon, but he was not in his office. As of the filing of this Motion, counsel for DSC has not called counsel for Brown to discuss this matter further. For this reason, counsel for Brown presents this motion to the Court for its consideration.

WHEREFORE, PREMISES CONSIDERED, Defendant Evan Brown respectfully requests that this Court grant his Motion to Postpone Hearing and postpone the hearing on DSC's Motion to Compel Interrogatory Responses and DSC's Motion for Protective Order and to Compel until a date which is at least three (3) days from the date of notice of the hearing and which is convenient for all counsel involved.

Respectfully submitted,



RICHARD A. SAYLES

State Bar No. 17697500

ERIC D. PEARSON

State Bar No. 15690472

SAYLES & LIDJI, P.C.

A Professional Corporation

4400 Renaissance Tower

1201 Elm Street

Dallas, Texas 75270

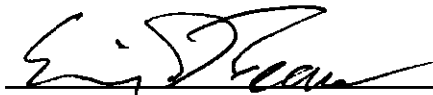
(214) 939-8700

(214) 939-8787 (fax)

Attorneys for Defendant

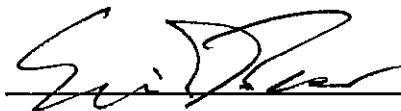
CERTIFICATE OF CONFERENCE

On July 23, 1997, counsel for Brown wrote the letter attached hereto as "Exhibit A" to counsel for DSC and placed a telephone call to counsel for DSC in an attempt to resolve this matter. Having not heard back from counsel for DSC, counsel for Brown hereby submits this Motion to the Court for its consideration.



CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been served upon all counsel of record on this 23rd day of July, 1997, pursuant to rule 21a of the Texas Rules of Civil Procedure.



SAYLES & LIDJI

July 23, 1997

Eric D. Pearson
Direct Line 939.8708
epearson@saylid.com

VIA FAX 214/981-3839

Eric W. Pinker, Esq.
Lynn Stodghill Melsheimer & Tillotson, L.L.P.
750 N. St. Paul Street
Suite 1400
Dallas, Texas 75201

Re: Cause No. 199-596-97; *DSC Communications Corporation v. Evan Brown*, pending in the
199th Judicial District Court of Collin County

Dear Eric:

As you know, yesterday afternoon we discussed the fact that DSC was going to be filing a Motion to Compel and Motion for Protective Order. During our conversation, you stated that you wished to have the motions heard this week. I expressed to you that Dick Sayles, who has been designated as lead counsel in this matter and who would like to participate in the hearing on the motions, is out of town this entire week. I also informed you that I was quite busy this week and that I had a mediation that would tie me up all day Thursday. As such, I requested that the hearing not be held until next week and informed you that we would insist on our right to three (3) days notice under Texas Rule of Civil Procedure 21. Notwithstanding the foregoing, I received this morning a fax which you sent yesterday evening informing me that the hearing on the two motions has been set for 9:00 a.m. this Friday, July 25, 1997.

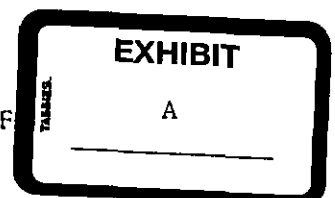
Your insistence on scheduling the hearing on DSC's motions on less than three (3) days notice and on a date which is not convenient for Evan Brown and his counsel violates Texas Rule of Civil Procedure 21, the Texas Lawyer's Creed, and basic principles of common courtesy. I believe that I was quite clear during our conversation that neither Dick Sayles nor I could participate in the hearing this Friday. I believe I was equally clear that we would insist on our right to three (3) days notice of a hearing on DSC's motions as provided by Rule 21. Given the foregoing, I was quite surprised to receive your fax indicating that you had nonetheless set the hearing for this Friday.

Finally, the certificate of conference on DSC's Motion for Protective Order and to Compel incorrectly states that you attempted to resolve the subject matter of this motion with counsel for Defendant. In fact, during our telephone conversation, you stated only that DSC was filing a motion to compel a response to interrogatory number 7 and a motion for protective order seeking to prevent Brown from taking depositions of representatives of DSC until he has made disclosure of his idea. At no time did you mention that DSC was also filing a motion to compel a more complete response to interrogatory number 2. Because we have not yet conferred regarding that portion of DSC's Motion for Protective Order and to Compel, it would be premature for the Court to rule on that issue.

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4400 Renaissance Tower 1201 Elm Street Dallas, Texas 75270 Telephone 214.939.8700 F

Attorneys - A Professional Corporation



Eric W. Pinker
July 23, 1997
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Given the foregoing, I would respectfully request that you reschedule the hearing on DSC's Motion for Protective Order and to Compel and DSC's Motion to Compel Interrogatory Responses. While history gives me no reason to be optimistic, I would hope that we could resolve this matter among ourselves without the necessity of involving Judge Henderson. If you insist on going forward with the hearing scheduled for this Friday, however, I will insist on my right to three (3) days notice of the hearing as provided by Rule 21. In order to avoid wasting our time and the Court's time, it would seem to make more sense to simply reschedule the hearing at a time which is convenient for all counsel involved. If Judge Henderson is not available next week, I would suggest that we try to have the motions heard immediately following the hearing on Evan Brown's Motion for Summary Judgment set for August 5, 1997.

Please let me know as soon as possible whether you will reschedule the hearing as requested herein.

Sincerely,


Eric D. Pearson

EDP/ih

cc: Judge Henderson (via fax)

SUGGESTED COVER SHEET FOR FAX MAILING
COLLIN COUNTY

Date: 7-23-97

972-548-4697

TO: Hannah Kunkle, District Clerk, Fax # (214) ~~939-8787~~

FROM: Eric D. Pearson, Sayles + Lidji, P.C.

Subscriber Non-Subscriber (\$5.00 per case fax fee added to court cost)

Fax # (214) 939-8787 Phone # (214) 939-8708

NUMBER OF PAGES TRANSMITTED INCLUDING THIS COVER SHEET: _____

RE: DSC Communications Corp. vs. Evan Brown

NEW SUIT or CAUSE NO. 199-59697 (if existing case)

PLEASE FILE THE DOCUMENTS WHICH FOLLOW ...AND...

Issue _____ citation(s) and deliver to _____

Issue _____ and deliver to _____

Other Forward to Judge Henderson, who is sitting for Judge Rouch in this case.

Explicit instructions transmitted on separate sheet.

IF TRANSMISSION IS INCOMPLETE OR INSTRUCTIONS NOT CLEAR, PLEASE CALL:

_____ at phone number above.

CHARGE AUTHORIZATION

Please charge the total amount due for this transmission to:

ESCROW ACCOUNT # - 17697500

Signature 