

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

DR. NIKOLAOS)
TSIRIKOS-KARAPANOS, *et al.*)
)
Plaintiffs,)
)
vs.)
)
LIFEHEALTH SCIENCE, LLC, *et al.*)
)
Defendants.)

CASE NO. CV 14 836244
JUDGE JOHN P. O'DONNELL

JUDGMENT ENTRY DECIDING
LIFEHEALTH SCIENCE AND
MOYAR'S MOTIONS FOR
DISCOVERY SANCTIONS

LIFEHEALTH SCIENCE, LLC)
)
Plaintiff,)
)
vs.)
)
DR. NIKOLAOS)
TSIRIKOS-KARAPANOS, *et al.*)
)
Defendants.)

CASE NO. CV 14 836269
JUDGE JOHN P. O'DONNELL

John P. O'Donnell, J.:

These lawsuits are about the disputed ownership of the formula for a hydrolyzed zeolite solution sold to consumers as a health supplement known as a nutraceutical. A zeolite is a mineral adsorbent. When ingested it attaches to toxins in the gastrointestinal system and sweeps them from the body. Most commercial zeolites cleanse toxins only from the GI system, but the solution at issue here is water soluble, allowing it to detoxify cells throughout the body.

According to Dr. Nikolaos Tsirikos-Karapanos, he independently invented and owns the formula for the water soluble zeolite and has applied to patent it. According to LifeHealth Science, LLC, it owns the formula and Tsirikos-Karapanos stole it from LifeHealth. The competing claims include Tsirikos-Karapanos's causes of action, on his own behalf and for his company Metron Nutraceuticals, LLC, for a declaratory judgment that LifeHealth has no right to his invention and for defamation and tortious interference with business relations as a result of LifeHealth's spreading the word in the nutraceutical industry that Tsirikos-Karapanos was marketing a stolen formula. For its part, LifeHealth has sued Tsirikos-Karapanos for misappropriation of trade secrets and related claims as well as a declaratory judgment that it owns the formula.

The two lawsuits have not been consolidated under Rule 42 of the Ohio Rules of Civil Procedure but have been managed together for practical purposes and will be joined for trial. A third related lawsuit – *Metron Nutraceuticals, LLC v. Jeunesse Global, LLC*, case number CV 15 846184 – involves claims arising from Metron's agreement to distribute the product through Jeunesse, a multilevel marketer.

LifeHealth's motions for discovery sanctions

LifeHealth – with Bert Moyer, a defendant in case number CV 14 836244 and one of LifeHealth's owners – has moved in both cases to require Tsirikos-Karapanos and Metron¹ to show cause why they should not be held in contempt for violating previous orders compelling discovery, and in case number CV 14 836244 they have moved to dismiss the complaint against

¹ Since LifeHealth, Tsirikos-Karapanos and Metron are each plaintiffs in one case and defendants in another, I will refrain in this judgment from referring to them as either plaintiffs or defendants. Instead I will name them.

them as a Civil Rule 37 discovery sanction. LifeHealth and Moyar also seek an award of their expenses in connection with the motions.

A hearing was held on the motions and this decision follows.

Discovery history

In CV 14 836269 LifeHealth served written interrogatories and requests for production of documents on Tsirikos-Karapanos and Metron in November 2014 and followed with a second set of written discovery in May 2015. Ultimately, those requests were the subject of LifeHealth's motions to compel discovery on December 16, 2014, January 20, 2015, and August 14, 2015. LifeHealth served requests for production of documents on Tsirikos-Karapanos and Metron in CV 14 836244 on February 11, 2015. Those requests resulted in LifeHealth's motions to compel discovery filed April 8 and August 14, 2015.

All five motions to compel in both cases were granted. In summary:

- 1) On April 23, 2015, Tsirikos-Karapanos and Metron were ordered to respond to the requests for production in CV 14 836244 within 21 days or a Civil Rule 37 sanction would be imposed;
- 2) On September 11, 2015, in CV 14 836244, Tsirikos-Karapanos was ordered to produce "documents related to damages for intentional infliction of emotional distress";
- 3) On September 11, 2015, in CV 14 836269, Tsirikos-Karapanos and Metron were ordered to produce, within 21 days: an Apple laptop bought by LifeHealth and used by Tsirikos-Karapanos; communications by Tsirikos-Karapanos and Metron with distributors, customers and suppliers of the zeolite solution; communications by

Tsirikos-Karapanos and Metron with lenders, licensees and other third parties they were doing business with;

- 4) On September 11, 2015, in CV 14 836269, Tsirikos-Karapanos and Metron were ordered to produce patent applications and related documents; and
- 5) On September 11, 2015, in CV 14 836269, the objections by Tsirikos-Karapanos and Metron to the May discovery requests were overruled and they were ordered to answer the interrogatories and produce responsive documents.

Tsirikos-Karapanos and Metron were also ordered to produce emails that had already been given to LifeHealth with attachments to the emails in order and not separate from the emails referring to them. Because the parties were unable to agree on the wording of a protective order, Tsirikos-Karapanos and Metron were permitted to produce the discovery under the terms of LifeHealth's proposed protective order, attached as Exhibit A to a January 1, 2015, filing in support of its motion to compel.

LifeHealth asserts that as of the time of filing the discovery sanction motions under consideration, Tsirikos-Karapanos and Metron had not complied with the orders to produce documents and answer interrogatories. For their part, Tsirikos-Karapanos and Metron have filed briefs opposing the motions for discovery sanctions. They generally assert that 1) discovery has been produced as ordered, 2) LifeHealth has failed to produce discovery demanded of it so its unclean hands preclude the relief sought, and 3) the interlocutory appeal by Tsirikos-Karapanos and Metron of one of the discovery rulings stayed discovery in both cases.

As to this last argument, the interlocutory appeal was dismissed between briefing on the motions and the hearing.

The hearing

At the hearing on the motions, LifeHealth advised that counsel for Tsirikos-Karapanos and Metron informed LifeHealth only a month before the hearing, and well after briefing on the motions was over, that the Apple laptop that Tsirikos-Karapanos and Metron were ordered to produce had been lost even before the lawsuits were filed. At the same time, counsel also advised LifeHealth that Tsirikos-Karapanos did have a thumb drive of documents taken from a LifeHealth computer but Tsirikos-Karapanos and Metron never produced the thumb drive, although they have produced some of the documents saved on the thumb drive. Just a week before the hearing, Tsirikos-Karapanos and Metron produced about 5,000 pages of documents but also told LifeHealth that copies of documents used to prepare a patent application had long since been destroyed and could not be produced.

LifeHealth prepared an inventory of items Tsirikos-Karapanos and Metron were ordered to produce but never did. That list is attached as Appendix A to this judgment.

Tsirikos-Karapanos and Metron opposed the motions for discovery sanctions at the hearing on the grounds that many documents had been produced, a protective order had yet to be stipulated to, counsel was still figuring out how to produce Tsirikos-Karapanos's text messages, and Tsirikos-Karapanos's medical records did not have to be produced because he had dismissed his intentional infliction of emotional distress claim.

Discussion

Civil Rule 37(A) provides the procedure for the five motions to compel filed by LifeHealth and ultimately granted in whole or in part. Civil Rule 37(B) pertains to a party's failure to obey an order compelling discovery. When that happens, the aggrieved party may seek an order treating as a contempt of court the other party's failure to obey any orders. A dismissal

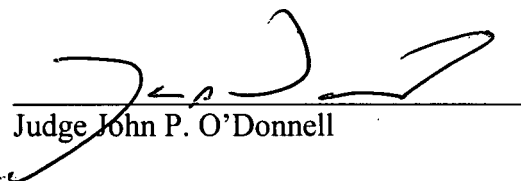
of the disobedient party's lawsuit may also be entered as a sanction. Additionally, the movant may recover its expenses, including attorney's fees, caused by the failure.

Based upon the record evidence, I find that Tsirikos-Karapanos and Metron were ordered by the April 23 and September 11, 2015, judgment entries to produce all of the documents and tangible objects listed in Appendix A under the heading "documents still not produced." I further find that, as of the hearing date, Tsirikos-Karapanos and Metron had not produced any of those documents or things. Accordingly, I find they are each a disobedient party as that term is used in Civil Rule 37(B) and I further find that the disobedience is a contempt of court.

As a sanction for that contempt, Tsirikos-Karapanos and Metron are ordered, under Civil Rule 37(B)(3), to pay LifeHealth's expenses, including attorney's fees, caused by the failure to follow the orders compelling discovery responses, through the date of the hearing on the discovery sanction motions. LifeHealth's motion to dismiss the complaint in CV 14 836244 pursuant to Civil Rule 37(B)(1)(e) is denied because most of the discovery not produced pertains to LifeHealth's affirmative claims in CV 14 836269. But the underlying obligation to produce all of the documents and things still exists, and a future dismissal or other Civil Rule 37 sanction may yet be ordered.

A hearing to receive evidence on the correct amount of LifeHealth's expenses under Civil Rule 37(B)(3) will be scheduled by a subsequent entry.

IT IS SO ORDERED:



Judge John P. O'Donnell

Date: 9/6/2017

SERVICE

A copy of this judgment entry was sent by email on September 6, 2017, to the following:

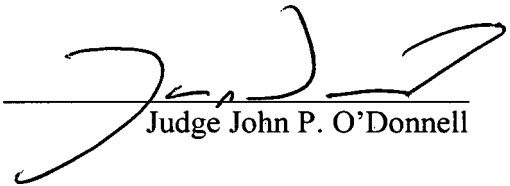
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Judge John P. O'Donnell

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DISCOVERY AT ISSUE ON MOTION TO SHOW CAUSE

Documents not Produced (as of pre-Friday June 10)

- Operating Agreements for Metron entities, other formation documents, capitalization, marketing, etc.
- Laptop computer
- Thumb drive
- 8,000 documents (approximately) that TK sent to Jeunesse in the Jeunesse case
- Complete provisional and utility patent application documents
- Meeting minutes, resolutions of the Metrons
- Clayton documents, marketing, e-mails, text messages, exchanges between TK and Thomas
- Proof of sales by Metron, PO's, Invoices, checks, statements
- Realzeolite.com documents

- Employee or independent contractor agreements
- Medical records, IIED proof, "loss of income and livelihood"
- Response to interrogatories regarding Metron's "business relationships"

Documents Received on June 10, 2016, 8 months after show cause application

- Our own documents
 - o Agendas, meeting minutes
 - o Custom analytics invoices
 - o Certificates of Analysis
 - o Hubbard study
 - o Inovatia labs invoices
 - o Our product formulas: SNatural, ZCC, ZNatural production formula
 - Production results, schedules
 - ZNatural studies
 - o Sales order for ZNatural
 - o Nutrathera and KNatural manufacturing documents
 - KNatural production formula
- Some Dr. TK post-employment emails regarding his business
 - o Re: cytodetox
- Dr. TK phone bills
- Separation and Redemption Agreements with co-defendant Clayton Thomas
- Patent documents
- Metron invoices (14 total)
- Metron confidentiality agreements
- Various LHS templates

Documents still not produced

- Metron operating agreements, capitalization information, bank information, marketing materials, financials
- 8,000 documents that Dr. TK gave to Jeuenesse in their lawsuit
- Laptop
- Thumb drive
- Meeting minutes, resolutions of Metron
- Clayton Thomas' documents
- Money earned as result of Dr. TK's alleged invention
 - o Checks, accounting printouts, bank statements
- Efforts to gain employment with Clinic

- Proof that LHS sold anything against his will as per his complaint
- Medical records, IIED proof
- Responses to interrogatories regarding Metron's various "business relationships"
- "Paper documents" that were thrown away as per opposing counsel's June 10, 2016 letter