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ORDER OF THE SUPREME COURT OF THE STATE OF DELAWARE (DECEMBER 13, 2022)

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RYAN WOLLNER,

Plaintiff Below, Appellant,

v.

PEARPOP INC.,

Defendant Below, Appellee.

No. 257, 2022

Court Below Court of Chancery of the State of Delaware C.A. No. 2021-0157

Before: Gary F. TRAYNOR, Justice.

It appears to the Court that, on November 4, 2022, the Chief Deputy Clerk issued a notice, by certified mail and through File & ServeXpress, directing the appellant to show cause why his appeal should not be dismissed for his failure to file an opening brief and appendix. The opening brief and appendix were due by October 13, 2022. Postal records confirm that the notice to show cause was delivered on November

8, 2022. A timely response to the notice to show cause was due on or before November 18, 2022. To date, the appellant has not filed an opening brief or responded to the notice to show cause. Dismissal of this appeal is therefore deemed to be unopposed.

NOW, THEREFORE, IT IS ORDERED, under Supreme Court Rules 3(b)(2) and 29(b), that this appeal is DISMISSED.

BY THE COURT:

/s/ Gary F. Traynor
Justice

ORDER OF THE SUPREME COURT OF THE STATE OF DELAWARE (AUGUST 8, 2022)

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RYAN WOLLNER

v.

PEARPOP INC.

No. 236, 2022

Court Below – Court of Chancery of the State of Delaware C.A. No. 2021-0157

The following docket entry has been efiled in the above cause.

August 8, 2022. Certified copy of Order dated July 21, 2022, to Clerk of Court Below. Case closed.

cc: The Honorable Kathaleen St. J. McCormick
Mr. Ryan S. Wollner
John L. Reed, Esquire
Ronald N. Brown, III, Esquire
Kelly L. Freund, Esquire

/s/ Lisa A. Dolph
Clerk of Supreme Court

Date: August 8, 2022

ORDER OF THE SUPREME COURT OF THE STATE OF DELAWARE (JULY 21, 2022)

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RYAN WOLLNER,

Plaintiff Below, Appellant,

v.

PEARPOP INC.,

Defendant Below, Appellee.

No. 236, 2022

Court Below–Court of Chancery of the State of Delaware C.A. No. 2021-0157

Before: VAUGHN, TRAYNOR, and MONTGOMERY-REEVES, Justices.

Upon consideration of the notice to show cause and the appellant's response, it appears to the Court that:

(1) On July 6, 2022, Ryan Wollner, filed a notice of appeal from a Court of Chancery letter decision, dated June 21, 2022, granting PearPop, Inc.'s motion for default judgment and finding Wollner responsible

for some of PearPop's attorneys' fees. The decision directed PearPop to prepare a form of final order. After issuance of the June 21 decision, Wollner filed multiple documents in the Court of Chancery, including a motion to stay pending appeal and a letter requesting removal of the Chancellor from the case.

(2) On July 7, 2022, the Senior Court Clerk issued a notice directing Wollner to show cause why this appeal should not be dismissed for his failure to comply with Supreme Court Rule 42 when taking an appeal from an apparent interlocutory order. On July 9, 2022, the Court of Chancery denied Wollner's request for removal. As to the motion to stay, the court found there was nothing to stay, except for the award of attorneys' fees. The court directed PearPop to submit, within five business days, a proposed form of final order reflecting the attorneys' fees requested and to state its position with respect to the motion to stay and the amount of any required security. Wollner then filed letters disagreeing with the court's denial of his request for removal and demanding an investigation by the Department of Justice.

(3) In his response to the notice to show cause in this Court, Wollner primarily argues the merits of his appeal. He also contends that the requirements of Supreme Court Rule 42 for interlocutory appeals should not apply because it is taking too long for issuance of a final order in the Court of Chancery.

(4) Absent compliance with Rule 42, this Court is limited to the review of a trial court's final judgment.[1] An order is deemed final and appealable if the trial

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[1] *Julian v. State*, 440 A.2d 990, 991 (Del. 1982).

court has declared its intention that the order be the court's final act in disposing of all justiciable matters within its jurisdiction.[2]

(5) The June 21 decision (and July 9 decision) required further action by PearPop. The amount of attorneys' fees that Wollner is responsible for remains unresolved. Because the June 21 decision did not finally determine and terminate the Court of Chancery proceedings and those proceedings remain ongoing, this appeal is interlocutory.

(6) Wollner is not exempt from the requirements of Rule 42. He complains that it is taking too long for issuance of a final order, but it has been less than thirty days since the June 21 decision and less than fourteen days since the July 9 decision. According to the Court of Chancery docket, PearPop filed a proposed form of final order with its attorneys' fees yesterday. Wollner has also continued to make demands for action in the Court of Chancery. As there is presently no final judgment in the Court of Chancery and Wollner has not complied with Rule 42, this appeal must be dismissed.

NOW, THEREFORE, IT IS ORDERED that this appeal is DISMISSED. The filing fee paid by Wollner shall be applied to any future appeal he files from a final order entered in the case.

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[2] *J.I. Kislak Mortg. Corp. v. William Matthews, Builder, Inc.*, 303 A.2d 648, 650 (Del. 1973).

BY THE COURT:

/s/ Gary F. Traynor
Justice

FINAL ORDER AND JUDGMENT OF THE COURT OF CHANCERY OF THE STATE OF DELAWARE (JULY 21, 2022)

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

RYAN WOLLNER,

Plaintiff,

v.

PEARPOP INC.,

Defendant.

C.A. No. 2021-0157-KSJM

WHEREAS:

A. On February 22, 2021, Plaintiff filed a Verified Complaint to Compel Inspection of Books and Records (the "Verified Complaint").

B. On July 12, 2021, the Court Granted Defendant's motion to compel.

C. On October 11, 2021, Defendant filed its Motion For Default Judgment.

D. On October 24, 2021, Plaintiff filed his Motion to Vacate the Courted Ordered Motion to Compel, Motion for a Protective Order, and Deny the

Defendants' Motion for a Default Judgment (the "Motion to Vacate").

E. On June 21, 2022, following briefing and argument on the Motion for Default and the Motion to Vacate, the Court issued a letter decision (i) granting Defendant's Motion For Default Judgment, (ii) denying Plaintiff's Motion to Vacate, (iii) awarding Defendant its attorneys' fees and expenses since the date of July 12, 2021 ruling, and (iv) denying Plaintiff's pending motions filed since the March 25, 2022 hearing (the "Letter Opinion").

F. On July 15, 2022, counsel for Defendant submitted an affidavit in compliance with Court of Chancery Rule 88. The Court has reviewed counsel's affidavit and does not believe that additional support is required. Although this action has involved unique complexities, the Court views the amount requested through fee-shifting as slightly disproportionate to the needs of this action. For this reason, the amount of Defendant's attorneys' fees and expenses to be paid by Plaintiff is capped at $100,000.

NOW, THEREFORE, IT IS HEREBY ORDERED, for the reasons explained in the Court's June 21, 2022 Letter Opinion:

1. Defendant's Motion for Default Judgment is GRANTED;

2. Plaintiff's Motion to Vacate is DENIED;

3. Plaintiff's other motions filed between March 25, 2022 and June 21, 2022 are DENIED;

4. Plaintiff's Verified Complaint is hereby DISMISSED with prejudice; and

5. Defendant is awarded its reasonable attorneys' fees and costs in the amount of $100,000.

/s/ Kathaleen St. J. McCormick
Chancellor Kathaleen St. J. McCormick
Dated: July 21, 2022

FINAL OPINION OF THE COURT OF CHANCERY OF THE STATE OF DELAWARE (JUNE 21, 2022)

EFiled: Jun 21 2022 10:21AM EDT
Transaction ID 67743212
Case No. 2021-0157-KSJM

COURT OF CHANCERY
OF THE STATE OF DELAWARE

Kathaleen St. Jude McCormick
Chancellor

Leonard L. Williams Justice Center
500 N. King Street, Suite 11400
Wilmington, Delaware 19801-3734

June 21, 2022

Ryan Wollner
By Email

John L. Reed, Esquire
Ronald N. Brown, III, Esquire
Kelly L. Freund, Esquire
DLA Piper LLP (US)
1201 N. Market Street, Suite 2100
Wilmington, DE 19801

Re: *Ryan Wollner v. PearPop Inc.*, C.A. No. 2021-0157-KSJM

Dear Mr. Wollner and Counsel:

This letter resolves the defendant's motion for default judgment[1] and the plaintiff's competing (combined) motion to vacate the order to compel, motion

[1] C.A. No. 2021-0157-KSJM, Docket ("Dkt.") 78 ("Def.'s Mot.").

for a protective order, and opposition to the motion for default judgment.[2]

As background, Plaintiff Ryan Wollner filed this action under Section 220 of the Delaware General Corporation Law to inspect books and records to investigate Defendant PearPop Inc.'s June 5, 2020 conversion from an LLC into a corporation. Wollner alleges that the conversion violated his rights as a purported 5% equity holder, "Initial Member," and "Manager" of the pre-conversion LLC.[3] Wollner served his Section 220 demand on December 31, 2020.[4]

In response to the Section 220 demand, PearPop agreed to produce books and records conditioned on Wollner signing a confidentiality agreement, which the parties executed in late January 2021.[5] PearPop then produced documents pursuant to the confidentiality agreement. Wollner viewed this production as insufficient and initiated this Section 220 action on February 22, 2021.[6] PearPop agreed to expedited treatment of the case and the parties stipulated to a schedule setting trial for April 28, 2021.[7]

On March 17, 2021, Wollner served 85 interrogatories and 85 requests for production on PearPop and noticed a deposition of PearPop pursuant to Court

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[2] Dkt. 82 ("Pl.'s Mot.").

[3] Dkt. 1 ("Compl.") ¶¶ 1–2.

[4] *Id.* Ex. J.

[5] Def.'s Mot. Ex. A.

[6] Compl.

[7] Dkt. 11, Scheduling Order.

of Chancery Rule 30(b)(6).[8] PearPop responded to the written discovery requests on March 26, 2021, but moved for a protective order on March 28, 2021, arguing that the noticed deposition topics were overbroad.[9] Also on March 28, PearPop filed declarations from two of its directors attesting to the authenticity of some of the documents that PearPop had produced, which Wollner had apparently disputed while meeting and conferring with PearPop's counsel concerning discovery.[10]

On April 1, 2021, Wollner's initial counsel moved to withdraw.[11] According to the motion to withdraw, Wollner refused to provide document discovery to his own attorney and then represented to PearPop that he was "temporarily suspending" his counsel.[12] Corroborating this story, PearPop filed a motion to compel the next day, arguing that Wollner had refused to respond to interrogatories or produce any documents.[13]

On April 28, 2021, I held a telephonic hearing on Wollner's counsel's motion to withdraw and gave Wollner ten additional days to find new counsel before

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[8] Dkt. 21, Freund Aff. Ex. 1–3; Dkt. 14.

[9] Dkt. 20, Def.'s Mot. for Protective Order.

[10] Dkt. 22, Decl. of Cole Mason; Dkt. 23, Decl. of Michael Shvartsman.

[11] Dkt. 25, First Mot. to Withdraw.

[12] *Id.* ¶¶ 1–2; Dkt. 38, Apr. 28, 2021 Tr. at 4:17.

[13] Dkt. 26, Mot. to Compel.

ruling on the motion.[14] I granted the motion to withdraw on May 14, 2021.[15]

Through the remainder of May and early June, Wollner directly engaged with PearPop's counsel in discussions regarding the scope of discovery.[16] On May 20, 2021, Wollner forwarded PearPop a settlement offer that attached a document produced to him by PearPop, suggesting that the document was fully responsive to "probably half or more of the evidence [PearPop was] requesting" in its motion to compel.[17] On May 22, 2021, Wollner sent PearPop three audio recordings he had taken of a couple of PearPop's principals.[18] On June 11, 2021, Wollner's second set of counsel entered an appearance and later filed oppositions to PearPop's pending motions.[19]

On July 12, 2021, I held a hearing on PearPop's pending motions to compel and for a protective order. Because Wollner had withdrawn his discovery requests by that time, I denied the motion for a protective order. PearPop pressed its request to shift fees in connection with that motion, which I also denied.[20] I then granted PearPop's motion to compel (the "Discovery Ruling"),

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[14] Dkt. 38, Apr. 28, 2021 Tr. at 14:14–22.

[15] Dkt. 40, May 14, 2021 Tr. at 5:1–2.

[16] *See* Dkt. 53, Reply in Supp. of Def.'s Mot. for Protective Order Ex. 8–14.

[17] Dkt. 54, Reply in Supp. of Def.'s Mot. to Compel Ex. 13 at 4–6.

[18] *Id.* at 3.

[19] Dkt. 46, Entry of Appearance; Dkt. 48, Opp'n to Mot. for Protective Order; Dkt. 51, Opp'n to Mot. to Compel.

[20] Dkt. 60, July 12, 2021 Tr. at 23:2–21.

despite some discomfort with the breadth of the requested discovery, but denied it to the extent that it sought to shift fees.[21] Following my bench ruling, I instructed Wollner to "dig deep and do his best to respond to all the requests propounded and to do so promptly given the delays that have occurred in this proceeding in large part due to [his] conduct and inability to retain counsel."[22]

Given that I had granted the motion to compel and that Wollner was being advised by counsel, I believed that discovery would proceed apace and that this case was back on track. Eight days after that hearing, however, Wollner's new counsel filed a motion to withdraw, informing the court that Wollner had discharged him.[23]

On September 13, 2021, Wollner filed a motion for a protective order regarding the discovery requests at issue in the Discovery Ruling.[24] The motion also sought to compel more complete responses to his interrogatories and other discovery requests, privilege logs, fees, and sanctions.[25] Wollner publicly filed a number of exhibits with this motion, which PearPop had produced to him pursuant to the confidentiality agreement the parties entered before the commence-

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[21] *Id.* at 25:2–24.

[22] *Id.* at 26:6–10.

[23] Dkt 59 Second Mot to Withdraw.

[24] Dkt. 63, Pl.'s Mot. for a Protective Order.

[25] *Id.*

ment of this litigation, despite never seeking PearPop's permission to do so.[26]

I granted the second motion to withdraw at a hearing on September 20, 2021, after which Wollner proceeded *pro se*. By that time, Wollner had not produced any documents since I had entered the Discovery Ruling. I nevertheless gave Wollner another opportunity to comply with his obligations, again directly instructing him to do so during the hearing.[27]

On September 22, 2021, Wollner informed PearPop that he would only produce documents if PearPop signed a "one way confidentiality agreement," rather than the standard confidentiality stipulation based on the Court of Chancery's form.[28] On September 23 and 24, 2021, Wollner filed letters to the court to this effect, arguing that he was concerned about how any discovery he provided to PearPop could be used against him.[29] On September 29, 2021, Wollner voluntarily withdrew his motion for a protective order.[30]

The parties met and conferred at some length regarding Wollner's discovery obligations, particularly with regard to responding to interrogatories, between late September and early October 2021. Wollner sent several versions of his interrogatory responses to PearPop in that timeframe, which PearPop informed

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[26] Dkt. 64; Def.'s Mot. at 6.

[27] Dkt. 75, Sept. 20, 2021 Tr. at 6:8–17, 7:19–22.

[28] Def.'s Mot. Ex. C.

[29] Dkt. 72; Dkt. 73.

[30] Dkt. 74.

him were deficient in several respects.[31] On October 4, 2021, Wollner filed the final version of his interrogatory responses.[32] These interrogatory responses, in addition to the single email and three edited audio recordings, remain the only discovery that Wollner has provided PearPop in this litigation.

Based on Wollner's repeated failure to adhere to his discovery obligations, PearPop moved for a default judgment and fee-shifting under Court of Chancery Rule 37 on October 11, 2021.[33] Just over a week later, the plaintiff filed a combined motion to vacate the order to compel under Court of Chancery Rule 60(b), motion for a protective order, and opposition to the motion for default judgment.[34] The parties completed briefing on the competing motions by November 30, 2021, and I heard oral argument on March 25, 2022.[35]

I first address PearPop's motion for default judgment. The Delaware Supreme Court "has long recognized that the purpose of discovery is to advance issue formulation, to assist in fact revelation, and to reduce the element of surprise at trial."[36] "Scheduling orders and discovery cutoffs further these important purposes and policies by ensuring that parties provide discovery in a timely fashion, thereby avoiding trial

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[31] Def.'s Mot. Ex. D–E.

[32] Dkt. 77, Pl.'s Resps. to Def.'s First Set of Interrogs.

[33] Def.'s Mot.

[34] Pl.'s Mot.

[35] Dkt. 112, Mar. 25, 2022 Tr.

[36] *Levy v. Stern*, 687 A.2d 573, 1996 WL 742818, at *2 (Del. Dec. 20, 1996) (TABLE).

by surprise and the prejudice that results from belated disclosure."[37] "Parties must be mindful that scheduling orders are not merely guidelines but have the same full force and effect as any other court order."[38] "A party that disregards the provisions in a scheduling order that govern discovery is engaging in discovery abuse. If a party cannot meet a deadline, the onus is on that party to be forthcoming and transparent about the situation and the reasons for it."[39]

"A trial court has broad discretion to fashion and impose discovery sanctions."[40] "Trial courts should be diligent in the imposition of sanctions upon a party who refuses to comply with discovery orders, not just to penalize those whose conduct warrants such sanctions, but to deter those who may be tempted to abuse the legal system by their irresponsible conduct."[41] "This court has broad discretion to remedy violations of its orders, but the decision to impose sanctions for failure to abide by a court order must be just and reasonable."[42]

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37 *IQ Hldgs., Inc. v. Am. Com. Lines Inc.*, 2012 WL 3877790, at *2 (Del. Ch. Aug. 30, 2012).

38 *Terramar Retail Ctrs., LLC v. Marion #2-Seaport Trust U/A/D June 21, 2002*, 2018 WL 6331622, at *9 (Del. Ch. Dec. 4, 2018) (quoting *Ams. Mining Corp. v. Theriault*, 51 A.3d 1213, 1238 (Del. 2012)).

39 *In re ExamWorks Gp., Inc. S'holder Appraisal Litig.*, 2018 WL 1008439, at *6 (Del. Ch. Feb. 21, 2018).

40 *Genger v. TR Invs.*, 26 A.3d 180, 190 (Del. 2011).

41 *Holt v. Holt*, 472 A.2d 820, 824 (Del. 1984).

42 *Clymer v. DeGirolano*, 2022 WL 1012993, at *4 (Del. Ch. Apr. 4,

"Court of Chancery Rule 37(b)(2) provides an 'arsenal' of possible sanctions that a trial court can impose for discovery violations."[43] Among those, if a party "fails to obey an order to provide or permit discovery," the court may "render[] a judgment by default against the disobedient party."[44] Further, under Court of Chancery Rule 37(d), "the Court shall require the party failing to act . . . to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the Court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust."[45]

Here, Wollner does not dispute that he has provided virtually no document discovery to PearPop, nor does he meaningfully address whether his interrogatory responses were sufficient to satisfy his discovery obligations. He effectively concedes that he has been in continuing violation of the Discovery Ruling.

Discovery directed to a Section 220 plaintiff should not be broad or extensive; frequently, a Section 220 defendant will not propound discovery. When

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2022) (interpreting Court of Chancery Rule 70(b)) (citing *Gallagher v. Long*, 940 A.2d 945, 2007 WL 3262150 (Del. 2007) (TABLE)).

43 *Terramar*, 2018 WL 6331622, at *10.

44 Ct. Ch. R. 37(b)(2)(C).

45 *Id.* 37(d); *see also TransPerfect Glob., Inc. v. Pincus*, ___ A.3d ___, 2022 WL 1763204, at *8 n.97 (Del. June 1, 2022) (stating that the standard of proof for a finding of civil contempt in Delaware is preponderance of the evidence); *InTEAM Assocs., LLC v. Heartland Payment Sys., LLC*, 2021 WL 5028364, at *11 (Del. Ch. Oct. 29, 2021) (same).

discovery is served on a Section 220 plaintiff, however, the plaintiff must endeavor to meet his obligations or timely move for a protective order. Instead of doing so in this case, Wollner repeatedly and blatantly flouted his obligations.

Given Wollner's egregious misconduct, it is appropriate to grant PearPop's motion for a default judgment. I now turn to the question of whether Wollner's competing requests for relief under Rule 60(b) alter the outcome.

Rule 60(b) provides that, "[o]n motion and upon such terms as are just, the Court may relieve a party . . . from a final judgment, order, or proceeding" for any of six enumerated reasons.[46] Wollner relies on three: "(2) newly discovered evidence;" "(3) fraud . . . , misrepresentation or other misconduct of an adverse party;" and "(6) any other reason justifying relief from the operation of the judgment."[47]

"Rule 60(b) advances 'two important values: the integrity of the judicial process and the finality of judgments.'"[48] "The rule exists to serve the first; its administration must acknowledge the second."[49] Granting relief under Rule 60(b) requires the movant to demonstrate that another party has engaged in "the most egregious conduct involving a corruption of

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46 Ct. Ch. R. 60(b).

47 *Id.*

48 *Okla. Firefighters Pension & Ret. Sys. v. Corbat*, 2018 WL 1254958, at *2 (Del. Ch. Mar. 12, 2018) (quoting *Credit Lyonnais Bank Nederland, N.V. v. Pathe Commc'ns Corp.*, 1996 WL 757274, at *1 (Del. Ch. Dec. 20, 1996)).

49 *Credit Lyonnais*, 1996 WL 757274, at *1.

the judicial process itself."[50] "Sinister suspicions and 'dark imaginings' are not enough."[51]

"Although there is no set time limit in which a party must file a Rule 60(b) motion, the movant must exercise diligence and act without unreasonable delay."[52] This court has found that, "in the context of a summary proceeding such as an action under Section 220 . . . the delay in bringing a motion under Rule 60(b) should be measured in weeks rather than months."[53]

I issued the Discovery Ruling on July 12, 2021. Wollner waited until after PearPop moved for a default judgment to move to vacate the court's order—more than three months. I am tempted to deny Wollner's combined motion due to its untimeliness alone, but given that Wollner is a *pro se* litigant, I will address his arguments on the merits.

Wollner advances a host of reasons why, in his view, PearPop's motion should be denied and his motions granted. For the sake of analysis, I have endeavored to organize these arguments according to the three subparts of Court of Chancery Rule 60(b) on which Wollner relies. Subpart (6) is a catch-all

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50 *In re MCA, Inc.*, 774 A.2d 272, 280 (Del. Ch. 2000) (quoting 11 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* § 2870, at 418–19 (1995)).

51 *Id.* at 280.

52 *Shipley v. New Castle Cty.*, 975 A.2d 764, 770 (Del. 2009) (discussing the Superior Court counterpart to the Court of Chancery rule).

53 *High River Ltd. P'ship v. Forest Lab'ys, Inc.*, 2013 WL 492555, at *6 (Del. Ch. Feb. 5, 2013) (Master's Report).

provision, so I will address the plaintiff's arguments that do not fit into the first two subparts last.

Rule 60(b)(2) permits the court to relieve a party from an order based on newly discovered evidence.[54] To obtain relief under this rule, the movant must show that

> (1) the newly discovered evidence has come to his knowledge since the judgment; (2) that it could not, in the exercise of reasonable diligence, have been discovered for use before the judgment; (3) that it is so material and relevant that it will probably change the result . . . ; (4) that it is not merely cumulative or impeaching in character; and (5) that it is reasonably possible that the evidence will be produced at the trial.[55]

In support of relief under Rule 60(b)(2), the plaintiff argues that, in a phone conversation on August 31, 2021, he learned from Michael Shvartsman, a PearPop principal, that PearPop had hired its counsel, DLA Piper, against Shvartsman's wishes.[56] Wollner maintains that Shvartsman instructed Cole Mason, an initial member of PearPop, and Spencer Markel, PearPop's counsel and a former DLA Piper attorney, not to hire DLA Piper because they were too expensive.[57] According to Wollner, Mason and

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54 Ct. Ch. R. 60(b)(2).

55 *Corbat*, 2018 WL 1254958, at *2 (brackets omitted) (quoting *Levine v. Smith*, 591 A.2d 194, 202 (Del. 1991)).

56 Pl.'s Mot. ¶¶ 39–41; Dkt. 90 ("Reply in Supp. of Pl.'s Mot.") at 13–14.

57 Pl.'s Mot. ¶¶ 9, 39.

Markel disobeyed Shvartsman and hired DLA Piper for $50,000, which DLA Piper agreed to as a favor to Markel.[58] Wollner believes that the $50,000 figure is significant because that is allegedly the amount that PearPop, through DLA Piper, initially offered him to settle this case.[59]

Ignoring the hearsay nature of this evidence, and assuming its veracity solely for the sake of analysis, this proffered new evidence does not satisfy the requirements of Rule 60(b)(2). For new evidence to warrant relief under the third element of the Rule 60(b)(2) test, the new evidence must change the result of the court order. The new evidence here would not alter the Discovery Ruling, which I entered based on Wollner's failure to adhere to his discovery requirements. At best, this evidence could be used to impeach the character of some PearPop affiliates. But that too would be insufficient to warrant relief under Rule 60(b)(2), because the fourth element of the test prohibits relief based on newly discovered evidence that is merely impeaching in character.

I turn now to Wollner's argument under Rule 60(b)(3), which permits the court to relieve a party from an order on the basis of fraud, misrepresentation, or other misconduct.[60] Such relief is appropriate "where a party has engaged in fraud or misrepresentation that prevents the moving party from fairly and adequately presenting his or her case."[61] To succeed

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[58] *Id.* ¶ 39.

[59] *Id.*

[60] Ct. Ch. R. 60(b)(3).

[61] *MCA, Inc. v. Matsushita Elec. Indus. Co. Ltd.*, 785 A.2d 625,

on a claim under Rule 60(b)(3), "the movant must ordinarily do so by proof of clear and convincing evidence and within a reasonable period of time after" the relevant order or judgment was entered.[62] In support of his request relief under Rule 60(b)(3), Wollner makes a series of somewhat confusing points.

Wollner first contends that PearPop "falsely accuse[d]" Wollner's first attorney of refusing to engage meaningfully in discovery discussions.[63] But the basis of this contention is routine discovery communications between counsel and nothing more.

Wollner next contends that PearPop falsely accused him of sending "threatening and harmful messages."[64] Namely, PearPop accused Wollner of sending an animated image of a gun to PearPop's CEO after Wollner sent the settlement offer. Wollner argues that these allegedly false allegations regarding the threatening images and other statements by PearPop caused his first attorney to withdraw.[65] Giving Wollner the benefit of a logical inference, perhaps his point is that these accusations disadvantaged him in presenting his case in connection with the Discovery Ruling because his first attorney withdrew.

Regardless of the truth or falsity of PearPop's accusation, the conduct does not warrant relief under

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639 (Del. 2001).

62 *In re U.S. Robotics Corp. S'holders Litig.*, 1999 WL 160154, at *12 (Del. Ch. Mar. 15, 1999) (cleaned up).

63 Pl.'s Mot. ¶¶ 23, 27, 42.

64 *Id.* ¶¶ 25–26; Reply in Supp. of Pl.'s Mot. at 2–4.

65 Pl's Mot ¶ 44; Reply in Supp of Pl 's Mot at 5–6.

Rule 60(b)(3). PearPop's accusation, while serious, did not form the basis of the Discovery Ruling nor indeed any order this court. Wollner has not demonstrated that anyone relied on PearPop's accusation to their own or another's detriment, nor that PearPop knew or believed the accusation to be false when made. These familiar elements of fraud and misrepresentation are entirely lacking here. Moreover, Wollner's first counsel moved to withdraw because Wollner "contacted counsel for [PearPop] to advise them that Withdrawing Counsel was not currently representing him," not for the allegedly false statements about Wollner.[66] And at the time I entered the Discovery Ruling, Wollner was represented by new counsel. So, it cannot be said that *PearPop's* conduct prevented Wollner from fairly and adequately presenting his case.

Last, Wollner contends that he feels threatened by PearPop, alleging that he has observed people who he believes are associated with PearPop outside of his house.[67] He expressed concern that PearPop will use discovery he provides to fabricate false documents or alter genuine ones, which he alleges PearPop has already done.[68] Although these allegations could certainly rise to the level of conduct that would warrant relief under Rule 60(b)(3), Wollner has presented no evidence to substantiate those allegations.

Therefore, relief is not warranted under Rule 60(b)(3).

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[66] Dkt. 25, First Mot. to Withdraw ¶ 1.

[67] Dkt. 112, Mar, 25, 2022 Tr. at 49:18–24.

[68] Pl.'s Mot. ¶¶ 10, 43–44.

I now address Wollner's remaining arguments under Rule 60(b)(6), which permits the court to relieve a party from an order on the basis of any otherwise unenumerated reason that would serve the interests of justice.[69] Wollner's four remaining arguments are that: PearPop is not entitled to depose him because it asked Wollner's first attorney if he had sent the plaintiff PearPop's settlement offer;[70] Wollner did not understand his obligations or rights during the periods when he was not represented by counsel;[71] PearPop's discovery requests were overbroad;[72] and that the edited audio recordings he provided in discovery were not recorded illegally.[73]

Addressing these four points in reverse order, I can dispose of the last two quickly. I cannot—despite generous efforts—find any theoretical role in this analysis for the "lawful" designation of Wollner's recording of the audio tapes, and I already rejected the overbreadth argument when entering the Discovery Ruling. Wollner's second point is equally unavailing, given that I took pains to instruct Wollner of his obligations during the July 12, 2021 hearing and gave him more opportunities to comply than he deserved. As for the first (and final) point, I again confess that I do not get it. It was fair for PearPop to seek clarification from Wollner's counsel regarding that attorney's actions on Wollner's behalf given that

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69 Ct. Ch. R. 60(b)(6).

70 Pl.'s Mot. ¶¶ 14–16, 42; Reply in Supp. of Pl.'s Mot. at 4–5.

71 Pl.'s Mot. ¶ 38(a); Reply in Supp. of Pl.'s Mot. at 9–10, 14.

72 Pl.'s Mot. ¶¶ 38(b), 43.

73 Reply in Supp. of Pl.'s Mot. at 6–8.

Wollner had suspended his counsel for a period. What bearing this has on the pending motion is a mystery in any event.

In sum, Wollner has not met his burden to demonstrate that he is entitled to relief from the court's order under Rule 60(b)(6).

Wollner also has not demonstrated the circumstances necessary to escape fee shifting under Rule 37(d). As discussed above, Rule 37(d) provides for the payment of attorneys' fees for the failure to adhere to discovery obligations "unless the Court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust."[74] Although policy considerations make relief under Rule 60(b) more difficult to obtain,[75] this standard under Rule 37(d) and the interests-of-justice standard under Rule 60(b) are conceptually similar, in that they ask the court to look at the broader context when granting relief. Here, the broader context is not flattering for Wollner, who blatantly failed to adhere to his minimal discovery obligations despite being given every opportunity to do so.

Therefore, PearPop's motion for default judgment is granted. Wollner's motions to vacate the court's order to compel and for a protective order are denied.

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74 Ct. Ch. R. 37(d).

75 *See Wimbledon Fund LP v. SP Special Situations LP*, 2011 WL 378827, at *6 (Del. Ch. Feb. 4, 2011) ("Relief under Rule 60(b)(6) is an extraordinary remedy," and the standard "is more exacting than any other ground for relief provided for in the Rule. That is, in order for a party to succeed under Rule 60(b)(6), the party must make a showing of extraordinary situation or circumstances." (cleaned up)).

Wollner is responsible for PearPop's reasonable attorneys' fees in this litigation from the date of the Discovery Ruling forward.

Between September 2021 and the March 25, 2022 hearing, Wollner filed several additional motions that have not been fully briefed: a motion for leave of court to assess and (or) implement his rights including amending and (or) supplementing his complaint, seeking civil discovery sanctions against PearPop, and litigation fees and expenses;[76] a motion for clarification regarding the denial of PearPop's motion for a protective order on July 12th, 2021;[77] a motion to compel PearPop to advance litigation expenses in accordance with PearPop's bylaws;[78] a motion for a status quo ante litem, status quo suspensions, and extension of the plaintiff's rights;[79] and a motion for a summary judgment.[80]

Since the March 25, 2022 hearing, Wollner has filed a motion for confidential treatment;[81] an amended motion to compel PearPop to advance litigation expenses;[82] a motion for discovery sanctions against PearPop;[83] a motion for an expedited briefing schedule

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[76] Dkt. 91.

[77] Dkt. 92.

[78] Dkt. 93.

[79] Dkt. 97.

[80] Dkt. 98.

[81] Dkt. 108.

[82] Dkt. 109.

[83] Dkt. 110.

and hearing date regarding the plaintiff's motion for discovery sanctions against PearPop;[84] a motion for Rule 11(c) sanctions against PearPop;[85] a motion for default judgment;[86] and a motion for an *ex parte* communication with the court and temporary restraining order.[87]

I did not require that PearPop respond to these motions, which would have had the effect of increasing the award of attorneys' fees entered against Wollner.[88] Given that I have granted PearPop's motion for a default judgment, there is no reason to address these dozen additional pending motions on their merits. They are denied. I ask that PearPop's counsel prepare a final order memorializing this decision for my review.

Sincerely,

/s/ Kathaleen St. Jude McCormick
Chancellor

cc: All counsel of record (by *File & ServeXpress*)

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[84] Dkt. 111; *see also* Dkt. 114, Ex. 1.

[85] Dkt. 115.

[86] Dkt. 117.

[87] Dkt. 118.

[88] On March 18, 2022, PearPop filed a motion for leave to file a motion to strike one of the plaintiff's letters to the court or, in the alternative, for confidential treatment of the briefing on the motion to strike. Dkt. 104. PearPop should inform the court if further action on that motion is necessary.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. IV

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

U.S. Const. amend. XIV, § 1

United States Constitution Amendment 14 Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Delaware Constitution of 1897
Article I. Bill of Rights

§ 7. Procedural rights in criminal prosecutions; jury trial; self-incrimination; deprivation of life, liberty or property.

Section 7. In all criminal prosecutions, the accused hath a right to be heard by himself or herself and his or her counsel, to be plainly and fully informed of the nature and cause of the accusation against him or her, to meet the witnesses in their examination face to face, to have compulsory process in due time, on application by himself or herself, his or her friends or counsel, for obtaining witnesses in his or her favor, and a speedy and public trial by an impartial jury; he or she shall not be compelled to give evidence against himself or herself, nor shall he or she be deprived of life, liberty or property, unless by the judgment of his or her peers or by the law of the land.

Title 8 Corporations
Chapter 1. Delaware General Corporation Law
Subchapter VII. Meetings, Elections, Voting and Notice

§ 220. Inspection of books and records.

(a) As used in this section:

(1) "Stockholder" means a holder of record of stock in a stock corporation, or a person who is the beneficial owner of shares of such stock held either in a voting trust or by a nominee on behalf of such person.

(2) "Subsidiary" means any entity directly or indirectly owned, in whole or in part, by the corporation of which the stockholder is a stockholder and over the affairs of which the corporation directly or indirectly exercises control, and includes, without limitation,

corporations, partnerships, limited partnerships, limited liability partnerships, limited liability companies, statutory trusts and/or joint ventures.

(3) "Under oath" includes statements the declarant affirms to be true under penalty of perjury under the laws of the United States or any state.

(b) Any stockholder, in person or by attorney or other agent, shall, upon written demand under oath stating the purpose thereof, have the right during the usual hours for business to inspect for any proper purpose, and to make copies and extracts from:

(1) The corporation's stock ledger, a list of its stockholders, and its other books and records; and

(2) A subsidiary's books and records, to the extent that:

a. The corporation has actual possession and control of such records of such subsidiary; or

b. The corporation could obtain such records through the exercise of control over such subsidiary, provided that as of the date of the making of the demand:

1. The stockholder inspection of such books and records of the subsidiary would not constitute a breach of an agreement between the corporation or the subsidiary and a person or

persons not affiliated with the corporation; and

2. The subsidiary would not have the right under the law applicable to it to deny the corporation access to such books and records upon demand by the corporation.

In every instance where the stockholder is other than a record holder of stock in a stock corporation, or a member of a nonstock corporation, the demand under oath shall state the person's status as a stockholder, be accompanied by documentary evidence of beneficial ownership of the stock, and state that such documentary evidence is a true and correct copy of what it purports to be. A proper purpose shall mean a purpose reasonably related to such person's interest as a stockholder. In every instance where an attorney or other agent shall be the person who seeks the right to inspection, the demand under oath shall be accompanied by a power of attorney or such other writing which authorizes the attorney or other agent to so act on behalf of the stockholder. The demand under oath shall be directed to the corporation at its registered office in this State or at its principal place of business.

(c) If the corporation, or an officer or agent thereof, refuses to permit an inspection sought by a stockholder or attorney or other agent acting for the stockholder pursuant to subsection (b) of this

section or does not reply to the demand within 5 business days after the demand has been made, the stockholder may apply to the Court of Chancery for an order to compel such inspection. The Court of Chancery is hereby vested with exclusive jurisdiction to determine whether or not the person seeking inspection is entitled to the inspection sought. The Court may summarily order the corporation to permit the stockholder to inspect the corporation's stock ledger, an existing list of stockholders, and its other books and records, and to make copies or extracts therefrom; or the Court may order the corporation to furnish to the stockholder a list of its stockholders as of a specific date on condition that the stockholder first pay to the corporation the reasonable cost of obtaining and furnishing such list and on such other conditions as the Court deems appropriate. Where the stockholder seeks to inspect the corporation's books and records, other than its stock ledger or list of stockholders, such stockholder shall first establish that:

(1) Such stockholder is a stockholder;

(2) Such stockholder has complied with this section respecting the form and manner of making demand for inspection of such documents; and

(3) The inspection such stockholder seeks is for a proper purpose.

Where the stockholder seeks to inspect the corporation's stock ledger or list of stockholders and establishes that such stockholder is a stockholder and has complied with this

section respecting the form and manner of making demand for inspection of such documents, the burden of proof shall be upon the corporation to establish that the inspection such stockholder seeks is for an improper purpose. The Court may, in its discretion, prescribe any limitations or conditions with reference to the inspection, or award such other or further relief as the Court may deem just and proper. The Court may order books, documents and records, pertinent extracts therefrom, or duly authenticated copies thereof, to be brought within this State and kept in this State upon such terms and conditions as the order may prescribe.

(d) Any director shall have the right to examine the corporation's stock ledger, a list of its stockholders and its other books and records for a purpose reasonably related to the director's position as a director. The Court of Chancery is hereby vested with the exclusive jurisdiction to determine whether a director is entitled to the inspection sought. The Court may summarily order the corporation to permit the director to inspect any and all books and records, the stock ledger and the list of stockholders and to make copies or extracts therefrom. The burden of proof shall be upon the corporation to establish that the inspection such director seeks is for an improper purpose. The Court may, in its discretion, prescribe any limitations or conditions with reference to the inspection, or award such other and further relief as the Court may deem just and proper.

Del. Ct. Chancery
Rule 26. General provisions governing discovery.

(a) Discovery methods. Parties may obtain discovery by 1 or more of the following methods: Depositions upon oral examination or written questions; written interrogatories; production of documents, electronically stored information, or tangible things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission. Unless the Court orders otherwise under paragraph (c) of this rule, the frequency of use of these methods is not limited.

(b) Discovery scope and limits. Unless otherwise limited by order of the Court in accordance with these Rules, the scope of discovery is as follows:

(1) In general. Parties may obtain discovery regarding any non-privileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, including the existence, description, nature, custody, condition and location of any documents, electronically stored information, or tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial.

The frequency or extent of use of the discovery methods set forth in paragraph (a) shall be limited by the Court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or

is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the discovery sought is not proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. The Court may act upon its own initiative after reasonable notice or pursuant to a motion under paragraph (c).

(c) Protective orders. Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the Court or alternatively, on matters relating to a deposition taken outside the State of Delaware, a court in the state where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including 1 or more of the following: (1) That the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place or the allocation of expenses; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the

scope of the discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the Court; (6) that a deposition after being sealed be opened only by order of the Court; (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the Court. A party has standing to move for a protective order with respect to discovery directed at a non-party on the basis of annoyance, embarrassment, oppression, or undue burden or expense that the moving party will bear. A non-party from another state from whom discovery is sought always may move for a protective order from the court in the state where discovery is sought or, alternatively, from this Court provided the non-party agrees to be bound by the decision of this Court as to the discovery in question. If the motion for a protective order is denied in whole or in part, the Court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion

Rule 55. Default judgments.

(a) Omitted.

(b) Judgment. When a party against whom a judgment for affirmative relief is sought, has failed to appear, plead or otherwise defend as

provided by these Rules, and that fact is made to appear, judgment by default may be entered as follows: The party entitled to a judgment by default shall apply to the Court therefor; but no judgment by default shall be entered against an infant or incompetent person unless represented in the action by a guardian, trustee or other representative. If the party against whom judgment by default is sought has appeared in the action, the party (or, if appearing by representative, the party's representative) shall be served with written notice of the application for judgment at least 3 days prior to the hearing on such application. If such party has not appeared written notice shall be served if the Court so directs. If, in order to enable the Court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the Court may conduct such hearings or order such references as it deems necessary and proper.

Del. C. Ch. Rule 56. Summary Judgment.

(a) For claimant. A party seeking to recover upon a claim, counter claim, cross-claim or declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof.

[. . .]

(c) Motion and proceedings thereon. — The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issues of liability alone although there is a genuine issue as to the amount of damages, or some other matter.

Rule 60. Relief from judgment or order.

(a) Clerical mistakes. Clerical mistakes in judgments, order or other parts of the record and errors therein arising from oversight or omission may be corrected by the Court at any time of its own initiative or on the motion of any party and after such notice, if any, as the Court orders.

(b) Mistake; inadvertence; excusable neglect; newly discovered evidence; fraud, etc. On motion and upon such terms as are just, the Court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) Mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence; (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been

satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. A motion under this subdivision does not affect the finality of a judgment or suspend its operation. This Rule does not limit the power of a Court to entertain an independent action to relieve a party from a judgment, order or proceeding, or to grant any relief provided by statute, or to set aside a judgment for fraud upon the Court. The procedure for obtaining relief from judgments shall be by motion as prescribed in these Rules or by an independent action.

Delaware Court Chancery
Rule 7. Pleadings allowed; form of motions.

(b) Motions and other papers. (1) An application to the Court for an order shall be by motion which, unless made during a hearing or trial, shall be in writing, shall state with particularity the grounds therefor, and shall set forth clearly in the motion the relief sought. The party making the application shall not file a separate notice of motion. The party making the application or any other interested party may submit a proposed form of order.

(4) With respect to all written motions, the parties may enter into a stipulated brief schedule. If the parties are unable to agree to a brief schedule, any party may apply for an order fixing such schedule. After all

briefs have been filed, any party may apply for an order fixing a time for argument. Unless the Court directs otherwise, argument on a written motion shall be set only upon the application of a party. Briefing and/or argument may be waived by the parties subject to the approval of the Court.

Rule 65. Injunctions

(b) temporary restraining order; notice; hearing; duration. A temporary restraining order may be granted without written or oral notice to the adverse party or that party's attorney only if (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition, and (2) the applicant's attorney certifies to the Court in writing the efforts, if any, which have been made to give the notice and the reasons supporting the claim that notice should not be required. Every temporary restraining order granted without notice shall be indorsed with the date and hour of issuance; shall be filed forthwith in the office of the Register in Chancery and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry, not to exceed 10 days, as the Court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The

reasons for the extension shall be entered of record. In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and takes precedence of all matters except older matters of the same character; and when the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if that party does not do so, the Court shall dissolve the temporary restraining order. On 2 days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the Court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the Court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

Delaware Supreme Court Rules
Rule 7. Disclosure of Corporate Affiliations and Financial Interest.

(g) Disclosure of Corporate Affiliations and Financial Interest.—Each party shall file a Disclosure of Corporate Affiliations and Financial Interest, as provided for in Form P of these Rules, within fifteen (15) days of the notice of docketing the appeal, or concurrently by a party with the filing of a motion or other document seeking to expedite the proceedings, and within two (2) days of service of such a document by all other parties. However, when the State of Delaware or any other governmental entity is a party, a Disclosure

of Corporate Affiliations and Financial Interests shall be filed only if that party has pertinent information to report

DENIED PROPOSED ORDER TO COMPEL LITIGATION EXPENSES IN ACCORDANCE WITH THE BYLAWS OF PEARPOP (AUGUST 29, 2022)

This document constitutes a ruling of the court and should be treated as such.

File & Serve Transaction ID: 67981814

Current Date: Aug 29, 2022

Case Number: 257,2022

Case Name: Wollner, Ryan v. PearPop Inc.

Court Authorizer Comments:

The appellant will have the opportunity to argue the merits of his appeal in his opening brief. The Court warns the appellant that the Court will not waste scarce judicial resources on meritless or frivolous motions.

/s/ Collins J Seitz, Jr.
Chief Justice

Denied

EFILED: Aug 29 2022 10:27 AM EDT

Filing ID 67983886

Case Number 257,2022

IN THE SUPREME COURT OF THE
STATE OF DELAWARE

RYAN WOLLNER,

Plaintiff below,
Appellant,

v.

PEARPOP INC.,

Defendant below,
Appellee.

No. 257, 2022

Court Below – Court of Chancery of the
State of Delaware C.A. No. 2021-0157-KSJM

[PROPOSED] ORDER GRANTING THE APPELLANT'S MOTION TO COMPEL LITIGATION EXPENSES IN ACCORDANCE WITH THE BYLAWS OF PEARPOP

Upon The Appellant's Motion to Compel Litigation Expenses in Accordance with the Bylaws of Pearpop, and any opposition thereto having been considered,

IT IS HEREBY ORDERED, this _____ day of _____, 2022, that:

(a) The Appellee be ordered to immediately advance (within 7 days of the Order) the Appellant $1,500,000 for his legal expenses.

(b) A stay of the court proceeding until the legal advance is made.

(c) A 60 day enlargement of the proceeding after the advance is received for the Appellant to retain counsel.

_____

Chief Justice, Collin J. Seitz, Jr.

Note: Nothing in this Order shall waive or limit the Appellant's rights in the future to seek additional advancements.

DENIED PROPOSED ORDER TO COMPEL DISCLOSURES AND SANCTIONS (AUGUST 24, 2022)

This document constitutes a ruling of the court and should be treated as such.

File & Serve Transaction ID: 67929618

Current Date: Aug 24, 2022

Case Number: 257,2022

Case Name: Wollner, Ryan v. PearPop Inc.

Court Authorizer Comments:

The appellant has not shown that the appellee failed to make the necessary disclosures in its Disclosure of Corporate Affiliations and Financial Interest under Supreme Court Rule 7(g).

/s/ Chief Justice Collins J Seitz, Jr.

Denied

EFILED: Aug 24 2022 09:02 AM EDT

Filing ID 67965316

Case Number 257,2022

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RYAN WOLLNER,

Plaintiff below,
Appellant,

v.

PEARPOP INC.,

Defendant below,
Appellee.

No. 257, 2022

Court Below – Court of Chancery of the State of Delaware C.A. No. 2021-0157-KSJM

[PROPOSED] ORDER GRANTING THE APPELLANT'S MOTION TO COMPEL DISCLOSURES AND SANCTIONS

Upon The Appellant's Motion to Compel Disclosures and Sanctions Against Counsel of Record for Pearpop Inc. (the "Motion"), and any opposition thereto having been considered, IT IS

HEREBY ORDERED, this ___ day of August, 2022, that:

(1) The Motion is GRANTED;

(2) The Counsel of Record be ordered to immediately fully comply with Sup. Ct. Rule 7(g), thus, filing a supplemented disclosure form disclosing all active participants and Corporate Affiliations and Financial Interests, with a sworn affidavit signed by either Ronald Brown or John Reed;

(3) The Court immediately issue an order to show cause requiring the Counsel of Record to explain why they have not or did not comply with Del. Sup. Ct. Rule 7(g), with a sworn affidavit signed by either Ronald Brown or John Reed.

(4) Counsel of Record is held in Contempt of Court and Sanctioned in accordance with FRCP 37 and Del. Sup. Ct. Rule 33 (without waiving the Appellant's right to have the Appellee or their lawyers disqualified) as such:

a. Fines be levied against DLA Piper in the amount of $100,000 a day from the date of the Disclosures were due to the date until they have fully complied with the disclosure requirements (Given the size of Denied EFiled: Aug 24 2022 09:02AM EDT Filing ID 67965316 Case Number 257,2022 the law firm and the experience of the attorneys this amount is reasonable).

b. A public reprimand.

c .Compensation for Appellant's time and expenses in the amount $_____ and any fees to collect such, paid to Mr. Wollner within 15 days of this Order (which would be appropriate legal costs for bringing this motion should DLA Piper have had to make this motion against the Appellant.)

d. Referral of Counsel of Record to the Office of Disciplinary Counsel.

e. Preapproval to enlarge the proceedings by up to 45 days at the Appellants sole discretion.

ORAL ARGUMENT AND RULINGS OF THE COURT ON DEFENDANT'S MOTION TO COMPEL AND MOTION FOR A PROTECTIVE ORDER HELD VIA ZOOM (JULY 12, 2021)

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

RYAN WOLLNER,

Plaintiff,

v.

PEARPOP INC.,

Defendant.

C.A. No. 2021-0157-KSJM

Before: Hon. Kathaleen St. J. McCORMICK, Chancellor.

Chancery Court Chambers
Leonard L. Williams Justice Center
500 North King Street
Wilmington, Delaware
Monday, July 12, 2021
1:30 p.m.

APPEARANCES:

Antranig Garibian, Esq.
Garibian Law Offices, P.C.
for Plaintiff

Ronald N. Brown, III, Esq.
Kelly L. Freund, Esq.
DLA Piper LLP (US)
for Defendant

[July 12, 2021, Transcript, p. 3]

THE COURT: Good afternoon, everyone.

COUNSEL: Good afternoon, Your Honor.

THE COURT: I'll start by confirming that our court reporter can hear me. Karen?

THE COURT REPORTER: Yes, I can.

THE COURT: Thank you.

Can I have appearances for the record, please?

MR. GARIBIAN: Your Honor, good afternoon. For the plaintiff, Antranig Garibian, Garibian Law Offices, P.C., DE Bar ID 4962.

MR. BROWN: Good afternoon, Your Honor. Ron Brown of DLA Piper on behalf of defendant PearPop. With me is my colleague Kelly Freund.

[. . .]

THE COURT: I'm sorry. Can you hear me now?

The upside of what I just said is that the motion for fee shifting in connection with the protective order motion is denied. And I think you got the law wrong, but I'm giving you what you want anyway. Okay.

So let's move on to the motion to compel. Can you hear me? All right.

This is harder to resolve, in part because, Mr. Brown, I reviewed the discovery requests that

you issued to Mr. Wollner, and in a perfect world I would probably conclude that they stretched the bounds of what should be requested in a Section 220 action, or perhaps are a little more aggressive than I'd like to ordinarily permit.

In this case, Mr. Wollner's reticence to respond timely or at all also gives me pause. And so I have a level of discomfort with wading into the scope issue at all, and I'll return to that.

The documents and interrogatories need to be produced and responded to before Mr. Wollner's deposition. Mr. Brown is correct that the party propounding discovery gets to pick the order in which it occurs, within reason. And here, the request to have documents and interrogatory responses before a deposition is reasonable. So those are going to be responded to before the deposition.

I'm not deeming privilege waived, despite the fact that Mr. Wollner did forward communications with counsel to persons outside of the scope of those entitled to privileged communication, and despite the fact that Mr. Wollner did not respond timely with objections pending discovery. I'm exercising some leniency there and not deeming privilege waived.

I'm also not shifting fees for the reasons I stated earlier. It appears to me that there was–and perhaps I'm viewing this generously towards Mr. Wollner–there was a breakdown in communication concerning multiple discovery issues. And now that counsel has appeared for Mr. Wollner we'll get back on track.

So let's go back to the issue of scope. I've now resolved all the issues basically in favor of Mr. Wollner. And for that reason, although I view the scope of discovery requested as perhaps on the outer edge of what I normally permit, I think Mr. Wollner needs to dig deep and do his best to respond to all the requests propounded and to do so promptly given the delays that have occurred in this proceeding in large part due to Mr. Wollner's conduct and inability to retain counsel.

[. . .]

MR. BROWN: None from defendant, Your Honor. Thank you.

MR. GARIBIAN: Yes, Your Honor, I do have a question. Are you leaving it to counsel to confer as to the timeline for the responses?

THE COURT: Yes. But, Mr. Garibian, it needs to happen pretty quickly.

MR. GARIBIAN: I understand.

[. . .]

JUDICIAL ACTION FORM OF DEFENDANT'S MOTION TO COMPEL AND MOTION FOR A PROTECTIVE ORDER (JULY 12, 2021)

COURT OF CHANCERY JUDICIAL ACTION FORM

Date: 7-12-21 Start Time: 1:30 p.m. End Time: 1:59 p.m.

Caption: *Ryan Wollner v. PearPop Inc.*

Civil Action Number: 2021-0157-KSJM

☒ New Castle County

☒ Chancellor McCormick

Proceeding:

☒ Other: Defendant's motion to compel and motion for a protective order

Reporter:

☒ Karen Siedlecki

Notes: Protective order denied. Motion to compel granted in part, denied as to fee shifting. *See* transcript.

Plaintiff(s) Attorney(s):

Antranig Garibian

Defendant(s) Attorney(s):

Ronald N. Brown, III, Kelly L. Freund

JUDICIAL ACTION FORM OF THE COURT'S RULING ON BELLEW LLC'S MOTION TO WITHDRAW AS COUNSEL (MAY 14, 2021)

COURT OF CHANCERY JUDICIAL ACTION FORM

Date: 5-14-21 Start Time: 11:00 a.m. End Time: 11:09 a.m.

Caption: *Ryan Wollner v. PearPop Inc.*

Civil Action Number: 2021-0157-KSJM

- ☒ New Castle County
- ☒ Chancellor McCormick

Proceeding:

- ☒ Bench Ruling
- ☒ Other: The Court's Ruling on Bellew LLC's Motion to Withdraw as Counsel

Reporter:

- ☒ Jeanne Cahill

Notes: Motion Granted: See transcript.

Plaintiff(s) Attorney(s):

Sean Bellew, Charles Slanina, Ryan Wollner

Defendant(s) Attorney(s):

Ronald N. Brown, Kelly L. Freund

Court Clerk: n/a

TRANSCRIPT OF TELEPHONIC HEARING ON BELLEW LLC'S MOTION FOR LEAVE TO WITHDRAW AS COUNSEL (APRIL 28, 2021)

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

RYAN WOLLNER,

Plaintiff,

v.

PEARPOP INC.,

Defendant.

C.A. No. 2021-0157-KSJM

Before: Hon. Kathaleen St. J. McCORMICK, Chancellor.

[April 28, 2021, Transcript, p. 3]

THE COURT: Good morning, counsel. This is Kathaleen McCormick.

Can I confirm that we have a court reporter on the line?

THE COURT REPORTER: It's Juli, Your Honor.

THE COURT: Thank you, Juli.

And can I get a roll call from the participants?

MR. BELLEW: Yes, Your Honor. May it please the Court. Sean Bellew as withdrawing counsel.

MR. BROWN: Good morning, Your Honor. For defendant, Ron Brown of DLA Piper. With me is my colleague Kelly Freund.

MR. WOLLNER: And good morning, Your Honor. This is the plaintiff, Ryan Wollner.

THE COURT: Thank you.

So the purpose of this hearing today is to consider Mr. Bellew's motion to withdraw as counsel. I'd like to hear the parties' respective positions on that motion. We'll start with Mr. Bellew. We'll then ask defendant's position, and then we'll turn to Mr. Wollner to make his points known.

[. . .]

MR. WOLLNER: So is it possible to give me a little more time? I mean, I am talking to different counsels, but it's–it's not the easiest thing to just find counsel. I asked Sean for–for–you know, if he wanted to send me some people that I can talk to about substituting for him. I'm from New York, so it's not exactly the easiest thing to find Delaware counsel.

THE COURT: Yeah. I mean, just Google it, man. There's a lot of attorneys in this town, and you'll get a sense of them after you start calling around. You can even go on the Court's website and see what firms litigate the issues just by looking at the decisions that deal with these issues.

It's actually not that hard. I respect that you're new to the community and you're not from Delaware, but a lot of people are in that position.

MR. WOLLNER: Right.

THE COURT: So take ten days and do this. Canvass it, figure out what you can find. Be creative in how you approach and how you look for counsel. I think you'll find there are a lot of solutions publicly available.

And then, in ten days, report back. If you cannot find substitute counsel, I will determine whether to simply grant the motion at that time or what other action is appropriate.

Is that understood, Mr. Wollner?

MR. WOLLNER: Yes. It's understood.

[. . .]

AUDIO RECORDING BETWEEN PLAINTIFF AND INITIAL MEMBER 3 TRANSCRIPT (JUNE 8, 2020)

Redacted transcript of the audio recording between Initial Member 3 ("IM3")

[. . .]

Plaintiff: And I also wanted–I also wanted to make it very clear that you now know that he's [Cole Mason] been releasing information to Spencer that he shouldn't have.

IM3: Yes, I got it.

Plaintiff: I wanted–I wanted that message–yeah ok. I figured you–

IM3: I asked. . . I asked him point blank, I said "did you send our operating agreement to Spencer?" He said "No," but he said he did engage another lawyer, that he is paying out of his pocket, and, you know he wrote ah . . . his lawyer wrote a letter [June 8th 2020 "Expulsion Letter"; *see* D.I. 82 Ex. A], to you which I told him not to send you, alright?

Plaintiff: Mmhmm

IM3: And ah . . . he [Cole Mason] wants to send it, you know . . . now, and I told him not to send it, and ah . . . .that's it.

(Redacted)

AUDIO RECORDING OF CALL BETWEEN PLAINTIFF AND A PURPORTED SPENCER MARKEL, TRANSCRIPT (SEPTEMBER 11, 2020)

Transcript of audio recording between
Plaintiff and a purported Spencer Markel ("SM")
(former DLA Piper Attorney)
referred to as "Consultant" in the brief

[. . .]

Plaintiff: Stop lying . . .

SM: Hey . . . Well, you should not have said that man.

Plaintiff: It's not very manly–

SM: Yo yo, you don't want to go . . . you don't want to go–

Plaintiff: to–

SM: Yo, yo, Ryan!. You don't want to go against me! I'll destroy you, honestly–

Plaintiff: Won't destroy me. You won't–

SM: I 100%–

Plaintiff: You won't destroy me–

SM: Will cream you . . .

Plaintiff: You won't, you won't, you won't cream me.

SM: Bro, you just threatened to sue the Company [Pearpop LLC]. Like you–

Plaintiff: I am allowed to, I have my rights in the LLC, I'm allowed to file a case against the Company.

SM: No, you are not . . . the Company is not even an LLC bro, it's not. It was re–

Plaintiff: That is another lawsuit in itself.

SM: Go for it, bring it on dude, I'de love to see it. Bro, I make one call to my friend at the US Attorney in the Southern District in New York and you'll go down for extortion, which is a criminal case. So if you want to go that way–

Plaintiff: How am I extorting you?

SM: Yo! Ugh yo . . .

Plaintiff: Explain to me how I am extorting you? You guys changed the LLC to an S–corp without my signature.

SM: Yo! I already sent . . . I already sent . . . No, I already sent the stuff to my buddy, he says there's a fucking slam dunk case for extortion, and if you want to go there we can.

Plaintiff: How do you have . . . ? Yeah go for it, there is no extortion.

SM: Ok.

Plaintiff: Do you even know what extortion is?

SM: When you said you were going to block the Company from operating unless you get paid. Brooo, like . . .

Plaintiff: I never said . . .

SM: Yes you did, we have documentation of it, I promise you.

Plaintiff: You do?

SM: Yeah.

Plaintiff: So you recorded a phone call in the state of California, which is a criminal offense–

SM: That's not what I said. We have written documentation.

Plaintiff: You don't . . . You have no written documentation of that.

SM: Ok.

Plaintiff: Because it was never said.

SM: Bro, bro, I didn't come on this call making threats, and so you don't need to do that. I'm happy to take a step back, but you should, as well. Okay.

Plaintiff: I will play my cards how I feel like playing my cards.

SM: Yeah, you're welcome to do that. But I'm just telling you, like I didn't . . . if someone is not being hostile . . . hostile to you. You don't need to be hostile to them man.

Plaintiff: There's no hostility. You can't handle being called out on lying. That's you. You got hostile.

SM: You can't be handled calling out on anything, and you deny everything, bro. This is . . . we looked into your background, and we found out this is a major problem in other companies, too. It's not just one, dude.

Plaintiff: What companies?

SM: Okay. Okay. Look, look, If you think that you haven't had similar circumstances arise in other business dealings with, then that's fine to believe. I'm just telling you . . . you're saying I', lying to you. I'm not lying about anything, bro.

Plaintiff: And let me just tell you . . . Cole's had similar circumstances in his business. You've had similar circumstances in your business. Everybody has issues when it comes to business, nothing is straight forward. Nothing is . . . what it seems. I've never heard of a company . . . There is very few times that I've heard of a company that just runs like a smooth ship.

SM: That's not what we're talking about. We're talking about similar circumstances to the way that you're dealing with us, as you have with other companies and it's fine. Look, it is what it is. I don't want to have any hostility, man. You have your 5% . . .

Plaintiff: You . . . you . . . you keep making these claims.

SM: What claims am I making?

Plaintiff: Now I would like to know . . . first of all if any of those companies that you are even talking about, spoke to [you] they are in breach of their non-disclosure non-circumvents, that's one. 2, you guys are in breach of your non-disclosures non-circumvents, so, I would like to know . . .

SM: Ahhh . . . No, I'm not, (chuckles) I'm not in breach of anything.

Plaintiff: You have a non-disclosure non-circumvent with my company, Loxodonta.

SM: I didn't share any . . . I didn't share any confidential information about your company. Ok? Bro, go read the agreement. The counterparty is your company, it's not Pearpop. And secondly (chuckles) like that has nothing . . . –

Plaintiff: That's one agreement.

SM: Yo! Look, Ryan you are not going to do a "got-you", I'm trying to say . . .

SUPREME COURT
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