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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 ELSEVIER INC., et al.,

4 Plaintiffs,

5 v.

15 CV 4282

6 SCI-HUB, et al.,

7 Defendants.

8 -----x

New York, N.Y.
July 14, 2015
4:08 p.m.

9
10 Before:

11 HON. RONNIE ABRAMS,

12 District Judge

13 APPEARANCES

14 DEVORE & DEMARCO, LLP
15 Attorneys for Plaintiffs
16 BY: JOSEPH DEMARCO
DAVID HIRSCHBERG

17 ALEXANDRA ELBAKYAN, Pro Se Defendant
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1 (In chambers; all parties appearing via speakerphone)

2 THE COURT: Hi, this is Judge Abrams.

3 MR. DEMARCO: Good afternoon, your Honor.

4 THE COURT: Good afternoon. So, Mr. DeMarco, I have
5 you and your colleagues on the line.

6 And, Ms. Elbakyan, are you there as well?

7 MS. ELBAKYAN: Yes.

8 THE COURT: Okay. Good afternoon.

9 So, Ms. Elbakyan, last time we spoke you indicated
10 that you were going to file an opposition to the plaintiff's
11 complaint and motion for preliminary injunction. I never
12 received anything. But I did separately issue an order asking
13 you if you would like the Court to attempt to locate you pro
14 bono counsel, which means an attorney who might be willing to
15 represent you free of charge.

16 Is that something that you're interested in?

17 MS. ELBAKYAN: No, but I have additional question. I
18 spoke to pro se and they told me they don't accept anything by
19 email. They only accept by mail.

20 THE COURT: That may be. Look, it's completely up to
21 you whether you get an attorney. I look at this case and I
22 think that there are a lot of complicated or potentially
23 complicated legal issues regarding jurisdiction or what
24 extraterritorial relief could be ordered and a number of sort
25 of issues that are complicated under U.S. law.

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1 I don't know if a lawyer would be willing to represent
2 you, but one might be willing to do that and that person could
3 handle all the filings, so, to the extent you're having trouble
4 filing things. But if you're not interested, that's fine.
5 It's really up to you.

6 MS. ELBAKYAN: But I want additional time to find a
7 lawyer because, for example --

8 THE COURT: I'm sorry, could you repeat that, please?

9 MS. ELBAKYAN: I need additional time to find a
10 lawyer.

11 THE COURT: Okay.

12 MS. ELBAKYAN: Could you delay the hearing until
13 August 21.

14 THE COURT: August 21, is that what you asked for?

15 MS. ELBAKYAN: Yes.

16 THE COURT: Okay. Mr. DeMarco.

17 MR. DEMARCO: So, obviously, your Honor, if the
18 defendant plans on finding an attorney to represent her in
19 court by filing a notice of appearance, i.e., an attorney
20 admitted before the court and plans to retain counsel in order
21 to litigate the matter, then obviously, you know, we consent to
22 that.

23 I am concerned, though, that we're going to come back
24 either on the 21st or the week before for a prehearing
25 conference and the defendant will not have secured a lawyer. I

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1 think your Honor has given the defendants ample time to respond
2 and, you know, we don't have any opposition papers yet. But
3 obviously if the defendant wants more time to find an attorney,
4 we will consent to that limited extension. But I think we
5 would request that there be no additional extensions on that
6 basis at that time.

7 THE COURT: I understand. Let me ask you this,
8 Mr. DeMarco. I know you had previously expressed a concern
9 about having this jump from judge to judge, which frankly I
10 understand. Judge Sweet is back, as I understand it, in
11 mid-September. Is it your preference, if I were to grant this
12 request for an adjournment until August 21 for Ms. Elbakyan to
13 attempt to secure an attorney, would your preference be to
14 proceed on August 21 or for me to speak to Judge Sweet's
15 chambers and schedule it a day after he has returned and,
16 therefore, one judge will be handling it; do you have a
17 preference in that respect?

18 MR. DEMARCO: I think our only preference is that it
19 not preambulate to yet another judge. We're indifferent as
20 between your Honor and Judge Sweet. I think you both have now
21 read the papers. We have a slight preference for proceeding on
22 the 21st if your Honor is available. But as between proceeding
23 with a third judge on the 21st versus waiting for Judge Sweet
24 in early September, I think we'd be fine waiting until early
25 September.

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1 That may not answer your question or help you, but I
2 think that's what our thinking is.

3 THE COURT: It does. I'm unavailable on August 21.
4 So I think if the hearing were scheduled then, it would be
5 before the Part I judge then. And I apologize for this; I know
6 that can be frustrating. And that's why I asked you because
7 I'm trying to be fair and take into consideration the need from
8 your client's perspective to move as quickly as possible, but I
9 also want to balance that against the inconvenience and the
10 difficulty that you may face if a number of different judges
11 are involved.

12 MR. DEMARCO: I think if we're talking between the
13 21st and another judge versus September and Judge Sweet, we
14 would prefer September and Judge Sweet.

15 THE COURT: Okay. So what I'm going to do is I'm
16 going to call his chambers and schedule it, once I speak to
17 them, as soon as he's available to do it in September.

18 Ms. Elbakyan, I just want to make sure you understand
19 this. I am on what we call Part I. It essentially means that
20 I'm the emergency judge for a few weeks. And the judge whose
21 case this is, to whom this case is assigned, is a judge by the
22 name of Judge Sweet and he is back in September.

23 And so what I think I'm going to do is I'm going to
24 grant your request for additional time to submit an opposition
25 and to attempt to get an attorney. But I'm going to talk to

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1 his chambers, his office, before I schedule a final date for
2 the hearing. But I expect right now that that date, it will be
3 after the August 21 date you asked for. It will either be
4 August 21 or, if he'll be back in early September or
5 mid-September, I'll schedule it in mid-September before Judge
6 Sweet.

7 Do you understand that?

8 MS. ELBAKYAN: September is good.

9 THE COURT: Okay. So that's what I'm going to do.
10 But I will tell you, Ms. Elbakyan, you have to move quickly
11 both in attempting to retain an attorney and you'll have to
12 stick to the schedule that is set once it's set. So I am going
13 to give you additional time to attempt to obtain an attorney
14 and to file your opposition and, presumably, your attorney will
15 file that for you. But you will have to stick to those dates.
16 So you will not be permitted in September to ask for additional
17 time, okay, because we're giving you over approximately two
18 months. So you need to work fast and be prepared to have a
19 hearing in September. Do you understand that?

20 MS. ELBAKYAN: Yes, I understand.

21 THE COURT: Okay.

22 MR. DEMARCO: Your Honor, just a couple of things.
23 First is perhaps your Honor could set some of those dates,
24 i.e., a date by which the defendant must retain an attorney and
25 file any papers either through that attorney or, if she's not

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1 going to be represented, she can't find an attorney, through
2 the pro se office by mailing them to the pro se office well in
3 advance of that date.

4 And then the second thing was another thought occurred
5 to me, your Honor, which is that since we're dealing here with
6 just one of multiple defendants and remaining defendants have
7 not appeared and are in default, one other option to keep the
8 matter moving forward potentially would be for us to appear
9 before your Honor on Tuesday only with respect to the other
10 defendants and presumably move on our papers at that time if
11 your Honor is amenable.

12 THE COURT: I think it's best to have it all happen at
13 one hearing and it should I think happen before Judge Sweet in
14 light of our prior discussion and the reason is that based on
15 my recollection of the last call, Ms. Elbakyan has admitted her
16 involvement in at least some of the corporate defendants and,
17 therefore, it may be that when she gets an attorney, that
18 attorney represents one or more of the corporate entities as
19 well as her individually.

20 And so just so we're not in a situation where we have
21 a motion for default and then perhaps a motion to vacate that,
22 I think it's best to give her time and a specific amount of
23 time to attempt to obtain an attorney and then to move forward
24 with the hearing at once. But I understand why you asked, but
25 I think that's best.

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1 Ms. Elbakyan, I just want to make something clear to
2 you which is that you need to have an attorney who's able to
3 represent you here in New York. Do you understand that?

4 MS. ELBAKYAN: Yes.

5 THE COURT: Okay. So it needs to be someone who is
6 admitted to the bar here or is working with someone who can get
7 them temporarily admitted or, as we call it, pro hac vice here
8 in New York. If you want the Court to attempt to locate an
9 attorney for you, you'll have to tell me within the next week.
10 Otherwise, I assume that you will try to get an attorney. And
11 what I'm going to do -- how much time do you think it will take
12 you to do that? Because, again, I want to set firm dates so
13 that this doesn't continually get pushed off. How much time do
14 you think you'll need to get an attorney?

15 MS. ELBAKYAN: I think I need at least one month or
16 more.

17 THE COURT: Okay. I'm going to give you until that
18 August 21 date to get an attorney to file a notice of
19 appearance, okay. And then I'm going to give you one week
20 after that to have your attorney file an opposition to the
21 plaintiff's motion for preliminary injunction. Okay?

22 MS. ELBAKYAN: Okay.

23 THE COURT: And then I am going to give the plaintiffs
24 one week to reply to that. So that's September 4, all right.
25 So you have until August 21 to obtain an attorney. The sooner

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1 you do it, the better because then that attorney will have more
2 time to get up to speed on your case and submit an opposition.
3 Okay?

4 MS. ELBAKYAN: Okay.

5 THE COURT: And then the plaintiffs will have until
6 August 28 to reply. Excuse me. I'm sorry. I'm going to say
7 that again because I don't think I was very clear.

8 So you'll have until August 21 to get an attorney file
9 a notice of appearance. You'll have until August 28 to submit
10 an opposition. And plaintiffs will have until September 4 to
11 submit a reply. And then I will talk to Judge Sweet's chambers
12 and schedule a date for the hearing in September. I expect
13 that it will be the week of September 14, but I'm going to
14 confirm that with him. Okay?

15 MS. ELBAKYAN: Okay.

16 THE COURT: But if you want the Court to get you an
17 attorney, you need to do that one week from today, okay, you
18 just need to tell us that you want us to do that. Otherwise,
19 we're going to leave it to you to get your own attorney. Do
20 you understand that?

21 MS. ELBAKYAN: Yes.

22 THE COURT: Okay. So what I'm going to do is I'm
23 going to, after I speak to Judge Sweet's chambers, I'm going to
24 issue an order with these dates in it and I'm going to put it
25 what we call on the docket and the plaintiffs will serve it on

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1 you and then we'll proceed with this schedule and you will be
2 before another judge in September.

3 MS. ELBAKYAN: Okay.

4 THE COURT: Mr. DeMarco, do you have any other
5 thoughts or applications at this time?

6 MR. DEMARCO: Just two thoughts, your Honor. The
7 first is I think a week will be enough time to file any reply
8 papers to any opposition papers, but obviously if we could with
9 the Court's permission ask for more time in the event that the
10 papers that oppose our application are voluminous. But,
11 obviously, we can take that up with Judge Sweet.

12 THE COURT: That's fine. Frankly, right now as I've
13 scheduled it, there are at least ten days between the
14 opposition papers and the hearing. So I mean so I can give you
15 a little more time now. Would it help to have until that
16 Wednesday the 9th?

17 MR. DEMARCO: Sure.

18 THE COURT: Okay.

19 MR. DEMARCO: And then secondarily, in the event that
20 the defendant on the phone would like the Court's help in
21 finding an attorney, perhaps your Honor could just spell out
22 what exactly is required of the defendant in order for her to
23 do that. I think your Honor mentioned that in the prior order
24 which was served on the defendant, but it may be worth going
25 over that just so we don't have to all get on the phone again.

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1 THE COURT: That's fine. I'll put information in the
2 order that I hope will be helpful to her.

3 So, again, Ms. Elbakyan, do you have any questions?

4 MS. ELBAKYAN: No.

5 THE COURT: Okay. Again, I urge you to try and get an
6 attorney as soon as possible and submit your opposition as soon
7 as possible. But, in any event, if you want the Court to
8 assist you in getting an attorney, you've got to tell me a week
9 from today.

10 MS. ELBAKYAN: Okay.

11 THE COURT: Are you still getting emails at the same
12 address?

13 MS. ELBAKYAN: Yes, I still get emails.

14 THE COURT: At the same email address. Okay. I just
15 wanted to confirm that so that we're able to contact you. All
16 right. I think that's it from my perspective, unless anyone
17 has any other applications or questions.

18 MR. DEMARCO: We do not, your Honor.

19 THE COURT: Okay. Thank you both. Thank you all.

20 MR. DEMARCO: Thank you, your Honor.

21 THE COURT: We're adjourned. If you'd like a copy of
22 this transcript, you can reach out to the court reporters,
23 okay. You can go on the website SDreporters.com. Thank you.

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