

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ERIC PULIER,	:
	:
Plaintiff,	:
	:
v.	: Civil Action
	: No. 12005-CB
COMPUTER SCIENCES CORPORATION, a	:
Nevada Corporation, and CSC AGILITY	:
PLATFORM, INC., (F/K/A SERVICEMESH	:
INC.), a Delaware Corporation,	:
	:
Defendants.	:

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Chambers
New Castle County Courthouse
500 North King Street
Wilmington, Delaware
Monday, August 7, 2017
4:40 p.m.

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BEFORE: HON. ANDRE G. BOUCHARD, Chancellor

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THE COURT'S RULING ON PLAINTIFF PULIER'S COURT OF
CHANCERY RULE 88 MOTION FOR ADVANCEMENT OF FEES AND
EXPENSES

CHANCERY COURT REPORTERS
New Castle County Courthouse
500 North King Street - Suite 11400
Wilmington, Delaware 19801
(302) 255-0521

1 APPEARANCES: (via telephone)

2 MARTIN S. LESSNER, ESQ
3 DANIEL M. KIRSHENBAUM, ESQ.
4 TAMMY L. MERCER, ESQ.
5 EMILY V. BURTON, ESQ.
6 Young, Conaway, Stargatt & Taylor LLP

-and-

7 MARK HOLSCHER, ESQ.
8 JAMES RAPORE, ESQ.
9 of the California Bar
10 Kirkland & Ellis LLP
11 for Plaintiff

12 PETER J. WALSH, JR., ESQ
13 JACOB R. KIRKHAM, ESQ.
14 Potter Anderson & Corroon LLP

-and-

15 THOMAS E. O'BRIEN, ESQ.
16 of the Texas Bar
17 Baker Botts L.L.P.
18 for Defendants

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1 THE COURT: All right. With that, I'm
2 going to turn to the Rule 88 motion in Civil Action
3 No. 12005. This, fortunately for everyone involved,
4 will be much shorter.

5 Before the Court is the motion of
6 plaintiff, Eric Pulier, for advancement of fees and
7 expenses in the amount of \$233,159.07 pursuant to
8 Court of Chancery Rule 88 and the Court's May 27,
9 2016, advancement order. The underlying action for
10 which advancement is sought here is Civil Action No.
11 11011. For reasons that I am going to explain, I am
12 going to grant the motion in full.

13 The motion involves four categories of
14 fees and expenses. In its answering brief,
15 ServiceMesh conceded one category by agreeing to
16 advance certain expenses related to paralegal work
17 totaling \$326.80. That leaves us with three
18 categories, which I am going to address in turn.

19 The first category concerns fees
20 Pulier allegedly incurred in connection with CSC's
21 efforts to obtain indemnification for the fees and
22 expenses CSC incurred in litigation involving a
23 ServiceMesh employee and equityholder, Shawn Douglass.
24 The total amount in dispute in this category is

1 \$208,225.45.

2 According to Pulier, these fees relate
3 to Pulier's defense of Counts 1 and 8 of the second
4 amended complaint in the underlying action. Count 1
5 seeks, among other things, indemnification from Pulier
6 and TechAdvisors for alleged breaches of
7 representations in the equity purchase agreement.
8 Count 8 is essentially a mirror-image claim that is
9 asserted against SRS as the agent of the non-employee
10 selling stockholders of ServiceMesh.

11 Paragraph 3 of the May 27th
12 advancement order unambiguously provides, and I'm now
13 quoting, "Plaintiff is entitled to advancement from
14 ServiceMesh of his attorneys' fees and other expenses
15 reasonably incurred in connection with defending
16 against the first, second, third, fourth and eighth
17 causes of action in the Underlying Action."

18 On page 21 of the May 12th transcript
19 ruling granting Pulier's motion for advancement of
20 these claims, I noted CSC's argument "that the actions
21 Pulier took that underlie Counts 1, 2 and 8 were all
22 personal to Pulier and were not undertaken by reason
23 of the fact that he was a director or officer of
24 ServiceMesh before the closing."

1 After examining cases such as Reddy,
2 TractManager, and Al Jazeera, I concluded, and again
3 I'm quoting, that "Pulier is entitled to advancement
4 from ServiceMesh for Counts 1, 2 and 8, because the
5 factual underpinnings of those claims are closely
6 related to conduct that Pulier is alleged to have
7 undertaken in his official capacity as a director and
8 officer of ServiceMesh before the closing," namely, to
9 enter into a side agreement with certain executives of
10 Commonwealth Bank of Australia in exchange for
11 contracts to trigger an earnout payment from CSC.

12 Notwithstanding my prior ruling, CSC
13 argues that fees Pulier incurred concerning the
14 Douglass matter should not be advanceable because the
15 Douglass litigation, and I'm now quoting from CSC's
16 brief, "did not implicate the wrongful conduct of
17 Pulier as an officer or director of ServiceMesh that
18 is the basis of CSC's lawsuit against him."

19 At last week's hearing, CSC focused in
20 particular on attorneys' fees and expenses Pulier
21 incurred in preparing a brief to oppose CSC's motion
22 for partial summary judgment on Count 8, which was
23 asserted only against SRS. That is the motion CSC
24 filed seeking indemnification for the fees it incurred

1 in connection with the Douglass matter.

2 It is of no moment in my judgment that
3 Count 8 is asserted only against SRS because the
4 allegations in Counts 1 and 8 are substantially
5 similar, as evidenced by paragraphs 95 to 112 and
6 paragraphs 185 to 200 of the Second Amended Complaint,
7 respectively. Indeed, as I read the Second Amended
8 Complaint, both counts contain virtually identical
9 allegations regarding the Douglass matter itself in
10 paragraphs 111 for Count 1 and paragraph 199 for Count
11 8, respectively.

12 In Danenberg versus Fittracks, the
13 Court held that "If a particular defense or litigation
14 activity benefits multiple ... defendants, but [the
15 advancement plaintiff] would have raised or undertaken
16 it himself if he were the sole ... defendant, then
17 [the defendant corporation] must advance 100 percent
18 of the related fees and expenses." The same logic
19 applies here. Although Count 8 is asserted only
20 against SRS, Pulier would need to litigate
21 substantially similar issues under Count 1 and would
22 incur the related attorneys' fees and expenses in any
23 event. In fact, the brief that CSC focused on last
24 week during the hearing on August 2nd also was

1 submitted in support of Pulier's cross-motion for
2 summary judgment not only on Count 8 but on Count 1 as
3 well.

4 In essence, by arguing that expenses
5 Pulier incurred in connection with Count 8 are not
6 advanceable because Count 8 is only against SRS,
7 ServiceMesh is improperly seeking in my view to
8 reargue the advancement order.

9 So the bottom line for the first
10 category is that the advancement order unambiguously
11 requires ServiceMesh to advance reasonable fees and
12 expenses Pulier incurred in connection with Counts 1
13 and 8. It does not contain any exceptions for the
14 Douglass matter, and therefore the fees and expenses
15 Pulier incurred in connection with the Douglas matter
16 are advanceable.

17 The second category of disputed fees
18 and expenses relates to time entries for work that
19 ServiceMesh acknowledges is advanceable but that
20 allegedly was mixed in with Douglass-related work.
21 ServiceMesh contends that it is unable to determine
22 from the face of the entries how much of the fees and
23 expenses were incurred in connection with the Douglass
24 matter, which it argues is not advanceable, as we just

1 discussed, and thus has refused advancement for all of
2 the mixed entries which total \$18,814.02.

3 Because I've concluded that Pulier is
4 entitled to advancement for fees and expenses he
5 incurred in connection with the Douglass matter, the
6 fees and expenses in the mixed entries are subject to
7 advancement in their entirety.

8 The third category of disputed fees
9 and expenses were incurred by Pulier in connection
10 with his counsel's work to determine SRS's
11 responsibility to accept service of process in the
12 underlying action. Specifically, CSC attempted to
13 serve third-party subpoenas on two former ServiceMesh
14 employees and equityholders by serving SRS rather than
15 the two individuals directly. The total outstanding
16 disputed amount in this category is \$5,792.80.

17 ServiceMesh argues that these fees and
18 expenses are not advanceable because they were
19 performed by Pulier's counsel on behalf of SRS and
20 were not related to Pulier's defense of the claims
21 that are subject to advancement.

22 That objection is without merit in my
23 view. CSC attempted to serve third-party subpoenas on
24 two individuals for the apparent purpose of gathering

1 evidence from these former employees to use in the
2 underlying action in support of its claims against
3 Pulier.

4 As I discussed earlier, if a
5 particular litigation activity benefits multiple
6 defendants, the corporation still must advance
7 100 percent of the related fees and expenses so long
8 as the advancement plaintiff would have undertaken the
9 activity if he were the sole defendant. Thus, because
10 the work Pulier's counsel performed regarding CSC's
11 attempted service on SRS was related to Pulier's
12 defense of the covered claims in the underlying
13 action, that work is subject to advancement.

14 For the reasons I have explained,
15 Pulier's motion for advancement of fees and expenses
16 pursuant to Court of Chancery Rule 88 and the Court's
17 May 27, 2016, advancement order is granted in its
18 entirety. ServiceMesh is directed to advance to
19 Pulier the fees and expenses that are at issue in this
20 motion, which I stated at the outset total
21 \$233,159.07, within ten calendar days.

22 Consistent with paragraph 13 of the
23 advancement order, Pulier also will be awarded
24 pre-judgment interest on the disputed amounts, and

1 Pulier can seek indemnification for the fees and
2 expenses he incurred in connection with this motion in
3 parallel with his next demand under the order that
4 exists in this case.

5 Mr. Lessner, I would like you to
6 submit to me a form of order to implement this ruling.
7 I know you submitted an order with your motion but I
8 think you need to fill in a few blanks, and it's not
9 in my queue. So if you could do that and get it over
10 to me, I'll enter it when I get it. Obviously show it
11 to the other side first.

12 MR. LESSNER: Obviously, Your Honor.

13 Would Your Honor prefer that we submit
14 an order similar to the civil advancement order and
15 similar to the Danenberg-Fitracks order which I'm
16 going to say resolves a lot of the issues that have
17 been ruled upon?

18 THE COURT: We already have a
19 Danenberg-Fitracks order I think in place for this
20 case. Right?

21 MR. LESSNER: Yes, we do.

22 THE COURT: For this civil action.
23 This is the advancement action for the underlying
24 case. Right?

1 MR. LESSNER: You know what? I'm
2 sorry, Your Honor. I am confusing my two cases today.
3 Yes, we would be happy to submit an order regarding
4 the 12005 which we just went through. I apologize,
5 Your Honor.

6 THE COURT: The order that you
7 submitted with this motion is a two- or three-
8 paragraph order. That's all you need to do. You have
9 one that you submitted with your motion, but I don't
10 think it was filed in a way that entered the queue
11 separately, and it has a few blanks. So why don't you
12 prepare one of those, show it to the other side, and
13 assuming there's no disagreement, file it with me and
14 I'll get it entered.

15 MR. LESSNER: Thank you, Your Honor.

16 THE COURT: Does anybody have any
17 questions on that?

18 I can't imagine that's terribly
19 controversial. I'm sure CSC won't agree but I can't
20 imagine what I said is terribly controversial.

21 MR. O'BRIEN: No questions, Your
22 Honor. Thank you.

23 THE COURT: All right. Counsel, thank
24 you for your patience. Sorry to keep you on the phone

1 so long, but given that it's advancement, I wanted to
2 get you an answer as promptly as I could, and this is
3 the best way I could do it. Have a good day.

4 MR. LESSNER: Thank you, Your Honor.

5 MR. O'BRIEN: Thanks.

6 (Court adjourned at 4:51 p.m.)

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CERTIFICATE

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I, JEANNE CAHILL, RDR, CRR, Official Court Reporter for the Court of Chancery of the State of Delaware, do hereby certify that the foregoing pages numbered 3 through 12 contain a true and correct transcription of the proceedings as stenographically reported by me at the hearing in the above cause before the Chancellor of the State of Delaware, on the date therein indicated.

IN WITNESS WHEREOF I have hereunto set my hand at Wilmington, Delaware, this 9th day of August, 2017.

/s/ Jeanne Cahill

Jeanne Cahill, RDR, CRR
Official Chancery Court Reporter
Registered Diplomat Reporter
Certified Realtime Reporter