The Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ADRIENNE BENSON AND MARY SIMONSON, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

DOUBLE DOWN INTERACTIVE, LLC, et al.,

Defendants.

No. 2:18-cv-00525-RSL

DEFENDANT DOUBLE DOWN INTERACTIVE LLC'S OPPOSITION TO PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER

I. INTRODUCTION

The timing of Plaintiffs' Motion for a Temporary Restraining Order ("Motion") is not coincidental. It comes in the midst of good faith settlement negotiations involving substantial monies, guided by Judge Layn Philips (Ret.), with one mediation session having been completed on July 28, 2022, and another set for August 26, 2022. As these negotiations are ongoing, Plaintiffs' Motion is a transparent attempt to create artificial settlement leverage as their requested relief has no bearing on the actual merits of the underlying claims. Plaintiffs instead hope that by preventing DDI from conducting its business operations, DDI will be forced to pay a higher settlement amount than the facts and law require. The judicial process should not be an unwitting co-conspirator in Plaintiffs' efforts.

Plaintiffs' conspiracy theory supporting their Motion is rooted in the unfounded notion that Defendant Double Down Interactive, LLC ("DDI") has not negotiated in good faith. What this *really means* is that DDI simply has not agreed to pay the ever-changing amounts unilaterally demanded by Plaintiffs. Rather than rely on Plaintiffs' self-serving representations and waste this Court's time with factual rebuttals, DDI instead ***invites the Court to contact Judge Phillips (Ret.)*** directly to confirm its good faith participation in the mediation process. He can be reached through Phillips ADR's main office line: (**949) 760-5280**. DDI is confident that Judge Phillips (Ret.) and his co-mediator, Niki Mendoza, ***will reject Plaintiffs' allegations*** regarding DDI's alleged mediation conduct and will instead confirm DDI's active and good faith participation in the settlement negotiations that have been ongoing throughout July 2022 and to this day. What will become apparent is that after Plaintiffs filed their Motion, substantive settlement communications ceased—the opposite of good faith negotiations.

Plaintiffs' smokescreens aside, the factual and legal merit of their Motion is also deficient. What Plaintiffs essentially seek here is an extraordinary restraint upon Double Down Interactive Co., Ltd. ("DDI Co. Ltd."), a ***Korean non-party*** corporation that filed the Form 6-K attached to the Motion. Without any actual evidence of wrongdoing or asset dissipation,

Plaintiffs' counsel admitted weeks ago that (a) any issues concerning DDI Co. Ltd.'s corporate actions arise under Korean law, and (b) they are completely ignorant regarding such Korean law:

> Under the Korean Commercial Code (and any other applicable law), may DDI tap into its capital reserve to resolve pending litigation? ***We know very little about Korean law, but because our instinct is that the answer to this question is "yes," we are deeply troubled*** by the notion that DDI will be pulling cash out of its capital reserve the day before our August 26 mediation--all while DDI hopes to have the case stayed.

June 23, 2022 e-mail from Plaintiffs' counsel to DDI's counsel. Dkt. 483-2 at 5 (emphasis added).

But "instincts" about the effect of DDI Co. Ltd.'s Form 6-K cannot replace Korean law. Under that set of laws, as explained in an expert declaration by Joonsup Yoon, who specializes in corporate law at a top Korean law firm, the Form 6-K filed by DDI Co. Ltd. means something far different. First, the complained of corporate action by DDI Co. Ltd. is routine under Korean law and *does not actually* have the effect of removing money from DDI Co. Ltd.—let alone DDI, the actual defendant here. Second, Mr. Sigrist has no power to thwart the scheduled shareholder vote and would face civil and criminal penalties in Korea for attempting to do so. Third, even crediting Plaintiffs' speculation that DDI Co. Ltd. plans to issue a dividend, it could not do so until 2023 *at the earliest*. Put simply, under Korean law, nothing Plaintiffs allege justifies their emergency TRO or claim of harm, irreparable or otherwise.

That their TRO is instead directed at Joe Sigrist is a transparent end run around Korean (and U.S.) law and cannot fix their inability to prove a likelihood of success on the merits as to the Korean non-party. Plaintiffs instead confusingly direct the Court to their *February 25, 2021* motion for preliminary injunction, but that motion involved only defendant DDI and the requested relief—enjoining operation of an allegedly illegal online casino—was directly related to the underlying claims. Here, DDI Co. Ltd. is not a defendant and Plaintiffs do not ask the Court to exercise jurisdiction over it. For the same reasons, Plaintiffs' reliance on a Washington statute that permits injunctive relief where a "defendant" intends to fraudulently convey assets to avoid a judgment is equally unavailing.

Apart from these technical deficiencies, there still is no evidence linking DDI Co. Ltd.'s public announcement of a routine shareholder vote pursuant to Korean law (one that primarily involves the election of directors) to an intent to dissipate assets. It is also worth noting that the proposed reduction in "capital reserve" balance is approximately $50 million, which would represent *less than a 10 percent* reduction of that balance, which is not material in light of Plaintiffs' damages demands. This fact alone rebuts any inference of a specific intent to dissipate an amount of assets that would be material to the alleged claims.

If TROs were granted in this manner based on "instincts" and inference, then any pre-judgment use of monies by DDI or any recipient of monies from DDI, including DDI Co. Ltd., would be automatically prohibited. If the Court were to accept this protocol, then a publicly-traded corporate defendant and its ultimate parent company could not engage in a host of ordinary corporate actions to benefit its shareholders, such as issuing dividends, buying back stock, while a lawsuit is pending.

Perhaps the most telling irony here is that for DDI to settle this lawsuit, it would need a modification of the TRO to do so. But this contradiction highlights what should now be obvious: Plaintiffs' true motivation in bringing this TRO is not to remedy some actual wrong but rather to hold DDI's funds hostage and force DDI to pay whatever settlement demand is forthcoming if and to the extent that a TRO is issued. This Court should follow the facts and the law and reject Plaintiffs' attempt to create such artificial settlement leverage.[1]

II. RELEVANT FACTUAL BACKGROUND

A. DDI Mediated, and Continues to Engage in Settlement Discussions, in Good Faith.

On July 1, 2022, the parties agreed to mediate with Hon. Layn Phillips (Ret.) and Niki Mendoza of Phillips ADR on July 28, 2022, and August 26, 2022. Declaration of Ekwan Rhow

[1] Mr. Sigrist will attend the hearing as ordered. Without waiving any jurisdictional objections DDI Co. Ltd. may have, he is prepared to represent to the Court that DDI Co. Ltd. has not engaged and does not intend to engage in any actions to render a potential judgment in this case ineffectual. Further, as DDI Co. Ltd. is a publicly traded company, to the extent that the Court questions Mr. Sigrist about DDI Co. Ltd.'s anticipated corporate actions, any such questioning should be conducted *in camera* so that Mr. Sigrist remains in compliance with SEC regulations regarding the disclosure of certain corporate events.

("Rhow Decl."), ¶ 3. Prior to this, the concept of a stay was initially requested by co-defendant IGT and agreed to by Plaintiffs. *Id.* ¶ 4. DDI was the last party to confirm participation in the mediation and assented to the concept of a mediation subject to a stay. *Id.* Contrary to Plaintiffs' implication otherwise, while recognizing the value of a stay to all parties pending mediation, DDI did not demand a stay as a precondition to mediating nor did it initially request the stay. *Id.* On June 17, 2022, the Court granted a stay through June 24, 2022. *Id.*; Dkt. 469. Subsequently, and while the parties worked to confirm mediation dates, the issue of extending the stay continued to be raised. *Id.*, ¶ 5. The request for a one-week extension of the stay on June 24, 2022 was made ***solely "[a]s a courtesy to IGT,"*** not at DDI's request. *Id.*, Dkt. 473.

On July 1, 2022, as is often the case when parties are engaged in settlement discussions or awaiting mediation, the parties agreed to extend the stay of this action by one month until August 1, 2022. Dkt. 475. Prior to the initial July 28, 2022 session, the parties engaged with Ms. Mendoza in several pre-mediation discussions designed to narrow the issues and monetary spread. *Id.*, ¶ 7. The parties continued their discussions during their July 28, 2022 session with Ms. Mendoza, which lasted more than nine hours. *Id.*, ¶ 7. Subsequent to that session, the parties continued to engage in settlement discussions with Plaintiffs, who engaged separately and extensively in writing and orally with DDI and IGT. Without disclosing settlement-privileged information, and despite Plaintiffs' claims to the contrary, DDI mediated in good faith and intends to continue to do so in advance of and during the August 26, 2022 in-person session with Judge Phillips. *Id.*, ¶ 11.

Indeed, Defendants were engaged in settlement discussions guided by Phillips ADR as recently as yesterday. Again, DDI invites the Court to contact Phillips ADR to confirm DDI's good faith mediation efforts.

B. Plaintiffs' Motion Is Pure Gamesmanship, Which Started During the Mediation Process.

On July 23, 2022, the week before the July 28, 2022 mediation session with Niki Mendoza, Plaintiffs' counsel began accusing DDI of "playing games with its on-hand cash while

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