

Organovo Holdings, Inc. v. Dimitrov – Court of Chancery Does Not Hold Subject Matter Jurisdiction to Enjoin a “Short And Distort” Scheme Absent Interference with Specific Contractual or Economic Relationships

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In *Organovo Holdings, Inc. v. Georgi Dimitrov*, C.A. No. 10536-VCL (Del. Ch. June 5, 2017), the Delaware Court of Chancery vacated a default judgment against an investor facing \$188 million in damages caused by an online short-sale scheme. The court extensively analyzed equitable jurisdiction over defamation and libel claims to determine subject matter jurisdiction did not exist on a fact pattern of a party disseminating false statements to the general public, via Twitter and webpages, intended to drive down the price of a stock to enable short-sale profit. The court left open the question of whether equitable jurisdiction exists to enjoin trade libel that interferes with specific contractual and economic relationships.

Organovo sued Georgi Dimitrov for libel, libel *per se*, and tortious interference with prospective economic advantage. Organovo designs functional human tissues through its use of a proprietary 3-D bio-printing technology. Allegedly Dimitrov, through a sham company called Simeon, published two defamatory “research reports” through a webpage disseminated by sixty-five comments on Simeon’s Twitter account. The reports were camouflaged as the work product of a professional research firm, but contained false statements designed to damage Organovo’s share value, in a typical “short and distort” scheme that netted approximately \$35,000.

Organovo had won a prior action against Simeon by default judgment, in which the Court of Chancery ordered Simeon to remove all internet and Twitter posts containing the false statements. Dimitrov caused Simeon to comply with that order.

Then, on January 13, 2015, Organovo sued Dimitrov personally, alleging the same fact pattern, seeking a prohibitory injunction to prevent Dimitrov from defaming Organovo in the future, and monetary damages. Dimitrov defaulted, but later moved via Chancery Court Rule 60(b) to vacate the judgment for lack of subject matter jurisdiction, among other unaddressed reasons.

The court expounded upon the maxim “equity will not enjoin a libel,” noting that historically libel was a crime and therefore subject to the sole jurisdiction of the law courts. The court noted that English law discarded the maxim with the merger of its courts of law and equity, and now makes available even preliminary injunctions against libel. However, American courts have maintained a “no injunction” rule, grounded on the premise that defamation claims are uniquely suitable for jury determination in the context of First Amendment guarantees. The rule of “no injunction against future defamation” was endorsed by the U.S. Supreme Court in the 1931 opinion *Near v. Minnesota ex rel Olson*, 283 U.S. 697 (1931).

The court then explained that Delaware jurisprudence does permit preliminary injunctive relief for trade libel, including tortious interference with economic relations. But *Organovo*’s complaint was that Dimitrov had defamed it generally to the wide world, rather than interfered with any specific customer, lender, or supplier. The complaint was unable to allege that Dimitrov knew anything about *Organovo*’s specific business relationships, and therefore failed to effectively allege that Dimitrov *intentionally* interfered with any specific prospective contract.

The court then noted that it held the power to issue an injunction *after* a jury verdict via a transfer of jurisdiction during the remedial phase of the case per 10 Del. C. §1092. Finally, the court rejected disgorgement as a viable equitable remedy, because the profits were alleged to come from general trading rather than any contribution of *Organovo*.

The case is important for two reasons. First, it affirms that the Court of Chancery will not enjoin libelous statements directed to the wide world, rather than to specific contractual or economic relations of the complaining party. Second and arguably more important, *Organovo* recognizes the availability of equitable jurisdiction over claims of trade libel, *i.e.*, statements that are intended to interfere with the complainant’s relationships with specific identified parties rather than with the wide world.