

Judge Blasts Defendant for Ignoring Discovery Obligations and More

By Daniel A. Lowenthal
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A recent decision by Bankruptcy Judge Brendan Shannon was peppered with some harsh words for a defendant in an adversary proceeding. Judge Shannon said the party’s “failure to perform basic discovery responses and participation in litigation ... has been breathtaking. I have seen a lot, but I have not seen strategic and patterned failure to provide meaningful, substantive responses to very basic and cogent questions that have gone on for more than a year.” *In re Byju’s Alpha*, Case No. 24-10140, Adv. Pro. No. 25- 50526, 2025 Bankr. LEXIS 3034, at *16 (Bankr. D. Del. Nov. 20, 2025).

Judge Shannon also said, “the circumstances of this case are, frankly, unique and unlike anything the undersigned has encountered before, thereby making [the] relief in this case richly warranted.” *Id.* at *28.

These comments were made in a case that was filed after the fraudulent transfer of \$533 million of the debtor’s funds, plus other proceeds. The plaintiffs — the debtor and another entity — sued defendants for breaches of fiduciary duty, aiding and abetting breach of fiduciary duties, accounting, conversion, and civil conspiracy.

The plaintiffs filed a motion seeking limited expedited discovery. One defendant, who initially represented himself pro se, filed an opposition to the motion but did not appear at the hearing. The court granted the motion and set multiple discovery deadlines, but the defendant did not comply with them.

Then the plaintiffs filed a motion for civil contempt and sanctions. The defendant decided it was time to retain counsel, who opposed the contempt motion and said the defendant would comply with the discovery orders. But the defendant produced just four documents. The plaintiffs argued that the responses were “evasive, incomplete, and not made in good faith.” *Id.* at *5.

The court agreed with the plaintiffs and granted the motion for civil contempt. Each of the factors under Third Circuit law was met: “(i) a valid court order existed, (ii) [the defendant] had knowledge of the order, and (iii) [the defendant] had disobeyed the order.” *Id.*

The court ordered the defendant to comply with the discovery orders and imposed a fine of \$10,000 for each day he did not. The plaintiffs repeatedly asked the defendant when he would comply, the defendant said he would comply but didn’t, and then the plaintiffs filed a motion for a default judgment under Fed.R.Civ.P. 37(b)(2)(A)(vi), which is made applicable to bankruptcy proceedings by Fed.R.Bankr.P. 7037.

The court analyzed that motion under a six-part test in the Third Circuit:

- 1) the extent of the party's personal responsibility;
- 2) the prejudice to the adversary caused by the failure to meet scheduling orders and respond to discovery;
- 3) a history of dilatoriness;
- 4) whether the conduct of the party or the attorney was willful or in bad faith;
- 5) the effectiveness of sanctions other than dismissal, which entails an analysis of alternative sanctions; and
- 6) the meritoriousness of the claim or defense.

Poulis v. State Farm Fire and Cas. Co., 747 F.2d 863, 868 (3d Cir. 1984).

Sanctions can be awarded when less than all six factors are satisfied. A court must "assure that the 'extreme' sanction of dismissal or default is reserved for the instances in which it is justly merited." *American Asset Fin., LLC v. Feldman (In re Feldman)*, 608 B.R. 426 (Bankr. E.D. Pa. 2019)(citing *Poulis*, 747 F.2d at 870).

The court ruled that each of the six factors was satisfied. First, the defendant was responsible for not complying with discovery. He didn't comply when he represented himself pro se, and later, when he had counsel, his discovery responses were evasive and incomplete.

Second, the plaintiffs were prejudiced because what the defendant did and did not do in response to discovery showed an "intent to delay and defraud the plaintiffs." *Id.* at *11. The discovery requests sought information about the defendant's knowledge of transferred assets. In a related proceeding, the defendant had told lenders "the money is someplace the Lenders will never find it." The bankruptcy judge concluded, "[i]t is difficult to imagine a single combination of words to demonstrate actual fraudulent intent more clearly." *Byju's Alpha v. Camshaft Capital Fund, LP (In re Byju's Alpha, Inc.)*, 661 B.R. 109, 123 (Bankr. D. Del. 2024).

Third, the defendant was dilatory throughout the case.

Fourth, the court concluded that the defendant had acted willfully and in bad faith.

Fifth, alternative sanctions did not prompt the defendant to comply with his discovery obligations. The \$10,000 per-day sanction reached the hundreds of thousands of dollars and had not been paid. The court noted that the defendant "lives abroad and apparently has no intention of satisfying his financial penalties or complying with the discovery order." *Id.* at 19.

Finally, the court concluded that the plaintiffs' claims had merit. The defendant had previously filed a motion to dismiss the complaint for failure to state a claim under Fed.R.Civ.P. 12(b)(6). The court denied that motion when it ruled on the contempt motion, noting that the 12(b)(6) standard is also applicable when analyzing the factors under *Poulis*.

Because all six factors were met, the court granted the plaintiffs' motion for a default judgment. The court initially entered judgment against the defendant for \$533 million on certain claims and more than \$540 million on other claims and directed the defendant to account to the plaintiffs concerning the funds transferred, any related proceeds, and any subsequent transfers.

The defendant filed a motion asking the court to make a correction to the opinion. The parties had stipulated that damages would be considered separately after the court ruled on the motion for a default. In response to this, the court issued an amended opinion that removed the award of damages. The court directed the parties to file simultaneous briefs this month detailing their respective views on damages.

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