

New Twist in the Case of Marvel CEO's Secretly Collected DNA

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ISAAC "IKE" PERLMUTTER. Photo: Susan Walsh/AP

Marvel CEO Ike Perlmutter will confront his nemesis again — or at least, his lawyers will.

A Wednesday appellate court decision means Perlmutter's legal team must take a second crack at showing a Florida attorney participated in a fraud by secretly collecting the billionaire's DNA during a deposition.

The Fourth District Court of Appeal granted attorney William Douberley a new hearing on a motion to compel him to answer questions about the DNA testing debacle.

Douberley and his client, Toronto businessman Harold Peerenboom, admit they surreptitiously collected Perlmutter and his wife Laura's DNA by giving them documents treated with chemicals and by keeping their water bottles after the deposition. But they disagreed with Palm Beach Circuit Judge Meenu Sasser's finding that the deposition was a fraud on the court — a cover for Peerenboom's real intention, which the judge found was to try to link Perlmutter's DNA to a stream of hate mail sent to the businessman's family, friends and acquaintances.

Sasser ruled Douberley was involved in the fraud, piercing the shield of attorney-client privilege. The judge made the finding at a hearing Douberley did not attend, as he said he wasn't notified of it.

"The attorney was denied due process when the court found that his conduct was fraudulent without offering him an opportunity to be heard," Fourth DCA Judge Melanie May wrote, with Judges Carole Taylor and Jonathan Gerber concurring.

On those grounds alone, the Fourth DCA granted a new hearing but did not take a stance on whether scheduling the deposition was a fraud on the court.

"The hearing is on a very narrow issue," said the Perlmutter's appellate attorney, Joel Perwin of Miami. "That concerns the trial court's comments concerning Mr. Douberley's involvement with the scheme to secretly take DNA evidence at a deposition, not the question of whether what happened is privileged. The court has already ruled in the earlier petition brought by Mr. Peerenboom that there is no privilege, that all discovery can go forward."

Douberley also contends he did not break the Florida law requiring anyone analyzing DNA to notify the person tested, as he was merely collecting the DNA and not testing it.

"The driver of the getaway car in a bank robbery says the same thing," said Roy Black, who also represents the Perlmutter. "He's part of the conspiracy to get this done. If I hire a hitman to kill my wife, does that mean I'm not guilty of it because I didn't shoot the gun?"

Peerenboom was the one who sent the DNA off to a laboratory, Black said, but Douberley knew he was collecting it so it could be tested. Douberley and his attorney Daniel Bachi of Sellars, Marion & Bachi in West Palm Beach did not respond to requests for comment.

Black, the legendary Miami criminal defense attorney from Black Srebnick Kornspan & Stumpf, said he has rarely found himself so fascinated by a civil case.

"As far as I know, it is the first case in the United States of theft of DNA," he said.

DNA theft is a legal gray area, and fewer than 12 states have laws that could create a civil cause of action encompassing it, Arnstein & Lehr attorneys Franklin Zemel and Ariel Deray wrote in a contributed Daily Business Review piece about the Peerenboom case.

"While the lack of remedy for DNA theft is apparent, the appropriate legislative solution is not as clear," the lawyers wrote. "Because DNA is ubiquitous and is constantly being collected, most often for no improper purpose, e.g. by your server when he or she collects your wine glass from the table or by janitorial staff cleaning your office, legislators face a difficult task in drafting a statute that is narrowly tailored and not overbroad."

The question is just one of many interesting aspects of the Peerenboom vs. Perlmutter saga, which The Globe and Mail reports began when the two disagreed about who should run the tennis center they use in the elite Sloan's Curve community near Palm Beach. Peerenboom's neighbors started receiving "hundreds of anonymous hate letters falsely accusing him of loathsome crimes, including murder and sexual assault against a minor," Peerenboom, the owner of the international consulting firm Mandrake, alleged in a defamation complaint against Perlmutter.

The defamation case was filed after the head of the tennis center sued Peerenboom, also for defamation. Black said Peerenboom's attorneys deposed the Perlmutter in the tennis center case ostensibly because the Marvel CEO was paying the plaintiff's legal fees.

"But that's not the reason they took his deposition," Black said. "They took his deposition to get his DNA."