

EIP



Should a stay be ordered?

**10X Genomics, Inc. v Nanostring Technologies Inc. & Ors (UPC_CFI_2/2023;
UPC_CoA_335/2023)**

Order of Court of Appeal on 26 February 2024

On 19 September 2023, the Munich Local Division issued a preliminary injunction against the Defendants, Nanostring. The Defendants appealed and the appeal was heard by the Court of Appeal on 18 December 2023.

Before the Court of Appeal could hand down its decision, on 4 February 2024 the Defendants filed a petition to open insolvency proceedings under Chapter 11 of the United States Code ("Bankruptcy Code"). This was followed by an Order made on 6 February 2024 in Delaware confirming, restating and enforcing a worldwide automatic stay, anti-discrimination provisions and protection under the Bankruptcy Code subject to certain conditions.

In light of this the Claimants, 10X, requested a stay of these proceedings. The Defendants consented to that request.

Decision

The Court of Appeal declined to order a stay.

The aim of Chapter 11 proceedings is to reorganise and restructure a company. During this process the debtor generally retains the power of administration and representation. Rule 311.1 RoP provides that “the Court shall stay the proceedings up to three months” if a party is “declared insolvent under the law applicable to the insolvency proceedings”. The Court held that it was not necessary to decide whether the opening of Chapter 11 proceedings amounted to a declaration of insolvency such as to engage Rule 311.1. Even if this were the case there was no need for a stay.

The RoP are to be interpreted in accordance with Article 41(3) UPCA so as to “ensure a fair balance between the legitimate interests of all parties” that the proceedings are conducted “in the most efficient and cost effective manner” and that “the required level of discretion of judges [is provided] without impairing the predictability of proceedings for the parties”.

In this case, the oral hearing had already been concluded and the matter was ready for a decision before the insolvency was declared. In these circumstances a decision not to stay the proceedings is justified. All procedural steps have been taken and costs incurred and the interest in a timely order is great where provisional legal protection is in place. Further a fair balance between the legitimate interests of the parties is struck if events that occur after conclusion of the oral hearing are disregarded.

In support of its decision the Court referred also to procedure in other UPC jurisdictions. Under French and German civil procedure a stay is not ordered if the insolvency occurs after conclusion of the oral hearing. The position is similar in Italy where a stay is not ordered if notification of the insolvency occurs after the oral hearing. In Netherlands a stay is not applicable if the case is already ready for a decision.

Comment

The Court of Appeal has made a pragmatic decision that the interests of justice are better served by handing down the decision lifting the provisional injunction in circumstances where the oral proceedings had taken place and the decision was ready, rather than by applying a strict literal interpretation of “shall stay” in Rule 311.1 RoP.

The Court of Appeal’s decision on the provisional injunction is reported [here](#).