

COURT OF CHANCERY  
OF THE  
STATE OF DELAWARE

MORGAN T. ZURN  
MASTER IN CHANCERY

LEONARD L. WILLIAMS JUSTICE CENTER  
500 NORTH KING STREET, SUITE 11400  
WILMINGTON, DE 19801-3734

Final Report: March 31, 2017  
Date Submitted: January 13, 2017

John G. Harris, Esquire  
Berger Harris LLP  
1105 North Market Street, Suite 1100  
Wilmington, DE 19801

Mr. Mikhael Khenin  
1561 East 12<sup>th</sup> Street  
Brooklyn, NY 11230  
[mykhenin@gmail.com](mailto:mykhenin@gmail.com)

Re: *Utilisave, LLC v. Khenin*  
C.A. No. 7796-MZ  
Motion to Compel Discovery in Aid of Execution

Dear Counsel and Mr. Khenin:

Pending before me is Plaintiffs' motion to compel discovery in aid of execution. This is my final report. For the reasons that follow, I recommend granting Plaintiffs' motion in part.

This breach of contract and trade secret misappropriation case proceeded through a partial motion for summary judgment and trial before then-Master LeGrow, and review *de novo* on exceptions by Vice Chancellor Slight. On June 29, 2016, the Court ordered Defendant to pay Plaintiffs \$87,124.15, plus pre-

judgment and post-judgment simple interest at the legal rate (“Final Order”). On August 16, 2016, the Court also ordered Defendant to pay Plaintiffs \$6,488.45 in costs, which Defendant has paid.

On September 25, 2016, having received no payment under the Final Order and with the time for appealing the Final Order having passed, Plaintiffs served Defendant with post-judgment discovery requests in aid of execution pursuant to Court of Chancery Rule 69(b). Defendant did not respond.

Plaintiffs moved to compel on November 14, 2016. Defendant did not respond until Plaintiffs’ counsel asked the Court on December 6, 2016, to grant the Motion as unopposed. Defendant submitted an informal response on December 9, 2016, but before I received it, on December 16, 2016, I directed Defendant to respond or the motion would be considered unopposed. Defendant filed a formal response on January 6, 2017. Plaintiffs replied on January 13, 2017.

Defendant, proceeding *pro se*, contends the requested discovery is “not necessary” because he agreed to pay the \$87,124.15, and the parties disagree only as to the amount of interest. He states he “does not acknowledge” Plaintiffs’ motion because he denies this Court has jurisdiction over him, as all parties are in New York State. Defendant explains he would prefer to address this issue in New York because he would be entitled to legal assistance there. Defendant offers no substantive objection to the discovery requests.

Defendant has presented no basis to avoid answering Plaintiffs' discovery requests. Defendant submitted to this Court's jurisdiction in this case, including in the post-trial proceedings regarding costs. This Court retains jurisdiction to enforce the Final Order, including through Rule 69 supplementary proceedings.<sup>1</sup> Defendant has not paid any amount under the Final Order, so Rule 69(b) discovery in aid of its execution is warranted. Defendant represented himself since the conclusion of discovery in this case, so his *pro se* status now, after the Final Order, is unremarkable. In addition, Plaintiffs' Rule 69(b) discovery requests appear to be factual inquiries regarding personal financial information that is available to most laypeople.

Defendant shall respond to Plaintiffs' discovery requests within twenty days of this order becoming final. To prevent Defendant from benefitting from his delay and the pendency of Plaintiffs' motion, he shall answer the discovery requests as of the date they were served and shall thoroughly explain any differences in the state of affairs between the date served and the response date. I deny Plaintiffs' request for the Court to find Defendant has waived any objections

---

<sup>1</sup> Ct. Ch. R. 69(b) (providing proceedings thereunder are "supplementary" and "[i]n aid of the judgment or execution"); *Forsythe v. CIBC Empl. Private Equity Fund (U.S.) I, L.P.*, 2006 WL 846007, at \*2 (Del. Ch. Mar. 22, 2006) ("This court ... retains inherent authority to enforce its decisions, even in the absence of specific authorization by rule.").

to the discovery requests, although I note that baseless or dilatory objections may result in sanctions.

Plaintiffs also seek sanctions for Defendant's failure to act pursuant to Rule 37(a)(4). I agree with Plaintiffs that Defendant's failure to act necessitated the motion, that Defendant's delayed opposition to the motion was not justified, and that Defendant's *pro se* status does not excuse his refusal to respond to discovery requests. I award Plaintiffs the fees and costs incurred by bringing their motion to compel. This is a final report pursuant to Court of Chancery Rule 144.

IT IS SO ORDERED.

Sincerely,

*/s/ Morgan T. Zurn*

Master in Chancery