

**COURT OF CHANCERY  
OF THE  
STATE OF DELAWARE**

SAM GLASSCOCK III  
VICE CHANCELLOR

COURT OF CHANCERY COURTHOUSE  
34 THE CIRCLE  
GEORGETOWN, DELAWARE 19947

June 27, 2013

David E. Ross, Esquire  
Seitz Ross Aronstam & Moritz LLP  
100 S. West Street, Suite 400  
Wilmington, DE 19801

James Dennis Sanders  
2007 Tiffany Court  
Villa Rica, GA 30180

Re: *CHC Companies, Inc., et al. v. James Dennis Sanders*  
Civil Action No. 8298-VCG

Dear Litigants:

This matter involved an attempt to enforce Defendant James Dennis Sanders' contractual obligations not to compete with, solicit employees or customers of or disparage his former company, Plaintiff Judicial Corrections Services, Inc., and the buyer of that company, CHC Companies, Inc. Ultimately, the Plaintiff suffered a default judgment after serial violations of Court Orders designed to obtain compliance with the standstill agreement entered by the parties, and to coerce Sanders into fulfilling his obligations to answer discovery.<sup>1</sup> In those prior Orders, I indicated that, absent Sanders' compliance, I would shift fees onto him in connection with three matters: "Plaintiffs' Emergency Motion for An Order to Show Cause Why Defendant Should Not Be Held In Contempt And For Other

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<sup>1</sup> *CHC Cos., Inc. v. Sanders*, 2013 WL 1952017, at \*4 (Del. Ch. May 10, 2013).

Relief” (“First Rule to Show Cause”), “Plaintiffs’ Renewed Emergency Motion For An Order To Show Cause Why Defendant Should Not Be Held In Contempt And For Other Relief” (“Second Rule To Show Cause”), and in relation to the Defendant’s failure to appear at his scheduled deposition.<sup>2</sup>

The Plaintiffs have submitted affidavits in support of their request for fees and expenses, which seeks \$48,519.50 in connection with the First and Second Rules to Show Cause and the deposition.<sup>3</sup> Sanders had an opportunity to object to the Plaintiffs’ request and has failed to do so,<sup>4</sup> thereby waiving the opportunity to oppose entry of this amount. Nevertheless, when shifting fees, I have an independent obligation to determine whether the requested fees are reasonable.<sup>5</sup> What follows is my determination of a reasonable fee under these circumstances.

I first note that both firms involved in representing the Plaintiffs have submitted affidavits from counsel stating the amount of fees sought. These affidavits separate the fees incurred into three categories: those for the First and Second Rules to Show Cause and those incurred in preparation for the deposition of the Defendant, at which he failed to appear. There is also a statement in each affidavit stating that, in the opinion of counsel, these fees and costs are “reasonable

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<sup>2</sup> *Id.*

<sup>3</sup> Pls.’ Affs. Supp. Request for Fees and Expenses, Exs. 1-2.

<sup>4</sup> See Letter to Mr. Sanders Regarding Pls.’ Req. for Fees 1, June 7, 2013.

<sup>5</sup> *E.g., SIGA Techs. Inc. v. PharmAthene, Inc.*, 2013 WL 2303303, at \* 13 (Del. May 24, 2013).

and in compliance with Rule 1.5 of the Rules of Professional Conduct.”<sup>6</sup> However, Counsel have not submitted timesheets, hourly rates, or other evidence demonstrating how attorney time and expenses were incurred in this matter. The aggregate amounts give me little information upon which to exercise my discretion in shifting fees.

Sanders was a serial contemnor of this Court. He made it plain that he would be reluctant to comply with discovery in this matter.<sup>7</sup> The shifting of fees with respect to his deposition was an attempt to coerce him to abandon his contemptuous stance and comply with his obligations under the Rules of this Court. In order for this Court’s authority to have credibility, the fact that the penalty failed to coerce cannot relieve the contemnor of the obligation imposed thereby. The affidavits of counsel indicate that fees incurred in preparation for and attendance at the failed deposition were in, in the aggregate, approximately \$7,400.00, a reasonable amount given the attorneys and the issues involved. Therefore, that amount is approved. I turn to the issue of fees in connection with the Rules to Show Cause.

In shifting fees for the Rules to Show Cause, I note that fee shifting here was appropriate as a coercive attempt to persuade the Defendant to abandon his contemptuous actions, and to redress the costs to Plaintiff of the Defendant’s bad-

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<sup>6</sup> Pls.’ Affs. Supp. Request for Fees and Expenses, Ex. 1, at ¶ 4; *Id.*, Ex. 2, at ¶ 4.

<sup>7</sup> Pls.’ Mot. Final J., Ex. A, Ex. 5 (letter from James Dennis Sanders), at 1.

faith litigation tactics, which included his promising to abide by a Status Quo Order entered to avoid a hearing on injunctive relief, and then serially violating that Order. The fee request, however, is approximately \$20,000.00 in connection with the first Rule to Show Cause and \$20,000.00 in connection with the second.<sup>8</sup> I have no doubt that the Plaintiffs have made this fee request in good faith. However, they have failed to supply a breakdown of how this time was incurred. The hearings themselves, the second of which the Defendant failed to appear, were brief affairs. While the Plaintiffs submitted memoranda in connection with the two Rules to Show Cause which were competent and well drafted, I think an award of \$20,000 *in toto* for Plaintiffs' expenses in connection with the two Rules to Show Cause represents a reasonable fee award.

The Plaintiff should provide me with a form of order consistent with this Letter Opinion.

Sincerely,

*/s/ Sam Glasscock III*

Sam Glasscock III

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<sup>8</sup> Pls.' Affs. Supp. Request for Fees and Expenses, Exs. 1-2.