SAM GLASSCOCK III
VICE CHANCELLOR

COURT OF CHANCERY
OF THE
STATE OF DELAWARE

COURT OF CHANCERY COURTHOUSE
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GEORGETOWN, DELAWARE 19947

May 13, 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
Submitted: May 10, 2013

Dear Litigants:

This matter is currently before me on the request of CHC that I enter a final judgment as a sanction for James Dennis Sanders' (the "Defendant") contempt of Court, failure to comply with discovery, and failure to appear for a Rule to Show Cause. For the following reasons, I have granted that motion.

According to the Complaint in this case, Plaintiff CHC Companies, Inc. ("CHC") is a Delaware corporation providing correctional and probation services to prisons and courts nationwide. The Defendant was a co-founder and co-owner of Plaintiff Judicial Correction Services, Inc. ("JCS"), also a Delaware corporation, providing private probation services to courts, mostly in the deep south. On September 30, 2011, CHC purchased JCS. CHC paid the Defendant more than

$500,000 for his interest in JCS, and hired him as Vice President of Customer Relations, post acquisition. On December 31, 2011, that relationship terminated.

As part of the acquisition of JCS, CHC and the Defendant entered into a non-competition and non-solicitation agreement on September 30, 2011. That agreement was to be in force for a period of five years. It forbad the Defendant to

> . . . engage in or own, manage, operate or control or participate in the ownership, management, operation or control of any business or entity that engages anywhere in the United States in any businesses in direct or indirect competition with [the Plaintiffs]. . .; [to] directly or indirectly solicit or attempt to solicit or take any actions calculated to persuade (or that could otherwise reasonably be expected to cause) any person who is or has been a customer, supplier, distributor, licensor or licensee, sales representative, sales agent, consultant or any other business relation of [JCS] prior to or after the closing to cease doing business with, or alter or limit its business relationship with, the [Plaintiffs];" [and to] . . .solicit to perform services (as an employee, consultant or otherwise) any persons who are or, within the 12 month period immediately preceding [Defendant]s' action, were employees of the [Plaintiffs], or take any actions intended to persuade any such person to terminate his or her association with the [Plaintiffs]. . . .

In other words, under the terms of the Defendant's sale of JCS, he was prohibited from competing with CHC or JCS, and from soliciting employees or customers.

The Complaint goes on to allege that the Defendant has in fact formed or entered competing businesses and has solicited both CHC/JCS employees and customers, in violation of the agreement. The Complaint seeks damages and injunctive relief. Contemporaneously with Complaint, the Plaintiffs filed a Motion to Expedite and for a Temporary Restraining Order, citing irreparable harm in the

conduct of their business arising from the breaches of contract recited in the Complaint.

The Complaint was filed on February 13, 2013, and I scheduled a hearing on the Temporary Restraining Order request for February 22, 2013. The parties were able to work out a Status Quo Order which I entered on February 22, 2013. That Order provided that, pending resolution of the action, the Defendant and all persons acting in concert with him, whether in their individual capacities or through entities under their control, would forebear from competing with the Plaintiffs; forebear from hiring or soliciting the Plaintiffs' employees; and refrain from soliciting or attempting to persuade or otherwise interfere with the Plaintiffs' employees and customers. The Order identified by name certain customers, including several municipal court systems, that the Defendant was prohibited from contacting. The Status Quo Order also required the Defendant to preserve evidence relating to the alleged violations of the Defendant's agreement not to compete with the Plaintiffs. The Order specifically provided that the Defendant was required to respond to discovery within 21 days and to appear for deposition on an "expedited basis." The Order also directed the parties to enter a pre-trial schedule.

Two weeks later, on March 8, 2013, the Plaintiffs filed an Emergency Motion for An Order to Show Cause against the Defendant. According to that

Motion, the Defendant was in flagrant violation of both his underlying contractual obligations and, pertinently, the Status Quo Order I entered on February 22, 2013. According to the Plaintiffs, the Defendant's violations of the Status Quo Order began on the day following entry of that Order, in soliciting Talladega Municipal Court, one of the courts specifically mentioned as a customer of the Plaintiffs in the Status Quo Order. The Motion alleged other breaches of the Status Quo Order as well. The Plaintiffs supported the Motion with affidavits and other evidence.

I scheduled a telephonic hearing on the Motion on March 12, 2013. At that hearing, the Defendant did not deny that he contacted employees and customers as the Plaintiffs had alleged; instead, he protested that his contact was innocent. In light of the expedited nature of the matter, and anticipating a quick resolution after trial, I continued consideration of the Rule to Show Cause and directed Mr. Sanders to comply with the February 22 Order and to cease his contacts with customers and employees of the Plaintiffs. I instructed him not to

> contact them. Don't have a friendly lunch with them. Don't go to a ballgame with them. Don't write letters about their business. You've got to leave them alone. If I get another complaint, I'm going to have to bring you up here and get to the bottom of it, and if I find you have been violating the order, I'm going to have to impose sanctions on you. You understand that sir?

The Defendant responded in the affirmative. I then instructed Plaintiffs' counsel to "monitor the situation. If there is any—if you feel that there is still non-

compliance, you don't need to renotice the Motion. You just need to notify me that you would like it considered based on whatever has happened, and I will take the appropriate action." I told the parties I would schedule the matter for a one day trial after mid-April. Shortly thereafter, trial was scheduled for May 7, 2013.

On April 21, 2013, Plaintiffs renewed their Emergency Motion. The renewed Motion alleged that a few days after the telephonic hearing, the Defendant began soliciting courts in a manner prohibited by the Status Quo Order. The Plaintiffs alleged that Sanders "sent messages to [the] Director of the Hoover Municipal Court (one of JCS's oldest clients) on her mobile work phone that were aimed at disparaging JCS and soliciting the Hoover Municipal Court to transfer its business to Mr. Sander's [current] company", Guardianship Probation Services ("GPS") and solicited the Police Department of Carrolton, Georgia on behalf of GPS. The Motion also alleged that GPS was directly competing for and had in fact acquired the business of another court, the Wedowee Municipal Court. These allegations were supported by affidavits. In addition, the renewed Motion provided that the Defendant had failed to appear at his own deposition and had failed to respond to Plaintiffs' counsel's questions as to why he had not appeared. The Defendant also failed to respond to discovery requests (or seek an extension of time to respond). After receiving the Renewed Emergency Motion, I caused a rule

to issue for the Defendant to appear and show cause on April 26, 2013 why he should not face sanctions for contempt.

In response, Mr. Sanders filed a letter with the Court stating that he would not attend the April 26 hearing. Sanders stated that he was

> going to be very honest and straightforward with what I intend to do. CHC/JCS has lost nine courts and will continue to lose more. I also know that CHC/JCS has several lawsuits that continue to expand and appear. The consistent pursuit of me, is further complicating a recovery from a very serious injury. It is also keeping CHC/JCS from at least establishing a path of recovery for the business and the employees involved . . . if this was followed and done properly the profit revenue for the company would respond accordingly. I have offered to communicate with CHC/JCS and explain what they would need to do to keep from continuing to lose courts and employees. . .so now we will proceed forward and see how actually worthless I am. Take this response however you choose.
>
> However, asking me, not to associate with many of the people that I hired and became friends with is unethical and is just not going to happen. These friends I helped when they needed it and I do not intend to walk away from them now.
>
> If CHC/JCS would look into the possibility that I could guide them appropriately, it could reduce current problems throughout the company, and there could be a joint venture, which could and would benefit all people involved including employees and those placed on probation, which is who we are trying to help in the first place.
>
> This is the last offer I will make to do this. I have held back quiet [sic] a lot of information that would be detrimental to the company to protect Jarrett Gorlin. Now you all will be informed by upper personnel and JCS that this is just a ridiculous and last offense from a former founder of JCS who has suffered from a very serious brain injury.
>
> However, the future will show us what value the facts actually hold. I have quite a lot of valid information on paper from myself, past employees, and even current employees showing how unethical and wrong Jarrett Gorlin was conducting the business. To give you an indication of what I hold part of it contains bank account records of

> how court fines and restitution was delivered and distributed to the company versus the courts. This in itself will detrimental to CHC/JCS.
>
> So with this said, we shall move forward.

The letter was addressed "to whom it may concern", and implied that the Defendant would attend the trial scheduled on May 7, 2013. It stated, however, that he would not attend the "meeting" on April 26 (actually, the hearing on the Rule to Show Cause) but it did not request a continuance of that hearing or state any reason why the Defendant would be unable to attend. It simply indicated a refusal to abide by the Rule to Show Cause.

True to his threat, the Defendant did not appear at the hearing on the Rule to Show Cause on April 26, 2013. At the hearing, counsel for the Plaintiffs sought entry of a final order, enjoining the Defendant from violating his contractual obligations under the non-solicitation and non-competition agreement.

I found the Defendant in contempt of the Status Quo Order and the directive to appear at the Rule to Show Cause hearing. However, I declined to enter a final judgment of injunctive relief as a sanction. Instead, I continued consideration of the Rule to Show Cause, and I directed the Plaintiffs to submit a reasonable statement of fees in connection with the contempt motions which would constitute a sanction against the Defendant. I then directed the Plaintiffs to renew the notice of the Defendant's deposition for the following week and directed Mr. Sanders to (1) appear at his deposition; and (2) respond to discovery no later than 24 hours

before the deposition. I made it quite clear that I would enter the relief sought by the Plaintiffs—a final order in the Plaintiffs' favor—if Mr. Sanders failed to comply.

Mr. Sanders has violated this order as well. He did not seek reconsideration of my bench ruling nor did he seek to continue the dates for his deposition or production. After he was already in violation of my directive to produce documents, however, Sanders sent a letter to the Plaintiffs, which is attached to their current Motion. In the letter, the Defendant stated that "due to medical and financial reasons, I am not going to be able to make the 800 mile drive to appear in court this week." He also indicated that he would not appear at trial scheduled for May 7, 2013. He "offered" to make himself available for trial *after* May 14, 2013. He provided no reason why he could not produce the documents responsive to the discovery request, as ordered. Despite alleging that medical and/or financial considerations kept him from appearing at the scheduled deposition, one of Defendant's stated reasons for delay was that he intended to attend his nephew's graduation ceremony at the University of Georgia on May 11, 2013. As a result of the Defendant's additional violations of my Orders, the Plaintiffs have made a Motion for the Entry of a Judgment consistent with my bench decision of April 26, 2013, entering a final judgment enjoining the defendant from violating his contractual obligations not to compete with or solicit against the Plaintiffs.

After receiving this motion, I directed Sanders to make a response, if any, by Friday, May 10, 2013. Sanders has made no response of any kind.

The Defendant is a serial contemnor of this Court. He voluntary entered the Status Quo Order to avoid a hearing on the Plaintiffs' request for the Temporary Restraining Order. The Plaintiffs have presented evidence, unrebutted by the Defendant, that he has repeatedly violated that Order. At a telephonic hearing concerning those violations, the Defendant did not deny his contact with customers and employees of the Plaintiffs, although he indicated that those contacts were either benign or of right. I continued my consideration of the Emergency Motion for Contempt and directed the Defendant to have no further contact with these individuals pending trial, which I then scheduled for early May. The Plaintiffs have presented evidence, again unrebutted, that the Defendant violated both the Status Quo Order and my later directive and continues to solicit employees and customers of the Plaintiffs and to disparage the Plaintiffs' business.

I issued a Rule to Show Cause, at which the Defendant failed to appear. He did not seek a continuation of the hearing but instead issued a defiant "To Whom it May Concern" letter indicating that he did not intend to comply with Court orders. I then directed him to comply with discovery requests in order to preserve the May 7, 2013 trial date. Once again, the Defendant failed to comply. He did not seek relief from the Order. Instead, he sent a letter to the Plaintiffs containing

contradictory excuses as to why he was not complying, and indicating that he would fail to appear for trial as well. I gave the Defendant the opportunity to respond to the Plaintiffs' resulting request that I enter a final judgment, which opportunity he eschewed.

It is the preference of this Court always to determine matters on the merits. In addition, while *pro se* litigants are expected to comply with Court Rules and Orders, this is a court of equity, and there is a certain consideration given to the actions of *pro se* litigants who fail, despite a good faith attempt, to comply with the strictures of litigation.

Here, however, the Defendant is in flagrant contempt of this Court. The Plaintiffs sought emergency relief in connection with the colorable claim that the Defendant has violated the non-competition and non-solicitation agreement made as part of the sale of the Defendant's business to the Plaintiffs. In addition, the Plaintiffs have presented unrebutted evidence that these violations continue, in violation not only of the agreements but of this Court's Orders as well. I have given the Defendant several chances to comply with orders or explain why he has not done so, and at every opportunity he has frustrated me by failing to respond. Shifting fees has not been sufficient to obtain his compliance. The Plaintiffs make a credible allegation of ongoing irreparable harm due to continued violation of the agreements and the orders of this Court. In light of Sander's willful disregard of

Court Orders, it is within my discretion to enter a final judgment against the Defendant.[1] While I am loathe to determine this matter without a full hearing on the merits, it is Defendant's behavior and contempt for Court Orders that has made such a determination impossible. It would be a perversion of justice to deny relief to the Plaintiffs, based upon the ongoing contemptuous actions of the Defendant. The Plaintiffs have proposed an Order which simply directs the Defendant not to breach the non-competition and non-solicitation agreement entered in connection with the purchase of the Defendant's interest by CHC, throughout the term stated in that agreement.[2] The proposed Order also allows the Plaintiffs reasonable attorneys' fees in connection with the Motions for Contempt and in connection with the Defendant's failure to appear at his deposition, which I have previously granted.

Since it appears that justice requires that such an order be entered so that it may be enforced in the jurisdictions where Sanders is violating his contractual

[1] *E.g. Gallagher v. Long*, 2007 WL 3262150, at *2 (Del. Nov. 6, 2007).
[2] I have modified the date until which the order shall be in effect from that suggested in the form of Order, to reflect a date five years from the sale of JCS as provided by contract.

obligations, the Plaintiffs' Motion is granted. An Order accompanies this Letter Opinion.

Sincerely,

/s/ Sam Glasscock III

Sam Glasscock III