

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHESTER )  
  
Superior Plus Energy Services Inc., )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
Kenneth A. (Andy) Hudson, and Edisto )  
Butane Gas Co., Inc. )  
 )  
Defendant. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
SIXTH JUDICIAL CIRCUIT

Case No.: 2022-CP-12-00188

**RECEIVED**  
**Aug 03 2022**  
SC Court of Appeals

**TEMPORARY INJUNCTION ORDER**

This matter is before the Court on Plaintiff’s Motion for Temporary Injunction. Based on Plaintiff’s Motion, the Verified Complaint, the Affidavits on file, the memoranda of law submitted by both parties, and the oral arguments presented to the Court at the hearing held on June 23, 2022, the Court finds that the record supports a finding that Plaintiff Superior Plus Energy Services Inc. (“Superior Plus”) has satisfied its burden of demonstrating entitlement to the relief it seeks.

**Findings of Fact and Conclusions of Law**

1. Defendant Kenneth A. (Andy) Hudson (“Hudson”) was the Manager of Superior Plus’s Chester branch until he resigned in November 2021.
2. Hudson previously served as the Manager of the Chester branch of Freeman Gas and Electric Co. (“Freeman Gas”) from 2011 until June 2021.
3. Superior Plus acquired all of the assets of Freeman Gas in June 2021, including the Chester branch and its confidential information, accounts, goodwill, and other assets.

4. Superior Plus offered Hudson employment as Manager of its Chester branch—which it operates under the Freeman Gas trade name—in June 2021 in connection with its acquisition of Freeman Gas.

5. Superior Plus required Hudson, as a condition of its offer of initial employment, to enter into a Confidentiality and Non-Solicitation Agreement (“Agreement”).

6. Hudson accepted the offer of employment and signed the Agreement on June 9, 2021.

7. Hudson became the Manager of the Superior Plus Chester branch on June 16, 2021, the day of Superior Plus’s closing on its acquisition of Freeman Gas.

8. Hudson remained in that role until he resigned on November 19, 2021.

9. In his role with Superior Plus (and Freeman Gas, before the acquisition), Hudson had access to and acquired knowledge of Superior Plus’s confidential information. Hudson also had access to and acquired knowledge of Superior Plus’s customers, vendors, and other business partners, developing substantial goodwill and enduring relationships with those individuals and entities at the expense of Superior Plus and Freeman Gas.

10. In the Agreement, Hudson agreed to the following protective covenants, among other provisions: (a) a 12-month customer non-solicitation covenant, and (b) a non-disclosure covenant with respect to Confidential Information.

11. The customer non-solicitation covenant in the Agreement restricts Hudson, for a period of 12 months following his separation from Superior Plus, from directly or indirectly soliciting, selling to, or servicing Superior Plus customers with or for whom he had material contact or management responsibility at Superior Plus:

**Agreement Not to Solicit Customers.** Employee covenants and agrees that for a period of twelve (12) months following the

termination of employment with Company, (for any reason whatsoever and whether such termination be voluntary or involuntary), he or she will not, directly or indirectly, as owner, officer, director, stockholder, partner, associate, consultant, manager, advisor, representative, employee, agent, or creditor, solicit, attempt to solicit or in any other way contact, sell to or service any person, firm or corporation that is or was a customer of the Company, its parent corporation, subsidiaries or affiliates as to which, (i) Employee had direct or indirect account responsibility, (ii) Employee received compensation of any kind, in the form of commissions, bonus, salary or otherwise, or (iii) Employee regularly communicated, interacted or had relationship management responsibility.

12. The non-disclosure covenant in Hudson' Agreement restricts him from using or disclosing Confidential Information for so long as the information meets the definition. The Agreement defines "Confidential Information" as follows:

any and all information related to the financial condition, marketing activities, customer lists, plans that enables a business entity to maintain its goodwill and competitive positive business world, all specifications, formulas and processes that are related to the business of the Company, and business methods of the Company and its respective parent corporations, subsidiaries and affiliates; except to the extent, Employee can document that any of the foregoing (i) is now or later becomes part of the public domain; (ii) was in the possession of the Employee prior to the date of first employment with the Company; or (iii) is hereafter lawfully received by Employee from a third party without any violation or breach of any obligation of confidentiality.

13. Hudson is working as Manager of the Chester branch of Edisto Butane Gas Co., Inc. ("Edisto").

14. If, during the 12-month period following his resignation from Superior Plus (until November 19, 2022) Hudson solicits, sells to, or services any Superior Plus customers with or for whom he had material business contact or management responsibility at Superior Plus, Hudson would be breaching the customer non-solicitation covenant in his Agreement. The information in

the record indicates that Hudson either already has engaged in such activities or intends to engage in such activities.

15. In April 2022, Edisto placed a billboard advertisement on J.A. Cochran Bypass in Chester that is visible from the parking lot of Superior Plus's Chester branch. The billboard directs viewers to "Call Andy Hudson and his team for any of your gas needs," and includes Hudson's phone number. Based on that phrase on the billboard, the Court concludes that it constitutes a direct or indirect solicitation of Superior Plus customers in violation of the customer non-solicitation covenant in the Agreement.

16. Absent an Order from this Court, Hudson's actions will cause Superior Plus to suffer irreparable damage to and loss of its business reputation, business opportunities, goodwill, market share, and relationships with customers.

17. The injury to Superior Plus is irreparable in that (a) relationships with customers will likely be impaired and/or lost permanently, (b) business opportunities with customers will likely be impaired and/or lost permanently, and (c) Superior Plus may suffer a loss of goodwill, loss of market share, and damage to its business reputation.

18. Superior Plus lacks an adequate remedy at law because the amount of damages Superior Plus will suffer as a result of the specific language on the billboard which constitutes solicitation is inherently difficult, if not impossible, to fully calculate.

19. The irreparable harm that Superior Plus would suffer in the absence of injunctive relief substantially outweighs the harm Defendants could suffer if the Court grants injunctive relief. First, Superior Plus is requesting only that Hudson comply with the terms of his Agreement. Second, Hudson's ability to engage in employment activities of his choice has few limitations. For example (a) Hudson is free to continue his employment with Edisto; (b) Hudson can do whatever

he wants, for whoever he wants, wherever he wants, as long as he does not violate the customer non-solicitation and non-disclosure covenants in his Agreement; and (c) after the expiration of the 12-month customer non-solicitation covenant, Hudson can engage in any activities he chooses as long as he does not use or disclose Superior Plus's Confidential Information.

20. Superior Plus has demonstrated a likelihood of success on the merits, as the Court finds the protective covenants in the Agreement to be consistent with South Carolina law:

- a. The customer non-solicitation and non-disclosure covenants are designed to protect Superior Plus's legitimate business interests (namely, customers, goodwill, and confidential information);
- b. The customer non-solicitation covenant is reasonable in duration (12 months) and scope (applicable to Superior Plus's customers with or for whom Hudson had material business contact or management responsibility);
- c. The non-disclosure covenant is substantively similar to the one the Supreme Court enforced in *Milliken & Co. v. Morin*, 399 S.C. 23, 37-39, 731 S.E.2d 288, 295-96 (2012);
- d. The covenants do not impact Hudson's ability to earn a livelihood (see Paragraph 28 above);
- e. The covenants are reasonable in terms of public policy (nothing in Hudson's Agreement prevents free and open competition in the markets, including fair competition by Edisto and Superior Plus's other competitors); and
- f. The covenants were supported by valuable consideration (initial employment with Superior Plus).

### **Temporary Injunction**

In consideration of the foregoing findings of fact and conclusions of law, IT IS HEREBY ORDERED AND DECREED AS FOLLOWS:

1. Hudson is enjoined and restrained, through and until November 19, 2022, from directly or indirectly soliciting, selling to, or servicing any Superior Plus customers with whom or as to which Hudson (a) had direct or indirect account responsibility at Superior Plus, (b) received compensation of any kind, in the form of commissions, bonus, salary or otherwise at Superior Plus,

or (c) regularly communicated, interacted or had relationship management responsibility at Superior Plus.

2. Hudson is enjoined and restrained from using, misappropriating, or divulging any Superior Plus Confidential Information (as defined above), for so long as the information in question meets the above definition.

3. Edisto is enjoined and restrained from engaging in any activity that does or is likely to encourage, facilitate, or permit Hudson's violation of his obligations described above in Paragraphs 1 and 2.

4. Edisto and Hudson are ordered to, within 10 calendar days of the entry of this Order, remove the specific language on the billboard advertisement that is on J.A. Cochran Bypass in Chester, South Carolina which states "Call Andy Hudson and his team for any of your gas needs."

5. This Temporary Injunction shall remain in full force and effect until a trial can be had on the merits.

6. A bond in the amount of \$10,000 (ten thousand and 00/100 DOLLARS) is sufficient to pay Hudson's costs and damages in the event Hudson is found to have been wrongfully enjoined. Superior Plus shall post a bond in this amount by 5:00 p.m. on July 15, 2022.

**IT IS SO ORDERED ON THIS THE \_\_\_\_ DAY OF \_\_\_\_\_, 2022.**

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The Honorable Brian M. Gibbons  
South Carolina Circuit Judge  
Sixth Judicial Circuit



Chester Common Pleas

**Case Caption:** Superior Plus Energy Services, Inc. VS Kenneth A. Hudson ,  
defendant, et al  
**Case Number:** 2022CP1200188  
**Type:** Order/Temporary Injunction

So Ordered

s/Brian M. Gibbons #2168 Circuit Judge