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THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY  
COURT OF COMMON PLEAS

**RECEIVED**

SEP 28 2015

SC Court of Appeals

Perry H. Gravely, Circuit Court Judge

Case No. 2015-CP-23-03546

Appellate Case No. 2015-001973

Chemgard, Inc. ....Respondent,

v.

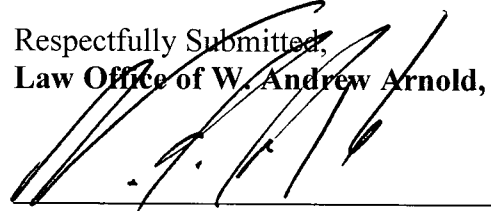
Darrell Keith Haynes and Chem-Tek, LLC.....Appellants.

**MOTION TO DISMISS APPEAL**

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, Respondent Chemgard, Inc. hereby moves to dismiss the above-captioned appeal made by Appellants Darrell Keith Haynes and Chem-Tek, LLC (collectively "Appellants").

In this matter, Appellants have attempted to appeal from an order issued by Circuit Court Judge Perry Gravely on July 17, 2015 that granted Chemgard's motion for a preliminary injunction. Appellants made a motion to reconsider seeking only a more detailed ruling on their motion to dismiss. As shown in the attached Memorandum in Support, South Carolina law is clear that an appellant must file within 30 days of receipt of the court's order, which Appellants failed to do in the case of the injunction. Appellants' Notice of Appeal should be dismissed.

Respectfully Submitted,  
Law Office of W. Andrew Arnold, P.C.



---

W. Andrew Arnold, Esq.  
S.C. Bar No. 065311  
712 E. Washington Street  
Greenville, South Carolina 29601  
aarnold@aalawfirm.com  
864.242.4800 864.242.4885 fax

Jeremy R. Summerlin, Esq.  
S.C. Bar No. 101383  
712 E. Washington Street  
Greenville, South Carolina 29601  
jsummerlin@aalawfirm.com  
864.242.4800 864.242.4885 fax

ATTORNEYS FOR RESPONDENT

September 22<sup>nd</sup>, 2015

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY  
COURT OF COMMON PLEAS

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Case No. 2015-CP-23-03546

Appellate Case No. 2015-001973

Chemgard, Inc. ....Respondent,

v.

Darrell Keith Haynes and Chem-Tek, LLC.....Appellants.

**MEMORANDUM IN SUPPORT OF MOTION TO DISMISS APPEAL**

Pursuant to Rule 240(c)(2) of the South Carolina Appellate Court Rules, Respondent Chemgard, Inc. (hereinafter “Chemgard”) hereby submits this memorandum in support of its motion to dismiss the above-captioned appeal made by Appellants Darrell Keith Haynes and Chem-Tek, LLC (collectively “Appellants”).

**FACTUAL BACKGROUND**

Appellants file this appeal from an order of judgment related to a breach of contract dispute between Chemgard, a Greenville, South Carolina corporation, and one of its former salesmen, Darrell Keith Haynes. In September 2000, Chemgard hired Haynes to sell its products and services. As a condition of his hiring, Haynes signed an employment contract with Chemgard that contained a non-solicitation provision.

On May 10, 2015, Haynes resigned from Chemgard and began working for Chem-Tek, LLC, which offers products and services similar to Chemgard. Chemgard

quickly received notice from multiple customers that they were being solicited by Haynes in violation of the non-solicitation agreement. The present litigation followed.

**PROCEDURAL BACKGROUND**

On June 5, 2015, Chemgard commenced this action by filing and serving a civil action against Appellant Haynes arising out of Haynes's breach of his employment contract, and seeking both legal remedies and equitable remedies (in the form of a preliminary injunction). That same day, Chemgard filed its motion for a preliminary injunction against Haynes. On June 25, 2015, Chemgard filed an amended complaint adding Appellant Chem-Tek as a party and adding a cause of action against Chem-Tek for tortious interference with contractual relations.

On July 6, 2015, the same day that the court was to hear arguments on Chemgard's motion for a preliminary injunction, Appellant Haynes filed a motion to dismiss the complaint as against him on the grounds that the circuit court lacked personal jurisdiction. Chemgard waived the 10-day requirement to hear such motion, and the Honorable Perry Gravely heard Chemgard's motion for preliminary injunction and Appellant Haynes's motion to dismiss for lack of personal jurisdiction. On July 7, 2015, Judge Gravely issued a Form 4 decision granting Chemgard's motion for preliminary injunction and denying Appellant Haynes's motion to dismiss, and directing Chemgard's counsel to submit a proposed order. Plaintiff submitted an order as to the grant of the injunction, and Judge Gravely signed the formal order on July 15, 2015. This order was filed with the clerk's office on July 17, 2015.<sup>1</sup>

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<sup>1</sup> Attached as Exhibit 1.

On July 21, 2015, Appellants filed a Motion to Reconsider.<sup>2</sup> In their motion, Appellants noted that the court's July 17 order substantively addressed the grounds for the preliminary injunction but did not mention the basis for denying Appellant Haynes's Motion to Dismiss on jurisdictional grounds. Appellants asked the court to reconsider its ruling on the motion to dismiss only. (The motion to reconsider does not actually seek reconsideration, but instead it merely seeks a more detailed order denying the motion to dismiss.) On August 18, 2015, Judge Gravely issued a Supplemental Order<sup>3</sup> addressing only the grounds for denying the motion to dismiss.

Thereafter, on September 15, 2015, Appellants initiated the present appeal of entirety of Judge Gravely's July 17, 2015 Order, nearly sixty days after the Court issued its Order. Accordingly, this appeal was (1) untimely filed as it relates to the preliminary injunction, and (2) inappropriate as it relates to the issue of personal jurisdiction, as the denial of the motion to dismiss is not immediately appealable.<sup>4</sup> Therefore, the Court should dismiss the appeal in this matter.

#### LAW / ANALYSIS

**This Court should dismiss the appeal in this matter because the Notice of Appeal was not timely filed.**

This Court should dismiss this appeal because counsel for Appellants filed the Notice of Appeal beyond the thirty (30) days provided for in Rule 2013, SCACR.

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<sup>2</sup> Attached as Exhibit 2.

<sup>3</sup> Attached as Exhibit 3.

<sup>4</sup> To the extent that Appellants' appeal concerns the personal jurisdiction issue, South Carolina law is clear that a trial court's denial of a motion to dismiss an action for lack of personal jurisdiction is not immediately appealable. In *Mid-State Distributors, Inc. v. Century Importers, Inc.*, the South Carolina Supreme Court had to decide "whether the pre-trial denial of a motion to dismiss for lack of personal jurisdiction under Rule 12(b)(2), SCRCP, is appealable." 310 S.C. 330, 332, 426 S.E.2d 777, 779 (1993). The court determined that "[t]here is no finality in a denial of the motion to dismiss for lack of personal jurisdiction," *id.* at 335, 426 S.E.2d at 780, and that, therefore, "the denial of a motion to dismiss under Rule 12(b)(2), SCRCP, is interlocutory and not directly appealable." *Id.* at 336, 426 S.E.2d at 781.

Rule 203, SCACR, provides the following time limits for filing a notice of appeal:

A notice of appeal shall be served on all respondents within (30) days after receipt of written notice of entry of order or judgment. When a timely motion for judgment n.o.v. (Rule 50, SCRCPP), motion to alter or amend the judgment (Rules 52 and 59, SCRCPP), or a motion for a new trial (Rule 59, SCRCPP) has been made, the time for appeal for all parties shall be stayed and shall run from receipt of written notice of entry of the order granting or denying such motion.

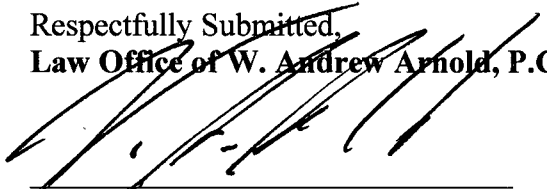
Rule 203(b), SCACR.

Judge Gravely's July 17th Order addressed only the preliminary injunction issued against Haynes, and did not address the court's denial of the motion to dismiss. Appellants filed the motion to reconsider on July 21, 2015 seeking to have the trial court substantively address the motion to dismiss arguments only. Appellants failed to move the court to reconsider the grounds for the preliminary injunction. Thus, the court's order regarding the preliminary injunction was final on July 17, 2015, and any appeal on that ground must have been made "within (30) days after receipt of written notice of entry of order or judgment." Rule 203(b), SCACR. Because Appellants' appeal was not filed until September 15, 2015, Appellants' appeal is untimely and must be dismissed.

#### CONCLUSION

Appellants have failed to timely file the notice of appeal within 30 days of the trial court's order granting a preliminary injunction. Based on Respondent's arguments and supporting authorities, Respondent asks that the Court dismiss the appeal in this matter.

Respectfully Submitted,  
Law Office of W. Andrew Arnold, P.C.



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W. Andrew Arnold, Esq.  
S.C. Bar No. 065311  
712 E. Washington Street  
Greenville, South Carolina 29601  
aarnold@aalawfirm.com  
864.242.4800 864.242.4885 fax

Jeremy R. Summerlin, Esq.  
S.C. Bar No. 101383  
712 E. Washington Street  
Greenville, South Carolina 29601  
jsummerlin@aalawfirm.com  
864.242.4800 864.242.4885 fax

ATTORNEYS FOR RESPONDENT

September 22, 2015

# **EXHIBIT 1**

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE  
IN THE COURT OF COMMON PLEAS

FILED: GREENVILLE COUNTY  
JUDGMENT IN A CIVIL CASE  
GREENVILLE, S.C.  
PAUL B. WICKENSIMER  
CASE NO: 2015CP2303546

2015 JUL 17 PM 4 48

Chemgard Inc vs. Darrell Keith Haynes

**CHECK ONE:**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**
  - Rule 12(b), SCRPC;
  - Rule 41(a), SCRPC (Vol. Nonsuit);
  - Rule 43(k), SCRPC (Settled);
  - Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**
  - Rule 40(j) SCRPC;
  - Bankruptcy;
  - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
  - Other: \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
  - Affirmed;
  - Reversed;
  - Remanded;
  - Other: \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order;  Statement of Judgment by the Court;

Dated at Greenville, South Carolina, this .

Court Reporter:

**PRESIDING JUDGE -**

This judgment was entered on the 17th day of July, 2015, and a copy mailed first class this 17th day of July, 2015, to attorneys of record or to parties (when appearing pro se) as follows:

**W. Andrew Arnold** Law Office Of W. Andrew Arnold, P.C. 712 E. Washington St. Greenville, SC 29601

**James H. Cassidy** Roe Cassidy Coates & Price, P.A. P.O. Box 10529 Greenville, SC 29603  
**Joseph Owen Smith** Roe Cassidy Coates & Price, P.A. P.O. Box 10529 Greenville, SC 29603

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer - Greenville County Clerk Of Court - Clerk of Court

CHEMGARD, INC., 2015 JUL 17 ) PM 4 48

Plaintiff,

v.

DARRELL KEITH HAYNES AND  
CHEM-TEK, LLC,

Defendants.

**ORDER**

This matter comes before the court on Plaintiff's Motion for Preliminary Injunction, which seeks to enforce a non-solicitation provision contained in an Employment Agreement between Plaintiff and Defendant Darrell Keith Haynes ("Haynes"). Both parties presented memorandums of law and affidavits in support of their respective positions and were represented by counsel at a hearing on July 6, 2015. After a full consideration of the legal and factual issues presented to this Court, this Court finds and rules as follows:<sup>1</sup>

**I. FINDINGS OF FACT**

1. Plaintiff is a citizen and resident of the County of Greenville, South Carolina. Defendant Haynes is a citizen and resident of the State of Georgia.
2. Chemgard is a South Carolina corporation that sells and distributes chemicals, chemical products, and equipment, including water management systems, both at retail or wholesale. Chemgard is also in the business of servicing equipment that utilizes or consumes the products sold by Chemgard.

<sup>1</sup> The Court's findings of fact and conclusions of law are preliminary in nature and based upon the record before it, including the Verified Amended Complaint, Employment Agreement at issue, Affidavit of Darrell Keith Haynes, Memorandums submitted by the parties and arguments of counsel during the hearing. Such factual findings and conclusions of law based upon them in this Order may ultimately be proven or disproven by evidence unearthed and/or established in the discovery process and brought forth at a trial on the merits.

3. On September 15, 2000, Chemgard hired Defendant Haynes, and Haynes signed an Employment Agreement with Chemgard before beginning his employment.

4. This agreement contained a non-solicitation provision. In the agreement, Haynes covenanted:

that during the course of his/her employment by the Company and for a period of twenty-four (24) months after termination of his/her employment, he/she will not:

(i) [s]olicit or call on, either directly or indirectly, any customer of the Company for the purpose of selling any products or services sold by the Company or any products or services similar to those sold by the Company.

(Agreement at ¶ 9(d)(i)).

5. Haynes was employed as a salesman for the territory of Georgia and Alabama, although Plaintiff claims he was not limited to this territory. During the course of his employment, Haynes was the only Chemgard salesman in Georgia.

6. Because of Haynes's agreement to the non-solicitation provisions, Chemgard provided Haynes with customer information, business information, and other information it claims to be confidential.

7. When Haynes started at Chemgard, Chemgard provided Haynes with multiple current customer accounts worth approximately \$200,000.00 in billings. Haynes was responsible for promoting sales growth and for regularly servicing the established customer accounts.

8. On May 10, 2015, Haynes voluntarily resigned from Chemgard without providing Chemgard with the contractually-required 30-days' written notice. On May 11, 2015, Haynes began working for Defendant Chem-Tek, LLC ("Chem-Tek"), a competitor of Plaintiff.

9. After his resignation, Haynes began engaging in direct solicitation of Chemgard's existing customers on behalf of Chem-Tek. Several of Chemgard's customers have since cancelled their accounts with Chemgard and switched to Chem-Tek.

*Page # 2*

10. Such solicitation is a violation of the non-solicitation provisions of Haynes's Employment Agreement.

11. Plaintiff is currently without a salesman in Georgia and Alabama to service the accounts that Haynes was servicing prior to his resignation.

12. Evidence presented by the Defendants, including the Affidavit of Darrell Keith Haynes, showed that Mr. Haynes serviced customers exclusively in Georgia and Alabama during his employment with Chemgard. (Haynes Aff. ¶ 11). Defendants claim that Mr. Haynes left his employ with Chemgard due to intolerable and unworkable conditions created by the principles of Chemgard. (Haynes Aff. ¶ 13).

## II. CONCLUSIONS OF LAW

### 1. Plaintiff Successfully Established Entitlement to Injunctive Relief

"An injunction is a drastic remedy issued by the court in its discretion to prevent irreparable harm suffered by the plaintiff." *Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 907 (2004). To obtain an injunction, Plaintiff must allege facts sufficient to constitute a cause of action for injunction and demonstrate the injunction is reasonably necessary to protect the legal rights pending in the litigation. *County of Richland v. Simpkins*, 348 S.C. 664, 669, 560 S.E.2d 902, 904 (Ct. App. 2002). To establish entitlement to an injunction, the plaintiff must show that "(1) it would suffer irreparable harm if the injunction is not granted; (2) it will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law." *Scratch Golf*, 361 S.C. at 121, 603 S.E.2d at 908.

#### A. **Chemgard presented sufficient evidence to establish it may suffer irreparable harm in absence of an injunction**

Chemgard has presented sufficient evidence to establish a *prima facie* case that it has suffered and will continue to suffer irreparable injury in the form of lost business, lost customer goodwill, and a damaged business reputation if Haynes is not prevented from soliciting

Chemgard's current customers on behalf of his new employer. If a court's failure to grant a preliminary injunction creates the *likelihood* of permanent loss of customers to a competitor or the loss of goodwill, the irreparable injury prong is satisfied. *See Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008); *Multi-Channel TV Cable Co. v. Charlottesville Quality Cable Operating Co.*, 22 F.3d 546, 551 (4th Cir. 1994); "Irreparable injury is suffered when monetary damages are difficult to ascertain or are inadequate." *Id.* at 552 (quoting *Merrill Lynch, Pierce, Fenner and Smith v. Bradley*, 756 F.2d 1048, 1055 (4th Cir. 1985)). As a salesman for Chemgard for almost fifteen years, Haynes had access to and retains extensive knowledge of Chemgard's customers and pricing. If Haynes is, as Plaintiff claims, using this information to solicit Chemgard's customers with knowledge of Chemgard's alleged confidential information it may likely result in permanent damage to Chemgard's relationship and goodwill with its customers. Therefore, the Court finds an injunction is appropriate in order to guard against this potential irreparable harm.

**B. Chemgard Has Made a *Prima Facie* Showing that it Will Likely Succeed on the Merits**

Plaintiff has presented evidence sufficient to make a *prima facie* showing that it will likely succeed on the merits of this case at trial on one or more of its claims. *Transcon Gas Pipe Line Corp. v. Porter*, 252 S.C. 478, 481, 167 S.E.2d 313, 315 (1969) ("It is well settled that, in determining whether a temporary injunction should issue, the merits of the case are not to be considered, except in so far as they may enable the court to determine whether a *prima facie* showing has been made.").

Based upon the allegations in the Verified Amended Complaint and evidence presented to the Court Haynes remains bound by the restrictive covenants which he voluntarily signed before beginning employment with Chemgard. It is well-settled that while contracts in general

restraint of trade are against public policy, those in partial restraint, supported by valid consideration, and which are reasonable in their operation, are valid and binding. *Standard Register Co. v. Kerrigan*, 119 S.E.2d 533, 536 (S.C. 1961).

South Carolina courts have applied the following test to determine whether covenants not to compete should be upheld:

1. The covenant must be necessary for the protection of the employer's legitimate interests;
2. The provisions must be reasonably limited as to time and space;
3. Provisions must not be unduly harsh in curtailing the employee's legitimate effort to earn a livelihood;
4. The covenant must be reasonable from the standpoint of public policy; and
5. The covenant or contract containing the covenant not to compete must be supported by valuable consideration.

*Stringer*, 424 S.E.2d at 548.

The restrictive covenants in Haynes' Employment Agreement appear to meet all of these requirements for enforceability under South Carolina law. Accordingly, Plaintiff has made a *prima facie* showing that it will likely prevail on the merits.

**1. The Restrictive Covenant is Designed to Protect Chemgard's Legitimate Business Interests**

One element of Chemgard's legitimate business interest in upholding the non-solicit is the protection of its stock of customers, which is "the most important single asset" of the business. *Standard Register*, 119 S.E.2d at 539 (emphasis added); see also *Dove Data Products, Inc. v. Murray*, 2006 WL 463588, \*3 (D.S.C. Feb. 23, 2006).

Additionally, an employer has a legitimate interest in preventing disclosure and use of confidential, trade secret, or other proprietary information or knowledge that the employee has no right to reveal to the extent the employer has a protectable trade secret and/or the employee

possess and is utilizing such information. *See Wolf*, 420 S.E.2d at 222 (to the extent the information is useful to the new employer in selling its products, it is detrimental to the old employer who had the restriction).

Based upon what has been presented to the Court, it appears that the restrictive covenants in this case are tailored specifically to protect Chemgard's business interests and relationships with its existing customers, and also to prevent knowledge and information about Chemgard's detailed customer contact information and business strategies from being used against them by competitors like Haynes and his new employer. As such, the restrictive covenants appear to serve a legitimate purpose, and the evidence before the Court at this stage does not show they are overly broad as exceeding the boundaries necessary to protect such business interests.

**2. The Restrictions Contained in the Employment Agreement are Reasonable in Scope, Time, and Place.**

The non-solicitation compete covenant in the Employment Agreement contains customer-based rather than geographic restrictions. This two-year, customer-based restriction is nearly identical to others that South Carolina courts have upheld as reasonable and enforceable. As noted above, covenants with temporal duration of two years have repeatedly been enforced in South Carolina. *See supra; Rockford Mfg.*, 296 F. Supp. 2d at 689. Similarly, customer-based restrictions, such as Haynes's non-solicitation covenant, have been recognized as reasonable and enforceable under South Carolina law. *Rockford Mfg.*, 296 F. Supp. 2d at 689.

**3. None of the Restrictive Covenants by which Haynes is Bound Unduly Affect His Efforts to Earn a Livelihood.**

The restrictions on Haynes are reasonable as they are limited in time and scope. The non-solicit is enforceable for a period of two years and does not continue indefinitely. Haynes is free to work as a salesman anywhere he wants as long as he does not solicit Chemgard's customers.

This does not appear to create an undue burden on Haynes to earn a living and therefore is appropriate to be enforced against him.

**4. The Covenants Applicable to Haynes are Reasonable from the Standpoint of Public Policy.**

The public interest is best served by upholding and enforcing the valid contractual agreements between two private parties. "Sound public policy generally requires the enforcement of contracts freely entered into by the parties." *Wolf*, 420 S.E.2d at 221. No public interest would be affected by an order enjoining and restraining Haynes from violating his non-solicitation, because Chemgard and its competitors will continue to provide their services to their customers and the general public. Consequently, public policy rests in favor of Chemgard.

**5. The Employment Agreement was Supported by Valuable Consideration.**

Haynes was required to sign his Employment Agreement as a condition of being hired by Chemgard; that is, the Agreement was ancillary to his initial contract of employment. Therefore, under South Carolina law, there was valuable consideration sufficient to support Haynes's promises in the Employment Agreement.

**D. Chemgard Does Not Have an Adequate Remedy At Law.**

The final factor for Court to consider is whether Chemgard has an adequate remedy at law. The alleged damage that is being done, and will continue to be done to Chemgard's business and goodwill is irreparable. If confidential information is used to solicit a Chemgard customer, the future lost income becomes difficult, if not impossible, to calculate with the requisite customer. There is no adequate remedy at law for the permanent loss of a customer or the damage to Chemgard's goodwill. Unless Haynes is immediately enjoined from breaching the Agreement, Chemgard's business, confidential information and customer relationships may be permanently impaired.

*ply #7*

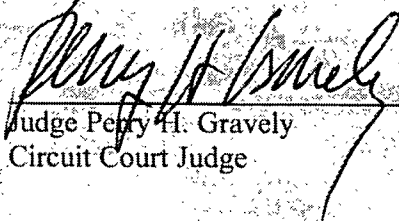
**III. CONCLUSION**

Accordingly, based upon these finding of fact and conclusions of law, this Court grants Plaintiff's Motion for Injunctive Relief as follows:

Defendant Haynes is enjoined from soliciting or calling on, either directly or indirectly, any business or entity that was a customer of Chemgard as of May 10, 2015, for the purpose of selling any products or services sold by Chemgard or any products or services similar to those sold by Chemgard for a period of two years from the date of May 10, 2015 or until a trial can be had on the merits, whichever is earlier.

Chemgard shall obtain and post a security bond with the Greenville County Clerk of Court in the amount of Fifteen Thousand 00/100 (\$15,000.00) Dollars as required under Rule 65 of the South Carolina Rules of Civil Procedure.

**IT IS SO ORDERED.**

  
\_\_\_\_\_  
Judge Perry H. Gravely  
Circuit Court Judge

Date: July 15, 2015



**Power of Attorney  
FIDELITY AND DEPOSIT COMPANY OF MARYLAND**

KNOW ALL MEN BY THESE PRESENTS: That the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a corporation of the State of Maryland, by THEODORE G. MARTINEZ, Vice President, and ERIC D. BARNES, Assistant Secretary, in pursuance of authority granted by Article VI, Section 2, of the By-Laws of said Company, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, does hereby nominate, constitute and appoint **Hugh B. MCGOWAN, Hugh M. MCGOWAN, Sheila K. FREDERICK and Carl BOYER**, all of **Indianapolis, Indiana**, EACH its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed, each in a penalty not to exceed the sum of **ONE MILLION DOLLARS (\$1,000,000)** and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Company, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the Company at its office in Baltimore, Md., in their own proper persons. This power of attorney revokes that issued on behalf of Hugh B. MCGOWAN, Nancy A. TAYLOR, Hugh M. MCGOWAN, Sheila K. FREDERICK, Cynthia A. SHANE, Carl BOYER, dated September 18, 2006.

The said Assistant Secretary does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article VI, Section 2, of the By-Laws of said Company, and is now in force.

IN WITNESS WHEREOF, the said Vice-President and Assistant Secretary have hereunto subscribed their names and affixed the Corporate Seal of the said FIDELITY AND DEPOSIT COMPANY OF MARYLAND, this 2nd day of October, A.D. 2006.

ATTEST:

**FIDELITY AND DEPOSIT COMPANY OF MARYLAND**



*Eric D. Barnes*

Eric D. Barnes

*Theodore G. Martinez*

By:

Assistant Secretary

Theodore G. Martinez

State of Maryland }  
City of Baltimore } ss:

On this 2nd day of October, A.D. 2006, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, came THEODORE G. MARTINEZ, Vice President, and ERIC D. BARNES, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and they each acknowledged the execution of the same and being by me duly sworn, severally and each for himself deposeth and saith, that they are the said officers of the Company aforesaid, and that the seal affixed to the preceding instrument is the Corporate Seal of said Company, and that the said Corporate Seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.



*Maria D. Adamski*

Maria D. Adamski

Notary Public

My Commission Expires: July 8, 2007

# **EXHIBIT 2**

STATE OF SOUTH CAROLINA )

COUNTY OF GREENVILLE )

Chemgard, Inc. )  
 Plaintiff )

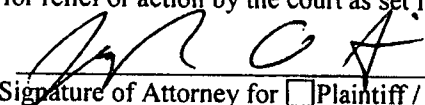
v. )

Darrell Keith Haynes And Chem-Tek, LLC )  
 Defendant. )

IN THE COURT OF COMMON PLEAS

CASE NO.  
2015-CP-23-03546

MOTION AND ORDER INFORMATION  
FORM AND COVER SHEET

Plaintiff's Attorney: W. Andrew Arnold, Bar No. 65311 Address: 712 E. Washington Street, Greenville, SC 29601 phone: (864) 242-4800 fax: (864) 242-4885 e-mail: aarnold@aalawfirm.com other:	Defendant's Attorney: Joseph O. Smith, Bar No. 77475 Address: P.O. Box 10529, Greenville SC 29603 phone: (864) 349-2600 fax: (864) 349-0303 e-mail: jsmith@roecassidy.com other:
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
<b>SECTION I: Hearing Information</b>	
Nature of Motion: Motion to Reconsider Estimated Time Needed: 30 minutes Court Reporter Needed: <input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO	
<b>SECTION II: Motion/Order Type</b>	
<input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
 Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant	July 21, 2015 Date submitted
<b>SECTION III: Motion Fee</b>	
<input type="checkbox"/> PAID - AMOUNT: <input type="checkbox"/> EXEMPT: <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support (check reason) <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: <input type="checkbox"/> Other:	
<b>JUDGE'S SECTION</b> <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other:	_____ JUDGE  CODE: _____ Date: _____
<b>CLERK'S VERIFICATION</b>	
Collected by: _____ Date Filed: _____	
<input type="checkbox"/> MOTION FEE COLLECTED: _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: _____	

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
Chemgard, Inc.,	)	C.A. No.: 2015-CP-23-03546
	)	
Plaintiff,	)	
	)	
v.	)	
	)	<b>MOTION TO RECONSIDER</b>
Darrell Keith Haynes and Chem-Tek, LLC,	)	
	)	
Defendant.	)	
_____	)	

The Defendants, Chem-Tek, LLC and Darrell Keith Haynes (*hereinafter collectively* “Defendants”), by and through their attorneys, hereby move this Court pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, to reconsider the Court’s July 17, 2015 Order entered by the Honorable Perry H. Gravely.

Defendants’ motion is made upon the following grounds:

1. On July 6, 2015 the Court was scheduled to and did hear arguments on Plaintiff’s Motion for Temporary Injunction.
2. That same day, pursuant to the agreement of the parties, the Court also heard arguments on Defendant Haynes’ Motion to Dismiss under Rule 12(b)(2) for lack of personal jurisdiction over this Defendant.
3. The Court issued a Form 4 Order dated July 7, 2015 denying Defendant Haynes’ Motion to Dismiss and granting Plaintiff an injunction. It instructed Plaintiff counsel to prepare a formal order. (Exhibit A).
4. The Court entered a formal Order on July 17, 2015.

5. The formal Order substantively addresses the injunction but does not mention the basis for denial of Defendant Haynes' Motion to Dismiss.

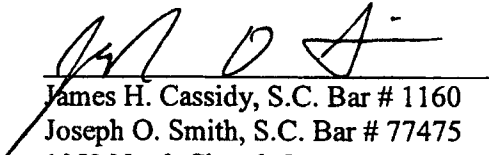
6. Defendants respectfully ask the Court to reconsider its ruling on Defendant Haynes' Motion to Dismiss, and issue a substantive order setting forth the grounds for its ruling on that motion.

Defendants make this Motion pursuant to Rule 59 of the South Carolina Rules of Civil Procedure and respectfully request that this Court reconsider the Order.

This motion will be based upon the pleadings, depositions, affidavits, applicable law, and such other documentation or memoranda as may be submitted prior to any hearing on the motion.

Respectfully submitted,

ROE CASSIDY COATES & PRICE, P.A.



James H. Cassidy, S.C. Bar # 1160

Joseph O. Smith, S.C. Bar # 77475

1052 North Church Street

Greenville, S.C. 29601

(864)-349-2600

(864)-349-0303 fax

[JCassidy@roecassidy.com](mailto:JCassidy@roecassidy.com)

[JSmith@roecassidy.com](mailto:JSmith@roecassidy.com)

*Attorneys for the Defendants*

July 21<sup>st</sup>, 2015.  
Greenville, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Chemgard, Inc.,

Plaintiff,

v.

Darrell Keith Haynes and Chem-Tek, LLC,

Defendant.

) IN THE COURT OF COMMON PLEAS

) THIRTEENTH JUDICIAL CIRCUIT

) C.A. No.: 2015-CP-23-03546

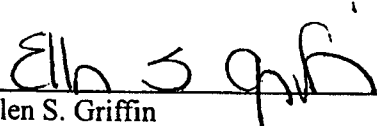
) **CERTIFICATE OF SERVICE**

This is to certify that I did cause on this 21th day of July 2015, a copy of **Defendants' Motion to Reconsider** to be served in the above-entitled matter on the person(s) listed below by enclosing a copy of same in an envelope with sufficient postage thereon prepaid in the United States mail, addressed as follows:

W. Andrew Arnold  
Jeremy R. Summerlin  
The Law Office of W. Andrew Arnold  
712 E. Washington Street  
Greenville, SC 29601

Respectfully submitted,

ROE CASSIDY COATES & PRICE, P.A.

  
\_\_\_\_\_  
Ellen S. Griffin  
Paralegal to Joseph O. Smith

Greenville, South Carolina

# **EXHIBIT 3**

FORM 4

STATE OF SOUTH CAROLINA  
 COUNTY OF GREENVILLE  
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE  
 CASE NUMBER 2015CP2303546

ChemGard, Inc. Darrell Keith Haynes  
and Chem-Tek, LLC.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Attorney for:  Plaintiff  Defendant  
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT:** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT:** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (of Nonsuit);  
 Rule 43(k), SCRPC (Settled);  Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j) SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other: \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other: \_\_\_\_\_

FILED-CLERK OF COURT  
GREENVILLE S.C.  
JUL 15 11 35 AM '15

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order; (formal order to follow)  Statement of Judgment by the Court: The Plaintiff/Appellant's Motion to Continue is granted.

ORDER INFORMATION

This order  ends  does not end the case.  
 Additional Information for the Clerk: \_\_\_\_\_

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

*[Signature]*  
 Circuit Court Judge  
 CPFORM4Cm  
 SCCA SCRPC Form 4C (Revised 3/2013)

2755 8/17/2015  
 Judge Code Date

**For Clerk of Court Office Use Only**

This judgment was entered on <sup>8/18/15</sup> and a copy mailed first class or placed in the appropriate attorney's box on <sup>8/18/15</sup> to attorneys of record or to parties (when appearing pro se) as follows:

Andrew W Arnold

James H Cassidy  
Joseph Owen Smith

\_\_\_\_\_  
**ATTORNEY(S) FOR THE PLAINTIFF(S)**

\_\_\_\_\_  
**ATTORNEY(S) FOR THE DEFENDANT(S)**

**Court Reporter**

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

STATE OF SOUTH CAROLINA )

COUNTY OF GREENVILLE )

CHEMGARD, INC., )

Plaintiff, )

v. )

DARRELL KEITH HAYNES AND )  
CHEM-TEK, LLC, )

Defendants. )

COURT OF COMMON PLEAS

Civil Action No. 2015-CP-23-03546

**SUPPLEMENTAL ORDER**

FILED-CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL B. WICKENSIMMER  
2015 AUG 18 PM 2:35

Defendants filed a Motion to Reconsider the Order denying Defendant Haynes' Motion to Dismiss pursuant to Rule 12(b)(2). The Order denying Defendant Haynes' Motion was set forth in a Form 4 Order with instructions for Plaintiff's counsel to submit a formal order, but the final order did not cover the Court's denial of Defendant Haynes' Motion to Dismiss. Therefore, this Order is submitted as a Supplemental Order and only addresses the Court's denial of Defendant Haynes' Motion to Dismiss under Rule 12(b)(2), SCRCP.

In the Amended Complaint the Plaintiff seeks an injunction against Defendant Haynes, a former employee, based on a Covenant Not to Compete contained in an Employment Agreement entered into by Defendant Haynes and the Plaintiff. Defendant Haynes, in his Motion to Dismiss, requested that the Amended Complaint be dismissed as to him under Rule 12(b)(2) for lack of personal jurisdiction. In support of his Motion to Dismiss, Defendant Haynes submitted an Affidavit asserting that he was a resident of Georgia and that all of his actions in relation to the negotiations and acceptance of the Employment Agreement and all work performed under the agreement took place outside of South Carolina.

*Page #1*

In determining whether Defendant Haynes is subject to personal jurisdiction in this state, the Court must undertake a two-part analysis: (1) whether the cause of action falls within South Carolina's Long Arm Statute, and (2) whether the Defendant has sufficient "minimum contacts" to satisfy the due process requirements. See Springmaster, Inc. v. D & M Mfg., 402 S.E.2d 192 (S.C. Ct. App. 1991).

The Court finds that Defendant Haynes actions fall within the South Carolina Long Arm's statute, South Carolina Code Section 36-2-803(A)(7) which states as follows:

*A court may exercise personal jurisdiction over a person who acts directly or by agent as to a cause of action arising from the person's: .....*  
*(7) entry into a contract to be performed in whole or part by either party in this State...*

The Employment Agreement in question between Defendant Haynes and the Plaintiff states that the Plaintiff is a South Carolina corporation and according to evidence submitted, all actions by the Plaintiff originated from South Carolina including payment to Defendant Haynes. Further, Defendant Haynes attended periodic sales meetings in South Carolina. Therefore, the Court finds that the Plaintiff, as a party to the Employment Agreement, had entered into a contract which was to be performed at least in part within this state and the South Carolina Long Arm's statute would apply.

Now the Court must consider whether the exercise of personal jurisdiction over Defendant Haynes is appropriate under due process and "comports with the traditional notions of fair play and substantial justice." Springmaster, Inc., 402 S.E.2d 192 (citing Hammond v. Butler, Means, Evins & Brown, 388 S.E.2d 796 (S.C. 1990)). In the matter before this Court, the factors supporting the exercise of personal jurisdiction are as follows:

1. Defendant Haynes entered into an employment agreement with a South Carolina corporation with its principal offices located in South Carolina;

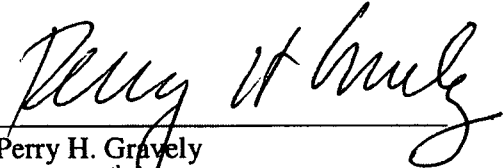
*Page # 2*

2. Payment to Defendant Haynes originated in South Carolina;
3. Defendant Haynes attended sales meetings in South Carolina on a periodic basis;
4. The employment agreement contains a provision stating that "*This agreement has been executed and delivered in, and shall be interpreted, construed, and enforced pursuant to and in accordance with the laws of the state of South Carolina.*" (*Employment Agreement, 10(c)*); and
5. All notices to be provided to the Plaintiff from Defendant Haynes were to be delivered or mailed to the Plaintiff at its Greenville, South Carolina address. (*Employment Agreement, 10(f)*).

Based on these factors, the Court finds that Defendant Haynes maintained sufficient contacts and the exercise of personal jurisdiction over Defendant Haynes in this matter does not offend due process or Defendant Haynes' right to "traditional notions of fair play and substantial justice." See Berkeley PG Corp. v. Southbank Investment Grp., Inc., 353 S.E.2d 305 (S.C. Ct. App. 1987).

Therefore, Defendant Haynes' Motion to Dismiss is denied.

**IT IS SO ORDERED.**

  
Perry H. Gravely  
Judge, 13<sup>th</sup> Circuit

August 17, 2015

Greenville, South Carolina

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY  
COURT OF COMMON PLEAS

Perry H. Gravely, Circuit Court Judge

Case No. 2015-CP-23-03546

Appellate Case no. 2015-

RECEIVED  
SEP 28 2015  
SC Court of Appeals

Chemgard, Inc. ....Respondent,

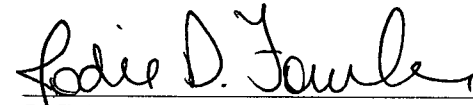
v.

Darrell Keith Haynes and Chem-Tek, LLC.....Appellants.

CERTIFICATE OF SERVICE

I, Jodie D. Fowler, Paralegal for W. Andrew Arnold, do hereby certify that on September 23, 2015, I served upon the below-named individual Motion to Dismiss Appeal by depositing a copy of the same in the United States Mail, proper postage affixed thereto, in an envelope addressed as shown below:

James H. Cassidy, Esquire  
Roe Cassidy Coates & Price, P.A.  
1052 N. Church Street  
Greenville, SC 29601

  
\_\_\_\_\_  
JODIE D. FOWLER  
Paralegal to W. Andrew Arnold



**RECEIVED**

SEP 28 2015

SC Court of Appeals

September 23, 2015

Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

RE: Chemgard, Inc. v. Darrell Keith Haynes and Chem-Tek, LLC  
Case Number: 2015-23-CP-03546  
Appellate Case Number: 2015-001973

Dear Ms. Kitchings:

In reference to the above, enclosed please find original and six copies of the Motion to Dismiss Appeal and related documents for filing. Also enclosed is a check in the amount of \$25 for the filing fee.

Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Summerlin', written over a horizontal line.

Jeremy R. Summerlin

cc: Joseph O. Smith, Esquire (with enclosures)  
James H. Cassidy, Esquire (with enclosures)

**P**

**US POSTAGE AND FEES PAID**

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LAW OFFICE OF  
W. ANDREW ARNOLD, P.C.  
712 E WASHINGTON ST  
GREENVILLE SC 29601-3035

**B012**

**0024**

**Ship To:**

JENNY ABBOTT KITCHINGS  
CLERK, SOUTH CAROLINA COURT OF APPEALS  
PO BOX 11629  
COLUMBIA SC 29211-1629

**USPS TRACKING #**



**9405 5102 0079 3707 6948 37**

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SEP 28 2015  
SC Court of Appeals