

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

**RECEIVED**

APPEAL FROM GREENVILLE COUNTY  
Circuit Court

OCT 07 2015  
SC Court of Appeals

The Honorable 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.

**APPELLANTS' RETURN TO RESPONDENT'S MOTION TO DISMISS**

Appellants, Carrell Keith Haynes and Chem-Tek, LLC, by and through their undersigned counsel, pursuant to SCACR 240(e) hereby file this Return to Respondent's Motion to Dismiss Appeal and Memorandum in Support of the same. For the reasons set forth below, Respondent's Motion to Dismiss should be denied.

**FACTUAL BACKGROUND**

The order from which Appellants filed this appeal arose out of a breach of contract dispute between the Respondent, Chemgard, Inc. and Appellants, Keith Haynes and his new employer Chem-Tek, LLC. Haynes worked for Chemgard, Inc. as a salesman from 2000 until resigning on May 10, 2015. Chemgard required Haynes sign an employment agreement containing non-competition provisions as a condition of his employment.<sup>1</sup> Following his

<sup>1</sup> That document attempts to restrict Haynes post-employment potentially competitive actions stating:

resignation from Chemgard, Haynes began working for Chem-Tek, LLC. Soon after, Chemgard filed the underlying suit setting forth breach of contract claims and seeking to enjoin Haynes from violating the non-compete provisions of his employment agreement.

### **PROCEDURAL BACKGROUND**

On June 5, 2015, Chemgard filed an action against Appellant Haynes for alleged breach of the non-compete provisions of his employment agreement. Chemgard sought both legal and equitable remedies, the latter in the form of a preliminary injunction. On June 25, 2015 Chemgard filed and served an Amended Complaint adding Appellant Chem-Tek as a Defendant and setting forth an additional cause of action for alleged tortious interference with contractual relations.

Chemgard's preliminary injunction relied upon the non-compete provisions in Haynes' employment agreement and requested the circuit court enjoin Haynes from "[s]olicit[ing] or call[ing] 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

---

#### 9. Nondisclosure and Noncompetition Covenants

##### (d) Covenants Not to Compete

\*\*\*

Employee agrees 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) Solicit 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;
- (ii) Solicit or call on, either directly or indirectly, any business or entity that had been a customer of the Company within fifteen (15) months prior to the termination of Employee's employment with 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;
- (iii) Solicit or call on, either directly or indirectly, any business or entity with which Employee had contact on behalf of the Company within fifteen (15) months prior to the termination of Employee's employment but which did not become a 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 pgs. 4-6).

by the Company for a period of two years following his resignation from [Chemgard's] employment.”

Chemgard's motion for a preliminary injunction was set to be heard on Monday July 6, 2015 before the Honorable Perry H. Gravely. Before the hearing Haynes filed a Motion to Dismiss for lack of personal jurisdiction and the Appellants submitted Memorandum in Opposition to Chemgard's Motion for Preliminary Injunction. Prior to the hearing counsel for both parties conferred and consented to Judge Gravely taking up both motions at the July 6<sup>th</sup> hearing recognizing that should the circuit court determine it lacked personal jurisdiction over Haynes it could not enjoin him. Judge Gravely heard the Parties' motions during the July 6<sup>th</sup> hearing.

On July 7, 2015 Judge Gravely issued a Form 4 denying Haynes' Motion to Dismiss and granting Chemgard's motion for preliminary injunction. (Exhibit A). In the Form 4 Judge Gravely instructed Plaintiff counsel to “prepare a formal order.” (Exhibit A). The circuit court issued a formal Order on July 17, 2015 (“the Order”) granting the injunction but failing to address the issue of personal jurisdiction ruled upon in the Form 4. (Exhibit B).

On July 21, 2015 Appellants filed a motion “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” (“Motion to Reconsider”). (Exhibit C). In response, Judge Gravely issued a Supplemental Order dated August 18, 2015 with Appellants receiving written notice of the lower court's denial on August 21, 2015. (Exhibit D). On September 15, 2015 Appellants filed a timely Notice of Appeal seeking this Court's review of the July 17, 2015 Order. (Exhibit E).<sup>2</sup>

---

<sup>2</sup> The present appeal does not seek appellate review of Judge Gravely's denial of the Motion to Dismiss for lack of personal jurisdiction as Appellants agree that determination is not immediately appealable.

## LAW & ANALYSIS

Respondent's Motion to Dismiss rests upon an inaccurate and unsupported interpretation of SCACR 203 to argue Appellants' failed to file a timely appeal. Chemgard asks this Court to dismiss the present appeal because Appellant's Motion for Reconsideration of the July 17, 2015 Order and Judge Gravely's Supplemental Order in response focused upon Haynes' Motion to Dismiss rather than issuance of the preliminary injunction. Within its motion and memorandum in support, Chemgard fails to cite any supporting authority for its interpretation and advocated application of SCACR 203. It merely notes the Rule, and without reference to any language within it supporting its position, argues that because the Motion to Reconsider and Supplemental Order focused upon the issue of personal jurisdiction, its tolling provision did not apply in this case. Chemgard's argument is flawed in numerous respects.

### **A. The plain language of SCACR 203 does not support Chemgard's position**

"Courts interpreting the South Carolina Rules of Civil Procedure apply the same rules of construction used to interpret statutes." *James v. South Carolina Dept. of Transp.*, 393 S.C. 440, 445, 711 S.E.2d 919, 922 (Ct. App. 2011). "[C]ivil procedure and appellate rules should not be written or interpreted to create a trap for the unwary lawyer or party...." *Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9, 25, 602 S.E.2d 772, 780 (2004). "The language of [a rule or statute] must also be read in a sense which harmonizes with its subject matter and accords with its general purpose." *Id. citing Hitachi Data Sys. Corp. v. Leatherman*, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992).

SCACR 203(b) states that:

[a] notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment. When a timely motion... to alter or amend the judgment (Rules 52 and 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. When a form or other short order or judgment indicates that a more full and complete order or judgment is to follow, a party need not appeal until receipt of written notice of entry of the more complete order or judgment.

SCACR 203(b)(1). As noted above, Appellants filed a Motion to Reconsider pursuant to Rule 59 seeking the alternation or amendment of the Court's judgment as embodied in the Form 4; later becoming the July 17<sup>th</sup> Order. (Exhibits A & B). The plain and ordinary language of SCACR 203 says the filing of such a motion tolls the deadline for filing a notice of appeal. *See also Lucey v. Meyer*, 401 S.C. 122, 736 S.E.2d 274 (Ct. App. 2012).

Appellants freely admit that the Motion to Reconsider and Supplemental Order focused on the issue of personal jurisdiction; however that is of no consequence under the language of SCACR 203.<sup>3</sup> The Rule does not differentiate between issues within a single order or ruling. It does not say that its tolling provision applies only to immediately appealable issues. It is much more simplistic than that. It simply states that “[w]hen a timely motion ...to *alter or amend* the judgment (Rules 52 and 59 SCRCR)...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.” SCACR 203(b)(*emphasis added*). Appellants’ Motion to Reconsider sought amendment or alteration of the July 17, 2015 Order and therefore the time for filing a notice of appeal was tolled under SCACR 203. The circuit court issued its Supplemental Order on August 18, 2015, with Appellants receiving written notice on August 21<sup>st</sup>. They then filed a timely notice of appeal on September 15<sup>th</sup>.

---

<sup>3</sup> “[O]ur rule contemplate two basic situations in which a party should consider filing a Rule 59(e) motion. A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argue or issue, and the party wishes for the court to reconsider or rule on it.” *Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004).

## **B. Appellants' Motion Expressly Sought Reconsideration of the July 17<sup>th</sup> Order**

Furthermore, the Motion to Reconsider expressly sought amendment or alteration of the July 17<sup>th</sup> Order plainly stating “[t]he Defendants, Chem-Tek, LLC and Darrell Keith Haynes...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....” (Exhibit C). It concludes by stating “[t]he Defendants make this Motion pursuant to Rule 59...and respectfully request that this Court reconsider the Order.” (Exhibit C).

## **C. Judge Gravely’s August 18<sup>th</sup> Order Supplemented his Earlier Ruling**

Finally, in response to Appellants’ Motion to Reconsider Judge Gravely issued a Supplemental Order on August 18, 2015. (Exhibit D). By its very title that document supplemented, and thereby altered or amended his original July 17, 2015 Order from which Appellants appealed. Appellants recognize the distinction between the two issues addressed in the original and supplemental orders; however SCACR 203(b) does not. The circuit court made a ruling in its Form 4 and directed the preparation of an order reflecting it. (Exhibit A). Appellants simply take the position (and acted under the contention when waiting for the circuit court to rule on its Motion to Reconsider before filing this appeal) that under the plain language of SCACR 203(b), the time for filing an appeal was tolled until the circuit court ruled upon the motion to reconsider. It was not until that ruling was entered that the order became final and ripe for appeal.

## **CONCLUSION**

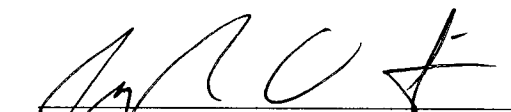
Here Appellants’ filing of its Motion to Reconsider pursuant to SCRCR 59 seeking amendment or alteration of the July 17, 2015 Order tolled the 30 day deadline for filing notice of appeal under SCACR 203(b). It was not until the circuit court issued its August 18<sup>th</sup>

Supplemental Order in response to that motion that the time for filing an appeal began to run. Therefore, Appellants' timely filed the Notice of Appeal on September 15, 2015 which should be allowed to proceed in this Court.

The timing of the filing of the Notice of Appeal was deliberate and mindful of the applicable deadline(s) under SCACR 203. Appellants contend and operated under the contention that the lower court's Order was not final until Judge Gravely ruled on their Motion to Reconsider. The present appeal should not be dismissed upon an unsupported, tortured and overly oppressive interpretation of SCACR 203 as Respondent argues. Respondent fails to cite any supporting authority for their advocated interpretation and application of SCACR 203. Adoption of Respondent's interpretation and application of SCACR 203 would result in overly harsh dismissal of a valid appeal upon a reading not found within or supported by the language of the Rule. Furthermore, dismissal of this matter under Respondent's theory would not serve the purpose of SCACR 203 – ensuring timely application for appellate review.

Therefore, Appellants respectfully request that Respondent's Motion to Dismiss be denied and the appeal of the Order be allowed to proceed.

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 Appellants Haynes and Chem-Tek, LLC*

October 2<sup>nd</sup>, 2015  
Greenville, South Carolina

# Exhibit A

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

Chem-Tek, Inc.

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 (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; (formal order to follow)  Statement of Judgment by the Court: See page 2.

### 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.

  
Circuit Court Judge

2755

Judge Code

7/7/2015

Date

For Clerk of Court Office Use Only

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

---

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

---

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

---

**Court Reporter**

---

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

---

**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.

Defendant Darrell Keith Haynes's Motion to Dismiss pursuant to Rule 12(b)(2), SCRPC is  
denied. Plaintiff's Motion for Preliminary Injunction as to Defendant Darrell Keith Haynes is  
granted upon presentment of security in the amount of \$15,000.00. Plaintiff's counsel is to  
Submit a formal order.

---

---

---

---

Exhibit B

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE  
FILED-CLERK OF COURT  
GREENVILLE, S.C.  
PAUL B. WICKENSIMMER  
COURT OF COMMON PLEAS  
Civil Action No. 2015-CP-23-03546

CHEMGARD, INC.,  
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.

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.

**III. CONCLUSION**

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

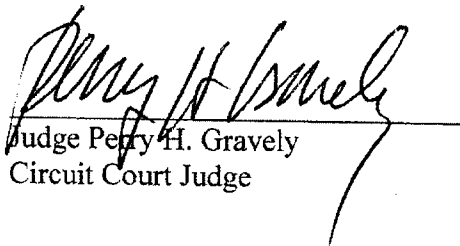
Defendant Haynes is enjoined from soliciting or calling on, either directly or indirectly, any business or entity that was a customer of Chemgard as of May 10, 2015, for the purpose of selling any products or services sold by Chemgard or any products or services similar to those sold by Chemgard for 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.**

Date:

July 15, 2015

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

**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      Assistant Secretary

*Theodore G. Martinez*

By:      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 depose 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



Fidelity and Deposit Company of Maryland

Home Office: P.O. Box 1227, Baltimore, MD 21203-1227

State of South Carolina  
COUNTY OF Greenville

IN THE Common Pleas COURT

CAUSE NO.

**Chemgard, Inc**  
**Plaintiff**

-vs-

**Darrell Keith Haynes and Chem-Tek, LLC**  
**Defendant**

**INJUNCTION BOND**

We undertake that the plaintiff in the above entitled cause shall pay to the defendant all damages and costs which may accrue to him by reason of the injunction of this action, not to exceed the sum of (\$15,000.00) Fifteen Thousand and NO/100 Dollars.

Witness our hands this 8<sup>th</sup> day of July 2015.

\_\_\_\_\_  
BY:

\_\_\_\_\_  
FIDELITY AND DEPOSIT COMPANY OF MARYLAND

By: 

\_\_\_\_\_  
Attorney-in-fact

Carl L. Boyer

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

FILED-CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL B. WICKENSIMER  
JUDGMENT IN A CIVIL CASE  
CASE NO: 2015CP2303546

2015 JUL 17 PM 4 47

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

FILED-CLERK OF COURT  
 GREENVILLE S.C. 29601  
 PAUL B. WICKENSIMER  
**Exhibit C**

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Chemgard, Inc.  
 Plaintiff

2015 JUL 21 PM 3 52

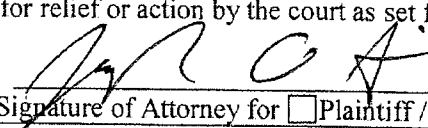
v.

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: _____  <input type="checkbox"/> MOTION FEE COLLECTED: _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: _____	Date Filed: _____

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

**MOTION TO RECONSIDER**

FILED-CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL B. WICKENS/IMMER  
2015 JUL 21 PM 3 52

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.

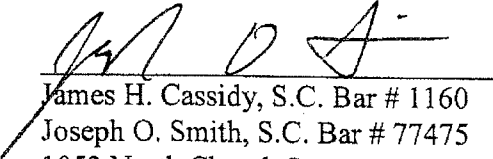
6. Defendants respectfully ask the Court to reconsider its ruling on Defendant Haynes' Motion to Dismiss, and issue a substantive order setting forth the grounds for its ruling on that motion.

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



# Exhibit D

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 (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: \_\_\_\_\_

FILED-CLEMSON COUNTY  
GREENVILLE, S.C.  
PAUL B. WOOD  
CLERK  
2015 NOV 18 PM 2:35

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: \_\_\_\_\_

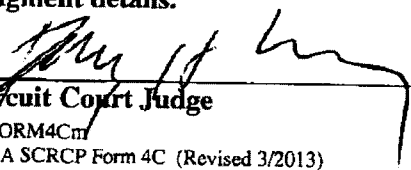
### INFORMATION FOR THE JUDGMENT INDEX

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.**

  
Circuit Court Judge  
CPFORM4Cm  
SCCA SCRPC Form 4C (Revised 3/2013)

2755  
Judge Code

8/17/2015  
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 JUN 18 PM 2:55

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), SCRPC.

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.

*PLG #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:

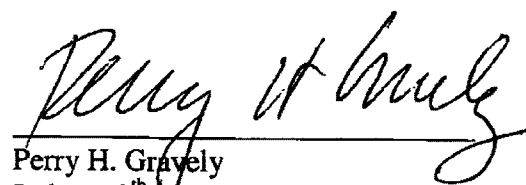
1. Defendant Haynes entered into an employment agreement with a South Carolina corporation with its principal offices located in South Carolina;

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

# Exhibit E

71283

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY  
Circuit Court

The Honorable Perry H. Gravely, Circuit Court Judge

**RECEIVED**

SEP 17 2015

SC Court of Appeals

Case No. 2015-CP-23-03546

Appellate Case No. 2015-

Chemgard, Inc., .....Respondent,

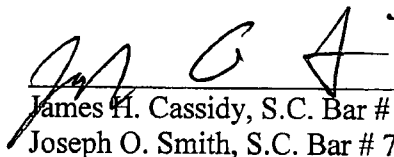
v.

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

## JOINT NOTICE OF APPEAL

Darrell Keith Haynes and Chem-Tek, LLC appeal the Order of the Honorable Perry H. Gravely dated July 17, 2015. Appellant filed a timely motion pursuant to Rule 59, SCRCP, seeking reconsideration of the July 17, 2015 Order and received written notice of the Court's denial of the same on August 21, 2015.

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 Appellants Haynes and Chem-Tek, LLC*

September 15, 2015  
Greenville, South Carolina

**Other Counsel of Record:**

W. Andrew Arnold, SC Bar No. 65311  
Jeremy R. Summerlin, Esq., S.C. Bar No. 101383  
LAW OFFICE OF ANDY ARNOLD, P.C.  
712 East Washington Street  
Greenville, South Carolina, 29601  
864.242.4800  
864.242.4885 (fax)  
[aarnold@aalawfirm.com](mailto:aarnold@aalawfirm.com)  
[jsummerlin@aalawfirm.com](mailto:jsummerlin@aalawfirm.com)  
**Attorneys for the Respondent Chemgard, Inc.**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY  
Circuit Court

The Honorable Perry H. Gravely, Circuit Court Judge.

**RECEIVED**  
SEP 17 2015  
SC Court of Appeals

Case No. 2015-CP-23-03546

Appellate Case No. 2015-

Chemgard, Inc., .....Respondent,

v.

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

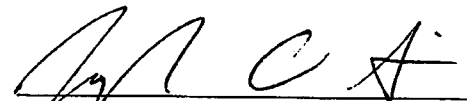
**PROOF OF SERVICE**

I certify that I have served the Joint Notice of Appeal on the above named Respondent by depositing a copy of it in the United States Mail, postage prepaid, on September 15, 2015, addressed to counsel of record as follows.

W. Andrew Arnold  
Jeremy R. Summerlin  
LAW OFFICE OF ANDY ARNOLD, P.C.  
712 East Washington Street  
Greenville, South Carolina, 29601  
**Attorneys for the Respondent Chemgard, Inc.**

**(signature page to follow)**

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 Appellants Haynes and Chem-Tek, LLC*

Greenville, South Carolina

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

**RECEIVED**

APPEAL FROM GREENVILLE COUNTY  
Circuit Court

OCT 07 2015  
SC Court of Appeals

The Honorable 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.

---

**PROOF OF SERVICE**

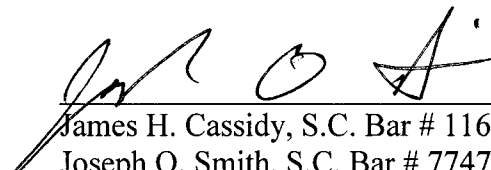
---

I certify that I have served Appellants' Return to Respondent's Motion to Dismiss on the above named Respondent by depositing a copy of it in the United States Mail, postage prepaid, on October 2, 2015, addressed to counsel of record as follows.

W. Andrew Arnold  
Jeremy R. Summerlin  
LAW OFFICE OF ANDY ARNOLD, P.C.  
712 East Washington Street  
Greenville, South Carolina, 29601  
**Attorneys for the Respondent Chemgard, Inc.**

(signature page to follow)

**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 Appellants Haynes and Chem-Tek, LLC*

Greenville, South Carolina