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STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM BERKELEY COUNTY  
Court of Common Pleas

Kristi L. Harrington, Circuit Court Judge

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Case No. 2011-CP-08-1078

Blackhawk Logistics, LLC,

Respondent,

v.

Jerry Ward,

Appellant.

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**FINAL BRIEF OF RESPONDENT**

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## STATEMENT OF ISSUES ON APPEAL

- I. IS THIS APPEAL MOOT? SHOULD THE APPELLATE COURT EXPEND VALUABLE JUDICIAL RESOURCES TO DECIDE AN ACADEMIC CONTROVERSY WHEN THE TEMPORARY INJUNCTION OF WHICH APPELLANT COMPLAINS HAS ALREADY EXPIRED ON ITS OWN TERMS?
- II. IS *ATWOOD AGENCY V. BLACK* INAPPLICABLE HERE, SINCE APPELLANT WARD HAS NO SUBSTANTIAL PECUNIARY INTEREST INVOLVED WITH REGARD TO BLACKHAWK'S CONFIDENTIAL CUSTOMERS AND CLIENTS, AND THUS THE CIRCUIT COURT DID NOT ABUSE ITS DISCRETION BY SETTING A BOND OF \$0.00?
- III. DID THE CIRCUIT COURT EMPLOY THE CORRECT LEGAL STANDARD IN REVIEWING THE RESTRICTIVE COVENANTS FOUND IN THE EMPLOYMENT AGREEMENT HERE, AND IF SO, ARE THE ORDERS GRANTING INJUNCTIVE RELIEF AN ABUSE OF DISCRETION?
- IV. WERE THE CIRCUIT COURT'S FINDINGS AND CONCLUSIONS OF LAW AS TO THE INJUNCTIVE RELIEF GRANTED AN ABUSE OF DISCRETION?

## STATEMENT OF THE CASE

On April 6, 2011, Blackhawk Logistics LLC (“Respondent”) filed a Complaint and Emergency Motion for Temporary Restraining Order and Permanent Injunctive Relief, to which were attached an enormous number of affidavits, e-mails, and related documentary evidence (“Complaint”), against Appellant Jerry Ward (“Ward”), Respondent’s former member, President and General Manager (R. pp. 1-93).

Judge Harrington set Respondent’s request for temporary restraining order for a hearing held April 14, 2011 (R. pp. 94, 98, 100-132). Prior to this, both Ward and Ward's counsel Charles Altman received both notice of the hearing and copies of the Complaint with attached affidavits (all notarized on April 11, well prior to the hearing) and exhibits. Ward was represented by attorney Altman at this hearing (R. p. 101).

Judge Harrington issued an order granting the temporary restraining order on April 18, 2011 (“April 18 Order”) (R. pp. 94-97). The April 18 Order expired on its own terms on April 25, 2011, and the April 18 Order therefore set the matter for further hearing on April 25, 2011 at 9 a.m. (R. p. 97). In the April 18 Order, Blackhawk did not obtain all of the relief that it sought (R. pp. 94-97). In particular, Judge Harrington did not enforce the non-compete portion of the employment agreement.

Judge Harrington held a hearing on Blackhawk’s Motion for Temporary and Permanent Injunction on April 25, 2011 (R. pp. 97, 98-99, 133-155). Judge Harrington subsequently issued an order granting the preliminary injunction, which was signed on April 29, 2011, and issued on May 13, 2011 (“May 13 Order”) (R. pp. 98-99). Paragraph 5 of the May 13 order states that “this injunction will expire on December 8, 2011, unless otherwise modified or superseded by hearing on the merits” (R. p. 99). As of

today, the Circuit Court has not modified the May 13 Order, nor has there yet been a hearing on the merits. Accordingly, *the injunctive relief referenced in the May 13 Order and which Appellant challenges has already expired of its own terms.*

Appellant appealed the April 18 Order and the May 13 Order. On August 16, 2011, this Court dismissed Appellant's appeal for failure to file a brief or provide information regarding a transcript. Thereafter, Appellant filed a petition to reinstate his appeal, which was granted.

Respondent filed an answer to the Complaint. Appellant filed an amended complaint, adding Pratt (Georgia Box) Inc. ("Pratt"), Ward's new employer and a Blackhawk competitor. Pratt has filed responsive pleadings. Subsequently, Blackhawk has also filed a motion to modify the preliminary injunction, which the lower court has taken under advisement.

#### STATEMENT OF FACTS

Blackhawk filed the Complaint following Ward's repeated, disparaging contacts with numerous, important clients, customers and vendors of Respondent, which caused Respondent enormous damage, and which contacts and damage Respondent has not (and cannot) deny. The *overwhelming* documentary evidence proving these contacts by Ward with Respondent's clients, customers and vendors and the resulting damage is attached to the Complaint, and is the basis for the injunctive relief issued by Judge Harrington, which this Court should affirm.

Blackhawk is a third-party logistics company operating in Hanahan, South Carolina, which employs in excess of 15 people. Ward's repeated contact of Blackhawk's customers, vendors and clients, and numerous disparaging remarks were made with the

specific intent to “poison” Blackhawk’s relationship with the same, and were documented by evidence attached to the Complaint. Ward’s conduct has substantially damaged Blackhawk. Because of Ward’s conduct, Blackhawk sought and obtained injunctive relief against Ward, which relief was appropriate under the circumstances, and which should be affirmed here.

Ward was previously a minority member (42.5%) of Blackhawk, but a creditor of Ward foreclosed and took possession of his membership interest (R. pp. 23-24).

In addition to his membership, Ward served as President of Blackhawk, beginning in approximately 2006, until the Board of Managers (“Board”), representing the majority in interest of Blackhawk, suspended Ward in December, 2009, then terminated him for “cause,” including gross mismanagement, by certified letter from counsel to Ward’s prior attorney Brian Hellman, dated April 2, 2010, and attached to the Complaint as Exhibit 3 (R. pp. 2, 33-35). This letter, attached to the Complaint and thus part of the evidentiary record before the Judge at the April 6 hearing, sets out repeated instances of mismanagement and misconduct, including that Ward took advantage of his position as manager of Blackhawk to pay himself amounts to which he was not entitled, at a time when significant company creditors, such as Blackhawk’s landlord, were not being paid, all of which has led to disastrous financial consequences for Blackhawk (R. pp. 33-35).

On January 1, 2007, Ward, at the beginning of a new employment term (not in the middle of an existing term as suggested by Appellant), as a condition of his employment and in consideration thereof, and for an increased salary, executed an employment agreement with Blackhawk to be employed as President and General Manager of Blackhawk. A true and correct copy of this document was attached to the Complaint as

Exhibit 2 (“Employment Agreement”) (R. pp. 29-32). The Employment Agreement contains *inter alia* non-interference, non-compete, and non-solicitation provisions which are of the most critical importance to Blackhawk, and which Ward repeatedly and flagrantly violated, much to the harm of Blackhawk, as set out in documentary evidence attached to the Complaint (R. pp. 29-32).

Ward is currently employed by Pratt (Georgia Box), Inc. (“Pratt”), as admitted by Pratt (currently a defendant in the action pending below) in discovery. Pratt is a direct competitor of Blackhawk, despite Ward’s statements that Pratt is only a “paper and packaging manufacturer.” To the contrary, in discovery in the pending matter below, in response to Blackhawk’s Requests to Admit, Pratt:

[a]dmitted that Pratt-Georgia Box . . . accepts shipments of products from some third parties at 412 industrial Road in Summerville, South Carolina and stores those products at its facilities . . . [and] that Pratt Georgia Box requires payment from such 3rd parties for all services provided to them.

Pratt is thus admittedly involved in third-party logistics, the same business as Blackhawk, and is thus a direct competitor of Blackhawk.

Attached to the Complaint is voluminous evidence, part of the record herein, in support of the injunctive relief granted by Judge Harrington. As alleged in the Complaint, these e-mails and other documentary evidence are the “*smoking guns*” upon which the injunctive relief granted to Blackhawk is justly and appropriately founded (R. p. 4).

The emails and other documentary evidence attached to the complaint demonstrate that Ward consistently violated the restrictive covenants in the Employment Agreement, by attempting to “poison” Blackhawk’s relationships with at least six of its current clients, to induce such clients to do business for Ward’s own account and/or for the benefit of his current employer Pratt. The e-mails and other evidence substantiating

these contacts are attached to the complaint, and were reviewed by Judge Harrington at the hearing. Ward had access to the identity of such customers based solely on his position as President and General Manager of Blackhawk (R. pp. 25, 27, 44-45).

There are numerous examples of the conduct referenced in the preceding paragraph described in the Complaint, but three in particular should satisfy this court as to the soundness of the injunctive relief issued by Judge Harrington.

First, Ward successfully induced two important former Blackhawk customers to leave Blackhawk and join Pratt: “Pratt is accepting shipments from third parties and former Blackhawk clients Client F and Client G [who had not previously been Pratt customers], and is thus by definition engaged in third party logistics (R. p. 3, 17, 45).

The second example of Ward’s breach of the Employment Agreement is an email attached to the Complaint as Exhibit 7. Client A has been a regular customer of Blackhawk since 2009, accounting for an average of **\$30,000** in revenue monthly. Moreover, until Ward contacted them, they had always paid Blackhawk within several days of invoice (R. p. 25). This email reads:

From: [From: [Client A Employee CB email address]  
To: [Client A Employee JK email address], [Client A Employee WB]  
Date: Tue, 15 Mar 2011 18:11:08 -0400  
Subject: Re. Blackhawk

[JK]/[WB],

Jerry Ward who used to work for Blackhawk called here looking for YOU [JK]. Said he called & left messages for you but have not heard back from you and does not have [WB’s] #.

**Wanted to let us know that BH will be evicted this Friday, 03/18.**

His cell if you want to call him back - (843) 514-5653

Tks! (emphasis supplied).

Blackhawk respectfully submits that this evidence, reviewed by Judge Harrington at the April 11 hearing, unquestionably demonstrates that Ward interfered with Blackhawk's relationship with its customer Client A. There is simply no other logical explanation for Ward contacting Client A to tell them that Blackhawk "*will be evicted this Friday, 3/18,*" other than to damage Blackhawk's relationship with its customer and convert such customer into a customer of Ward's new employer and/or for his own account. (Blackhawk was not evicted on Friday, March 18, 2011, nor thereafter).

Finally, the damage done by Ward to Blackhawk is underscored in a further email attached to the Complaint as Exhibit 8 (R. p. 48). This email, because of its importance quoted in full, directly shows the effect of Ward's meddling:

From: [Client A Employee JK email address]  
To: [Client A Employee WB email address]  
Date: Mon, 28 Mar 2011 11:36:13 -0400  
Subject: Re: BH OPEN!

WHAT ELSE? Jason have some additional information for you yet? Time frame, Plan, Ruling from Judge, etc...?? What does he know??? Jerry calling [BC, President of Client J], etc.. making [TC, President of Client A] nervous, making all of us nervous, making us start to consider other options? Possibly Jerry trying to scare everybody to pull out of BH that will make BH abandon the facility early, who knows at this point?? But if we have the threat of a lockout on our 2 MILLION dollar inventory hanging over us every week, end of month, etc... then we are going to have to do something about it so get some additional information, ps - nice job showing up at 8 this morning.

JK is an important regional manager for Client A; he is based in California. WB is a manager of Client A's local operations. "Jerry" refers to Respondent Jerry Ward. BC refers to the President, owner and/or manager of Client J, another client of

Blackhawk, and one which has considerable business with Client A. TC refers to the President Client A. “BH” refers to Blackhawk (R. p. 44).

This email shows at least the following critical points, *any one of which individually* would merit injunctive relief and an award of damages, but which when taken together demonstrate substantial and *irreparable harm* done to Blackhawk by Ward:

- i. Confirmation that Ward contacted Client A as set out in Complaint, Exhibit 7 to convey the falsehood that Blackhawk was “being evicted on 3/18,” and the conveyance of other false and disparaging information to Blackhawk customers.
- ii. Defendant is “trying to scare everybody to pull out of BH that will make BH abandon the facility early.” The clear import of this statement is that Defendant is “scaring” Blackhawk’s customers, and moreover that Defendant is trying to induce Blackhawk customers to leave Blackhawk so that Blackhawk will be forced to abandon its “facility” in Hanahan. Blackhawk believes that such statement is evidence that Ward was conspiring with others to force Blackhawk from its warehouse facility in Hanahan.
- iii. Defendant contacted another client, BC of Client J, to similarly disparage Blackhawk and interfere in Blackhawk’s relationship with such client.
- iv. Defendant’s disparagement of Blackhawk to its customer Client A is “making all of us [Client A] nervous” and that Client A is considering “other options” and “going to have to do something about it”—a clear reference to Client A finding another third party logistics company other than Blackhawk, which would be a devastating loss for Blackhawk.
- v. The value of Client A’s “2 MILLION dollar” inventory at Blackhawk, and thus the economic effect on Blackhawk’s business by Defendant’s interference.

Ward’s meddling has already resulted in Client A paying Blackhawk more slowly than normal. Given the ominous threat to this critical customer, and the fact that Ward has already successfully taken both Client F and Client G from Blackhawk, the Court below was fully warranted in enjoining Ward from any such further conduct.

There are numerous other, similar examples of Ward's flagrant breach of the Employment Agreement provisions, including non-solicitation, attached as documentary evidence to the Complaint, and which were reviewed by Judge Harrington at the April 11 hearing. In sum, this evidence overwhelmingly indicates that the injunctive relief issued by Judge Harrington was appropriate.

## ARGUMENT

### STANDARD OF REVIEW

A decision whether to grant or deny an injunction is ordinarily left to the sound discretion of the trial court. *County of Richland v. Simpkins*, 348 S.C. 664, 668, 560 S.E.2d 902, 904 (Ct.App.2002). Temporary injunctive relief will not be overturned unless the order is clearly erroneous. *Gilley v. Gilley*, 327 S.C. 8, 488 S.E.2d 310 (1997); *Transcontinental Gas Pipe Line Corp. v. Porter*, 252 S.C. 478, 167 S.E.2d 313 (1969). An abuse of discretion occurs when a trial court's decision is either unsupported by the evidence or controlled by an error of law. *Ledford v. Pennsylvania Life Ins. Co.*, 267 S.C. 671, 675, 230 S.E.2d 900, 902 (1976) (citations omitted).

The facts alleged must be sufficient to support a temporary injunction and the injunction must be reasonably necessary to protect the rights of the moving party. *Transcontinental*, supra. The merits of the underlying case are to be considered only to the extent necessary to determine whether there has been a prima facie showing to support a temporary injunction. *Curtis v. State*, 345 S.C. 557, 549 S.E.2d 591 (2001).

**I. THIS COURT SHOULD DISMISS THIS APPEAL AS MOOT, AND SHOULD NOT EXPEND VALUABLE JUDICIAL RESOURCES TO DECIDE AN ACADEMIC CONTROVERSY WHEN THE TEMPORARY INJUNCTION OF WHICH APPELLANT COMPLAINS HAS ALREADY EXPIRED ON ITS OWN TERMS.**

This appeal is moot, and this court should therefore dismiss Appellant's appeal.

*The referenced injunctive relief expired on its own terms on December 8, 2011*, as set out in the May 13 Order (R. p. 98-99). South Carolina case law is clear that in such a case, when the temporary injunction has expired, the issue on appeal is moot. *Floyd v. Horry County School Dist.*, 351 S.C. 233, 569 S.E.2d 343 (S.C. 2002) ("Where a temporary injunction has expired, as here, the issue is moot. *Curtis v. State*, 345 S.C. 557, 549 S.E.2d 591 (2001)").

The *Curtis* case cited by the Court in *Floyd* stated:

An appellate court will not pass on moot and academic questions or make an adjudication where there remains no actual controversy. *Jackson v. State*, 331 S.C. 486, 489 S.E.2d 915 (1997). Moot appeals differ from unripe appeals in that moot appeals result when intervening events render a case nonjusticiable. See Jean Hoefler Toal, Shahin Vafai & Robert A. Muckenfuss, *Appellate Practice in South Carolina* 122 (1999).

*Id.*

*Curtis* also explains:

[t]he rule that an appellate court limits its review to the issues necessary to a proper disposition of the appeal, and will not consider immaterial or moot questions, applies when reviewing decrees and orders relating to injunctions." 42 AM.JUR.2D Injunctions § 335 (2000).

*Id.*

*Curtis* also sets out three exceptions to this doctrine that appellate courts should not decide moot issues, none of which are implicated here. Accordingly, Appellant's appeal should be dismissed as moot.

**II. ATWOOD AGENCY V. BLACK IS INAPPLICABLE HERE, SINCE APPELLANT WARD HAS NO SUBSTANTIAL PECUNIARY INTEREST INVOLVED WITH REGARD TO BLACKHAWK'S CONFIDENTIAL CUSTOMERS, VENDORS AND CLIENTS, AND THUS THE LOWER COURT DID NOT ABUSE ITS DISCRETION BY SETTING A BOND OF \$0.00.**

In reliance on *Atwood Agency v. Black*, 374 S.C. 68, 646 S.E.2d 882 (S.C. 2007), Appellant contends that Judge Harrington abused her discretion in granting injunctive relief without requiring a bond pursuant to rule 65(c) of the South Carolina Rules of Civil Procedure. This argument misses the mark.

*Atwood* should be limited to its specific facts, and should not be read as a *universal* rule that the setting of a zero or nominal bond in the appropriate circumstances as determined by the trial judge is *always* an abuse of discretion. In *Atwood*, the South Carolina Supreme Court found:

Because the information Atwood seeks to protect is available through other proper means, it is not protected as a trade secret. Accordingly, we find the temporary injunction restraining appellants from contacting or contracting with Atwood clients clearly erroneous.

Because the South Carolina Supreme Court found that the injunctive relief “clearly erroneous” it remanded the case to the lower court to set the appropriate amount of costs and damages for the improper issuance of the injunction.

The principal question to be determined by the trial court is to find the “amount sufficient to protect appellants in the event the injunction is ultimately deemed improper.” *Atwood, supra*, 374 S.C. at p. 73.

In this case, Judge Harrington found in the May 13 Order that the bond should be “\$0.00 (zero).” Judge Harrington narrowly tailored the award, and did not in fact grant Blackhawk all of the relief it requested, in particular relating to a request to enforce the

covenant not to compete. To the contrary, Ward was enjoined only from contacting or otherwise interfering with Blackhawk's employees and vendors, and its confidential, secret customers and clients. Judge Harrington ordered Ward restrained and enjoined from:

contacting, soliciting, interfering, or otherwise affecting or causing others to effect, directly or indirectly Blackhawk's relationship with its current employees and vendors . . . [and] from contacting, soliciting, interfering, or otherwise affecting or causing others to affect either directly or indirectly Blackhawk's relationship with its customers and clients, including without limitation the confidential list of clients provided to Ward by opposing counsel at the hearing. This restraint applies only to customers and clients, including those appearing on the confidential client list, that were clients of Blackhawk's as of April 3, 2010.

(R. p. 99).

In issuing this order, Judge Harrington had the benefit of reviewing the substantial evidence of Ward's damaging conduct set out in documentary evidence attached to the Complaint. In direct contrast to *Atwood*, Blackhawk proffered evidence that its customer and client list is secret and confidential, and not available to the public, a critical distinction. For example, the Complaint at paragraph 74, citing the Cone affidavit, par. 7, states: "The very purpose of the Employment Agreement was to protect Blackhawk's vital and secret customer lists and prospective customer lists" (R. p. 16). The Cone affidavit at paragraph 7 states:

as President and General manager Ward had an extremely privileged position with Blackhawk, with great access to secret, confidential and vital information of Blackhawk, including customer lists, prospective customer lists, and the like. It is for this reason that the company insisted Ward execute the employment agreement at the beginning of a new term of employment on January 1, 2007—to protect this vital, confidential and secret information (R. p. 24).

The fact that Ward held the highest executive position at Blackhawk, and thus had access to its most secret information, is yet another basis upon which to distinguish this case from *Atwood*, which involved a much lower level employee. See *Delmar Studios of the Carolinas v. Kinsey*, 233 S.C. 313, 319 (1958).

If this Court decides that, despite the mootness of the issues raised by Appellant, *Atwood* should be read as a universal principle that a zero or nominal bond is always an abuse of discretion under SCRCP Rule 65, then Blackhawk respectfully suggests that the proper result is to remand this matter for the establishment of a bond. Blackhawk must respectfully reiterate, however: what possible pecuniary interest could Jerry Ward have in Blackhawk's confidential, secret client and customer lists? It is for that reason that the setting of a bond at zero, if at variance with *Atwood*, was harmless error.

**III. THE CIRCUIT COURT EMPLOYED THE CORRECT LEGAL STANDARD IN REVIEWING THE RESTRICTIVE COVENANTS FOUND IN THE EMPLOYMENT AGREEMENT HERE, AND THE ORDERS GRANTING INJUNCTIVE RELIEF ARE NOT AN ABUSE OF DISCRETION**

Appellant states that the lower court abused its discretion by granting injunctive relief without considering all of the "required tests" to determine the validity of the restrictive covenants. Again, Appellant's arguments miss the mark by a wide margin.

Appellant admits that Judge Harrington properly referenced the correct five part legal standard in the subject orders granting the challenged injunctive relief, as set out in *Rental Uniform Service of Florence v. Dudley*, 278 SCE 674, 675–76 (1983). Based on her citation of the correct authority, it is clear that Judge Harrington was aware of the appropriate legal standard. There is no requirement in South Carolina law, and certainly none cited by appellant, that a Circuit Judge in a mechanical, rote and redundant fashion

recite every single bit of evidence supporting a decision. To the contrary, the question is only whether the order sets forth a *reasonable* basis for the conclusions contained therein. The orders below do exactly that.

Moreover, this Court should give great deference to the Circuit Court in the weighing of the relevant facts and evidence supporting that court's conclusions. *Partain v. Upstate Auto. Grp.*, 386 S.C. 488, 491, 689 S.E.2d 602, 603 (2010). The trial court's factual findings will not be reversed on appeal if there is any evidence reasonably supporting the findings. *Id.*

In fact, the Complaint and attached documentary evidence provided substantial evidence in *each* of the five categories described in *Rental Uniform Service of Florence, supra*. For example, the Complaint at par. 74 describes the evidence set forth in the Cone affidavit relating to the reasonable nature of the territorial restriction in the restrictive covenant:

The restricted area may be broader the restraint than simply the territory in which the employee worked or was assigned to during employment if the employee is a manager, because they acquire more knowledge than an ordinary salesman/employee. *Delmar* 233 S.C. at 323 . . . . Accordingly, as Ward was President and General Manager of Blackhawk, the geographic restriction is reasonable. Moreover, given the very specific nature of the third party logistics business, where a former employee such as Ward could do great damage to Blackhawk simply by relocating to a port such as Norfolk or Savannah, and then soliciting Blackhawk customers to move from Charleston to such other port, the geographic restriction is valid (R. p. 27).

The adequacy of consideration exchanged by the parties relating to the restrictive covenants in Ward's employment agreement is similarly referenced in the Complaint at par. 74, and supported by the Cone affidavit, including at paragraph 7 (R. p: 16). Blackhawk respectfully submits that, being aware of the entirety of the five part standard,

Judge Harrington merely recited what she believed were the most salient points. Her findings are reasonable and amply supported by evidence in this record, and should be affirmed.

**IV. THE CIRCUIT COURT'S FINDINGS AND CONCLUSIONS OF LAW AS TO THE INJUNCTIVE RELIEF GRANTED BLACKHAWK WERE NOT AN ABUSE OF DISCRETION**

Appellant finally argues that Judge Harrington abused her discretion by finding that Blackhawk met its burden of establishing the necessary elements for the injunctive relief, including consideration of matters outside the proffered affidavits. Again, these arguments miss the mark by a very wide margin.

First, all of the affidavits, to which substantial documentary evidence was attached, were properly notarized and filed with the court on April 11, 2011. Appellant's assertions to the contrary are flatly contradicted by the record, and are nothing more than a "red herring." Even a cursory review of the complaint, with the attached affidavits and documentary evidence, demonstrates that Blackhawk proffered sufficient evidence to justify the injunctive relief issued by the Circuit Court. The appropriate standard of review is that if any evidence be found to substantiate the award, it should not be disturbed. This Court should not substitute its view of the facts and evidence for the judgment of the Circuit Court, which had a firsthand view of the same.

Incredibly, Appellant suggests that it was somehow inappropriate for Blackhawk to wait approximately a year after Ward's termination for cause from Blackhawk on April 2, 2011, to file the Complaint. Though certainly Blackhawk heard rumors of Ward's repeated disparaging and damaging remarks to its clients and customers, it was not until

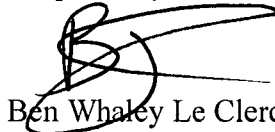
Blackhawk obtained “smoking guns”-- irrefutable documentary evidence of Ward's breach of the restrictive covenants, that it filed the Complaint.

Finally, as set out above, the restrictive covenants and employment agreement here were entered at the beginning of a new term of employment, on January 1, 2007— not in the middle of a term of employment as suggested by Appellant. Accordingly, the authority cited by Appellant, *Poole v. Incentives Unlimited Inc.*, 345 S.C. 378 (2001) is inapposite here for the purposes for which it is cited by Appellant.

### CONCLUSION

WHEREFORE, for the reasons stated herein, respondent Blackhawk Logistics, LLC respectfully requests that this Court dismiss this appeal as moot. In the alternative, if the Court does not dismiss the appeal as moot, the Court should limit *Atwood* to its facts, and affirm the Circuit Court’s setting of the bond here at \$0.00, since Ward has no conceivable pecuniary interest in Blackhawk’s secret, confidential client, vendor and customer lists. Finally, this Court should hold that the Circuit Court properly employed the correct legal standard in reviewing the reasonableness of the restrictive covenants here, and did not abuse her discretion in weighing the facts and evidence supporting the injunctive relief granted Blackhawk.

Respectfully submitted,



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Appellant.

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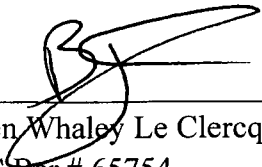
PROOF OF SERVICE OF RESPONDENT'S FINAL BRIEF AND CERTIFICATE OF  
COMPLIANCE WITH RULE 211(b)

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I certify that this final brief complies with Rule 211(b). I have served the final brief of respondent by delivering the same via United States mail, with a courtesy copy delivered via electronic mail on August 1, 2012, addressed to all attorneys of record as follows:

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