

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

J. D. Quattlebaum, Special Referee

Appellate Case No. 2012-213453

RECEIVED

MAR 21 2013

SC Court of Appeals

Jeff Yelton,Appellant,

v.

ScanSource, Inc.,Respondent.

Appellant's Motion to Supplement the Record

Brian P. Murphy S.C. Bar No. 6770
Brian Murphy Law Firm, PC
514 Pettigru Street
Greenville, South Carolina 29601
(864) 370-9400

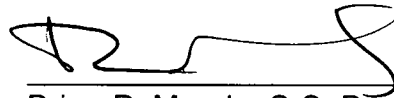
Attorneys for Appellant

Pursuant to Rule 212(b), SCACR, Appellant ("Yelton") now moves to supplement the Record to include portions of the deposition of Rick Burke and other materials set forth in the accompanying Motion. The grounds for this Motion are set forth more fully in the accompanying Memorandum.

WHEREFORE, Yelton respectfully moves for an Order permitting him to supplement the Record with relevant portions of the Burke deposition and other materials referred to above for the purpose of showing that the Preliminary Injunction was improperly obtained and to address the veracity of assertions made to this Court.¹

Respectfully submitted,

March 20, 2013



Brian P. Murphy S.C. Bar No. 6770
C. Alexander Cable S.C. Bar No. 100561
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514 Pettigru Street
Greenville, South Carolina 29601
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Attorneys for Appellant

¹ Counsel for ScanSource advises that it does not consent to this Motion.

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In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

J. D. Quattlebaum, Special Referee

Appellate Case No. 2012-213453

2012-CP-23-0314

Jeff Yelton,Appellant,

v.

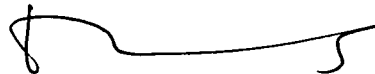
ScanSource, Inc.,Respondent.

Proof of Service

The Undersigned hereby certifies that, on the date indicated below, he served counsel for Respondent with a copy of *Appellant's Motion to Supplement the Record* by mailing a copy of the same by United States Mail with first class postage prepaid to the following address:

William H. Foster
Nelson, Mullins, Riley & Scarborough
Ninth Floor, 104 S. Main Street
Greenville, South Carolina 29601

Respectfully submitted,



Brian P. Murphy

March 20, 2013

THE STATE OF SOUTH CAROLINA
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J. D. Quattlebaum, Special Referee

SC Court of Appeals

Appellate Case No. 2012-213453

Jeff Yelton,Appellant,

v.

ScanSource, Inc.,Respondent.

Memorandum in Support of
Appellant's Motion to Supplement the Record

Brian P. Murphy S.C. Bar No. 6770
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514 Pettigru Street
Greenville, South Carolina 29601
(864) 370-9400

Attorneys for Appellant

Pursuant to Rule 212(b), SCACR, Appellant (“Yelton”) now moves to supplement the Record because discovery obtained after entry of the Order from which Yelton appeals proves not only that the basis for statements made to obtain injunctive relief are false but that, more importantly, Respondent (“ScanSource”) was aware of their falsity at the time they were made. The evidence relates to assertions by ScanSource that Yelton used a program called “KillDisk” to destroy property and data. The deposition testimony of ScanSource’s own help desk manager, Rick Burke, now establishes that the statements ScanSource has made to this Court and to the Special Referee are demonstrably false.

The KillDisk allegations

ScanSource has made three false claims regarding Plaintiff’s use of the file deletion program, KillDisk: (1) that Appellant destroyed his laptop and rendered it incapable of being used again; (2) that Yelton destroyed ScanSource documents with KillDisk; and (3) that ScanSource was unable to recover any data from the disk without hiring a forensic expert, FTI Consulting.

The Destruction of Laptop Representations

Before this Court, ScanSource has represented that “Yelton installed and ran a program named ‘KillDisk’ on his ScanSource laptop, disabling the laptop,” and that this “rendered the computer incapable of ever being used again.” (ScanSource Initial Appellate Brief at 4, 5). ScanSource further claims that “Yelton’s testimony belies that he used KillDisk to destroy that laptop.” (*Id.* at 5).

To obtain the Order from which Yelton appeals, counsel for ScanSource claimed to the Special Referee: "On December 16th that morning before he left, he downloaded . . . a program called KillDisk and blew up his computer." (Hearing Tr. before Special referee 8/31/12 at 40:2-3 (Exh. 1)). ScanSource further represented that "Yelton . . . rendered the computer incapable of ever being booted and used again." (Motion for Prelim Injunction Exh. 2 "Pet for Rule to Show Cause for Contempt p. 7 (Exh. 3); see also id. ("Amy Pharr attempted to shut down Yelton's machine when he left, but was unable to do so due to the KillDisk program damage to the machine.")).

We now know that ScanSource has known all along that the laptop was never destroyed or rendered incapable of being used again. Mr. Burke, who examined the laptop at issue after Yelton left, testified there was no damage to the disk or the laptop. (Burke Dep. at 43 (Exh. 2)). The KillDisk program merely affected the boot sector partition, and all that is necessary to make it boot normally is to reformat the drive and reload the files. (Id. at 39, 42-43).

The Deletion of Documents Claim

Perhaps more disturbing is ScanSource's representations that Yelton deleted ScanSource documents when it knew (but failed to disclose in discovery) that no data was erased. Before this Court, ScanSource states that the purpose of KillDisk is "to destroy all data on hard disks, USB drives and floppy disks completely, excluding any possibility of future recovery of deleted files and folders." (ScanSource Initial Appellate Brief at 5 (quoting affidavit)). ScanSource told the Special Referee that, "[c]ontrary to [Yelton's] testimony . . . [KillDisk] destroyed all

the documents on that computer, destroyed all the metadata associated with that.” (Hearing Tr. before Special referee 8/31/12 at 40:4-5 (Exh. 1)). ScanSource flatly claimed that Yelton “did destroy ScanSource documents and data via KillDisk.” (Powerpoint presentation re Contempt (Motion for Prelim Inj. Exh. 6) at pp. 4, 35 (Exh. 4)).

These assertions also are false. Mr. Burke took Yelton’s laptop to his desk, put in a utility program, and “was able to see all the files.” (Burke Dep. at 28 (Exh. 2)). After hooking up the hard drive to his own computer Burke “browsed the documents, files, [and] contacted Scott [Benbenek, Yelton’s superior] to let him know that the files were indeed intact.” (Id. at 35). He specifically told Benbenek he found the Dropbox folder [at issue in this case] and its contents/data, including 30-50 subfolders. (Id. at 44-46, 49-50). Burke further testified that he saw folders and files related to vendors as well as the Dropbox data file, which also contained vendor folders and files. (Id. at 36).

Burke did not determine that any data files were deleted. (Id.) He also did not determine that any program files were deleted. (Id. at 37). Mr. Burke never told anyone that data or programs were deleted. (Id. at 37). How ScanSource can justify making such claims is a matter that certainly should be addressed before this Court considers upholding an extraordinary Order granted in equity.

The Inability to Recover Data Assertion

In an apparent effort to create further suspicion and to justify a claim for significant expenditures in retaining a New York computer forensic firm, ScanSource has represented: “We have to have a forensic expert like FTI to retrieve [the

deleted] information.” (Hearing Tr. before Special referee 8/31/12 at 40:7-8 (Exh. 1)). “Only with the help of a forensics technician were [Yelton’s] misdeeds uncovered.” (Motion for Prelim Injunction Exh. 2 “Pet for Rule to Show Cause for Contempt p. 8 (Exh. 3)).

As Mr. Burke has explained, however, the files have been on the hard drive all along. Nothing was lost or deleted, and Mr. Burke told ScanSource so at the time. ScanSource simply never revealed these facts until after it used patently false assertions to obtain injunctive relief.

ScanSource continues its attempt to justify the extraordinary relief obtained by repeating these assertions before this Court. In addition to the quoted statements from ScanSource’s initial brief, ScanSource has designated some of the materials that include the KillDisk misrepresentations, including its presentation to the Special Referee, to be included in the Record on Appeal. It would be a gross injustice to permit the Record to reflect these statements when it is now clear that ScanSource knew at the time they were made. ScanSource should not be permitted to use Rule 210(c) to continue to represent as fact things that are demonstrably false and were known to ScanSource to be false when made to the Special Referee. Accordingly, an exception to this Court’s limited review should apply where, to strictly apply the rule, would work an injustice. Dakota Indus., Inc. v. Dakota Sportswear, Inc., 988 F.2d 61, 63 (8th Cir. 1993); Miller v. Benson, 51 F.3d 166, 168 (8th Cir. 1995) (citing Dakota Industries).

For the foregoing reasons, Yelton respectfully moves for an Order permitting him to supplement the Record with relevant portions of the Burke deposition and

other materials referred to above for the purpose of showing that the Preliminary Injunction was improperly obtained and to address the veracity of assertions made to this Court.

Respectfully submitted,

March 20, 2013

A handwritten signature in black ink, appearing to read "B.P. Murphy", written over a horizontal line.

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Attorneys for Appellant

HEARING

1

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
CASE NO. 2012-CP-23-0314

Jeff Yelton,
Plaintiff,
vs.
ScanSource, Inc.,
Defendant.

HEARING

DATE TAKEN: August 31, 2012
TIME BEGAN: 1:03 p.m.
TIME ENDED: 2:52 p.m.
LOCATION: Haynsworth Sinkler Boyd, P.A.
75 Beattie Place
Greenville, South Carolina

SPECIAL REFEREE: J. D. Quattlebaum, Esquire
Haynsworth Sinkler Boyd, P.A.
75 Beattie Place
Greenville, South Carolina

REPORTED BY: Debbie Gaddy, CVR
Notary Public for South Carolina

APPEARANCES:

BRIAN P. MURPHY, ESQUIRE

Brian Murphy Law Firm, PC

514 Pettigru Street

Greenville, South Carolina 29601

.....On behalf of the Plaintiff

WILLIAM H. FOSTER, III, ESQUIRE

CARMEN HARPER THOMAS, ESQUIRE

Nelson, Mullins, Riley & Scarborough

104 South Main Street, Suite 900

Post Office Box 10084

Greenville, South Carolina 29603

.....On behalf of the Defendant

ALSO ATTENDING: Jeff Yelton,
 John Ellsworth
 John Harvey
 Dean Gaida (via telephone)

1 point. But on December 16th that morning before he
2 left, he downloaded a software packaged called -- or
3 a program called KillDisk and blew up his computer.
4 And contrary to his testimony, you know, that
5 destroyed all the documents on that computer,
6 destroyed the metadata associated with that. And we
7 have to have a forensic expert like FTI to retrieve
8 that information. And, Your Honor, I don't -- you
9 know, if the issue of whether or not he's submitted
10 false testimony as a separate grounds for contempt,
11 if that's not before you, I'm not trying to argue
12 that it should be. That's your decision. That's
13 your bailiwick. That's what I'm doing. But how can
14 you say that this conduct is not willful when you
15 look at what's transpired. "I didn't destroy
16 anything when I left." But you did, you clearly
17 did. You dropped a KillDisk on your work computer.
18 This is not something that a senior executive at a
19 publicly-traded company just does because he's
20 worried he might have a couple of personal things on
21 his computer. You do that when you're up to no
22 good. You do that when you're covering your tracks.
23 You do that when you're trying to take proprietary
24 information that doesn't belong to you. Your Honor,
25 contempt again is a willful disobedience of an order

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE CASE NO. 2012-CP-23-0314

JEFF YELTON,
 Plaintiff,
 vs.
SCANSOURCE, INC.,
 Defendant.

DEPOSITION OF RICK BURKE

DATE TAKEN: Thursday, February 28, 2013
TIME BEGAN: 10:10 a.m.
TIME ENDED: 12:14 p.m.
LOCATION: Nelson, Mullins, Riley & Scarborough
 104 South Main Street
 Poinsett Plaza, suite 900
 Greenville, South Carolina 29603

REPORTED BY: TARI B. KRAMER, RMR, CRR
 GALLAGHER COURT REPORTING
 864-234-5744

APPEARANCES:

BRIAN P. MURPHY, ESQUIRE
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Greenville, South Carolina 29601
.....On behalf of the Plaintiff

WILLIAM H. FOSTER, ESQUIRE
Nelson, Mullins, Riley & Scarborough
104 South Main Street
Poinsett Plaza, Suite 900
P.O. Box 10084
Greenville, South Carolina 29603
and

JOHN HARVEY, ESQUIRE
ScanSource, Inc.
6 Logue Court
Greenville, South Carolina 29615
.....On behalf of the Defendant

Also Attending: Jeff Yelton

STIPULATIONS: The within deposition was taken pursuant to the South Carolina Rules of Civil Procedure.

NONWAIVER: Examination and reading of the deposition are not waived by the witness and by the parties.

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Exhibits: (No exhibits introduced)

1 A. The external drive bay.

2 Q. And what type of external drive bay were you
3 using?

4 A. The brand, I do not know.

5 Q. So what happened when you plugged Mr. Yelton's
6 laptop hard drive into the external bay which
7 connected to your computer?

8 A. It showed up as an external hard drive. And so
9 I browsed the documents, files, contacted Scott
10 to let him know that the files were indeed
11 intact.

12 And Scott had asked, why wouldn't it boot up?
13 So I looked through the program files and found
14 a piece of software that was installed on there
15 that could potentially erase the disk.

16 Q. Okay. We'll get through all that. I want to
17 start from the beginning there and ask you a few
18 follow-up questions.

19 You said -- you said after the -- your laptop
20 computer recognized Mr. Yelton's hard drive,
21 that you browsed the documents and files.

22 A. Correct.

23 Q. What documents and files did you browse?

24 A. There is a My Documents folder on most every
25 windows operating system. So I looked through

1 the My Documents folder to ensure that there
2 were still other folders within the My Documents
3 folder. And there were.

4 Q. what folders did you see?

5 A. I don't remember specifically the names of the
6 folders but they were specific to vendors and --
7 and then I did notice a My Dropbox folder, which
8 also contained vendor folders and vendor files
9 within the My Dropbox folder.

10 Q. Did you print off any kind of report or screen
11 prints or anything showing the contents of
12 Mr. Yelton's laptop hard drive after you plugged
13 it into your expansion bay?

14 A. I do not remember doing that. No.

15 Q. Did you open any of the documents?

16 A. I do not remember doing that.

17 Q. Based on your review of Mr. Yelton's laptop hard
18 drive, were you able to determine that any data
19 files were deleted?

20 A. No.

21 Q. Based on your review of Mr. Yelton's laptop hard
22 drive, were you able to determine that any
23 program files were deleted?

24 A. The phrasing of the question, I'm not sure I can
25 answer correctly.

1 Q. And don't. Okay? Because -- and you've done a
2 great job. Please understand, I appreciate you
3 doing that because we all want the questions and
4 answers to be clear. And I know you're doing
5 your very, very best at answering them. And you
6 computer guys are very specific about
7 everything. That's actually very good for a
8 deposition and it makes you a good witness.
9 Can you help me understand -- 'cause I'm just a
10 lay person. Can you help me understand why my
11 question doesn't make sense to a computer person
12 such as yourself?

13 A. Well, it doesn't have to do with technical
14 ability. It's just the, were you able to
15 determine.

16 Q. Let me do it this way. Based on your review of
17 Mr. Yelton's laptop hard drive, did you
18 determine that any program files were erased or
19 deleted?

20 A. No.

21 Q. Did you tell anybody that there had been data
22 files erased or deleted from Mr. Yelton's
23 laptop?

24 A. No.

25 Q. Did you ever tell anybody that there were

1 laptop the fact that the boot-up partition was
2 either erased or altered somehow?

3 A. Yes.

4 Q. Do we call that the boot partition? Is that the
5 correct phrase?

6 A. Correct.

7 Q. Is it a common issue that a boot partition can
8 be corrupted or damaged in any way?

9 A. No.

10 Q. You've never had to fix that type of problem at
11 ScanSource?

12 A. Yes.

13 Q. How often have you had to fix that type of
14 problem?

15 A. Statistics-wise, one in a thousand.

16 Q. What can cause a boot partition to be corrupted
17 or damaged in some way?

18 A. Really just depends. Could be spyware, could be
19 malware, could be viruses.

20 Q. Could it be a hardware problem?

21 A. No. Not necessarily just for the boot
22 partition.

23 Q. Well, if the boot partition sectors were
24 physically damaged, would that cause the boot
25 partition to not work?

1 you and said, There's a problem, it won't boot
2 up. That happens; right?

3 A. Correct.

4 Q. People bring you computers and say, It's not
5 working. Your job is to fix it.

6 A. Correct.

7 Q. You and your people.

8 A. Correct.

9 Q. Okay. To fix Mr. Yelton's laptop and give it
10 back to him so he would be able to use it, you
11 would reload an operating system; correct?

12 A. Correct.

13 Q. You would re-format the disk?

14 A. Correct.

15 Q. You would put the programs back on.

16 A. Correct.

17 Q. From the image; right?

18 A. Correct.

19 Q. And you would put his data back on there.

20 A. Correct.

21 Q. Because after re-formatting the disk, all that
22 would be gone.

23 A. Correct.

24 Q. And that's all you would have to do to make this
25 laptop as good as new?

1 A. Yes.

2 Q. And is that a function that you commonly perform
3 at ScanSource?

4 A. Re-imaging of computers, yes.

5 Q. Putting back the programs and --

6 A. Yes.

7 Q. And the data. That's a common thing that you
8 do.

9 A. Yes.

10 Q. And you can do all that with you and the people
11 who work for you at ScanSource?

12 A. Correct.

13 Q. Did you find any damage to the disk that was in
14 Mr. Yelton's -- strike that.

15 Did you find any damage to the hard drive that
16 was in Mr. Yelton's laptop when you examined it
17 in December, 2011?

18 A. No.

19 Q. Did you find any damage to the laptop itself,
20 the hardware, when you examined it in December
21 of 2011?

22 A. No.

23 Q. Did you ever tell anybody at ScanSource that you
24 found evidence that Mr. Yelton or anybody else
25 actually ran disk erasing software on that

1 laptop?

2 A. No.

3 Q. And so you can't testify that whatever happened
4 to the boot partition on that laptop was as a
5 result of the disk erasing software?

6 A. No.

7 Q. When Mr. Benbenek asked you why the laptop
8 wouldn't boot, did you tell him that one
9 possibility was spyware?

10 A. No.

11 Q. Did you tell him one possibility was malware?

12 A. No.

13 Q. Did you tell him one possibility was a virus?

14 A. No.

15 Q. Did you tell him one possibility was physical
16 damage?

17 A. No.

18 Q. And you stated that you saw the program Dropbox
19 on this hard drive; correct?

20 A. A Dropbox folder inside the My Documents folder.

21 Q. Well, Dropbox consists of a program and a folder
22 which is just a data folder. Is that correct?

23 A. Correct.

24 Q. Did you see the program for Dropbox on that
25 computer?

1 A. I do not remember looking.

2 Q. Okay. But you saw a Dropbox folder which is a
3 data folder?

4 A. Correct.

5 Q. And you're familiar with Dropbox?

6 A. Yes.

7 Q. Do you -- can you tell me how many folders you
8 saw within the Dropbox folder?

9 A. I can't tell you exact now.

10 Q. Can you give me any estimate?

11 A. 30 to 50.

12 Q. And within those folders, can you tell me how
13 many subfolders you saw?

14 A. No.

15 Q. Can you give me any estimate how many files were
16 within all of the folders contained in the
17 Dropbox folder?

18 A. No.

19 Q. Did you tell Mr. Benbenek that you found the
20 data on Mr. Yelton's laptop?

21 MR. FOSTER:

22 Object to the form.

23 A. Yes.

24 MR. FOSTER:

25 You can answer.

1 EXAMINATION RESUMED BY MR. MURPHY:

2 Q. You did?

3 A. Yes.

4 Q. When did you tell Mr. Benbenek that?

5 A. I believe it was the same day that he gave me
6 the laptop.

7 Q. The first conversation you had with Mr. Benbenek
8 when he said, Come to my office, you guys looked
9 at the laptop, you went back to your desk, you
10 did what you described to me. You called
11 Mr. Benbenek back and told him what you told me.
12 That all happened on the same day?

13 A. Correct.

14 Q. Other than running the Hiren's utility and
15 performing the review of the hard drive that you
16 described to me, did you do anything else with
17 Mr. Yelton's laptop?

18 A. Yes.

19 Q. Okay. What else did you do with his laptop?

20 A. Brought the hard drive down to the legal
21 department. And as well as, I believe I brought
22 the laptop down as well.

23 Q. Did you bring it down separately?

24 A. If I brought the laptop down, it would have been
25 at the same time.

1 found disk erasing software on the laptop. Do
2 you recall that conversation?

3 A. Yes.

4 Q. Did you say anything else to Mr. Benbenek during
5 that conversation that you can recall?

6 A. I mentioned to him about the Dropbox folder.

7 Q. I'm sorry. You did testify that you told him
8 you found the Dropbox folder and you found files
9 within the Dropbox folder.

10 A. Correct.

11 Q. Anything else that you recall telling
12 Mr. Benbenek that day?

13 A. No.

14 Q. Do you recall what Mr. Benbenek said to you?

15 A. After that specific conversation, he asked, what
16 is a Dropbox folder? And so I explained the
17 purpose of a Dropbox folder to him.

18 Q. During that same -- you said after that. Just
19 to be clear, did that explanation that you gave,
20 his question and that explanation you gave,
21 occur in the same conversation in which you
22 conveyed to him you found disk erasing software?

23 A. Yes.

24 Q. So by after, you just mean after -- within the
25 same conversation?

1 A. Yes.

2 Q. Okay. Did Mr. Benbenek say anything in response
3 when you told him what Dropbox software was?

4 A. I don't remember.

5 Q. During the conversation that you had with
6 Mr. Benbenek in December, 2011 in which you told
7 him you found disk erasing software, you found
8 Dropbox, you found data files within the
9 Dropbox, and you explained to him what Dropbox
10 was, do you recall anything else said between
11 yourself and Mr. Benbenek other than what you've
12 already conveyed to me?

13 A. No.

14 Q. What's the next thing -- well, strike that.
15 What's the next involvement you had whatsoever
16 with this laptop or the hard drive?

17 A. After what?

18 Q. After your conversation with Mr. Benbenek in
19 which you told him that you found a file --
20 excuse me -- that you found disk erasing
21 software, that you found Dropbox, you found
22 files within the Dropbox, and you explained to
23 him what Dropbox was. After that conversation,
24 what's the next involvement you had with the
25 hard drive or the laptop?

Nelson Mullins

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September 17, 2012

Hand Delivered

Derrick Quattlebaum
75 Beattie Place, 11th Floor
Greenville, SC 29601-2119

RE: Jeff Yelton v. ScanSource Inc.
C/A No. 2012-CP-23-00314
Our File No. 18309/05002

Dear Derrick:

First, thank you for your time and attention to this case. We recognize that the issues, evidence, and arguments from counsel may have proven tedious at times, and we appreciate your thoughtful consideration of our client's position.

ScanSource, Inc.'s ("ScanSource" or the "Company") Motion for Preliminary Injunction is pending before you, and the Company is submitting the enclosed materials in support of same.¹ We respectfully contend that an Order granting preliminary injunctive relief is *urgently* required to prevent irreparable harm to ScanSource in the form of the misappropriation of its Confidential Information (as defined by the Court's February 8, 2012 Order), loss of goodwill, and harm to its customer relationships and reputation.

The threat of irreparable harm to ScanSource absent injunctive relief is irrefutable, and the Company's evidence in support of the requested relief is overwhelming. The utter *lack* of harm to Plaintiff should the requested relief be granted is likewise irrefutable, and he can offer no evidence to support his dubious position that he should not be enjoined from using or disclosing proprietary information he claims he does not possess, admits he has no right to possess, and claims he has no need for in his current business endeavors.

¹ Instead of restating information that has already been presented in this case, ScanSource refers to the materials previously submitted, which are included in the enclosed binder ("Binder"), along with documents recently received from former ScanSource employee Penn Williams, which are filed herewith under seal. (Binder, Tab 5.)

EXHIBIT 2

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) THIRTEENTH JUDICIAL CIRCUIT

Jeff Yelton,) Civil Action No. 2012-CP-23-0314
)

Plaintiff,)

vs.)

ScanSource, Inc.,)

Defendant.)

**DEFENDANT SCANSOURCE'S
PETITION FOR A RULE TO SHOW
CAUSE FOR CIVIL CONTEMPT BY
PLAINTIFF JEFF YELTON
AND MOTION TO COMPEL AND
FOR SANCTIONS PURSUANT TO**

RULE 37, SCRPC

PRIORITY MATTER

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
JUL 9 11 30 AM
WICKENBURG

Willful disobedience of an order of the court is contempt of court.

Submitting false and misleading testimony is likewise grounds for contempt of court.

Plaintiff Jeff Yelton has done both, and must be sanctioned by the Court.

Plaintiff Yelton ("Yelton") has failed to comply with the February 8, 2012 Temporary Restraining Order's directive for him to return to ScanSource, Inc. ("ScanSource" or the "Company") any Confidential Information in his possession, custody, or control, as shown by evidence resulting from the electronic forensic investigation of Yelton's devices. Specifically, Yelton has willfully failed to return no fewer than five electronic storage devices that contain ScanSource's confidential and proprietary information in direct violation of this Court's order to return all such devices.

The circumstances surrounding Yelton's failure to comply leave no doubt that his misconduct is deliberate. Given the intense focus in this action on the return of ScanSource's confidential and proprietary information, including months of effort by the Court and counsel to develop a protocol devoted to the return of all storage devices that

which included confidential and proprietary ScanSource information, which ScanSource collected and later produced as Yelton00614 to Yelton01264. Indeed, a VDC Research memorandum regarding NFC Payments and an Erwin-Penland report named ScanSource Online Community Strategy were labeled "Confidential," obviously signifying that this information was confidential to ScanSource. (Yelton00746, Yelton00754, attached as Exhibit H (redacted confidential material pursuant to Confidentiality Protective Order).) Amy Pharr met with Yelton on the morning of December 16, 2011, to process his departure, and she noted that the office was emptied. (Affidavit of Amy Pharr at ¶ 5.) Whether or not the documents were confidential, removing these ScanSource documents from his office contradicts Yelton's sworn statement: "I did not remove from company premises hard copies of ScanSource reports and records or an external hard drive as claimed by ScanSource." (Yelton Affidavit at ¶ 12.) In addition, all of these acts of removing information from ScanSource contradict Yelton's sworn statement: "Defendant's suggestion that I took any documents is false." (Yelton Affidavit at ¶ 5.)

Fourth, on December 16, 2011 at 7:41 AM, his last hours in the office, Yelton installed and ran a program named "KillDisk" on his ScanSource laptop, disabling the laptop and erasing portions of the laptop's data. (Gaida Affidavit at Part III.) Using KillDisk, Yelton erased the "System Reserve partition," which is necessary for Windows 7 to boot up a computer. (*Id.* at Part III, ¶ 7.) Thus, Yelton deleted critical system data and rendered the computer incapable of ever being booted and used again. Amy Pharr attempted to shut down Yelton's machine when he left, but was unable to do so due to the KillDisk program damage to the machine. (Pharr Affidavit at ¶ 7.)

Yelton apparently chose KillDisk after his December 15, 2011 internet research into other programs named "Darik's Boot and Nuke," also known as dban, and "White Canyon," both of which are designed to destroy data and erase hard drives. (Gaida Affidavit at Part III, ¶ 4.) He methodically identified a program that "allows you to destroy all data on hard disks, USB drives and floppy disks completely, excluding any possibility of future recovery of deleted files and folders." (*Id.* at Part III, ¶ 5 (quoting www.killdisk.com)). These actions contradict Yelton's sworn statement: "To the best of my knowledge, I did not destroy or discard any documents that are not stored at ScanSource but only notes I had that would not be of any use to anyone else or paper copies of documents that are stored electronically." (Yelton Affidavit at ¶ 10.) Yelton's careful statement belies that he rendered his ScanSource computer unusable with KillDisk, preventing a lay user from knowing what he had done on the computer before his departure. Only with the help of a forensics technician were his misdeeds uncovered. In light of Yelton's deliberate use of a program he downloaded from the internet to destroy evidence of his misconduct immediately before his departure, this false statement cannot be characterized as accidental.

These actions by Yelton after he learned of his termination on December 9, 2011, were intentional and malicious and breached his Employment Agreement and Release, along with various ScanSource policies. However, ScanSource only gradually began to recognize Yelton's misdeeds when several Merchandising Directors met with Scott Benbenek on December 30, 2011, and explained to him that Yelton had requested the confidential and proprietary QBRs and other data after Yelton knew he was leaving

Jeff Yelton v. ScanSource, Inc.
Civil Action No. 2012-CP-23-0314

Petition for Rule to Show Cause for Contempt and
Motion to Compel and For Sanctions

Nelson Mullins.
Nelson Mullins Riley & Scarborough LLP

Introduction

- Yelton has submitted false testimony in his affidavit.
 - He did not leave the QBR Flash Drive in his office.
 - He did remove company documents and electronic files when he left.
 - He did destroy ScanSource documents and data via KillDisk.

False Testimony

➤ Contrary to his sworn testimony, the evidence shows:

- He did not leave the QBR Flash Drive in his office.
- He did remove company documents and electronic files when he left.
- He did destroy ScanSource documents and data via KillDisk.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

J. D. Quattlebaum, Special Referee

Appellate Case No. 2012-213453

2012-CP-23-0314

Jeff Yelton,Appellant,

v.

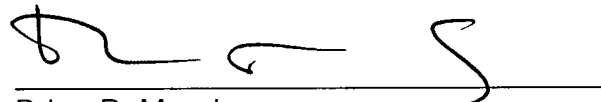
ScanSource, Inc.,Respondent.

Proof of Service

The Undersigned hereby certifies that, on the date indicated below, he served counsel for Respondent with a copy of *Memorandum in Support of Appellant's Motion to Supplement the Record* by mailing a copy of the same by United States Mail with first class postage prepaid to the following address:

William H. Foster
Nelson, Mullins, Riley & Scarborough
Ninth Floor, 104 S. Main Street
Greenville, South Carolina 29601

Respectfully submitted,



Brian P. Murphy

March 20, 2013