

IN THE CIRCUIT COURT OF COUNTY, MISSISSIPPI

PLAINTIFF

VS.

NO.

DEFENDANT

COMPLAINT FOR INJUNCTION AND OTHER RELIEF

Comes now Plaintiff, (hereinafter " "), by and through its counsel, and files this complaint against defendant, (hereinafter " ") for a temporary and permanent injunction and other relief for defendant's breach of contract. In support thereof would show as follows:

1. is a Mississippi corporation qualified to do business in the State of Mississippi and in , Mississippi. It is engaged in the business of providing business services to customers in , Mississippi and , .

2. , the Defendant, is an adult resident citizen of County, Mississippi.

3. was formed , . was an original holder and owned one-half of .

4. and entered into an employment contract on , and since that time, has served as an officer and member of the Board of Directors of .

5. desired to sell all of his/her interest in , that being % of the outstanding shares of stock, to the . Said sale took place on , . was paid \$ for his/her stock.

6. The parties desired to terminate their employment agreement and entered into a termination agreement on , with the effective date of termination being , . The termination agreement also included a covenant not to compete. A copy of the agreement entitled "Covenant Not to Compete and Termination Agreement" is attached hereto as Exhibit .

7. In consideration of the covenant not to compete, paid to monies totaling \$. (\$) of this amount was cash and \$ was a promissory note. This promissory note has been paid in full. undertook other obligations and paid other non-cash assets in consideration for the termination and covenant not to compete. These valuable obligations are delineated in Paragraph of Exhibit .

8. Pursuant to Paragraph of the agreement, agreed that for a period of years from the date of his/her termination (, through ,

) he/she would not engage in any business or perform any service, directly or indirectly, in competition with the business of the corporation within _____ miles of the city limits of the City of _____, Mississippi, or with _____ miles of the city limits of the City of _____, _____. He/She also agreed not to have any interest, in any enterprise or entity that engages in such business.

9. _____ agreed that if he/she were to violate the restrictive covenant, and would be entitled to preliminary and permanent injunctive relief and to monetary damages from _____.

10. _____'s employment with _____ ended on _____, _____. In _____ of _____, _____ began competing against _____. Upon information and belief, Plaintiff alleges _____ may have competed against _____ even sooner.

11. _____ began selling color work to his/her customers and clients in direct competition and in violation of the covenant not to compete and termination agreement.

12. _____ has breached the contract entered into with _____; therefore _____ is entitled to injunctive relief and monetary damages.

CLAIMS FOR RELIEF INJUNCTION

13. _____ asks the Court for an order enjoining _____ from further violation of his/her covenant not to compete against _____ in the relevant area.

14. _____ would show that the harm being done to its business by _____'s conduct is irreparable and continuous and _____ is without an adequate remedy at law to protect its legitimate business interests.

15. The granting of an injunction would give to _____ that to which it is legally and contractually entitled and the injunction would have no adverse impact on the public interest.

16. Alternatively, _____ would show that in Paragraph _____ of the Covenant not to Compete and Termination Agreement, _____ agreed that “_____”. _____ also agreed that the restrictions contained in the agreement were reasonable and that any violations of the restrictive covenants would cause substantial injury to _____.

17. _____ would not have entered in this agreement with _____ without receiving the additional consideration of _____'s agreeing to these restrictions.

DAMAGES

Under the terms of the agreement, _____ is entitled to monetary damages from _____.

WHEREFORE, _____ requests an order from this Court enjoining _____ from further violation of his/her covenant not to compete, awarding monetary damages to _____ and other

general relief this Court deems appropriate.

This the day of , 20 .

Respectfully submitted,

Attorney for

Of counsel:

Telephone:
MSB #
Attorney for

COVENANT NOT TO COMPETE AND TERMINATION AGREEMENT

This Agreement is entered into by and between _____, a Mississippi corporation (the "Corporation") and _____ ("_____"). The Corporation and _____ are referred to collectively herein as the "Parties."

WHEREAS, the Corporation is engaged in the business of providing prepress services to customers from its _____, Mississippi and _____, _____ locations (such business engaged in or authorized to be engaged in as of the date hereof being referred to as the "Business")

WHEREAS, _____ and the Corporation entered into an Employment Agreement on the day of _____, _____ (the "Employment Agreement"), and _____ has been an employee, officer and member of the board of directors of the Corporation.

WHEREAS, the Parties desire to terminate the Employment Agreement effective _____, _____.

WHEREAS, the Parties agree that the covenants herein are not oppressive to _____ because such restricted covenants allow _____ carrying on his/her business except for the restrictions as related to the Business in the limited geographical area for a limited period of time as set forth herein.

WHEREAS, _____ acknowledges and understands that the Corporation would not be willing to pay the price it has agreed to herein unless _____ had agreed to the covenants herein.

WHEREAS, _____ and the Corporation agree that the covenants of each are reasonably necessary to protect the Corporation's legitimate business interest.

NOW, THEREFORE, in consideration of the premises and the mutual promises herein made, and in consideration of the representations, warranties, and covenants herein contained, the Parties agree as follows:

1. Definitions.

"Adverse Consequences" means all charges, complaints, actions, suits, proceedings, hearings, investigations, claims, demands, judgments, orders, decrees, stipulations, injunctions, damages, dues, penalties, fines, costs, amounts paid in settlement, liabilities, obligations, taxes, liens, losses, expenses and fees, including all attorneys' fees and court costs. "Code" means the Internal Revenue Code of 1986, as amended.

"Confidential Information" means any information concerning the businesses and affairs of the Corporation not generally known in the business that is disclosed to _____ or known by him as a consequence of his employment by the Corporation, whether or not pursuant to this Agreement.

"Corporation Share" means any share of the Common Stock, par value \$1 per share, of

the Corporation.

"Employee Stock Ownership Plan" means the Employee Stock Ownership Plan and Trust, dated , .

" " means any federal, state or local tax of any kind whatsoever, including any interest, penalty, or addition thereto, whether disputed or not.

2. Termination of Employment. The Parties mutually agree to hereby terminate the Employment Agreement effective , . has tendered his resignation as an employee and officer effective , and as a member of the board of directors of the Corporation effective as of the Closing Date.

3. Payments.

(a) Cash and Notes. It is the intention of the Corporation and that the covenant not to compete, contained in Section 6(e) of this Agreement be considered as materially significant and essential to the closing of any and all transactions related to the termination of the relationship between the Corporation and . In consideration of such covenant, shall receive a principal amount equal to \$. The Corporation shall pay said amount by delivery to at the Closing of (i) its promissory note (the "Promissory Note") in the form of Exhibit "A" attached hereto in the aggregate principal amount of \$; and (ii) cash payable by check drawn on Phelps Dunbar's trust account in the amount of \$. The Promissory Note shall be deemed in default if payment is not received by on or before the day after the payment under said Promissory Note is due or in the event the Corporation files or bankruptcy protection.

(b) Other Obligations of Corporation. The Corporation agrees to the following additional obligations to commence at the Closing. Provided, however, that the Corporation expressly disavows any responsibility for the Tax consequences resulting from the satisfaction of any of the obligations listed below:

(i) The Corporation agrees to convey to at Closing the currently owned by the Corporation previously used by in connection with his/her employment with the Corporation;

(ii) The Corporation agrees to pay on behalf of the health and dental insurance premiums for coverage for and 's family for the period ending on , . The foregoing obligation shall in no way extend beyond , , despite the obligation of the Corporation to extend COBRA continuation coverage to during any period after , ;

(iii) The Corporation agrees to convey to at a mutually agreeable time after Closing all office furnishings located in 's office at in , excluding Confidential Information or proprietary information of the Corporation;

(iv) The Corporation agrees to convey to _____ at the Closing the mobile telephone previously used by _____ in connection with _____'s employment with the Corporation;

(v) _____ shall be entitled to his/her regular monthly salary of \$ _____ through _____, the effective date of the termination of _____'s employment with the Corporation. The Corporation agrees to pay to _____ severance benefits of \$ _____ per month from _____, until the earlier of the Closing or _____;

(vi) The Corporation has paid on behalf of _____ monthly rent on _____ trailer ending with payment for the month of _____, _____; and the Corporation assumes no obligation for such payments after that date; and

(vii) The Corporation agrees to pay on behalf of _____ an amount not to exceed \$ _____ for attorneys fees incurred by _____ associated with this Agreement or the purchase of his/her Corporation Shares by the Employee Stock Ownership Plan; _____ acknowledges payment has been made prior to Closing by the Corporation to _____ in the amount of \$ _____ in partial settlement of this obligation.

It is the intention of the Corporation and _____ that none of the amounts payable by the Corporation under this Section 3(b) be construed as a payment for the Corporation Shares held by _____ or for the goodwill of the Corporation, as that term has been defined in conjunction with Section 167(a)(1) of the Code.

(c) The Corporation and _____ agree to report all of the payments under this Section 3 on their income tax returns in accordance with this Agreement.

(d) The Closing Simultaneously with execution of this Agreement, _____ has entered an agreement with the Employee Stock Ownership Plan ("Stock Purchase Agreement") for the purchase of the corporation Shares owned by _____. The closing of the transaction contemplated by the Stock Purchase Agreement (the "Closing") shall take place at the offices of _____, _____, in _____, Mississippi, commencing at _____ a.m. on _____, _____ or such other date as may be mutually determine by the parties to the Stock Purchase Agreement (the "Closing Date").

(e) Deliveries at the Closing At the Closing, (i) _____ will deliver to the Corporation the various certificates, instruments and documents referred to in Section 7(a) below, (ii) the Corporation will deliver to _____ the various certificates, instruments and documents referred to in Section 7(b) below, and (iii) the Corporation will deliver to _____ the consideration specified in Section 3 above.

4. Transaction - Representations and Warranties

(a) Representations and Warranties of _____. _____ represents and warrants to the Corporation that the statements contained in this Section 4(a) are correct and complete as of the date of this Agreement and will be correct and complete as of the Closing Date with respect to himself.

(i) Authorization of Transaction. has full power and authority to execute and deliver this Agreement and to perform his obligations hereunder. This Agreement constitutes the valid and legally binding obligation of , enforceable in accordance with its terms and conditions.

(b) Representations and Warranties of the Corporation The Corporation represents and warrants to that the statements contained in this Section 4(b) are correct and complete as of the date of this Agreement and will be correct and complete as of the Closing Date.

(i) Organization of the Corporation. The Corporation is a corporation duly organized, validly existing, and in good standing under the laws of the jurisdiction of Mississippi.

(ii) Authorization of Transaction The Corporation has full power and authority (including full corporate power and authority) to execute and deliver this Agreement and to perform its obligations hereunder. This Agreement constitutes the valid and legally binding obligation of the Corporation, enforceable in accordance with its terms and conditions.

(iii) Personal Guaranty. The Corporation represents that the largest shareholders of the corporation, excluding the Employee Stock Ownership Plan, have agreed to personally guarantee the amount of debt reflected by the Promissory Note. These guarantees will be subordinate to the guarantees of these shareholders to with respect to its loans to the Corporation represented by notes numbered , and , including any extensions or renewals thereof.

(iv) Partnership Interests. The Corporation represents that the partners of Partnership and the partners of have agreed to pledge their interest in the partnerships as collateral for the Promissory Note.

(v) Stock Purchase Agreement. The Corporation represents that all of the stockholders to the Stock Purchase Agreement dated , have agreed to waive the terms and provisions of said Stock Purchase Agreement.

(vi) Release from Debts. The Corporation represents that on or before the Closing Date, shall be released from all debts of the Corporation, except for the Continuing Guaranty of to of () dated , in the amount of \$.

5. Pre-Closing Covenants. The Parties agree as follows with respect to the period between the execution of this Agreement and the Closing:

(a) General. Each of the Parties will use his or its reasonable best efforts to take all action and to do all things necessary, proper, or advisable to consummate and make effective the transactions contemplated by this Agreement (including satisfying the closing conditions set forth in Section 7 below).

(b) Operation of Business. will vote his/her Corporation Shares on all matters on which a shareholder vote is required in accordance with the majority vote of all Corporate Shares other than the Corporate Shares held by .

(c) Notice of Developments. Each Party will give prompt written notice to the other of any material development affecting the ability of the Parties to consummate the transactions contemplated by this Agreement. No disclosure by any Party pursuant to this Section 5(c), however, shall be deemed to prevent or cure any misrepresentation, breach of warranty, or breach of covenant.

(d) Exclusivity. will not (i) solicit, initiate, or encourage the submission of any proposal or offer from any person the Employee Stock Ownership Plan, have agreed to personally guarantee the amount of debt reflected by the Promissory Note. These guarantees will be subordinate to the guarantees of these shareholders to with respect to its loans to the Corporation represented by notes numbered , and , including any extensions or renewals thereof.

6. Post-Closing Covenants. The Parties agree as follows with respect to the period following the Closing.

(a) General. In case at any time after the Closing any further action is necessary or desirable to carry out the purposes of this Agreement, each of the Parties will take such further action (including the execution and delivery of such further instruments and documents) as the other Party reasonably may request, all at the sole cost and expense of the requesting Party (unless the requesting Party is entitled to indemnification therefore under Section 8 below).

(b) Transition. will not take any action that primarily is designed or intended to have the effect of discouraging any lesser, licensor, customer, supplier, or other business associate of the Corporation from maintaining the same business relationships with the Corporation after the Closing as it maintained with the Corporation prior to the Closing. will refer all customer inquiries relating to the business of the Corporation to the Corporation from and after the Closing. This Section 6(b) is limited in duration to () years from Closing Date.

(c) Confidentiality. will treat and hold as such all of the Confidential Information, refrain from using any of the Confidential Information except in connection with this Agreement, and deliver promptly to the Corporation or destroy, at the request and option of the Corporation, all tangible embodiments (and all copies) of the Confidential Information which are in his possession. acknowledges that the list of Corporation's customers as it may exist from time to time is a valuable, special and unique asset of the Corporation. will not disclose the list of the Corporation's customers, any part thereof or any Confidential Information to any person, firm, corporation, association or other entity for any reason or purpose whatsoever. All of the lists and other Confidential Information shall belong to the Corporation. In the event that is requested or required (by oral question or request for information or documents in any legal proceeding, interrogatory, subpoena, civil investigative

demand, or similar process) to disclose any Confidential Information, _____ will notify the Corporation promptly of the request or requirement so that the Corporation may seek an appropriate protective order or waive compliance with the provisions of this Section 6(c). If, in the absence of a protective order or the receipt of a waiver hereunder, _____ is, on the advice of counsel, compelled to disclose any Confidential Information to any tribunal or else stand liable for contempt, _____ may disclose the Confidential Information to the tribunal; provided. However, that _____ shall use his/her reasonable best efforts to obtain, at the reasonable request of the Corporation, an order or other assurance that confidential treatment will be accorded to such portion of the Confidential Information required to be disclosed as the Corporation shall designate. The foregoing provisions shall not apply to any Confidential Information which is generally available to the public immediately prior to the time of disclosure. This Section 6(c) is limited in duration to _____ (_____) years from closing Date.

(d) **Covenant Not to Compete.** _____ agrees that he/she will not, for a period of _____ years after the termination of his/her employment with the Corporation (_____ , _____ through _____ , _____), within _____ miles of the city limits of the City of _____ , Mississippi, and within _____ miles of the city limits of the City of _____ , _____ , engage in any business or perform any service, directly or indirectly, in competition with the Business of the Corporation or have any interest, whether as a proprietor, partner, employee, stockholder, principal, agent, consultant, director, officer, or in any other capacity or manner whatsoever, in any enterprise or entity that shall engage. The Corporation has no objection to _____ working for a printer provided _____ 's services for the printer is not in competition with the Corporation. It is the intention of the Corporation that this covenant is not to prevent _____ from working in a service industry similar to the Corporation's but only to restrict _____ 's employment so that _____ may not be in competition with the Corporation. If _____ violates this restrictive covenant and the Corporation brings legal action for injunctive or other relief, the Corporation shall not, as a result of the time involved in obtaining such relief, be deprived of the benefit of the full period of the restrictive covenant. Accordingly, the restrictive covenant shall be deemed to have the duration specified above, computed from the date such relief is granted, but reduced by the time expired by the date the period of the restriction began to run and the date of the first violation of the covenant by _____. If any court shall determine that the duration or the geographical limits of any restriction contained in this paragraph are unenforceable, it is the intention of the Parties to this Agreement that the restrictive covenant set forth herein shall not thereby be terminated, but shall be deemed amended to the extent required to render it valid and enforceable, such amendment to apply only with respect to the operation of this paragraph in the jurisdiction of the court which has made such adjudication. _____ agrees that the restrictions contained in this paragraph are reasonable and necessary for the protection of the legitimate interests of the Corporation that any violation of, these restrictive covenants would cause substantial injury to the Corporation and that the Corporation would not have entered into this Agreement with _____ without receiving the additional consideration of _____ signing himself to these restrictions. Therefore _____ hereby agrees that in addition to preliminary and permanent injunctive relief, the Corporation shall be entitled to monetary damages from _____. Said monetary damages shall not exceed the amount paid by the Corporation for this covenant.

(e) **Delivery of Financial Statements** The Corporation will deliver to _____ , on a monthly basis, the monthly financial statements of the Corporation during the term of the

Promissory Note. The foregoing financial statements will be read by the Corporation to by the end of the month following the month for which the financial statements are prepared.

(f) The Corporation agrees to indemnify and hold harmless with respect to any claim, action, demand, damages, loss or expense (including reasonable attorney fees incurred in defending or enforcing this indemnity) incurred by as a result of any personal guaranty by (except for the Continuing Guaranty of to of () dated , in the amount of \$) of any indebtedness or other contractual obligation of the Corporation.

7. Conditions to Obligations.

(a) Conditions to Obligations of the Corporation. The obligations of the Corporation under this Agreement are subject to satisfaction of the following conditions:

- (i) The representations and warranties set forth in Section 4(a) and Section 5 above shall be true and correct in all material respects at and as of the Closing Date;
- (ii) shall have performed and complied with all of his covenants hereunder in all material respects through the Closing;
- (iii) shall have delivered to the Corporation a certificate (without qualification as to knowledge or materiality or otherwise) to the effect that each of the conditions specified above in Section 7(a)(i)-(ii) is satisfied in all respects;
- (iv) The Corporation shall have received the resignation, effective as of , of in his capacity as an employee and officer of the Corporation, and effective as of the Closing Date as a member of the board of directors of the Corporation;
- (v) shall have delivered to the Corporation all credit cards of the Corporation or which are in the possession of or which may have had possession of at any time prior to the Closing;
- (vi) The Corporation shall have obtained on terms and conditions reasonably satisfactory to it all of the financing it needs in order to consummate the transactions contemplated hereby and fund the working capital requirements of the Corporation after the Closing; and
- (vii) All actions to be taken by in connection with consummation of the transactions contemplated hereby and all certificates, opinions, instruments, and other documents required to effect the transactions contemplated hereby will be reasonably satisfactory in form and substance to the Corporation.

b. The Corporation may waive any condition specified in this Section 7(a) if it executes a writing so stating at or prior to the Closing.

c. Conditions to Obligations of . The obligations of under this Agreement are subject to satisfaction of the following conditions:

- (i) The representations and warranties set forth in Section 4(b) and Section 5 above shall be true and correct in all material respects at and as of the Closing Date.
- (ii) The Corporation shall have performed and complied with all of its covenants hereunder in all material respects through the Closing;
- (iii) The Corporation shall have delivered to a certificate (without qualification as to knowledge or materiality or otherwise) to the effect that each of the conditions specified above in Section 7(b)(i)-(ii) is satisfied in all respects;
- (iv) shall have received from counsel to the Corporation an opinion with respect to the matters regarding 's election under Section 1042 of the Code with regard to the sale of his Corporation Shares to the Employee Stock Ownership Plan; and the Corporation agrees that it is responsible for the payment of counsel's fees incurred in preparing said opinion in an amount not to exceed \$ and acknowledges that he/she has received said opinion and is satisfied therewith;
- (v) The Corporation shall have entered into lease agreements for the and offices, in the form of Exhibit " " and Exhibit " ", respectively, attached hereto, for a period of years. Said agreements to include a year option to renew exercisable by the Corporation; and
- (vi) All actions to be taken by the Corporation in connection with consummation of the transactions contemplated hereby and all certificates, opinions, instruments, and other documents required to effect the transactions contemplated hereby will be reasonably satisfactory in form and substance to .

may waive any condition specified in this Section 7(b) if he/she executes a writing so stating at or prior to the Closing.

8. Remedies for Breaches of this Agreement.

(a) Survival. Except as otherwise provided herein, all of the representations, warranties, and covenants of the Parties contained in this Agreement shall survive the Closing

hereunder (even if the damaged Party knew or had reason to know of any misrepresentation or breach of warranty or covenant at the time of Closing) and continue in full force and effect for a period of four (4) years from the Closing Date.

(b) Indemnification Provisions for Benefit of the Corporation. In the event breaches any of his/her representations, warranties, and covenants contained herein, and provided that the particular representation, warranty, or covenant survives the Closing and that the Corporation makes a written claim for indemnification against pursuant to Section 8(d) below within the applicable survival period, then agrees to indemnify the Corporation from and against the entirety of any Adverse Consequences the Corporation may suffer through and after the date of the claim for indemnification (including any Adverse Consequences the Corporation may suffer after the end of the applicable survival period) resulting from, arising out of, relating to, in the nature of, or caused by the breach.

(c) Indemnification Provisions for Benefit of . In the event the Corporation breaches any of its representations, warranties, and covenants contained herein, and provided that the particular representation, warranty, or covenant survives the Closing and that makes a written claim for indemnification against the Corporation pursuant to I 8(d) below within the applicable survival period, then the Corporation agrees to indemnify from and against the entirety of any Adverse.