

STATE OF NORTH CAROLINA  
ORANGE COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
17 CVS 1724

JULIE SMITH MASON and JULIE  
SMITH MASON, LLC,

Plaintiffs,

v.

RICHARD S. MASON,

Defendant.

**ORDER ON MOTION FOR  
CRIMINAL CONTEMPT  
REGARDING GUILT**

1. THIS MATTER is before the Court on Plaintiff Julie Smith Mason’s (“Ms. Mason” or “Julie Mason”) Motion for Criminal Contempt (the “Contempt Motion”) filed against Defendant Richard S. Mason (“Mr. Mason” or “Richard Mason”) on April 16, 2019.<sup>1</sup> (Mot. for Criminal Contempt, ECF No. 129 [“Contempt Mot.”].)

2. The Contempt Motion requests that the Court: (i) enter an order directing Mr. Mason to appear and show cause why he should not be held in criminal contempt; and (ii) hold Mr. Mason in criminal contempt pursuant to N.C.G.S. §§ 5A-11 *et seq.* for Mr. Mason’s allegedly willful failure to comply with this Court’s August 10, 2018 Order on Plaintiff’s Motion for Receiver or Preliminary Injunction and Motion for Referee (the “Injunction”). The Contempt Motion is supported by Ms. Mason’s briefs

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<sup>1</sup> On April 16, 2019, Ms. Mason also filed a Motion for Rule 11 Sanctions Against Richard Mason (the “Sanctions Motion”). (ECF No. 131.) The Court has decided to consider the Sanctions Motion separately from, and after hearing and ruling on, the Contempt Motion (the “Interim Order”). (See Interim Order on Procedural Matters Regarding Pending Mots. for Criminal Contempt & for Rule 11 Sanctions & Not. Hearing ¶ 9(c), ECF No. 147 [“Interim Order”].)

in support thereof, (ECF Nos. 130, 146), four affidavits and the exhibits thereto, (ECF Nos. 142–45), and several additional exhibits, (ECF Nos. 128.1–.16).

3. Upon consideration of the Contempt Motion, and Ms. Mason’s briefs and the record evidence submitted in support thereof, the Court, pursuant to N.C.G.S. § 5A-15(a), entered a Show Cause Order and Notice of Hearing (the “Show Cause Order”) on July 2, 2019 finding and concluding that Ms. Mason had met her burden of establishing that an order should issue pursuant to section 5A-15(a) directing Mr. Mason to appear and show cause why he should not be held in criminal contempt for his willful violation of the Injunction. (Show Cause Order & Not. Hearing ¶ 11, ECF No. 156 [“Show Cause Order”].)

4. The Court held the criminal contempt hearing on August 22, 23, and September 20, 2019 in Hillsborough, North Carolina (the “Contempt Hearing”). The State of North Carolina (the “State”), as prosecutor of the Contempt Motion, was represented by James Rainsford, Esq. (“Mr. Rainsford”) and Jason Murphy, Esq. (“Mr. Murphy”). Mr. Mason was present for the Contempt Hearing and was represented by Joseph E. Zeszotarski, Esq. (“Mr. Zeszotarski”). The Court, having considered the Motion, the briefs, evidentiary submissions of counsel, appropriate matters of record, and the arguments of counsel hereby FINDS and CONCLUDES as follows.

## **I. PROCEDURAL BACKGROUND**

5. Ms. Mason and Plaintiff Julie Smith Mason, LLC (“Plaintiffs”) initiated this action by filing their Complaint on December 13, 2017. (Compl., ECF No. 4.) The Complaint originally asserted claims for: (i) judicial dissolution of former Defendant

Multiflora Greenhouses, Inc. (“MGI” and, collectively with Mr. Mason, “Defendants”); (ii) breach of fiduciary duty against Mr. Mason; and (iii) breach of contract against MGI.<sup>2</sup> (See Compl. ¶¶ 32–51.)

6. Defendants filed their Answer on January 22, 2018. (ECF No. 8.)

7. On May 4, 2018, Ms. Mason filed a Motion for Appointment of a Receiver or, in the Alternative, Preliminary Injunctive Relief, and Motion for Temporary Restraining Order (the “Receivership Motion”). (ECF No. 19; see ECF No. 29 (corrected version) [“Receivership Mot.”].) Ms. Mason’s alternative request for a preliminary injunction sought an order enjoining Mr. Mason and MGI from taking certain action with respect to MGI and MGI’s wholly owned subsidiary, Austram LLC (“Austram”), and further requested that Mr. Mason and MGI be ordered to keep Ms. Mason apprised of MGI and Austram’s business status during the pendency of this litigation. (See generally Receivership Mot.)

8. On May 16, 2018, Ms. Mason filed a Motion for Appointment of Referee (the “Referee Motion”). (ECF No. 38.) On August 6, 2018, the Court held a hearing on the Receivership Motion and the Referee Motion. (See ECF No. 73.)

9. Following the August 6, 2018 hearing, the Court entered the Injunction on August 10, 2018. (Order on Pl.’s Mot. for Receiver or Prelim. Inj. and Mot. for Referee, ECF No. 82 [“Injunction”].) The Court denied Ms. Mason’s request for the appointment of a receiver and of a referee but granted in part Ms. Mason’s alternative request for a preliminary injunction. (Injunction ¶¶ 16, 21, 24, 25.) The Court

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<sup>2</sup> Plaintiffs dismissed their claims against MGI without prejudice on April 17, 2019. (ECF No. 137.)

entered the Injunction based, in part, on Mr. Mason's consent to all but one of the prohibitions to be set forth therein. (Injunction ¶ 18.) At the August 6, 2018 hearing, Mr. Mason objected only to a prohibition on MGI's paying any legal fees and expenses incurred in connection with Mr. Mason's buyout of Ms. Mason's shares in MGI. (Injunction ¶ 18.) The Court overruled Mr. Mason's objection as to this one prohibition and entered the Injunction as requested by Ms. Mason. (Injunction ¶¶ 19–20.)

10. Specifically, paragraph 21 of the Injunction ordered that, during the pendency of this litigation:

- a) Defendants shall not pay any expenses representing personal expenditures for the benefit of any person, including but not limited to Richard Mason or Julie Mason, from MGI or Austram;
- b) Defendants shall deposit all receipts for sales of products or services rendered by MGI or Austram, including but not limited to cash receipts, in the operating account of MGI or Austram as appropriate;
- c) Defendants shall prepare, maintain, and provide on a monthly basis to Julie Mason accurate documents evidencing all receipts and expenditures on the books of MGI and Austram, respectively;
- d) Defendants shall notify Julie Mason prior to making any draws from MGI's line of credit, shall keep such line of credit in good standing at all times, and shall not refinance or obtain additional loans for MGI or Austram absent prior notice and consent by Julie Mason or Court order;
- e) Defendants shall keep all accounts payable current and shall promptly notify Julie Mason in the event MGI or Austram have insufficient funds to meet outstanding obligations;

- f) Defendants shall not grant any additional liens on any assets of MGI or Austram or further extend the line of credit without agreement of Julie Mason or Court order;
- g) Defendants shall not pay Richard Mason a salary above or beyond the amounts historically paid to Richard Mason prior to the date of the separation of Julie and Richard Mason and shall not pay Richard Mason any bonuses or dividends or make payments to consulting companies owned or controlled by Richard Mason;
- h) Defendants shall not cause MGI to make any loans to Richard Mason or other MGI shareholders;
- i) MGI shall not pay any legal fees or expenses incurred in connection with Richard Mason's defense of this litigation. Defendants and their counsel shall further maintain detailed time records to justify any allocation of invoices for services rendered and costs incurred by Defendants' counsel for payment by MGI as opposed to Richard Mason;
- j) Defendants shall not sell any asset outside of sales inventory in the ordinary course of business;
- k) Defendants shall not cause MGI to repay any loans purportedly made by Richard Mason to MGI;
- l) Defendants shall propose a repayment plan for the Carolina Farm Credit Line of Credit, which shall be subject to Court approval absent agreement to such plan by Julie Mason; and
- m) Defendants shall provide an accounting to Julie Mason and the other shareholders of all personal expenses paid by MGI, both before and after date of separation.

11. On September 24, 2018, approximately six weeks after entry of the Injunction, MGI filed for bankruptcy protection under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Middle District of North Carolina (the "Bankruptcy Court"). (See ECF Nos. 97, 99.)

12. In reaction to the bankruptcy filing by Mr. Mason, Ms. Mason filed a motion with the Bankruptcy Court on November 6, 2018 seeking relief from the automatic stay provisions of the United States Bankruptcy Code. (See ECF No. 105.) On February 8, 2019, this Court stayed all proceedings in this action pending a determination by the Bankruptcy Court of Ms. Mason's motion for relief from the automatic stay. (ECF No. 119.)

13. On March 28, 2019, the Bankruptcy Court entered an order confirming that the automatic stay does not apply to Mr. Mason or enjoin Ms. Mason from filing the Contempt Motion in this action. (See ECF No. 125.1.)

14. On April 12, 2019, this Court lifted the stay entered on February 8, 2019 for the limited purpose of allowing Ms. Mason to file the Contempt Motion and the Sanctions Motion. (ECF No. 127.)

15. On April 16, 2019, Ms. Mason filed the Contempt Motion only as to Mr. Mason and not MGI. In the Contempt Motion, Ms. Mason alleges that, both before and after MGI filed for bankruptcy, Mr. Mason willfully and intentionally violated the Injunction. Specifically, Ms. Mason alleges, with support from documentary evidence filed in connection with the Contempt Motion, that Mr. Mason violated the Injunction by, among other things:

- a) Using MGI's funds to pay Mr. Mason's personal credit card bill for what Ms. Mason contends are Mr. Mason's personal expenses on August 16, 2018 and August 20, 2018, and for legal expenses on October 6, 2018;
- b) Making lease payments for, and paying other expenses related to Mr. Mason's personal vehicle from MGI's operating account on August 30, 2018 and September 17, 2018;

- c) Paying Mr. Mason's rent for his townhouse residence on August 30, 2018;
- d) Using MGI's credit card to pay for [Mr. Mason's] personal expenses on August 17, 2018, August 18, 2018, August 19, 2018, and August 23, 2018;
- e) Receiving reimbursement from MGI for Mr. Mason's personal expenses on November 6, 2018;
- f) Failing to propose a plan for repayment of the Carolina Farm Credit Line of Credit;
- g) Failing to keep Ms. Mason apprised of MGI's ability to pay its debts;
- h) Causing MGI to incur additional debt by making a loan of \$200,000 to MGI without either Ms. Mason's or the Court's approval; and
- i) Failing to provide Ms. Mason with an accounting of all personal expenses paid by MGI.

(See Contempt Mot. ¶¶ 1–8; *see also* Show Cause Order ¶ 8.)

16. Following a video conference with counsel of record for Ms. Mason and Mr. Mason on April 26, 2019, (*see* ECF No. 138), the Court directed Ms. Mason and Mr. Mason to brief certain procedural issues related to the Contempt Motion and Sanctions Motion, (*see* ECF No. 140). Mr. Mason submitted his brief on May 17, 2019, (ECF No. 141), and Ms. Mason submitted her brief on May 24, 2019, (ECF No. 146).

17. Following receipt of these briefs, the Court entered the Interim Order on May 28, 2019, resolving many, but not all, of the procedural issues related to the Contempt Motion. (*See* Interim Order ¶ 4.)

18. Of particular relevance to this Order, the Court concluded that “based on the material submitted to the Court, . . . Ms. Mason has satisfied her burden of

showing that an order should issue directing Mr. Mason to appear and show cause why he should not be held in criminal contempt for the misconduct alleged by Ms. Mason in the Contempt Motion.” (Interim Order ¶ 7.)

19. The Court further concluded that, pursuant to N.C.G.S. § 5A-15(g), “either the Orange County District Attorney’s office, or an unrelated private attorney, and not Ms. Mason’s counsel, should prosecute the Contempt Motion.” (Interim Order ¶ 8.)

20. Because at the time the Court entered the Interim Order the Court had not appointed a prosecutor or private attorney to prosecute the Contempt Motion, the Court deferred entering a formal show cause order until a hearing could be held with the Orange County District Attorney (the “District Attorney”). (Interim Order ¶ 9(a).) The Interim Order therefore noticed a hearing for June 10, 2019 in Hillsborough, North Carolina which the District Attorney, as well as counsel of record for Mr. Mason and Ms. Mason, were directed to attend. (Interim Order ¶ 9(b).)

21. On June 10, 2019, the Court held the previously noticed hearing, at which the District Attorney and counsel of record for Mr. Mason and for Ms. Mason were present. During the hearing, the District Attorney represented that his office was willing to prosecute the Contempt Motion but proposed and recommended to the Court that the District Attorney refer the prosecution, with the Court’s approval, to two attorneys, Mr. Rainsford, a former Assistant District Attorney now in private practice, and Mr. Murphy, each of the law firm Coleman, Gledhill, Hargrave, Merritt & Rainsford, P.C. Mr. Rainsford was also in attendance at the June 10, 2019 hearing. (See ECF No. 153.)



22. At the June 10, 2019 hearing, the Court provided counsel for Mr. Mason and Ms. Mason an opportunity to state their position on the District Attorney's referral of the matter to Mr. Rainsford and Mr. Murphy. Though counsel made no objection at the hearing, the Court afforded counsel an opportunity to consult with their respective clients and directed counsel to file any objection to the District Attorney's proposed referral of the matter to Mr. Rainsford and Mr. Murphy no later than 5:00 p.m. on June 11, 2019.

23. Ms. Mason's counsel did not file or otherwise state any objection to the proposed referral by that deadline. On June 11, 2019, Mr. Mason, through his counsel, filed an Objection to Appointment of James Rainsford as Prosecutor (the "Objection"). (ECF No. 152.)

24. Having considered the Objection, as well as the statements of counsel for Mr. Mason and Ms. Mason, the District Attorney, and Mr. Rainsford at the June 10, 2019 hearing, as well as other appropriate matters of record, on June 12, 2019, the Court entered an order overruling the Objection. (Order Appointing District Att'y to Prosecute Pl. Julie Smith Mason's Mot. for Criminal Contempt and Approving District Att'ys Referral of Matter to Private Att'ys ¶¶ 9, 11, ECF No. 153 ["Order Appointing Counsel"].)

25. Accordingly, on June 12, 2019, pursuant to N.C.G.S. § 5A-15(g), the Court appointed the District Attorney to prosecute the Contempt Motion and approved of the District Attorney's referral of the matter to Mr. Rainsford and Mr. Murphy (Mr. Rainsford and Mr. Murphy collectively, "the Prosecutors"). (Order Appointing Counsel ¶ 10.)

26. The Court also directed the Prosecutors to propose a schedule and hearing date for the prosecution of the Contempt Motion. (Order Appointing Prosecutor ¶ 12.) On July 1, 2019, Mr. Rainsford, by e-mail communication to the Court with a copy to all counsel of record in this matter, proposed that the hearing on the Contempt Motion take place on August 22, 2019.

27. Accordingly, as forecast in the Court's Interim Order, (Interim Order ¶ 9(a)), the Court entered the Show Cause Order, pursuant to N.C.G.S. § 5A-15(a), directing Mr. Mason to appear before the Court and show cause why he should not be held in criminal contempt for violation of the Injunction on August 22, 2019 at 9:30 a.m. in Hillsborough, North Carolina, (Show Cause Order ¶ 12).

28. The Court further ordered, pursuant to N.C.G.S. § 5A-15(a), that counsel for Mr. Mason promptly deliver a copy of the Show Cause Order personally to Mr. Mason and file a notice with the Court certifying that Mr. Mason had received a copy of same. (Show Cause Order ¶ 13.) Mr. Mason's counsel of record, J.M. Cook, Esq. ("Mr. Cook") failed to file such certificate of service as directed. Accordingly, on August 21, 2019, the Court, by e-mail communication to all counsel, again directed Mr. Cook to promptly file a certificate of service of the Show Cause Order on Mr. Mason. In response to the Court's e-mailed directive, Mr. Cook filed a document entitled "Notice" on August 21, 2019, certifying that he "promptly delivered a copy of the Show Cause Order and Notice of Hearing personally" to Mr. Mason.<sup>3</sup> (ECF No. 173.) The Notice did not state the date on which Mr. Cook did so.

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<sup>3</sup> While Defendant argued that the notice as provided in the Show Cause Order was insufficient, the Court concludes otherwise. See *O'Briant v. O'Briant*, 313 N.C. 432, 435, 329

29. On August 8, 2019, Mr. Zeszotarski filed a Notice of Limited Appearance in this action specifically limited to the representation of Mr. Mason in the criminal contempt proceedings and stating that Mr. Cook will otherwise continue to represent Mr. Mason in all other aspects of this litigation. (ECF No. 167.)

30. On August 8, 2019, Mr. Mason, through his counsel, Mr. Zeszotarski, filed a Request for Production of Discovery under N.C.G.S. § 15A-903 and Motion for Production of All *Brady/Giglio* Material (the “Discovery Request”). (ECF No. 166 [“Discovery Request”].) The Discovery Request sought:

(1) the complete “files” of all law enforcement and/or prosecutorial offices involved in the investigation and prosecution of [Mr. Mason] as set out in [section] 15A-903(a)(1) (including all documents that may constitute exhibits at the trial of this matter); (2) the notice and material regarding expert witnesses as required under [section] 15A-903(a)(2); and (3) the witness list at the beginning of the trial of this matter as required under [section] 15A-903(a)(3).

(Discovery Request 1.) The Discovery Request also sought “the immediate production of all exculpatory and/or impeachment material subject to” *Brady v. Maryland*, 373 U.S. 83 (1963), *Giglio v. United States*, 405 U.S. 150 (1972), and *Kyles v. Whitley*, 514 U.S. 419 (1995), “and their progeny[.]” (Discovery Request 1–2.)

31. Receiving no filing by the Prosecutors in response to the Discovery Request, the Court, on August 12, 2019, sent an e-mail communication to the Prosecutors and Mr. Zeszotarski, with a copy to the parties’ other counsel of record, requesting that

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S.E.2d 370, 373 (1985) (“[P]rinciples of due process require reasonable notice of a charge[.]”). The Show Cause Order incorporated verbatim the directives of the Injunction and specific examples of conduct that Mr. Mason was alleged of engaging in that violated the Injunction. (Show Cause Order ¶¶ 6, 8.) Sufficient notice was provided to Defendant by the Show Cause Order to adequately prepare to present his defense at the Contempt Hearing. *See O’Briant*, 313 N.C. at 441, 329 S.E.2d at 376; *State v. Revels*, 250 N.C. App. 754, 761–63, 793 S.E.2d 744, 750 (2016).

the Prosecutors and Mr. Zeszotarski advise whether the Discovery Request would require Court involvement or whether the issue had been, or would be, resolved voluntarily. The same day, Mr. Murphy responded, on behalf of the Prosecutors, with a copy to all counsel, that there was no need for Court involvement and the issue would be resolved voluntarily. On August 15, 2019, based on the August 12, 2019 communication from the Prosecutors, and having received no response from Mr. Zeszotarski that the Discovery Request had been voluntarily resolved, the Court informed all counsel by e-mail communication that the Court assumed Mr. Zeszotarski and the Prosecutors had resolved the issue voluntarily without need for the Court's involvement. *See* N.C.G.S. § 15A-902(b) ("To the extent that discovery authorized in this Article [15A] is voluntarily made in response to a request or written agreement, the discovery is deemed to have been made under an order of the court for the purposes of this Article [15A].").

32. On August 22 and 23, 2019, the Court held the duly noticed hearing on the Contempt Motion at which Mr. Zeszotarski represented Mr. Mason and the Prosecutors represented the State of North Carolina. Testimony was adduced by the Prosecutors from the following witnesses: Carol Jarmon, Ashley Price, Johanna Ashley ("Ms. Ashley"), Johannes Lenselink ("Mr. Lenselink"), and Ms. Mason.

33. At the close of the Prosecutors' evidence, Mr. Mason, through counsel, moved for dismissal of the contempt charge, which the Court took under advisement.

34. Defendant Mr. Mason testified on his own behalf and, through counsel, introduced evidence in the form of testimony from Bert Davis.

35. Based on Mr. Mason's testimony at the August 22 and 23 hearing and e-mail communication with counsel of record, the Court decided to hear the testimony of James C. White ("Mr. White"), MGI's former attorney of record in this matter, before making a determination on the Contempt Motion. The Court entered a Scheduling Order on Motion for Criminal Contempt on September 3, 2019 ordering Mr. White to attend a hearing on September 20, 2019, and the State served a subpoena on Mr. White on September 4, 2019.<sup>4</sup> (See ECF Nos. 174, 176.) On September 20, 2019, the Court continued the hearing on the Contempt Motion and heard testimony from Mr. White, and both the State and Mr. Zeszotarski were given the opportunity to cross-examine Mr. White.

36. Upon the completion of the evidentiary presentation by both sides, Mr. Mason, through counsel, renewed his motion for dismissal of the contempt charge, which was denied by the Court.

37. Having considered the admissible evidence of record and pursuant to applicable law, the Court makes the following FINDINGS OF FACT and CONCLUSIONS OF LAW.

## II. FINDINGS OF FACT

38. Based on the foregoing procedural background, and based on the evidence adduced at the Contempt Hearing, the Court makes the following FINDINGS OF FACT beyond a reasonable doubt.

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<sup>4</sup> "Pursuant to Rule 614 of the North Carolina Rules of Evidence, '[t]he court may, on its own motion or at the suggestion of a party, call witnesses, and all parties are entitled to cross-examine witnesses thus called.' N.C. Gen. Stat. 8C-1, Rule 614(a)[.]" *In re L.B.*, 184 N.C. App. 442, 451, 646 S.E.2d 411, 416 (2007).

39. Mr. Mason, a Cornell University graduate with over thirty years of experience in the operation and financial reporting of businesses and their operations, is well educated, financially astute, and has previously held a number of corporate positions including acting as an accountant and as an assistant treasurer.

40. When the Court entered the Injunction on August 10, 2018, Mr. Mason understood the Court's directives and the importance of complying with the Injunction. (*See* State Exhibit 2 ["St. Ex."].)

41. On or about August 28, 2018, after the Court entered the Injunction, Mr. Mason signed an engagement letter with Mr. White of the law firm of Parry Tyndall White to represent MGI. Mr. White emphasized and made clear to Mr. Mason that Mr. White represented MGI and not Mr. Mason in his personal capacity due to the potential conflicts of interest between MGI and Mr. Mason. Mr. White made his first formal appearance before this Court on September 13, 2018. (ECF No. 86.) Mr. Mason retained Gerald Meek ("Mr. Meek") to represent Mr. Mason in his personal capacity. Mr. Meek made his first formal appearance on behalf of Mr. Mason that same day. (ECF No. 87.)

42. Once Mr. White began representing MGI, he advised Mr. Mason, as MGI's CEO, to file for Chapter 11 bankruptcy in large part because MGI would not be able to pay the Carolina Farm Line of Credit owed by MGI when it became due in October 2018. Mr. White specifically represented that filing for bankruptcy was the "only realistic means to navigate the repayment of the [Carolina Farm Line of Credit] debt without infusion of cash from the shareholders."

43. At all times relevant herein, MGI had four shareholders, Mr. Mason, Mr. Lenselink, Timothy Stephens (“Mr. Stephens”), and Ms. Mason. Ms. Mason owned the most shares of any shareholder but did not own a majority of the stock of the company. Several days before MGI, through Mr. White, filed for bankruptcy protection, Mr. Mason informed both Mr. Lenselink and Mr. Stephens that Mr. Mason intended to put MGI into bankruptcy. However, Mr. Mason intentionally did not disclose this information to Ms. Mason. Mr. Mason intentionally directed Mr. Lenselink and Mr. Stephens not to advise Ms. Mason that he was considering filing for bankruptcy protection for MGI. Mr. Mason did this because he was worried that, armed with prior notice of Mr. Mason’s intention to put MGI in bankruptcy, Ms. Mason might take steps in an attempt to thwart Mr. Mason’s plan.

44. Anticipating Ms. Mason would not agree to filing for bankruptcy, Mr. Mason implemented a scheme around September 2018 to increase the number of directors from two (Mr. and Ms. Mason) to four (adding Mr. Lenselink and Mr. Stephens). After increasing the size of the board, Mr. Mason intended to instruct Mr. Lenselink and Mr. Stephens to vote in favor of putting MGI into bankruptcy without the consent of or notice to Ms. Mason.

45. Mr. Mason contends that Mr. White advised him not to keep Ms. Mason informed; however, the weight of the evidence establishes that Mr. White did not advise Mr. Mason to conceal the plan to file for bankruptcy from Ms. Mason. By e-mail dated September 6, 2018, Mr. White instructed Mr. Mason that they may increase the size of the board and then “proceed to the Board of Directors meeting, [at which Ms. Mason was present] and authorize the bankruptcy.”

46. At the board of directors meeting on September 20, 2018, Mr. LenseLink and Mr. Stephens were elected as directors, increasing the board from two directors to four. Mr. Mason actively concealed the plan to file for bankruptcy by instructing Mr. LenseLink and Mr. Stephens to not inform Ms. Mason of the pending bankruptcy. Notwithstanding the advice of Mr. White, Mr. Mason did not make a motion to place MGI into bankruptcy and the meeting was adjourned.

47. Shortly thereafter, Mr. Mason, Mr. LenseLink, and Mr. Stephens voted without a duly noticed meeting and without notifying Ms. Mason to place the company into bankruptcy. Mr. White filed the petition for Chapter 11 Bankruptcy on behalf of MGI on September 23, 2019. Ms. Mason was only made aware of the pending bankruptcy by letter from Mr. White on September 24, 2019 addressed to her attorney, Pamela S. Duffy, notifying Ms. Duffy of the filing made one day prior.

48. Mr. Mason willfully, and in bad faith, concealed financial information from Ms. Mason regarding MGI's ability to pay the Carolina Farm Credit Line in violation of the Court's Injunction requiring Mr. Mason to "keep all accounts payable current and . . . promptly notify [Ms.] Mason in the event MGI or Austram have insufficient funds to meet outstanding obligations[.]"

49. Furthermore, there is evidence that establishes Mr. Mason paid sums including bills for his own personal benefit using MGI funds in violation of the Injunction. Mr. Mason entrusted an MGI employee, Ms. Ashley, with the operation of MGI's finances and his own personal finances. Ms. Ashley worked for MGI as bookkeeper and controller from on or about October 2015 to January 3, 2019. During Ms. Ashley's tenure at MGI, Ms. Ashley interacted with Mr. Mason frequently, and



on an almost daily basis. After Mr. Mason's separation from Ms. Mason, Mr. Mason tasked Ms. Ashley with paying Mr. Mason's personal expenses in addition to her responsibilities as MGI's bookkeeper.

50. Mr. Mason had full trust and confidence in Ms. Ashley until August 2018. In or about early August 2018, Mr. Mason realized there were no deposits being made into the MGI bank account and that approximately \$1 million was missing from MGI's bank account. (Defendant Exhibit 16 ["Def. Ex."].) Mr. Mason believed Ms. Ashley was stealing money from MGI and relayed this concern to Mr. Lenseink. Regardless of Mr. Mason's suspicions and lack of trust in Ms. Ashley, by e-mail dated August 10, 2018, Mr. Mason requested that Ms. Ashley assist him in complying with the Injunction. (St. Ex. 2.) The personal expenditures listed herein are charges initially made with Mr. Mason's personal credit card (the "Citi Card"), which were later paid by Ms. Ashley with MGI funds at the direction of Mr. Mason.

51. The Citi Card billing statement for the period from July 10, 2018 through August 8, 2018 contained four personal charges on the following dates and in the following amounts:

- a) \$75.73 at A Cleaner World on July 12, 2018;
- b) \$60.00 at Orange Water and Sewer, Carrboro on July 26, 2018;
- c) \$30.00 at Johnson Lexus of Durham on July 30, 2018; and
- d) \$70.63 at a Cleaner World on August 2, 2018.

(St. Ex. 5.) As of August 8, 2018, the Citi Card had a balance of \$81,619.86. (St. Ex. 5.) On August 12, 2018, Mr. Mason instructed Ms. Ashley to pay Mr. Mason's personal credit card balance without incurring interest or late fees, which included

both business and personal expenditures. (St. Ex. 4.) Ms. Ashley understood this to mean that she was to pay the entire balance of Mr. Mason's personal credit card with MGI funds. The Citi Card's balance of \$81,619.86 was paid in full, including the above-referenced personal expenditures, on August 20, 2018 with MGI funds. (St. Exs. 8; 8a.)

52. The Citi Card billing statement for August 9, 2018 through September 10, 2018 contained one personal charge from Jill Burton, Mr. Mason's domestic attorney, on August 30, 2018 in the amount of \$7,000. (St. Ex. 6.) As of September 10, 2018, the Citi Card had a balance of \$44,961.88. (St. Ex. 6.) The Citi Card's balance of \$44,961.88 was paid off in excess by payment of \$50,000.00 on October 9, 2018 with MGI funds. (St. Exs. 14; 14a.)

53. The Citi Card billing statement for September 11, 2018 through October 10, 2018 contained one personal charge from A Cleaner World on September 11, 2018 in the amount of \$94.93. (St. Ex. 12.) As of October 8, 2018, the Citi Card had a balance of \$19,875.77. (St. Ex. 12.) On November 7, 2019, MGI issued a check to Richard Mason in the amount of \$19,875.77. (St. Ex. 17.) The memo line of the check reads "Expense Report – Citi (Reimbursement)."

54. The billing statement for October 9, 2018 through November 8, 2018 contained several charges that were incurred by Mr. Mason in Florida while on a personal trip. (St. Ex. 15.) Ms. Ashley paid for the personal expenditures related to the Florida trip with MGI funds at the direction of Mr. Mason. The billing statement also includes a \$1,157.86 charge to Johnson Lexus of Durham on October 25, 2018, which was incurred for Mr. Mason's personal vehicle. On December 4, 2018, Mr.

Mason told Ms. Ashley to “make sure” the balance of the Citi Card for the above-referenced billing statement was paid on time. (St. Ex. 18.)

55. Mr. Mason contends that the above-referenced expenses at A Cleaner World were not personal expenditures. Rather, he claims they were business expenses to get shirts with MGI’s logo on them worn by employees dry cleaned. Notwithstanding Mr. Mason’s position, the Court concludes these charges were not business expenses but were Mr. Mason’s personal expenses. After all of the charges to A Cleaner World listed above had been incurred, Mr. Mason represented to Mr. White that Ms. Ashley purchased the polo shirts several months before November 19, 2018 but that the shirts were never used or even distributed to MGI employees. (Def. Ex. 31.) MGI historically has not needed dry cleaning services. The charges to A Cleaner World are for three different amounts, two of which occurred in August. MGI’s busy seasons include the spring and poinsettia season in the fall and winter. There would be few to no drivers requiring the polo shirts during the month of July showing that there would be no need for two dry-cleaning charges in August. The foregoing evidence supports a finding that the charges to A Cleaner World were incurred by Mr. Mason for his personal benefit.

56. As conceded by Mr. Mason, the payments to Jill Burton, Orange Water and Sewer Carrboro, and Johnson Lexus of Durham were personal expenditures, all paid with MGI funds. Mr. Mason’s repeated payment of personal expenditures was a willful disregard of the mandates contained in the Injunction.

57. Contrary to Mr. Mason’s position that his conduct was not willful or that Ms. Ashley is to blame for the payment of his personal expenditures, on multiple

occasions, Mr. Mason made representations to employees of MGI to the effect that MGI's money was his and no one could tell Mr. Mason how to use MGI funds or how to run MGI's business.

58. Furthermore, during the period of time when Mr. Mason was allegedly relying on Ms. Ashley to properly pay and account for personal versus business expenses, Mr. Mason repeatedly advised others that he could not trust Ms. Ashley to act properly as MGI's bookkeeper. Mr. Mason first became aware that Ms. Ashley was causing Mr. Mason to violate the Injunction in August 2018. In November 2018, by e-mail to Mr. White, Mr. Mason described Ms. Ashley as "controlling, manipulative, and at times, abusive and insubordinate[.]" (Def. Ex. 31.) Mr. Mason expressed further concerns that Ms. Ashley's "lack of integrity" and "poor judgment" placed MGI at "tremendous risk." However, as late as December 4, 2018, Mr. Mason was still instructing Ms. Ashley to pay his personal credit card bill with MGI funds. (St. Ex. 18.) Even if Mr. Mason is to be believed that he did not instruct Ms. Ashley to do so, the evidence is overwhelming that he believed Ms. Ashley to be untrustworthy yet continued to allow her to oversee the payment of his personal expenses with MGI funds.

59. Mr. Mason willfully caused MGI to pay for his personal expenses with MGI funds in violation of the Injunction.

60. As an additional violation of the Injunction, Mr. Mason obtained a loan for MGI without prior notice to or consent of Ms. Mason. Mr. Mason was instructed by MGI's accountants to inject cash into MGI and categorize the cash injection as a loan. On August 12, 2018, Mr. Mason expressed to Ms. Ashley his intent to "cut MGI a

check for \$200k.” (St. Ex. 4.) On August 17, 2018, Mr. Mason obtained a cashier’s check from State Employee’s Credit Union for \$200,000.00 and the memo line reads “RSM LOAN TO MGI[.]” (Def. Ex. 14.) The memo line was later scratched out and Ms. Ashley inserted a handwritten note reading “repayment of personal expenses.”

61. This cashier’s check was deposited into the MGI bank account on August 17, 2018. Contrary to the handwritten note on the cashier’s check, a proof of claim submitted to the Bankruptcy Court on January 24, 2019 by Mr. Cook on behalf of Mr. Mason indicates that MGI owes \$275,000.00 to Mr. Mason for loans he made to MGI “to cover costs.” (St. Ex. 24.) Mr. Mason did not advise Ms. Mason prior to the deposit of these funds into MGI’s account that he was doing so or seek her consent.

62. The Court concludes the \$200,000 was in fact a loan and that Mr. Mason willfully violated the Injunction by obtaining a loan for MGI without prior notice to and consent of Ms. Mason.

63. Lastly, and as an additional willful violation of the Injunction, Mr. Mason used MGI funds to pay for his legal fees in connection with his defense of this litigation. On September 20, 2018, Ms. Ashely wired \$2,500.00 from MGI’s bank account to Mr. Meek, Mr. Mason’s personal attorney, at the direction of Mr. Mason. (St. Exs. 11; 11a.)

### **III. ANALYSIS**

#### **A. Guilt**

64. Under N.C.G.S. § 5A-11(a)(3), a court may find a person in criminal contempt for the “[w]illful disobedience of, resistance to, or interference with a court’s lawful process, order, directive, or instruction or its execution.” “Willfulness’ in [the

criminal contempt] statute means an act ‘done deliberately and purposefully in violation of law, and without authority, justification, or excuse.’” *State v. Phair*, 193 N.C. App. 591, 594, 668 S.E.2d 110, 112 (2008) (quoting *State v. Chriscoe*, 85 N.C. App. 155, 158, 354 S.E.2d 289, 291 (1987)). Our Court of Appeals has also stated that the “willfulness” element of criminal contempt “involves more than deliberation or conscious choice; it also imports a bad faith disregard for authority and the law.” *Forte v. Forte*, 65 N.C. App. 615, 616, 309 S.E.2d 729, 730 (1983). “[I]n a criminal contempt proceeding, as in any other criminal proceeding, the State has the ultimate burden of proof beyond a reasonable doubt of all elements of the offense.” *State v. Simon*, 185 N.C. App. 247, 255, 648 S.E.2d 853, 858 (2007).

65. Criminal contempt may be either direct or indirect. See N.C.G.S. § 5A-13(a), (b). Criminal contempt is deemed direct when the act:

- (1) Is committed within the sight or hearing of a presiding judicial official; and
- (2) Is committed in, or in immediate proximity to, the room where proceedings are being held before the court; and
- (3) Is likely to interrupt or interfere with matters then before the court.

*Id.* § 5A-13(a). “Any criminal contempt other than direct criminal contempt is indirect criminal contempt and is punishable only after proceedings in accordance with the procedure required by [N.C.]G.S. 5A-15.” *Id.* § 5A-13(b). Here, the Contempt Motion seeks to hold Mr. Mason in indirect criminal contempt.

66. Mr. Mason repeatedly violated multiple provisions of the Injunction from August 10, 2018 until in or about December 2018. Mr. Mason cites his own negligence

in managing Ms. Ashley, oversight on his part, and his busy schedule as reasons for violating the Injunction and contests that for those reasons the Court should find Mr. Mason did not act willfully. Willful ignorance, being busy, and oversight may not serve as Mr. Mason's excuse to repeatedly violate the Injunction without any criminal culpability. *State v. Jordan*, No. COA12–1264, 2013 N.C. App. LEXIS 736, at \*8–9 (N.C. Ct. App. July 16, 2013) (concluding that the evidence supported a finding that the defendant willfully violated the court order regardless of the fact the defendant was feeling “very stressed out” and “didn't feel mentally prepared” to comply with the court's order).

67. Mr. Mason in large part blames Ms. Ashley for the violations of the Injunction. However, any alleged reliance on Ms. Ashley by Mr. Mason was unjustifiable given Mr. Mason's demonstrated lack of trust in Ms. Ashley. At best, Mr. Mason intentionally remained ignorant as to the misconduct of Ms. Ashley and seeks to use her misconduct as a shield against a finding of willfulness. The Court credits Ms. Ashley's sworn testimony that the payments in question were made at Mr. Mason's directive and that he advised her he would not be told how to run his company or handle its assets.

68. The Court concludes that Mr. Mason's conduct was beyond mere negligence or oversight. Mr. Mason, who has extensive business experience and a clear understanding of the Injunction, repeatedly took actions, and directed others to take actions on his behalf, that violated the Injunction for a period of nearly five months. *See State v. Salter*, No. COA18–747, 2019 N.C. App. LEXIS 311, at \*18–19 (N.C. Ct. App. Apr. 2, 2019) (considering the repetitiveness of the defendant's behavior over a

two-day period, ignoring the court's instructions, in affirming that the defendant was guilty of direct criminal contempt); *State v. Evans*, No. COA08–293, 2008 N.C. App. LEXIS 1822, at \*8 (N.C. Ct. App. Oct. 21, 2008) (providing that willful intent of a Defendant may be inferred). Mr. Mason deliberately, purposefully, and in bad faith conducted business at MGI in direct violation of the directives of this Court for his own benefit.

69. Based on the foregoing findings of fact and analysis, the Court concludes that the State has proven beyond a reasonable doubt that Mr. Mason repeatedly and willfully violated the Court's Injunction in the following ways:

- a) Paying expenses representing personal expenditures for the benefit of Mr. Mason with MGI funds, (*See* Injunction ¶ 21a);
- b) Obtaining additional loans for MGI without notice to and consent of Ms. Mason, (*See* Injunction ¶ 21d);
- c) Failing to keep all accounts payable current and failing to promptly notify Ms. Mason when MGI had insufficient funds to meet outstanding obligations, (*See* Injunction ¶ 21e); and
- d) Causing MGI to pay legal fees or expenses incurred in connection with Mr. Mason's defense of this litigation, (*See* Injunction ¶ 21i).

## **B. Sentencing**

70. Having found that Mr. Mason is guilty of indirect criminal contempt, the Court must determine the appropriate sentence or sanction for his misconduct. The Court will hold a sentencing hearing on a later date and will determine an



appropriate sentence and/or monetary sanction to be levied against Mr. Mason based on the following legal principles.

71. “A person who commits criminal contempt, whether direct or indirect, is subject to censure, imprisonment up to 30 days, fine not to exceed five hundred dollars (\$500.00), or any combination of the three,” except in circumstances not implicated by the Contempt Motion. N.C.G.S. § 5A-12(a). Where, as here, a person is alleged to have committed criminal contempt under section 5A-11(a)(3), “[a] fine or imprisonment may not be imposed for criminal contempt, whether direct or indirect, unless: (1) [t]he act or omission was willfully contemptuous; or (2) [t]he act or omission was preceded by a clear warning by the court that the conduct was improper.” *Id.* § 5A-12(b).

72. Although criminal contempt hearings are criminal proceedings, “[a] criminal contempt adjudication is not a misdemeanor in North Carolina.” *State v. Burrow*, 248 N.C. App. 663, 670–71, 789 S.E.2d 923, 929 (2016) (alteration in original) (citation and internal quotation marks omitted). Furthermore, “[n]othing in [section 5A-12] or in Chapter 5A prohibits consecutive sentences for multiple findings of contempt.” *Id.* (upholding trial court’s sentencing of defendant to “six consecutive thirty-day terms of imprisonment” for criminal contempt “[b]ecause a finding of contempt is not a Class 3 misdemeanor”).

73. “The judicial official who finds a person in contempt may at any time withdraw a censure, terminate or reduce a sentence of imprisonment, or remit or reduce a fine imposed as punishment for contempt if warranted by the conduct of the contemnor and the ends of justice.” N.C.G.S. § 5A-12(c).

74. Based on the foregoing procedural history and factual findings by the Court, the Court enters the following CONCLUSIONS OF LAW.

#### IV. CONCLUSIONS OF LAW

75. THEREFORE, pursuant to N.C.G.S. §§ 5A-11(a)(3), 5A-12(a), (b), 5A-13(b), it is hereby ORDERED, ADJUDGED, and DECREED that:

- a) The State has proved beyond a reasonable doubt that Mr. Mason willfully violated the Injunction in numerous ways;
- b) Mr. Mason is guilty of multiple separate acts of indirect criminal contempt;
- c) The Court must next determine appropriate sentencing for Mr. Mason's misconduct; and
- d) As a result of the Court's decree, the Court will schedule a hearing at a time and date after conferring with counsel for the parties, at which time the Court will hear from counsel regarding the parties' position regarding an appropriate sentence or sanction to be ordered against Mr. Mason.

SO ORDERED, this the 26th day of November, 2019.

/s/ Michael L. Robinson

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Michael L. Robinson  
Special Superior Court Judge  
for Complex Business Cases