

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

SBS FRANCHISING, INC.,
d/b/a STRATUS BUILDING SOLUTIONS
a Delaware corporation,

Plaintiff,

v.

CIVIL ACTION NO:

MODERN INDUSTRIAL SERVICES, INC.,
a Florida corporation,

PRO CLEAN USA, INC.
a Florida corporation,

BRYAN REXROAT,
an individual, AND

JEFFREY REXROAT,
an individual,

Defendants.

VERIFIED COMPLAINT

Plaintiff, SBS Franchising, Inc. d/b/a Stratus Building Solutions ("**SBS**"), by counsel, sues Defendants Modern Industrial Services, Inc. ("**Modern**"), Pro Clean USA, Inc. ("**Pro Clean**"), Bryan Rexroat, and Jeffrey Rexroat, for Preliminary and Permanent Injunctive relief, damages, and other relief, and alleges:

Parties, Jurisdiction, and Venue

1. SBS is a Delaware Subchapter S corporation with its principal place of business in North Hollywood, California.
2. SBS franchises businesses for comprehensive building maintenance care, commercial cleaning and maintenance services, supplies and equipment, for interior and exterior

environments of business and residential locations. Specifically, SBS grants Master Franchise or Area Developer Franchises (there is no material distinction) to entities providing them the exclusive right to establish and operate as an SBS Area Developer or Master Franchise and to license to franchisees (also called “sub-franchisees”) in their area the operational methods, marks, procedures and products including proprietary information developed by SBS or acquired by SBS from SBS’ predecessor. SBS bought the assets, including but not limited to Master Franchise Agreements and Area Developer Agreements (collectively “ADFAs”), of the original franchisor Stratus Franchising, Inc. in early 2015 for in excess of \$2 million. Under the ADFAs, the Franchisor, the Area Developer, and the sub-franchisees split the revenues from the cleaning jobs done by the sub-franchisees.

3. Modern is a Florida corporation with its headquarters and principal place of business in Tampa, Florida and one or more office(s) elsewhere in Florida, including upon information and belief, in Fort Myers, Florida. Modern was the Master Franchisee (Area Developer) for SBS in Florida, responsible for a network of dozens of “Stratus” cleaning sub-franchises from 2012 until November, 2015, under its Stratus Building Solutions ADFA.

4. Pro Clean is a Florida corporation with its headquarters and principal place of business in Florida and (it represents) businesses throughout Southwest Florida from Tampa through Marco Island.

5. Bryan Rexroat, an individual and resident of Florida, is President of Modern and was during the pendency of its ADFA. He was a “Key Participant” under the ADFA. He is President of Pro Clean.

6. Jeffrey Rexroat, an individual and resident of Florida, is an officer and/or managing agent of Modern and was during the pendency of its ADFA. He was a “Key

Participant” under the ADFA. Upon information and belief, he is an officer or managing agent of Pro Clean.

7. Subject matter jurisdiction is founded upon 28 U.S.C. §§ 1332 in that the parties are of diverse citizenship and the amount in controversy between Plaintiff and each Defendant exceeds the sum of \$75,000, exclusive of interest and costs.

8. Venue is proper in this Court under 28 U.S.C. § 1391. Central events giving rise to the claims asserted by SBS occurred in this District. Further, Defendants have places of business within this District and are found within this District.

The Controversy

The Area Developer Franchise Relationship

9. On May 31, 2012, Modern and Bryan Rexroat executed its ADFA, in which it was granted a license as Area Developer in Florida zipcodes 33601-22626, 33629-33631, 33633-33637, 33646-33647, 33650-33651, 33655, 33660-33664, 33672-33675, 33677, 33679-33682 and 33684-33690. (ADFA §II-A; the ADFA is attached to the Estoppel Certificate and General Release given by Modern and Rexroat on January 14, 2015 to SBS as the new owner of the Franchise System. The Estoppel Certificate with attached ADFA is Exhibit 1 hereto. Page numbers for the ADFA refer to page numbers from the original Franchise Disclosure Document of which it was a part).

10. SBS terminated that ADFA for multiple uncured breaches of Modern’s contractual obligations in late 2015. Modern and its principals have refused to adhere to its and their individual post-termination obligations to SBS, including but not limited to return and non-use of records and proprietary information and a non-competition restriction, which all of them are blatantly violating despite repeated reminders and warnings to them.

The Termination

11. Modern systematically violated its obligations to SBS throughout the limited time of their business relationship. SBS provided Modern with numerous opportunities to cure these breaches, without success. (See e.g., letter dated October 8, 2015 from SBS counsel to Bryan Rexroat, referring to prior breach letters in 2015 from SBS, which earlier communications had elicited a combination of assurances and failures to cure. That letter is Exhibit 2 hereto. That letter also attached copies of bitter criticism of Modern, specifically of principal Jeff Rexroat, by sub-franchisees in Modern's development area.)

12. The October 8, 2015 letter provided a final opportunity to cure. When Modern failed to take any action, indeed failed to respond despite a written assurance from its then-counsel that SBS would receive a substantive response, SBS counsel sent a termination letter to Modern and its counsel on November 9, 2015 (Exhibit 3 hereto). That letter specifically referred to various post-termination obligations, "including but not limited to the two year, 100 mile non-compete in the MFA [ADFA] §XII (C)-(D), the protection of SBS' confidential and proprietary trade secret information in §XIV..... and all other post-term de-identification, records return, telephone assignment, payment and other obligations set forth in §XVIII." The letter also quoted in full the requirement of §XVIII (A) to immediately return and not use in any manner many things, including without limitation these:

4. All files and records, franchise agreements, and any other documents or information related to the operation of the Area Developer Franchise business and its Sub franchisees, including without limitation, all Sub franchisee lists, customer/client lists (with contact information, including names, addresses and phone numbers) and copies of all customer/client contracts.

5. All funds held for the benefits of [any] Sub franchisee.

(Emphasis in original.) SBS recently learned that, effective on October 18, 2015, even prior to termination, Bryan Rexroat as President incorporated Pro Clean, one of the vehicles used by the Rexroats to violate their post-term obligations to SBS. (Exhibit 4 comprises the October, 2015 incorporation record and Articles of Incorporation of Pro Clean).

13. The post-term non-compete and the separate records return requirements are of particular importance. Observance of the non-compete is crucial to this or any franchise system. And, unfortunately, the prior owner of the Stratus System did not have records of the sub-franchisees in Modern's territory. Therefore, SBS has been unable even to notify many sub-franchisees in Modern's former territory that Modern has been terminated, that it must stop doing business with them, and that SBS will deal with them until it is able to locate and appoint another Area Developer (a difficult, lengthy process requiring perhaps up to two years). In fact, Modern simply dropped the "Stratus" name and continued competing. Indeed, as SBS learned recently, it has continued such business (among other ways) as "Pro Clean" through the same sub-franchisee network, with Pro Clean stating it is "Servicing all of Southwest Florida – Tampa Bay to Marco Island and everywhere in between." (See Exhibit 5 hereto, a Pro Clean website photo.) Plaintiffs have deprived SBS of its contract rights, flaunted their contractual obligations, and demonstrated to honest Area Developers and sub-franchisees that SBS cannot maintain their franchise System.

14. The November 9th termination letter elicited no action and indeed no response by Modern or its counsel.

**Silence of Defendants and Their Continued Refusal to Honor Their
Post-Termination Obligations**

15. Because, as aforesaid, in October, SBS' counsel had received a letter from Defendant's counsel affirming his continuance as counsel, SBS' counsel wrote him on December 11, 2015, long before SBS had identified Pro Clean recently as one of the entities through which Defendants were violating their post-termination obligations. That letter sought compliance by the Defendants with their post-termination obligations, and read in pertinent part:

As you know, on behalf of Stratus Building Solutions, Inc. ("SBS"), the former franchisor of your client, I wrote on November 9, 2015, terminating the Area Developer Franchise Agreement aka Master Franchise Agreement ("MFA") dated May 31, 2012. I copied you on the letter.

In the letter, I reminded your client of its post-termination obligations, which included de-identification, return of all records (including but not limited to sub-franchisee lists, customer/client lists (with all contact information and customer contracts), assignment of the business telephone number, and payment of monies due. I reminded your client of its further obligations in the Agreement, §XVIII. Moreover, importantly, as your client is aware, there is in §XII a non-compete requirement. Rather than quote this at great length, I enclose for you the relevant pages of the Agreement and ask you to review Section XII (C), which sets forth the two year restriction on competition within the "Non-Compete Area" (later described in what I enclose as 100 miles from your client's Territory and from another SBS Territory) by your client and any "Key Participants" in the business (defined in §XII D, enclosed). The remainder of the enclosed Section XII sets forth the parties' agreement that these restrictions are reasonable, and are enforceable by SBS by injunction without bond, with your client to pay SBS' attorney's fees and costs.

Except for de-identifying from Stratus, your client has ignored every post-termination obligation, has returned nothing, has paid nothing, and competes under another name with the franchisee network it had when it was with SBS.

No franchise system can abide such blatant disregard of its non-compete and other post-termination requirements.

If you wish to discuss this with me, please contact me. If you do not represent Mr. Rexroat and Modern Industrial Services, Inc., please advise me immediately. If you do not represent them, please send this letter as soon as possible to them and/or to whomever does represent them, and as a courtesy please advise me that you have done so. Thank you.

(Exhibit 6 hereto) (Emphasis added.)

16. Despite this letter, SBS counsel's reward was further silence. Finally, after phone calls and emails simply to clarify whether Defendants were represented (in order to comply with

ethical responsibilities), SBS counsel received a letter from Defendants' former counsel, as follows:

Dear Mr. Hilman:

I received your voicemail on Monday, January 18, 2016. Sorry for the non-responsiveness from our client and your inability to get through to our office. Both Attorney James McQuade and I have been instructed not to take any action by Mr. Rexroat whatsoever on this file. We are not authorized to communicate about this file nor, have we been retained to take any further action on the file and have closed this file. Further, of course we have not been authorized nor, will we accept service of process of the Complaint.

As such you certainly have the authority to contact Mr. Rexroat directly since he may engage other counsel or alternatively choose to represent his own interests in this matter.

Sincerely,
IS/KEVIN F. JURSKINSKI

(Exhibit 7 hereto) At this point, it was clear beyond peradventure that Defendants' plan is to ignore SBS and hope SBS will simply write them off. But, except for ceasing to use the name Stratus, Defendants have treated their post-termination obligations as if they were written in invisible ink. SBS cannot and will not ignore this, as it must protect the integrity of its franchise system and halt the damage and irreparable harm done to it by these continuing violations.

COUNT I – BREACH OF CONTRACT:

ENFORCEMENT OF NON-COMPETITION OBLIGATIONS

(Injunctive Relief)

17. SBS realleges paragraphs 1 through 16 above.
18. This is an action by SBS against Defendants for injunctive relief to enforce the restrictive covenants contained in the ADFA pursuant to Section 542.335, Florida Statutes. The

provisions of the ADFA pertaining to these two year post-term covenants (XII-C-L) are as follows:

C. Non-Competition After Term of Agreement Has Expired – Within the Non-compete Area and for a period of two(2) years immediately following the termination, assignment or other transfer of this Agreement, the Area Developer Franchisee and its Key Participants may not directly or indirectly.

1. Divert, solicit, interfere with, misappropriate, take away or attempt to divert or take away any source of SBS business or revenue, SBS customer or SBS sub franchisee.

2. Perform any services for, engage in or acquire, become an employee of, have any financial, beneficial, or equitable interest in, or have any interest whatsoever in any business which:

(a) perform any type of cleaning and/or maintenance related services, including but not limited to, commercial industrial, institutional and residential cleaning services; or

(b) is similar to the SBS' janitorial, cleaning and maintenance system and business described in any of the following: this Area Developer Franchise Agreement, an SBS Sub franchise Agreement or the SBS Operating Manual, all as amended or revised from time to time.

(c) sells, leases or distributes supplies and equipment related to any of the above.

3. Employ or seek to employ any person, who is at that time, employed by SBS or any of its affiliates, any SBS Maser Franchisee or SBS Sub franchisee.

4. Induce any person to leave his or her employment with SBS or any of its affiliates, any SBS Area Developer Franchisee or SBS Sub franchisee.

5. Perform or contribute to any other act injurious or prejudicial to the goodwill associated with SBS or its Marks.

The "Non-Compete Area" means: (1) within one hundred (100) miles of the Area Developer Franchisee's Territory and (2) within one hundred (100) miles of any other SBS Area Developer Franchisee territory, any SBS Sub franchisee or other business which is franchised, owned, operated or managed by or under the direction or auspices of SBS or any of its affiliates which is within one hundred (100) miles of the Area Developer Franchisee's Territory.

D. Key Participant Defined – In this Section, the term "Key Participants" includes, without limitation:

1. All owners and their spouses;

2. All directors or others in similar decision-making or fiduciary capacity, regardless of title;

3. All officers and managers (including division managers),

4. All people with supervisory or management positions.

Area Developer Franchisee is obligated, at all times, to identify and provide SBS with the names of all its Key Participants. Failure to do so is a material breach of this Agreement. SBS has the sole and final authority to determine whether a person has the necessary training or access to Proprietary Information and/or decision making authority to fall under the definition of a "Key Participant".

E. Claims Not A Defense – No claim that Area Developer Franchisee may have against SBS, whether or not it arises under this Agreement, may be asserted as a defense to SBS' enforcement of the provision of this Section.

F. Reasonableness of Restrictions – SBS intends to restrict the activities of Area Developer Franchisee and its Key Participants only to the extent necessary for the protection of SBS's legitimate business interests. If any of the provisions or restrictions herein are excessively broad as to time, geographical scope, activity or subject, that provision must be limited and construed in a way that makes it enforceable under the applicable law.

G. SBS Remedies For Breach – Area Developer Franchisee acknowledges that a violation of the terms and conditions of this Section will irreparably and continually damage SBS and that money damages may not be adequate (and thus no remedy at law may be available). Consequently, if SBS discovers such a violation or reasonable believes that such a violation is about to occur, then SBS is entitled to both (1) a temporary, preliminary or permanent injunction to prevent the continuing harm to SBS, and (2) money damages insofar as they can be determined. No bond is required for the issuance of a temporary restraining order of preliminary injunction and Area Developer Franchisee expressly waives the imposition of any bond for that purpose. Area Developer Franchisee must pay SBS' costs (including expert witness fees) and actual attorney fees necessary to pursue any SBS remedy under this Section.

H. SBS Third Party Beneficiary – Area Developer Franchisee acknowledges that SBS is a third party beneficiary of every duty, obligation and covenant imposed on the Area Developer Franchisee and its Key Participants in this Section with the independent right to enforce them without notice to the Area Developer Franchisee.

I. Non-Compete Agreements Required – Every Key Participant must execute a Non-Compete Agreement in the form attached as Exhibit A. Failure of the Area Developer Franchisee to procure this Non-Compete Agreement from each Key Participants is a material breach of this Agreement.

(Emphasis added)

19. Modern and “Key Participants” Bryan Rexroat and Jeffrey Rexroat have breached their covenants not to compete set forth in the ADFA by operating a business (indeed, the same business) involving the Stratus sub-franchisee network, in direct competition with SBS as Modern, as Pro Clean, and upon information and belief through other entities. Were it not for these violations and the Defendants’ continuing use of SBS’ information and records, SBS could today be operating that business and seeking to replace Modern and the Rexroats with another Area Developer.

20. Jeffrey Rexroat also is independently liable because he has knowingly and willfully aided and abetted Modern, Pro Clean and ADFA signatory Bryan Rexroat to breach the covenant not to compete by taking a significant role in the above competitive businesses. Therefore, apart from his status as a Key Participant, this court has equitable powers to prevent Jeffrey Rexroat from facilitating and engaging in the breach of the covenants not to compete.

21. These covenants not to compete are supported by legitimate business interests, including SBS’ relationships with its prospective and existing Area Developers and sub-franchisees and their retail customers, SBS’ goodwill, SBS’ business methods and confidential proprietary information including its Operations Manual, and most importantly the integrity of SBS’ entire Stratus Franchise System and adherence to its requirements by other Area Developers and sub-franchisees.

22. These covenants not to compete are reasonably necessary to protect SBS’ legitimate business interests.

23. Modern and its “Key Participants” Bryan Rexroat and Jeffrey Rexroat are obligated under the post-term non-compete provisions, but have flagrantly violated them through

operation of Modern, Pro Clean, and upon information and belief other entities after termination of the ADFA.

24. Defendants are causing and will continue to cause substantial and irreparable harm to SBS by violating their non-competition obligations.

25. The actuality and continued threat of injury to SBS vastly outweighs any harm the issuance of an injunction may inflict upon Defendants, who merely must honor their contractual obligations.

26. SBS has a substantial likelihood of success on the merits of this claim against Defendants.

27. The issuance of a preliminary injunction enforcing the covenants not to compete will serve the public good, as it will, among other things, protect the investment of companies such as SBS and their honest Area Developers and sub-franchisees, who are entitled to protection from illegal and unfair competition from former Area Developers which and who have violated their contractual duties.

COUNT II – BREACH OF CONTRACT:
ENFORCEMENT OF OTHER POST-TERMINATION OBLIGATIONS BEYOND THE
POST-TERM NON COMPETITION COVENANTS
(Injunctive Relief)

28. SBS realleges paragraphs 1 through 27 above.

29. Defendants Modern and the Rexroats are obligated as ADFA signatories and/or Key Participants to honor all post-term obligations in the ADFA. Except for ceasing to use

the Stratus name and mark, however, Defendants have breached every other post-termination obligation recited in the ADFA, Section XVIII. These breaches have caused SBS harm which cannot be wholly recompensed in damages and is irreparable.

30. A preliminary injunction is necessary to avoid such harm to the SBS System and to its relationships with its honest Area Developers and sub-franchisees.

COUNT III – BREACH OF CONTRACT:

**DAMAGES FOR BREACHES OF POST TERM OBLIGATIONS FROM THE
DATE OF TERMINATION TO THE ENTRY OF AN INJUNCTIVE RELIEF**

31. SBS realleges paragraphs 1 through 30 above.

32. From November 9, 2015 until the violations set forth herein are enjoined, SBS has suffered and will suffer damages, including the denial of monies it would have received if it had operated the System in Modern's former territory (while seeking to replace Modern), as well as damages specifically and separately set forth in AFDA §XVIII (C) of \$500 per day for non-compliance by the Defendants of various post-termination obligations.

COUNT IV – BREACH OF CONTRACT

DAMAGES FOR BREACHES DURING PENDENCY OF ADFA

33. SBS realleges paragraphs 1 through 32 above.

34. Defendants Modern and Bryan Rexroat violated numerous obligations under the ADFA prior to termination, as set forth in the letters of October 8, 2015, and November 9, 2015, (Exhibits 2 and 3 hereof).

35. Defendants owe damages to SBS on account of these violations.

WHEREFORE, Plaintiff SBS prays that the Court enter an Order as follows:

1. Pursuant to Rule 65(d)(2) FRCP and Florida Statutes 542.335, Defendants, their officers and agents, servants, employees, attorneys and all those persons and entities in active concert and participation with them and who receive notice of the Order, are preliminarily enjoined

(a) from violating in any manner directly or indirectly themselves or through any person or entity, all post-term non-competition obligations set forth in the Area Developer Franchise Agreement (“ADFA”) dated May 31, 2012, (Exhibit 1 hereto), ADFA §XII – C-D, for two years, from the date of entry of this Order, without bond, as set forth in ADFA §XII – G; and

(b) from violating each and every other requirement of the post-termination obligations in the above ADFA, in Section XVIII A-E, without bond.

2. Defendants, joint and severally, shall pay to SBS all sums due for their breaches of their post-termination obligations from the date of termination on November 9, 2015 to the date of the preliminary injunction in (1) above.

3. Defendants Modern and Bryan Rexroat, jointly and severally, shall pay SBS all sums due for their breaches of the ADFA during its pendency.

4. Plaintiffs are entitled to their attorneys’ fees and costs in accordance with ADFA §XIX(C).

5. Plaintiffs are entitled to such other and further relief as the Court deems appropriate.

Respectfully submitted,

s/ S. Douglas Knox

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VERIFICATION

Afshin Cangarlu, states:

1. I am CEO of Plaintiff SBS Franchising, Inc., d/b/a Stratus Building Solutions.
2. I make this verification under penalties of perjury.
3. I swear that allegations made in the attached Verified Complaint by my company against Modern Industrial Services, Inc., Pro Clean USA, Inc., Bryan Rexroat and Jeffrey Rexroat are true to the best of my knowledge and belief.
4. I swear that SBS and its Stratus Franchise System have suffered irreparable harm due to these Defendants' post-termination contract violations and will continue to suffer such irreparable harm until these violations are enjoined.

Dated: February 12, 2016



Afshin Cangarlu