IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

ILLINOIS COUNTY DEPARTMENT, LAW DIVISION

Marcellus Long,

Plaintiff,

v.

CDW Government LLC,

Defendant.

Case No. 2025L007458

Calendar W

PLAINTIFF'S MOTION TO STRIKE AS VOID AB INITIO THE APPEARANCE CERTIFICATIONS OF ATTYS. CRAIG R. THORSTENSON AND JOEL M. ZEID FOR FALSELY CERTIFYING AS "ATTORNEY FOR DEFENDANTS" IN A SINGLE-DEFENDANT ACTION UNDER 735 ILCS 5/1-109

TABLE OF CONTENTS

I. INTRODUCTION

Plaintiff filed this action against one defendant: CDW Government LLC. There are no other defendants. There have never been any other defendants. The Complaint names a single corporate entity in a single caption in a single cause of action. The legal concept of "Defendants," plural, has no application to this case.

Nevertheless, the first two attorneys to enter appearances on behalf of the named Defendant filed their Certificates of Service certifying their actions as "Attorney for Defendants." The third attorney corrected this to the singular "Attorney for Defendant." That sequential correction eliminates any inference of typographical error. What the pattern demonstrates is a deliberate choice to certify as if representing multiple defendants, entities that do not exist in this caption, in this Court, under this case number.

This motion seeks to strike those Certificates of Service as facially void and void ab initio under 735 ILCS 5/1-109. A certification that is false on its face never achieved legal existence, and is therefore a nullity from the moment it was executed. The consequence is equally significant: the record of this case contains no valid initial sworn certification that any attorney entered an appearance on behalf of CDW Government LLC, the named and only Defendant.

II. THE RECORD

Three appearances were filed by FordHarrison LLP in the opening weeks of this litigation. The Certificates of Service accompanying each are at issue:

1. Craig R. Thorstenson, FordHarrison LLP (Filed July 18, 2025, Initial Counsel of Record)

Certificate of Service sworn under 735 ILCS 5/1-109. Signature line reads:

*"s/ Craig R. Thorstenson / **Attorney for Defendants** / Craig R. Thorstenson"*

2. Joel M. Zeid, FordHarrison LLP (Filed July 23, 2025, Additional Appearance)

Certificate of Service sworn under 735 ILCS 5/1-109. Signature line reads:

*"s/ Joel M. Zeid / **Attorney for Defendants** / Joel M. Zeid"*

3. John C. O'Connor, FordHarrison LLP (Filed August 21, 2025, Additional Appearance)

Certificate of Service sworn under 735 ILCS 5/1-109. Signature line reads:

"s/ John C. O'Connor / Attorney for Defendant / John C. O'Connor"

This is not a stylistic variation. "Defendants" is a sworn factual assertion that more than one defendant exists in this action. No such party exists, has ever existed, or has ever been named in any pleading filed in this case.

Critically, John Pennell, a licensed private investigator retained to effect service, filed his own sworn affidavit under 735 ILCS 5/1-109 identifying the party served as: *"DEFENDANT CDW GOVERNMENT, LLC."* Singular. The process server's invoice simultaneously reflects a printed field for "Defendant #2" left entirely blank, because there was no second defendant. A neutral private investigator with no stake in this litigation and no law degree correctly identified one defendant in his sworn affidavit under the same statute. Two senior FordHarrison attorneys did not. (See Exhibit 2.)

The dates and circumstances of Plaintiff's receipt and review of each of the three certifications described above are set forth in detail in the Affidavit of Marcellus Long in support

of Plaintiff's Motion to Strike Appearance Certifications, filed contemporaneously herewith in support of this Motion.

III. ARGUMENT

A. The Certificates Are Facially Void and Void Ab Initio Under 735 ILCS 5/1-109

Section 1-109 of the Illinois Code of Civil Procedure provides that certifications made thereunder carry the force of sworn testimony and that false certifications subject the maker to penalties for perjury. What is certified must be true and correct to the best of the certifier's knowledge, information, and belief. The statute requires accuracy as the condition of the instrument's legal existence, not merely as a procedural formality.

The factual assertion embedded in "Attorney for Defendants" is that the certifying attorney represents defendants, plural. That assertion is false. There is exactly one defendant. CDW Government LLC is the sole party named in the Complaint and the sole entity required to respond. A certification made under Section 1-109 that asserts a plural of something that is indisputably singular is not true and correct on its face.

The falsity is apparent from reading the document. No extrinsic evidence is required. No discovery is necessary. The certificate says "Defendants." The case has one defendant. The certificate is facially void; the defect is visible on the instrument itself. And because the falsity existed at the moment of execution, the certificate is void ab initio, void from the beginning, as if it never legally existed. An instrument that is void ab initio is treated as a nullity incapable of retroactive cure or subsequent rehabilitation, as though it was never executed, because as a matter of law, it never was.

B. The Sequential Correction Eliminates Any Inference of Inadvertence

Thorstenson filed on July 18, 2025. Zeid filed five days later on July 23, 2025. Both used identical language: "Attorney for Defendants." O'Connor filed on August 21, 2025 and used the correct singular form: "Attorney for Defendant."

The change from plural to singular reflects a substantive word choice made consistently by two senior attorneys across two separate filings, then changed by a third without any motion to amend, any explanation of record, or any acknowledgment of error. The very Appearance form each attorney personally completed on the same day correctly identifies "CDW Government LLC" in the Litigant's Name field, meaning each attorney had the correct singular name directly in front of them when they wrote "Defendants" on their certificate. That sequence removes inadvertence as a plausible explanation. O'Connor's silent correction, offered without acknowledgment of the certifications that preceded it, is consistent with an awareness that those certifications were incorrect.

C. Thorstenson and Zeid Acted with Knowledge

Before an attorney writes "Attorney for ___" in a sworn personal certification, they know who they represent. That knowledge belongs to the foundational structure of every attorney-client relationship: an attorney is hired by a specific entity, that entity has a name, and the attorney writes that name. Thorstenson and Zeid should have been retained to defend CDW Government LLC, the named and only defendant, yet wrote "Defendants." Under 735 ILCS 5/1-109, a false statement made with knowledge of its falsity carries the added consequence of perjury.

Furthermore, every other sworn instrument connected to service in this action correctly identified a singular defendant. The Summons names CDW Government LLC. John Pennell's sworn affidavit says "DEFENDANT CDW GOVERNMENT, LLC." The process server's invoice

has a printed "Defendant #2" field that is completely blank. An attorney who cannot match the accuracy of a private investigator in a sworn instrument the attorney personally authored cannot attribute the failure to inadvertence.

D. NeTech Establishes Institutional Knowledge and Confirms a Deliberate Pattern

The knowledge argument rests on direct evidence rather than inference, proven by "CDW's" own litigation history. In *CDW, LLC v. NeTech Corp.*, 2013 WL 1703518 (S.D. Ind. Apr. 18, 2013), entities within the "CDW" corporate family sued former employees for violating non-compete agreements they had signed with Berbee Information Networks, a CDW subsidiary. Those employees had transferred from Berbee to **CDW Direct, LLC**, the identical entity from which Plaintiff Marcellus Long transferred to CDW Government LLC in May 2023. The employees in NeTech performed the same job, for the same clients, in the same territories, under the same supervisor. CDW argued that because the work was functionally continuous across subsidiary lines, the prior subsidiary's agreements still governed.

The United States District Court for the Southern District of Indiana rejected that argument completely: *"There simply is no denying that Berbee and its sister subsidiary, CDW Direct, are separate and distinct corporate entities. While they are both subsidiaries of the same parent company, CDW LLC, they are separate and distinct nonetheless. That fact dictates a finding that the transfers of employment from one such entity to another, whether to perform the identical duties, under identical circumstances, in the same place, marked the end of employment with one entity and the beginning of employment with another."*

The factual parallel to Plaintiff's case is exact. Plaintiff transferred from CDW Direct, LLC to CDW Government LLC. CDW has attempted throughout this litigation to use CDW Direct's documents to govern Plaintiff's CDW Government LLC employment, the precise theory NeTech

rejected. The institutional knowledge of "CDW's" own subsidiary separateness was established in published federal authority before Thorstenson wrote a single word in this case. When he wrote "Attorney for Defendants," plural, he was either importing his client's discredited theory that all CDW entities constitute collective "Defendants," or he was making a deliberate choice to blur corporate lines that Defendant's own prior litigation proved are legally distinct. Either way, the knowledge was present. The certification was false. It is void ab initio.

The motion now before the Court provides the starkest possible illustration of why that authority matters: Defendant's litigation team, the team that proved Defedant's subsidiaries are separate entities in federal court, certified sworn documents in this action as if multiple "Defendants" exist where only one does. *See also* Plaintiff's pending Motion for Entry of Default Judgment.

E. No Employee of CDW Government LLC Has Certified a Single Document in This Litigation

Thorstenson appeared as Initial Counsel of Record. His Certificate of Service is the founding sworn certification of defense counsel's entry into this case. That certificate is facially void and void ab initio. Zeid's certificate, filed five days later, is likewise facially void and void ab initio. O'Connor's certificate, the first valid one, accompanied an Additional Appearance, not the Initial Counsel of Record filing. Because the defective certifications are void ab initio, nullities from the moment of execution, they cannot be retroactively cured. Defendant cannot file a corrected certificate dated July 18, 2025, because a nullity leaves no instrument to correct.

But the defect transcends the initial appearances. The fourteen months of litigation that followed confirm what these opening certifications first revealed: Defendant has litigated this matter as if the action were brought against collective "Defendants," not against the single named

entity CDW Government LLC. Among the certifications examined to date, every discovery certification bearing a CDW entity name has been executed by employees of other CDW entities: Elizabeth Hiszczynski, identified as employed by CDW, LLC, not CDW Government LLC. Kimberly Bruno, identified as a CDW, LLC/Sirius Computer Solutions employee. Dianne Bearwald, identified as a CDW, LLC employee. None of these individuals work for the named Defendant. The March 17, 2026 Certificate of Service for the Motion to Dismiss refers to "DEFENDANT CDW'S," not CDW Government LLC. CDW Direct, LLC documents have been improperly submitted as operative CDW Government LLC employment records. John Pennell, a private investigator with no law degree, correctly identified one Defendant in his sworn affidavit under the same statute. "Attorney for Defendants" was not an anomaly. It was the opening statement of a litigation posture that every subsequent filing has confirmed.

This Court should so declare, consistent with its inherent authority to address void and improper filings and to protect the integrity of its own docket. *See Robidoux v. Oliphant*, 200 Ill. 2d 548, 556 (2002).

F. Default Is Warranted as Further Relief

The striking of these void ab initio certifications does not exist in a vacuum. It lands on a record already containing Plaintiff's pending Motion for Entry of Default Judgment, documenting over a year of sustained discovery fraud, void certifications by non-CDWG employees, fabricated procedural objections, and active economic coercion of a pro se plaintiff during the pendency of these proceedings. The defect now before the Court predates all of that misconduct: the very first sworn instrument defense counsel filed was facially void and void ab initio.

Under 735 ILCS 5/2-1301(d), this Court may enter default against a party who fails to appear, fails to plead, or fails to comply with any order or rule of court. The Initial Counsel of

Record entered a certification that is a nullity. The second attorney did the same. The first valid sworn certification did not arrive until August 21, 2025, more than a month after service, and arrived only as an additional appearance. No one ever properly certified an initial appearance on behalf of CDW Government LLC. Plaintiff expressly preserves this argument in connection with the pending Motion for Entry of Default Judgment.

IV. WHY THIS MOTION IS TIMELY: ONE YEAR IN THE MAKING

Plaintiff anticipates that Defendant will argue that this motion comes too late, that Plaintiff observed the "Defendants" language in July 2025 and should have moved to strike it then. That argument fails on both the law and the facts.

On the law: a void ab initio instrument has no time bar. There is no statute of limitations on a nullity. Illinois courts have consistently held that void instruments may be challenged at any time before final judgment. *See People v. Thompson*, 209 Ill. 2d 19 (2004). The doctrine of laches, the only equitable mechanism that could theoretically cut off this challenge, requires both unreasonable delay and prejudice to the opposing party. Defendant cannot claim prejudice from a challenge to their own false oath. They wrote the wrong information. They swore it was correct. The consequences of that choice belong to them.

On the facts: Plaintiff did not delay. Plaintiff observed. There is a meaningful difference between the two.

In July 2025, "Attorney for Defendants" appeared in two certificates filed five days apart. Standing alone, a pro se plaintiff seeing that language for the first time, in their first-ever lawsuit, might reasonably attribute it to a firm-wide template, a formatting error, or standard boilerplate. To characterize a single wrong word as a deliberate component of a litigation strategy requires something the record did not yet have in July 2025: a pattern.

That pattern took a year to fully emerge and document. The Hiszczynski certification, sworn by a CDW, LLC employee, not a CDW Government LLC employee, was filed September 2, 2025. The Bruno and Bearwald certifications, sworn by CDW, LLC and Sirius Computer Solutions employees, followed in discovery. The CDW Direct offer letter was submitted at the preliminary injunction stage to induce a finding about CDW Government LLC employment. The March 17, 2026 Certificate of Service for the Motion to Dismiss referenced "DEFENDANT CDW'S" while the signature block below correctly stated "CDW GOVERNMENT, LLC." The May 7, 2026 repayment demand arrived from a CDW, LLC employee, captioning CDW, Inc. as the contracting party, threatening to withhold Plaintiff's paycheck if he did not sign a debt obligation to a non-party entity and agree the he is an "at-will employee."

Each of these events, standing alone, might have been argued to be isolated error. Together, over the course of a year, they constitute a documented, sustained pattern of corporate-entity substitution that this Court has now seen across every category of litigation conduct: discovery certifications, preliminary injunction submissions, motion certifications, and economic coercion of the opposing party.

It is only against that complete backdrop that "Attorney for Defendants" in the founding sworn certification is properly understood. The word was not wrong because of a template. It was wrong because it reflects "CDW's" institutional belief, documented, litigated, and rejected in NeTech, that its subsidiaries can be treated as a collective, interchangeable "Defendants" when convenient. Plaintiff could not have made that argument in July 2025. The pattern was not yet visible. It is visible now, and this motion presents the defect in its proper context: not as an isolated certification error, but as the first instance of the exact strategy that has defined this litigation for over a year.

This motion is timely. It is principled. And it is the product of a year of careful, documented observation by a pro se plaintiff who waited until the full record was assembled before asking this Court to look at all of it together.

V. PRAYER FOR RELIEF

WHEREFORE, Plaintiff Marcellus Long respectfully requests that this Court enter an Order:

A. Striking the Certificate of Service filed by Craig R. Thorstenson on July 18, 2025, as facially void and void ab initio under 735 ILCS 5/1-109, for falsely certifying as "Attorney for Defendants" when only one defendant exists in this action;

B. Striking the Certificate of Service filed by Joel M. Zeid on July 23, 2025, as facially void and void ab initio under 735 ILCS 5/1-109, on the same grounds;

C. Declaring that both defective certifications are nullities void ab initio, incapable of retroactive cure, and of no legal force or effect from the moment of their execution;

D. Declaring that the record contains no valid sworn initial certification of an appearance entered on behalf of CDW Government LLC;

E. Treating these void ab initio certifications as further evidence of Defendant's documented pattern of corporate-entity substitution, consistent with the instructive federal authority in CDW, LLC v. NeTech Corp., 2013 WL 1703518 (S.D. Ind. Apr. 18, 2013), and Plaintiff's pending Motion for Entry of Default Judgment;

F. Entering default against Defendant CDW Government LLC pursuant to 735 ILCS 5/2-1301(d) as further relief, based on the absence of any valid sworn initial certification of appearance

on behalf of the named Defendant, and in light of the cumulative record established by this motion and Plaintiff's pending Motion for Entry of Default Judgment; and

G. Granting such other and further relief as this Court deems just and proper.

Respectfully submitted,

/s/ Mr. Marcellus Long, MBA

Pro Se Plaintiff

1 E. Erie St., Suite 525-2420

Chicago, IL 60611

legal@marcelluslong.com

(312) 469-0683

Dated: June 22, 2026

CERTIFICATE OF SERVICE

The undersigned certifies that on or around June 22, 2026, a true and correct copy of the foregoing Motion to Strike was served via email pursuant to Illinois Supreme Court Rule 11 upon counsel of record for Defendant at their designated service addresses.

/s/ Mr. Marcellus Long, MBA

EXHIBITS FOLLOW

Hearing Date: No hearing scheduled
Location: <<CourtRoomNumber>>
Judge: Calendar, W

Appearance/Jury Demand **(12/01/24) CCL 0530**

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

Marcellus Long

Plaintiff

v.

CDW Government LLC.

Defendant

Case No. 2025L007458

Calendar: W

APPEARANCE/JURY DEMAND

☑ **General Appearance**
- ◉ 0900 - Appearance - Fee Paid
- ○ 0909 - Appearance- No Fee
- ○ 0904 - Appearance Filed - Fee Waived

☐ **Jury Demand**
- ○ 1900 - Appearance & Jury Demand - Fee Paid
- ○ 1909 - Appearance & Jury Demand - No Fee

The undersigned enters the appearance of:
- ○ Plaintiff ◉ Defendant
- ○ Additional Party
- ○ Respondent-in-discovery

CDW Government LLC.

Litigant's Name

/s/ Craig R. Thorstenson

Signature

☑ **INITIAL COUNSEL OF RECORD** ☐ **PRO SE**
☐ **ADDITIONAL APPEARANCE** ☐ **SUBSTITUTE APPEARANCE**

A copy of this appearance shall be given to all parties who have appeared and have not been found by the Court to be in default.

Mariyana T. Spyropoulos, Clerk of the Circuit Court of Cook County, Illinois
cookcountyclerkofcourt.org

◉ Atty. No.: 43346 ○ Pro Se 99500

Name: Craig R. Thorstenson of FORDHARRISON

Atty. for (if applicable):

Defendant. CDW Government LLC.

Address: 180 North Stetson Avenue, Suite 1660

City: Chicago,

State: IL Zip: 60601

Telephone: 312-960-6116

Primary Email: cthorstenson@fordharrison.com

Pro Se Only:

☐ I have read and agree to the terms of the Clerk's Office Electronic Notice Policy and choose to opt in to electronic notice from the Clerk's office for this case at this email address:

CERTIFICATE OF FILING AND SERVICE

I certify that on July 18, 2025, I electronically filed the foregoing APPEARANCE with the Clerk of the Circuit Court of Cook County, Illinois, Law Division, by using the Odyssey EfileIL system.

I further certify that Plaintiff, named below, is not a registered service contact on the Odyssey eFileIL system, and has not designated an e-mail address of record for service, and thus the foregoing APPEARANCE was served by placing a copy in an envelope bearing proper prepaid postage and directed to the address indicated below, and depositing the envelope in the United States mail, before 5:00 p.m. on July 18, 2025.

Marcellus Long
P.O. Box 60832
Chicago, IL 60660

Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge, information, and belief.

s/ Craig R. Thorstenson
Attorney for Defendants
Craig R. Thorstenson

Craig R. Thorstenson
cthorstenson@fordharrison.com
FORDHARRISON LLP
180 N. Stetson Avenue, Suite 1660
Chicago, IL 60601
Telephone: 312-960-6116
Firm Attorney No. 43346

Appearance/Jury Demand **(12/01/24) CCL 0530**

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

Marcellus Long

Plaintiff

v.

CDW Government LLC.

Defendant

Case No. 2025L007458

Calendar: W

APPEARANCE/JURY DEMAND

☑ **General Appearance**
- ○ **0900 - Appearance - Fee Paid**
- ◉ **0909 - Appearance- No Fee**
- ○ **0904 - Appearance Filed - Fee Waived**

☐ **Jury Demand**
- ○ **1900 - Appearance & Jury Demand - Fee Paid**
- ○ **1909 - Appearance & Jury Demand - No Fee**

The undersigned enters the appearance of:
- ○ **Plaintiff**
- ◉ **Defendant**
- ○ **Additional Party**
- ○ **Respondent-in-discovery**

CDW Government LLC.

Litigant's Name

/s/ Joel M. Zeid

Signature

☐ **INITIAL COUNSEL OF RECORD** ☐ **PRO SE**
☑ **ADDITIONAL APPEARANCE** ☐ **SUBSTITUTE APPEARANCE**

A copy of this appearance shall be given to all parties who have appeared and have not been found by the Court to be in default.

Mariyana T. Spyropoulos, Clerk of the Circuit Court of Cook County, Illinois
cookcountyclerkofcourt.org

◉ Atty. No.: 43346 ○ Pro Se 99500

Name: Joel M. Zeid of FORDHARRISON

Atty. for (if applicable):

Defendant. CDW Government LLC.

Address: 180 North Stetson Avenue, Suite 1660

City: Chicago,

State: IL Zip: 60601

Telephone: 312-960-6119

Primary Email: jzeid@fordharrison.com

Pro Se Only:

☐ I have read and agree to the terms of the Clerk's Office Electronic Notice Policy and choose to opt in to electronic notice from the Clerk's office for this case at this email address:

CERTIFICATE OF FILING AND SERVICE

I certify that on July 23, 2025, I electronically filed the foregoing APPEARANCE with the Clerk of the Circuit Court of Cook County, Illinois, Law Division, by using the Odyssey EfileIL system.

I further certify that Plaintiff, named below, is not a registered service contact on the Odyssey eFileIL system, and has not designated an e-mail address of record for service, and thus the foregoing APPEARANCE was served by placing a copy in an envelope bearing proper prepaid postage and directed to the address indicated below, and depositing the envelope in the United States mail, before 5:00 p.m. on July 23, 2025.

Marcellus Long
P.O. Box 60832
Chicago, IL 60660

Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge, information, and belief.

s/ Joel M. Zeid
Attorney for Defendants
Joel M. Zeid

Joel M. Zeid
Jzeid@fordharrison.com
FORDHARRISON LLP
180 N. Stetson Ave., Suite 1660
Chicago, IL 60601
Phone: (312) 960-6119
Cook County Firm ID No. 43346

Appearance/Jury Demand **(12/01/24) CCL 0530**

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

Marcellus Long

Plaintiff

v.

CDW Government LLC.

Defendant

Case No. 2025L007458

Calendar: W

APPEARANCE/JURY DEMAND

☑ **General Appearance**

- ○ **0900 - Appearance - Fee Paid**
- ◉ **0909 - Appearance- No Fee**
- ○ **0904 - Appearance Filed - Fee Waived**

☐ **Jury Demand**

- ○ **1900 - Appearance & Jury Demand - Fee Paid**
- ○ **1909 - Appearance & Jury Demand - No Fee**

The undersigned enters the appearance of: ○ **Plaintiff** ◉ **Defendant**
○ **Additional Party**
○ **Respondent-in-discovery**

CDW Government LLC.

Litigant's Name

/s/ John C. O'Connor

Signature

☐ **INITIAL COUNSEL OF RECORD** ☐ **PRO SE**
☑ **ADDITIONAL APPEARANCE** ☐ **SUBSTITUTE APPEARANCE**

A copy of this appearance shall be given to all parties who have appeared and have not been found by the Court to be in default.

Mariyana T. Spyropoulos, Clerk of the Circuit Court of Cook County, Illinois
cookcountyclerkofcourt.org

◉ Atty. No.: 43346 ○ Pro Se 99500

Name: John C. O'Connor of FORDHARRISON

Atty. for (if applicable):

Defendant. CDW Government LLC.

Address: 180 North Stetson Avenue, Suite 1660

City: Chicago,

State: IL Zip: 60601

Telephone: 312-960-6117

Primary Email: joconnor@fordharrison.com

Pro Se Only:

☐ I have read and agree to the terms of the Clerk's Office Electronic Notice Policy and choose to opt in to electronic notice from the Clerk's office for this case at this email address:

CERTIFICATE OF FILING AND SERVICE

I certify that on August 21, 2025, I electronically filed the foregoing APPEARANCE with the Clerk of the Circuit Court of Cook County, Illinois, Law Division, by using the Odyssey EfileIL system.

I further certify that Plaintiff, named below, is not a registered service contact on the Odyssey eFileIL system, and has not designated an e-mail address of record for service, and thus the foregoing APPEARANCE was served by placing a copy in an envelope bearing proper prepaid postage and directed to the address indicated below, and depositing the envelope in the United States mail, before 5:00 p.m. on August 21, 2025.

Marcellus Long
P.O. Box 60832
Chicago, IL 60660

Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge, information, and belief.

s/ John C. O'Connor
Attorney for Defendant
John C. O'Connor

John C. O'Connor
joconnor@fordharrison.com
FORDHARRISON LLP
180 N. Stetson Ave., Suite 1660
Chicago, IL 60601
Phone: (312) 960-6117
Cook County Firm ID No. 43346

Illinois Process Servers, LLC
40 HICKORY POINT
SPRINGFIELD, IL, 62712 Phone (217)-241-1335 Fax

Tax ID 352-58-0363

Customer
MARCELLUS LONG
P.O.BOX 60832
CHICAGO, IL, 60660

Phone: (312)-469-0683 Fax:

Invoice# 80446

Date Of Invoice: 6/23/2025

Plaintiff: LONG
Court CaseID: 2025L007458 Firm#
Process Server: JOHN PENNELL

Case Returned Date: 6/21/25
ProcessType: SUMMONS & COMPLAINT

Defendant:#1 CDW GOVERMENT, LLC.
Person Served: BAYLON ELFGEN, AUTHORIZED
Sex MALE Age 23 Height 6'3" Build 250#

Type Of Service: CORPORATE SERVICE
Date Of Service: 6/23/2025 Time: 11:45 AM
Hair Color BRN Race WHITE

Defendant:#2
Person Served:
Sex Age Height Build

Type Of Service:
Date Of Service: Time:
Hair Color Race

Location 801 ADLAI STEVENSON DR., SPRINGFIELD, IL, Type Of Premise:

Delivery Charge	$50.00	Skip Trace	$0.00
Bad Address	$0.00	Rush	$0.00
Filing	$0.00	Investigation	$0.00
Database Charge	$0.00	Mileage	$0.00

Payment Received Date:

Total: $50.00 Check No Stripe Paid

The information is deemed reliable but is not guaranteed. There is a $25 fee for all NSF checks.
Payment due upon receipt. There is a 9% annum late charge on any unpaid balances.

ClientCaseID: 80446 CaseReturnDate: 6/21/25

Affidavit of A PRIVATE INVESTIGATOR

COOK COUNTY STATE OF ILLINOIS, CIRCUIT COURT

Case Number **2025L007458**

I, **JOHN PENNELL**

FIRST DULY SWORN ON OATH STATES THAT I AM OVER 18 YEARS OF AGE AND NOT A PARTY TO THIS SUIT AND LICENSED AS A PRIVATE DETECTIVE (LICENSE # 115.002074) UNDER THE PRIVATE DETECTIVE ACT OF 2004.

CORPORATE SERVICE

THAT I SERVED THE WITHIN **SUMMONS & COMPLAINT**
ON THE WITHIN NAMED DEFENDANT **CDW GOVERMENT, LLC.**
PERSON SERVED **BAYLON ELFGEN, AUTHORIZED AGENT**
BY LEAVING A COPY OF EACH WITH THE SAID DEFENDANT ON **6/23/25**

That the sex, race and approximate age of the whom I left the **SUMMONS & COMPLAINT** are as follow:

Sex MALE **Race** WHITE **Age** 23 **Height** 6'3" **Build** 250# **Hair** BRN

LOCATION OF SERVICE **801 ADLAI STEVENSON DR. SPRINGFIELD, IL, 62703**

Date Of Service **6/23/25** Time of Service **11:45 AM**

JOHN PENNELL 6/24/2025

A PRIVATE INVESTIGATOR

PRIVATE DECTECTIVE # 115.002074

Under penalties of perjury as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statement are true and correct, except as to matters therein stated to be on information and belief and such matters the undersigned certifies as aforesaid that he/she verily believes same to be true.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

CDW LLC, CDW DIRECT LLC, and BERBEE INFORMATION NETWORKS CORPORATION,	)	
Plaintiffs,	)	1:10-cv-00530-SEB-DML
vs.	)	
NETECH CORPORATION,	)	
Defendant.	)	

ORDER GRANTING DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT

This cause is before the Court on the motion of Defendant NETech Corporation ("NETech") for partial summary judgment. [Docket No. 184]. Specifically, NETech requests that the Court grant partial summary judgment in its favor with respect to the tortious interference with contractual relationship claim of CDW LLC, CDW Direct LLC ("CDW Direct"), and Berbee Information Networks Corporation ("Berbee") (collectively, "Plaintiffs"). For the reasons detailed herein, NETech's motion is GRANTED.

I. Factual Background

In September 2006, Berbee Information Networks Corporation ("Berbee") employed, among others, sales executives Rick Dinkins, Ann Garcia, and Nicole Sawa. Berbee's employees signed employment agreements containing convenants not to

compete with Berbee. Paragraph 8 of the employment agreement executed by Garcia and Dinkins (the "Garcia/Dinkins Agreement") provided as follows:

> . . . Employee agrees that while employed by Berbee and for a period of equal to his or her length of employment, but not greater than twelve (12) months from the termination of this Agreement for whatever reason, he or she shall not directly or indirectly, whether as an owner, stockholder, partner, employee, consultant, agent, independent contractor or otherwise, for himself or herself, or on behalf of any other person or entity, engage directly or indirectly, or enter into any aspect of the business of Berbee (as such business activities exist as of the date of his or her termination of employment).
>
> The forms of competition prohibited by this paragraph shall include, but not be limited to, the following activities to the extent that any of them are competitive with the business of Berbee: (a) soliciting or assisting in the solicitation of customers of Berbee; (b) supplying goods or rendering services or assisting in such activities, to customers of Berbee; (c) diverting or attempting to divert any customer's business from Berbee or otherwise interfering with the business relationships between Berbee and its customers; (d) planning for or the organization of any business activity competitive with Berbee's business; (e) combination or conspiracy with other employees of Berbee for the purpose of acquisition of any such competitive business activity; (f) actively soliciting for hire any employees of Berbee; or (g) use or dissemination of Confidential Business Information, except in furtherance of the business interest of Berbee (subject to the provisions of paragraph 4 hereof).

Garcia/Dinkins Agreements. The employment agreement executed by Nicole Sawa also contained a covenant not to compete. In both versions of the employment agreement, competition was restricted as to "Berbee." While there was no mention of restrictions on competition with any other company, the agreements specifically state that they are binding with regard to any successors of the respective parties.

A. Relationship Between Plaintiffs

The Plaintiffs in this case are CDW LLC and two of its subsidiaries, CDW Direct

LLC, and Berbee. CDW LLC is the parent company of these and other subsidiaries, including CDW Government. Berbee became a subsidiary of CDW LLC on September 16, 2006 when it merged with CDW Acquisition Sub, Inc, which was created only for purposes of acquiring Berbee. Rother Decl. ¶¶ 4-5. CDW LLC paid $184,000,000 to purchase Berbee. Id. ¶ 4. Both parties agree that Berbee was the surviving corporation as a result of this merger.[1] Id. ¶ 6. All of these CDW entities sell hardware, software, and technology parts and services. However, they each sell these products to different commercial entities. For instance, CDW Direct sells to commercial businesses and not-for-profit organizations, and CDW Government sells to local, state, and federal governments, educational institutions, and healthcare facilities.

Following the merger, some Berbee employees were transferred to work for other CDW entities, including CDW Direct and CDW Government. For instance, Garcia and Dinkins became employees of CDW Direct in July of 2008. Sawa became an employee of CDW Direct in June 2009. Plaintiffs stress that this change in employment was part of several measures to integrate Berbee with CDW LLC and thus Plaintiffs characterize the employees' transfer from Berbee to CDW Direct as "internal," despite the undisputed fact that CDW Direct and Berbee are separate subsidiaries of CDW LLC. Despite the transfer, these employees continued to perform the same work for the same clients, from the same

[1]Approximately one year after the merger took place, Berbee's name was officially changed to "CDW Berbee." Rother Decl. ¶ 9. Then, in June 2010, this entity was renamed "CDW Technologies." Id. ¶ 12. However, we will shall use the name Berbee throughout this entry.

offices, and with the same supervisors. Rother Decl. ¶ 7. The employees did not sign new employment agreements as part of their transfers.

Eventually, Garcia, Dinkins, and Sawa all left employment at CDW Direct to work for NETech. Shortly after their departure from CDW Direct, all three received letters from Plaintiffs' law firm stating (in relevant part) as follows:

> I represent Berbee Information Networks Corporation and CDW LLC. It has come to my clients' attention that you have become employed by NETech Corporation in violation of certain promises you made in [your employment agreement]. . . .
>
> As you know, the Agreement prohibits you, [for a period specified in each employment agreement], from working with or for a competitor and from soliciting certain of your former colleagues and customers. The Agreement also prohibits you from using or disclosing any of my clients' confidential or secret information, or other technical, business, proprietary or financial information that is not available to the public generally or to competitors. In addition, you specifically agreed that when you left your job, you would promptly return *all* records, memoranda, notes, plans, reports computer tapes and software and other documents and data which constitute Confidential Business Information.
>
> We demand that you ***immediately*** return any and all information related to Berbee and CDW that is in your possession, whether that information is: (i) a hard copy document; (ii) on a work, home, or laptop computer; (iii) on a blackberry, PDA, iPhone, or cell phone; or (iv) on an external hard drive, thumb drive, or any other peice of extenal medial that permits the storage of information. You cannot keep any copies. You must collect any information that you may have given to others (and all copies) and return that as well. You cannot review or use any of this information.
>
> In addition to requiring the return of all information related to your former employment, as noted above, the Agreement also prohibits you from being employed by a competitor for . . . short period of time after leaving your job. NETech Corporation is clearly competitive with . . . [the] core business of Berbee, as well as with CDW, and we demand that you honor your agreement and cease any work for NETech for at least the term outlined in the

> agreement. To the extent that there was any confusion over whether NETech is a competitor, we write to let you know (pursuant to Section 8 of the Agreement) that NETech is a competitor, and we attach as Exhibit 2 to this letter a representative, non-exhaustive list of other competitors that the Agrement bars you from joining for the limited restricted period. If our information is not correct, and you have not become an employee of NETech in violation of the Agreement, please let me know as soon as possible.
>
> Because we believe you are working for NETech, I am also writing to inform you that my clients may have legal claims against you. Therefore, you must preserve and not destroy documents (including all e-mail and other electronically stored information) relating to Berbee or CDW (that is not otherwise required to be returned), or your recruitment, hiring, or work at NETech, or any third party with whom you have discussed alternative employment. This includes, but is not limited to, any hard copy document and any e-mail in a personal e-mail account and includes all active, archived, and deleted e-mail – including on your home/personal computer. We demand that you ***immediately*** preserve all such information whether it is: (i) a hard copy document; (ii) on a work, home, or laptop computer; (iii) on a blackberry, PDA, iPhone, or cell phone; or (iv) on an external hard drive, thumb drive, or any other piece of external media that permits the storage of information. If any electronic system has a function that includes deleting materials automatically after a certain time period you must disable such a system so that all materials currently existing, and all materials created on a going forward basis, are preserved.
>
> We take this matter extremely seriously and it is my clients' policy to take swift, appropriate steps to protect their interests. Please direct all future communications to me.

Def.'s Ex. 8.

According to Garcia and Dinkins, they did not consider the referenced employment restrictions enforceable as to them and, thus, continued working for NETech. Garcia Decl. ¶ 10; Dinkins Decl. ¶ 10.

B. Procedural Background of the Litigation

In the Spring of 2010, Plaintiffs filed a Complaint against Defendant requesting, inter

alia, a preliminary injunction. Specifically, Plaintiffs sought an order enjoining NETech from using CDW's confidential information and trade secrets; contacting or soliciting CDW's customers; soliciting or hiring any current CDW workers or workers terminated within the past twelve months; and otherwise unfairly competing against CDW. An evidentiary hearing that spanned several days was conducted by the Court, on the basis of which Plaintiffs' motion for preliminary injunction was granted. Dkt. No. 96. The Court's order enjoined Defendant in the following terms:

> 1. NETech is enjoined from retention, communication, distribution, or other such use of any confidential materials or trade secret information obtained by CDW's former employees now employed by NETech, and shall forthwith diligently and thoroughly search for and relinquish to CDW any and all such materials in its possession.
>
> 2. NETech is enjoined from interfering with the former CDW employees' covenants not to compete or disclose confidential information in any way through territory or account assignments, or directing or encouraging contacts with accounts previously developed or serviced by the former CDW employees while those employees were employed by CDW, or from remunerating these employees for any such work produced on behalf of NETech; or in any other way employing, engaging, or otherwise assisting any former CDW employee to perform any duties or services that would in any respect violate the terms of his/her covenant not to compete and confidentiality agreement as well as this preliminary injunction, both of which prohibitions shall commence with the date of the issuance of this Order and extend for such a time as to be in accordance with the time periods contained in each relevant employee's non-compete agreement. This prohibition shall also be coextensive with the injunction in the parallel Wisconsin State Court litigation;
>
> 3. NETech is enjoined from recruiting or hiring any other CDW sales agents to perform work in Indiana who are subject to comparably drawn covenants not to compete, while at the same time placing them in the same territories they served when employed by CDW with responsibility for their former customer accounts, for the duration of and consistent with the non-compete agreements between CDW and its current and former employees. When and

> if NETech engages in future recruitment efforts targeted at CDW employees, notice of such contacts must be provided to NETech's counsel who shall thereafter communicate with CDW's counsel to ensure that those contacts are consistent with and do not encourage violations of the targeted employees' non-compete agreements;
>
> 4. NETech is not enjoined from attempting further sales to or servicing of CDW customers tied to or otherwise associated with the former CDW employees, so long as the contacts maintained by NETech with those customers are conducted by someone other than the former CDW employees, while such employees are subject to CDW non-compete agreements. Any such sales or servicing must be performed without reliance on confidential CDW materials or information which NETech may have access.
>
> 5. This Order in no way impacts or impairs the parties' rights in the related ongoing proceeding in Wisconsin State Court, CDW Direct, LLC, et al. v. Peterson et al., Case No. 10-cv-2144 (Wis.Cir.Ct. June 30, 2010), and shall therefore have no precedential impact on that or any other pending litigation.

Based on the evidence presented at the evidentiary hearing, the Court held that Plaintiffs' employment agreements with its former employees, including Dinkins and Garcia, were likely to be found valid and enforceable on the merits. Dkt. No. 96 at 16. We based our conclusion on the Wisconsin Supreme Court's decision in Star Direct, Inc. v. Dal Pra, which held that reasonable restrictions on solicitation of former customers and provisions ensuring the protection of confidential information were reasonable, enforceable restrictions. 767 N.W.2d 898 (Wis. 2009). We found another portion of the Star Direct holding – that otherwise reasonable portions of an employment agreement might be unenforceable if inextricably linked to another portion that is overly broad – inapplicable because the restrictions in Plaintiffs' agreements were specifically enumerated and divisible from potentially over-broad portions of the agreements. We also rejected NETech's argument that

Plaintiffs could not enforce the employment agreements by virtue of the fact that those agreements were made with Berbee instead of CDW. We so concluded based on the premise that CDW was the surviving entity after its merger with Berbee and based on controlling legal authority that such a surviving entity was entitled to enforce the agreement.[2] See Dkt. No. 96 at 12 n. 7.

At approximately the same time this Court had before it this litigation during the Spring of 2010, Plaintiffs initiated a parallel proceeding in Wisconsin state court against the individual employees who had left CDW's employ for NETech. A stipulated preliminary injunction was granted in that case enjoining those individual employees from violating the employment agreements that are at issue here in this case. CDW Direct, LLC, et al. v. Peterson et al., Case No. 10-cv-2144 (Wis. Cir. Ct. June 30, 2010).

On November 18, 2010, NETech filed a motion seeking a modification of the

[2]The day after the Court issued its preliminary injunction, NETech filed a "request for clarification" regarding this portion of the Court's holding. Dkt. No. 98. Specifically, NETech maintained that only Berbee could enforce the employment agreement because it, and not CDW, was the surviving entity following the merger between Berbee and CDW Acquisitions Sub, Inc. The importance of NETech's contention was two-fold. First, they requested that only Berbee be able to enforce the employment agreements, as opposed to its parent company, CDW, or its sister subsidiary, CDW Direct. Second, NETech hoped to exploit the distinction between these entities in order to support an argument that the employees were no longer employed by Berbee when CDW Direct became their employer, causing the clock on their respective employment agreements to begin to run on that date, rather than at the time they left CDW Direct to work for NETech.

The Court denied NETech's request for clarification, finding that is was actually a "disguised motion for reconsideration" of the Court's order granting Plaintiffs' Motion for Preliminary Injunction. Dkt. No. 102. We further noted that NETech had repeatedly raised this issue at the hearing but had failed to substantiate its theory with evidence or a brief on the subject, despite the Court's express grant of leave to do so. Id.

preliminary injunction (Dkt. No. 130). On January 31, 2011, the Court heard argument on that motion as well as on Plaintiffs' motion for an order to show cause why NETech should not be held in contempt. NETech's request was largely based on a decision handed down in the aforementioned parallel proceeding in Wisconsin that the Dinkins/Garcia employment agreement was void and unenforceable.[3] CDW Direct, LLC, et al. v. Peterson et al., Case No. 10-cv-2144 (Wis. Cir. Ct. Nov. 8, 2010). During that hearing, the Court expressed hesitancy about modifying its order based on the Wisconsin decision because that decision was not binding on this Court and because Plaintiffs represented that they intended to appeal the Wisconsin decision making any modification by this Court based on that decision premature. Following that hearing, the Court denied Plaintiffs' request for an order to show cause but, in recognition of the Wisconsin decision, modified Paragraph 2 of the preliminary injunction by substituting the final sentence of the paragraph ordering that the restriction be considered "coextensive" with the Wisconsin State Court litigation with the following

[3]The Wisconsin state court found that Paragraph 8 of the Dinkins/Garcia Agreement, as quoted above, contained three non-compete provisions: a non-competition covenant found in the first paragraph; a non-solicitation covenant in the second paragraph, sections (a), (b), (c), and (f); and a confidentiality covenant in the second paragraph, section (g). The court found the first non-competition provision, which Plaintiffs admitted they were not attempting to enforce, unreasonable because it contained no geographical restriction and because it found that it was not necessary for Plaintiffs' protection. Then, the court ruled the non-solicitation covenant unenforceable because it was considered indivisible from the non-competition provision. The court reasoned that only the non-competition provision from Paragraph 8 contained a time restraint. The only way to read the non-solicitation provision to contain a time restraint (without which, the provision would be unreasonable per se), according to the Wisconsin court, was to link it to the time limit imposed in the overly broad non-competition covenant. Thus, because the non-solicitation covenant could not be independently read, the court found that it, too, was unenforceable.

sentence: "This prohibition shall apply in all states except Wisconsin, in recognition of the ruling in the parallel Wisconsin State Court litigation and so long as it is in effect." [Docket No. 169]. The Court expressed its hope that this modification would quell both NETech's concern regarding its ability to employ individuals whose non-compete agreements had been deemed unenforceable by the Wisconsin courts and Plaintiffs' concern regarding the need to pursue additional litigation in other states.

Shortly thereafter, NETech filed the instant motion for partial summary judgment requesting that the Court find in its favor that: (1) the non-competition and non-solicitation provisions in the Garcia/Dinkins Agreement are unenforceable; and/or (2) the post-employment obligations contained in all versions of the employment agreements began to run when the employees were transferred from Berbee to CDW Direct. Both of these contentions relate to the merits of Plaintiffs' claim of tortious interference with contractual relationships against NETech. As discussed below, we agree with NETech with regard to the second of these contentions and that judgment thus should be entered in its favor on Plaintiffs' tortious interference with contract claim. We decline therefore to address the first of NETech's contentions since its resolution is unnecessary to the relief granted here.

II. Legal Analysis

Summary judgment is appropriate when the record shows that there is "no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c); Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). Disputes concerning material facts are genuine where the evidence is such that a reasonable jury could

return a verdict for the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). In deciding whether genuine issues of material fact exist, the court construes all facts in a light most favorable to the non-moving party and draws all reasonable inferences in favor of the non-moving party. See id. at 255. However, neither the "mere existence of some alleged factual dispute between the parties," id., 477 U.S. at 247, nor the existence of "some metaphysical doubt as to the material facts," Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986), will defeat a motion for summary judgment. Michas v. Health Cost Controls of Ill., Inc., 209 F.3d 687, 692 (7th Cir. 2000).

The moving party "bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of [the record] which it believes demonstrate the absence of a genuine issue of material fact." Celotex, 477 U.S. at 323. The party seeking summary judgment on a claim on which the non-moving party bears the burden of proof at trial may discharge its burden by showing an absence of evidence to support the non-moving party's case. Id. at 325.

Summary judgment is not a substitute for a trial on the merits, nor is it a vehicle for resolving factual disputes. Waldridge v. Am. Hoechst Corp., 24 F.3d 918, 920 (7th Cir. 1994). Therefore, after drawing all reasonable inferences from the facts in favor of the non-movant, if genuine doubts remain and a reasonable fact-finder could find for the party opposing the motion, summary judgment is inappropriate. See Shields Enterprises, Inc. v. First Chicago Corp., 975 F.2d 1290, 1294 (7th Cir. 1992); Wolf v. City of Fitchburg, 870 F.2d 1327, 1330 (7th Cir. 1989). But if it is clear that a plaintiff will be unable to satisfy the

legal requirements necessary to establish his or her case, summary judgment is not only appropriate, but mandated. See Celotex, 477 U.S. at 322; Ziliak v. AstraZeneca LP, 324 F.3d 518, 520 (7th Cir. 2003). Further, a failure to prove one essential element "necessarily renders all other facts immaterial." Celotex, 477 U.S. at 323.

NETech maintains that the post-employment contractual obligations of the former employees of Plaintiff Berbee began to run when those employees were transferred to CDW Direct. As noted above, the Court previously rejected this argument on the grounds that CDW LLC was the surviving entity following the merger. Subsequent briefing, however, makes clear that Plaintiffs now concede that Berbee was, in fact, the surviving corporation as a result of the merger between Berbee and CDW Acquisitions Sub, Inc., and not "CDW."[4] See Pls.' Resp. at 7-8. Following the merger of these two entities, Berbee continued on as a wholly owned subsidiary of CDW LLC. Likewise, CDW Direct is a CDW subsidiary and, thus, a "sister subsidiary" of Berbee.

The parties agree that the right to enforce employment agreements, such as those at issue in this case, pass through corporate mergers to the surviving entity. Farm Credit Serv. of North Central Wis., ACA v. Wysocki, 627 N.W.2d 444, 450-52 (Wis. 2001); Def.'s Reply at 14; Pls.' Resp. at 19. The parties also do not dispute that the surviving entity to the corporate merger, Berbee, can enforce the rights pursuant to the employment agreements (to the extent those rights exist). Rather, the parties' dispute centers on whether CDW, LLC (the

[4]The parties also agree that CDW Acquisition Sub, Inc. ceased to exist following the merger with Berbee.

parent company of Berbee) and/or CDW Direct (another CDW subsidiary) may enforce those rights. Our analysis convinces us that under Wisconsin law they cannot.[5] Berndt v. Fairfield Resorts, Inc., 337 F. Supp. 2d 1120, 1131 (W.D. Wis. 2004) ("Rights made by contract with a subsidiary are the subsidiary's rights alone. They do not automatically transfer to a parent company solely by virtue of common ownership."); Frier v. Vilione, 766 N.W.2d 517, 525 (Wis. 2009) ("a corporation does not 'have independent standing to sue for injuries done to a sister or subsidiary corporation, despite the fact that their businesses are intertwined and the success of one is dependent on that of the other.'")(quoting 1 William Meade Fletcher, Fletcher Cyclopedia of the Law of Corporations § 36 at 95-96 (perm. ed., rev. vol. 2006)). Thus, on the basis of the record now before us, we vacate our previous holding and find that neither CDW LLC or CDW Direct has the right to enforce the contractual rights possessed by Berbee.

Having determined that only Berbee may enforce the employment agreements at issue here, we address whether there is a genuine issue of material fact with regard to whether the employees' move from Berbee to its sister subsidiary, CDW Direct, constituted the "termination" of the employment agreement. NETech's position is that the employees left

[5]The cases Plaintiffs contend hold to the contrary are not binding and, more importantly, are entirely distinguishable. In Siemens Med. Solutions Health Serv. Corp v. Carmelengo, the district court simply held that the surviving company could enforce a covenant not to compete. 167 F. Supp. 2d 752, 759 (E.D. Pa. 2001). Here, as explained above, Plaintiffs concede that Berbee is the surviving company, not the parent, CDW LLC, or its sister subsidiary, CDW Direct. Moreover, in Williams v. Powell Elec. Mfg. Co., Inc., the court held that a *subsidiary* corporation could enforce part of a covenant not to compete entered into by the *parent*. But this holding has no bearing on a parent company's rights with respect to the contracts of its subsidiaries.

one corporation – Plaintiff Berbee – to work for another – CDW Direct – and in so doing, the post-employment obligations began to run at the time of those transfers, in which case any obligations they may have had towards Berbee expired at the time they left CDW Direct for employment at NETech.[6] Plaintiffs rejoin that, because the employees continued to perform the same job, for the same clients, in the same territories, reporting to the same supervisor, in the same location, and without any fundamental change in their job functions, their post-employment obligations did not begin to run until the employees left CDW Direct for NETech. We are unpersuaded by Plaintiffs' arguments in this regard.

There simply is no denying that Berbee and its sister subsidiary, CDW Direct, are separate and distinct corporate entities. While they are both subsidiaries of the same parent company, CDW LLC, but they are separate and distinct nonetheless. That fact dictates a finding that the transfers of employment from one such entity to another, whether to perform the identical duties, under identical circumstances, in the same place, marked the end of employment with one entity and the beginning of employment with another. As the Wisconsin Supreme Court observed in Krier:

---

[6]Rick Dinkins, Ann Garcia, Dan Ryan, and Chris Jones transitioned from employment for Plaintiff Berbee and to Plaintiff CDW Direct in July, 2008. Dinkins, Garcia, Ryan, Jones Declarations. Each of these employees had signed 12-month non-compete agreements. If the employees' transition to CDW Direct constituted a termination of their employment, it means that their respective post-employment obligations expired in July, 2009 – months before any of these employees began to work for NETech. Id. Nicole Sawa made a similar transition in June, 2009. Sawa Decl. ¶ 6. Thus, if her transition to CDW Direct constituted a termination of her employment with Berbee, her 6-month non-compete agreement with Plaintiff Berbee expired in December, 2009 – months before she began to work for NETech in April, 2010. Sawa Decl. ¶ 8.

> [The parties] cannot pick and choose when they would like to operate separately and when they would like to operate as one corporation. Their business's interdependence does not blur the entities' distinct corporate structures.
>
> A particular type of corporation may be the preferred method of doing business for any number of reasons including tax and liability implications, and these individuals chose to operate a business by creating separate and distinct corporate entities. Presumably, [Plaintiffs] made a conscious decision to create three different corporations with different types of corporate entities to carry out their operations. While they likely enjoyed certain advantages from doing business as three separate corporate entities, they also are bound by the disadvantages of forming separate corporations.
>
> The plaintiffs essentially assert that because the entities function as one overall business, corporate principles ought to be overlooked in the interest of justice. However, when [Plaintiffs] were joint owners of the three entities, if one of their corporate entities were being sued, [Plaintiffs] would not likely suggest that the corporations were actually interdependent such that the assets of all three entities would be available for damages. In fact, in a business such as waste disposal, there may be deliberate reasons to separate the entity that holds assets from other entities that might have greater exposure to liability. One cannot maintain the corporate structure when it inures to one's benefit and then ignore the constraints of corporate law when it does not. These parties formed separate entities that remain separate entities.

766 N.W.2d at 525. The cases cited by Plaintiffs do not establish that a transfer to a sister subsidiary does not constitute a change in employers. In Peters v. Davidson, for instance, the court held that a merger between the entity with which an employee had negotiated an employment agreement and another company did not terminate that employee's term of employment. 359 N.E.2d 556 (Ind. Ct. App. 1977). Likewise, in Am. Homecare Supply Mid-Atlantic, LLC v. Gannon, the court held that the subsidiary which was the former employer could enforce a restrictive covenant against that former employee, despite the fact that it was sold by one parent company to another. 10 Pa. D. & C.5th 362, 381-85 (Pa. Com.

Pl. 2009). As explained above, however, in our case, two successive events occurred: first, Berbee merged with CDW Acquisitions Sub, Inc., creating Berbee as the surviving entity; second, the individuals employed by Berbee were transferred to CDW Direct, another CDW LLC subsidiary. This second event, according to NETech, constituted a change in employment and we agree with that analysis . The cases cited by Plaintiffs, if applicable at all, would only be relevant with regard to the first of these two events. That is not the situation before us.

Whatever post-employment limitations obliged the former Berbee employees under their employment agreements were triggered when they ceased to work for that company. By the time the employees were hired by NETech, those obligations had expired. Thus, Plaintiffs' tortious interference claim fails as a matter of law.

III. Conclusion

As discussed herein, there are no genuine issues of material fact underlying Plaintiffs' tortious interference with contract claim against NETech, and NETech is entitled to judgment as a matter of law on this theory of relief. NETech's Motion for Partial Summary Judgment accordingly is GRANTED.

IT IS SO ORDERED.

Date: 02/16/2012

SARAH EVANS BARKER, JUDGE
United States District Court
Southern District of Indiana

16

Copies to:

Craig T Boggs
PERKINS COIE, LLP
cboggs@perkinscoie.com

Jeannil Boji
PERKINS COIE LLP
jboji@perkinscoie.com

Michael R. Brunelle
BARNES & THORNBURG LLP
mbrunelle@btlaw.com

David A. Given
FAEGRE BAKER DANIELS LLP - Indianapolis
david.given@faegrebd.com

Donald E. Knebel
BARNES & THORNBURG LLP
donald.knebel@btlaw.com

Dwight D. Lueck
BARNES & THORNBURG
dwight.lueck@btlaw.com

Brandy R. McMillion
PERKINS COIE LLP
bmcmillion@perkinscoie.com

Abiman Rajadurai
PERKINS COIE, LLP
arajadurai@perkinscoie.com

Jennifer Lynn Schuster
BARNES & THORNBURG LLP
jschuster@btlaw.com

Aaron M. Staser
BARNES & THORNBURG LLP
aaron.staser@btlaw.com

Eric E Walker
PERKINS COIE, LLP
ewalker@perkinscoie.com

Christopher B Wilson
PERKINS COIE LLP
cwilson@perkinscoie.com