STATE OF NORTH CAROLINA MECKLENBURG COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 22 CVS 9465
AIRTRON, INC., Plaintiff, v. LOGAN CHARLES BENTLEY and BRADLEY ALLEN HEINRICH, Defendants.	**ORDER ON MOTION TO COMPEL**

1. Pending is Plaintiff Airtron, Inc.'s motion to compel. (*See* ECF No. 59.) Defendant Bradley Allen Heinrich did not file a responsive brief, and the Court therefore treats the motion as uncontested. *See* BCR 7.6.

2. **Background.** This dispute goes back to October 2022, when Airtron served its first set of interrogatories (numbered 1 through 27) and requests for production of documents (numbered 1 through 28). Heinrich, who was represented by counsel at the time, responded to request for production 20 but did not respond to the other document requests or to the interrogatories. Shortly after, Heinrich's counsel withdrew.

3. In January 2023, Airtron submitted a Business Court Rule ("BCR") 10.9 discovery dispute summary. Heinrich did not respond to that submission. The Court convened a conference, which Airtron's counsel attended and which Heinrich attended without counsel. Because Heinrich conceded that he had responded only to one of Airtron's discovery requests, the Court ordered him to "serve full and complete

responses" within a reasonable time. (Order Following BCR 10.9 Conference, ECF No. 52.)

4. Following that order, Heinrich sent a document containing his interrogatory responses to Airtron's counsel. The document is unsigned and includes no responses to Airtron's requests for production. (*See* Pl.'s Ex. 6, ECF No. 59.6.) Citing these and other deficiencies, Airtron submitted a second BCR 10.9 discovery dispute. Again, Heinrich did not respond to the submission. Rather than hold another conference, the Court authorized Airtron "to file a discovery motion as permitted by BCR 10.9(c)." (Order on Airtron's BCR 10.9 Submission, ECF No. 54.)

5. Airtron did so. Its motion, though styled as a motion to compel, is chiefly a motion for sanctions. Airtron seeks not only complete discovery responses but also an order shifting some of its attorney's fees to Heinrich, striking his answer, and entering a default judgment against him. Having earlier chosen not to respond to either of Airtron's BCR 10.9 submissions, Heinrich also chose not to file a brief opposing its motion.

6. The Court scheduled a hearing for early May 2023. At that hearing, Airtron's counsel and Heinrich reported that they had reached a settlement, asked the Court to hold the motion to compel in abeyance, and advocated a stay of all other deadlines pending completion of certain terms of the settlement. The Court agreed to temporarily pause the case. (*See* Order, ECF No. 63.)

7. By June, the settlement had fallen apart. Airtron reported that Heinrich had refused to execute a confession of judgment as required by their agreement.

Failure to execute the confession rendered the agreement "null and void." (Settlement Agrmt. § 4, ECF No. 67.3.) At Airtron's request, the Court arranged a status conference to discuss prospects for resurrecting the settlement. Both sides attended and acknowledged that a settlement was unlikely. Accordingly, the Court lifted the stay and, because months had passed, called for supplemental briefing from both sides on the pending motion to compel. (*See* Scheduling Order, ECF No. 66.)

8. In its supplemental brief, Airtron adds a request to enforce the parties' void settlement agreement based on principles of judicial estoppel. Airtron also points to actions by Heinrich—separate from his deficient discovery responses—that it contends support an award of sanctions. (*See* Pl.'s Suppl. Br. 3–6, ECF No. 67.) Heinrich did not file a brief.

9. The Court held a hearing on Airtron's motion on 2 October 2023. Airtron was represented by counsel at the hearing; Heinrich represented himself. The motion is ripe for decision.

10. **Compliance with a Discovery Order.** If a party "fails to obey an order to provide or permit discovery," a trial court may order sanctions against that party. N.C. R. Civ. P. 37(b)(2); *see also Red Valve, Inc. v. Titan Valve, Inc.*, 2019 NCBC LEXIS 57, at *40–41 (N.C. Super. Ct. Sept. 3, 2019) (collecting cases). Here, the question is whether Heinrich obeyed the order to provide full and complete responses to Airtron's interrogatories and document requests.

11. There is no dispute that Heinrich fully and completely responded to some interrogatories. Airtron concedes, for example, that the responses to interrogatories 5, 6, 12, 13, 15, 19, 23, and 26 are sufficient.

12. His responses to interrogatories 17, 20, and 21 are also sufficient despite Airtron's dissatisfaction. Interrogatory 17 asks for information regarding communications relating to a specific electronic file. Heinrich's response—that there were "None"—is adequate. Interrogatories 20 and 21 are incoherent, apparently because language from one was accidentally switched with language from the other. Given the incoherence of the questions posed to him, Heinrich's responses of "???" and "I do not have that information" are reasonable in context.

13. And the Court will grant some leeway as to Heinrich's responses to interrogatories 22 and 25, though for different reasons. His response to interrogatory 22 makes clear that he has no information that Airtron does not already possess. His response to interrogatory 25 is a reasonably detailed recitation of his employment history. Both answers substantially comply with the Court's order even if Heinrich may not have dotted every *i* or crossed every *t*.

14. But many other responses are deficient. To interrogatories 10, 11, and 24, Heinrich responded, "I object to this interrogatory." The time to object passed long ago, and even if it had not, a boilerplate objection is equivalent to no objection at all. Heinrich's nonresponse violates the Court's order.

15. Heinrich also failed to provide complete answers to interrogatories 9, 14, and 18. Each asks Heinrich for information about his employment with American

Builder Services, Inc. and his affiliation with RH Mechanicals, Inc. (supposedly a name that American Builder Services used when doing business). Although Heinrich states that Sean Poccia was his direct supervisor at American Builder Services and that his employment ended in June 2022, his answers leave out other requested information. This information includes, among other things, the names and job titles of anyone who reported to Heinrich, the names and job titles of others in his chain of command, and descriptions of communications related to his separation from American Builder Services.

16. The same is true for interrogatories 1 through 4 (which ask for information related to communications involving Airtron, its confidential information, its customers, and similar matters); interrogatories 7 and 8 (which ask for information related to communications involving services and equipment provided to certain customers); and interrogatory 16 (which asks for information related to communications involving two of Airtron's confidential documents). In his responses, Heinrich acknowledges having had relevant communications but gives only generalities about them. He does not identify any individual communication—apart from one e-mail exchange with Poccia—or provide details about the participants, date, format, and substance of his communications on these topics.

17. Interrogatory 27 asks for information pertaining to "the Emails Referenced in the Amended Complaint." In response, Heinrich states, "These were sent to my lawer [sic]." Now that he is self-represented, Heinrich may not refer Airtron to his

former counsel. The responsibility to answer Airtron's discovery requests falls to Heinrich himself.

18. Finally, Heinrich does not dispute Airtron's assertion that he failed to respond in any way to its requests for production 1–19 and 21–28. This, too, is a failure to obey the Court's order.

19. **Sanctions.** Trial courts have broad discretion under Rule 37(b) when choosing appropriate sanctions to address a party's failure to obey an order to permit discovery. *See, e.g.*, *Feeassco, LLC v. Steel Network, Inc.*, 264 N.C. App. 327, 337 (2019). "The sanction imposed should be proportionate to the gravity of the offense." *Kixsports, LLC v. Munn*, 2019 NCBC LEXIS 62, at *26 (N.C. Super. Ct. Sept. 30, 2019) (quoting *Montaño v. City of Chicago*, 535 F.3d 558, 563 (7th Cir. 2008)).

20. Airtron seeks an order striking Heinrich's answer and entering default judgment against him. These are "severe sanction[s] which should only be imposed where the trial court has considered less severe sanctions and found them to be inappropriate." *Few v. Hammack Enters., Inc.*, 132 N.C. App. 291, 299 (1999).

21. The Court declines to impose severe sanctions. Contrary to Airtron's arguments, Heinrich has not "displayed a complete disregard for this tribunal's authority" or "demonstrated a blatant refusal to participate in this litigation." (Br. in Supp. 11, ECF No. 60.) Although Heinrich has yet to submit any written argument, he attended his deposition and has appeared at every conference and hearing. He also made an effort, albeit imperfect, to comply with the Court's discovery order—for example, meeting the deadline set in that order and providing

substantially complete responses to more than a dozen interrogatories. To be sure, the deficient responses outnumber the compliant responses. But this appears to reflect Heinrich's unfamiliarity with civil litigation as a nonlawyer rather than truly willful disobedience. Striking his answer and entering judgment against him would be unjust and would run contrary to "the general purpose of the Rules to encourage trial on the merits." *Moore v. Mills*, 190 N.C. App. 178, 180–81 (2008) (quoting *Am. Imps., Inc. v. G.E. Emps. W. Region Fed. Credit Union*, 37 N.C. App. 121, 124 (1978)).

22. Lesser sanctions are adequate to address Heinrich's conduct and to give Airtron a full and fair opportunity to develop its case through discovery. First, Heinrich must supplement his discovery responses. This means that Heinrich must answer interrogatories 10, 11, and 24 rather than state an objection and complete his answers to interrogatories 1–4, 7–9, 14, 16, 18, and 27 by adding the requested information that his earlier answers left out. It also means that Heinrich must respond to Airtron's requests for production. To be more specific, Heinrich must produce documents in his possession that are responsive to Airtron's requests even if he has already provided those documents to his former counsel. If no responsive documents exist for a given request or if Heinrich does not possess the documents, he must say so.[1]

[1] During the hearing, Heinrich suggested that he was reluctant to answer some of the requests fully out of concern that Airtron would use his confidential information outside this litigation. Much earlier in the case, the Court entered a protective order to govern the disclosure of confidential information. (*See* Consent Protective Order, ECF No. 39.) Heinrich may, under the terms of that order, designate material as confidential in good faith and thereby prevent its misuse.

23. Second, Airtron may depose Heinrich again following receipt of his supplemental responses. This will allow Airtron to explore Heinrich's written responses and to test those responses for completeness and truthfulness. It will also go far in curing any prejudice that may have resulted from delay and in ensuring that Airtron receives all the information it seeks.

24. Third, a monetary sanction is appropriate. By rule, "the court shall require the party failing to obey the order to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust." N.C. R. Civ. P. 37(b)(2). Heinrich's failure to obey was not substantially justified. But because Airtron has prevailed only in part, a partial fee award is fair. It would be unjust to award expenses related to the preparation of Airtron's opening and supplemental briefs, which chiefly consist of unpersuasive arguments in favor of severe sanctions. It is entirely fair, though, to require Heinrich to reimburse Airtron for the reasonable expenses that it incurred in preparing for and attending the hearing on 2 October 2023.

25. The parties are advised that further noncompliance may result in more severe sanctions. Heinrich's decision to represent himself in this litigation does not relieve him of the obligation to produce discovery, comply with court orders, or review

and follow governing rules. Neither does it exempt him from the standards of civility and decorum that this Court expects of all counsel and litigants.[2]

26. **Settlement Agreement.** In its supplemental brief, Airtron asks the Court to enforce the parties' void settlement agreement. The case that it cites does not support its position. There, a litigant represented to a trial court that he had agreed to a conditional settlement but later refused to sign the settlement agreement once the condition had been satisfied. Citing principles of judicial estoppel, the North Carolina Supreme Court enforced the agreement. *See Powell v. City of Newton*, 364 N.C. 562, 566–67, 569–71 (2010). Here, by contrast, Heinrich signed the parties' agreement. That agreement, which Airtron drafted, included a provision that rendered it "null and void" when Heinrich failed to execute a confession of judgment. (Settlement Agrmt. § 4.) As a result, there is no settlement agreement for the Court to enforce because, by its terms, the agreement is void. Airtron's request is, in reality, a request to excise section 4 and enforce everything else. But that was not the parties' bargain, and the Court sees no lawful basis to impose settlement terms that differ from their agreement.

27. **Conclusion.** For all these reasons, the Court **GRANTS in part** and **DENIES in part** Airtron's motion to compel. The Court **ORDERS** as follows:

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[2] During his deposition in April 2023, Heinrich allegedly threw his driver's license at the court reporter, "slamm[ed] documents on the conference table," and repeatedly interrupted the deposing attorney. (Ruiz-Uribe Aff. ¶¶ 2–4, ECF No. 67.1; Holscher Aff. ¶¶ 3–8, ECF No. 67.2.) The Court will, if necessary, consider this alleged conduct in the context of the whole record should the need to impose sanctions arise again in the future.

a. On or before 26 October 2023, Heinrich shall serve full and complete responses to interrogatories 1–4, 7–11, 14, 16, 18, 24, and 27 and requests for production 1–19 and 21–28. Heinrich must sign his responses.

b. Airtron may depose Heinrich for a second time on or before 9 November 2023. The parties shall meet and confer to choose a mutually agreeable date.

c. Airtron shall recover from Heinrich its reasonable expenses, including attorney's fees, incurred in preparing for and attending the hearing on 2 October 2023. The Court strongly encourages the parties to stipulate to the amount of these expenses. If the parties do not stipulate to the amount, however, Airtron may file its fee petition and supporting materials on 19 October 2023. Heinrich may file an opposition on or before 2 November 2023.

d. In all other respects, Airtron's motion to compel is **DENIED**.

e. Finally, the Court notes that Heinrich has failed to comply with three separate orders to associate himself to this case as a pro se litigant. (*See* Order on Mot. Withdraw, ECF No. 45; Order, ECF No. 47; Scheduling Order.) On its own motion, the Court reiterates its previous order that Heinrich must associate himself to this case for the purpose of receiving service through the e-filing system. As noted, "[c]ontinued failure to

associate to this case as a pro se litigant may be deemed willful." (Scheduling Order.)

SO ORDERED, this the 5th day of October, 2023.

/s/ Adam M. Conrad
Adam M. Conrad
Special Superior Court Judge
for Complex Business Cases