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Rival Court Reporting Cos. Settle Fight Over Sales Execs

By **Rosie Manins**

Law360 (September 1, 2022, 2:37 PM EDT) -- Competing court reporting companies settled a case over the employment of two executives Thursday, telling a Georgia state trial court they came to an agreement on the eve of a hearing for a temporary restraining order.

Planet Depos LLC, based in Washington, D.C., will pay Atlanta-based Esquire Deposition Solutions LLC \$150,000 to continue to employ former Esquire executives Grace Chance and Jaclyn Geller.

Chance and Geller, who for years each generated more than \$3 million in annual business revenue for Esquire's predecessor, will remain on Planet Depos' roster without doing any work for the company for nine months from their July 25 resignation from Esquire.

"Sounds like an enjoyable nine months," Georgia State-wide Business Court Judge Walter W. Davis said from the bench during a Thursday hearing.

The judge had been due to hear arguments on a **motion** by the executives and Planet Depos for a temporary restraining order and preliminary injunction against Esquire, which had allegedly threatened to enforce two-year restrictive covenants against the executives through litigation in New York.

Counsel for Planet Depos told Judge Davis the parties had worked late into Wednesday night to agree on settlement terms, which will be formalized in a written agreement.

"They'll be employed but not competing in any fashion [during the nine-month period]," Jeffrey M. Schwaber of Stein Sperling Bennett De Jong Driscoll PC, an attorney for Planet Depos, said of Chance and Geller. "They can be employed by Planet Depos, they can tell the world they're employed by Planet Depos, they can be on the Planet Depos payroll, they can learn Planet Depos' computer systems, they can come to holiday parties and the like. They can't do the business of Planet Depos for nine months."

Schwaber said the executives also won't solicit any business for Planet Depos from any client they were the sales representative for at Esquire or its predecessor in the last two years, for an 11-month period from the date of their resignation.

Additionally, Chance and Geller, based in Florida and Maryland, respectively, will not solicit or hire for Planet Depos any court reporters who to their knowledge have worked for Esquire and not Planet Depos, during that 11-month period. And for two years from their resignation date, the executives will not solicit Esquire employees, Schwaber said.

Counsel for Esquire said the company will pay Chance and Geller their outstanding commissions and residual payments for work they did before resigning. Jeffrey A. Kimmel of Akerman LLP, an attorney for Esquire, said the language of the agreement might be tweaked as it is put down on paper, but that all material details have been agreed upon.

Chance and Geller have also agreed to honor their confidentiality and trade secret obligations to Esquire under contracts they had with its predecessor, New York-based court reporting company TSG Reporting Inc., which Esquire acquired in May.

The acquisition is what drove Chance and Geller to Planet Depos, case filings show.

Shortly after Esquire took over TSG, customers complained to Chance and Geller about a lack of communication and responsiveness and the company's inability to provide the type and caliber of in-person support they had come to rely on, per a **complaint** filed by the executives and Planet Depos against Esquire.

The plaintiffs said TSG delivered "white glove" services in contrast to Esquire, which has a reputation for quantity over quality and which "caters to insurance companies and other customers for whom cost is the overriding concern."

Chance and Geller were also worried about potential changes in their job titles and commissions under Esquire, they said. They were allegedly reassured in early May by TSG CEO Michael Rixon that the restrictive covenants in their contracts were not enforceable and that he would help them move their books of business to another court reporting agency if they were unhappy with Esquire.

But while negotiating jobs with Planet Depos in anticipation of resigning from Esquire, Chance and Geller said Esquire threatened to sue them in New York in order to enforce the restrictive covenants.

The executives, together with Planet Depos, preemptively filed their suit against Esquire in Georgia on the day of their resignation, seeking a declaratory judgment that the restrictive covenants are unenforceable as overbroad and constituting illegal restraint of trade under Georgia law. They sought a temporary and permanent injunction against Esquire to bar the company from enforcing or trying to enforce the employment restrictions.

Chance and Geller were among TSG's top earners, per their complaint.

"Chance, for example, generated substantial business through a childhood friend who is the president of a top Am Law 100 firm," the plaintiffs said. "Geller, a former paralegal at a national law firm, generated substantial business through family and social relationships maintained with lawyers on Capitol Hill and in the D.C. area."

Chance was hired by TSG as an account manager in 2008 and Geller joined the company in that capacity in 2010, case filings show. In 2015, Chance was promoted to vice president of business development and Geller to vice president of sales. Both became senior vice presidents in 2018.

Chance, Geller and Planet Depos are represented by Michelle W. Johnson and Amy B. Cheng of Nelson Mullins Riley & Scarborough LLP and Jeffrey M. Schwaber and Judith G. Cornwell of Stein Sperling Bennett De Jong Driscoll PC.

Esquire is represented by Sul A. Kim, Ana C. Dowell, Jeffrey A. Kimmel and Jason S. Oletsky of Akerman LLP.

The case is Chance et al. v. Esquire Deposition Solutions LLC, case number 22-GSBC-0011, in the Georgia State-wide Business Court.

--Editing by Patrick Reagan.