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Dated: February 24, 2011

REDFIELD T. BAUM, SR
U.S. Bankruptcy Judge

6
 7 IN THE UNITED STATES BANKRUPTCY COURT
 8 FOR THE DISTRICT OF ARIZONA

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| <p>9 In Re:</p> <p>10 JOHN R. ROSE,</p> <p>11 12 Debtor,</p> <hr/> <p>13 SEYCHELLES ORGANICS, INC., a 14 Delaware corporation,</p> <p>15 Plaintiff,</p> <p>16 vs.</p> <p>17 JOHN R. ROSE,</p> <p>18 Defendant.</p> | <p>Proceedings Under Chapter 11</p> <p>Case No. 2:10-bk-04373-RTB</p> <p>Adversary Case No. 2:10-ap-01006-RTB</p> <p>FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER PURSUANT TO THIS COURT'S MINUTE ENTRY DATED DECEMBER 16, 2010 (DKT. # 21)</p> |
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20 **I. BACKGROUND AND PROCEDURAL HISTORY**

21 1. On March 16, 2009, the Third Judicial District in and for Salt Lake County,
 22 Utah (the "Utah Court") entered a temporary restraining order ("TRO") ordering John
 23 Rose ("Rose") to comply with a covenant not to compete ("CNTC") that he executed in
 24 favor of Seychelles Organics, Inc. ("Seychelles").

25 2. On May 20, 2009, the Utah Court entered a Preliminary Injunction that
 26 ordered and required Rose to comply with the CNTC.

27 3. Notwithstanding the Court's order, Rose continued to engage in conduct
 28 that violated the CNTC.

1 4. Accordingly, Seychelles filed a Motion and Order to Show Cause as to Why
2 Defendant Rose Should Not Be Held In Contempt on February 3, 2010.

3 5. The Utah Court set an Order to Show Cause hearing on February 23, 2010.

4 6. On February 22, 2010, the day before the Order to Show Cause hearing,
5 Rose filed a Chapter 13 bankruptcy petition with this Court.

6 7. On March 10, 2010, Seychelles filed a Motion to Lift Stay for the limited
7 purpose of allowing the Utah contempt proceeding to continue against Rose, and on June
8 4, 2010, Seychelles initiated this adversary proceeding.

9 8. On September 20, 2010, the parties filed their amended Joint Pretrial
10 Statement (Dkt. # 15), which contains a statement of stipulated facts as well as a
11 stipulation to admit certain witnesses and exhibits. The Amended Pretrial Statement is
12 hereby incorporated by this reference, as if fully set forth herein. .

13 9. This matter came on for trial to the Court on November 10, 2010, and the
14 Court admitted Exhibits 1 through 24 (*see* Dkt. # 19), which are hereby incorporated by
15 this reference, as if fully set forth herein.

16 10. The Court returned its ruling on December 16, 2010 (Dkt. # 21), which is
17 hereby incorporated by this reference as if fully set forth herein, and made the following
18 findings of fact and conclusions of law:

19 **II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

20 11. In November 2006, Seychelles purchased Rose's cosmetic products for a
21 price of seven million dollars and Rose gave Seychelles a CNTC. The CNTC precluded
22 Rose or any Rose company from producing or selling any similar cosmetic products in the
23 United States or Canada or to any prior customer of Seychelles.

24 12. The CNTC had a term of three years.

25 13. Rose's employment with Seychelles ended on August 1, 2007 and
26 Seychelles and Rose then entered into an independent contractor agreement.

27 14. Seychelles sued Rose in Utah to enforce the CNTC.

28 15. On March 6, 2009, by stipulation a TRO was entered enforcing the CNTC.

1 16. On May 20, 2009 that TRO became a preliminary injunction.

2 17. During the period 2008 through most of 2010, Rose sold \$534,342.75 (gross
3 sales) indirectly through his various companies cosmetic products.

4 18. Rose sold \$103,904 to Aarisse, a New Jersey company that was a customer
5 of Rose prior to Rose’s sale of cosmetic products to Seychelles.

6 19. Rose sold \$74,576.29 to Khonsu, another customer of Rose prior to Rose’s
7 sale of cosmetic products to Seychelles.

8 20. Rose sold \$256,716.00 to Wisdom Natural Brands, a company located in
9 Gilbert, Arizona.

10 21. The CNTC is valid and enforceable.

11 22. Rose violated the CNTC when companies that he was associated with sold
12 products to Aarisse, Khonsu, Wisdom Natural Brands and other companies located in the
13 United States.

14 23. Seychelles was damaged by Rose’s conduct.

15 24. Seychelles’ damages that were incurred after the Utah Court entered the
16 TRO and preliminary injunction are not dischargeable under Section 523(a)(6) because
17 such post-order actions violate public policy.

18 **III. ORDER**

19 In light of the foregoing Findings of Fact and Conclusions of Law, IT IS HEREBY
20 ORDERED that:

21 25. Rose’s actions violated the CNTC;

22 26. Rose’s actions violated the TRO and preliminary injunction entered by the
23 Utah Court;

24 27. Rose’s actions damaged Seychelles in an as yet undetermined amount;

25 28. Seychelles’ damages that were incurred after the Utah Court entered the
26 TRO and preliminary injunction are not dischargeable in bankruptcy.

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28 **DATED AND SIGNED ABOVE**