Fulton County Superior Court
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Cathelene Robinson, Clerk

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

ROGER STONECIPHER, **Plaintiff,** **v.** **PANGBORN, LLC,** **UNITED GENERATIONS, LLC,** **Defendants.**	**Civil Action File No: 2021CV344987**

ORDER ON CROSS MOTIONS FOR SUMMARY JUDGMENT

On August 9, 2022, this matter came before the Court for a hearing on Plaintiff's Motion for Partial Summary Judgment ("Plaintiff's Motion") and Defendants' Motion for Summary Judgment ("Defendants' Motion"). Based on the governing law, the briefing, evidence, arguments of counsel, and the entire record, the Court hereby makes the following findings of fact and conclusions of law.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff Roger Stonecipher ("Stonecipher" or "Plaintiff") was employed by Defendant Pangborn, LLC ("Pangborn") as its president from June 2017 until February 10, 2020. See Deposition of Pangborn, LLC ("Pangborn Dep.") 15:8-17; Exhs. 4, 13. During the 2 years and 9 months of Mr. Stonecipher's tenure as president, Pangborn was wholly owned by United Generations, ("United Generations"). See Defendants Pangborn, LLC and United Generations, LLC's Answer & Defenses to Plaintiff's Complaint ("Answer") at ¶ 6.

On February 17, 2020, the parties entered into an agreement memorializing Plaintiff's termination (hereinafter "Separation Agreement"), which Defendants drafted and presented to Plaintiff on the day of his termination. The Separation Agreement states that "it supersedes all prior agreements, understandings and practices concerning such matters, including, but not limited to, any Company personnel documents, handbooks, policies, incentive or bonus plans or programs, and any prior customs or practices of the Company." Next, the Separation Agreement states that Defendant Pangborn[1] "will pay [Plaintiff], [his] Long-Term Incentive in [Confidential Dollar Amount]".

As to the separation payment, the Separation Agreement provides, in relevant part:

> ***Subject to audited financials, the Company will pay you, your Long-Term Incentive in [Confidential Dollar Amount] over the next twenty-four months*** in the amount of [Confidential Monthly Dollar Amount] each month less applicable taxes. The amount will be payable to you by the Company in installments in accordance with the Company's normal payroll practices and schedule, beginning on the first regular Company pay date that occurs at least five (5) business days following expiration of the Revocation Period (defined below), and the installments will be subject to normal deductions for income and employment taxes.

Pangborn Dep., Exh 13 at ¶ 2(a) (emphasis added). The Separation Agreement further provides in paragraph 5(a):

> This agreement constitutes the complete understanding between you and the Company concerning all matters affecting your employment with the Company and the termination thereof. If you accept this agreement, ***it supersedes all prior agreements, understandings and practices concerning such matters, including, but not limited to, any Company personnel documents, handbooks, policies, incentive or bonus plans or programs, and any prior customs or practices of the Company.***

[1] Although the Separation Agreement provides that Pangborn as the "Company" will pay the contracted amount, both Defendants are arguably liable to pay the amount since the Separation Agreement is signed by Defendant United Generations and the only signature block is a corporate representative on behalf of United Generations.

Pangborn Dep., Exh 13 at ¶ 5(a) (emphasis added). Moreover, the Separation Agreement provides in the last paragraph, "[t]his agreement is intended to resolve all outstanding issues between you and the Company in a comprehensive manner." Pangborn Dep., Exh 13 at pg. 5. Additionally, the Separation Agreement provides that the "agreement and its interpretation shall be governed and construed in accordance with the laws of Illinois…." Pangborn Dep., Exh. 13 at ¶ 5(d).

When Defendants did not pay Plaintiff the sum certain set forth in the Separation Agreement, Plaintiff brought the instant action and, following discovery, filed a motion for summary judgment asserting that he is entitled to judgment as a matter of law. Defendants also moved for summary judgment, contending that because the Separation Agreement states that Defendant Pangborn "will pay [Plaintiff], [his] Long-Term Incentive . . . ," Defendant should be entitled to present evidence of whether Plaintiff met certain goals under this incentive plan as well as evidence of the terms and conditions of this plan.

LEGAL AUTHORITY AND ANALYSIS

Under the law of Illinois, "[s]ummary judgment is appropriate where the pleadings, depositions, admissions and affidavits on file, viewed in the light most favorable to the nonmoving party, reveal that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Kajima Const. Services, Inc. v. St. Paul Fire and Marine Ins. Co., 227 Ill.2d 102, 106 (Ill. Sup. Ct. 2007).

The Court turns first to Plaintiff's motion for partial summary judgment on his claim for breach of contract (Count 1).[2] "Summary judgment is generally appropriate when deciding questions of contract interpretation as it involves a question of law." Gomez v. Bovis Lend Lease,

[2] Plaintiff withdrew his motion for summary judgment as to his claim for breach of duty of good faith and fair dealing (Count 2), conceding that it is a question of fact for the factfinder.

Inc., 2013 IL App (1st) 130568, 5 (2013). See also William Blair & Co., v. FI Liquidation Corp., 358 Ill.App.3d 324, 334 (2005); Gallagher v. Lenart, 226 Ill.2d 208, 219 (2007). The material elements to establish a breach of contract claim are (1) the existence of a valid contract; (2) performance by the plaintiff; (3) breach by the defendant; and (4) damages resulting from the breach. See Sheth v. SAB Tool Supply Co., 2013 IL App (1st) 110156, 755 (2013).

"Traditional contract interpretation principles in Illinois require that:

> [a]n agreement, when reduced to writing, must be presumed to speak the intention of the parties who signed it. It speaks for itself, and the intention with which it was executed must be determined from the language used. It is not to be changed by extrinsic evidence."

Air Safety, Inc. v. Teachers Realty Corp., 185 Ill. 2d 457, 462 (Ill. Sup. Ct. 1999) (discussing the "four corners" rule of contract interpretation) (citation and internal quotations omitted). In applying the four corners rule, the court first looks to the language of the agreement alone. See id. at 462 (holding that when a contract contains an integration clause a court may not consider parol evidence in determining whether an ambiguity exist and the court must instead solely look at the language of the contract); see also Rakowski v. Lucente, 104 Ill.2d 317, 323 (Ill. Sup. Ct. 1984) (stating that both the meaning of a written agreement and the intent of the parties is to be gathered from the face of the document without assistance from extrinsic evidence). If the language is clear and facially unambiguous, the court then interprets the agreement as a matter of law as written, without the use of parol evidence. See id.

Whether a contract is ambiguous is a question of law for the court. See William Blair and Co., LLC v. FI Liquidation Corp., 358 Ill.App.3d 324, 334 (2005). "[T]he mere fact that the parties disagree as to the meaning of a term does not make that term ambiguous." Id. Moreover, "[a] contract term is ambiguous if it can reasonably be interpreted in more than one way due to the indefiniteness of the language or due to it having a double or multiple meaning." Id. "A contract

is not ambiguous, however, if a court can ascertain its meaning from the general contract language." Id.

Here, the Court finds that the Separation Agreement unambiguously excludes and, most importantly, supersedes the LTIP, any of its appendices, bonus plans, all prior agreements and documents concerning such matters, and the Company's practices and understandings concerning such matters. Specifically, Paragraph 5(a) provides:

> This agreement constitutes the complete understanding between you and the Company concerning all matters affecting your employment with the Company and the termination thereof. If you accept this agreement, *it supersedes all prior agreements, understandings and practices concerning such matters*, including, but not limited to, any Company personnel documents, handbooks, *policies, incentive or bonus plans or programs*, and any prior customs or practices of the Company.

Pangborn Dep. Exh. 5 at ¶5(a) (emphasis added).

Illinois law is clear that a merger (or integration) clause is designed to bind the parties to the terms of their written agreement. See Air Safety, Inc. v. Teachers Realty Corp., 185 Ill.2d at 464. When parties include an integration clause in their contract, they are "explicitly manifesting their intention to protect themselves against misinterpretations which might arise from extrinsic evidence." Id. "Under the parol evidence rule, extrinsic or parol evidence concerning a prior or contemporaneous agreement is not admissible to vary or contradict *a fully integrated writing*." Eichengreen v. Rollins, Inc., 325 Ill.App.3d 517, 521 (2001) (emphasis in original, internal quotations omitted). Therefore, when a contract contains an integration or merger clause, the court may not look at extrinsic evidence, unless the writing is incomplete or ambiguous. See id. at 522; see also Air Safety, Inc. v. Teachers Realty Corp., 185 Ill.2d at 464; Pecora v. Szabo, 94 Ill.App.3d 57, 63 (1981) (noting that the threshold question for the application of the parol evidence rule is whether a writing was intended by the parties to be a final and complete expression of the entire agreement).

Additionally, the Court finds that, contrary to Defendants' assertion, the LTIP is not "part of" the Separation Agreement at issue, but is expressly superseded by the Separation Agreement, and that the cases cited by Defendants for this proposition are distinguishable from the case at bar. In W.W. Vincent & Co. v. First Colony Life Insurance Co., the agreement at issue "refer[ed] to an attached disclosure schedule and detailed financial statement," and contained a merger clause providing:

> This Agreement, together with the Contracts executed and delivered pursuant hereto, supersedes all prior discussions and agreements between the parties with respect to the subject matter of this Agreement, *and this Agreement, including documents, certificates and contracts executed and delivered pursuant hereto*, contains the sole and entire agreement between the parties hereto with respect to the subject matter hereof.

351 Ill. App. 3d 752, 758 (2004) (emphasis added). Here, the Separation Agreement does not demonstrate that the parties intended the Separation Agreement to include the LTIP, the one-time exceptions, or the company's prior practices of calculating the LTIP, and further, the Separation Agreement does not expressly reference or incorporate the LTIP.

Likewise, in Westlake Financial Group, Inc. v. CDH-Delnor Health System, the agreement at issue specifically referenced the "WITS Program Service Agreement," attached it as an exhibit to the agreement, and stated that it was "*incorporated herein by reference.*" 2015 IL App (2d) 140589, 1172 (2015) (emphasis in original). Also, the merger clause in Westlake Financial Group provided, in relevant part: "This Agreement is the complete and exclusive agreement between the parties with respect to the subject matter hereof, superseding and replacing any and all prior agreements, communication, and understandings (both written and oral) regarding such subject matter *except for (i) that certain WITS Program Service Agreement*…." Id. at 1171 (emphasis in original). Here, the Separation Agreement does not "expressly incorporate the" LTIP and the merger clause does not "explicitly make[] an exception for the" LTIP. Id. Therefore, because the

Separation Agreement did not explicitly reference the "Long Term Incentive Plan," nor did it expressly incorporate the LTIP into the Separation Agreement by reference or attach it as an exhibit, the Court finds that the LTIP is not "part of" the Separation Agreement.

Turning next to Defendants' contention regarding the audited financials, the Separation Agreement provides that, "[s]ubject to audited financials, the Company will pay you, your Long-Term Incentive in the amount of [Confidential Dollar Amount] over the next twenty-four months…." After the Parties executed the Separation Agreement, Defendants informed Plaintiff that they no longer intended to pay him the amount agreed to in the Separation Agreement, based upon unilateral changes to the company's EBITDA calculations. See e.g. Pangborn Dep., 93:11-25 – 94:1-6, Exh. 15. Specifically, Defendants changed the LTIP target for 2017 and attempted to re-calculate Stonecipher's LTIP. See id. However, the Court finds that the amount and results of the audited financials are inapplicable here for two reasons. First, they are barred by the merger clause, and second, to interpret them would involve consulting a variety of communications and documents, all of which are specifically barred by the merger clause and the plain language of the Separation Agreement. Furthermore, the Separation Agreement is silent as to how the "audited financials" will change or effect the amount of the payment. Accordingly, the Court finds that all documents concerning the parties' negotiations, calculations, or the documents related to the LTIP should be excluded as a matter of law. See K's Merchandise Mart, Inc. v. Northgate Ltd. Partnership, 359 Ill. App. 3d 1137, 1143 (2005) (noting extrinsic evidence, parol or otherwise, is inadmissible to alter, vary or contradict the written contract). Cf. Hangebrauck v. Ernst & Young, LLP, 2017 Il. App. (1st) 153430-U (2017) (noting settlement agreement that did not mention Employment Agreement did not serve to merge or supersede the Employment Agreement).

For all of these reasons, the Court hereby GRANTS summary judgment in favor of Plaintiff on his breach of contract claim, as stated in Count I of the Complaint.

As to Defendants' motion for summary judgment as to Counts III of the Complaint, the Court finds that there is adequate evidence in the record to reserve Plaintiff's claim for attorney's fees for the factfinder at trial. Accordingly, the Court hereby DENIES summary judgment to Defendants on Count III.

CONCLUSION

Based on the foregoing, it is hereby

ORDERED, that Plaintiff's Motion for Summary Judgment is GRANTED as to Count I of the Complaint; and it is further

ORDERED, that Defendants' Motion for Summary Judgment is DENIED.

SO ORDERED, this 15th day of August, 2022.

Eric K. Dunaway
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Honorable Eric K. Dunaway
Judge, Superior Court of Fulton County
Atlanta Judicial Circuit

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