



Timothy Burke v. Community Brands Holdco, LLC and Community Brands Parentco, LLC

2024 | Cited 0 times | Superior Court of Delaware | January 4, 2024

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

TIMOTHY BURKE,)) Plaintiff,)) v.) C.A. No. N23C-05-012 JRJ) COMMUNITY BRANDS)
HOLDCO, LLC and COMMUNITY) BRANDS PARENTCO, LLC,)) Defendants.))

Date Submitted: September 6, 2023 Date Decided: October 26, 2023 Date Corrected: January 4, 2024 1

MEMORANDUM OPINION

Upon Defendants Motion to Dismiss: DENIED

Daniel C. Herr Esq., Daniel C. Herr, LLC, 1225 N. King Street, Suite 1000, Wilmington, DE 19801.
Attorney for Plaintiff.

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Wilmington, DE 19801. Attorney for Defendants.

Jurden, P.J.

1 This cover page has been corrected to reflect correct counsel for the defense at the time of this decision. I. INTRODUCTION

This is an action for declaratory judgment and breach of contract. Plaintiff

Plaintiff), claims Community Brands Holdco, LLC

Defendants) failed to remit payment owed to Burke from the alleged sale of Community

Brands. Community Brands moves to dismiss Burke was no breach of contract and Burke is not entitled to the compensation sought. For

the reasons that follow, Community Brands Motion to Dismiss is DENIED.

II. BACKGROUND



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A. Allegations

Burke began working for Community Brands in May 2018. 2 On November 27, 2018, Community Brands offered Burke a Award which he accepted and signed. 3 Contained within the Award is a details the awarded compensation. 4 The

Award contains the following provisions relevant to this dispute:

[t]he Award is intended to entitle the Participant to gain additional income from the Company sale expected within a future date. . . the Participation Level Award shall be based on the established market value price for the business. You are granted an equity opportunity

2 Compl. ¶ 4, Trans. ID 69926981 (May 1, 2023). 3 Ex. A, Trans. ID 69926981 (May 1, 2023). The Award was not a part of any offer Ans. Br. in Opp to Def Mot. to Dismiss at 3, Trans. ID 70658495 (Aug. 17, 2023). 4 ¶¶ 5-6. Collectively, the Community Brands Award and the Management Incentive with an earning potential of \$75,000.00 at 2.25x exit value or \$150,000 x exit 2.50. . . 2.50 or greater is the maximum opportunity. . . Participant shall immediately forfeit any opportunity for payment upon voluntary . Termination for Cause, Participant shall immediately forfeit any payment opportunity. .

. The Company will make such a provision for the withholding of taxes as it deems necessary. The participant is responsible for making the IRS aware of this award. 5

Up until the Fall of 2021, Ministry Brands was the parent company of

Community Brands. 6 Burke alleges that Community Brands spun-off Ministry Brands as a subsidiary sometime in the Fall of 2021. 7 This spin-off purportedly resulted in the sale of Community Brands, making Community Brands the parent organization to a number of subsidiaries. 8 According to Burke, as a result of the sale, he is owed compensation. 9

On December 21, 2021, Community Brands sent a letter to Burke at his residence, offering to promote him to Senior Director of Alliances, 10 increase his



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annual salary to \$150,000, and invite Offer 11

The Offer Letter was signed by

5 Id. 6 ¶ 8. 7 Compl. ¶ 7. 8 Id. 9 Id. ¶ 9. 10 Defs Mot. to Dismiss at 2, Trans. ID 70295563 (June 30, 2023); see also Compl., Ex. B, Trans. ID 69926981 (May 1, 2023). 11 Id. Community Brands on December 21, 2021 and by Burke on January 4, 2022. 12 The

Offer Letter contains a clause which states in pertinent part:

this offer letter sets forth the terms and conditions of your employment with the Company and supersedes any and all prior representations and agreements, whether written or oral . . . This offer letter is governed by Delaware law. 13

On January 13, 2023, Community Brands terminated Burke as

a result of restructuring. 14 On February 14, 2023, Burke contacted Community

Brands requesting payment allegedly owed to him under the Award. 15 On March

via letter stating

that Community Brands did not validly issue Burke any Award and, even if it did,

the Offer Letter superseded all prior agreements. 16

B. Procedural History

On May 1, 2023, Burke filed his Complaint requesting a declaratory judgment

against Community Brands and alleging, in the alternative, a breach of contract

claim. 17 Burke alleges that Community Brands breached the terms of the Award

12 , Ex. B. 13 Compl., Ex. B. 14 Compl. ¶ 10. 15 Defs Mot. to Dismiss at 3. 16 Compl. ¶ 11; see also ., Ex. B. 17 See Should the merger clause not apply to the Award and Community Brands was not sold, Plaintiff is requesting a declaratory judgment rendered in his favor and seeks relief on that basis. Alternatively, if the merger clause does not apply to the Award and Community Brands was sold in Fall 2021, then the requested relief falls under a breach of contract claim. . Br. in Opp to Def Mot. to Dismiss at 9. because it: (1) failed to provide Burke with payment from its Fall 2021 sale of



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Community Brands, and (2) continuously failed to recognize the Award as a valid, binding contract. 18 On June 30, 2023, Community Brands filed a Motion to Dismiss (b)(6), 19 arguing that the Offer Letter contains a merger clause which supersedes the Award. 20 On August 17, 2023, Burke filed an Answering Brief in Opposition to Defendants Motion to Dismiss, 21 arguing the Award and the Offer Letter are two separate agreements and the latter is not superseded by the former. 22 Additionally, Burke alleges the parties did not intend to Award by offering him a promotion. 23 On September 6, 2023, Community Brands submitted to the Court Defendants Reply Brief, reiterating its argument that the Offer Letter supersedes the Award and that Burke has no right to any further compensation. 24

III. STANDARD OF REVIEW

18 . 19 Super. Ct. Civ. R. 12(b)(6). Failure to state a claim. 20 Defs Mot. to Dismiss at 1. Although Community Brands argues in two sentences in its Motion to Dismiss that the Award is invalid, it provides no caselaw to support this argument and does not mention it again in any supplement Reply Brief. ; Def Reply Br. in Supp. of Their Mot. to Dismiss the Compl. at 6, Trans. ID 70805834 (Sept. 6, 2023). Further, Community Brands Reply Brief appears to concede the Award was a prior agreement when it argues, a prior written agreement, and that the Award controlled at one time. y Brief at 4- 5. 21 Pl. Ans. Br. in Opp to Def Mot. to Dismiss. 22 Id. at 1. 23 Id. at 5. 24 Def Reply Br. in Supp. of Their Mot. to Dismiss the Compl. at 2, Trans. ID 70805834 (Sept. 6, 2023). Pursuant to Superior Court Rule 12(b)(6), the Court may dismiss an action for

failure to state a claim upon which relief can be granted. 25 In reviewing a motion to dismiss, the Court will accept all well-pled allegations as true and draw every reasonable factual inference in favor of the non-moving party. 26 To survive a motion to dismiss, the non-moving party must show there is a reasonable conceivability for



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his contentions. 27 reasonable certainty that, under any set of facts that could be proven to support the

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IV. DISCUSSION

The issue raised is one of pure contractual interpretation whether the merger clause in the Offer Letter is limited to matters of employment or includes previously agreed-to management incentive awards. In interpreting the scope of a merger

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A merger clause is its] plain

meaning when its terms are unambiguous. 30 provisions in controversy are reasonably or fairly susceptible of different

25 Super. Ct. Civ. R. 12(b)(6). 26 Id. 27 Cent. Mort. Co. v. Morgan Stanley Mort. Capital Hldgs. LLC, 27 A.3d 531, 536 (Del. 2011). 28 Clinton v. Enter. Rent-A-Car Co., 977 A.2d 892, 895 (Del. 2009). 29 James v. United Medical, LLC, 2017 WL 1224513 at *5 (Del. Super. Mar. 31, 2017) (citing Paul v. Deloitte & Touche, LLP, 974 A.2d 140, 145 (Del. 2009)). 30 Focus Fin. Partners, LLC v. Holsopple, 241 A.3d 784, 822 (Del. Ch. 2020) (internal citations omitted). 31 When determining whether a merger clause extends to a prior

agreement, 32 This determination requires consideration

of 33 of the clause. Dismissal

may only occur when only reasonable

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Accepting the well-pled allegations as true and drawing all reasonable factual

inferences in favor of the non-movants, the Court cannot conclude as a matter of law

that Community Brand struction. interpretation that the Offer merger clause does not extend to the Award is



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a reasonable construction. Further, Community Brands fails to provide the Court with any law supporting its contention that an Offer Letter merger clause supersedes a prior agreement for a portion of company sale profits offered by the same company. earned restricted stock and that Burke would have earned it when

he executed the Award. 35 This would operate like an already vested bonus. 36 This makes sense. It then follows that the Offer Letter merger clause could be reasonably

31 Kaiser Aluminum Corp. v. Matheson, 681 A.2d 392, 395 (Del. 1996). 32 MicroStrategy Inc. v. Acacia Research Corp., 2010 WL 5550455, at *13 (Del. Ch. Dec. 30, 2010). 33 Carrow v. Arnold, 2006 WL 3289582 at *4 (Del. Ch. Oct. 31, 2006). 34 Vanderbilt Income and Growth Associates, LLC v. Arvida/JMB Managers, Inc., 691 A.2d 609, 613 (Del. 1996). 35 Pl. Opp to Defs Mot. to Dismiss at 6. 36 Id. interpreted to pertain solely to other employment agreements discussing salary,

bonus eligibility, and specifications of the position; but not previously paid out bonuses or allocated stock. Because there are multiple reasonable constructions of the merger clause, the Court finds the merger clause ambiguous. Accordingly, Community Brands Motion to Dismiss must be DENIED.

V. CONCLUSION

For the reasons stated above, the Court finds the merger clause in the Offer Letter is ambiguous and Community Brands is DENIED.

IT IS SO ORDERED.

/s/ Jan R. Jurden

Jan R. Jurden, President Judge

cc: Prothonotary

