IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

WORLD MARKET CENTER VENTURE, LLC and RELATED WORLD MARKET CENTER LLC Plaintiffs, v. NAMA HOLDINGS, LLC Defendant.	C.A. No. 5131-VCL

MEMORANDUM OPINION

Date Submitted: April 21, 2010
Date Decided: April 30, 2010

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LASTER, Vice Chancellor.

Plaintiffs World Market Center Venture, LLC ("World") and Related World Market Center LLC ("Related") have moved for summary judgment on Count I of their complaint, which seeks a declaration that they complied with their obligations under the operating agreement governing World (the "World Operating Agreement") and a stipulated order that resolved a prior action in this Court. The plaintiffs' motion also seeks summary judgment on Counts I and II of the counterclaims filed by defendant NAMA Holdings, LLC ("NAMA"). In Count I of its counterclaims, NAMA contends that World and Related breached their contractual obligations under the World Operating Agreement and this Court's order, *i.e.*, the mirror image of the plaintiffs' affirmative claim. In Count II of its counterclaims, NAMA contends that World and Related violated the implied covenant of good faith and fair dealing. I grant the plaintiffs' motion for summary judgment.

I. FACTUAL BACKGROUND

The facts are drawn from the documentary record presented by the parties for purposes of summary judgment. I have assumed any disputed facts would be resolved in favor of NAMA, the non-movant, and I have given NAMA the benefit of all reasonable inferences.

A. The Ownership Structure of World

World is a Delaware limited liability company that owns, operates, and is continuing to develop the World Market Center, a large, multi-phase home furnishings showroom complex located in Las Vegas, Nevada. The rights and obligations of and the relationships among World's members are governed by the World Operating Agreement,

a highly detailed, lengthy, and complex document spanning over 100 pages, not including exhibits.

World has two members. One member, Related, is a single-purpose Delaware limited liability company. The sole member of Related is The Related Companies, L.P., a major real estate investment and development firm. The other member is Network World Market Center, LLC ("Network Sub"), a single-purpose Delaware limited liability company. Network Sub's sole member is Alliance Network Holdings, LLC ("Alliance Holdings"), also a single-purpose Delaware limited liability company. The sole member of Alliance Holdings is Alliance Network, LLC, a Nevada limited liability company. The members of Alliance Network are NAMA, Prime Associates Group, LLC ("Prime"), and Crescent Nevada Associates, LLC ("Crescent"). Prime is owned, managed, and controlled by Shawn Samson and Jack Kashani, who serve as the managers of Alliance Network.

Although NAMA is not a member of World, the World Operating Agreement grants certain rights to NAMA. Under Section 12.18 of the World Operating Agreement, if a dispute arises between the members of Alliance Network, or between a member of Alliance Network and its managers, then NAMA can direct Related to segregate and hold funds that might otherwise be distributed to Network Sub. Section 12.18(g) of the World Operating Agreement provides as follows:

> Upon receipt by Related of a written notice from any member of Alliance Network (a "Disputing Alliance Member") certifying to Related that there is a bona fide dispute between the Disputing Alliance Member and the other members and/or the managers of Alliance Network (the "Affected Alliance Members") or any of them regarding the parties [*sic*.] respective

> shares of, and/or the allocation, calculation, timing or distribution of Affiliate Fees, other fees, Cash Available for Distribution, net income or any other amount due Network [Sub] (or any other Person who is part of the Alliance Network Group) under this Agreement and specifying the items that are in dispute (the "Disputed Items"), then notwithstanding any provision in this Agreement to the contrary, Related, shall retain [*sic*.] from any future distributions or payments of the Disputed Items due Network [Sub] (or any other Person who is part of the Alliance Network Group) on account of the Disputed Items with respect to any Phase of the Project or Ancillary Business in which Network [Sub] has a direct, or indirect, Interest and shall instead, deposit such amounts (the "Disputed Amounts") in a segregated bank account of the Company until such time as either: (i) the parties to such Dispute direct and authorize Related, by joint written instructions, to release the Disputed Amount; or (ii) Related receives a copy of the decision of the Person arbitrating such dispute under the provisions of Article IX of the Alliance Network Operating Agreement, subject in any case to the superior rights of Related and any Project Lender to such Disputed Amounts in accordance with the this [*sic*.] Agreement.

World Operating Agreement § 12.18(g). The reference to "arbitrating such dispute under the provisions of Article IX of the Alliance Network Operating Agreement" contains a typographical error. The provision should refer to Article XI.

Section 12.18(g) thus effectively requires Related to act as an escrow agent pending resolution of an arbitration among the members or managers of Alliance Network. Other provisions of Section 12.18 are consistent with this role. Section 12.18(h)(i) specifies that "[i]n no event shall Related be deemed to be a fiduciary in connection with any monies held by it pursuant to Section 12.18(g)." *Id.* § 12.18(h). Section 12.18(h)(ii) states that "Related shall be protected in acting or refraining from acting as provided for in Section 12.18(g) on any instrument believed to be genuine and to have been signed or presented by the proper party or parties." *Id.* Section 12.18(h)(iii) provides that "Related shall have no liability under, or duty to inquire into the terms and

provisions of Section 12.18(g)." *Id.* Section 12.18(h)(iv) establishes that "Related's duties pursuant to Section 12.18(g) are ministerial in nature . . . ." *Id.* Section 12.18(h)(v) gives Related the right to continue to hold any Disputed Amounts until any uncertainty as to its obligations is resolved. *Id.*

B. Disputes Arise Among The Members Of Alliance Network.

In late 2006, a number of disputes came to a head between NAMA and the other members and managers of Alliance Network. Among other things, NAMA contended that Samson and Kashani persistently withheld critical information about Alliance Network from NAMA, engaged in self-dealing, failed to make required distributions to NAMA, and engineered a purported transfer of NAMA's membership interest to Fordgate World Market Center, LLC. In December 2006, NAMA notified Related of the disputes and instructed Related to refrain from making any further distributions in accordance with Section 12.18(g).

In February 2007, NAMA filed an action in this Court against Related and World captioned *NAMA Holdings, LLC v. Related World Market Center LLC and World Market Center Venture, LLC,* C.A. No. 2755-VCL (the "Delaware Action"). Through the Delaware Action, NAMA sought to ensure that Related and World complied with Section 12.18(g) and segregated distributions until the Alliance Network disputes could be arbitrated under Article XI of the Alliance Network Operating Agreement.

By Stipulation and Order dated May 13, 2007 (the "Delaware Order"), the parties resolved the Delaware Action. The Delaware Order states:

> [World] shall continue to maintain the Account and all sums deposited into the Account (plus interest) until such time as either:
>
> (i) the parties to such Dispute direct and authorize Related, by joint written instructions, to release the Disputed Amount; or (ii) Related receives a copy of the decision of the Person arbitrating such dispute under the provisions of Article IX of the Alliance Network Operating Agreement, subject in any case to the superior rights of Related and any Project Lender to such Disputed Amounts in accordance with the [World] Operating Agreement,
>
> as such capitalized terms are defined in the [World] Operating Agreement (the "Release Event").

Delaware Order at 2-3. Pursuant to the Delaware Order, Related and World placed over $11 million (the "Disputed Funds") in a segregated bank account.

C. The Alliance Network Members Arbitrate Their Disputes.

In March 2007, Alliance Network, Samson, and Kashani initiated an arbitration against NAMA (the "Arbitration"). NAMA filed counterclaims, including claims against Samson and Kashani. In addition, NAMA filed suit in the New York Supreme Court (the "New York Action") against Greenberg Traurig LLP, which had acted as counsel on various Alliance Network matters. The New York Action remains pending.

In November 2008, twenty months after commencing the Arbitration and two months before the merits hearing was scheduled to begin, Samson and Kashani moved to be dismissed from the Arbitration. Even though Samson and Kashani themselves commenced the proceeding, and over NAMA's objection, the arbitral panel dismissed them from the Arbitration. NAMA responded by amending its complaint in the New York Action to add Samson and Kashani as defendants and assert its claims there.

After approximately two years of discovery and other pre-hearing proceedings in the Arbitration, the parties presented evidence at a merits hearing in Los Angeles,

California and Las Vegas, Nevada. The hearing commenced on January 5, 2009, and concluded on March 19, 2009 after 26 days of testimony from both fact and expert witnesses. The panel issued its unanimous, binding final award on July 28, 2009 (the "Arbitration Award").

D. Related And World Release The Disputed Funds.

On August 10, 2009, Alliance Network's counsel emailed a copy of the Arbitration Award to Related's counsel. On October 9, 2009, Related received a formal demand letter from Network Sub (the "Demand Letter") calling for the release of the Disputed Funds and enclosing another copy of the Arbitration Award. The Demand Letter was executed by Samson and Kashani as co-managers of Alliance Network, which was acting in its capacity as managing member of Alliance Holdings, which was acting in its capacity as managing member of Network Sub. The Demand Letter listed nine entities and law firms as copy recipients, including NAMA.

The Demand Letter called for Related to "release all Disputed Amounts to Network [Sub] for redistribution in accordance with the [Arbitration] Award." It further instructed that the funds be sent "by wire transfer today" to an account designated by NAMA. Related complied. The total amount released was $11,802,038.88. After receiving the funds, Network Sub redistributed them through Alliance Holdings to Alliance Network, which in turn distributed $5,907,647 to NAMA, $4,807,108 to Prime, and $1,087,283 to Crescent.

October 9, 2009, was a Friday. At the same time it released the funds, Related sent written notice to NAMA by Federal Express informing NAMA of the release of

funds and enclosing a copy of the wire transfer receipt. NAMA received the notice on Monday, October 12, 2009. NAMA thus did not receive the notice until after the funds were distributed.

On October 21, 2009, NAMA sent a letter to Related asserting that NAMA was entitled to all of the Disputed Funds and that Related violated the World Operating Agreement, the Delaware Order, and the Arbitration Award by releasing the funds. NAMA further alleged that Related and World had conspired with Samson and Kashani to convert the funds that were distributed to Prime and Crescent.

E. Related And World Return To Delaware.

On December 8, 2009, World and Related filed this action seeking a declaration in Count I of their complaint that they acted properly under the World Operating Agreement and the Delaware Order. On January 15, 2010, NAMA answered Count I of the complaint and asserted counterclaims alleging that Related breached its obligations under the World Operating Agreement and the Delaware Order and did so in bad faith. World and Related then moved for summary judgment on Count I of the Complaint and on NAMA's counterclaims.

II. LEGAL ANALYSIS

Summary judgment is appropriate where the moving party demonstrates that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. Ct. Ch. R. 56(c). Under the Declaratory Judgment Act, this Court has the "power to declare rights, status and other legal relations whether or not further relief is or could be claimed. . . . The declaration may be either affirmative or negative in form

and effect, and such declaration shall have the force and effect of a final judgment or decree." 10 *Del. C.* § 6501. A party "may have determined any question of construction or validity arising under the instrument, . . . and obtain a declaration of rights, status or other legal relations thereunder." 10 *Del. C.* § 6502.

The Delaware Order is the controlling document for purposes of the release of the Disputed Funds now at issue. Absent the Delaware Order, Related and World were bound by Section 12.18(g) of the World Operating Agreement. After NAMA filed the Delaware Action to enforce its rights under Section 12.18(g), the parties entered into the Delaware Order to resolve the Delaware Action. The Delaware Order thus superseded Section 12.18(g) and became the operative document for purposes of this dispute. My analysis therefore focuses solely on the Delaware Order, although the same analysis and outcome would apply under Section 12.18(g), were I to examine that provision independently.

The meaning of the Delaware Order presents an issue of contract interpretation. *See In re Estate of Necastro*, 1993 WL 315464, at *4 (Del. Ch. Aug. 3, 1993) (explaining that a settlement order is a binding contract and is to be construed as such). "Contract terms themselves will be controlling when they establish the parties' common meaning so that a reasonable person in the position of either party would have no expectations inconsistent with the contract language." *Eagle Indus., Inc. v. DeVilbiss Health Care, Inc.*, 702 A.2d 1228, 1232 (Del. 1997). "[I]f the instrument is clear and unambiguous on its face, . . . the trial court may [not] consider parol evidence 'to interpret it or search for the parties' intent[ions] . . . .'" *Pellaton v. The Bank of N.Y.*, 592 A.2d 473, 478 (Del.

1991) (quoting *Hibbert v. Hollywood Park Inc.*, 457 A.2d 339, 343 (Del. 1983)). Language should be given its ordinary and usual meaning. *O'Malley v. Boris*, 2004 WL 1588345, at *1 (Del. Ch. July 9, 2004).

The Delaware Order is clear and unambiguous. Under the Delaware Order, Related was obligated to "continue to maintain the Account and all sums deposited into the Account (plus interest) until . . . Related receives a copy of the decision of the Person arbitrating such dispute under the provisions of Article [XI] of the Alliance Network Operating Agreement." The Delaware Order defines the receipt of the decision as a "Release Event." Under this language, a Release Event occurred on August 10, 2009, when Related received a copy of the Arbitration Award. The language of the Delaware Order is not reasonably susceptible to a different interpretation.

The fact that Related waited to distribute the Disputed Funds to Network Sub until October 9, 2009, after receiving specific release instructions from Network Sub, does not change the plain meaning of the Delaware Order. Related was contractually permitted to release the funds to Network Sub – the member to whom the distributions otherwise were owed – upon the occurrence of a Release Event. The Release Event took place on August 10. Related appropriately waited for release instructions and then relied upon them.

In contending that Related and World violated the Delaware Order, NAMA takes a much broader view of its scope. According to NAMA, the Delaware Order obligated Related and World to segregate and hold funds not simply until the resolution of the Arbitration, but rather until the final resolution of all disputes among NAMA, Samson,

Kashani, and the other members or managers of Alliance Network. NAMA correctly points out that the Arbitration Award did *not* resolve all of those disputes. NAMA's disputes with Samson and Kashani have yet to be resolved, because those individuals were dismissed from the Arbitration. NAMA's claims against Samson and Kashani are now the subject of the ongoing New York Action.

NAMA's position is inconsistent with the plain language of the Delaware Order. The Delaware Order speaks in terms of "the decision of the Person arbitrating such dispute under the provisions of Article [XI] of the Alliance Network Operating Agreement." Although NAMA is understandably frustrated that Sampson and Kashani were able to escape from the Arbitration, the New York Action is not an arbitration under Article XI of the Alliance Network Operating Agreement. Related's receipt of the Arbitration Award constituted a Release Event under the terms of the Delaware Order, regardless of the continuing pendency of the New York Action.

NAMA next argues that World Markets and Related acted improperly by releasing funds without NAMA's written permission. Under the plain language of the Delaware Order, NAMA's consent was not required. The Release Event that occurred here – receipt of the Arbitration Award – did not require NAMA's involvement. The Delaware Order separately defines the receipt of joint written instructions from the parties to the Arbitration as an alternative Release Event. Once Related received the Arbitration Award, a Release Event had occurred, and Related and World Markets were not required to seek NAMA's permission before releasing the Disputed Funds.

NAMA also argues that the Arbitration Award somehow modified the terms of the Delaware Order, such that Related and World were required to release the Disputed Funds in accordance with the terms of the Arbitration Award. NAMA cites paragraph 8 of a section of the Arbitration Award entitled "Declaratory Relief," in which the panel ruled as follows:

> Prime, Crescent and NAMA shall (i) make all reasonable and necessary efforts to cause [Related] to redistribute to Alliance Network all proceeds of the escrow account held by [Related] at the prior request of NAMA, and (ii) within five business days of its receipt of such funds Alliance Network shall distribute to NAMA its proportionate share of such proceeds . . . .

Arbitration Award at 24, ¶ 8. NAMA also cites paragraph 5 of the same section of the award, in which the panel held that "Alliance Network shall not make any distributions to Prime, Crescent or Fordgate until all property (except the Phase 3 building) pledged to Hypo Bank as collateral for the construction loan for Phase 3 ("Lien Property") is released from such lien and security obligations." *Id.* at 23-24, ¶ 5. NAMA contends that these provisions barred Alliance Network from making any distributions to anyone except NAMA until the lien and security obligations were released. NAMA further contends that the Arbitration Award required that Prime, Crescent and NAMA work together to "redistribute [the Disputed Funds] to Alliance Network." *Id.*, ¶ 8. NAMA believes that in light of these rulings, World and Related could not release the Disputed Funds in accordance with the Delaware Order.

Contrary to NAMA's arguments, the Arbitration Award could not modify World and Related's obligations under the Delaware Order. Related and World were not parties to the Arbitration. They were not bound by the Arbitration Award. They were subject to

and bound by the Delaware Order. Under the Delaware Order, World and Related were entitled to make any distribution to Network Sub, the other member of World. The Delaware Order provided that Related was to retain amounts "due Network [Sub]" and that it was not to "cause [World Markets] to distribute to Network [Sub] any sums" until the occurrence of a Release Event. Related and World Markets complied with the Delaware Order by releasing the Disputed Funds to Network Sub, the entity designated by the Delaware Order as being entitled to the Disputed Funds.

Moreover, Related and World's release of the Disputed Funds to Network Sub complied with the plain meaning of the Arbitration Award. The Arbitration Award speaks of Prime, Crescent, and NAMA making all reasonable and necessary efforts to redistribute the Disputed Funds to Alliance Network. As a matter of entity law, World first needed to distribute the Disputed Funds to Network Sub. Once that happened, the funds could be redistributed from Network Sub to Alliance Holdings, and then again from Alliance Holdings to Alliance Network. For Related and World to release the funds to Network Sub was thus consistent with and the first step in their being "redistributed" to Alliance Network, as contemplated by the Arbitration Award. Similarly, because Network Sub was the entity that was a member of World and the party entitled to the Disputed Funds under the Delaware Order, the Demand Letter appropriately came from Network Sub. The Demand Letter recited that Network Sub would redistribute the Disputed Funds in accordance with the Arbitration Award. The World Operating Agreement explicitly provides that "Related shall be protected in acting or refraining from acting … on any instrument believed to be genuine and to have been signed or

presented by the proper party or parties." *Id.* § 1218(h). The Demand Letter was such an instrument.

It may well be that NAMA has some claim against Alliance Network, Prime, Crescent, or other parties to the Arbitration regarding their compliance with the Arbitration Award. Those issues are not before me. The only question I must address is whether Related and World complied with the Delaware Order. They did. Summary judgment is therefore appropriately granted in favor of plaintiffs World and Related on Count I of the complaint and on Count I of NAMA's counterclaims.

This leaves Count II of NAMA's counterclaims, in which NAMA contends that World and Related breached the implied covenant of good faith and fair dealing. Because the Delaware Order addresses the release of the Disputed Funds explicitly, there is no room for the application of the implied covenant. *See Nemec v. Shrader*, 2010 WL 1320918, at *4 (Del. Apr. 6, 2010) ("The implied covenant will not infer language that contradicts a clear exercise of an express contractual right."); *Alliance Data Sys. Corp. v. Blackstone Capital Partners V L.P.*, 963 A.2d 746, 770 (Del. Ch. 2009) ("[T]he implied covenant only applies where a contract lacks specific language governing an issue and the obligation the court is asked to imply advances, and does not contradict, the purposes reflected in the express language of the contract."), *aff'd*, 976 A.2d 170 (Del. 2009). The grant of judgment on the contract issues therefore controls the outcome of the implied covenant claim.

III. CONCLUSION

For the foregoing reasons, I grant Related and World's motion for summary judgment. This ruling disposes of Count I of the complaint and Counts I and II of the counterclaims. Within ten days, counsel will meet and confer regarding the need for any further proceedings on Counts II and III of the complaint. After meeting and conferring, plaintiffs will present a form of order on notice to defendant.