IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

DANIEL HALLISEY, in his capacity as the Seller Representative and Seller Obligor, Plaintiff, v. ARTIC INTERMEDIATE, LLC Defendant. ARTIC INTERMEDIATE, LLC Counterclaim-Plaintiff, v. DANIEL HALLISEY, in his capacity as the Seller Representative and Seller Obligor, Counterclaim-Defendant.	)	C.A. No. 2019-0980-MTZ

ORDER GRANTING PLAINTIFF'S
MOTION FOR JUDGMENT ON THE PLEADINGS

WHEREAS, on the Motion for Judgment on the Pleadings (the "Motion") filed by Plaintiff and Counterclaim-Defendant Daniel Hallisey, as briefed and taken under advisement on October 5, 2020, it appears:

A. Hallisey is the Seller Representative and Seller Obligor under a Securities Purchase and Exchange Agreement (the "SPA") by which Defendant Artic Intermediate, LLC ("Buyer" or "New Artic") acquired substantially all of the assets of Artic Mechanical, Inc. ("Target" or "Old Artic"). The acquisition closed

on March 18, 2019 (the "Closing Date") with a purchase price of $20 million as adjusted at closing according to the Company's estimate of closing cash and net working capital.

B. The SPA provides procedures for a post-closing purchase price adjustment (the "Post-Closing Adjustment"). Section 2.5(a) provides in relevant part:

> Not later than six (6) months after the Closing Date, Buyer shall prepare and deliver to Seller Representative a report (the "Closing Date Report") of (a) Buyer's written, good faith determination and calculation of (i) the Closing Cash, (ii) the Net Working Capital, and (iii) the Adjusted Target Working Capital (6 Months), (b) the resulting calculation of the Purchase Price based on the foregoing calculations in accordance with Adjusted GAAP and the methodology specified in Section 2.3, (c) the amount of Indebtedness as of the Effective Time ("Closing Indebtedness"), (d) the amount of Transaction Expenses, and (e) the adjustment necessary to reconcile the Estimated Purchase Price to the Purchase Price in the Closing Date Report, the Closing Indebtedness with the Estimated Indebtedness, and the Transaction Expenses with the Estimated Transaction Expenses (the "Preliminary Closing Adjustment").[1]

Upon delivery of Buyer's Closing Date Report, the SPA leads the parties through a specified process to arrive at a final closing adjustment.[2] The SPA also enumerates

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[1] Docket Item ("D.I.") 1, Verified Complaint [hereinafter "Compl."], Ex. A § 2.5(a) [hereinafter "SPA"].

[2] *See id.* ("Seller Representative shall have forty-five (45) days after delivery of the Closing Date Report (the 'Review Period') to notify Buyer in writing (the 'Dispute Notice') that Seller Representative disputes the proposed Preliminary Closing Adjustment, and if no such notice is given within such time period then such amounts shall conclusively be deemed final on the first Business Day after the end of the Review Period (the 'Final

several representations and warranties in Article 4, and provides that except for fraud and claims for injunctive or other equitable relief, "the sole and exclusive remedy for any and all claims arising under, out of or related to this Agreement shall be the rights of indemnification set forth in [the SPA's] Article 9 only."[3]

C. Under Section 2.5(a), Buyer was required to deliver a Closing Date Report by September 18, 2019.[4] Buyer did not.[5] Buyer delivered what it called a Closing Date Report on December 3, seeking a $12 million adjustment in Buyer's favor.

D. Hallisey, as Seller Representative and Seller Obligor under the SPA, contends Buyer has waived its ability to deliver a Closing Date Report and has therefore nullified the rest of the post-closing purchase price adjustment process. Hallisey seeks a declaratory judgment that Section 2.5 governs, and that Buyer's failure to deliver a Closing Date Report constitutes as waiver of its right to seek a Post-Closing Adjustment under the plain terms of the SPA.[6] Hallisey also seeks an injunction prohibiting Buyer from taking any further action under Section 2.5, and

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Closing Adjustment' and the Purchase Price (as adjusted) in such Final Closing Adjustment, the 'Final Purchase Price').").

[3] *Id.* § 9.12; *see id.* Arts. 4, 9. Both parties have sought injunctive relief, and neither party has moved to dismiss this action based on this provision.

[4] *See id.*; Compl. ¶ 13.

[5] *See id.* ¶ 14.

[6] *Id.* ¶¶ 19–25.

its fees and costs in bringing this action.[7]

E. For its part, Buyer seeks a declaratory judgment that "[t]here were valid and justifiable reasons, caused by one or more Sellers, for any delay in Buyer's submission of a Closing Date Report."[8] Buyer alleges that upon acquiring Target, it discovered that John Hadley, Old Artic's former Chief Financial Officer and New Artic's President and Chief Financial Officer, "had been regularly misrepresenting the indebtedness of New Artic to Buyer and to the governing Board of Managers . . . and had over-extended New Artic's line of credit . . . and . . . concealed false accounts receivable and invoices included within the closing working capital estimate that Sellers made pursuant to the SPA."[9] Buyer also alleges that Hadley had "actively manipulated and misrepresented the status of the business' Accounts Receivable, both before Closing (with respect to [Old] Artic) and after Closing (with respect to New Artic)" to mislead Buyer and the Board.[10]

F. New Artic terminated Hadley for cause on or around August 6, 2019.[11] Buyer contends that Hadley's wrongdoing made it very difficult to manage New Artic, keep it afloat, and discern its financial situation. And Buyer contends

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[7] *Id.*

[8] D.I. 9 ¶ 25 [hereinafter "Ans. & Countercl."].

[9] *Id.* ¶ 4.

[10] *Id.* ¶ 5.

[11] *Id.* ¶ 6.

Hadley's misdeeds made it impossible to submit a timely Closing Date Report because Buyer had to finish a forensic review first.[12]

G. In seeking to be excused from the SPA's Closing Date Report deadline, Buyer alleges Hallisey, as a post-closing fiduciary of New Artic, knew of New Artic's difficulties at Hadley's hands.[13] Buyer contends that because Hallisey is the Seller Representative and Seller Obligor under the SPA, Hallisey is bound by all Sellers in the SPA, including Hadley. To support this theory, Buyer points out that the SPA defines the "Knowledge of the Company" as current actual knowledge of each of Hallisey and Hadley.[14] Buyer also alleges it made Hallisey aware of its difficulties preparing a closing date estimate in the summer and fall of 2019.[15]

H. Hallisey seeks judgment on the pleadings on both his and Buyer's requests for declaratory judgments based on the plain language of the SPA and Buyer's untimely Closing Date Report. Buyer does not contend that the SPA is ambiguous; that any provision in the SPA permits the post-closing price adjustment process to continue in the absence of a timely Closing Date Report; that the parties renegotiated or amended the post-closing adjustment provisions; or that Hallisey has not pled any of the elements of his declaratory judgment claim.

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[12] *Id.* ¶ 8.

[13] *Id.* ¶ 9.

[14] SPA Ex. A (defining "Knowledge of the Company").

[15] Ans. & Countercl. ¶ 9.

I. Rather, Buyer opposes Hallisey's motion on the grounds that Hallisey has unclean hands: "Hadley, as a Seller under the SPA, and therefore Hallisey, as Seller Representative, engaged in actions so egregious that they offend the very sense of equity to which Hallisey appeals."[16] Buyer also contends Hallisey should be equitably estopped from the relief he seeks.

J. The standard of review for a motion for judgment on the pleadings is familiar:

> In determining a motion under Court of Chancery Rule 12(c) for judgment on the pleadings, a trial court is required to view the facts pleaded and the inferences to be drawn from such facts in a light most favorable to the non-moving party. The court must take the well-pleaded facts alleged in the complaint as admitted. A motion for judgment on the pleadings may be granted only when no material issue of fact exists and the movant is entitled to judgment as a matter of law.[17]
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> [J]udgment on the pleadings . . . is a proper framework for enforcing unambiguous contracts because there is no need to resolve material disputes of fact. . . . If the contract's meaning is unambiguous, [and that meaning supports the movant's claim or defense], the court must grant judgment on the pleadings in favor of the moving party.[18]

[16] D.I. 16 at 11.

[17] *Desert Equities, Inc. v. Morgan Stanley Leveraged Equity Fund, II, LP*, 624 A.2d 1199, 1205 (Del. 1993) (internal citations omitted).

[18] *Lillis v. AT & T Corp.*, 904 A.2d 325, 329–30 (Del. Ch. 2006) (internal quotations and citations omitted).

K. Delaware courts strictly construe and enforce all contracts, especially those negotiated by sophisticated parties or parties with sophisticated counsel.[19] Further, Delaware courts will "read a contract as a whole and . . . will give each provision and term effect, so as not to render any part of the contract mere surplusage."[20] "When the contract is clear and unambiguous, we will give effect to the plain-meaning of the contract's terms and provisions."[21] When parties document their promises to each other in a detailed agreement, "it comes with ill grace to call on equity's mercy. If contract law is to be reliable, promises have to be enforceable."[22]

L. "The doctrine of unclean hands is based on the long-established rule that if a party who seeks relief in a Court of Equity 'has violated conscience or good faith or other equitable principles in his conduct, then the doors of the Court of Equity should be shut against him.'"[23]

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[19] *See W. Willow-Bay Ct., LLC v. Robino-Bay Ct. Plaza, LLC*, 2007 WL 3317551, at *9 (Del. Ch. Nov. 2, 2007) ("The presumption that the parties are bound by the language of the agreement they negotiated applies with even greater force when the parties are sophisticated entities that have engaged in arms-length negotiations."), *aff'd*, 985 A.2d 931 (Del. 2009).

[20] *Kuhn Constr., Inc. v. Diamond State Port Corp.*, 990 A.2d 393, 396–97 (Del. 2010).

[21] *Oxborn ex rel. Osborn v. Kemp*, 991 A.2d 1153, 1159–60 (Del. 2010).

[22] *Cent. Mortg. Co. v. Morgan Stanley Mortg. Cap. Hldgs LLC*, 2012 WL 3201139, at *26 (Del. Ch. Aug. 7, 2012).

[23] *Universal Enter. Gp., LP v. Duncan Petroleum Corp.*, 2014 WL 1760023, at *7 (Del. Ch. Apr. 29, 2014) *aff'd*, 99 A.3d 228 (Del. 2014) (ORDER) (quoting *Bodley v. Jones*, 50 A.2d 463, 469 (Del. 1947)).

> Delaware courts are hesitant to apply unclean hands in cases involving a breach of contract. . . . "When parties have ordered their affairs voluntarily through a binding contract, Delaware law is strongly inclined to respect their agreement, and will only interfere upon a strong showing that dishonoring the contract is required to vindicate a public policy interest even stronger than freedom of contract." Requiring parties to live with "the language of the contracts they negotiate holds even greater force when, as here, the parties are sophisticated entities that bargained at arm's length."[24]

M. "Equitable estoppel is a narrow doctrine that is sparingly invoked."[25] "Estoppel will be invoked 'when a party by his conduct intentionally or unintentionally leads another, in reliance upon that conduct, to change position to his detriment.'"[26] The party asserting equitable estoppel bears the burden of proof, which is clear and convincing evidence.[27] "This Court does not lightly turn to equitable estoppel to enforce contract rights which cannot be vindicated as the contract is written."[28] Where the representation or promise at issue is documented in a contract supported by valid consideration, equitable estoppel is not applicable.[29]

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[24] *Id.* at *8 (internal citations omitted); *accord Weber v. Weber*, 2015 WL 1811228, at *4 n.20 (Del. Ch. Apr. 20, 2015) ("Generally, this Court does not apply the unclean hands doctrine in garden-variety breach of contract cases."); *USH Ventures v. Global Telesystems Gp., Inc.*, 796 A.2d 7, 20 n.16 (Del. Super. Ct. May 9, 2000) ("The defense of 'unclean hands' is generally inappropriate for legal remedies.").

[25] *Cent. Mortg. Co.*, 2012 WL 3201139, at *24.

[26] *Am. Family Mortg. Corp. v. Acierno*, 1994 WL 144591, at *5 (Del. Mar. 28, 1994) (quoting *Waggoner v. Laster*, 581 A.2d 1127, 1136 (Del. 1990)).

[27] *Vintage Rodeo Parent, LLC v. Rent-a-Center, Inc.*, 2019 WL 1223026, at *23 (Del. Ch. Mar. 24, 2019).

[28] *Id.*

[29] *Genencor Int'l, Inc. v. Novo Nordisk A/S*, 766 A.2d 8, 12 (Del. 2000).

In a dispute about enforcement of a bargained-for contract right, equitable estoppel is not the proper remedy.[30]

IT IS HEREBY ORDERED, this 29th day of October, 2020, that:

1. Even assuming that Hadley's egregious actions could soil Hallisey's hands, the doctrine of unclean hands is inapplicable because Hallisey appeals not to equity, but to the law of contract.[31] The parties bargained to allow Buyer six months to submit a Closing Date Report.[32] The parties also bargained to allow Buyer certain indemnity rights if all was not as was represented to be.[33] Those contractual provisions govern the acquisition, purchase price, and the parties' rights of recovery: they will be respected by this Court, and will not yield to unclean hands.[34]

2. Equitable estoppel similarly has no role in this contract dispute. Buyer bargained for representations about New Artic's financial conditions and the state of its financial records, as well as the remedies for breaches of those representations, and supported that bargain with consideration. Equitable estoppel is not available

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[30] *Id.*

[31] *See Universal Enter. Gp.*, 2014 WL 1760023, at *8.

[32] SPA § 2.5(a).

[33] *See id.* Art. 4 (providing the seller's representations and warranties as to, *inter alia*, financial statements, indebtedness, and accounts receivable); *id.* Art. 9 (providing Buyer with indemnification rights). The observation of these contractual provisions is not intended to imply that they would apply to give Buyer relief.

[34] *See Universal Enter. Gp.*, 2014 WL 1760023, at *8.

to enforce such a bargained-for contract right.[35] Further, it is unclear that Buyer changed its position in reliance on any representation; it did not decide *not to* submit a Closing Date Report, but decided to perform more analysis first.[36]

3. As a result of Buyer's failure to timely file a Closing Date Report, the Post-Closing Adjustment process cannot proceed. Under the plain language of the SPA, the absence of a Closing Date Report obviates the rest of the Post-Closing Adjustment process. Without a Closing Date Report, the Seller Representative cannot "respond to or evaluate the calculations contained in the Closing Date Report," during the "Review Period."[37] Without this review, there is no opportunity for the Seller Representative to file a Dispute Notice, nor for the parties to reconcile their disputes and come to a Final Closing Adjustment.[38] And without the reconciliation process, the parties cannot come to a "Resolution of Closing Adjustment," as contemplated by Section 2.5(b).[39] When the SPA's window for filing a Closing Date Report closed, so did Buyer's opportunity to challenge the Estimated Closing Price.[40]

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[35] *See Genencor Int'l, Inc.*, 766 A.2d at 12.

[36] *See Vintage Rodeo Parent*, 2019 WL 1223026, at *23 (finding a party that neglected to send a timely extension election did not make a qualifying decision that supported estoppel).

[37] *See* SPA § 2.5(a).

[38] *See id.*

[39] *See id.* § 2.5(b).

[40] The SPA is silent on what happens if Buyer fails to provide its Closing Date Report or proposed Preliminary Closing Adjustment under Section 2.5(a): it does not explicitly

4. Judgment on the pleadings in Hallisey's favor is warranted because there are no disputed material facts. Certainly, investigation into Hadley's actions will inspire disputes of fact: but they are not material here, where the SPA unambiguously provided Buyer six months to submit a Closing Date Report. That investigation must play out under the bargained-for representations and warranties, not the maxims of equity.

5. Therefore, Hallisey is entitled to a declaration that Section 2.5 of the SPA governs, and having failed to timely file a Closing Date Report, Buyer is foreclosed from proceeding through the remaining steps of the post-closing adjustment process. I do not reach the more subjective issue of whether Buyer has "waived its right to seek a Post-Closing Adjustment," as such a determination is ill-suited for judgment on the pleadings.[41]

6. I also do not reach Hallisey's request for an injunction preventing

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provide that Buyer accedes to the Estimated Purchase Price from closing calculated under Section 2.4. This omission stands in stark contrast to the other language in Section 2.5(a), which provides that if the Seller Representative fails to timely dispute the adjustment in the Closing Date Report, "such amounts shall constructively be deemed final." SPA § 2.5(a). In view of this difference, I cannot conclude that Buyer has "acquiesced" to the Estimated Closing Price; rather, I find that under the plain terms of the SPA, Buyer's opportunity to challenge the Estimated Closing Price has come and gone. This may be a distinction without a difference.

[41] *See, e.g.*, *Mergenthaler v. Hollingsworth Oil Co. Inc.*, 1995 WL 108883, at *2 (Del. Super. Ct. Feb. 22, 1995) ("Waiver implies knowledge and an intent to waive, and the facts relied on to prove waiver must be unequivocal. The question of waiver is normally a jury question, unless the facts are undisputed and give rise to only one reasonable inference.") (internal citations omitted)).

"Buyer from taking any further action under [Section] 2.5 of the SPA." A declaration that such action would be foreclosed by the SPA is sufficient to afford Hallisey relief. When a declaratory judgment so affords full and complete relief, "equity is superfluous" because "this court does not enjoin hypothetical future breaches."[42]

7. Each party shall bear their own costs. Neither party briefed a reason to deviate from the American Rule on this point.[43]

/s/ Morgan T. Zurn

Vice Chancellor Morgan T. Zurn

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[42] *Athene Life & Annuity Co. v. Am. Gen. Life Ins. Co.*, 2019 WL 3451376, at *8 (Del. Ch. July 31, 2019) ("Again, if the Plaintiffs prevail on declaratory relief construing the Transaction Documents as they suggest, equity is superfluous. Generally, this court does not enjoin hypothetical future breaches of contract.").

[43] *See Dover Hist. Soc., Inc. v. City of Dover Plan. Comm'n*, 902 A.2d 1084, 1093–94 (Del. 2006) (describing the bad faith exception to the American Rule).