IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

FLAGLER HOLDINGS VI BETA, INC., and KENNETH SHANLEY,	)	
Plaintiffs,	)	
v.	)	C.A. No. 2023-0050-SKR
AIRLINE ACCOMMODATIONS SOLUTIONS, LLC, and FLEETCOR TECHNOLOGIES OPERATING COMPANY, LLC,	)	
Defendants.	)	

Submitted: December 1, 2023
Decided: December 19, 2023

Upon Plaintiff's Motion for Partial Judgment on the Pleadings:

DENIED.

MEMORANDUM OPINION AND ORDER

Michael J. Maimone, Esquire, William J. Burton, Esquire, Gabriella Mouriz, Esquire, BARNES & THORNBURG LLP, Wilmington, Delaware, *Attorneys for Plaintiffs Flagler Holdings VI Beta, Inc. and Kenneth Shanley*.

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RENNIE, J.

I. INTRODUCTION

Before the Court is Plaintiffs' Motion for Partial Judgment on the Pleadings. This motion centers on a narrow issue that is part of the parties' broader earnout dispute. As part of the sale of his business, one of the plaintiffs, Kenneth Shanley, signed a non-compete agreement. A provision of that non-compete provides that "claims or causes of action" related to the asset purchase agreement would be a defense to enforcement of the non-compete. Up until now, Plaintiffs treated that language as meaning a breach of the purchase agreement would invalidate the non-compete. But, after withstanding a partial motion to dismiss, Plaintiffs now argue that their complaint already contains "claims or causes of action" sufficient to prevent enforcement of the non-compete. So, they argue that they are entitled to a declaratory judgment that the non-compete is ineffective. For two reasons, their motion is denied.

The first reason is judicial estoppel. As explained below, Plaintiffs' current argument is a departure from their previous position that a breach of the purchase agreement was required to invalidate the non-compete. Vice Chancellor Laster accepted that position and relied on it in denying the partial motion to dismiss. Having convinced the Court of their desired interpretation of the non-compete, Plaintiffs are estopped from changing their theory.

The second reason is more routine. Plaintiffs' new interpretation is unreasonable. It would theoretically allow the non-compete to be made unenforceable by the filing of a frivolous lawsuit. That would be an absurd result. To distance themselves from that unreasonable interpretation, Plaintiffs suggest that the "claims or causes of action" referenced by the non-compete must get past Rule 12(b)(6). However, that qualifier is not contained in the language of the contract.

The only reasonable interpretation of "claims or causes of action" as used here is taken from Black's Law Dictionary, which contemplates entitlement to a remedy as part of the definition of both those terms. Thus, Plaintiffs must be entitled to a remedy related to the purchase agreement before the non-compete becomes ineffective. Whether Plaintiffs are entitled to such a remedy will be deferred until the resolution of this litigation. Therefore, Plaintiffs' Motion is denied.

II. BACKGROUND[1]

A. The Parties

Plaintiff Flagler Holdings VI Beta, Inc. f/k/a Hotel Connections, Inc. ("HCI") is a Florida corporation.[2] HCI's main business entailed finding hotel accommodations for airline and cruise industry crewmembers.[3] Plaintiff Kenneth

[1] The following facts are derived from the well-pleaded allegations in the Complaint and Defendant's Amended Answer to the Complaint, as well as from documents incorporated into the pleadings. *See* D.I. No. 1 ("Compl."); D.I. No. 61 ("Am. Ans.").

[2] Compl. ¶ 29.

[3] *Id*.

Shanley (together with HCI, "Plaintiffs") is the founder and former Chairman and CEO of HCI.[4]

At the relevant times, Defendant FleetCor Technologies Operating Company, LLC ("FleetCor") was a Georgia entity with its principal place of business in Georgia.[5] FleetCor is the wholly owned subsidiary of FleetCor Technologies, Inc. (FLT).[6] Defendant Airline Accommodations Solutions, LLC ("US Purchaser" and together with FleetCor, "Defendants"), a Delaware entity, is FleetCor's wholly owned subsidiary and was formed to consummate the transaction in dispute.[7]

B. The Parties' Negotiations and the Transaction

FLT first showed interest in acquiring HCI in 2008.[8] Though Shanley rebuffed its initial inquiries, FLT continued to pursue an acquisition of HCI.[9] In that time, Shanley and FLT's CEO, Ronald Clarke, became friends.[10] By 2019, after FLT had bought a business similar to HCI, Shanley began to consider selling HCI to FLT.[11] After negotiations, Shanley agreed to sell HCI to FleetCor for [redacted].[12]

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[4] *Id.* ¶ 30.

[5] *Id.* ¶ 32.

[6] *Id.*

[7] *Id.* ¶ 31.

[8] *Id.* ¶ 67.

[9] *Id.* ¶¶ 67-68.

[10] *Id.* ¶ 67.

[11] *Id.* ¶¶ 68-69.

[12] *Id.* ¶ 73.

The sale of this travel-dependent entity was scheduled to close in March 2020.[13] When COVID-related travel restrictions emerged on the eve of closing, HCI and FleetCor agreed to "pause" the deal.[14] After two months of waiting, Shanley and Clarke decided to restructure the sale.[15]

The eventual compromise contemplated a total purchase price of [redacted]; [redacted].[16] Specifically, [redacted] was guaranteed as a "down payment" and the rest was to be calculated based on HCI's performance [redacted].[17] The intricacies of that calculation are not particularly relevant to this motion. In brief, certain defined revenue would be multiplied, and the resulting product would constitute the earnout payment.[18] [redacted].[19] Notably though, if the applicable revenue was less than [redacted]

[13] *Id.* ¶ 74.

[14] *Id.* ¶ 75.

[15] *Id.* ¶¶ 76-78.

[16] *Id.* ¶ 78, 81.

[17] *Id.* ¶¶ 78-79.

[18] *Id.* ¶ 79.

[19] *Id.* ¶ 80.

[redacted].[20] The parties worked out the details over the summer and executed the Asset Purchase Agreement (the "APA") on August 10, 2020.[21]

On the same day that the parties executed the APA, Shanley signed a non-compete agreement (the "Non-Compete Agreement").[22] The two agreements are "inextricably intertwined" in that Shanley would not have agreed to the Non-Compete Agreement if not for the APA.[23] For that reason, the Non-Compete Agreement contains the provision that is now the subject of this motion. Specifically, the Non-Compete Agreement states:

> [Shanley] agrees that any claim or cause of action of [Shanley] against [FleetCor], *except such claims or causes of action as relate to payments to* [*HCI*] *under the Asset Purchase Agreement of the Purchase Price or Earnout* (as such terms are defined in the Asset Purchase Agreement), will not constitute a defense to the enforcement of the restrictions contained in this agreement.[24]

Based on that language, Plaintiffs asserted that "[a] breach of the earnout provisions of the APA by US Purchaser and FleetCor . . . would constitute a breach of the Non-Compete Agreement, relieving Mr. Shanley of his duty to perform under the Non-Compete Agreement, and freeing him to compete with US Purchaser's business."[25]

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[20] *Id*.

[21] *Id*. ¶¶ 88-89.

[22] *Id*. ¶ 108.

[23] *Id*. ¶¶ 109-10.

[24] Compl., Ex. C ("Non-Compete") ¶ 8 (emphasis added).

[25] Compl. ¶ 110.

C. The Alleged Breaches of the Earnout Provisions

After the Earnout Period concluded, US Purchaser calculated the relevant revenue to be about [redacted], which was insufficient to generate an earnout payment.[26] Plaintiffs allege that Defendants' misconduct is the source of that unsatisfactory figure.[27] As with the particularities of the earnout calculation formula, Plaintiffs' exact allegations of breach are only tangentially relevant to this motion.

First, Plaintiffs allege that US Purchaser departed from HCI's "ordinary course of business" in violation of the APA by removing certain employees from their positions and by creating inefficiencies in its "revenue and collection functions."[28] Plaintiffs continue that US Purchaser implemented those deleterious changes shortly before the Earnout Period commenced, evincing an intent to avoid earnout obligations in further violation of the APA.[29] Last, Plaintiffs allege that Defendants breached the APA "by failing to provide good faith calculations and conclusions of the earnout due to HCI, and by failing to provide HCI with access to US Purchaser's" books, records, accountants, and employees so that HCI could verify the earnout calculations.[30]

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[26] *Id.* ¶ 139.

[27] *Id.* ¶ 141.

[28] *Id.* ¶ 202.

[29] *Id.* ¶ 213.

[30] *Id.* ¶ 225.

D. Procedural History

Plaintiffs initiated this action by filing a Complaint on January 18, 2023.[31] On February 13, 2023, Defendants responded by moving to dismiss Count IV of the Complaint—which seeks a declaration that Shanley's obligations under the Non-Compete Agreement are extinguished pursuant to Paragraph 8 thereof—as unripe and for failing to state a claim.[32] That motion was denied by Vice Chancellor Laster on September 6, 2023.[33] Following that decision, Defendants filed an Amended Answer to the Complaint, having first answered during the pendency of their partial motion to dismiss.[34]

On October 6, 2023, Plaintiffs responded to the Amended Answer with the current Motion for Partial Judgment on the Pleadings, which seeks immediate relief as to Count IV.[35] Defendants opposed the motion on November 7, 2023,[36] and Plaintiffs replied on November 21, 2023.[37] The Court heard oral argument on December 1, 2023.

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[31] Compl.

[32] D.I. No. 16; Compl. ¶¶ 230-36.

[33] D.I. No. 55.

[34] Am. Ans.

[35] DI. No. 65 ("Pls.' Mot.").

[36] D.I. No. 86 ("Defs.' Opp'n").

[37] D.I. No. 93 ("Pls.' Reply").

III. STANDARD OF REVIEW

Rule 12(c) permits a party to move for judgment on the pleadings.[38] A court may grant such a motion where "the movant is entitled to judgment as a matter of law" and there are "no material issues of fact."[39] The Court views the well-pleaded facts and the reasonable inferences derived from those facts in the light most favorable to the non-movant.[40] Rule 12(c) motions are "a proper framework for enforcing unambiguous contracts," as those contracts are only susceptible to one reasonable meaning and thus avoid material disputes of fact.[41]

Absent ambiguity, "Delaware courts interpret contract terms according to their plain, ordinary meaning."[42] Such interpretation "should be that which would be understood by an objective, reasonable third party."[43] Courts construing an agreement "must give effect to all terms of the instrument, must read the instrument

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[38] Ct. Ch. R. 12(c).

[39] *Am. Healthcare Admin. Servs., Inc. v. Aizen*, 285 A.3d 461, 475 (Del. Ch. 2022) (citing *Desert Equities, Inc. v. Morgan Stanley Leveraged Equity Fund, II, L.P.*, 624 A.2d 1199, 1205 (Del. 1993)).

[40] *Warner Commc'ns, Inc. v. Chris-Craft Indus., Inc.*, 583 A.2d 962, 965 (Del. Ch. 1989).

[41] *Aizen*, 285 A.3d at 475 (quoting *NBC Universal v. Paxson Commc'ns Corp.*, 2005 WL 1038997, at *5 (Del. Ch. Apr. 29. 2005)).

[42] *Alta Berkeley VI C.V. v. Omneon, Inc.*, 41 A.3d 381, 385 (Del. 2012) (citing *City Investing Co. Liq. Tr. v. Cont'l Cas. Co.*, 624 A.2d 1191, 1198 (Del. 1993)).

[43] *Salamone v. Gorman*, 106 A.3d 354, 367-68 (Del. 2014) (quoting *Osborn ex rel. Osborn v. Kemp*, 991 A.2d 1153, 1159 (Del. 2010)).

as a whole, and, if possible, reconcile all the provisions of the instrument."[44] For unambiguous terms, "the writing itself is the sole source for gaining an understanding of intent."[45]

But "[i]f the language of an agreement is ambiguous, then the court 'may consider extrinsic evidence to resolve the ambiguity.'"[46] "Contract language is not ambiguous merely because the parties dispute what it means. To be ambiguous, a disputed contract term must be fairly or reasonably susceptible to more than one meaning."[47]

IV. PARTIES' CONTENTIONS

A. Plaintiffs

Plaintiffs' position is straightforward. They assert that "claims or causes of action [that] relate to payments to [HCI] under the Asset Purchase Agreement of the Purchase Price or Earnout" constitute a defense to enforcement of the Non-Compete Agreement.[48] They next assert that Counts I, II, and III of their Complaint are

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[44] *Alta Berkeley*, 41 A.3d at 386 (quoting *Elliot Assoc., L.P. v. Avatex Corp.*, 715 A.2d 843, 854 (Del. 1998)).

[45] *City Investing*, 624 A.2d at 1198 (citing *Citadel Hldg. Corp. v. Roven*, 603 A.2d 818, 822 (Del. 1992)).

[46] *ArchKey Intermediate Hldgs. Inc. v. Mona*, 302 A.3d 975, 988 (Del. Ch. 2023) (quoting *Salamone*, 106 A.3d at 374).

[47] *Alta Berkeley*, 41 A.3d at 385 (citations omitted).

[48] Pls.' Mot. at 29; *see also* Non-Compete ¶ 8.

"claims or causes of action" related to the APA's earnout payment.[49] Connecting the dots, Plaintiffs say Shanley presently has a defense to enforcement of the Non-Compete Agreement, irrespective of whether they eventually prevail on their other Counts.[50] In support, Plaintiffs point out that Vice Chancellor Laster noted that harm would result if Shanley is "wrongfully forced to sit on the sidelines," so Plaintiffs portray this motion as an endeavor to mitigate Shanley's damages.[51]

B. Defendants

Defendants make four principal arguments in opposition to Plaintiffs' motion. First, they say this "new theory" of Count IV is not contained within the Complaint, so it may not be considered on Rule 12(c) motion.[52] They also say this theory is fatally inconsistent with the position Plaintiffs took in the Complaint and in opposing the partial motion to dismiss.[53] Specifically, Defendants argue that Plaintiffs have used language that suggests only a *breach* of the APA would trigger the Paragraph 8 defense to the Non-Compete Agreement.[54] Defendants thus say judicial estoppel bars this argument.[55]

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[49] Pls.' Mot. at 31-32.

[50] *Id*. at 32.

[51] *Id*. at 34-36.

[52] Defs.' Opp'n at 17.

[53] *Id*. at 21-25.

[54] *Id*. at 21-22.

[55] *Id*. at 25.

Defendants' final two arguments go to the merits of Plaintiffs' suggested interpretation. They claim that Plaintiffs' reading is unreasonable because it misconstrues the limited nature of a "defense"[56] and would give Shanley unchecked power to nullify the non-compete.[57] Last, they say Shanley cannot avail himself of the "claims" in Counts I, II, and III because they belong to HCI, not Shanley.[58] Since the language of the Non-Compete Agreement contemplates Shanley's own claims, Defendants argue Paragraph 8's defense would not be triggered even if Counts I, II, and III were "claims or causes of action."[59]

V. ANALYSIS

A. The Inconsistency with Plaintiffs' Previous Arguments Warrants Judicial Estoppel

Though Plaintiffs contend otherwise, their current position as to Paragraph 8 diverges from what they convinced Vice Chancellor Laster to accept during the motion to dismiss argument. Thus, the doctrine of judicial estoppel stands in the way of their novel theory.

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[56] *Id*. at 26-29.

[57] *Id*. at 29-32.

[58] *Id*. at 32-33.

[59] *Id*. at 32-33.

Judicial estoppel is designed "to protect the integrity of the judicial proceedings."[60] It "is intended to preclude a party from arguing a position that is inconsistent with a position taken in the same or earlier related legal proceeding."[61] "The two requirements of judicial estoppel are that a litigant advances 'an argument that contradicts a position previously taken by that same litigant, and that the Court was persuaded to accept as the basis for its ruling.'"[62] A position will be considered a basis for a ruling where (i) "the prior position contributed to the court's decision"; (ii) "the court relied on the party's prior position"; or (iii) "the party's newly inconsistent position contradicts the court's ruling."[63] Courts may also consider whether unfair advantages or detriments would result from the changed position.[64]

The clearest evidence of Vice Chancellor Laster relying on Paragraph 8 being triggered by an actual breach comes from his own words. He began his oral ruling on the partial motion to dismiss by saying, "Shanley seeks a declaratory judgment that a *breach* of the asset purchase agreement would render his noncompete

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[60] *Motorola Inc. v. Amkor Tech., Inc.*, 958 A.2d 852, 859 (Del. 2008) (citing *State v. Chao*, 2006 WL 2788180, at *9 (Del. Super. Ct. Sept. 25, 2006)).

[61] *La Grange Cmtys., LLC v. Cornell Glasgow, LLC*, 2013 WL 4816813, at *4 (Del. Sept. 9, 2013) (TABLE) (citing *Motorola*, 958 A.2d at 859).

[62] *Id*. at *4 (quoting *Siegman v. Palomar Med. Techs., Inc.*, 1998 WL 409352, at *3 (Del. Ch. July 13, 1998)).

[63] *Hammann v. Adamis Pharms. Corp.*, 2023 WL 5424109, at *13 (Del. Ch. Aug. 23, 2023) (quoting *In re Rural/Metro Corp. S'holders Litig.*, 102 A.3d 205, 247 (Del. Ch. 2014)).

[64] *Capaldi v. Richards*, 2006 WL 3742603, at *2 (Del. Ch. Aug. 9, 2006) (quoting *New Hampshire v. Maine*, 532 U.S. 742, 750-51 (2001)).

ineffective."[65] He continued, "[h]ere, the issue on which the plaintiff seeks a declaratory judgment is whether a *breach* of the earnout provisions results in the cessation . . . of the noncompete."[66] Similarly, he described the dispute as "whether there's been a breach of the asset purchase agreement and, therefore, whether that *breach* also causes cessation of the noncompete."[67] And in a substantive point in his ruling, he explained:

> It's that linkage that distinguishes this case from other noncompete cases where this Court has looked to whether or not a party is actually competing when determining whether an issue is ripe such that a noncompete needs to be addressed.
>
> This declaratory judgment isn't about whether or not Shanley is currently competing. The question is whether that noncompete falls away *based on the underlying breach of the asset purchase agreement*.[68]

The remainder of his ruling continued to discuss Paragraph 8 as requiring a breach.[69] Plaintiffs may argue that "Defendants failed to understand Plaintiffs' argument

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[65] D.I. No. 62 ("MTD OA Tr.") at 41:4-7 (emphasis added).

[66] *Id*. at 42:8-11 (emphasis added).

[67] *Id*. at 42:17-19 (emphasis added).

[68] *Id*. at 42:20-43:5 (emphasis added).

[69] *See id*. at 43:15-17, 43:21-44:1, 44:5-9, 45:2-5, 46:5-16, 47:8-13, 48:16-20.

during the Partial Motion to Dismiss,"[70] but it is problematic for them to argue that the Court did so.[71]

With it established that the Court's previous ruling was based on a link between Paragraph 8 and a breach of the APA, the remaining question is whether Plaintiffs contributed to that understanding. The answer is yes.

The first source of Plaintiffs' position is the Complaint. Therein, Plaintiffs stated:

> A *breach* of the earnout provisions of the APA . . . would constitute a breach of the Non-Compete Agreement. Accordingly, *if US Purchaser and FleetCor breached the earnout provisions of the APA*, then Mr. Shanley no longer will be bound by the restrictive covenents contained in the Non-Compete Agreement[.][72]

That conditional "if . . . then" language shows that Plaintiffs predicated their Paragraph 8 argument on a breach of the APA. Similarly, the Complaint asserts that "[*b*]*ased on these breaches* of Section 2.8 of the APA, FleetCor breached the Non-Compete Agreement."[73]

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[70] Pls.' Reply at 16.

[71] *See Capaldi*, 2006 WL 3742603, at *2 (judicial estoppel may apply where "judicial acceptance of an inconsistent position in a later proceeding would create the perception that either the first or the second court was misled" (quoting *New Hampshire*, 532 U.S. at 750)).

[72] Compl. ¶ 233 (emphasis added).

[73] *Id*. ¶ 235 (emphasis added).

The same theme continues in Plaintiffs' brief opposing the partial motion to dismiss. There, Plaintiffs argued that "the Non-Compete Agreement provides that Shanley continuing to satisfy his obligations under the Non-Compete Agreement is conditioned on Defendants satisfying their obligations under the APA."[74] That is just a different way of saying Shanley's performance would be excused if Defendants breached the APA. The brief continues,

> if specific performance is an adequate form of relief to remedy Defendants' breaches of the APA, and if it is possible to calculate and pay accurately the earnout, then HCI will be paid an accurate earnout under the APA and Shanley will continue to satisfy his obligations under the Non-Compete Agreement.[75]

If Shanley was relieved from complying with the Non-Compete Agreement merely by alleging a breach, he would have no continuing obligations even if specific performance was later awarded.

Moreover, Plaintiffs maintained this position at oral argument. Most notably, Plaintiffs' counsel had the following exchange with Vice Chancellor Laster:

> THE COURT: From your standpoint, *there's no aspects to litigate of the noncompete claim other than the existence of the breach under the asset purchase agreement*? You are not arguing, for example, that your client is doing

[74] D.I. No. 33 at 28 (emphasis omitted); *see also id.* at 50-51 ("[S]atisfaction of Defendants' obligation to calculate and pay the earnout accurately is a condition to Shanley continuing to satisfy his obligations under the Non-Compete Agreement." (emphasis omitted)); *id.* at 60 n.16 ("Shanley's obligations under the Non-Compete Agreement were conditioned on Defendants calculating and paying an earnout accurately[.]").

[75] *Id*. at 57.

> something now that should qualify as permissible under the noncompete and you just want clarification of that? The two are joined at the hip, as far as you are concerned.
>
> [PLAINTIFFS' COUNSEL]: That is correct, Your Honor[.][76]

If Vice Chancellor Laster had truly misunderstood Plaintiffs' argument, as they now implicitly contend, that question provided them the opportunity to clarify. Instead, they agreed that the only issue regarding the Non-Compete Agreement was "the *existence of the breach* under the asset purchase agreement." Accordingly, Plaintiffs are bound to that position.

Plaintiffs' attempts to demonstrate that they have consistently argued for their current position fall flat. Plaintiffs cite six quotations from their previous arguments to demonstrate their purported consistency.[77] But four of those quotes merely recite the language of Paragraph 8 without providing any interpretation of "claims or causes of action," so they do not mean much in this context.[78]

The other two quotes, both from the partial motion to dismiss oral argument, relate to Plaintiffs' position that Defendants are already in breach of the Non-Compete Agreement. Specifically, Plaintiffs highlight the language, "[a]nd our position is [Plaintiffs] did not get paid, so [Defendants are] already in breach of the

[76] MTD OA Tr. at 32:17-33:2.

[77] Pls.' Reply at 17-19.

[78] *Id*. at 17-18.

restrictive covenant" and "[FleetCor] breached the restrictive covenant and put Mr. Shanley in a position where his claims based on the restrictive covenant will likely be moot soon after this case."[79] But those statements do not support Plaintiffs' current position. The referenced lack of payment is the core of the APA-related allegations. So, these quotes, too, reflect that Plaintiffs' position was that the breach of the APA is what breached the Non-Compete Agreement. It makes little difference that Plaintiffs believe the breach of the APA already occurred—after all, that is the very basis of their suit.

In sum, Plaintiffs current position is inconsistent with what they previously argued. In the past, they said the Non-Compete Agreement was nullified by a breach of the APA; now, they say an actual breach of the APA is unnecessary. The Court accepted Plaintiffs' previous position in ruling on the partial motion to dismiss. The two core requirements for judicial estoppel have therefore been met, so Plaintiffs are stuck with their previous argument.[80]

B. Plaintiffs' Reading of "Claims or Causes of Action" is Unreasonable

In any event, Plaintiffs' argument rests on an unreasonable interpretation of Paragraph 8. They claim that "the parties agreed that Mr. Shanley's defense would be 'triggered' by the *existence* of 'claims or causes of action,' rather than the

[79] *Id*. at 19 (quoting MTD OA Tr. at 25:4-13, 30:18-23).

[80] *See La Grange*, 2013 WL 4816813, at *4 (quoting *Siegman*, 1998 WL 409352, at *3).

adjudication of 'claims or causes of action.'"[81] They then rely on Black's Law Dictionary to argue Counts I, II, and III are "claims or causes of action."[82] They are mistaken.

Principally, the dictionary definitions that Plaintiffs themselves rely upon do not support their position. As for "claim" they focus on the definition, "an existing right; any right to payment or to an equitable remedy, even if contingent or provisional."[83] Plaintiffs fail to appreciate that this entire litigation centers on whether they have "any right to payment or to an equitable remedy." Whether they have such an existing right will be answered when the Court determines whether Defendants breached the APA. Though the definition includes "contingent" rights, it would be circular to say the existence of a right is contingent on whether a court determines the right exists. So, whether Plaintiffs have a "claim" under their own definition is dependent on a finding that Defendants breached the APA.

Plaintiffs' proffered definition of "cause of action" suffers from similar problems. They suggest that a "cause of action" is "[a] group of operative facts giving rise to one or more bases for suing; a factual situation that entitles one person

[81] Pls.' Mot. at 29.

[82] *Id*. at 31.

[83] *Id*. at 31-32 (quoting *Claim*, BLACK'S LAW DICTIONARY (11th ed. 2019)).

to obtain a remedy in court from another person."[84] The latter definition is functionally the same as the above definition of "claim." The only definition that comes at all close to Plaintiffs' position is the former. Although, context suggests the referenced basis for suing must be legitimate, which would similarly revert back to a need to adjudicate Plaintiffs' allegations. Regardless, interpretating Paragraph 8 to be triggered by a potentially illegitimate basis for suing would be unreasonable.

Interpreting the relevant "claims or causes of action" to include unproven allegations would allow Shanley to unilaterally terminate the Non-Compete Agreement by filing a frivolous suit related to the APA. That cannot be correct.[85] Recognizing the peril in such a broad interpretation, Plaintiffs attempt to narrow it by saying the "claims or causes of action" contemplated by Paragraph 8 must survive the Rule 12(b)(6) stage.[86] While that is a more reasonable interpretation, it finds no support in the language of the provision.

Rule 12(b)(6) is often shortened to "failure to state a claim," but the actual rule is "failure to state a claim *upon which relief can be granted.*"[87] So, the contents

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[84] *Id*. at 32 (alteration in original) (quoting *Cause of Action*, BLACK'S LAW DICTIONARY (11th ed. 2019)).

[85] *See Osborn*, 991 A.2d at 1160 ("An unreasonable interpretation produces an absurd result or one that no reasonable person would have accepted when entering the contract." (citations omitted)).

[86] Pls.' Reply at 9 ("Plaintiffs' position is the filing of a 'claim' or 'cause of action' regarding the calculation and payment of the earnout that survives a Rule 12(b)(6) motion to dismiss (or is not challenged under Rule 12(b)(6)) 'triggers' Mr. Shanley's right to compete.").

[87] Ch. Ct. R. 12(b)(6) (emphasis added).

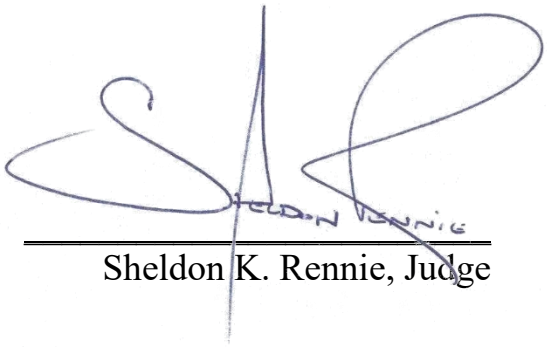
of Rule 12(b)(6) impose requirements not found in the text of the Non-Compete Agreement. But, where a single reasonable interpretation can be derived from the four corners of a contract, parties may not resort to outside sources to add terms or create ambiguity.[88]

Here, there are two possible interpretations that could come directly from the language of Paragraph 8: first, any allegation related to the APA; or second, entitlement to relief related to the APA. Only the second interpretation is reasonable. That reading therefore controls. Accordingly, for Paragraph 8 to be triggered, Plaintiffs must be entitled to relief related to the APA. That, in turn, requires a finding that Defendants breached the APA. It follows that relief under Count IV cannot be provided until Count I, II, or III is granted. The Court need not address Defendants' other arguments.

VI. CONCLUSION

For the foregoing reasons, Plaintiff's Motion for Partial Judgment on the Pleadings is **DENIED**.

IT IS SO ORDERED.



Sheldon K. Rennie, Judge

[88] *See Steward Health Care Sys. LLC v. Tenet Bus. Servs. Corp.*, 2023 WL 5321484, at *9 (Del. Ch. Aug. 18, 2023) ("'[E]xtrinsic evidence may not be used to interpret the intent of the parties, to vary the terms of the contract or to create an ambiguity' in an otherwise unambiguous contract." (alteration in original) (quoting *Eagle Indus., Inc. v. DeVilbiss Health Care, Inc.*, 702 A.2d 1228, 1232 (Del. 1997))).