IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

DANIEL C. MURPHY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. N16C-12-433 WCC CCLD
	)	
PENTWATER CAPITAL MANAGEMENT LP, HALBOWER HOLDINGS, INC., and MATTHEW C. HALBOWER	)	
	)	
Defendants.	)	

Submitted: April 18, 2019
Decided: July 24, 2019

DEFENDANTS' MOTION TO DISMISS COUNTS VI, VII, AND VIII OF PLAINTIFF'S SECOND AMENDED COMPLAINT – DENIED IN PART, GRANTED IN PART

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT – DENIED

PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT - DENIED

MEMORANDUM OPINION

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CARPENTER, J.

Before the Court are Pentwater Capital Management LP, Halbower Holdings, Inc., and Matthew C. Halbower's (collectively, "Defendants" or "Pentwater") Motion to Dismiss Counts VI, VII, and VIII of Plaintiff Daniel C. Murphy's ("Plaintiff" or "Murphy") Second Amended Complaint, Defendants' Motion for Summary Judgment, and Plaintiff's Motion for Partial Summary Judgment. For the reasons set forth in this Opinion, Defendants' Motion to Dismiss Counts VI and VII is DENIED. The Motion to Dismiss Count VIII is GRANTED. Defendants' Motion for Summary Judgment is DENIED. Plaintiff's Motion for Partial Summary Judgment is DENIED.

I. FACTUAL & PROCEDURAL BACKGROUND

Plaintiff Murphy initiated this litigation in order to recover money allegedly owed to him under the terms of a bonus plan (the "Bonus Plan") and employment agreement (the "Employment Agreement") (collectively, the "Agreements") with Pentwater.[1]

A. Plaintiff's Employment Relationship With Pentwater

Murphy first worked as a hedge fund portfolio manager at Pentwater from February 2008 until February 2011, when he resigned "because he disagreed with the amount of his compensation and the way ... Pentwater's CEO, Matthew C.

[1] *See* Second Am. Compl. ¶ 7.

Halbower ("Halbower") … determined [it]."[2] In March 2012, Halbower asked Plaintiff to return to Pentwater, but he declined.[3] Over a year later, in June 2013, Halbower again attempted to recruit Murphy back to Pentwater, and Plaintiff eventually rejoined the hedge fund on July 16, 2013.[4]

As part of Murphy's return to Pentwater, he was promised a 2.5% Synthetic Equity interest in the hedge fund.[5] This interest purportedly entitled Plaintiff to incentive bonuses "roughly equal to 2.5% of [its] distributable cash."[6] Halbower also allegedly promised Murphy in writing that he "would receive credit for amounts that had already been distributed in 2013 and that would be distributed in 2013 before he began work."[7]

Upon rejoining the hedge fund, Murphy received a copy of the Bonus Plan, which stated that "if [his] employment with Pentwater was terminated, he still would be entitled to cash payments after his termination until he received an amount equal to 2.5% of Pentwater's book value."[8] However, the copy of the Bonus Plan given to Plaintiff did not include an amendment apparently made just one day before his reemployment with Pentwater began.[9]

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[2] *Id.* ¶ 1.
[3] *Id.* ¶ 2.
[4] *Id.* ¶¶ 3, 5.
[5] *Id.* ¶ 3.
[6] *Id.*
[7] Second Am. Compl. ¶¶ 4, 21.
[8] *Id.* ¶ 4.
[9] *Id.* ¶ 6.

Approximately two years later, on August 7, 2015, Halbower allegedly fired Murphy.[10] Plaintiff then sought to enforce the Bonus Plan after his departure from Pentwater, which "was required to pay [him] … in cash on or before February 15, 2016."[11] However, Defendants refused to pay Murphy the money purportedly owed to him under the Agreements, citing the Bonus Plan amendment as a basis for its refusal.[12] Pentwater also claims it does "not owe any amounts under the Bonus Plan because Murphy did not execute a release of claims within two weeks of his termination as purportedly required in Paragraph 13 of the [Employment] Agreement."[13]

B. The Instant Litigation

On December 30, 2016, Plaintiff transferred his case from the Court of Chancery to Superior Court and filed an Amended Complaint, alleging claims for breach of contract (Counts I-II), recovery of wages under the Illinois Wage Payment and Collection Act ("IWPCA") (Counts III-IV), and fraudulent inducement (Count V).[14] In its October 31, 2017 Memorandum Opinion, the Court ultimately dismissed

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[10] *Id.* ¶ 7.
[11] *Id.*
[12] *Id.* ¶¶ 6-7, 38.
[13] Second Am. Compl. ¶ 79.
[14] *See Murphy v. Pentwater Capital Mgmt. LP*, 2017 WL 5068572, at *2 (Del. Super. Ct. Oct. 31, 2017).

Count IV against Halbower for lack of personal jurisdiction, but denied Defendants' Motion to Dismiss the claims against the remaining parties.[15]

On September 6, 2018, Plaintiff filed a Motion for Leave to File a Second Amended Complaint, which the Court granted.[16] Pentwater now moves to dismiss Counts VI, VII, and VIII of Murphy's Second Amended Complaint for failure to state a claim pursuant to Superior Court Civil Rule 12(b)(6) and has also filed a Motion for Summary Judgment on Counts I, II, III, and V of Murphy's Second Amended Complaint. Plaintiff filed his own Motion for Partial Summary Judgment on Counts I, II, III, and VII.

This is the Court's decision on the portion of the motions not previously addressed in its Letter Opinion of July 16, 2019.

II. DISCUSSION

A. Motion to Dismiss

In considering a motion to dismiss for failure to state a claim pursuant to Rule 12(b)(6), the Court must assume the truthfulness of the complaint's well-pleaded allegations,[17] and afford a plaintiff "the benefit of all reasonable inferences that can

[15] *See id.* at *1, 5.

[16] *See* Second Am. Compl.

[17] *See Solomon v. Pathe Commc'ns Corp.*, 672 A.2d 35, 38-39 (Del. 1996). *See also VLIW Tech., LLC v. Hewlett-Packard Co.*, 840 A.2d 606, 611 (Del. 2003) (noting that the complaint is to be liberally construed and under "Delaware's judicial system of notice pleading, a plaintiff need not plead evidence" but must "only allege facts that, if true, state a claim upon which relief can be granted.").

be drawn from its pleading."[18] Certain documents that are "integral to a plaintiff's claims … may be incorporated by reference without converting the motion to a summary judgment."[19] At this preliminary stage, dismissal will be granted only when the Court is able to determine with "reasonable certainty" that the plaintiff would not be entitled to relief "under any set of facts that could be proven to support the claims asserted" in the complaint.[20]

1. Counts VI & VII: Breach of Contract

Defendants argue that Counts VI and VII for breach of contract in Plaintiff's Second Amended Complaint must be dismissed because they are barred by the statute of limitations.[21] According to Pentwater, Murphy's claims are also prohibited by the language and terms of the Agreements themselves.[22] More specifically, Defendants argue that Halbower, as CEO of Pentwater, "had complete and binding discretion to interpret and implement the Bonus Plan,"[23] including calculation of the Total Equity Payment figure.

In response, Plaintiff argues that his additional claims are not time-barred because the discovery rule tolled the statute of limitations and they also relate back

[18] *In re USACafes, L.P. Litig.*, 600 A.2d 43, 47 (Del. Ch. 1991) (noting, however, that the Court is not required to blindly accept all allegations or draw all inferences in a plaintiff's favor).
[19] *Furnari v. Wallpang, Inc.*, 2014 WL 1678419, at *3–4 (Del. Super. Ct. Apr. 16, 2014).
[20] *See id.* (citing *Clinton v. Enter. Rent–A–Car Co.*, 977 A.2d 892, 895 (Del. 2009)).
[21] *See* Defs.' Opening Br. Mot. to Dismiss at 16-17.
[22] *See id.* at 18-23.
[23] *Id.* at 18.

to his original Amended Complaint.[24] Murphy also contends that the Bonus Plan sets forth a formula for calculating the Total Equity Payment figure and does not give Halbower the ability to just "choose a number out of thin air."[25]

The Court will first address the statute of limitations issue. Superior Court Rule of Civil Procedure 15(c)(2) states that "[a]n amendment of a pleading relates back to the date of the original pleading when the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading."[26]

The Court finds that Counts VI and VII relate back to Plaintiff's original Amended Complaint and, as a result, are not barred by the statute of limitations. Murphy's original Amended Complaint contained claims for breach of contract for Defendants' refusal to pay amounts allegedly owed to him under the Agreements. Counts VI and VII also seek relief for Pentwater's failure to compensate Murphy for other, additional amounts that he was apparently required to receive under the Agreements. Ultimately, the Court believes discovery has revealed calculation issues that relate back to Plaintiff's original claims for breach of the Bonus Plan and Employment Agreement. The breach of contract claims now asserted in Counts VI and VII of the Second Amended Complaint arise from the same conduct complained

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[24] *See* Pl.'s Opp'n. Br. Mot. to Dismiss at 12-13.
[25] *Id.* at 17.
[26] Super. Ct. Civ. R. 15.

of at the start of this litigation – Defendants' alleged failure to properly compensate Murphy pursuant to the terms set forth in the Agreements.

The second issue is whether Murphy's new breach of contract claims are prohibited by the language of the Agreements. Defendants argue that Count VI must fail because the Bonus Plan gave Halbower "the authority and discretion to operate, maintain, amend and administer [it] ..."[27] Pentwater also claims that Halbower's determination of the Total Equity Payment is unchallengeable and cannot be the basis for a breach of contract action[28] because the Bonus Plan states that Halbower's "interpretations of [it] are final, binding, and conclusive on all parties."[29] Murphy believes that "even if Halbower had sole discretion to determine how much Pentwater paid him and his related entities, it does not follow that he can simply ignore the plain language of the Bonus Plan that mandates the Total Equity Payment must be calculated by the amounts paid to Halbower and related entities."[30]

In Delaware, a breach of contract claim requires Plaintiff to demonstrate: (1) a contractual obligation, (2) a breach of that obligation, and (3) resulting damages.[31] When interpreting a contract, "[t]he Court will [construe] clear and unambiguous terms according to their ordinary meaning."[32] The discretionary provision cited by

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[27] *See* Am. Compl., Ex. 1 at § 3.2 [hereinafter, Bonus Plan].
[28] Defs.' Opening Br. Mot. to Dismiss at 19.
[29] Bonus Plan at § 3.3.
[30] Pl.'s Opp'n. Br. Mot. to Dismiss at 18.
[31] *Interim Healthcare, Inc. v. Spherion Corp.*, 884 A.2d 513, 548 (Del. Super. Ct. Feb. 4, 2005).
[32] *GMG Capital Inv., LLC v. Athenian Venture Partners I, L.P.*, 36 A.3d 776, 780 (Del. 2012).

Defendants cannot be interpreted to prohibit Murphy's breach of contract claim or to insulate the Defendants from liability for any alleged failure to follow defined terms and formulas set forth in the Bonus Plan. In fact, Halbower was to determine Incentive Bonuses "consistent with the provisions"[33] contained in the Plan. The Court believes Murphy's allegation that the Total Equity Payment was not calculated "consistent with" the formula set forth in the Bonus Plan is enough to support his breach of contract claim against Defendants in Count VI. Furthermore, any issues regarding how the Total Equity Payment amount was calculated are factual in nature and cannot be decided on a Motion to Dismiss. Therefore, the Motion to Dismiss Count VI is denied.

Defendants also contend that Count VII must be dismissed because "Murphy's Incentive Bonus was properly reduced by his buy-in amount in accordance with the terms of the Bonus Plan."[34] Plaintiff, by contrast, claims that Pentwater's Incentive Bonus calculation did not give him credit for one of two distributions that occurred in 2013.[35] Again, it is clear to the Court that there are factual issues surrounding how the Incentive Bonus was calculated. These issues cannot appropriately be decided or resolved on a Motion to Dismiss. Therefore, the Motion to Dismiss Count VII is denied.

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[33] Bonus Plan at § 3.2(b).

[34] Defs.' Opening Br. Mot. to Dismiss at 23.

[35] *See* Pl.'s Opp'n. Br. Mot. to Dismiss at 19-20.

2. Count VIII: Quantum Meruit

Pentwater argues that Murphy's quasi-contractual claim for quantum meruit is improper because its relationship with Plaintiff is governed by the two express Agreements.[36] Meanwhile, Murphy contends that the enforceability of the Bonus Plan and Employment Agreement at issue are questionable, and he only seeks recovery under the quantum meruit theory as an alternative to the breach of contract claims.[37]

Quantum meruit "is a quasi-contractual remedy by which a plaintiff, in the absence of an express agreement, can recover the reasonable value of the materials or services it rendered to the defendant."[38] When "there is an enforceable contract between the parties, quantum meruit recovery is inapplicable."[39]

Because this litigation is based on alleged breaches of the Employment Agreement and Bonus Plan, Murphy's quantum meruit claim cannot proceed. The Court believes these two express Agreements and the terms contained within them control the parties' now-soured relationship and the ultimate outcome of Plaintiff's lawsuit. In short, there is no "absence of an express agreement"[40] to support quantum

[36] *See* Defs.' Opening Br. Mot. to Dismiss at 23-24.
[37] *See* Pl.'s Opp'n. Br. Mot. to Dismiss at 21-22.
[38] *C & C Drywall Contractor, Inc. v. Milford Lodging, LLC*, 2010 WL 1178233, at *3 (Del. Super. Ct. Jan. 13, 2010).
[39] *Id.*
[40] *Id.*

meruit recovery in this case. Therefore, Count VIII of Plaintiff's Second Amended Complaint for quantum meruit is dismissed.

B. Motions for Summary Judgment

In reviewing a motion for summary judgment pursuant to Superior Court Civil Rule 56, the Court must determine whether any genuine issues of material fact exist.[41] The moving party bears the burden of showing that there are no genuine issues of material fact, such that he or she is entitled to judgment as a matter of law.[42] In reviewing a motion for summary judgment, the Court must view all factual inferences in a light most favorable to the non-moving party.[43] Where it appears that there is a material fact in dispute or that further inquiry into the facts would be appropriate, summary judgment will not be granted.[44] Additionally, "the standard for summary judgment 'is not altered'" with cross-motions for summary judgment.[45]

1. Defendants' Motion for Summary Judgment

(i) Fraudulent Inducement

As indicated in prior rulings, the Court believes the dispute over how bonus amounts were calculated and the numbers used to make those calculations is factual

[41] Super. Ct. Civ. R. 56(c); *see also Wilm. Tru. Co. v. Aetna*, 690 A.2d 914, 916 (Del. 1996).
[42] *See Moore v. Sizemore*, 405 A.2d 679 (Del. 1979).
[43] *See Alabi v. DHL Airways, Inc.*, 583 A.2d 1358, 1361 (Del. 1990).
[44] *See Ebersole v. Lowengrub*, 180 A.2d 467, 470 (Del. Super. Ct. 1962), *rev'd in part* on procedural grounds and *aff'd in part*, 208 A.2d 495 (Del. 1965).
[45] *Total Care Physicians, P.A. v. O'Hara*, 798 A.2d 1043, 1050 (Del. Super. Ct. 2001) (citing *United Vanguard Fund, Inc. v. TakeCare, Inc.*, 693 A.2d 1076, 1079 (Del. 1997)).

in nature, and therefore also cannot be resolved on a motion for summary judgment. It appears to the Court that beyond the issue of a release, the parties' dispute centers around whether Plaintiff is in fact owed any additional amounts under the Agreements and, if so, when those amounts could have been calculated and paid to him. There is also a dispute as to which version of the Bonus Plan is applicable to Plaintiff's compensation. Resolution of these underlying factual issues is inappropriate at the summary judgment stage.

The Court also finds there is a sufficient basis for Plaintiff's fraudulent inducement claim to go forward. Under Illinois law, fraudulent inducement is "a false representation of material fact, made with knowledge or belief of that representation's falsity, and made with the purpose of inducing another party to act or to refrain from acting, where the other party reasonably relies upon the representation to its detriment."[46] If Halbower presented Murphy with what he knew was an outdated or soon-to-be amended version of the Bonus Plan, as Plaintiff alleges,[47] the Court believes it was likely done in an effort to encourage Murphy to rejoin Pentwater. In contrast, Defendants claim that Halbower "explained to Plaintiff the terms of the Bonus Plan as it existed in or around July 2013," and deny that he made any false representations to Murphy.[48] Again, this is an issue of disputed fact,

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[46] *Enter. Recovery Sys., Inc. v. Salmeron*, 927 N.E.2d 852, 858 (Ill. App. Ct. 2010).
[47] *See* Compl. ¶ 84.
[48] *See* Answ. ¶ 84.

which cannot be resolved at the summary judgment stage. The outcome of Plaintiff's fraudulent inducement claim ultimately depends upon whether the jury believes: (a) Murphy, who argues that "the Plan actually had been materially amended the day before [he] was presented with the Agreement" and he was not advised of the changes,[49] or (b) Defendants, who contend there is "no evidence that Pentwater engaged in any scheme to defraud."[50]

Furthermore, the Court finds these alleged fraudulent representations have not been consumed by the terms of the employment contract subsequently issued. The Agreement correctly references the Bonus Plan, but the conduct addressed in this claim is materially amending the Plan to Plaintiff's detriment, knowing he would rely upon the information previously provided, and not disclosing the changes made to induce Murphy to rejoin Pentwater. Therefore, Defendants' Motion for Summary Judgment on Count V is denied, and Plaintiff's claim for fraudulent inducement will proceed to trial.

(ii) IWPCA

The remaining issue on Defendants' Motion for Summary Judgment is whether the penalties imposed under the Illinois Wage Payment and Collection Act ("IWPCA" or "Act") are applicable to Murphy's bonus under the Plan. At this

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[49] Pl's. Opp'n Br. Mot. for Summ. J. at 35.
[50] Defs.' Opening Br. Mot. for Summ. J. at 34.

juncture of the litigation, the Court finds the requirements of the IWPCA have not been met to bring the penalties imposed by the Act into play.

The Act defines final compensation to include "any other compensation owed the employee by the employer pursuant to an employment contract or agreement between the 2 parties." The Employment Agreement in this matter dated July 16, 2013 sets forth the compensation to be paid to Plaintiff, including amounts he would be owed if his employment was terminated by Defendants. Paragraph 6 of the Employment Agreement outlines the calculation process and asserts that Plaintiff "shall receive" a post termination bonus on or before February 15th of the following year. The Employment Agreement itself refers to this post termination bonus as compensation. As a result, under the Employment Agreement between the parties, at least as of February 15, 2016, this compensation would be owed to Plaintiff. However, the other competing provision of the Employment Agreement is the requirement in paragraph 13 that Plaintiff execute a waiver and release of claims to specifically obtain the post termination bonus. At this juncture, Murphy has failed to execute such a release and this has been a hotly contested issue in this litigation. The Court has previously ruled that Defendant had an obligation to initially propose a release and Plaintiff's right to post termination compensation was not extinguished until a reasonable release was provided. While the Court finds Plaintiff has earned compensation as of February 15, 2016, its payment is still controlled by paragraph

13 of the Employment Agreement and payment is not due until the execution of a release has occurred. As such, the Court finds that the IWPCA will only become applicable if the release is signed, and once executed, the compensation must be paid within 21 days from that date. Failure to pay within the 21 days will activate the penalties set forth in the IWPCA.

As a final note, this statute is uniquely applicable to compensation to employees of Illinois-based entities and any violation of its provisions are to be investigated and enforced by the Illinois Department of Labor. While the primary enforcement of the Act rests with the Department of Labor, the Act does specifically allow an employee to pursue violations of the Act, independent of the Department of Labor. However, the statute appears to require that if an individual desires to prosecute a claim, they do so in the Circuit Court of Illinois in the county where the alleged violation occurred. Section 11 of the Act in part states:

> Any employee aggrieved by a violation of this Act or any rule adopted under this Act may file suit in circuit court of Illinois, in the county where the alleged violation occurred or where any employee who is party to the action resides,...

As such, the Court only highlights that it has some concern as to whether it has proper jurisdiction to even consider the claim. However, since the Court has ruled that at the moment the Act is not applicable to Plaintiff's post termination compensation, the Court need not address the concern at this time.

2. Plaintiff's Motion for Partial Summary Judgment

Plaintiff has also moved for Partial Summary Judgment on Counts I, II, and III of his Second Amended Complaint. For the reasons set forth in its Letter Opinion of July 16, 2019, the Court believes summary judgment on these counts is not appropriate.

As to Count VII, Plaintiff argues he is entitled to partial judgment "in the amount of at least $400,000 related to an underpayment of [his] Incentive Bonus paid in February 2014."[51] Defendants respond by claiming that Murphy is not entitled to any additional 2014 compensation because he suffered no damages and his calculations are incorrect and inconsistent with how the Bonus Plan is administered.[52] The Court again finds that there is a factual dispute regarding how the Incentive Bonus is calculated and which numbers should be used in the calculation. It cannot be resolved at the summary judgment stage. Therefore, Plaintiff's Motion for Partial Summary Judgment on Count VII is also denied.

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[51] Pl.'s Opening Br. Mot. for Partial Summ. J. at 25.
[52] Defs.' Opp'n Br. Mot. for Partial Summ. J. at 24.

III. CONCLUSION

For the foregoing reasons, Defendants' Motion to Dismiss Counts VI and VII of Plaintiff's Second Amended Complaint is **DENIED**. The Motion to Dismiss Count VIII is **GRANTED**. Defendants' Motion for Summary Judgment is **DENIED**. Plaintiff's Motion for Partial Summary Judgment is **DENIED**.

IT IS SO ORDERED.

Judge William C. Carpenter, Jr.