UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

ROBERT WILLIAMSON, III, an individual

Plaintiff,

vs.

VICTORIA L. GUNVALSON, an individual; WOO HOO PRODUCTIONS, LLC; DAVID BROOKS AYERS, an individual,

Defendants.

AND RELATED CLAIMS

Base Case No.: 2:13-cv-01019-JAD-GWF

Member Case No.: 2:13-cv-02022-JAD-GWF

Order Granting in Part and Denying in Part Defendants' Motion for Summary Judgment (Doc. 53)

Defendants Victoria Gunvalson and Woo Hoo Productions, LLC, move for summary judgment against Plaintiff Robert Williamson, a professional poker player with whom Gunvalson partnered to form a vodka business that capitalized on Gunvalson's recurring role on a reality television show. Defendants claim Williamson lacks standing to bring his vodka-business-related claims because, if any party was injured, it was the company Vicki's Vodka, not Williamson personally. Defendants also claim that each of Williamson's business-related claims fails on its merits and that his remaining claims, which are based on a settlement agreement he and Gunvalson signed, fail due to Williamson's anticipatory breach.

Williamson responds that he has standing because he was personally injured by defendants' alleged breached, particularly the alleged breach of the oral agreement establishing the parties' obligations to one another. At the time that agreement was made, Williamson contends, Vicki's Vodka did not even exist as a company, so it could not be injured. Williamson claims he did not anticipatorily breach the settlement agreement: that document merely required him to dismiss the first lawsuit he brought against Gunvalson; it did not prohibit him from filing a second one.

I find that genuine issues of material fact exist with respect to some, but not all, of Williamson's claims against Gunvalson and Woo Hoo. I therefore grant summary judgment in part

and deny it in part.[1] I grant summary judgment against Williamson with respect to his claims for unjust enrichment (Count IV), civil conspiracy (Count VI), and intentional infliction of emotional distress (Count IX). I deny it with respect to Williamson's claims for breach of contract (Count I); breach of the convenant of good faith and fair dealing (Count II); misrepresentations, fraud, and omissions (Count III); and promissory estoppel (Count V).

Background

I. The Oral Agreement

In the summer of 2012, Williamson began negotiations with Mike Nicholson and defendant Gunvalson to start "Vicki's Vodka."[2] Gunvalson's nickname is "Vicki" and for several years she has appeared on the television show "The Real Housewives of Orange County." The vodka company was set up to capitalize on her role on the show.

The first official meeting occurred in a conference room at Williamson's Las Vegas condominium on June 3, 2012.[3] There, the parties orally agreed that (1) Williamson would make "substantial capital contributions to Vicki's Vodka" and (2) Gunvalson would make efforts to promote the products and brand.[4] No written agreement was penned to memorialize this arrangement.

II. The Membership-Interest Purchase Agreement

Soon after that initial meeting, Nicholson withdrew from the venture, leaving Williamson and Gunvalson each with a 50% interest.[5] Gunvalson then gave part of her share to her boyfriend

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[1] Defendants note that Williamson did not file his responsive brief until 15 days after the deadline and that he made no requests for an extension. *See* Doc. 69 at 3. I do not see the value in striking Williamson's late brief at this point, but I do caution him that the judges of this district spend a lot of time crafting our local rules and do not like to see them violated, particularly so cavalierly.

[2] *See* Doc. 63 at 3.

[3] *Id.*

[4] *Id* at 4–5.

[5] *Id.* at 5.

David Brooks Ayers, who, in turn, sold it to Williamson for $50,000.[6] After this exchange, which was memorialized in a Membership Interest Purchase Agreement (MIP), Williamson believed that he owned 66.67% of Vicki's Vodka and Gunvalson owned the remaining 33.3%.[7] The MIP contains an integration clause that makes clear no representations outside of the agreement were made.[8]

III. The Settlement Agreement

According to the defendants, Williamson and others confronted Gunvalson with disparaging and disturbing allegations about Ayers two weeks after the MIP was executed. Believing the allegations, Gunvalson terminated her romantic affiliation with Ayers. Over the next several weeks, however, Gunvalson "came to doubt Williamson's allegations against Ayers."[9] Her working relationship with Williamson suffered, and she eventually had her attorney send Williamson a letter requesting that he seek pre-approval before using her name or likeness in connection with the business.[10] The letter also reiterated that the business still lacked an operating agreement and expressed Gunvalson's concern that Williamson "was going rough with the business and would tarnish Gunvalson's name and likeness in the process."[11]

Four weeks later, on June 7, 2013, Williamson filed a complaint against Gunvalson and Ayers in what is now the base case.[12] Williamson alleged that Gunvalson breached her contractual obligation to promote Vicki's Vodka and that Gunvalson and Ayers tricked him, with the MIP agreement, into buying Ayers's shares in the business, knowing full well that those shares would

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[6] *See* 2:13-cv-02022-JAD-GWF ("*Member Case*"), Doc. 1-1 at 25.

[7] Doc. 63 at 5.

[8] *Id.* at 29.

[9] *Id.* at 8.

[10] *Id.*

[11] *Id.*

[12] Doc. 1.

ultimately be worthless.[13]

About a month later, Gunvalson and her manager flew to Las Vegas to meet with Williamson and try to settle the dispute. Accounts of what happened next conflict. According to Williamson, he and Gunvalson negotiated a settlement agreement that was executed on July 15, 2013, shortly after the meeting.[14] According to defendants, however, Gunvalson was coerced into signing the settlement agreement right before a scheduled television appearance on the show "Watch What Happens Live," a show she helped get Williamson booked on as well.[15] Defendants contend that just hours before the show, which is shot live and appears on the same network as Gunvalson's show, Williamson began calling Gunvalson and threatening that if she did not sign the settlement agreement, he would tell the press that Gunvalson had defrauded him. Because Gunvalson did not have a copy of the agreement in front of her, Williamson came to her dressing room, document in hand, and told her to sign it. Gunvalson claims she did not even read the document but "simply signed it out of fear that Williamson would create a scene on the live broadcast and slander her to the media, potentially ruining her opportunity to renew her contract with Bravo."[16]

That day, after getting Gunvalson's signature, Williamson dismissed the lawsuit against her.[17] Seven weeks later, Williamson filed a second lawsuit against Gunvalson (and others).[18] The allegations in the second lawsuit are almost identical to those in the lawsuit Williamson agreed to dismiss; there are just more of them—including an allegation that Gunvalson breached the settlement agreement—and also more named parties. [19]

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[13] *See* Doc. 1 at ¶¶ 23–29, 55.

[14] Doc. 63 at 6–7

[15] Doc. 53 at 9–10.

[16] Doc. 53 at 10.

[17] *See* Doc. 6.

[18] *Member Case*, Doc. 1-1 at 2.

[19] Compare *Member Case*, Doc. 1-1 at ¶¶ 14-31 to *Base Case*, Doc. 1 at ¶¶ 14-31.

Defendant argues that this second lawsuit constitutes an anticipatory breach of the settlement agreement. Williamson responds that the settlement agreement obligated him only "to dismiss Gunvalson from the first lawsuit within ten business days of [its] execution"; "[he] did not, however, agree to dismiss his claims with prejudice or to forgo filing a second lawsuit."[20]

Originally filed in Eighth Judicial District Court, the second lawsuit was removed to federal court and then eventually consolidated with the base case.[21] I have already granted Ayers summary judgment on the claims that relate to him in that lawsuit.[22] I now consider whether Gunvalson and Woo Hoo are entilted to summary judgment, too.

Discussion

I. Legal standard for summary judgment

Summary judgment is appropriate when the pleadings and admissible evidence "show there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law."[23] When considering summary judgment, the court views all facts and draws all inferences in the light most favorable to the nonmoving party.[24] If reasonable minds could differ on material facts, summary judgment is inappropriate because summary judgment's purpose is to avoid unnecessary trials when the facts are undisputed, and the case must then proceed to the trier of fact.[25]

If the moving party satisfies Rule 56 by demonstrating the absence of any genuine issue of material fact, the burden shifts to the party resisting summary judgment to "set forth specific facts showing that there is a genuine issue for trial."[26] The nonmoving party "must do more than simply

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[20] Doc. 63 at 11.

[21] *See Member Case*, Docs. 1, 23.

[22] *See* Doc. 78.

[23] *See Celotex Corp. v. Catrett*, 477 U.S. 317, 330 (1986) (citing Fed. R. Civ. P. 56(c)).

[24] *Kaiser Cement Corp. v. Fishbach & Moore, Inc.*, 793 F.2d 1100, 1103 (9th Cir. 1986).

[25] *Warren v. City of Carlsbad*, 58 F.3d 439, 441 (9th Cir. 1995); *see also Nw. Motorcycle Ass'n v. U.S. Dep't of Agric.*, 18 F.3d 1468, 1471 (9th Cir. 1994).

[26] *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986); *Celotex*, 477 U.S. at 323.

show that there is some metaphysical doubt as to the material facts"; he "must produce specific evidence, through affidavits or admissible discovery material, to show that" there is a sufficient evidentiary basis on which a reasonable fact finder could find in his favor.[27] The court only considers properly authenticated, admissible evidence in deciding a motion for summary judgment.[28]

II. Defendants have not demonstrated that Williamson lacks standing.

Defendants insist that Williamson does not have standing to bring any of his business-related claims against Gunvalson, including his claims for breach of contract and breach of the covenant of good faith and fair dealing. They argue that the "gravamen" of these claims is injury not to Williamson himself but to the limited liability company Vicki's Vodka and that, under California law, members of a limited liability company—in this case, Gunvalson and Williamson—"are shielded from liability from other members for alleged diminution in value to the member interest."[29] They urge me in particular to rely on the California Corporations Code and three California appellate cases.[30]

Defendants have not demonstrated, however, that California law applies here. The record is too unsettled even as to the formation of Vicki's Vodka as a limited liability company for me to grant their motion for summary judgment simply on the basis of standing. For example, as defendants themselves note several times, there is no operating agreement for Vicki's Vodka.[31] Nor have defendants submitted any other document that establishes where, when, or how the company was formed. All I have is unauthenticated minutes from a meeting that allegedly took place on June 3, 2012.[32]

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[27] *Bank of Am. v. Orr*, 285 F.3d 764, 783 (9th Cir. 2002) (internal citations omitted); *Bhan v. NME Hosps., Inc.*, 929 F.2d 1404, 1409 (9th Cir. 1991); *Anderson,* 477 U.S. at 248–49.

[28] Fed. R. Civ. P. 56(c); *Orr*, 285 F.3d at 773–74.

[29] Doc. 53 at 11.

[30] *See id.* at 11–12.

[31] *Id.* at 3, 6, 8.

[32] *See Member Case*, Doc. 1-1 at 21–23.

Moreover, according to one of the terms of the settlement agreement, "[Gunvalson] reaffirms that [Vicki's Vodka] will be headquarted and operated in Clark County, Nevada, for tax purposes and other reasons, that the LLC has been formed in Nevada for this purpose and any and all related accounts and further dealings will be initiated in Nevada."[33] This representation in the record belies the notion that the company—if it exists—is governed by California law. I therefore cannot conclude as a matter of law, and based on this record, that Williamson does not have standing to bring his claims as an individual.

III. Defendants have not demonstrated that Gunvalson was not a party to the MIP agreement.

Defendants claim that Gunvalson was not a party to the MIP agreement in which Williamson acquired 16.67% of Vicki's Vodka from Ayers. Thus, in their view, for this reason, Williamson's claim that Gunvalson breached that contract necessarily fails.[34]

But Gunvalson signed the MIP agreement and committed to a number of conditions and obligations in it. First, she agreed that she is "currently a member of the Company and owns 33.33% of the Company and the Seller (Ayers) owns 16.67% of the Company."[35] She also agreed not to "sell, transfer, or gift any of her ownership in the Company without obtaining the written unanimous approval of the others members of the Company" and that "[a]ny such transfer without written approval shall be deemed null and void."[36] Finally, she agreed that she "consents to, and approves this sale and transfer of the Seller's member interest to Buyer."[37] Based on this and without any more from defendants than the conclusory statement that "Gunvalson was not a party to that agreement," I cannot conclude that are no genuine issues of material fact as to whether Gunvalson breached the MIP agreement or breached the corresponding convenant of good faith and fair dealing.

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[33] *Id.* at 38.

[34] *See* Doc. 53 at 13–14.

[35] *Member Case*, Doc. 1-1 at 30.

[36] *Id.* at 30-31.

[37] *Id.* at 31.

IV. Defendants have not shown that Williamson anticipatorily breached the settlement agreement.

Next, defendants challenge Williamson's claim that Gunvalson breached the settlement agreement by arguing that Williamson committed an anticipatory breach. They contend that once Williamson initiated the second lawsuit, he himself breached the agreement, which means Gunvalson was then excused from performing her part of the dealt. The settlement agreement was designed, according to defendants, to prevent future suits by Williamson against Gunvalson.

The actual language of the agreement, however, does not go that far. It states only that "Settling Parties agree to dismiss [Gunvalson] from the Federal Court case styled as Case No. 2:31(sic)-cv-01019-RCJ-GWF within ten (10) business days of execution of this Agreement."[38] It says nothing about not bringing another lawsuit. Defendants have therefore not shown that Williamson anticipatorily breached the settlement agreement, so I find that genuine issues of material fact still exists over whether Gunvalson remains liable for its breach.

V. The existence of an integration clause in the MIP agreement does not mean Williamson's misrepresentation claim fails.

Defendants challenge Williamson's claim for "misrepresentation, fraud, and omission" by pointing to the integration clause in the MIP agreement.[39] But Williamson's claim, though pled with an unhelpful lack of precision, appears to cover more than just whatever communications directly lead to the MIP agreement. He seeks relief not just for the $50,000 he paid for Ayers's membership interest but for his total investment in Vicki's Vodka, a number he puts at "in excess of $300,000."[40] He maintains that genuine issues of material fact exist with respect to "(1) the persistent failure of Gunvalson to use all efforts to promote the business of Vicki's Vodka of California; (2) the failure of Gunvalson to appear at events to promote the products of Vicki's Vodka of California; (3) the failure

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[38] *Member Case*, Doc. 1-1 at 39.

[39] *See* Doc. 53 at 15.

[40] *Member Case*, Doc. 1-1 at 13

of Gunvalson to promote the products of Vicki's Vodka of California on social media outlets such as Twitter and Facebook; and (4) the transfer to Ayers by Gunvalson and Woo Hoo of a portion of their membership interests in Vicki's Vodka of California."[41] He claims that Gunvalson misrepresented her willingness to follow through on these commitments. And Gunvalson has not provided sufficient evidence to demonstrate that she either did follow through on these commitments or that these commitments do not accurately reflect the terms of the oral agreement. I therefore find that genuine issues of material fact remain with respect to Williamson's claim for misrepresentation, fraud, or omission.

VII. Williamson cannot maintain his claim for unjust enrichment.

Defendants are more successful, however, in their challenge to Williamson's claim for unjust enrichment. "The phrase 'unjust enrichment' is used in law to characterize the result or effect of a failure to make restitution of, or for, property or benefits received under such circumstances as to give rise to a legal or equitable obligation to account therefor."[42] It is a theory of "quasi-contract," and an action grounded in this theory is not available when there is an express, written agreement because no agreement can be implied when there is an express one.[43] Williamson cannot therefore maintain his unjust enrichment claims with respect to the MIP agreement or the settlement agreement. "To permit recovery by quasi-contract where a written agreement exists would constitute a conversion of contractual principles."[44]

He also cannot maintain his unjust enrichment claims with respect to the oral agreement—but for a different reason. To prove unjust enrichment, Williamson must show that (1) he conferred a benefit on Gunvalson, (2) Gunvalson appreciated the benefit, and (3) Gunvalson accepted and retained the benefit under circumstances that make it inequitable for her to keep the benefit without

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[41] Doc. 63 at 12.

[42] *Leasepartners Corp. v. Robert L. Brooks Trust* 113 Nev. 747, 755 (1997) (quoting Am.Jur.2d Restitution § 3 (1973)).

[43] *Id.* at 756 (quoting Am.Jur.2d Restitution § 6 (1973)).

[44] *Liphsie v. Tracy Investment Co.*, 93 Nev. 370, 379 (1977).

paying for its value.[45] Williamson cannot satisfy these three elements. He did not pay Gunvalson any money as a result of the oral agreement or confer any other benefit on her; he simply took the risk of investing in a vodka business. Just because the investment did not turn out the way he hoped it would does not mean Gunvalson was unjustly enriched. I therefore grant defendants' motion for summary judgment on Williamson's claim for unjust enrichment.

VIII. Williamson can maintain his claim for promissory estoppel.

Nevada follows the doctrine of promissory estoppel articulated in the Restatement (Second) of Contracts:

> A promise [that] the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and [that] does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise.[46]

Defendants challenge Williamson's claim for promissory estoppel on the ground that "Gulvason did not induce [Williamson] to do anything."[47] Williamson responds that, because of various promises Gunvalson made, he was induced both to make "capital contributions to Vicki's Vodka" and to dismiss his first lawsuit.[48]

Defendants have not presented enough evidence to eliminate the discrepancy between these two accounts. They claim that "Gunvalson made no personal promise to [Williamson that] induced [Williamson] to do anything he already had not done (namely, to invest capital)."[49] But the allegations in Williamson's verified complaint, which date these personal promises to before Williamson even invested in Vicki's Vodka, tell a different story.[50] Viewing the facts in a light most

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[45] *Leasepartners Corp*, 942 P.2d at 187.

[46] *Dynalectric Co. of Nevada, Inc. v. Clark & Sullivan Constructors, Inc.* 255 P.3d 286 (Nev. 2011) (quoting Restatement (Second) of Contracts § 90(1) (1981)).

[47] Doc. 53 at 17.

[48] Doc. 63 at 15.

[49] Doc. 53 at 17.

[50] *Member Case*, 1-1 at §§ 93–94.

favorable to Williamson, I therefore find that genuine issues of material fact preclude summary judgment on Williamson's claim for promissory estoppel.

IX. Williamson cannot maintain his claim for civil conspiracy.

"In Nevada, an actionable civil conspiracy is defined as 'a combination of two or more persons, who by some concerted action, intend to accomplish some unlawful objective for the purpose of harming another which results in damage.'"[51] Defendants argue that Williamson's claim for civil conspiracy fails against Gunvalson because "there was no predicate unlawful act by Gunvalson."[52] They further contend that Williamson cannot show Gunvalson ever conspired to defraud him.[53]

Williamson's claim for misrepresentation, fraud, and omission supplies the predicate act for a civil conspiracy claim provided that Gunvalson acted in concert with some other person. But Williamson has not identified whom that person would be. Williamson's claims against Ayers have already been dismissed,[54] and Williamson has made no specific allegations against Woo Hoo. All he has said is that "[g]enuine issues of material fact exist about the capacity in which Gunvalson acted in connection with the Oral Agreement, the MIP Agreement, and the Settlement Agreement and, as a result, the liability of Woo Hoo for the actions of Gunvalson."[55] He has provided no evidence of how Woo Hoo, which defendants assert is simply a limited liability company formed and controlled by Gunvalson, was involved in any of the unlawful acts Gunvalson allegedly engaged in.

Williamson simply has not met his burden on summary judgment. I therefore grant Gunvalson's motion and enter summary judgment in favor of the defendants on Williamson's civil-conspiracy claim.

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[51] *Flowers v. Carville*, 266 F. Supp. 2d 1245, 1249 (D. Nev. 2003) (quoting *Collins v. Union Fed. Sav. & Loan Ass'n*, 662 P.2d 610, 622 (1983)).

[52] Doc. 53 at 17.

[53] *Id.*

[54] *See* Doc. 78

[55] *See* Doc. 63 at 19.

X. Williamson cannot maintain his claim for intentional infliction of emotional distress.

A claim for intentional infliction of emotional distress requires a showing of (1) extreme and outrageous conduct with either the intention of, or reckless disregard for, causing emotional distress; (2) the plaintiff's having suffered severe or extreme emotional distress; and (3) actual or proximate causation.[56]

Defendants are right to point out the absence of any evidence that Williamson suffered severe or extreme emotional distress. All that Williamson offers is the statement in his verified complaint that he "suffered emotional distress on account of the conduct of Gunvalson, Woo Hoo, and others."[57] Conclusory statements like these cannot defeat a motion for summary judgment. Objectively verifiable evidence is needed.[58] I therefore grant defendants' motion with respect to Williamson's claim for intentional infliction of emotional distress.

XI. Williamson's "claim" for attorneys' fees is not a viable claim.

Williamson's verified complaint includes a separately pled cause of action for attorneys' fees.[59] But attorneys' fees is a not a claim for relief; it's a remedy. I therefore dismiss it as a claim. This ruling does not preclude Williamson from seeking or recovering attorneys' fees, if legally available; he just can't maintain this concept as an independent cause of action.

Conclusion

Accordingly, IT IS HEREBY ORDERED that defendant's motion for summary judgment (**Doc. 53**) is GRANTED IN PART and DENIED IN PART. Summary judgment is entered against Williamson and in favor of defendants on Williamson's claims for unjust enrichment (Count IV), civil conspiracy (Count VI), and intentional infliction of emotional distress (Count IX). In all other

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[56] *Star v. Rabello*, 625 P.2d 90, 92 (Nev. 1981).

[57] Doc. 63 at 18.

[58] *Miller v. Jones*, 970 P.2d 571, 577 (Nev. 1998) (finding that plaintiff could not sustain his emotional distress claim where although he states that he was depressed for some time, he did not seek any medical or psychiatric assistance and presented no objectively verifiable evidence of the severity of his distress).

[59] *See Member Case*, Doc 1-1 at §§ 118–120 (Count X).

respects, the motion for summary judgment is denied. Williamson's claim for attorneys' fees (Count X) is dismissed because it does not state a claim for relief.

DATED this 25th day of August, 2015.

Jennifer A. Dorsey
United States District Judge