STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: December 18, 2017)

YAGOOZON, INC.,	:	
Plaintiff,	:	
	:	
v.	:	**C.A. No. PC-2014-2881**
	:	
UNCLE MILTON INDUSTRIES, INC.	:	
Defendant.	:	
_____	:	
	:	
UNCLE MILTON INDUSTRIES, INC.	:	
Plaintiff-in-Counterclaim,	:	
	:	
v.	:	
	:	
YAGOOZON, INC., JUSTIN LIGERI	:	
(a/k/a JUSTIN NICOLA), and	:	
KANGAROO MANUFACTURING, INC.	:	
Defendants-in-Counterclaim/	:	
Third-Party Defendants.	:	

DECISION

SILVERSTEIN, J. Before the Court are several motions filed by both Plaintiff and Defendant-in-Counterclaim Yagoozon, Inc. (Yagoozon) and Defendant and Plaintiff-in-Counterclaim Uncle Milton Industries, Inc. (Uncle Milton). Uncle Milton has submitted a motion for partial summary judgment on its contract claims pursuant to Super. R. Civ. P. 56, as well as a motion to strike exhibits attached to Yagoozon's opposition to Uncle Milton's motion for partial summary judgment. In turn, Defendants-in-Counterclaim Yagoozon, Justin Ligeri (Ligeri), and Kangaroo Manufacturing, Inc. (Kangaroo) (collectively, Third-Party Defendants) have submitted a motion for partial summary judgment with regard to Uncle Milton's alter ego and successor liability counterclaims, and Yagoozon has filed a motion to strike the affidavit of Elizabeth

France (France) submitted by Uncle Milton in conjunction with its motion for partial summary judgment. This Court exercises jurisdiction pursuant to G.L. 1956 § 8-2-14 and Super. R. Civ. P. 56.

I

Facts and Travel

Uncle Milton is a toy company based in Agoura Hills, California. At all times relevant to this proceeding, Frank Adler (Adler) was the President of Uncle Milton.[1] Yagoozon, a company founded in Rhode Island, is an internet retailer that would purchase goods wholesale and sell them online through Amazon.com under the Fulfilled by Amazon program, in which goods are held in warehouses and shipped directly to consumers through Amazon. The President and Owner of Yagoozon is Ligeri.

Prior to 2013, Yagoozon was one of Uncle Milton's smaller customers. In November and December of 2013, Yagoozon placed an order for more than $700,000 worth of Uncle Milton products. This order was subject to extensive negotiations between Adler and Ligeri and extends across a number of purchase orders. The purchase orders pertaining to the December 2013 order contained additional terms departing from the standard purchase orders present in earlier Yagoozon orders. As part of these negotiations, Yagoozon and Ligeri allege that Adler referred to specific arrangements regarding price and exclusivity.

All of the products ordered by Yagoozon were delivered by Uncle Milton per the aforementioned purchase orders. Following delivery, Yagoozon had the opportunity to inspect the delivered products and returned a number of products that were determined to be defective. Additionally, in preparing one of the invoiced orders, Uncle Milton erroneously charged

[1] Throughout this Decision, the Court will refer to specific individuals by their surname only. In so doing, the Court seeks to improve clarity and readability and intends no disrespect.

Yagoozon a higher price for a specific ordered product. As a result of the pricing error and return of defective products, Uncle Milton issued a credit memo reimbursing Yagoozon.

Soon after Yagoozon received the ordered goods from Uncle Milton, Ligeri learned that other online retailers were selling the same products purchased by Yagoozon in violation of an allegedly negotiated exclusivity agreement. As a result, beginning in early 2014, Ligeri and Yagoozon contacted Uncle Milton in order to arrange the return of the purchased goods. Ligeri testified during his deposition that Adler had authorized the return of the goods; Adler maintains that he does not recall authorizing a return. Due to the purported negotiations concerning the return of these goods, Yagoozon attempted to ship a large quantity of the items to Uncle Milton. The return shipment, however, was rejected upon arrival at the Uncle Milton warehouse.

Yagoozon filed its initial Complaint in June of 2014 and subsequently amended the Complaint that August. Uncle Milton answered the Amended Complaint and filed a Counterclaim in February of 2015. Through a series of amended counterclaims, Uncle Milton additionally brought claims against Ligeri and Kangaroo under theories of alter ego and successor liability. On February 7, 2017, Uncle Milton filed a motion for partial summary judgment: (1) on the entirety of Yagoozon's First Amended Complaint; (2) on Uncle Milton's claims for breach of contract, declaratory relief, and goods sold and delivered; and (3) on Yagoozon's indebtedness to Uncle Milton in the amount of $1,084,944.08, plus interest of $353.58 per day from February 6, 2017.[2] Yagoozon, in turn, submitted a motion for partial summary judgement on June 29, 2017, with respect to Uncle Milton's claims under the theories of alter ego and successor liability. Additionally, Yagoozon also filed a motion to strike the

[2] Uncle Milton arrives at this figure by adding together the amount owed from five invoices spanning January to June 2014 totaling $716,971.96. Uncle Milton then applied eighteen percent interest, as provided in the purchase orders, arriving at $1,084,944.08, the total amount owed by Yagoozon to Uncle Milton.

affidavit of France, Uncle Milton's Controller. On July 13, 2017, Uncle Milton further moved to strike the deposition testimony of Ligeri and Adler attached to Yagoozon's June 29, 2017 opposition to Uncle Milton's motion for partial summary judgment. The parties further submitted numerous memoranda in support of their respective positions.

II

Standard of Review

"It is a fundamental principle that '[s]ummary judgment is a drastic remedy, and a motion for summary judgment should be dealt with cautiously.'" *Takian v. Rafaelian*, 53 A.3d 964, 970 (R.I. 2012) (alteration in original) (quoting *Emp'rs Mut. Cas. Co. v. Arbella Prot. Ins. Co.*, 24 A.3d 544, 553 (R.I. 2011)). With that in mind, in ruling on a motion for summary judgment, the Court is instructed to "review[] the evidence and draw[] all reasonable inferences in the light most favorable to the nonmoving party," *id.* (citation omitted) (internal quotation marks omitted), and to "'look for factual issues, not determine them.'" *Steinhof v. Murphy*, 991 A.2d 1028, 1032-33 (R.I. 2010) (quoting *Steinberg v. State*, 427 A.2d 338, 340 (R.I. 1981)). However, summary judgment is appropriate "'if there exists no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.'" *Takian*, 53 A.3d at 970 (quoting *Classic Entm't & Sports, Inc. v. Pemberton*, 988 A.2d 847, 849 (R.I. 2010) (internal citation omitted)); *see* Super. R. Civ. P. 56(c).

III

Discussion

In its motion for summary judgment, Uncle Milton asserts that there are no genuine issues of material fact with respect to (1) the delivery of goods; (2) Yagoozon's acceptance of the delivered goods; and (3) any material terms of the agreement entered into by both parties.

Accordingly, Uncle Milton moves for summary judgment with regard to its claims for breach of contract, declaratory relief, and goods sold and delivered. Uncle Milton in turn requests that Yagoozon's indebtedness, as detailed above, be satisfied. Additionally, Uncle Milton requests summary judgment on Yagoozon's First Amended Complaint, in its entirety. Further, Uncle Milton has moved to strike the deposition testimony of Ligeri as inadmissible under G.L. 1956 § 6A-2-202 and the deposition testimony of Adler as irrelevant. Yagoozon, however, contends that there is a genuine issue of material fact with regard to whether or not an exclusivity provision was negotiated as part of the contract. Yagoozon also objects to Uncle Milton's motions to strike the deposition testimony of Ligeri, arguing that Uncle Milton has misapplied the parol evidence rule and that there is no evidence indicating that the purchase orders were intended to represent a complete and final agreement between the parties.[3]

The Third-Party Defendants also move for summary judgment with respect to the alter ego and successor liability claims submitted by Uncle Milton. They argue that Uncle Milton's motion is an inappropriate attempt to pierce the corporate veil and that the undisputed facts in this matter do not support this proposition. Moreover, Yagoozon has also moved to strike the affidavit of France, in whole or in part, because she lacks personal knowledge of the negotiations entered into by the two parties and she has not properly authenticated the documents attached to her affidavit. Uncle Milton maintains that there is ample evidence to establish a claim for alter ego and successor liability in this matter. Furthermore, Uncle Milton asserts that France, as Controller for Uncle Milton at all relevant times, has personal knowledge of the documents

[3] Yagoozon does not outline their objection to Uncle Milton's motion to strike the deposition testimony of Adler on the basis of relevancy. Despite this omission, the Court will examine Uncle Milton's motion in its entirety.

attached to her affidavit and that her affidavit does not serve to detail the contents of the negotiations, but rather the terms outlined in the resulting purchase orders.

A

Motions to Strike

Each party has moved to strike testimony provided by one or more witnesses in conjunction with these proceedings. The Court will address these motions individually and in turn.

1

Ligeri Deposition Testimony

Uncle Milton asserts that the Ligeri deposition testimony attached to Yagoozon's opposition to Uncle Milton's motion for partial summary judgment ought to be excluded pursuant to the parol evidence rule contained in § 6A-2-202. Conversely, Yagoozon maintains that Uncle Milton has erroneously applied the parol evidence rule and that there is no evidence showing that the purchase orders were intended to be "a complete and exclusive statement of the terms of the agreement" as provided in § 6A-2-202(b). Further, Yagoozon contends that the statements provided in Ligeri's deposition testimony do not contradict the purchase orders, but rather supplement the written terms.

It is well established in Rhode Island "that, in the absence of fraud or mistake, parol or extrinsic evidence is not admissible to vary, alter or contradict a written agreement." *Supreme Woodworking Co. v. Zuckerberg*, 82 R.I. 247, 252, 107 A.2d 287, 290 (1954). The parol evidence rule is not an evidentiary rule, but rather a matter of substantive law. *See Fram Corp. v. Davis*, 121 R.I. 583, 587, 401 A.2d 1269, 1272 (1979). Indeed, this rule has been recognized in

this jurisdiction for over a century, with our Supreme Court outlining the general proposition in *Myron v. Union R.R. Co.*, 19 R.I. 125, 32 A. 165 (1895). In *Myron*, the Court opined:

> "Oral evidence of what was said or done during the negotiations will not be admitted either to contradict what is written or to supply terms with respect to which the writing is silent. The purpose of the rule is to enable parties to make their written contracts the only evidence of their undertakings, and to protect themselves against the hazard of uncertain oral testimony in respect to their engagements." *Id.*

Specifically, the text of § 6A-2-202 provides, in relevant part, "a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement[.]"

Here, Yagoozon seeks to nullify the purchase orders sent to—and fulfilled by—Uncle Milton through Ligeri's assertion that Adler had offered an exclusivity agreement with regard to the goods purchased by Yagoozon. Simply put, Yagoozon argues that the purchase orders were not intended to be a complete expression of the parties' agreement. "An integrated document is one 'where the parties thereto adopt a writing or writings as the final and complete expression of the agreement.'" *Golden Gate Corp. v. Barrington Coll.*, 98 R.I. 35, 41, 199 A.2d 586, 590 (1964) (quoting 1 Restatement *Contracts* § 228, at 307). "[T]he instrument alone for the writing does not in or of itself prove completeness." *Id.* Rather the trial justice must allow wide latitude for "inquiry as to whether the parties intended that the writing constitute an integration of all of their prior agreements and negotiations." *Id.*

Ligeri testified in this matter regarding the terms outlined in the purchase order submitted by Yagoozon. Specifically, he stated that they are "supposed to clarify the price and the due date of . . . the goods and when they'll be shipped, et cetera." Ligeri Dep. 75:17-20, May 12, 2016 (Ligeri Dep.). Ligeri further confirmed that the purchase orders contained the quantity of the

goods sought. *Id.* at 75:23-25. Additionally, he stated that the exclusivity arrangement was an "essential" and "material" aspect of the parties' agreement. *Id.* at 82:8-15. Finally, seemingly with respect to the purchase orders, Ligeri expressed the opinion that "they are as valid as any contracts." *Id.* at 82:1-2. Along with Ligeri's deposition testimony, an examination of the purchase orders reveals that—in addition to the inclusion of price, quantity, delivery, and payment terms—specific provisions related to payment schedules, shipping terms, and discounted pricing were detailed in the orders. Taking the purchase orders in conjunction with Ligeri's testimony, this Court finds that Ligeri's testimony constitutes extrinsic evidence intended to "vary, alter or contradict" the written agreement and, thus, is inadmissible per the parol evidence rule. *Supreme Woodworking*, 82 R.I. at 252, 107 A.2d at 290. Accordingly, Uncle Milton's motion to strike Ligeri's testimony as an exhibit to Yagoozon's opposition memorandum is granted.

2

Adler Deposition Testimony

Uncle Milton additionally moves to strike Adler's deposition testimony attached to Yagoozon's opposition to Uncle Milton's motion for partial summary judgment. Uncle Milton contends that Adler's testimony is irrelevant to the matter before the Court. In its response to Uncle Milton's motion to strike the exhibits attached to its opposition memorandum, Yagoozon failed to directly respond to Uncle Milton's argument regarding Adler's testimony. Nevertheless, this Court will examine Adler's testimony to determine its relevance to the current proceeding.

The excerpts of Adler's deposition attached to Yagoozon's opposition memorandum as Exhibit A concern the existence of pressure to meet sales goals at the conclusion of a fiscal quarter, the inclusion of a discount on Yagoozon's order, and his recollection of Uncle Milton's

rejection of Yagoozon's attempted return of the purchased goods. After reviewing Adler's testimony, the Court finds that the statements contained therein are relevant to the matter at hand. Rule 401 of the Rhode Island Rules of Evidence defines relevant evidence as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Specifically, Adler's statements directly relate to his motivation to enter a contract with Yagoozon, the terms of said contract, and an assertion made by Yagoozon with respect to the alleged damages incurred. Accordingly, Uncle Milton's motion to strike Adler's deposition testimony is denied.

3

France Affidavit

Yagoozon asserts that the affidavit of France should be struck, in whole or in part, as she does not possess the personal knowledge to attest to the statements contained in the affidavit and it therefore lacks foundation and constitutes hearsay. Uncle Milton contends, however, that France does not attempt through her affidavit to detail specific exchanges as part of the negotiations between the parties, but rather terms—*e.g.*, special shipping instructions, special payment terms, backorder restrictions—garnered from the negotiations in general. Moreover, Uncle Milton asserts that France, as Controller of the company, is the most appropriate individual to verify the purchase orders and invoices attached to her affidavit. Rule 56(e) of the Superior Court Rules of Civil Procedure states that "[s]upporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein."

Here, Yagoozon asserts that as France was not directly involved with the negotiations surrounding the underlying purchase orders, any reference to the negotiated terms lacks

foundation and constitutes hearsay. The France affidavit, however, does not expressly refer to specific exchanges from the negotiations. Rather, France attests to having "actual knowledge of the transactions" and to being "generally aware of the progress of negotiations." France Aff. ¶¶ 8, 16. France also specifically refers to terms detailed on the purchase orders submitted by Yagoozon. France Aff. ¶ 6. Therefore, this Court finds that France's statements do not appear to reference information that she admits was outside her personal knowledge.

Yagoozon further contends that France failed to properly authenticate the purchase orders and invoices attached to her affidavit because she did not review each item contained in the documents. The documents attached and referred to in France's affidavit comprise purchase orders received by Uncle Milton from Yagoozon and invoices sent from Uncle Milton to Yagoozon. Rule 803(6) of the Rhode Island Rules of Evidence expressly provides for an exception to the hearsay rule with regard to records kept and maintained "in the course of a regularly conducted business activity." France states in her affidavit that "[a]s Controller of Uncle Milton, [she is] privy to all of Uncle Milton's financial operations, and participate[s] in the purchase order, invoice, and accounts receivable processes." France Aff. ¶ 3. Further, France confirms that "Uncle Milton's practice in delivering product is to receive a purchase order from the customer, and then issue an invoice after delivery." *Id.* When making a determination regarding the requirements of authentication under Rule 901 of the Rhode Island Rules of Evidence, "'trial justices must decide whether there is enough support in the record to conclude that it is 'reasonably probable' that the evidence is what the offeror [pro]claims it to be.'" *R.I. Managed Eye Care, Inc. v. Blue Cross & Blue Shield of R.I.*, 996 A.2d 684, 691 (R.I. 2010) (quoting *State v. Oliveira*, 774 A.2d 893, 926 (R.I. 2001)); R.I. R. Evid. 901. This Court finds that France's position as Controller of Uncle Milton places her in a distinct position to

authenticate these documents. Accordingly, Yagoozon's motion to strike the affidavit of France is denied.

B

Summary Judgment

1

Uncle Milton

Uncle Milton further moves for partial summary judgment with respect to the entirety of Yagoozon's First Amended Complaint; the counts contained in its Amended Complaint regarding Breach of Contract, Declaratory Relief, and Goods Sold and Delivered; and damages incurred by Uncle Milton as a result of Yagoozon's alleged breach. Conversely, Yagoozon argues that summary judgment is inappropriate as there is a dispute regarding material facts present in this matter. Yagoozon's argument, however, is largely founded on the testimony provided by Ligeri in his deposition. As detailed above, this Court has found Ligeri's testimony constitutes extrinsic parol evidence, and therefore, it will not be considered with respect to the present motion.

Summary judgement is appropriate when "'there exists no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.'" *Takian*, 53 A.3d at 970 (quoting *Classic Entm't & Sports, Inc.*, 988 A.2d at 849 (internal citation omitted)); *see* Super. R. Civ. P. 56(c). "To succeed on a breach of contract claim under Rhode Island law, a plaintiff must prove that (1) an agreement existed between the parties, (2) the defendant breached the agreement, and (3) the breach caused (4) damages to the plaintiff." *Barkan v. Dunkin' Donuts, Inc.*, 627 F.3d 34, 39 (1st Cir. 2010) (citing *Petrarca v. Fid. & Cas. Inc. Co.*, 884 A.2d 406, 410 (R.I. 2005)). In the case at bar, Uncle Milton has shown that an agreement existed between the

parties, evidenced through the purchase orders and invoices. Furthermore, Yagoozon breached this agreement by a failure to pay the amount due for the delivered goods. Finally, Uncle Milton has shown that the breach by Yagoozon has caused damages in the amount of the unpaid invoices, plus interest. After reviewing the evidence and drawing all reasonable inferences in the light most favorable to the nonmoving party, this Court finds that Uncle Milton has satisfied the elements of a *prima facie* case of breach of contract. Accordingly, Uncle Milton's motion for summary judgment is granted.

2

Yagoozon

The Third-Party Defendants also move for summary judgment with respect to Uncle Milton's claims arising under alter ego and successor liability. They assert that these claims represent an attempt to pierce the corporate veil and are insufficient as a matter of law. Uncle Milton contends, however, that Ligeri—through his testimony—has indicated that he has shut down Yagoozon in an attempt to evade a potential negative judgment.

"The alter ego doctrine permits creditors of a corporation to reach the assets of the individual or individuals that control the corporation." *Heflin v. Koszela*, 774 A.2d 25, 30 (R.I. 2001). To pursue a claim under this doctrine,

> "there must be a concurrence of two circumstances: (1) there must be such a unity of interest and ownership that the separate personalities of the corporation and the individual no longer exist, viz., the corporation is, in fact, the alter ego of one or a few individuals; and (2) the observance of the corporate form would sanction a fraud, promote injustice, or an inequitable result would follow." *Id.* (quoting *Transamerica Cash Reserve, Inc. v. Dixie Power and Water, Inc.*, 789 P.2d 24, 26 (Utah 1990)).

With regard to Uncle Milton's claim for successor liability, our Supreme Court cited to the New Jersey Superior Court in *H.J. Baker & Bros., Inc. v. Orgonics, Inc.*, 554 A.2d 196, 205 (R.I.

1989), regarding the criteria for finding a continuing entity. The criteria outlined by the Court in its decision are:

> "(1) there is a transfer of corporate assets;
> "(2) there is less than adequate consideration;
> "(3) the new company continues the business of the transferor;
> "(4) both companies have at least one common officer or director who is instrumental in the transfer; and
> "(5) the transfer renders the transferor incapable of paying its creditors because it is dissolved either in fact or by law." *Id.* (citing *Jackson v. Diamond T. Trucking Co.*, 100 N.J. Super. 186, 196, 241 A.2d 471, 477 (1968)).

The Third-Party Defendants maintain that Uncle Milton is unable to fulfill the requirements under either theory of liability.

A review of the record reveals that (1) Ligeri is the sole owner and shareholder of Yagoozon; (2) Ligeri would oftentimes forego a salary and paid himself when funds were available; (3) Yagoozon did not have a formal office; in fact, Ligeri stated that he considered the Yagoozon office to be anywhere he completed business for the company; and (4) Yagoozon did not hold formal shareholder meetings. *See* Ligeri Dep., 24-56; Meyer Aff., Ex. 10 Ligeri Dep., 478-97, Aug. 22, 2013 (Ligeri Dep. II). Notably, however, there is an issue of material fact with regard to the continued operation of Yagoozon. *See Takian*, 53 A.3d at 970. The Third-Party Defendants contend that Ligeri continues to operate both Yagoozon and Kangaroo. Conversely, Uncle Milton claims that Ligeri orchestrated several transfers of capital between (1) Yagoozon and Kangaroo and (2) Kangaroo and Ligeri. Meyer Aff. ¶ 13, Ex. 9. Moreover, Uncle Milton points to Ligeri's deposition testimony indicating that Yagoozon "folded." Ligeri Dep. 30:11-25, 31:1-15. The Court finds that additional information is required to resolve the current disputes of material fact with regard to the alleged transfers of assets between Yagoozon and Kangaroo and the status of Yagoozon as a functioning entity. Accordingly, the Court exercises its authority under Rule 56(f) of the Superior Court Rules of Civil Procedure to continue this matter to permit

additional testimony and discovery to be obtained. Therefore, the Third-Party Defendants' motion for summary judgment is denied without prejudice.

IV

Conclusion

After due consideration of the parties' arguments and memoranda, the Court finds the deposition testimony of Ligeri to be extrinsic to the written agreement orders it struck as an exhibit to Yagoozon's opposition memorandum. Further, the Court finds the deposition testimony of Adler to be relevant to the current proceeding, and that France has personal knowledge regarding the statements contained in her affidavit and thus does not lack foundation nor constitute hearsay. Accordingly, the Court declines to strike either the Adler deposition testimony or the France affidavit. Moreover, after "review[ing] the evidence and draw[ing] all reasonable inferences in the light most favorable to the nonmoving party," the Court grants Uncle Milton's motion for summary judgment in its entirety. Finally, the Court denies the Third-Party Defendants' motion for summary judgment without prejudice and authorizes continued discovery by Third-Party Defendants as to this issue at their discretion.

Prevailing counsel shall present an order consistent herewith which shall be settled after due notice to counsel of record.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**Yagoozon, Inc. v. Uncle Milton Industries, Inc.** **Uncle Milton Industries, Inc. v. Yagoozon, et al.**
CASE NO:	**PC-2014-2881**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**December 18, 2017**
JUSTICE/MAGISTRATE:	**Silverstein, J.**
ATTORNEYS:	
For Plaintiff:	**Jillian N. Jagling, Esq.** **Jeffrey L. Levy, Esq.**
For Defendant:	**Christopher R. Blazejewski, Esq.**