STATE OF RHODE ISLAND

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: November 18, 2021)

JOSEPH BERETTA,	:	
	:	
Plaintiff,	:	
	:	
v.	:	**C.A. No. PC-2020-03404**
	:	
DAVID L. DEQUATTRO *et al*.,	:	
	:	
***Defendants*.**	:	

DECISION

STERN, J. Before this Court is Plaintiff Joseph R. Beretta's (Beretta) Motion for Partial Summary Judgment requesting judgment as a matter of law that a contract dated July 14, 2016, between Beretta and Defendant David L. DeQuattro is the sole and controlling agreement. Defendants—David L. DeQuattro (DeQuattro) and the Robinson Green Beretta Corporation (RGB)—object to the motion. Jurisdiction is pursuant to G.L. 1956 § 8-2-14.

I

Facts and Travel

By way of background, RGB is an architectural firm that, prior to January 9, 2009, had two majority shareholders: Beretta and Jeffrey Hatcher (Hatcher).[1] (Pl.'s Mot. Summ. J. (Pl.'s Mot.) Ex. 4, 1.) Beretta owned 100 percent of the preferred stock (400 shares) and 88.5 percent of common stock (269 shares), while Hatcher owned 4.6 percent of the common stock (14 shares). *Id*. Starting in 2006, RGB, Beretta, Hatcher, and DeQuattro negotiated the restructure of RGB's

[1] Hatcher is an architect and was an RGB employee at the time. (Defs.' Opp'n 3 n.1.)

ownership.[2] (Defs.' Opp'n Mot. Summ. J. (Defs.' Opp'n) 4-5.) The parties negotiated for approximately three years and eventually entered into an agreement on January 9, 2009 (2009 Letter Agreement).[3] (Pl.'s Mot. Ex. 2, ¶ 5; Pl.'s Mot. Ex. 8, 11:12-17.) The 2009 Letter Agreement memorialized the parties' "plan for the transition of the ownership of the [majority of the] issued and outstanding capital stock of RGB" to DeQuattro, Hatcher, and other new potential investors. (Pl.'s Mot. Ex. 2, ¶ 6.)

The 2009 Letter Agreement, among other things, designated Beretta, DeQuattro, and Hatcher as the sole members of RGB's Executive Committee and authorized RGB to purchase all of Beretta's preferred stock.[4] (Pl.'s Mot. Ex. 4, 2, 4 §§ II, VI.) The 2009 Letter Agreement also provided DeQuattro, Hatcher, and other new investors the opportunity to purchase up to 215 [5] shares of Beretta's remaining common stock within a thirty-six-month period starting on January 9, 2009. *Id*. at 4 § VII. Importantly, under the 2009 Letter Agreement, if neither DeQuattro, Hatcher, nor any other new investors purchased Beretta's shares within the initial thirty-six-month period, the Executive Committee had the ability to extend the purchase period for an additional twelve months.[6] *Id*. If Beretta still owned any shares by May 5, 2016, Beretta's sixty-fifth birthday, RGB would redeem all of Beretta's remaining shares. *Id*. Significantly, however, neither

[2] DeQuattro is an architect and was an RGB employee at the time. (Defs.' Opp'n 4 n.2.)
[3] Importantly, during the three years of negotiation leading up to the 2009 Letter Agreement, DeQuattro and Hatcher were represented by their own attorneys and separate counsel represented RGB and Beretta. (Hatcher Aff. ¶ 8; Pl.'s Mot. Ex. 8, 11:18-20.)
[4] Beretta sold fourteen shares to Hatcher and forty-one shares to DeQuattro of his common stock pursuant to the 2009 Letter Agreement. (Pl.'s Mot. Ex. 2, ¶¶ 9-10; Hatcher Aff. ¶ 12.)
[5] Although the 2009 Letter Agreement stated that 215 shares of Beretta's common stock would be available for purchase, after Beretta transferred 14 shares to Hatcher and 41 shares to DeQuattro, Beretta only had 214 shares available for purchase. (Pl.'s Mot. 5; Defs.' Opp'n 7.)
[6] The 2009 Letter Agreement provided for an incentive compensation plan (ICP) to compensate Hatcher and DeQuattro for business development; according to Hatcher and DeQuattro, the purpose of the ICP was to provide them with the necessary funds to purchase Beretta's stock. (Pl.'s Mot. Ex. 4, 2 § II; DeQuattro Aff. ¶ 15; Hatcher Aff. ¶¶ 12, 15.)

DeQuattro, Hatcher, nor any other investor purchased Beretta's remaining 214 shares during the initial thirty-six-month period, and the Executive Committee did not exercise the twelve-month extension. (Pl.'s Mot. Exs. 2, ¶ 15, 1, ¶ 4.)

Thereafter, in February and March 2015, DeQuattro, "believ[ing] that the 2009 Letter Agreement had lapsed," e-mailed Beretta, proposing to make himself fifty-one percent owner of RGB, which would result in RGB becoming a Veteran Owned Company eligible for certain projects. (Pl.'s Mot. Ex. 1, ¶ 6; Defs.' Opp'n 13; DeQuattro Aff. ¶¶ 22-26.) Beretta did not initially accept and asked RGB's corporate counsel, Sarah Dowling (Dowling), about DeQuattro's proposal to become the controlling shareholder and Beretta's concern about giving up control. (Pl.'s Mot. Exs. 1, ¶ 8, 12; Pl.'s Mot. 2-3; Defs.' Opp'n Ex. 54; DeQuattro Aff. ¶¶ 24-26.) Dowling stated that pursuant to the 2009 Letter Agreement "[Beretta] already gave away control of the business (see section XII) and on [his] 65th birthday [he needed] to sell [his] stock to the company for 'fair market value[.]"[7] (Pl.'s Mot. Ex. 12; Defs.' Ex. 54.) The parties dispute whether Beretta disclosed to DeQuattro Dowling's statement that the 2009 Letter Agreement was still in effect. (Pl.'s Mot. Ex. 8, 22:8-15; DeQuattro Aff. ¶¶ 23, 26, 34; Beretta Dep. vol. 2, 130:6-15 (June 8, 2021).)

Beretta and DeQuattro subsequently entered into multiple agreements stemming from DeQuattro's initial February 2015 proposal. (Pl.'s Mot. Exs. 5, 6.) First, on April 1, 2016, the Executive Committee—comprising Beretta, DeQuattro, and Hatcher—executed a "Written Consent of the Stockholders" permitting DeQuattro to purchase Hatcher's twenty-eight shares of RGB common stock "notwithstanding the terms and conditions of that certain Letter Agreement

[7] Until all of Beretta's stock was either purchased or redeemed, Beretta needed the approval of the Executive Committee to take any action outside the ordinary course of business according to the 2009 Letter Agreement. (Pl.'s Mot. Ex. 4, 8 § XII. d. (xv).)

dated January 9, 2009."[8] (Pl.'s Mot. Ex. 5.) Then, on June 30, 2016, Beretta transferred seventy-six shares of his common stock to DeQuattro, pursuant to another "Written Consent of the Stockholders" which again was "notwithstanding the terms and conditions of that certain Letter Agreement dated January 9, 2009." (Pl.'s Mot. Ex. 6.) Finally, on July 14, 2016, Beretta and DeQuattro executed an RGB "Operating Agreement" which outlined, in relevant part, each party's ownership interest and prospective changes thereto (2016 Agreement). (Pl.'s Mot. Ex. 7.) Importantly, the 2016 Agreement contained a merger clause stating:

> "This Agreement contains the entire agreement between the Members. All negotiations and understandings have been included in this Agreement. Statements or representations that may have been made by any Member during the negotiation stages of this Agreement, may in some way be inconsistent with this final written Agreement. All such statements have no force or effect in respect to this Agreement. Only the written terms of this Agreement will bind the Members." *Id*. ¶ 56.

The 2016 Agreement also provided that Beretta's remaining shares would be transferred on two dates: one half on May 1, 2017, and the other half on May 1, 2018. *Id*. ¶ 6.

On December 26, 2019, DeQuattro sent Beretta a letter that outlined what he believed that Beretta was entitled to under the 2016 Agreement and requested Beretta's acquiescence to those terms. (Pl.'s Mot. Ex. 16.) Beretta disagreed with the terms outlined in the letter, however, and responded by bringing the instant lawsuit.[9] (Pl.'s Mot. Ex. 2, ¶¶ 49-53.) DeQuattro answered and counterclaimed, arguing that the 2009 Letter Agreement is the controlling agreement between the

[8] This transaction dissolved Hatcher's ownership in RGB. (Hatcher Aff. ¶ 21; Pl.'s Mot. Ex. 1, ¶¶ 11-13.)

[9] Beretta claims DeQuattro breached the 2016 Agreement by failing to pay Beretta 50 percent of profits from 2018 and 2019; 50 percent of RGB's research and development tax credits from 2018 and 2019; an employment bonus for 2019; and accrued vacation time. (Pl.'s Mot. Ex. 2, ¶¶ 49-53.)

parties because the 2016 Agreement is ineffective due to a lack of valid consideration[10] and, more importantly, is inconsistent with the 2009 Letter Agreement. (Pl.'s Mot. Ex. 2, Am. Answer Countercl. ¶¶ 26, 35, 38-42.)

Beretta now asks this Court to find, as a matter of law, that the 2016 Agreement completely integrated, and therefore discharged, the 2009 Letter Agreement. (Pl.'s Mot. 1, 26.) DeQuattro opposes this motion, arguing that the 2016 Agreement is subject to recission because of Beretta's breach of fiduciary obligations owed to both him and RGB. (Defs.' Opp'n 1.) Significantly, in his reply memorandum, Beretta argues that because DeQuattro is deemed to have known the terms and conditions of the 2009 Letter Agreement, DeQuattro has failed to establish any genuine issue of material fact.[11] (Pl.'s Reply in Supp. of Mot. for Partial Summ. J. 4-9.)

II

Standard of Review

"Summary judgment is an extreme remedy and should be granted only when 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as [a] matter of law.'" *Plunkett v. State*, 869 A.2d 1185, 1187 (R.I. 2005) (quoting *Wright v. Zielinski*, 824 A.2d 494, 497 (R.I. 2003)). Partial summary judgment is

[10] The Court finds that there is adequate consideration and will not address the issue in this Decision.

[11] Beretta also asserts the Massachusetts Superior Court (MA Court) rejected DeQuattro's claims, significantly, that he did not know the 2009 Letter Agreement lapsed and Beretta breached his fiduciary duty when he did not disclose his conversation with Dowling. (Pl.'s Reply 9-11.) However, the MA Court ultimately rejected DeQuattro's claims through granting Beretta's motion to dismiss or stay proceedings because there was a Rhode Island case pending; it did not decide whether Beretta had a fiduciary duty to disclose his conversation with Dowling to DeQuattro. *Robinson Green Beretta Corp. v. Beretta*, No. 2084CV00838, 2020 WL 8918643, at *3-4 (Mass. Super. Ct. Jan. 19, 2020).

proper where there is no genuine issue of material fact as to one or more causes of action. *See Banks v. Bowen's Landing Corp.*, 522 A.2d 1222, 1224-25 (R.I. 1987). The Court views the admissible evidence "in the light most favorable to the nonmoving party[.]" *National Refrigeration, Inc. v. Standen Contracting Company, Inc.*, 942 A.2d 968, 971 (R.I. 2008) (internal quotation omitted). A party opposing "'a motion for summary judgment carries the burden of proving by competent evidence the existence of a disputed material issue of fact and cannot rest on allegations or denials in the pleadings or on conclusions or legal opinions.'" *Id*. (quoting *Accent Store Design, Inc. v. Marathon House, Inc.*, 674 A.2d 1223, 1225 (R.I. 1996)).

In this context, "'material' means that a contested fact has the potential to change the outcome of the suit under the governing law if the dispute over it is resolved favorably to the nonmovant." *McCarthy v. Northwest Airlines, Inc.*, 56 F.3d 313, 315 (1st Cir. 1995). "[W]hen ruling on a motion for summary judgment, the court is not authorized to try issues. The purpose of summary judgment procedure is issue finding and not issue determination." *Westinghouse Broadcasting Company, Inc. v. Dial Media, Inc.*, 122 R.I. 571, 581, 410 A.2d 986, 992 (1980). Generally, "[t]he judgment sought shall be rendered forthwith if the pleadings, depositions, documents, electronically stored information, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as matter of law." Super. R. Civ. P. 56(c).

III

Analysis

A

Completely Integrated Agreement

According to Beretta, the 2016 Agreement "is an unambiguous fully integrated agreement that outlines the final and complete agreement" between the parties. (Pl.'s Mot. 21.) In support of this contention, Beretta points to the language of the 2016 Agreement's merger clause which provides that this agreement "contains the entire agreement between the members" and "[o]nly the written terms of this Agreement will bind the Members." *Id*. at 24. Beretta also argues the 2009 Letter Agreement is "wholly within the scope" of the 2016 Agreement and, as such, has been discharged by it. *Id*. Beretta relies on DeQuattro's admission in his answer that he fully performed under the 2016 Agreement, except for Beretta's claim in the underlying action. *Id*.

The subject matter of both the 2009 Letter Agreement and 2016 Agreement is the purchase of Beretta's remaining shares. *Id*. at 24-26. The June 2016 Written Consent of Stockholders allowed DeQuattro to purchase seventy-six of Beretta's shares, while the 2016 Agreement scheduled sixty-nine of Beretta's remaining shares to be purchased on or before May 1, 2017, with the final sixty-nine shares to be purchased on or before May 1, 2018, contrary to the 2009 Letter Agreement's requirement for RGB to redeem any of Beretta's remaining shares as of May 5, 2016. *Id*. at 25-26. Beretta argues that the provision in the 2009 Letter Agreement regarding the purchase of shares is "wholly inconsistent with" the 2016 Agreement because DeQuattro did not exercise his option to purchase Beretta's shares during the thirty-six-month period or invoke the twelve-month extension. *Id*. at 25. Instead, Beretta contends DeQuattro's performance under the 2016 Agreement "subsumed the entirety" of the 2009 Letter Agreement since the 2016 Agreement

outlined the same shares subject to purchase as the 2009 Letter Agreement. *Id*. at 24. DeQuattro argues, however, that the 2016 Agreement is not completely integrated because he did not know the 2009 Letter Agreement lapsed, and "the execution of the [2016 Agreement] was based or premised on Beretta's breach of fiduciary duty" (fully discussed below). (Defs.' Opp'n 21.)

Before the Court can determine whether the 2016 Agreement is completely integrated, an initial determination must be made as to whether each agreement is clear and unambiguous. *See Westinghouse*, 122 R.I. at 579, 410 A.2d at 991-92. In *Westinghouse*, the Rhode Island Supreme Court explained that an ambiguous contract "cannot properly be resolved by summary judgment, unless only one reasonable interpretation exists." *Id*. at 579, 410 A.2d at 991 (citing *O'Connor v. McKanna*, 116 R.I. 672, 634-35, 359 A.2d 350, 353-54 (1976)). That is, summary judgment is improper if an ambiguous contract exists, and the evidence calls into question the meaning of a term in the contract, which would determine the outcome of an issue at stake in the controversy. *See id*. at 580-81, 410 A.2d at 991 (finding that a trial justice may not determine an issue by ruling on a meaning of a term in an ambiguous contract, but rather may determine that issues exist as to the meaning of the term which would preclude summary judgment). By contrast, "the construction of a clear and unambiguous contract presents an issue of law, which may be resolved by summary judgment." *Id*. at 579, 410 A.2d at 991 n.7 (citing *Cassidy v. Springfield Life Insurance Co*., 106 R.I. 615, 619, 262 A.2d 378, 380 (1970)).

When "'contract terms are clear and unambiguous, judicial construction is at an end for the terms will be applied as written.'" *Walsh v. Lend Lease (US) Construction*, 155 A.3d 1201, 1205 (R.I. 2017) (quoting *Rivera v. Gagnon*, 847 A.2d 280, 284 (R.I. 2004)). "To determine whether the contract language is unambiguous the Court will 'view the agreement[] in [its] entirety and give the contractual language its plain, ordinary and usual meaning.'" *Id*. (quoting *A.F. Lusi*

Construction, Inc. v. Peerless Insurance Co., 847 A.2d 254, 258 (R.I. 2004)). "An ambiguity occurs only when the contract term is 'reasonably and clearly susceptible of more than one interpretation.'" *Rivera*, 847 A.2d at 284 (quoting *Rubery v. Downing Corp.*, 760 A.2d 945, 947 (R.I. 2000)). "The interpretation of an integrated agreement is directed to the meaning of the terms of the writing or writings in the light of the circumstances, in accordance with the rules stated in [the Restatement (Second) *Contracts*]." Restatement (Second) *Contracts* § 212 (1) (Am. Law. Inst. 1981). "A question of interpretation of an integrated agreement is to be determined by the trier of fact if it depends on the credibility of extrinsic evidence or on a choice among reasonable inferences to be drawn from extrinsic evidence. Otherwise a question of interpretation of an integrated agreement is to be determined as a question of law." *Id*.

Here, the 2009 Letter Agreement is clear and unambiguous because only one reasonable inference can be drawn from the four corners of the document: that Beretta wanted to transfer ownership to DeQuattro and Hatcher through their purchase of his outstanding common stock. This is particularly evident in light of the preamble contained therein, which provided that the 2009 Letter Agreement replaced and superseded "any prior agreement or understanding between the parties with respect to the subject matter hereof." (Pl.'s Mot. Ex. 4, 1; Defs.' Opp'n Ex. 1A, 2.) Thus, the 2009 Letter Agreement clearly and unambiguously outlined the transition of ownership from Beretta to DeQuattro, Hatcher, and other investors through the purchase of Beretta's "outstanding capital stock of RGB." (Pl.'s Mot. Ex. 4, 1-2; Defs.' Opp'n Ex. 1A, 2-3.)

As for the 2016 Agreement, as mentioned above, its merger clause provides that "the Agreement contains the entire agreement between the Members," that "[a]ll negotiations and understandings have been included in this Agreement[,]" and that "[o]nly the written terms of this Agreement will bind the Members." (Pl.'s Mot. Ex. 7 ¶ 56; Defs.' Opp'n Ex. 5 ¶ 56.) In light of

these statements, the 2016 Agreement is also clear and unambiguous because its merger clause confirmed the parties' memorialization of negotiated terms.

Thus, because the Court finds that both the 2009 Letter Agreement and 2016 Agreement are clear and unambiguous as a matter of law, the Court will now turn to whether the 2016 Agreement completely integrated the 2009 Letter Agreement by analyzing the terms contained in each. *Id*.; Restatement (Second) *Contracts* § 212 (1).

The Restatement (Second) *Contracts* § 210 defines a "completely integrated" agreement as an agreement that adopts the parties' complete and exclusive statements of the terms of the agreement. Restatement (Second) *Contracts* § 210 (1). The Rhode Island Federal District Court explained "[o]nce the parties . . . [adopt] the writing as their 'entire understanding,' the Agreement [is completely] integrated." *ADP Marshall, Inc. v. Noresco LLC*, 710 F. Supp. 2d 197, 213 (D.R.I. 2010). The Court further noted a subsequent agreement completely integrates a prior contract when the subsequent agreement references the original and its merger clause states that the agreement and all attachments "represent[] the entire understanding" of the parties." *Id*. at 213. '"The basis of the rule is that a complete written agreement merges and integrates all the pertinent negotiations made prior to or at the time of execution of the contract."' *Carlsten v. Oscar Gruss & Son, Inc.*, 853 A.2d 1191, 1195 (R.I. 2004) (quoting *Filippi v. Filippi*, 818 A.2d 608, 619 (R.I. 2003)).

Here, it is clear that the 2016 Agreement completely integrated the 2009 Letter Agreement because the parties adopted, on various occasions, different agreements evidencing their "entire understanding" for the purchase of Beretta's remaining shares. *ADP Marshall*, 710 F. Supp. 2d at 212. The two "Written Consents of Shareholders" are evidence of the parties' understanding because both letters reference the 2009 Letter Agreement and state the agreement to purchase

Beretta's remaining shares was "*notwithstanding the terms and conditions of that certain Letter Agreement dated January 9, 2009*." *Id.*; Pl.'s Mot. Exs. 5, 6 (emphasis added). These statements demonstrate that the parties agreed to new purchase terms for Beretta's shares and understood all pertinent negotiations contrary to the 2009 Letter Agreement were included in these two written consents. *Carlsten*, 853 A.2d at 1195.

Additionally, the 2016 Agreement's merger clause is further evidence of the parties' entire understanding because it clearly and unequivocally states that the agreement "*contains the entire agreement between the Members*" and "[*a*]*ll negotiations and understandings have been included in this Agreement*. (Pl.'s Mot. Ex. 7 ¶ 56) (emphasis added). This language demonstrates that the parties adopted the 2016 Agreement as their final and complete memorialized expression for the purchase of Beretta's shares. *Carlsten*, 853 A.2d at 1195 (stating "[a] document is integrated when the parties adopt the writing as a final and complete expression of the agreement") (quotation omitted).

Thus, because the two letters clearly and unambiguously provide that Beretta's remaining shares were being purchased by DeQuattro, contrary to the 2009 Letter Agreement, and the merger clause in the 2016 Agreement specifically states that it is the "entire agreement" between the parties, as a matter of law the 2016 Agreement completely integrated the 2009 Letter Agreement.

B

Whether Defendants Demonstrated that there are Genuine Issues of Material Fact that the 2016 Agreement is the Controlling Agreement

Defendants argue that Beretta breached his fiduciary duties to RGB and DeQuattro such that the 2016 Agreement is subject to rescission. (Defs.' Opp'n 21.) Specifically, Defendants contend that the "execution of the 2016 [Agreement] was based or premised on Beretta's breach of fiduciary duty – he elevated his own interests above those of DeQuattro and RGB" because

Beretta obtained Dowling's advice and kept it to himself, while "everyone supposed that the 2009 Letter Agreement had lapsed." *Id*. DeQuattro claims that if he had been aware that the 2009 Letter Agreement had not lapsed and that RGB would redeem Beretta's remaining shares after his sixty-fifth birthday, he "would not have proposed the lengthy process of establishing a veteran owned company." (DeQuattro Aff. ¶¶ 23, 26, 34; Beretta Dep. vol. 2, 130:6-15 (June 8, 2021).) Accordingly, Defendants claim that Beretta breached a duty to disclose and his duty of loyalty. *Id*.

To establish a breach of fiduciary duty, the claimant must demonstrate: "(1) the existence of a fiduciary duty; (2) breach of that duty; and (3) damage proximately caused by the breach." *Chain Store Maintenance, Inc. v. National Glass & Gate Service, Inc.*, No. Civ. A. PB 01-3522, 2004 WL 877599, at *13 (R.I. Super. Apr. 21, 2004).

1

Duty to Disclose

Defendants argue that "Beretta's sin of omission constitutes a breach of his fiduciary duty to DeQuattro and Hatcher (as shareholders, members of the Executive Committee; and members of the Board of Directors) and to the RGB, which was, at all times relevant hereto, a close corporation." (Defs.' Opp'n 24.) Defendants point to several cases to support their proposition that Beretta had a duty to disclose his understanding that the 2009 Letter Agreement did not lapse.

Defendants first cite to *Point Trap Co. v. Manchester*, 98 R.I. 49, 199 A.2d 592 (1964). In *Point Trap*, the Court discussed whether a transaction was valid pursuant to statute, G.L. 1956 § 7-4-7 at that time, where an officer took ownership of company property without prior authorization or later ratification of the board of directors or the shareholders; under the applicable statute, if a contract was made without authorization or ratification, an aggrieved party could void the transaction. *Point Trap*, 98 R.I. at 54-55, 199 A.2d at 596. However, in the instant case, the

facts are not similar to *Point Trap* because there is no suggestion that Beretta transferred company property to himself.

Defendants also cite to *Lawton v. Nyman*, 327 F.3d 30 (1st Cir. 2003). In that case, analyzing Rhode Island law, the First Circuit "recognize[d] a heightened duty of disclosure in a close corporation setting by officers who are *majority shareholders with undisclosed information*, who are purchasing minority shares or causing the corporation to do so." *Lawton*, 327 F.3d at 40 (emphasis added). There, the court determined it was a breach of duty to not disclose the majority's plan to redeem the minority shareholders' stock and subsequently sell the company at a substantial profit to the majority shareholders. *Id*. at 42. Nevertheless, in *Lawton*, the court was faced with information that was completely "undisclosed[.]" *Id*.

In *Epstein v. Dimeo*, 694 A.2d 30 (R.I. 1997), our Supreme Court affirmed the trial justice's decision that the general partners did not fail to fully inform the limited partners of the distribution of sale proceeds from a transaction. *Epstein*, 694 A.2d at 33. In *Epstein*, because letters sent to the limited partners to obtain consent for the sale "reasonably apprised the limited partners that they would not share in the proceeds from the sale of the management rights[,]" the general partners did not fail to disclose information. *Id*. at 32.

In addition, in *Chiarella v. United States*, 445 U.S. 222 (1980), the United States Supreme Court discussed a corporate insider's duty to disclose information to prevent the insider from "tak[ing] unfair advantage of the *uninformed minority stockholders*." *Chiarella*, 445 U.S. at 228-29 (emphasis added) (quotation omitted). There, the Court stated that:

> "[O]ne who fails to disclose material information prior to the consummation of a transaction commits fraud only when he is under a duty to do so. And the duty to disclose arises when one party has information that the other [party] is entitled to know because of a fiduciary or other similar relation of trust and confidence between them. In its *Cady, Roberts* decision, the [Securities and Exchange]

> Commission recognized a relationship of trust and confidence between the shareholders of a corporation and those *insiders who have obtained confidential information by reason of their position* with that corporation. This relationship gives rise to a duty to disclose because of the necessity of preventing a corporate insider from . . . tak[ing] unfair advantage of the uninformed minority stockholders." *Id*. at 228-29 (emphasis added) (citations and quotations omitted).

Although in the context of a duty to disclose for purposes of § 10(b) violations, the Court in *Chiarella* recognized a common law duty to disclose information to persons with whom one holds a special relationship, like a fiduciary. *Id*. This common law duty to disclose and failure to do so opens the door for a claim of fraudulent misrepresentation. *See id*. Our Supreme Court has made clear that a claim of fraud, such as misrepresentation by omission, that seeks to vitiate a contract is an affirmative defense that must be pled in an answer or it is waived. *See West Davisville Realty Co., LLC v. Alpha Nutrition, Inc.*, 182 A.3d 46, 51 (R.I. 2018).

In the instant matter, Defendants did not specifically plead an affirmative defense of fraud or misrepresentation. (Pl.'s Mot. Ex. 2, Am. Countercl. ¶ 76.) ("Beretta breached his fiduciary duties to both Defendants by failing to disclose advice of counsel pertaining to the 2009 Letter Agreement . . . and by otherwise thwarting the transition of ownership of RGB from Beretta to DeQuattro."). To the extent that the duty to disclose was a duty belonging to Beretta, in his capacity as an officer and majority shareholder of RGB, separate and apart from the duty of loyalty (more fully discussed below, *infra*), questions of fact remain that preclude summary judgment.

First, there is an issue of fact as to whether Beretta did disclose the information he obtained from Dowling about the 2009 Letter Agreement. On the one hand, there is a deposition transcript from DeQuattro in which he suggests that Beretta did not disclose to DeQuattro or other shareholders that the 2009 Letter Agreement was still in effect. (Pl.'s Mot. Ex. 8, 22:8-15.) On the other hand, there is a deposition transcript from Beretta where he states that he told DeQuattro

"that the 2009 [Letter] [A]greement is still in effect." (Beretta Dep., vol. 2, 130:6-15.) Although the issue of whether Beretta had a duty is a question of law, the question of whether he breached that duty is a question of fact; the issue of credibility, of who is telling the truth in the above statements, is a genuine issue of fact relevant to whether Beretta breached a duty to disclose information.

Second, there is an issue of fact as to whether this information regarding the lapse of the 2009 Letter Agreement was in fact *unknown* to DeQuattro. As demonstrated in the above-mentioned cases, majority shareholders and officers of a close corporation have a duty to disclose information unknown to minority shareholders that would allow those minority shareholders to make informed decisions and prevent the majority from taking unfair advantage of those who are left uninformed. *See Chiarella*, 445 U.S. at 227-29; *see also Lawton*, 327 F.3d at 40.

In the instant case, on the one hand, there is deposition transcript from DeQuattro in which he states (1) that he signed the 2009 Letter Agreement, was represented by an attorney in the negotiation of the 2009 Letter Agreement, and had a full opportunity to read and understand it; (2) that, as of March 31, 2016, he was "unaware that the 2009 [Letter] [A]greement was still in existence" and had forgotten or did not know that the agreement provided that RGB was to redeem Beretta's shares on May 5, 2016; and (3) that he had a copy of the 2009 Letter Agreement. (DeQuattro Dep. 11:13-25; 13:2-5, 14-15; 14:6-20; 28:7-14.) In addition, the two written consents of the stockholders, executed in April and June 2016 by DeQuattro, state that shares were being transferred to DeQuattro, "notwithstanding the terms and conditions of that certain Letter Agreement dated January 9, 2009." (Pl.'s Mot. Exs. 5, 6.) This evidence suggests not that the information was unknown to DeQuattro but rather that he could not recall the terms of the 2009 Letter Agreement. However, this evidence conflicts with DeQuattro's acknowledgment that the

stock transfers were contrary to the terms of the 2009 Letter Agreement—which can only mean that he believed that the 2009 Letter Agreement was still effective, while stating that he did not know the 2009 Letter Agreement was still in effect. This contradiction creates an issue to be resolved by the factfinder.

Defendants' argument that Beretta had and breached his duty to disclose is based on Defendants' claim that Beretta failed to disclose that the 2009 Letter Agreement had not lapsed. As a matter of law, knowledge of the contents of the 2009 Letter Agreement may be imputed to DeQuattro.[12] *Dante State Bank v. Calenda*, 56 R.I. 68, 183 A. 873, 876-78 (1936). He had access to that agreement and failed to do his own due diligence and review its contents. That duty cannot be placed on Beretta and cannot be compared to the duty to disclose found in *Lawton* where the information known to the majority shareholders—that they were redeeming minority stock interests to sell the company for a substantial profit for themselves—was unknown, unavailable, and undisclosed to the minority shareholders. Here, DeQuattro creates no issue of fact as to whether he had the 2009 Letter Agreement at his disposal.

DeQuattro does not argue that the language in the 2009 Letter Agreement was ambiguous as to whether it had lapsed or that Dowling had given Beretta information that could not be readily ascertained from the 2009 Letter Agreement itself. Ambiguous language in an agreement is an

[12] According to Rhode Island common law, "one who signs a contract is presumed to know its contents" and, as a contracting party, has a duty to the other party(ies) to the contract "to learn and know its contents" before signing and delivering it. *Dante State Bank v. Calenda*, 56 R.I. 68, 183 A. 873, 876-77 (1936). More recently, our Supreme Court reiterated the "long . . . settled principle that 'a party who signs an instrument manifests his assent to it and cannot later complain that he did not read the instrument or that he did not understand its contents.'" *Shappy v. Downcity Capital Partners, Ltd.*, 973 A.2d 40, 46 (R.I. 2009) (quoting *Manchester v. Pereira*, 926 A.2d 1005, 1012 (R.I. 2007)). Further, "[t]he general rule of law is that a person is bound by an agreement to which he has assented, where his assent is uninfluenced by fraud, violence, undue influence, or the like, and he will not be permitted to say that he did not intend to agree to its terms." *Dante State Bank*, 56 R.I. 68, 183 A. at 878.

issue of fact. However, DeQuattro does not present this issue of fact to this Court. The extent of what Beretta knew from conversations with Dowling, which DeQuattro claims to have not known, and whether DeQuattro was "reasonably apprised" of the implications of the 2009 Letter Agreement and the various 2016 agreements, are issues of fact that preclude summary judgment. *See Epstein*, 694 A.2d at 32.

2

Duty of Loyalty

Defendants' contention that Beretta "elevated his own interests above those of DeQuattro and RGB[,]" by entering into the 2016 Agreement after obtaining information from Dowling and not disclosing that information to the other shareholders implicates Beretta's duty of loyalty. (Defs.' Opp'n 21.) There is no dispute that, prior to the 2016 Agreement and the written consents transferring stock to DeQuattro, Beretta was the majority shareholder and President of RGB.

"Corporate officers and directors of any corporate enterprise, public or close, have long been recognized as corporate fiduciaries owing a duty of loyalty to the corporation and its shareholders and thereby prohibited from diverting corporate opportunities to themselves." *A. Teixeira & Co. v. Texeira*, 699 A.2d 1383, 1386 (R.I. 1997). So too, "shareholders in a close held family corporation *may* have a fiduciary duty toward one another." *Id*. at 1387 (finding that where there is a small number of shareholders, active participation in management, and close working relations, the shareholders assume a fiduciary duty to one another). As such, officers, directors, and shareholders may be liable for taking corporate opportunities. *Id*. at 1386.

In *Sladen v. Rowse*, 115 R.I. 440, 347 A.2d 409 (1975), the Court "found that a corporate officer and director charged with the responsibility of acquiring stock for the corporation could not, as a fiduciary, acquire the stock for himself without first offering it to the corporation." *A.*

Teixeira, 699 A.2d at 1386 (citing *Sladen*, 115 R.I. at 444-45, 347 A.2d at 412-13). Whether a corporate fiduciary must first offer an opportunity to the corporation is a fact-intensive inquiry. *See Sladen*, 115 R.I. at 444, 347 A.2d at 412.

In determining whether it was proper for "a fiduciary [to] avail him or herself of a business opportunity . . . [that] rightfully belong[ed] to their corporation[,]" the party claiming the usurpation must demonstrate that (1) the person is a corporate fiduciary; (2) the opportunity was a potential corporate opportunity; and (3) the corporate opportunity was diverted from the company. *A. Teixeira*, 699 A.2d at 1387-88. In *A. Teixeira*, the Court determined that although the potential purchase of a liquor store was a corporate opportunity, as the corporation was in the same line of business, there was no proof that the purchase was an "opportunity that was in fact realistically available to plaintiff corporation or that the corporation was financially able to purchase [the liquor store]." *Id*. at 1388. Thus, there was no breach of loyalty by taking a corporate opportunity where the evidence suggested that the corporation was financially unable to avail itself of the opportunity. *Id*.

In the instant matter, Defendants essentially assert that Beretta entered into the 2016 Agreement because it allowed Beretta to maintain his ownership in RGB and ultimately diverted an opportunity to redeem those shares away from RGB. (Defs.' Opp'n 31.) There is no dispute that Beretta was a corporate fiduciary and that, according to the 2009 Letter Agreement, RGB's redemption of Beretta's shares was a corporate opportunity. However, there is an issue of fact as to whether the opportunity to redeem Beretta's shares was realistically available to RGB. In the letter dated April 26, 2019, addressed to Beretta from DeQuattro, discussing the final buyout of Beretta's remaining sixty-nine shares, DeQuattro states: "Thank you very much for keeping that amount within the company so that any amount if needed would be there." (Pl.'s Mot. Ex. 15.)

Also, DeQuattro's February 2015 proposal to Beretta noted a "reduction" and "slowing of business[,]" which could also suggest the need to keep the money within the company rather than redeem Beretta's remaining shares of common stock come May 2016. (Defs.' Opp'n Ex. 13.) Thus, there are issues of fact as to whether redemption of Beretta's stock was an opportunity realistically available to RGB, such that Beretta's taking the opportunity for himself was a usurpation of a corporate opportunity and, thus, a breach of his loyalty to RGB.

Defendants cite to *Friedman v. Kelly & Picerne, Inc.*, No. PB 05-1193, 2010 WL 5042896 (R.I. Super. Dec. 6, 2010) (Silverstein, J.). There, the court discussed a fiduciary's duty to disclose information in the context of the duty of loyalty. *Friedman*, 2010 WL 5042896, at *17-18. For instance, a duty of disclosure can arise when there is "a conflict of interest . . . in a transaction or contract between an individual and the corporation of which he or she is an officer or a director[.]" *Tomaino v. Concord Oil of Newport, Inc.*, 709 A.2d 1016, 1021-22 (R.I. 1998). This duty to disclose information is more relevant to a circumstance whereby an officer enters into a contract or transaction with its corporation and has a personal interest or stake in that contract or transaction. *Id*. The duty of loyalty requires that the fiduciary place the interests of the corporation above its own personal interests. *See Friedman*, 2010 WL 5042896, at *15.

For instance, in *Friedman*, the corporate-general partner breached its duty of loyalty to the partnership when it took a role of management and control that allowed it to divert profits away from the partnership and into its own entity. *Id*. at *16-17. Thus, a conflict of interest between its own profits and the profits of the partnership implicated its duty of loyalty and disclosure. *Id*.

If a conflict of interest arises in a transaction, for the transaction to be valid—and not avoided by the corporation—it must have been ratified, or in other words, "assented to by the disinterested officers and/or stockholders of the corporation with full knowledge of all the facts."

Tomaino, 709 A.2d at 1021. Albeit under Massachusetts law, the Court in *Tomaino* recognized that ratification can be implied when the disinterested officers or shareholders had '"knowledge of such facts or circumstances as would put a reasonable person on inquiry and [which] would lead to full discovery."' *Id*. at 1021-22 (quoting *Puritan Medical Center, Inc. v. Cashman*, 596 N.E.2d 1004, 1008 (Mass. 1992)).

In the instant matter, Defendants did not fully explain how the 2016 Agreement creates a conflict of interest such that Beretta had some personal interest other than to maintain his ownership in RGB and that this interest conflicted with those of RGB. Nevertheless, there is an issue of fact as to whether DeQuattro, the only other shareholder, ratified the 2016 Agreement by having knowledge of the 2009 Letter Agreement sufficient to put him on a reasonable inquiry and lead to full discovery of the contents and meaning of the 2009 Letter Agreement.

IV

Conclusion

Based on the foregoing, while this Court finds that the 2016 Agreement completely integrated the 2009 Letter Agreement as a matter of law, there are genuine issues of material fact regarding Beretta's fiduciary obligations to DeQuattro and RGB which prevent this Court from granting partial summary judgment. As a result, Beretta's Motion for Partial Summary Judgment is denied.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**Beretta v. DeQuattro, et al.**
CASE NO:	**PC-2020-03404**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**November 18, 2021**
JUSTICE/MAGISTRATE:	**Stern, J.**

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