



FOURTH JUDICIAL CIRCUIT OF VIRGINIA  
CIRCUIT COURT OF THE CITY OF NORFOLK

MICHELLE J. ATKINS  
JUDGE

April 16, 2018

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**RE: *Williamson Equity Partners, LLC v. Richard Jackson, Jr., et al.***  
**Docket No. CL17-1096**

Dear Counsel:

This case was last before the Court on March 20, 2018, for a hearing (the "Hearing") on Defendants' Motion for Reconsideration of the Court's Ruling on Plaintiff's Motion for Partial Summary Judgment (the "Motion") contained in the Court's February 16, 2018, letter opinion. The Motion was filed by Defendants Richard H. Jackson, Jr., Harrison J. Perrine, JP Fund Management LLC ("JP Fund"), Perrine Investments, LLC, and Jackson Property Company, LLC (collectively "Defendants"). As a result of the pending Hearing on the Motion, the Court entered an Order on March 2, 2018, suspending the entry of judgment contained in the February 16, 2018, letter opinion until after the Court rules on the Motion.

For the reasons stated herein, after further review of the Operating Agreement, the parties' briefs, and the arguments at the Hearing, the Court **DENIES** Plaintiff's Motion for Partial Summary Judgment on the breach of contract claim in the amount of \$1,849,590.

***POSITION OF THE PARTIES***

Defendants' Position

Defendants argue that the Court's prior opinion erroneously imposes a requirement that the Fund should have returned a profit in order to make a distribution pursuant to Article 8 when such a requirement is not found in the language of the Operating Agreement. (Defs.' Mot. 2, 4–8.) They further state, rather than "profit," "net," or "loss," the Operating Agreement uses the terms "net proceeds" and "net cash." (*Id.* at 2.) Thus, the plain meaning of the terms used in the Operating Agreement require "net cash," rather than a "profit." (*Id.* at 7.) In conjunction with

their argument regarding the plain language of the document, Defendants argue that because the provision the Court interpreted to require a profit also covers instances of refinancing, it could not possibly require a profit because there is never a profit in a refinancing. (*Id.* at 8–9.) In that way, they assert that it is nonsensical to interpret “net proceeds” to mean “profit.” (*Id.* at 9.)

Additionally, Defendants argue that the Court made a factual finding that there were no net proceeds, which is improper at the summary judgment stage. (*Id.* at 11–14.) On this point, Defendants argue that the Court should find that there are issues of material fact that prevent summary judgment. (*Id.* at 14.) Lastly, Defendants assert that JP Fund is the only Defendant that can be liable on summary judgment because the other defendants were not parties to the Operating Agreement, and the corporate veil has not yet been pierced, although the Complaint requests that the veil be pierced. (*Id.* at 14–15.)

### WEP’s Position

Plaintiff Williamson Equity Partners, LLC (“WEP”) argues that the Court should deny the Motion because it is an attempt to re-litigate the motion for summary judgment. (Pl.’s Br. 2.) It asserts that Defendants are attempting to re-litigate an issue that was decided on undisputed facts, and Defendants agreed to submit the issue for summary judgment. (*Id.* at 4.) WEP bolsters its argument by stating that Defendants are not only attempting to re-argue questions of law, but are also seeking to reopen the record and provide additional, immaterial evidence that was available before the hearing, but was not presented. (*Id.* at 4–5.)

At the Hearing, WEP expanded on the arguments in its brief in asserting that the Court was correct to determine, based on the summary of accounting, that there were no net proceeds to distribute, and that the Motion only spurs from “an unfortunate kind of use of synonymous terms.” (Hearing Tr. (“Tr.”) 26–28, 40.) It further states that the issue is not whether there are disputed facts, but rather merely that Defendants do not agree with how the Court interpreted the Operating Agreement. (Tr. 29.) In agreeing with the Courts conclusion, WEP asserts that the Operating Agreement is clear that, in deciding when and how to make distributions, one should look to what happened when a property was sold, and if the Summary of Accounting indicates a loss, then there should be no distribution. (Tr. 29–30.) Additionally, WEP argues that, even if the Court were to find net cash flow, then the distribution is still unlawful under the Operating Agreement for the reasons it argued in the prior hearing and briefs. (Tr. 35–36.)

Lastly, WEP agrees with Defendants that only JP Fund can be held liable for summary judgment on this issue, rather than all of the defendants collectively, because the corporate veil has not been pieced for the other defendants. (Tr. 36–37.)

### **STANDARD OF REVIEW**

The Virginia Supreme Court has opined that “motions to reconsider are not favored” because “judicial economy requires that litigants have one, but only one, full and fair opportunity to argue a question of law.” *Hechler Chevrolet, Inc. v. Gen. Motors Corp.*, 230 Va. 396, 403, 337 S.E.2d 744, 749 (1985). “Courts are provided for the purpose of putting an end, and a speedy end, to controversies, and not as a forum for endless litigation.” *Downing v. Huston, Darbee Co.*, 149 Va. 1, 10, 141 S.E. 134, 137 (1927) (quoting *Gills v. Gills*, 126 Va. 526, 546, 101 S.E. 900, 907 (1920)). Thus, “[w]ithout valid excuse, no party who has had his day in court can reopen the

hearing after final decision of extrinsic matters in controversy between the same parties on the mere ground that he wishes to interpose other defenses which he neglected to interpose before such decision was made.” *Id.* Consequently, “[i]n order to demonstrate an entitlement to a rehearing, a petitioner must show either an ‘error on the face of the record, or . . . some legal excuse for his failure to present his full defense at or before the time of entry of the decree.’” *Holmes v. Holmes*, 7 Va. App. 472, 480, 375 S.E.2d 387, 392 (1988) (quoting *Downing*, 149 Va. at 9, 141 S.E. at 136–37).

Rule 3:20 of the Rules of the Supreme Court of Virginia states “[i]f it appears . . . that the moving party is entitled to judgment, the court shall enter judgment in that party’s favor,” but shall not enter summary judgment “if any material fact is genuinely in dispute.” Furthermore, “[s]ummary judgment is not appropriate if reasonable persons may draw different conclusions from the evidence.” *Condo. Servs. v. First Owners’ Ass’n of Forty Six Hundred Condo., Inc.*, 281 Va. 561, 575, 709 S.E.2d 163, 171 (2011).

Upon a motion for summary judgment, the trial court is tasked with reviewing the record, “accepting as true those inferences from the facts that are most favorable to the nonmoving party, unless the inferences are forced, strained, or contrary to reason.” *Fultz v. Delhaize Am., Inc.*, 278 Va. 84, 88, 677 S.E.2d 272, 274 (2009). “[S]ummary judgment is a drastic remedy, available only when there are no material facts genuinely in dispute.” *Id.* Thus, “if the evidence is conflicting on a material point or if reasonable persons may draw different conclusions from the evidence, summary judgment is not appropriate.” *Id.*

### ANALYSIS

“Contracts between parties are subject to basic rules of interpretation. Contracts are construed as written, without adding terms that were not included by the parties.” *TM Delmarva Power, L.L.C. v. NCP of Va., L.L.C.*, 263 Va. 116, 119, 557 S.E.2d 199, 200 (2002). “Where the terms of the contract are clear and unambiguous, the contract is construed to its plain meaning.” *Id.* As such, “[w]hen a contract is complete on its face and is plain and unambiguous in its terms, a court is not free to search for its meaning beyond the contract itself.” *Aetna Casualty & Sur. Co. v. Fireguard Corp.*, 249 Va. 209, 214, 455 S.E.2d 229, 232 (1995). A court should look to parol evidence, however, when a contract is ambiguous and requires more information regarding the intention of the parties. *Id.* The Virginia Supreme Court has defined “ambiguity” as “the condition of admitting of two or more meanings, of being understood in more than one way, or of referring to two or more things at the same time.” *Id.* (quoting *Berry v. Klinger*, 225 Va. 201, 207, 300 S.E.2d 792, 796 (1983)).

In this case, Article 14 of the Operating Agreement states “[i]f, in connection with, as part of or immediately preceding any dissolution or winding up of the LLC, the LLC receives Net Cash from a Sale or Refinancing, then such Net Cash from a Sale or Refinancing shall be distributed and allocated among the members in accordance with Articles 8 and 9 of this Agreement.” (Operating Agreement 17–18.) Article 1 defines a “Net Cash from Sale or Refinancing” as:

the net proceeds from (i) any sale, exchange, condemnation or other disposition of any portion of the LLC’s assets, (ii) any sale, exchange, condemnation or other

disposition of any of the Properties or any part thereof, and (iii) any borrowing by the LLC or any Property Owner, in each case less all costs, fees (including Management Fees), expenses and obligations of the LLC and reserves determined by the Manager in its sole discretion.

(Operating Agreement 3–4.)

In the prior hearing on January 22, 2018, the parties' arguments were based primarily on the proper procedure for distributing funds under Articles 8 and 9. Upon review of the Operating Agreement, however, the Court interpreted the "net proceeds" language of Article 14 in its holding that it was improper to make distributions under Articles 8 and 9. Defendant's now argue that the Court's interpretation of this language is erroneous.

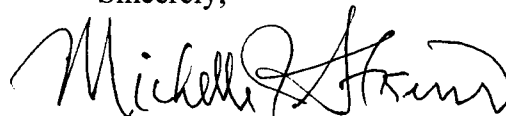
The Court does not view the Motion as an attempt to re-litigate the issue, but rather as opportunity to hear argument on an aspect of the summary judgment motion that was not a main basis of argument in the prior hearing. Having now had the benefit of further argument, the Court finds that granting summary judgment on the breach of contract claim is improper. The arguments made by the parties make it clear that the Court exceeded the plain meaning of the contract in interpreting "net proceeds" synonymously with "profit." At the very least, the definition of what constitutes "net proceeds" under the contract is a question of material dispute. Additionally, the value of the net proceeds that remained and the proper procedure for distribution for any proceeds are also material facts subject to the presentation of evidence by the parties.

### ***CONCLUSION***

Based on the foregoing, and upon further review of this matter, although the parties submitted documents that they agreed were not in dispute, the Court recognizes that there is a disputed issue within those documents with regard to whether pursuant to Article 14 the Fund received "Net Cash from a Sale or Refinancing." Further, the Court recognizes that if there was "Net Cash from a Sale or Refinancing," whether it was "distributed and allocated among the Members in accordance with Articles 8 and 9 of [the] Agreement" is a jury question that requires further evidence to be presented.

Therefore, the Court reconsiders its February 16, 2018, letter opinion and **DENIES** Plaintiff's Motion for Summary Judgment on their breach of contract claim for the distribution of \$1,849,590. The Court directs Defendants to prepare and circulate an Order consistent with the ruling in this Opinion and submit it to the Court for entry within fourteen (14) days.

Sincerely,



Michelle J. Atkins  
Judge

MJA/kml