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Re: CorVel Enterprise Comp, Inc. v. Schaffer
C.A. No. 4896-VCN
Date Submitted: February 23, 2010

Dear Counsel:

On May 31, 2007, in accordance with the Stock Purchase Agreement,[1] Plaintiff CorVel Enterprise Comp, Inc. ("CorVel") acquired The Schaffer Companies, Ltd. (the "Company") from its stockholders. The shareholders were few in number. Defendant Christopher Schaffer ("Schaffer") was a major stockholder and the Company's Executive Vice President. On the same day that the Stock Purchase Agreement was signed, Schaffer, for additional consideration, also executed the

[1] Compl. Ex. C.

Noncompetition Agreement[2] which, in very general terms, prohibited him from competing with CorVel for a period of five years.

Part of the consideration under the Stock Purchase Agreement was an earn out payment (the "Earn Out") which, again in general terms, depended upon the success of the Company's operations under the new CorVel ownership. A dispute between the former stockholders, including Schaffer, and CorVel arose later about the amount of the Earn Out. That dispute was resolved through the Settlement and General Release Agreement (the "Release"),[3] executed in February 2009.

Schaffer now, it is alleged, has a job with a competitor of CorVel in violation of the Noncompetition Agreement. CorVel brought this action to enforce the Noncompetition Agreement. Schaffer contends that the Release relieved him of his duties under the Noncompetition Agreement.

Both CorVel and Schaffer have moved under Court of Chancery Rule 12(c) for judgment on the pleadings. In considering a motion for judgment on the pleadings, the Court must be satisfied that there are no material facts in dispute, and it must

[2] Compl. Ex. A.
[3] Compl. Ex. B.

draw all reasonable inferences from those facts in the light most favorable to the nonmoving party.[4] The Court also may consider the agreements attached to the pleadings in making its determination.[5]

As will be seen, the Court's resolution of the dispute turns on interpretation of the language of the Release. The Release, of course, is a form of contract. Interpretation of a contract is a question of law.[6] If a contract's meaning is unambiguous and the underlying facts necessary to its application are not in dispute, judgment on the pleadings is an appropriate procedural device for resolving the dispute.[7]

The Court set forth the framework for contract interpretation in *West Willow v. Robino*[8] and will not reprise that description in any detail here. In reading a contract, the Court, at the outset, gives the words chosen by the parties their ordinary meaning

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[4] *Cantor Fitzgerald, L.P. v. Cantor*, 2001 WL 1456494, at *4 (Del. Ch. Nov. 5, 2001) (citation omitted).
[5] *See, e.g., Rag Am. Coal Co. v. AEI Res., Inc.*, 1999 WL 1261376, at *9 (Del. Ch. Dec. 7, 1999).
[6] *See OSI Sys., Inc. v. Instrumentarium Corp.*, 892 A.2d 1086, 1090 (Del. Ch. 2006) ("Under Delaware law, the 'proper interpretation of language in a contract, while analytically a question of fact, is treated as a question of law both in the trial court and on appeal,' and 'judgment on the pleadings . . . is a proper framework for enforcing unambiguous contracts.'") (citations omitted).
[7] *Lillis v. AT&T Corp.*, 2006 WL 4759865, at *4 (Del. Ch. May 22, 2006).
[8] *West Willow-Bay Court, LLC v. Robino Bay Court Plaza, LLC*, 2007 WL 3317551, at *9 (Del. Ch. Nov. 2, 2007), *aff'd*, 985 A.2d 391 (Del. 2009).

and construes it as an objective, reasonable third party would do.[9] That is how courts go about ascertaining the intent of the parties and their expectations upon entering into the contract. Moreover, the Court must construe the contract as a whole.[10] If the contract is unambiguous—that is, it is not susceptible to more than one reasonable reading—then the Court may not rely on extrinsic evidence that might otherwise shed light on the intentions of the parties when they entered into the contract.[11]

Schaffer claims that the Release, executed in the context of resolving a dispute about the Earn Out, released him from any continuing obligation under the Noncompetition Agreement.[12] Thus, the Court turns to the Release, which, at paragraph 3, reads in pertinent part:

> CorVel fully releases, acquits, and forever discharges the shareholders [i.e., Schaffer] from any and all claims, actions, causes of actions, . . . grievances, obligations, rights, . . . losses or liabilities of whatever nature, whether known or unknown, disclosed or undisclosed, asserted or unasserted, in law and equity, contract or tort, or otherwise,

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[9] *See Dittrick v. Chalfant*, 948 A.2d 400, 406 (Del. Ch. 2007) ("Standing in the shoes of an objectively reasonable third-party observer, if the court finds that the terms and language of the agreement are unmistakably clear, the court should look only to the words of the contract to determine its meaning and the parties' intent.").
[10] *Mehiel v. Solo Cup Co.,* 2005 WL 3074723, at *2 (Del. Ch. Nov. 3, 2005).
[11] *See Dittrick*, 948 A.2d at 406.
[12] Def. Christopher Schaffer's Opening/Answering Br. on J. on Pleadings at 13-14.

> including without limitation, any claims arising under federal, state or local law, and any claims arising out of any relationship between the shareholders [including Schaffer] and CorVel, including but not limited to any claims or counterclaims that were or could have been asserted in the Pending Case.[13] Further, CorVel intends that this Release shall fully discharge the shareholders to the maximum extent permitted by law.

The language of the Release is broad. It is also very general. When one looks at the "including but not limited to" language in paragraph 3, one cannot help but conclude that the Release cannot be limited to the Earn Out dispute. Schaffer's duties under the Noncompetition Agreement clearly qualify as "obligations." Furthermore, these duties no doubt arose out of the "relationship" between CorVel and Schaffer.

There is no fair way to read the language of paragraph 3 of the Release other than as fully encompassing the entire breadth of the relationship between CorVel and Schaffer. Section 6(e) of the Noncompetition Agreement acknowledges that the Noncompetition Agreement and the Stock Purchase Agreement operated as a joint undertaking with a combined subject matter, stating, "[the Noncompetition]

[13] The term "Pending Case" referred to the now-resolved Earn Out dispute.

Agreement and the Stock Purchase Agreement . . . constitute the entire agreement among the parties with respect to the subject matter hereof. . . ."[14]

Nothing in the balance of the Release suggests that the Court's reading of paragraph 3, which is the only operative provision binding CorVel in the Release, is wrong. For example, one of the Release's whereas clauses speaks of the parties' "desire to end their relationship on an amicable basis" and to "resolve any actual or potential disputes and claims including the Pending Case without further expenditures on litigation or delays." The choice of the word "including" in this clause would suggest that the drafter had something more expansive in mind than simply the termination of claims related to the Earn Out. CorVel contends that the "including" language should be read as referring to other potential disputes related to the Stock Purchase Agreement but that would arise apart from the Noncompetition Agreement, including, for example, claims involving obligations prescribed by Schaffer's employment agreement or claims based on the representations and warranties provided for in Section 6.1 of the Stock Purchase Agreement which survived for two

[14] As noted, both the Stock Purchase Agreement and the Noncompetition Agreement were executed the same day and were part of the same transaction. Compl. ¶ 10.

years after acquisition of the Company, a period which had not expired when the Release was signed.[15] Nevertheless, the recognition in the Release of the parties' intent to end their relationship—a contractual relationship which had commenced with the signing of the Stock Purchase Agreement and the Noncompetition Agreement—would also seem to encompass that part of their relationship defined by the Noncompetition Agreement.

CorVel seeks solace in paragraph 8 of the Release, which reads in part:

> This Agreement sets forth the entire agreement between the parties concerning the subject matter hereof, there being no agreement of any kind, verbal or otherwise, which varies, alters or adds to it, and this Agreement supersedes any and all prior agreements or understandings between the parties pertaining to the subject matter hereof, except [for certain exceptions that are not applicable].

CorVel argues that the "subject matter" of the Release refers only to the Earn Out and that this language thereby limits the Release to Earn Out matters only.[16] The Court does not agree. First, this provision simply says that there are no separate agreements. The language does not purport to modify the scope of the release conferred in paragraph 3. Second, and more importantly, the broad scope of the

[15] Pl.'s Reply Br. in Support of its Mot. for J. on the Pleadings at 6; Tr. 31-32.
[16] Pl.'s Opening Br. in Support of its Mot. for J. on the Pleadings at 16.

release in paragraph 3 also pertains, in the words of paragraph 8, to the "subject matter of the General Release." In other words, if paragraph 3 is, as the Court has concluded, a broad and general release that reaches the obligations of Schaffer under the Noncompetition Agreement, there is nothing in paragraph 8 that cuts back on that. The function of paragraph 8 is to make clear that nothing beyond the terms of the Release, i.e., outside of the document, is to bind the parties with respect to the subject matter of the Release. The Court draws its conclusion here from the Release, itself; thus, its conclusion is not undercut by the words of paragraph 8.

Finally, CorVel asserts that, even if paragraph 3 operated as a general release, it could not function as a substitute contract discharging the Noncompetition Agreement by rescission because CorVel had already performed all of its duties under that agreement with the payment of an additional $150,000 to Schaffer at the time of closing.[17] Thus, absent new consideration, which CorVel asserts was not present here, the duties arising under the Noncompetition Agreement could not be discharged by the Release as a matter of contract law because the agreement was not

[17] Pl.'s Opening Br. in Support of its Mot. for J. on the Pleadings at 17.

executory on both sides.[18] CorVel concludes that no additional consideration was provided for the release of obligations under the Noncompetition Agreement because none of the $800,000 paid to Schaffer to induce his execution of the Release was earmarked to serve as consideration for matters other than the Earn Out. CorVel further points out that the $800,000 payment is described in the Release as the "Final Earn Out Amount" or "Settlement Amount."[19]

However, the Release also provides that the $800,000 is "[i]n exchange for the mutual promises and releases herein and other good and valuable consideration," and that the sums received by Schaffer and the other shareholders were received "in full and complete settlement of all claims and disputed amounts of every kind and description . . . arising out of any relationship between the Shareholders and CorVel or the termination of such relationship."[20] In a global settlement of all past and future claims, the final settlement amount naturally reflects the offsetting values of a number of claims that are foregone on both sides by way of the settlement. The fact

[18] *See, e.g.*, 13 Corbin on Contracts § 71.1(1) at 398 (2003 & Supp. 2009) ("[T]he existence and the validity of a new contract of substitution must be established in the same manner as any other contract—establishing mutual assent and consideration.").
[19] Release ¶ 1.
[20] *Id.*

that there is not an itemized list of the consideration given for each released claim does not mean that no consideration was given—particularly, as here, where the consideration would only have been reflected as a reduction in the amount of the payment Schaffer received. Thus, this argument fails, as well.[21]

Whether CorVel really intended to release its rights under the Noncompetition Agreement is one of those subjective questions that the Court neither can answer nor may even ask. Instead, courts must read the words for what they say. This is a release in which CorVel specifically acknowledges the attorney who advised it. CorVel is, by all accounts, a sophisticated party. This is the agreement that it made. The agreement is clearly expressed. The Court's function is a limited one. It is to

[21] According to CorVel, the Release, if it absolved Schaffer of any responsibility under the Noncompetition Agreement, necessarily amended that agreement. It notes that the Noncompetition Agreement could have only been amended by a writing signed by both CorVel and Schaffer. The only provision of the Release, a writing signed by both Schaffer and a CorVel officer, that purports to supersede prior agreements is found in paragraph 8, which limits such supersession to those prior agreements or understandings between the parties that pertain to the subject matter of the Release. If the subject matter is limited to the Earn Out, then, CorVel reasons, the Release could not be deemed to affect Schaffer's duties under the Noncompetition Agreement.

This line of thought fails for two reasons. First, it is not clear that a release of a contractual obligation necessarily functions as an amendment of the underlying contract. *See, e.g.*, Restatement (Second) of Contracts § 284 (1981) ("A release is a writing which provides that a duty owed to the maker of a release is discharged immediately or upon the occurrence of a condition."). Second, and more importantly, as set forth above, the Release, in light of its broad scope, pertains to the entire contractual relationship between Schaffer and CorVel, including the Noncompetition Agreement.

give meaning and substance to the words that the parties have freely chosen. The Release is comprehensive and reaches Schaffer's obligations under the Noncompetition Agreement.[22] For that reason, Schaffer's motion for judgment on the pleadings is granted, and CorVel's motion for judgment on the pleadings is denied.

IT IS SO ORDERED.

Very truly yours,

/s/ John W. Noble

JWN/cap
cc: Register in Chancery-K

[22] With this conclusion, it is unnecessary to reach the other issues raised by the parties.