

STATE OF SOUTH CAROLINA
PICKENS COUNTY

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2019-CP-3901224

Christopher Young and Biotech Restorations,
LLC

Plaintiffs,

v.

Joanna Marie Paynter, a/k/a Joey Painter,
Samantha P. Nelson, and Paynter Consulting,
LLC,

Defendants.

ORDER CONSTRUING THE GENERAL
PARTNERSHIP AGREEMENT

RECEIVED

DEC 16 2022

SC Court of Appeals

The above-captioned matter involves a dispute over a General Partnership Agreement between Plaintiff Biotech Restorations, LLC (Biotech) and its owner Plaintiff Christopher Young (Young), on the one hand, and Defendant Paynter Consulting, LLC (Paynter Consulting) and its owner Dr. Valerie Paynter (Dr. Paynter), on the other hand. A jury trial commenced on April 20, 2022, and after the close of Plaintiffs' case and directed verdict rulings, the parties agreed to dismiss the Jury and conduct the remainder of the trial as a bench trial.

This Order addresses the admissibility and construction of the General Partnership Agreement shown in Plaintiffs' Exhibit 3, as well as the causes of action that remain pending.

I. Admissibility of Plaintiffs' Exhibits 2 and 3

During the trial conducted on April 20, 2022, the Court overruled Defendants' objections and allowed Young to authenticate and admit into evidence, as Plaintiffs' Exhibits 2 and 3, two versions of a General Partnership Agreement. 4/20/22 Trial Tr., pp. 92-93. Plaintiffs' Exhibit 2 purports to be a General Partnership Agreement between Young and Dr. Paynter and bears notary subscriptions from G. David Utley dated January 10, 2006, and Kay Kirkley Barrett dated January

16, 2006. Plaintiffs' Exhibit 3 purports to be a second General Partnership Agreement between Biotech, Young, Paynter Consulting, and Dr. Paynter and bears notary subscriptions from Rose Dalton dated May 30, 2006. Defendants have renewed their objections to the testimony about and admissibility of the General Partnership Agreements shown in Plaintiffs' Exhibits 2 and 3.

This Court has reconsidered its decision to admit Plaintiff's Exhibit No. 3 (the Agreement) and respectfully denies Defendant's Motion to Reconsider.

II. Interpretation of the Agreement shown in Plaintiffs' Exhibit 3

The Agreement shown in Plaintiffs' Exhibit 3 is a contract between Biotech, Young, Paynter Consulting, and Dr. Paynter that created a Partnership to remediate contaminated soils using a bioremediation technology referred to as the Factor Biotechnology. The parties primarily dispute the ownership of and rights to the Factor Biotechnology as provided in the Agreement. The Court construes the disputed terms of the Agreement as described in the following sections.

A. Does the Partnership described in the Agreement still exist?

The parties disagree on the status of the Partnership described in the Agreement. As a preliminary matter, this Court notes that under South Carolina law, "language [that] is perfectly plain and capable of legal construction alone determines the document's force and effect." *Ecclesiastes Production Ministries v. Outparcel Ass., LLC*, 374 S.C. 483, 498, 649 S.E.2d 494, 501 (Ct. App. 2009). Furthermore, the South Carolina Supreme Court has previously held that, "[i]t is fundamental that in the construction of the language of a [contract], it is proper to read together the different provisions therein dealing with the same subject matter, and where possible, all the language used should be given a reasonable meaning."¹ *Brady v. Brady*, 222 S.C. 242, 246,

¹ The case of *Ecclesiastes Production Ministries v. Outparcel Ass., LLC*, 374 S.C. 483, 499, 649 S.E.2d 494, 502 (Ct. App. 2009) references the *Brady* decision and uses the Court's reasoning concerning the construction of lease agreements to expound upon contract constructions more specifically.

72 S.E.2d 193, 195 (1952). With these baseline concepts in mind, the Court construes the contract in question in the below detailed manner.

The introductory sentences and the first numbered paragraph of the Agreement identify Dr. Paynter as a “party” to the Agreement and a “partner” in the business. Paragraph 4 of the Agreement defines the term of the Partnership, as follows:

4. Term – The Partnership shall commence on and continue until dissolved by mutual agreement of the partners. **The Partnership will terminate upon the death or incapacity of a partner.**

The Court finds neither method of termination defined in the contract to be ambiguous or in need of further interpretation given the plain language meaning of the terms. As such, the Court finds the Partnership as described in the Agreement no longer exists. Since there was no mutual agreement of the partners to dissolve the Partnership prior to Dr. Paynter’s death, her death as a partner is what ultimately terminated the Agreement. The terms of the Agreement provide the remaining partner (in this case, Plaintiffs) with the “right” to continue the business of the Partnership after termination of the Agreement due to death of a partner, provided that the continuing partner must pay 10% of the net profits annually from the continuation of the business to the heirs/estate of the deceased partner.

B. According to the Agreement, who owns the Factor Biotechnology?

The parties disagree on ownership of the Factor Biotechnology according to the Agreement.

The introductory sentence of the Agreement states that Paynter Consulting is “owned and operated solely by” Dr. Paynter. Paragraph 3 of the Agreement states that the “business of the partnership is set forth below and relates to the treatment of contaminated soil, marine sediments and other media as applicable to the **Factor biotechnology**” and “the Partnership will utilize propriety products and services under an exclusive use permit which restricts the use of the **Factor**

Biotechnology to this Partnership for all environmental business applications.” Paragraph 3.b further states that Paynter Consulting “having sole knowledge of the **proprietary Factor formulation**, agrees to provide the Partnership with exclusive use of **Factor formulated products** during the term of the Partnership.”

Construing these clauses together, the Agreement describes the Factor Biotechnology as a proprietary Factor formulation that can produce Factor formulated products to treat contaminated soils. According to the specific language of paragraph 3.b, Paynter Consulting has sole knowledge of the proprietary Factor formulation. According to the introductory sentence of the Agreement, Paynter Consulting is owned and operated solely by Dr. Paynter. Nothing in the remainder of the Agreement requires Paynter Consulting or Dr. Paynter to share, transfer, or otherwise disclose the formula of the Factor Biotechnology to anyone, including Plaintiffs. On the other hand, there is nothing contained within this Agreement to restrict Paynter Consulting or Dr. Paynter from sharing knowledge concerning the Factor formulation with others, including her children. Nonetheless, as the sole owner and operator of Paynter Consulting, the only person with knowledge of the proprietary Factor formulation, and the plain language of the Partnership Agreement, Dr. Paynter is the sole owner of the Factor Biotechnology according to the Agreement.

As previously stated, Dr. Paynter was able to share the Factor Biotechnology with Defendants before her death, and upon her death, Defendants Joanna Marie Paynter, A/K/A Joey Paynter and Samantha P. Nelson became the sole owners of the Factor Biotechnology. The Agreement provided for the exclusive **use** of the Factor Biotechnology for purposes of the Partnership **while it was ongoing**. However, nothing plainly in the contract or inferred from the language contained therein leads this Court to believe this Agreement prevented Dr. Paynter from sharing the Factor formulation with others prior to, or at the time of, her passing. In fact, the

language of this contract allowing for the right to continued use of the Factor Biotechnology upon the death of one, unspecified partner demonstrates to this Court there was no intent on behalf of either party for the information concerning the Factor formulation to die with Dr. Paynter. Dr. Paynter did not choose to share this information with the Plaintiffs, but there is nothing within the Agreement requiring or limiting her to do. As such, Defendants Joanna Marie Paynter, A/K/A Joey Paynter and Samantha P. Nelson own the Factor Biotechnology as they own and solely possess the knowledge to create it.

C. According to the Agreement, what rights do Plaintiffs have to the Factor Biotechnology?

The parties disagree on any rights Plaintiffs have to the Factor Biotechnology according to the Agreement.

The introductory sentences and the first numbered paragraph of the Agreement identify Biotech and Young as “parties” to the Agreement and “partners” in the business. As previously quoted, paragraph 3 of the Agreement states that the business of the partnership “relates to the treatment of contaminated soil, marine sediments and other media as applicable to the Factor biotechnology.” Paragraph 4 of the Agreement grants the surviving partner the right to continue the business of the Partnership, as follows:

In the event of the death of a partner, the remaining partner has the right to continue the business of the Partnership by themselves or in conjunction with any other persons they may select.

Construing these clauses together, the Agreement contemplates that a partner may continue the business of the Partnership after the death of a partner. Continuation of the business of the Partnership would be impossible for Plaintiffs without use of the Factor Biotechnology. Therefore, Plaintiffs have the right to use the Factor Technology and enter into contracts for use of the Factor Technology. However, Defendants own the Factor Biotechnology and are not required to share

the Factor Biotechnology formulation with Plaintiffs. If the Defendants should choose to sell the Factor Biotechnology, the contract for sale must include a provision allowing Plaintiffs to use the Factor Biotechnology after the sale. In addition, in compliance with the terms set forth in the Agreement, if the Defendants choose to sell the Factor Biotechnology, they would be required to pay the Plaintiffs 10% gross from the sale.

While the partners enjoyed exclusive use of the Factor Biotechnology “during the term of the Partnership,” Paragraph 4 states “the remaining partner has the right to continue the business of the Partnership by themselves or in conjunction with any other person they may select.” If the partners intended for the remaining partner to have the “exclusive” right to continue business with the Factor Biotechnology following the death of the other, language indicating that would be included in the contract. The plain language of the Agreement is consistent throughout, specifically concerning these portions that reference rights of the partners at differing periods of time. Therefore, this Court finds the Defendants could choose to use the Factor Biotechnology, sell it, or a combination of both so long as they abide by the conditions concerning the Plaintiffs’ continued use and compensation.

IT IS SO ORDERED.

Letitia H. Verdin
Thirteenth Circuit Court Judge



Pickens Common Pleas

Case Caption: Christopher Young , plaintiff, et al VS Joanna Marie Paynter ,
defendant, et al
Case Number: 2019CP3901224
Type: Order/Amend

So Ordered

s/Letitia H. Verdin, SC Judge 2162

STATE OF SOUTH CAROLINA
COUNTY OF Pickens
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP3901224

Christopher Young et al
PLAINTIFF(S)

Joanna Marie Paynter et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.



DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
Other



ACTION STRICKEN (CHECK REASON): Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
Other

STAYED DUE TO BANKRUPTCY

DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):

Affirmed; Reversed; Remanded;
Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

This matter is before the Court by way of Plaintiff's Motion for Relief. For the reasons previously provided in the Court's November 11, 2022 Order and clarified in the November 17, 2022 Amended Order, Plaintiff's Motion for Relief is respectfully denied. It is so ORDERED.

ORDER INFORMATION

This order ends does not end the case.

See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 12/11/2022 .

Paynter Consulting, Llc

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NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Pickens Common Pleas

Case Caption: Christopher Young , plaintiff, et al VS Joanna Marie Paynter ,
defendant, et al
Case Number: 2019CP3901224
Type: Order/Electronic Form 4

So Ordered

s/Letitia H. Verdin, SC Judge 2162

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PICKENS COUNTY

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JUDGMENT

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SC Court of Appeals

The above-captioned matter involves a dispute over a General Partnership Agreement between Plaintiff Biotech Restorations, LLC (Biotech) and its owner Plaintiff Christopher Young (Young), on the one hand, and Defendant Paynter Consulting, LLC (Paynter Consulting) and its owner Dr. Valerie Paynter (Dr. Paynter), on the other hand.

The Amended Complaint asserts the following causes of action against Defendants: (1) Declaratory Judgment, Breach of Agreement; (2) Mandatory Injunction – Return Lab Notes, Partnership Documents; (3) Interference with Contract; (4) Conversion; (5) Aiding and Abetting Breach of Fiduciary Duty; (6) Breach of Fiduciary Duty; (7) Constructive Trust – in the Alternative; and (8) Declaratory Judgment – Fraudulent Conveyance.

A jury trial commenced on April 20, 2022. After the close of Plaintiffs' case, the Court granted a directed verdict for Defendants as to the causes of action for Declaratory Judgment, Breach of Agreement; Aiding and Abetting Breach of Fiduciary Duty; and Breach of Fiduciary Duty. The parties agreed to dismiss the Jury and conduct the remainder of the trial as a bench trial.

On August 11, 2022, the Court conducted a hearing at which time Defendants rested without presenting any evidence.

On November 10, 2022, the Court issued an Order containing the Court's findings, specifically as to construction of the General Partnership Agreement. On November 15, 2022, the Court issued an Order amending a portion of the Order issued on November 10, 2022.

This Order contains the rulings of this Court as to the remaining causes of action.

The Court hereby grants verdict in favor of the Defendants for these remaining causes of action: Mandatory Injunction – Return Lab Notes, Partnership Documents; Interference with Contract; Conversion; Constructive Trust – in the Alternative; and Declaratory Judgment – Fraudulent Conveyance.

IT IS SO ORDERED.

Letitia H. Verdin, SC Judge 2162



Pickens Common Pleas

Case Caption: Christopher Young , plaintiff, et al VS Joanna Marie Paynter ,
defendant, et al
Case Number: 2019CP3901224
Type: Order/Judgment and Form 4

So Ordered

s/Letitia H. Verdin, SC Judge 2162