

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

IN THE COURT OF COMMON PLEAS  
THIRTEENTH JUDICIAL CIRCUIT

McMillan Pazdan Smith, LLC, )  
 )  
Plaintiff/Counter-Defendant, )

Civil Action No. 2019-CP-23-00998

vs. )

Donza H. Mattison, )  
 )  
Defendant/Counterclaimant. )

**ORDER GRANTING MOTION FOR  
SUMMARY JUDGMENT**

Donza H. Mattison, in a Derivative )  
Capacity on Behalf of McMillan Pazdan )  
Smith, LLC, )

**RECEIVED**

Third-Party Plaintiff, )

APR 05 2021

vs. )

Rondald G. Smith, Joseph M. Pazdan, )  
Brad B. Smith, and Chad C. Cousins, )

**SC Court of Appeals**

Third-Party Defendants. )  
 )

McMillan Pazdan Smith, LLC ("MPS") filed a Motion for Summary Judgment on December 14, 2020 as to MPS's declaratory judgment claim relating to the valuation of Defendant Donza H. Mattison's ("Mattison") equity in MPS. The Motion was fully briefed and came before the Court for hearing on January 14, 2021. Samuel W. Outten and Katie E. Towery appeared on behalf of MPS. David E. Rothstein appeared on behalf of Mattison. For the reasons explained more fully below, the Court deems the pending Motion to seek summary judgment in MPS's favor both on MPS's claim and on Mattison's counterclaims, all of which are issues ripe for determination. Having heard the arguments and reviewed the submissions of the parties, MPS's

Motion for Summary Judgment is hereby GRANTED, and summary judgment shall be entered in MPS's favor as to MPS's claim for declaratory judgment and Mattison's counterclaims.

#### **FACTUAL AND PROCEDURAL BACKGROUND**

MPS is a regional architectural and interior design firm with offices in South Carolina, North Carolina, and Georgia. Mattison is a former employee and current member of MPS, and worked as an architect in MPS's Spartanburg, South Carolina office. (Am. Answer ¶ 44.) Mattison's employment with MPS ended on February 12, 2018 with her voluntary resignation from the firm. (*Id.* at ¶¶ 49, 52.)

The parties memorialized Mattison's cessation of employment in a Severance Agreement and General Release ("Severance Agreement") dated December 5, 2017. The Severance Agreement provides that Mattison's dissociation from MPS will be treated as a "Proper Dissociation," meaning that there was no penalty or reduction in the value of her financial rights. The Severance Agreement provides: "The parties agree that the value of Employee's membership units shall be mutually determined in early 2018 following the close of YR2017, with Company providing access to all current and prior year financial reports, tax returns, and other financial information as requested by Employee's Counsel. The Proper Dissociation will be handled separately from this Agreement and will be done in accordance with the September 30, 2015 Operating Agreement." (*See* Severance Agreement ¶ 2(j).)

MPS's 2015 Operating Agreement (the "Operating Agreement"), which Mattison agreed in the Severance Agreement would control her dissociation from MPS, provides that a properly dissociating member will be paid "Fair Market Value" for her membership interest. (*See* Operating Agreement §§ 10.2, 11.3.) Fair Market Value is defined in the Operating Agreement as "the value of the Units as determined by the Management Committee in accordance with the procedure set

forth in Section 5.1(s)....” (*Id.* at Article I.) Pursuant to Section 5.1(s), the Management Committee “shall have the power and authority on behalf of the Company to: ... determine the per unit price of any Membership Interest or Units for purposes of Section 11.3....” (*Id.* at § 5.1(s).)

The Operating Agreement further provides that “the seller [in this case, Mattison] and the Management Committee shall attempt to agree upon the value of the Units as soon as practical after the occurrence of the event giving rise to a purchase and sale under Article XI. If the seller and the Management Committee are unable to reach an agreement within the first thirty (30) days of the Company’s Purchase Period (the ‘Agreement Period’), the value of the Units shall be determined as of the end of the fiscal year immediately preceding the date of the underlying event which triggered the sale by a Qualified Appraiser selected by the Management Committee.” (*Id.* at Article I.)

MPS retained HDH Advisors LLC (“HDH”) to conduct a 2017 valuation of the company in early 2018. After MPS and Mattison were unable to reach agreement on the value of her Units within 30 days after the event giving rise to the sale and purchase, MPS used HDH’s 2017 valuation to determine a per unit price, and made an offer to Mattison on August 3, 2018 to purchase her membership units for this amount. (Am. Answer ¶ 56.) Mattison, however, contested this valuation and demanded a much higher per unit price. (*See id.* at ¶ 57.)

MPS filed a Declaratory Judgment Action on February 22, 2019, asking the Court to declare that the Severance Agreement is a valid and enforceable contract and Mattison’s membership units are to be valued in accordance with the terms of the Operating Agreement. (*See Compl.*) MPS further asked the Court to declare that MPS had followed the Operating Agreement’s provisions regarding the annual valuation of the company, and, therefore, the value

of Mattison's membership units should be determined by applying the per unit price from the company's 2017 valuation conducted by HDH. (*Id.*)

Mattison filed an Answer, Counterclaims, and Third-Party Complaint on March 4, 2019, and filed an Amended Answer, Counterclaims, and Third-Party Complaint on July 30, 2019. Mattison asserted counterclaims for breach of contract, judicial determination of the fair value of her distributional interest, an accounting and order compelling production of MPS's financial records, and for declaratory judgment. (*See* Am. Answer.) Mattison also asserted a derivative cause of action against Ron Smith, Joseph Pazdan, Brad Smith, and Chad Cousins for breach of fiduciary duty and breach of the Operating Agreement. (*Id.*) The derivative action was dismissed by Order dated September 30, 2020. Thus, the remaining issue before the Court, raised both in MPS's claim and in Mattison's counterclaims, is the value of Mattison's equity interest in MPS.

MPS filed a Motion for Summary Judgment on December 14, 2020 asking the Court to find that the Severance Agreement is a valid and enforceable contract that binds the parties and prescribes the method by which Mattison's equity must be valued, and thus to grant summary judgment on its declaratory judgment claim. Because MPS's declaratory judgment claim rests on the same transactions, occurrences, documents, rights, and obligations that underly Mattison's four counterclaims, and because a ruling in MPS's favor on its declaratory judgment claim necessarily forecloses Mattison's ability to prevail on her counterclaims, the Court deems the issues pending before it to include a request for summary judgment in MPS's favor both on MPS's claim and on Mattison's counterclaims.<sup>1</sup> *See generally* *Midsouth Steel, Inc. v. DPR Construction, Inc.*, 225 F.

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<sup>1</sup> The Court notes that the parties' written and oral arguments presented at or in anticipation of the January 14 hearing likewise understood that MPS's claim and Mattison's counterclaims are two sides of the same coin, and that a ruling in MPS's favor on the former would necessitate a ruling in MPS's favor on the latter and would thus dispose of all claims pending before the Court.

Supp. 3d 542, 544-45 (D.S.C. 2016) (noting a court may of its own volition grant summary judgment on a claim when doing so is simply a restatement of the court's ruling granting a motion for summary judgment on another claim and when the two rulings reach the same conclusion); *Rouse v. Nielsen*, 851 F. Supp. 717, 737 (D.S.C. 1994) (noting that as long as the parties were given a chance to be heard, there is no error or prejudice in a court's *sua sponte* grant of summary judgment); *Horne v. Beason*, 285 S.C. 518, 331 S.E.2d 342 (1985) (upholding trial court's *sua sponte* grant of summary judgment).

#### STANDARD OF REVIEW

Summary judgment "shall be rendered forthwith if 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." Rule 56(c), SCRCP. The party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact, *Trivelas v. S.C. Dep't of Transp.*, 348 S.C. 125, 558 S.E.2d 271 (Ct. App. 2001), a burden it may satisfy by demonstrating the claims at issue rest on the interpretation of clear and unambiguous contractual language, *see infra*; *see also First-Citizens Bank & Tr. Co. v. Conway Nat'l Bank*, 282 S.C. 303, 305, 317 S.E.2d 776, 777 (Ct. App. 1984) ("Where a motion for summary judgment presents a question as to the construction of a written contract, the question is one of law if the language employed by the agreement is plain and unambiguous. [] In such a case, summary judgment is proper and a trial unnecessary where the intention of the parties as to the legal effect of the contract may be gathered from the four corners of the instrument itself.") (citations omitted). Once the moving party has met that burden, the burden shifts to the party opposing summary judgment, who must show the Court the existence of a genuine issue of material fact. *Dyer v. Moss*, 284 S.C. 208, 211, 325 S.E.2d 69, 70 (Ct. App.

1985). “In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party.” *Brockbank v. Best Capital Corp.*, 341 S.C. 372, 378–79, 534 S.E.2d 688, 692 (2000).

Claims that, like those pending before the Court, rest on the interpretation and application of contractual language may be resolved by summary judgment because the meaning and effect of an agreement’s language is a question of law for the Court. *See First-Citizens Bank & Tr. Co.*, 282 S.C. at 305, 317 S.E.2d at 777; *Pee Dee Stores, Inc. v. Doyle*, 381 S.C. 234, 241, 672 S.E.2d 799, 802 (Ct. App. 2009) (noting that summary judgment is appropriate when a claim involves the construction of an unambiguous, written contract, because the intent of the parties can be gathered from the four corners of the instrument); *Preservation Capital Consultants, LLC v. First Am. Title Ins. Co.*, 406 S.C. 309, 751 S.E.2d 256 (2013) (upholding trial court’s grant of summary judgment when the contractual language was unambiguous).

The claims before the court are ripe for adjudication because their determination rests solely on the interpretation of the clear and unambiguous language of the parties’ agreements. *See Whitlock v. Stewart Title Guar. Co.*, 399 S.C. 610, 615, 732 S.E.2d 626, 628 (2012) (“Where the contract’s language is clear and unambiguous, the language alone determines the contract’s force and effect.”); *Black v. Freeman*, 274 S.C. 272, 273, 262 S.E.2d 879, 880 (1980) (noting that when the terms of a contract are clear and unambiguous, the resolution of claims arising from the construction of that contract is a matter of law to be decided by the court); *Moser v. Gosnell*, 334 S.C. 425, 430, 513 S.E.2d 123, 125 (Ct. App. 1999) (“When the language of a contract is clear, explicit, and unambiguous, the language of the contract alone determines the contract’s force and effect and the court must construe it according to its plain, ordinary, and popular meaning.”).

### RULING

The parties' claims, and the Court's ruling, relating to the valuation of Mattison's equity in MPS depend on the validity, enforceability, interpretation, and application of the Severance Agreement and Operating Agreement insofar as they relate to the method of calculating and valuing a member's equity. As explained more fully below, the Court concludes both the Severance Agreement and the Operating Agreement are valid and enforceable and lead inevitably to the conclusion that MPS has established its entitlement to the declaratory judgment it seeks, and Mattison has not (and cannot) recover under her counterclaims.

As an initial matter, the Court finds that the Severance Agreement is a valid and enforceable contract. Neither party contests the enforceability of the Severance Agreement. (*See* Am. Answer ¶¶ 49, 61.) Furthermore, the Court finds that the Severance Agreement prescribes the methodology by which to value Mattison's membership units. Specifically, Section 2(j) provides that Mattison's "Proper Dissociation will be handled separately from this Agreement and will be done in accordance with the September 30, 2015 Operating Agreement." And while that section of the Severance Agreement states the parties will "mutually determine[]" the value of Mattison's equity, that statement does not—as Mattison argues—stand alone or leave Mattison free to select whatever means and method of valuation she likes, nor does it give her liberty to dispute the means and method used by MPS. Rather, the very next sentence of section 2(j) identifies the specific way in which that mutual determination must be reached, namely "in accordance with the September 30, 2015 Operating Agreement." The Court finds the Severance Agreement to be clear and unambiguous. The parties agreed that Mattison's membership units would be valued according to the provisions of the Operating Agreement.

In reaching this conclusion, the Court notes that MPS and Mattison signed this Severance Agreement after several weeks of negotiation and with both parties being represented by counsel. The Court is unpersuaded by counsel for Mattison's argument that the Court should judicially value Mattison's membership units. When the terms and provisions of an agreement are clear and unambiguous, the Court should enforce the parties' contract. Here, it is clear that the parties agreed Mattison's units would be valued pursuant to the Operating Agreement. The Severance Agreement does not provide that the value of Mattison's units should be determined by a judicial valuation, and pursuant to the plain meaning of the contract that is unmistakably not what the parties intended.

As the South Carolina Supreme Court has stated:

It is elementary... that the function of the courts is to adjudge and enforce contracts as they are written and entered into by the parties. The court cannot make them for the parties. When such contracts are capable of clear interpretation, the court cannot exercise its discretion as to the wisdom of such contract or substitute its own for that which was agreed upon where its provisions are clear, unambiguous and free from doubt.

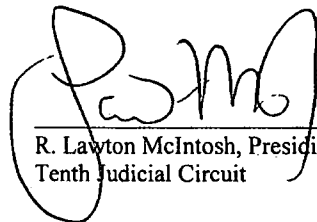
*Mid-Continent Refrigerator Co. v. Dean*, 256 S.C. 99, 101, 180 S.E.2d 892, 893-94 (1971) (quoting *Charles v. Canal Ins. Co.*, 238 S.C. 600, 121 S.E.2d 200 (1961)).

The Court further finds that MPS followed the Operating Agreement's provisions in determining the Fair Market Value of Mattison's membership units. The Operating Agreement is clear that when Mattison and the Management Committee did not reach an agreed-upon valuation within the first 30 days after the event giving rise to the purchase and sale, the value of her shares "shall be determined as of the end of the fiscal year immediately preceding the date of the underlying event which triggered the sale by a Qualified Appraiser selected by the Management Committee." (Operating Agreement at Article I; *see also id.* § 5.1(s) (noting that the Management Committee "shall have the power and authority on behalf of the Company to: ... determine the per

unit price of any Membership Interest or Units for purposes of Section 11.3....”).) The Management Committee hired HDH as a qualified third-party appraiser to determine the value of the firm consistent with the method outlined in the Operating Agreement. Thus, the value of Mattison’s 2,035.34 membership units are to be determined by applying the per unit price from the 2017 valuation conducted by HDH.

For the reasons set forth above, MPS’s Motion for Summary Judgment is hereby granted. The Court is enforcing the unambiguous terms of the parties’ Severance Agreement and MPS’s Operating Agreement. This ruling necessarily means Mattison cannot succeed on her counterclaims alleging MPS’s valuation breached the parties’ contract, seeking a judicial determination of the value of her equity, requesting an accounting or production of records, or seeking a contrary declaratory judgment. Accordingly, summary judgment is granted in MPS’s favor on Mattison’s counterclaims. The Court has carefully weighed and considered each of Mattison’s allegations, claims, and arguments asserted in her written submissions and oral arguments but finds them unpersuasive or legally incorrect. This ruling disposes of all the remaining causes of action in this matter. Mattison shall tender her membership units to MPS within ten (10) days of the date of this Order. Within ten (10) days of Mattison tendering her units, MPS shall provide payment to Mattison for her membership units as instructed by this Order.

AND IT IS SO ORDERED.

  
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R. Lawton McIntosh, Presiding Judge  
Tenth Judicial Circuit

Anderson, South Carolina

2-9, 2021