IN THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY

TORREY PINES BANK,)
Plaintiff,))) C.A. No. N12C-01-205 CLS
V.)
SEAN P. BYRNES	
Defendant.)

ORDER

On this 4th Day of March, 2013, and upon consideration of Plaintiff's Motion in *Limine*, it appears to the Court that:

Beginning on or about June 2007, Defendant Sean Byrnes ("Defendant") was employed by Plaintiff Torrey Pines Bank ("Plaintiff") in Plaintiff's credit card division, PartnersFirst Affinity Services, as chief financial officer. Plaintiff filed an action for breach of contract or, in the alternative, unjust enrichment based on certain post-employment payments that it made to Defendant, which were governed by a document containing the terms of employment between Plaintiff and Defendant ("Terms of Employment"). Plaintiff asserted that the payments were to cease once Defendant obtained new employment. Defendant counterclaimed arguing that Plaintiff owed him payments dating back from December 2011.

Plaintiff filed this motion arguing that the Terms of Employment is a fully integrated contract and, as such, parol evidence should be excluded. Defendant argues that the Court should consider parol evidence because Plaintiff's motion is premature and the terms of the agreement are ambiguous and, as such, the Court should consider parol evidence to determine the parties' intent.

The terms and conditions for Defendant's employment were set forth in the Terms of Employment dated June 1, 2007, executed by Plaintiff on June 14, 2007 and by Defendant on June 7, 2007. The Terms of Employment, under the section titled "Noncompetition," contained the following language:

To protect and preserve the value of the substantial financial commitment Western will be making in connection with the Program, and in consideration of the equity participation opportunities we are offering you, you agree that, during your employment with TPB, the Bank or any other affiliate of Western, and for a period of two years thereafter (the "Protection Period") not to: (1) compete with the Program in the credit business, including establishing "affinity" or "co-branding" arrangements; (2) employ or solicit employees of Western or any of its affiliates; and (3) solicit any of the Program's customers for credit card business, including any person or entity that had an "affinity" or "co-branding" arrangement with TPB and/or the Bank as of the date of termination of your employment. You agree, upon our request, to execute formal written covenants confirming these restrictions.

In consideration of the protective covenants described above, and subject to your continuing compliance with such covenants, during the Protection Period, TPB or the Bank (as the case may be) will continue to pay you an amount equal to sixty-six percent (66%) of your Base

¹ Compl., at ¶ 8.

Salary as of the date your employment is terminated [...], provided that, these payments will not apply in the event your employment is terminated as a result of your death or disability, as provided in your employment agreement. These payments are guaranteed for the first year following termination of your employment so long as you do not obtain new employment. Thereafter, in the event TPB or the Bank fails to make these payments for any reason, the protective covenants set forth above shall lapse, and you will have no further remedy or claim as a consequence of such failure.²

"A motion in limine is normally used to determine the admissibility of evidence outside the presence of the jury." Such an evidentiary determination is a decision for the trial judge, which will not be reversed unless there is a clear abuse of discretion. This Court may also deny a motion in *limine* if it finds the motion to be premature.

The parol evidence rule bars the admission of extrinsic evidence of an oral agreement to contradict a fully or partially integrated written contract. However, the rule does not prohibit the use of extrinsic evidence to supplement a partially integrated agreement, so long as such evidence is consistent with the writing. In order for the Court to determine whether a contract is fully or partially integrated,

_

² Pl. Mot. Ex. A., at 3 (emphasis added).

³ Battistini v. Hickman & Willey, Inc, 1989 WL 89692, at *2 (Del. Super. July 13, 1989).

⁴ Kling Meats, Inc. v. Baltimore Spice Co., 1988 WL 130370, at *1 (Del. Super. Nov. 23, 1988) (citing Lampkins v. State, Del.Supr., 465 A.2d 785 (1983).

⁵ E.g., Crowell Corp. v. Himont USA, Inc., 1994 WL 762663 (Del. Super. Dec. 8, 1994).

⁶ Taylor v. Jones, 2002 WL 31926612, at *3 (Del. Ch. Dec. 17, 2002).

⁷ *Id.*; *Value Line Foods of Delaware, Inc. v. Warshofsky*, 1981 WL 375934, at *4(Del. Super. Jan. 5, 1981)(quoting 17 *Am.Jur.2d*, "Contracts" § 260); *McGrew v. Vanguard Corp.*, 1979 WL 4635, at *3 (Del. Ch. Sept. 25, 1979).

it must consider several factors, including "whether the writing was carefully and

formally drafted, whether the writing addresses the questions that would naturally

arise out of the subject matter, and whether it expresses the final intentions of the

parties."8

After reviewing the parties' submissions and hearing argument, the Court

finds that Plaintiff's motion is premature. At this stage in the proceedings, there

has not been enough information developed for the Court to make a determination

as to whether parol evidence should be excluded. Defendant asserted that "[w]hile

the parties have exchanged documents, Torrey Pines has yet to produce a single

witness for deposition." On this basis, the Court finds it necessary to allow the

parties to conduct further discovery. Nevertheless, Plaintiff is not precluded from

moving to exclude parol evidence once more facts are further developed.

For the reasons stated above, Plaintiff's Motion in *Limine* is **DENIED**

WITHOUT PREJUDICE.

IT IS SO ORDERED.

/S/CALVIN L. SCOTT

Judge Calvin L. Scott, Jr.

Date: March 4, 2013

⁸ Taylor v. Jones, 2002 WL 31926612, at *3 (Del. Ch.) (citing Scott-Douglas Corp. v.

Greyhound Corp., 304 A.2d 309, 316 (Del. Ch. 1973).

4