

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

LEASEWEB USA, INC.,)

)

Plaintiff,)

)

v.)

C.A. No. N21C-01-219 WCC

)

CENTRO, INC.,)

)

Defendant.)

)

Submitted: July 7, 2021
Decided: November 19, 2021

**Defendant Centro, Inc.’s Motion for Summary Judgment
GRANTED in Part and DENIED in Part.**

MEMORANDUM OPINION

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CARPENTER, J.

Before the Court is Defendant Centro, Inc's ("Defendant" or "Centro") Motion for Summary Judgment. For the reasons set forth in this Opinion, Defendant's Motion for Summary Judgment is **GRANTED in Part and DENIED in Part.**

I. FACTUAL BACKGROUND

This action arises out of a Service Agreement entered into by the parties on or around August 10, 2019, for web-hosting services provided by Leaseweb USA, Inc. ("Plaintiff" or "Leaseweb") to Centro.¹ Leaseweb is a Delaware corporation with its principal place of business in Virginia and provides web-hosting and related services.² Centro is also a Delaware corporation with its principal place of business in Illinois and is an advertising technology firm.³

The parties negotiated two different terms under the Agreement: (1) a three-year term at a rate of \$73,758.97 per month ("Three-Year Monthly Rate"),⁴ and (2) a one-year term at a rate of \$103,654.56 per month ("One-Year Monthly Rate").⁵ The Special Conditions of the Agreement contain a one time, opt-out provision, which states:

¹ Pl.'s Am. Compl., D.I. 23, ¶ 12 (June 23, 2021)(hereinafter "Am. Compl.").

² *Id.* at ¶¶ 6, 11.

³ Def. Centro Inc.'s Mot. For Summ. J., D.I. 9, ¶ 2 (Apr. 20, 2021)(hereinafter "Def's Mot.").

⁴ Def.'s Ex. A, D.I. 9, (Leaseweb Quote Sheet/Order Form (Schedule 1) LSW004640.6) at p. 1.

⁵ Def.'s Ex. B, D.I. 9, (Quote Sheet/Order Form (Schedule 1) LSW004640.7) at p. 1.

[t]he following Initial Terms will apply to the Order:

- Initial Term of the contract will be that of three (3) years.

-The Customer will be entitled to a one time opt-out option, provided that the Customer will give Leaseweb a thirty (30) days prior written notice. If onetime opt-out option is not exercised within the 12 months of the Initial Term, the onetime opt-out expires.

-If the Customer chooses to invoke its right to the onetime opt-out option, the Service Charges in the one (1) year Quote as specified in Contract_LSW004640.7 10-09-2019 – Centro – 12MONTHSV5.pdf will apply. This means that the difference between the three (3) year monthly recurring Service Charges and the one (1) year monthly recurring Service Charges (multiplied by 12 months) will be invoiced and due by Customer for payment within the payment term upon receipt.⁶

Centro paid the Three-Year Monthly Rate from October 2019 until May 2020.⁷ On April 3, 2020, Centro sent a letter to Leaseweb providing notice it was exercising the opt-out option, effective May 3, 2020.⁸ Leaseweb confirmed the option was properly exercised on April 7, 2020 and advised Centro it owed \$886,655.68 in Service Charges pursuant to the opt-out provision.⁹ Leaseweb reached that amount by multiplying the One-Year Monthly Rate by twelve months and reducing it by the payments made by Centro.¹⁰

⁶ Def.'s Ex. E, D.I. 9, (Special Conditions for the Order of Centro) at p. 1.

⁷ Def's Mot. at ¶ 4.

⁸ Def.'s Ex. F, D.I. 9, (Letter from Centro to Leaseweb April 3, 2020) at p. 1.

⁹ Def's Ex. G, D.I. 9, (Letter from Leaseweb to Centro April 7, 2020) at p. 2.

¹⁰ *Id.*

Centro responded on April 16, 2020 highlighting two errors suggested by Leaseweb.¹¹ First, Centro asserted it satisfied the only precondition to the opt-out by providing thirty days advanced written notice of its intent to terminate, and any termination Service Charges are due within the normal payment terms of the Agreement after invoicing by Leaseweb.¹² Second, Centro explained that Leaseweb had improperly calculated the Service Charges, which should be determined pursuant to the formula in the opt-out provision.¹³ Centro suggested the proper amount owed is \$352,777.92 and reached its figure by calculating the difference between the Three-Year Monthly Rate and the One-Year Monthly Rate, then multiplying the difference by twelve months. The parties agreed at oral argument the difference in the calculations is that Leaseweb asserts that Centro was obligated for the Service Charges for one year even if they opted out before then.¹⁴ Centro asserts no additional monthly fee was required once they opted out.¹⁵

II. PROCEDURAL BACKGROUND

Leaseweb filed its Complaint on January 27, 2021 and Centro answered on February 26, 2021.¹⁶ On April 20, 2021, Centro moved for summary judgment

¹¹ Def's Ex. H, D.I. 9, (Letter from Centro to Leaseweb April 16, 2020) at p. 1.

¹² *Id.*

¹³ *Id.* at p. 2.

¹⁴ Rough Tr., June 21, 2021, at p. 24-28.

¹⁵ *Id.* at p. 16-17.

¹⁶ Compl., D.I. 1, (Jan. 27, 2021); Ans. and Defenses to Pl.'s Compl., D.I. 4, (Feb. 26, 2021).

asserting that the opt-out provision is unambiguous and controlling, and therefore, no factual dispute exists.¹⁷ On May 20, 2021, Leaseweb responded to the motion for summary judgment and moved for leave to amend complaint.¹⁸ The Court granted the Motion for Leave to Amend during a hearing conducted on June 21, 2021 and reserved its decision on the Motion for Summary Judgment.¹⁹ On June 23, 2021, Leaseweb filed its Amended Complaint, where it maintains two causes of action: (1) breach of contract, and (2) unjust enrichment.²⁰

Centro filed its Answer to Amended Complaint on July 7, 2021 denying Leaseweb's allegations and asserting five defenses: (1) Leaseweb failed to state a claim upon which relief can be granted; (2) Leaseweb failed to show that it has suffered damages or failed to mitigate damages; (3) Leaseweb's claims are barred by the doctrines of consent, waiver, implied waiver, laches, equitable estoppel, unclean hands, ratification, and other equitable defenses; (4) Centro has performed in all material respects under the Agreement; and (5) Leaseweb's unjust enrichment claim is barred by the existence of the Service Agreement.²¹ In spite of all the legal arguments made and the legalese used to argue their position, the only issue here is

¹⁷ Def.'s Mot. at ¶ 1.

¹⁸ Pl.'s Resp. to Def's Mot. for Summ. J., D.I. 13, (May 20, 2021)(hereinafter "Pl.'s Resp."); Pl.'s Mot. for Leave to Amend Compl., D.I. 14, (May 20, 2021).

¹⁹ Superior Court Proceeding Worksheet, D.I. 22, (June 21, 2021).

²⁰ Am. Compl., at p. 5.

²¹ Def. Centro Inc.'s Ans. To Pl.'s First Am. Compl., D.I. 24, p. 10-11 (July 7, 2021).

the interpretation of the opt-out provision and the damages that flow from executing the option.

III. STANDARD OF REVIEW

In reviewing a motion for summary judgment pursuant to Superior Court Civil Rule 56, the Court must determine whether any genuine issues of material fact exist.²² The moving party bears the burden of showing that there are no genuine issues of material fact, such that he or she is entitled to judgment as a matter of law.²³ In reviewing a motion for summary judgment, the Court must view all factual inferences in a light most favorable to the non-moving party.²⁴ “The Court maintains the discretion to deny summary judgment if it decides that a more thorough development of the record would clarify the law or its application.”²⁵ Where it appears that there is a material fact in dispute or that further inquiry into the facts would be appropriate, summary judgment should not be granted.²⁶

²² Super. Ct. Civil R. 56(c); *see also* *Wilm. Tru. Co. v. Aetna*, 690 A.2d 914, 916 (Del. 1996).

²³ *See Moore v. Sizemore*, 405 A.2d 679, 680-1 (Del. 1979).

²⁴ *See Alabi v. DHL Airways, Inc.*, 583 A.2d 1358, 1361 (Del. 1990).

²⁵ *TIBCO Software, Inc. v. Thrive Revenue Sys., LLC*, 2019 Del. Super. LEXIS 595, *9-10 (Del. Super. Ct. Nov. 19, 2019).

²⁶ *See Ebersole v. Lowengrub*, 180 A.2d 467, 470 (Del. Super. Ct. 1962), *rev'd in part* on procedural grounds and *aff'd in part*, 208 A.2d 495 (Del. 1965).

IV. DISCUSSION

Summary judgment is not appropriate in contract disputes where the language at issue is ambiguous.²⁷ “A contract is ambiguous ‘only when the provisions in controversy are reasonably or fairly susceptible of different interpretations or may have two or more different meanings.’”²⁸ “A contract is not rendered ambiguous merely because the parties dispute the meaning of its terms.”²⁹ “Where the language of a contract is clear and unambiguous, the Court must construe the contract terms by their ordinary and usual meaning.”³⁰ Whether a contract or contractual term is ambiguous is a question of law for the Court to decide.³¹

A. Count I - Breach of Contract Claim

“Delaware adheres to the ‘objective’ theory of contracts, i.e. a contract’s construction should be that which would be understood by an objective, reasonable third party.”³² When interpreting a contract, the Court “will give priority to the

²⁷ *Riverbend Cmty., LLC v. Green Stone Eng’g, LLC*, 55 A.3d 330, 334 (Del. 2012).

²⁸ *Matulich v. Aegis Commc’ns Grp., Inc.*, 942 A.2d 596, 600 (Del. 2008)(citing *Rhone-Poulenc Basic Chems. Co. v. Am. Motorists Ins. Co.*, 616 A.2d 1192, 1196 (Del. 1992)).

²⁹ *Anguilla RE, LLC v. Lubert-Adler Real Est. Fund IV, L.P.*, 2012 WL 5417101, at *5 (Del. Super. Ct. Nov. 5, 2012).

³⁰ *Id.*

³¹ *Buyse v. Colonial Sec. Service, Inc.*, 2012 WL 3025843, *2 (Del. Super. Ct. July 19, 2012).

³² *Osborn ex rel. Osborn v. Kemp*, 991 A.2d 1153, 1159 (Del. 2010)(citing *NBC Universal v. Paxson Commc’ns*, 2005 WL 1038997, at *5 (Del. Ch. Apr. 29, 2005)).

parties' intentions as reflected in the four corners of the agreement," construing the agreement as a whole and giving effect to all its provisions.³³

Centro contends it owes \$352,777.92 in Service Charges for exercising the opt-out provision based on its interpretation of the Special Conditions.³⁴ But, Leaseweb asserts Centro owes \$886,655.68 to properly execute the opt-out provision.³⁵

The Court finds that both parties produce plausible interpretations of the Agreement such that prior communications and the dealings between the parties may become relevant to determine the parameters of the opt-out provision. The parties concede that Centro properly exercised the opt-out by giving requisite notice within the Initial Term. However, the intended result of the opt-out is unclear as to whether Centro had an obligation to pay for the remaining months of services or was free to terminate at any time within the one year and simply pay the difference between the Three-Year Monthly Rate and the One-Year Monthly rate, multiplied by twelve.

When there are competing reasonable interpretations of a contract, the contract is ambiguous. Such ambiguities are unresolvable on a motion for summary

³³ *GMG Capital Invs., LLC v. Athenian Venture P'rs I, L.P.*, 36 A.3d 776, 779 (Del. 2012)(citing *Paul v. Deloitte & Touche, LLP*, 974 A.2d 140, 145 (Del. 2009).

³⁴ Ex. H, p. 2.

³⁵ Ex. G, p. 1.

judgment. Accordingly, Defendant's Motion for Summary Judgment as to this count is **DENIED**.

B. Count II - Unjust Enrichment Claim

Unjust enrichment is “the unjust retention of a benefit to the loss of another, or the retention of money or property of another against the fundamental principles of justice or equity and good conscience.”³⁶ The elements of unjust enrichment are: (1) an enrichment, (2) an impoverishment, (3) a relation between the enrichment and impoverishment, (4) the absence of justification, and (5) the absence of a remedy provided by law.³⁷

Leaseweb contends that it dedicated significant resources into building out the structure and providing services to Centro and relied on the income from the one-year term under the Agreement.³⁸ Leaseweb asserts that Centro's benefit arising under the Agreement exceeded the amount of money paid by Centro.³⁹ Lastly, Leaseweb argues that had it known of Centro's intentions to refuse to pay out the one-year term, it never would have engaged in its efforts to provide the services to

³⁶ *LCT Capital, LLC v. NGL Energy Partners LP*, 2016 WL 5793724, *8 (Del. Super. Ct. Oct. 3, 2016).

³⁷ *Nemec v. Shrader*, 991 A.2d 1120, 1130 (Del. 2010).

³⁸ Am. Compl. at ¶ 29.

³⁹ *Id.* at ¶ 31.

Centro, and therefore, Centro has been unjustly enriched and owes Leaseweb fair compensation.⁴⁰

Centro fails to address the unjust enrichment claim in its Motion for Summary Judgment and Leaseweb contends that the Motion is a partial motion for summary judgment aimed at the breach of contract claim.⁴¹ However, in its reply brief, Centro asserts that the unjust enrichment claim cannot exist when there is an enforceable contract governing the parties' relationship. The Court agrees.

Under Delaware law, “[i]f recovery is possible under the contract,” then the contract controls and a duplicative unjust enrichment claim will be dismissed as an attempt to obtain double recovery.⁴² “In some instances, Delaware law does permit unjust enrichment claims to cohabit complaints with breach-of-contract ones as alternative theories for recovery.”⁴³ “Those circumstances are limited to situations where ‘there is doubt surrounding [the relevant contract’s] enforceability or...existence.’”⁴⁴ An unjust enrichment claim is a quasi-contractual claim, but it is a claim that proceeds under the theory that no contract exists.⁴⁵ The courts

⁴⁰ *Id.* at ¶ 32.

⁴¹ Pl.’s Resp. at ¶ 1.

⁴² *Intermec IP Corp., and Intermec Technologies Corp. v. Transcore, LP, and Transcore Holdings, Inc.*, 2021 WL 3620435, *17 (Del. Super. Ct. Aug. 16, 2021).

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *JCM Innovation Corp. v. FL Acquisition Holdings, Inc.*, 2016 WL 5793192, *7 (Sept. 30, 2016)(citing *ID Biomedical Corp. v. TM Technologies, Inc.*, 1995 WL 130743, *15 (Del. Ch. Mar. 16, 1995)).

developed unjust enrichment as a theory of recovery to remedy the absence of a formal contract and a plaintiff cannot recover under this theory if a contract is a measure of the plaintiff's rights.⁴⁶ Both parties agree the detailed Agreement controls their relationship thereby eliminating the unjust enrichment claim.⁴⁷

Therefore, Defendant's Motion for Summary Judgment as to Count II, Unjust Enrichment, is **GRANTED**.

V. Conclusion

For the foregoing reasons, Defendant's Motion for Summary Judgment is **GRANTED in part and DENIED in Part**.

IT IS SO ORDERED.

/s/ William C. Carpenter, Jr.
Judge William C. Carpenter, Jr.

⁴⁶ *Id.*

⁴⁷ *E.g.*, Def's Mot. at ¶ 12; Pl.'s Resp. at ¶ 4.