IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

AYANA CONSULT EOOD, Plaintiff,	)	
v.	)	**C.A. No. N23C-07-217 PRW CCLD**
WHITEHAT EDUCATION TECHNOLOGY LLC d/b/a BYJU'S FUTURESCHOOL, Defendant.	)	

Submitted: November 3, 2023
Decided: November 14, 2023

ORDER DENYING BOTH DEFENDANT'S MOTION TO DISMISS AND PLAINTIFF'S CROSS-MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS

HAVING FULLY CONSIDERED the Defendant Whitehat Education Technology's Motion to Dismiss (D.I. 9); the Plaintiff AYANA Consult EOOD's Answer opposing dismissal and Cross-Motion for Judgment on the Pleadings (D.I. 13); Whitehat's reply supporting its own dismissal request and response to AYANA's cross-motion (D.I. 15); the parties' cited authorities; and the record developed thus far—there are no doubt both contract interpretation and factual disputes that abound. These contests cannot be resolved on this early-pleading-stage record but require each of the parties' applications be **DENIED** on the motion papers they have filed.

(1) Both sides are familiar with the factual background and operative agreements mentioned herein; so, the Court need not spell all that out in detail.

(2) Both sides are equally familiar with the procedural background of this matter and the pending motions; so, that is explained just briefly here. In sum, AYANA brought a three-count complaint against Whitehat. AYANA moved to dismiss all three counts. Whitehat countered with a combined response and its own cross-motion asking the Court to grant it certain partial judgments on the pleadings. That is, AYANA says the Court can—by simply examining its complaint, certain documents, and taking judicial notice of some facts—find Whitehat liable for alleged breaches of contract and subject to a contractual fee-shifting provision. Unsurprisingly, Whitehat replies that no such judgment on the pleadings can or should be granted and that it is instead due dismissal of the whole complaint filed against it.

(3) Under this Court's Civil Rule 12(b)(6), a party can move to dismiss for failure to state a claim upon which relief can be granted.[1] And Civil Rule 12(c) allows that a party may, at the proper time, move for judgment on the pleadings.[2]

(4) The parties are familiar with the standards the Court employs under Rule 12(b)(6). In resolving a Rule 12(b)(6) motion, the Court "(1) accept[s] all well-pleaded factual allegations as true; (2) accept[s] even vague allegations as 'well pleaded' if they give the opposing party notice of the claim, (3) draw[s] all

[1] Del. Super. Ct. Civ. R. 12(b)(6).

[2] Super. Ct. Civ. R. 12(c).

reasonable inferences in favor of the non-moving party, and (4) [will not dismiss a claim] unless the plaintiff would not be entitled to recover under any reasonably conceivable set of circumstances."[3] But, the Court need not "accept conclusory allegations unsupported by specific facts or . . . draw unreasonable inferences in favor of the non-moving party."[4] And the Court is not required to accept "every strained interpretation of the allegations proposed by the plaintiff."[5] Even so, Delaware's pleading standard is "minimal."[6] Dismissal is inappropriate unless "under no reasonable interpretation of the facts alleged could the complaint state a claim for which relief might be granted."[7]

(5) Contract interpretation is a question of law and can in the proper instance be resolved on a motion to dismiss.[8] "But, to achieve dismissal, the motion

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[3] *Central Mortgage Co. v. Morgan Stanley Mortgage Cap. Hldgs. LLC*, 27 A.3d 531, 535 (Del. 2011).

[4] *Price v. E.I. DuPont de Nemours & Co.*, 26 A.3d 162, 166 (Del. 2011), *overruled on other grounds by Ramsey v. Ga. S. Univ. Advanced Dev. Ctr.*, 189 A.3d 1255, 1277 (Del. 2018).

[5] *Malpiede v. Townson*, 780 A.2d 1075, 1083 (Del. 2001).

[6] *Central Mortgage*, 27 A.3d at 536 (citing *Savor, Inc. v. FMR Corp.*, 812 A.2d 894, 895 (Del. 2002)).

[7] *Unbound Partners Ltd. P'ship v. Invoy Hldgs. Inc.*, 251 A.3d 1016, 1023 (Del. Super. Ct. 2021) (internal quotation marks omitted); *see Central Mortgage*, 27 A.3d at 537 n.13 ("Our governing 'conceivability' standard is more akin to 'possibility' . . . .").

[8] *E.g.*, *Allied Cap. Corp. v. GC-Sun Hldgs., L.P.*, 910 A.2d 1020, 1030 (Del. Ch. 2006) ("Under Delaware law, the proper interpretation of language in a contract is a question of law. Accordingly, a motion to dismiss is a proper framework for determining the meaning of contract language.").

must be supported by unambiguous contract terms."[9] And the Court cannot choose between two differing reasonable interpretations of contested language at the pleadings stage of a contract dispute.[10] To succeed under 12(b)(6), the movant's interpretation must be "the *only* reasonable construction as a matter of law."[11] Otherwise, for purposes of deciding a 12(b)(6) dismissal motion, the language must be resolved in the non-movant's favor.[12]

(6) Under Rule 12(c), a motion for judgment on the pleadings may be granted where no material issue of fact exists and where the moving party is entitled to judgment as a matter of law.[13] A Rule 12(c) motion may well be "a proper framework for enforcing unambiguous contracts" that have but a singular reasonable meaning and lend to no material disputes of fact.[14] But by the very terms of this

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[9] *Blue Cube Spinco, LLC v. Dow Chemical Co.*, 2021 WL 4453460, at *7 (citing *VLIW Tech., LLC v. Hewlett-Packard Co.*, 840 A.2d 606, 615 (Del. 2003); *see also GMG Cap. Invs., LLC v. Athenian Venture Partners I, L.P.*, 36 A.3d 776, 783 (Del. 2012).

[10] *Vanderbilt Income & Growth Assocs., L.L.C. v. Arvida/JMB Managers, Inc.*, 691 A.2d 609, 613 (Del. 1996); *see also Appriva S'holder Litig. Co., LLC v. EV3, Inc.*, 937 A.2d 1275, 1292 (Del. 2007) ("Even if [the] Court consider[s] the [movant's] interpretation more reasonable than the [non-movant's], on a Rule 12(b)(6) motion it [is] error to select the 'more reasonable' interpretation as legally controlling.").

[11] *VLIW Tech.*, 840 A.2d at 615 (citation omitted).

[12] *Id.*; *see Veloric v. J.G. Wentworth, Inc.*, 2014 WL 4639217, at *8 (Del. Ch. Sept. 18, 2014) (observing that at the motion to dismiss stage, contested contract provisions must be interpreted most favorably to the non-moving party).

[13] *See Desert Equities, Inc. v. Morgan Stanley Leveraged Equity Fund, II, L.P.*, 624 A.2d 1199, 1205 (Del. 1993); *Guaranteed Rate, Inc. v. Ace American Ins. Co.*, 2021 WL 3662269, at *1 (Del. Super. Ct. Aug. 18, 2021).

[14] *Bay Point Capital Tr's L.P. v. Fitness Recovery Hldgs., LLC*, 2021 WL 5578705, at *4 (Del. Super. Ct. Nov. 30, 2021).

governing rule such a motion may only be brought "[a]fter the pleadings are closed"[15]—that is, after an answer to the complaint has been filed and the Court has some clear picture of what remains contested by the person or entity hailed before it.[16] That hasn't happened yet, so Whitehat's instant application for judgment on the pleadings is incognizable.[17]

(7) As to the motion to dismiss, it is clear the parties reasonably disagree on how the Court should interpret relevant provisions of their operative agreements and whether, as a matter of fact, those provisions have been triggered or breached. *First*, the parties give competing construction of the Success Fee terms of their Modified Agreement. They then disagree on whether AYANA's performance triggered the duty to pay that Success Fee. *Next*, the parties contest whether AYANA's General Manager and sole member, Angel Kelchev, is entitled to and was wrongfully denied a grant of employee stock options under the Modified

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[15] Super. Ct. Civ. R. 12(c).

[16] *See Unbound Partners*, 251 A.3d at 1025 (observing in a related context: "Though 'legally uncontested matters' should be disposed quickly, the Court can't know if a matter is 'legally uncontested' until the legal contest is actually joined—*e.g.*, by an answer admitting, denying, or defending the complaint's allegations." (cleaned up)); *see also* Super. Ct. Civ. R. 7(a) (defining "pleadings" under this Court's civil rules); *id.* at 7(b) (describing what are "motions and other papers").

[17] And even were Whitehat's request properly timed, the Court must accord a party opposing a Rule 12(c) motion the same benefits as a party defending a motion under Rule 12(b)(6). *IP Network Solutions, Inc. v. Nutanix, Inc.*, 2022 WL 369951, at 6 (Del. Super. Ct. Feb. 8, 2022). This means here that any potential ambiguity or other factors hindering the Court's ability to find a proponent's read of disputed contract terms to be "the *only* reasonable construction as a matter of law," prohibits entry of judgment on the pleadings. *VLIW Tech.*, 840 A.2d at 615 (emphasis in original); *Bay Point*, 2021 WL 5578705, at *4.

Agreement. *Lastly*, the parties provide competing construction of the Modified Agreement's performance-based bonus provision and differ on whether any such bonuses were earned.

(8) After a thorough review of the motion to dismiss, the response thereto, and the record to date, the Court finds that though the parties strongly urge their own reading of the various contract provisions and posit certain underlying facts (or lack thereof) from the complaint and their briefing, the record at this point strongly indicates that those construction and factual issues are not amenable to decision for either side under Rule 12. Put more simply, the interplay of factual issues, contract interpretation, and questions of law existing at this very early point warrants a fuller record to properly resolve.[18] Whitehat has failed to establish that its is "the *only* reasonable construction [of the parties' agreements] as a matter of law."[19] And AYANA has adequately pled that it may recover under a reasonably conceivable set of circumstances susceptible of proof as to each of the three counts in its complaint.[20]

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[18] *See, e.g.*, *Plume Design, Inc. v. DZS, Inc.*, 2023 WL 5224668, at *7 (Del. Super. Ct. Aug. 10, 2023) (observing one reason for denial of a motion for judgment on the pleadings "is a benefit to a further development of the facts and potentially more focused briefing on the language of the [subject] Agreement as it relates to" the disputed issue).

[19] *VLIW Tech.*, 840 A.2d at 615 (citation omitted).

[20] *See Vinton v. Grayson*, 189 A.3d 695, 700 (Del. Super. Ct. 2018) ("If any reasonable conception can be formulated to allow Plaintiffs' recovery, the [Rule 12(b)(6)] motion must be denied."); *Hedenberg v. Raber*, 2004 WL 2191164, at *1 (Del. Super. Ct. Aug. 20, 2004) ("Dismissal is warranted [only] where the plaintiff has failed to plead facts supporting an element of the claim, or that under no reasonable interpretation of the facts alleged could the complaint state a claim for which relief might be granted.").

(9) Given all this, the Court must **DENY** Defendant Whitehat Education Technology's Motion to Dismiss (D.I. 9) and Plaintiff AYANA Consult EOOD's Cross-Motion for Judgment on the Pleadings (D.I. 13) on the papers alone.

SO ORDERED this 14th day of November, 2023.

Paul R. Wallace, Judge

Original to Prothonotary
cc: All counsel via File & Serve