

**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

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SENIOR MAGISTRATE IN CHANCERY

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October 31, 2025

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Re: *HB Next LLC v. Alvin Joe Goodman III*,
C.A. No. 2025-0311-SEM

Dear Counsel:

Pending before me is a motion to dismiss or, in the alternative, for judgment on the pleadings. The defendant made several arguments but one is dispositive: subject matter jurisdiction. Because the plaintiff has failed to invoke this Court's equitable jurisdiction, the complaint must be dismissed with leave to transfer. If timely transferred, the receiving court can consider the defendant's various merits-based arguments for dismissal with prejudice. This is my final report, and exceptions may be filed under Court of Chancery Rule 144.

I. BACKGROUND

Through this action, HB Next LLC (the "Plaintiff") seeks to enforce various restrictive covenants found within an asset purchase agreement and related employment agreement against its former employee Alvin Joe Goodman III (the

“Defendant”).¹ Here, at the pleading stage, I take the well-pled averments of fact in the Plaintiff’s complaint as true.

A. The Parties

The Plaintiff is a Delaware limited liability company, with its principal place of business in Lawrenceville, Georgia. In business since 1999, the Plaintiff provides a range of training, safety, and environmental compliance solutions to construction companies across the United States.² Throughout the State of Georgia, the Plaintiff offers direct services including performing National Pollutant Discharge Elimination System inspections, water quality monitoring services, and related activities and services.

Before he worked for the Plaintiff, the Defendant had his own business, On-Site Monitoring & Management, LLC (“On-Site”). On November 1, 2022, the Plaintiff acquired On-Site through an asset purchase agreement (the “APA”). The acquisition expressly contemplated the Defendant, as the sole owner of On-Site, continuing with his business as an employee and Vice President of the Plaintiff. To that end, the APA, and a related employment agreement, contained several

¹ Docket Item (“D.I.”) 1 (“Compl.”) ¶ 1.

² Compl. ¶¶ 3–4.

restrictions, purporting to bind the Defendant. Those restrictions, and whether the Defendant violated them, are at issue in this action.

B. The Agreements

Under Section 4.8(a)-(b) of the APA, the Defendant agreed to the following:

Non-Competition. During the period beginning on the Closing Date and ending on the three (3) year anniversary of the Closing Date (the “Restricted Period”), neither [On-Site] nor the [the Defendant] shall, and shall cause their respective Affiliates, equityholders and family members not to, directly or indirectly, through any Person, contractual arrangement or otherwise, operate, have any type of equity or debt interest in a Competitive Business or otherwise engage in a Competitive Business anywhere in the United States, or perform management, or executive functions with respect to, join, control, render financial assistance to, receive any economic benefit from, exert any influence upon, participate in, render services or advice to, whether in corporate, proprietorship or partnership form, any business or Person that engages or could reasonably be expected to engage in a Competitive Business. “Competitive Business” means any business that competes with the Business anywhere in the United States.

Non-Solicitation. During the Restricted Period, neither [On-Site] nor the [Defendant] shall, and shall cause their respective Affiliates and family members not to, or encourage or direct any Person to, directly or indirectly, (i) solicit for employment or hire any employee, consultant or other service provider of [the Plaintiff] or any of its Affiliates or of the Business, or cause or induce any such Person to leave such employment or (ii) induce or attempt to induce any customer, vendor, subcontractor or other key business relationship of the Business to cease doing business with the Business, or in any way interfere with any such business relationship.³

³ Compl. ¶¶ 16–17.

“Business” is defined in the APA as: “providing environmental consulting services, including conducting National Pollutant Discharge Elimination System . . . inspections, preparing and submitting required filings, performing water quality monitoring services, together with all activities incidental to the foregoing[.]”⁴

In connection with the transaction, the Defendant also signed an employment agreement explaining his new role as “the Employee” of the Plaintiff, “the Company” (the “Employment Agreement,” with the APA, the “Agreements”). Section 8(b) of the Employment Agreement provides:

NONCOMPETITION. . . . [D]uring the Employee’s employment with the Company or any of its subsidiaries or affiliates and for a period of two (2) years thereafter, the Employee agrees that the Employee will not, directly or indirectly, in any capacity, render services, engage or have a financial interest in, any business that shall be competitive with those business activities that have constituted part of the Business anywhere in the world. . . . For purposes of this Section 8(b), “Business” means any business engaged in competition with the Company or any subsidiary or affiliate of the Company or in any other material business in which the Company or any subsidiary or affiliate of the Company is engaged during employment or in which they have planned on or prior to the date of termination, to be engaged in on or after such date in any locale of any country in which the Company or any subsidiary or affiliate of the Company conducts business. For purposes of clarity, the Business includes without limitation, the business of providing safety and environmental compliance, inspection, and training solutions to construction, government and utility customers, including conducting National Pollutant Discharge Elimination System inspections,

⁴ Compl. Ex. 1 p.1.

preparing and submitting required filings, performing water quality monitoring services, and all activities incidental to the foregoing.⁵

Section 8(c) of the Employment Agreement provides:

NONSOLICITATION; NONINTERFERENCE. (i) During the Employee's employment with the Company or any of its subsidiaries or affiliates and for a period of two (2) years thereafter, the Employee agrees that the Employee shall not, except in the furtherance of the Employee's duties hereunder, directly or indirectly, individually or on behalf of any other person, firm, corporation or other entity, solicit, aid or induce any customer of, or investor in, the Company or any of its subsidiaries or affiliates to purchase goods or services then sold by the Company or any of its subsidiaries or affiliates from another person, firm, corporation or other entity or assist or aid any other persons or entity in identifying or soliciting any such customer. (ii) During the Employee's employment with the Company or any of its subsidiaries or affiliates and for a period of two (2) years thereafter, the Employee agrees that the Employee shall not, except in the furtherance of the Employee's duties hereunder, directly or indirectly, individually or on behalf of any other person, firm, corporation or other entity, (A) solicit, aid or induce any employee, representative or agent of the Company or any of its subsidiaries or affiliates to leave such employment or retention or to accept employment with or render services to or with any other person, firm, corporation or other entity unaffiliated with the Company or any of its subsidiaries or affiliates or hire or retain any such employee, representative or agent, or take any action to materially assist or aid any other person, firm, corporation or other entity in identifying, hiring or soliciting any such employee, representative or agent, or (B) interfere, or aid or induce any other person or entity in interfering, with the relationship between the Company or any of its subsidiaries or affiliates and any of their respective vendors, joint venturers or licensors. An employee, representative or agent shall be deemed covered by this Section 8(c)(ii) while so employed or retained and for a period of twelve (12) months thereafter.⁶

⁵ Compl. ¶ 19.

⁶ Compl. ¶ 20.

I refer to these various provisions collectively as the “Restrictive Covenants.”⁷

Wrapping up the Agreements, I note the choice of law and irreparable harm provisions. The APA contains a Delaware choice of law and forum provision, while the Employment Agreement contains a Georgia choice of law and no choice of forum.⁸ The Agreements both reflect the parties’ agreement that violations of the Restrictive Covenants would irreparably harm the Plaintiff. The APA provides:

Equitable Relief. The parties agree that the covenants and undertakings contained in this Section 4.8 relate to matters which are of a special, unique and extraordinary character and that a violation of any of the terms of this Section 4.8 will cause irreparable injury to [the Plaintiff], the amount of which will be impossible to estimate or determine and which cannot be adequately compensated. Accordingly, the remedy at law for any breach of this Section 4.8 will be inadequate. Therefore, [the Plaintiff] will be entitled to obtain a temporary and permanent injunction, restraining order or other equitable relief from any court of competent jurisdiction in the event of any breach of this Section 4.8 without the necessity of proving actual damage or posting any bond whatsoever. The rights and remedies provided by this Section 4.8(d) are cumulative and in addition to any other rights and remedies which [the Plaintiff] may have hereunder or at law or in equity. . . .⁹

The Employment Agreement similarly provides the Defendant’s acknowledgement that his performance for “a competing business will result in irreparable harm to the

⁷ The Employment Agreement also contained a non-disparagement clause, but it applied solely during the Defendant’s employment. Compl. ¶ 21.

⁸ Compl. ¶ 8; Compl. Ex1-E p. 12.

⁹ Compl. ¶ 41.

Company, its subsidiaries and affiliates[.]¹⁰ Together, I will refer to these as the “Irreparable Harm Provisions.”

C. The Alleged Breaches

The Defendant began his employment with the Plaintiff as soon as the Agreements were executed on November 1, 2022. Under the Employment Agreement, his initial term was for two years, until November 1, 2024. That initial term would automatically extend for successive one-year periods until either party (the Plaintiff or the Defendant) elected not to extend and gave sufficient written notice of that election. Several months before the end of the Defendant’s initial term, the Plaintiff told the Defendant it had elected not to extend his term.¹¹

But, before the Defendant’s employment ended on November 1, 2024, a new competitor entered the market. Making conspicuous use of the passive voice, the Plaintiff pleads: “In August 2024, Point Source Environment, LLC (‘Point Source’) was formed as a Georgia limited liability company.”¹² The Plaintiff then pleads the Defendant “solicited, aided, and induced” two of the Plaintiff’s employees to leave their employment with the Plaintiff and join Point Source. The Defendant is also accused of making “negative and disparaging comments about” the Plaintiff to at

¹⁰ Compl. Ex. 1-E p. 6.

¹¹ Compl. ¶ 13.

¹² Compl. ¶ 24.

least one customer and of “directly or indirectly, solicit[ing], aid[ing], and induc[ing]” the Plaintiff’s customers to purchase goods and services from elsewhere. Through these alleged actions, the Plaintiff contends the Defendant has breached the Restrictive Covenants.

D. Procedural Posture

The Plaintiff filed its complaint seeking relief for the alleged breaches on March 21, 2025 (the “Complaint”). In the Complaint, the Plaintiff pleads three counts: Count I for breach of contract, Count II for tortious interference with contractual and business relations, and Count III for attorneys’ fees and costs.

On April 25, 2025, the Defendant moved to dismiss (the “Motion”). Vice Chancellor Cook approved the parties’ briefing schedule, which contemplated the parties completing briefing on the Motion in July 2025. Thereafter, on May 30, 2025, the Chancellor reassigned this action to me. I took the now fully briefed Motion under advisement by minute order on July 21, 2025.

II. ANALYSIS

Through the Motion, the Defendant seeks dismissal under Court of Chancery Rule 12(b)(1), (2), and (6).¹³ The Defendant also purports to move, in the alternative,

¹³ D.I. 7.

for judgment on the pleadings under Rule 12(c).¹⁴ That fallback option is misplaced. Under Court of Chancery Rule 12(c), a motion for judgment on the pleadings can be brought only after the pleadings have closed; here, the Defendant has not answered the Complaint, leaving the pleadings open. Thus, I am left with the Defendant's arguments for dismissal under Rule 12(b)(1), (2), and (6).

The subject matter jurisdiction argument under Rule 12(b)(1) is a gating issue, which must be addressed first. Because I agree with the Defendant that this Court lacks subject matter jurisdiction, I decline to address the remaining merits-based arguments.¹⁵

It has been emphasized time and again that this Court is a court of limited jurisdiction. This Court “can acquire subject matter jurisdiction over a case in three ways: (1) the invocation of an equitable right; (2) the request for an equitable remedy when there is no adequate remedy at law; or (3) a statutory delegation of subject matter jurisdiction.”¹⁶ An adequate hook for this Court's jurisdiction will, in most cases, then allow this Court to assert clean up jurisdiction over the remaining legal claims. “Under the so-called ‘clean up doctrine,’ the court may also exercise

¹⁴ *Id.*

¹⁵ See *Nestor v. Poore*, 2023 WL 3736779, at *3 (Del. Ch. May 31, 2023) (“A challenge to subject matter jurisdiction is a gating exercise; if it succeeds, this Court should not address the underlying merits of the claims not properly before it.”).

¹⁶ *Testa v. Nixon Unif. Serv., Inc.*, 2008 WL 4958861, at *2 (Del. Ch. Nov. 21, 2008).

ancillary jurisdiction over purely legal causes of action that are ‘part of the same controversy over which the Court originally had subject matter jurisdiction in order to avoid piecemeal litigation.’”¹⁷

On a Rule 12(b)(1) motion seeking dismissal for lack of subject matter jurisdiction, this Court “will dismiss an action for want of subject matter jurisdiction if it appears from the record that the Court does not have jurisdiction over the claim.”¹⁸ The plaintiff bears the burden of establishing the Court’s jurisdiction, and “the court must take all well-pleaded allegations in the complaint as true and make reasonable inferences in the non-movant’s favor.”¹⁹

Here, the Plaintiff has attempted to prize the doors of Chancery through a request for an equitable remedy: injunctive relief to permanently enjoin the Defendant from breaching the Restrictive Covenants for their remaining term. The Defendant argues that the request is inapt because it improvidently seeks an injunction against future wrongdoing. The Plaintiff retorts that (1) it is premature to judge the success of any specific remedy at the pleading stage, (2) injunctive relief

¹⁷ *Rodriguez v. Great Am. Ins. Co.*, 2021 WL 4892216, at *3 (Del. Ch. Oct. 20, 2021) (citing *Kraft v. WisdomTree Invs., Inc.*, 145 A.3d 969, 974 (Del. Ch. 2016)).

¹⁸ *Medek v. Medek*, 2008 WL 4261017, at *3 (Del. Ch. Sept. 10, 2008) (citation omitted).

¹⁹ *Medal v. Beckett Collectibles, LLC*, 2024 WL 3898535, at *5 (Del. Ch. Aug. 22, 2024) (quoting *Advent Int’l Corp. v. Servicios Funrarios GG S.A. de C.v.*, 2024 WL 3580934, at *4 (Del. Ch. June 7, 2024)).

is an available remedy for breach of contract claims and, particularly, restrictive covenant claims, and (3) the parties agreed to the need for injunctive relief through the Irreparable Harm Provisions. The Plaintiff misunderstands the limits on this Court's jurisdiction and the gatekeeping function I must play as the presiding judicial officer.

A. The Plaintiff did not invoke this Court's limited jurisdiction merely by requesting injunctive relief.

The Plaintiff appears to contend that it invoked this Court's jurisdiction by pleading the word "enjoin" coupled with the conclusory phrase that "it lacks an adequate remedy at law." This Court has long rejected the premise that those terms hold any magic and has consistently looked deeper to ensure the limits on this Court's equitable jurisdiction are protected. "When reviewing the complaint to determine whether equitable jurisdiction exists, the Court must examine what the parties to the litigation are actually seeking . . . to ensure that Chancery jurisdiction is a necessity to adequate justice, and not . . . a formulaic open sesame by which artful pleaders may attach equitable jurisdiction."²⁰ When equitable jurisdiction is premised on a request for equitable relief, the Court must be assured that "the relief is necessary to the full vindication of the plaintiffs' rights, and not merely speculative

²⁰ *Graciano v. Abode Healthcare, Inc.*, 2024 WL 960946, at *4 (Del. Ch. Mar. 4, 2024) (cleaned up).

or pretextual.”²¹ This is not prejudging future remedies; it is ensuring that this Court has subject matter jurisdiction.

B. The Plaintiff cannot solely rely on the type of contractual provisions at issue to invoke this Court’s equitable jurisdiction.

Just as there is no magic to including the words “enjoin” or “no adequate remedy at law,” the nature of restrictive covenants does not, alone, open the door to Chancery’s equitable jurisdiction. Injunctive relief is not a necessary remedy for all claims for breach of restrictive covenants.²² Sure, this Court has assumed jurisdiction over cases involving breach of restrictive covenants including non-competes, non-solicits, and the like. For example, when a former employee leaves, joins a competitor, and is allegedly breaching a non-compete or non-solicit day after day, this Court may have equitable jurisdiction to issue appropriate interim and permanent equitable relief.²³ But it does not follow that the doors to Chancery are automatically opened whenever there is a claim for breach of a restrictive covenant. Again, the Court must be assured that the requested injunctive relief is necessary, and the plaintiff does not have an adequate remedy at law.

²¹ *Id.*

²² *See, e.g., Active Day OH, Inc. v. Wehr*, 2024 WL 3201167, at *1 (Del. Super. June 27, 2024) (addressing claims brought in a court of law for breach of a non-competition provision in connection with a stock purchase agreement).

²³ *See infra* note 30.

C. The Irreparable Harm Provisions cannot confer subject matter jurisdiction on this Court.

The Plaintiff further appears to argue that the Irreparable Harm Provisions are conclusive; they are not. Although this Court will consider contractual stipulations of irreparable harm in connection with exercising its discretion to award injunctive relief, “parties do not have the authority to confer subject matter jurisdiction upon this Court through such an agreement.”²⁴ To invoke this Court’s jurisdiction the Plaintiff still needed to plead factual predicate supporting its need for equitable relief; that there is no adequate remedy at law. “If the facts [as pled] plainly do not warrant a finding of irreparable harm, this Court is not required to ignore those facts,” particularly if there is a “concern that the parties are attempting to improperly confer equitable jurisdiction upon this Court[.]”²⁵ This requires me to undertake an independent inquiry, despite the parties’ agreements in the Irreparable Harm Provisions.

D. The Plaintiff seeks injunctive relief to preclude a theoretical future wrong, premised on alleged breaches for which it has an adequate remedy at law.

²⁴ *Quarum v. Mitchell Int’l, Inc.*, 2019 WL 158153, at *3 (Del. Ch. Jan. 10, 2019) (citations omitted).

²⁵ *Kansas City S. v. Grupo TMM, S.A.*, 2003 WL 22659332, at *5 (Del. Ch. Nov. 4, 2003).

Upon review, the Plaintiff's allegations in the Complaint fall far short of the showing necessary to invoke this Court's equitable jurisdiction. "When evaluating whether a request for injunctive relief gives rise to equitable jurisdiction, the court looks at the substance and not the mere form of the claims."²⁶ Viewing form over substance requires this Court to refuse jurisdiction when the only equitable hook is "[a]n injunction improperly seeking to preclude a theoretical future wrong [which] cannot anchor subject matter jurisdiction in this Court."²⁷ At the pleading stage, I must review the request for injunctive relief to be sure there is a reasonable, non-speculative concern about future harm.²⁸ Thus, in the pleading the plaintiff must state a reasonably conceivable claim that "the wrongs complained of are likely to be continued unless restrained."²⁹

The Plaintiff failed to do so. In the Complaint, the Plaintiff did not plead any factual predicate from which it would be reasonable to infer that the alleged breaches

²⁶ *Kroll v. City of Wilm.*, 2023 WL 6012795, at *4 (Del. Ch. Sept. 15, 2023).

²⁷ *Mock v. Div. of State Police, Dep't of Safety & Homeland Sec.*, 2022 WL 1744439, at *10 (Del. Ch. May 31, 2022).

²⁸ *See Kroll*, 2023 WL 6012795, at *4–5.

²⁹ *In re COVID-Related Restrictions on Religious Servs.*, 285 A.3d 1205, 1233 (Del. Ch. 2022).

are likely to continue unless restrained through equity. In so holding, I acknowledge, yet distinguish, the Plaintiff's proffered authority.³⁰

³⁰ The Plaintiff points me to several cases where this Court has issued injunctive relief to remedy former employee breaches of restrictive covenants. In *Del. Express Shuttle v. Older*, the former employee started a competing business venture and the Court held, post-trial, that "his continued competition . . . represent[ed] a substantial and continuing threat to" his former employer, denying it of the benefit of its bargain, which "outweigh[ed] any cognizable harm that [the former employee] may suffer[.]" due to his knowing breach. 2002 WL 31458243, at *15 (Del. Ch. Oct. 23, 2002). Likewise, in *Del. Elevator, Inc. v. Williams*, the former employee opened and began operating a competing business, which this Court read as factual predicate underlying "a straightforward action to enforce" a non-competition agreement. 2011 WL 1005181, at *1 (Del. Ch. Mar. 16, 2011). Similarly straightforward facts were present in *COPI of Del., Inc. v. Kelly*, 1996 WL 633302, at *1 (Del. Ch. Oct. 25, 1996) and *Gener8, LLC v. Castanon*, 2023 WL 6381635 (Del. Ch. Sept. 29, 2023) where the former employees began working for competitors immediately after their employment ended.

But that is not what is alleged here. Through the Complaint, the Plaintiff alleges discreet instances of solicitation, without any factual predicate from which it would be reasonable to infer ongoing competitive conduct. It is that direct ongoing conduct which supported injunctive relief in the cases on which the Plaintiff relies. Even in *Kan-Di-Ki, LLC v. Suer* the competition was indirect but still present; the former employee's work as a consultant was sufficient to support injunctive relief. 2015 WL 4503210, at *27 (Del. Ch. July 22, 2015). Likewise, in *Concord Steel, Inc. v. Wilmington Steel Processing Co.*, the seller entity was found, post-trial, to have continued in competitive business after agreeing not to compete in connection with an asset purchase agreement. 2009 WL 3161643, at *13 (Del. Ch. Sept. 30, 2009). Injunctive relief was an appropriate remedy. *Id.* at *15.

The Plaintiff also points me to *TriState Courier & Carriage, Inc. v. Berryman*, 2004 WL 835886 (Del. Ch. Apr. 15, 2004). In that case, a former employee was found, post-trial, to have played a significant role, and provided substantial assistance, in the start-up of a competitive business. *Id.* at *6. The Plaintiff appears to be arguing that the facts as plead here reflect a similarly covert assistance or competition. But the Complaint does not state such a claim and there are no well-pled facts therein from which I could make such an inference. "While Delaware's pleading standard may be plaintiff-friendly, the Court need not accept conclusory allegations unsupported by *specific* facts nor draw *unreasonable* inferences in a plaintiff's favor." *Sunstone Partners Mgmt., LLC v. Synopsys, Inc.*, 2024 WL 3813266, at *3 (Del. Ch. Aug. 14, 2024) (emphasis in original).

The Plaintiff relies on a line of authority demonstrating that “our law has consistently found a threat of irreparable injury in circumstances when a covenant not to compete is breached.”³¹ That is largely because of the uncertainty in proving or measuring what would have happened if the non-compete had been honored by the former employee. “Measuring the effects of breaches [of non-competes] involves a costly process of educated guesswork with no real pretense of accuracy. This court has been candid to admit this reality and to use injunctive relief as the principal tool of enforcing covenants not to compete.”³²

But, here, we do not have a defendant allegedly competing, in breach of his agreement not to. The Plaintiff alleges the Defendant solicited or induced two former employees of the Plaintiff to leave their employment with the Plaintiff and join Point Source. Missing is any connection between the Defendant and Point Source or factual predicate on which it would be reasonable to infer future solicitations or ongoing competition. Then there is the alleged interference. The Plaintiff pleads that the Defendant solicited or induced four unnamed customers of the Plaintiff to take their business (or parts of it) elsewhere. Even if I accept these conclusory allegations

³¹ *Hough Associates, Inc. v. Hill*, 2007 WL 148751, at *18 (Del. Ch. Jan. 17, 2007), judgment entered, (Del. Ch. 2007).

³² *Id.*

as true, they do not support a reasonable inference that there is likely to be further solicitation by the Defendant.

The Complaint identifies, at best, discreet breaches, for which the Plaintiff would have an adequate remedy at law. The Complaint contains no factual predicate on which it would be reasonable to infer that the Defendant is engaged in ongoing, continuous breaches of the Restrictive Covenants which only this Court of equity could resolve through injunctive relief. Such is typically inferred from the former employee's own competition or direct involvement or employment with a competitor or other interest in a competitive enterprise. Here, the Plaintiff has not alleged in the Complaint that the Defendant has any connection to Point Source or its competitive business. There are also no allegations that the Defendant is working in or around the relevant industry such that there would be a reasonable likelihood of future solicitation and need for this Court's equitable remedies. That deficiency distinguishes this action from the typical restrictive covenant case and leaves this Court without equitable jurisdiction.

Because the Plaintiff has failed to properly invoke this Court's limited subject matter jurisdiction and an adequate remedy at law exists, the Complaint must be dismissed. That dismissal under 10 *Del. C.* § 1902 is without prejudice, however, to the Plaintiff's right to transfer to a court with jurisdiction within 60 days of this

dismissal becoming an order of the Court. If transferred, the receiving court can engage with the Defendant's merits-based arguments and decide whether the Plaintiff's claims survive the pleadings.

III. CONCLUSION

For the above reasons, the Motion is granted, and this action will be dismissed with leave to transfer within 60 days of this decision becoming an order of the Court. This is a final report under Court of Chancery Rule 144.

Respectfully submitted,

/s/ Selena E. Molina

Senior Magistrate in Chancery