IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

FIRSTSERVICE ROOFING HOLDINGS, INC., FIRSTSERVICE CAM HOLDINGS, INC., FIRSTSERVICE ROOFING ACQUIRECO, INC., ROOFING HOLDCO, LLC, and ROOFING BUYER, LLC,	)	C.A. No. N25C-09-183 PAW CCLD
Plaintiffs,	)	
v.	)	
TRAVIS WEBB,	)	
Defendant.	)	

Submitted: June 3, 2026
Decided: September 25, 2026

MEMORANDUM OPINION

Upon Defendant's Motion to Dismiss;
GRANTED.

Brian E. O'Neill, Esq., of Clark Hill PLC, *Attorney for Plaintiffs*.

Donna L. Culver, Esq., of Morris, Nichols, Arsht & Tunnell LLP; James F. Banter, Esq., of James Bates Brannan Groover LLP, *Attorneys for Defendant*.

WINSTON, J.

I. INTRODUCTION

Plaintiffs seek monetary damages, pre-judgment interest, and post-judgment interest from defendant for breach of contract claims. Now, defendant moves to dismiss for three reasons: (1) the restrictive covenants in both the Restrictive Covenant Agreement and the Shareholders' Agreement are unenforceable because neither is supported by consideration; (2) the non-competition provisions in the Restrictive Covenant Agreement and Shareholders' Agreement, as well as the non-solicitation provisions in the Restrictive Covenant Agreement, are overbroad in geographic and temporal scope and exceed the legitimate business interests of plaintiffs; and (3) plaintiffs failed to plead facts supporting customer or employee solicitation. For the reasons discussed herein, the Court finds the nationwide scope of the non-competition and non-solicitation provisions in the Restrictive Covenant Agreement and Shareholders' Agreement exceed Plaintiffs' legitimate business interests. The claims against the defendant are therefore dismissed.

II. FACTUAL AND PROCEDURAL BACKGROUND[1]

Plaintiffs FirstService Roofing Holdings, Inc. ("FirstService RHI"), FirstService CAM Holdings, Inc. ("FirstService CAM"), FirstService Roofing

[1] Unless otherwise noted, all factual averments are taken from the complaint, D.I. 1, and the Court must accept them as true—if well-pleaded—for the purposes of this motion.

Acquireco, Inc. ("FirstService RAI"), Roofing Holdco, LLC, and Roofing Buyer, LLC d/b/a Roofing Corp of America ("RCA" or "Roofing Buyer") bring this action for breach of contract against Defendant Travis Webb.[2]

Webb co-founded a roofing services company named Exterior Solutions of Georgia, Inc. d/b/a Bone Dry Roofing ("Bone Dry") in 2003 and owned 50% of the entity. He remained an owner and operator until July 30, 2021, when Bone Dry was acquired by Roofing Buyer for $17,000,000 and reorganized as a limited liability company.[3] Nearly two years later, on December 15, 2023, Bone Dry became an indirect subsidiary of FirstService RHI and FirstService RAI through a merger.[4] Webb agreed not to compete with the Plaintiffs through July 30, 2026, in connection with the acquisition.[5] Webb remained employed by Bone Dry after the acquisition, first as a vice president and later as president, and remained in an executive role until April 15, 2024.[6]

On December 15, 2023, while employed by Bone Dry, Webb entered into a Restrictive Covenant Agreement ("RC Agreement") with FirstService RAI in

[2] Compl. ¶¶ 1-6.

[3] *Id.* ¶¶ 10, 13-14.

[4] *Id.* ¶ 14.

[5] *Id.* ¶ 16.

[6] *Id.* ¶ 17.

connection with the abovementioned merger.[7] The RC Agreement defines a "Company Group" which includes FirstService RAI (the purchaser in the merger), Roofing Holdco (the target of the merger), and their respective direct and indirect subsidiaries.[8]

There are three sections of the RC Agreement that form the basis for Plaintiffs' claims in this case. The first, Section 2.3(a), prohibits Webb from "directly or indirectly . . . without the prior written permission of [FirstService RAI,] engag[ing], attempt[ing] to engage, financ[ing] or assist[ing] any other Person in engaging in the Business anywhere in the Territory" during the two year restriction period denoted in the agreement.[9] The RC Agreement's definition of "Person" encompasses any individual or entity.[10] It defines "Business" as:

> "(i) the business of providing roofing services . . . or related products or services[]; (ii) any other business(es) in which any member(s) of the Company Group is or are engaged as of, or at any time during the 12-month period prior to [December 15, 2023], including any business related to roofing maintenance programs and retrofitting; and (iii) any other business(es) in which any member(s) of the Company Group had or have taken reasonably substantial steps to engage in as of, or at any time during the 12-month period prior to [December 15, 2023].[11]

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[7] *Id.* ¶ 19.

[8] Compl. ¶ 20; Compl., Ex. A (hereinafter the "RC Agreement") § 1.1(g).

[9] Compl. ¶ 24; RC Agreement § 2.3(a)(i).

[10] RC Agreement § 1.1(r).

[11] *Id.* § 1.1(c).

The RC Agreement defines "Territory" as anywhere in the United States.[12] Additionally, Section 2.3(a) prohibits Webb from marketing, attempting to market, or assisting another in marketing "Competing Services" within the Territory.[13] The RC Agreement defines "Competing Services" as:

> [A]ny product or service that, during the Restriction Period, is of the same type as, that competes with or that is intended to compete with or displace in the market, any of the products or services involving the Business (or any part thereof) performed, offered or sold by the Company Group at any time during the twelve (12)-month period prior to [December 15, 2023] for any reason.[14]

It also prohibits Webb from performing, attempting to perform, or assisting another to perform Competing Services.[15]

The second section, Section 2.3(b), prohibits Webb from:

> "Solicit[ing] or assist[ing] any other Person to Solicit, any Customer: (i) to cease doing business with the Company Group; (ii) to alter or limit its business relationship with the Company Group; (iii) to purchase any Competing Services other than from the Company Group; or (iv) [] Solicit[ing], attempt[ing] to Solicit, or assist[ing] any other Person in Soliciting any agent or any other Person who is or has been a supplier, contractor, subcontractor, dealer, distributor, licensor, licensee or any other business relation of the Company Group at any time during the twelve (12)-month period prior to the [December 15, 2023]: (A) to cease doing business with the Company Group, or (B) to alter or limit its business relationship with the Company Group[.]"[16]

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[12] *Id.* § 1.1(z).

[13] Compl. ¶ 25; RC Agreement § 2.3(a)(ii).

[14] RC Agreement § 1.1(h).

[15] Compl. ¶ 26; RC Agreement § 2.3(a)(iii).

[16] Compl. ¶ 27; RC Agreement § 2.3(b). The RC Agreement defines "Solicit" as meaning to "encourage or induce, or attempt to encourage or induce." It defines

The third section, Section 2.3(c), prohibits Webb from:

> "Solicit[ing], attempt[ing] to Solicit or assist any other Person to Solicit (including by engaging in any recruiting or interviewing activities) any Business Associate or agent to terminate his, her or its association with the Company Group, or to commence employment, or any other services relationship, with any other Person; or (ii) hir[ing] or otherwise retain[ing] the services of any Business Associate or agent to perform Competing Services . . . in any [] capacity, attempt[ing] to do so, or assist[ing] any other Person to do so[.]"[17]

On the same day the RC Agreement was executed, the shareholders of FirstService RHI executed a Shareholders' Agreement, to which Webb is a party as an Existing Principal of Bone Dry Holdings, Inc, which held shares in FirstService RHI.[18] FirstService CAM and FirstService RHI are also parties to this agreement.[19] Like the RC Agreement, the Shareholders' Agreement contains several restrictive covenants applying to "Covenantors," which the Shareholders' Agreement defines as "the Executive Shareholders and the Principals[.]"[20] Bone Dry Holdings, Inc. is listed as an Executive Shareholder in Schedule A to the Shareholders' Agreement, and Travis Webb (along with non-party Chad Collins) is listed as a principal of Bone

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"Customer" as "any Person who is a customer of the Company Group as of [December 15, 2023] or has been a customer of the Company Group at any time within the twelve (12)-month period prior to [December 15, 2023].

[17] Compl. ¶ 28; RC Agreement § 2.3(c).

[18] Compl. ¶ 32; Compl., Ex. B (hereinafter "Shareholders' Agreement").

[19] Compl. ¶ 33; *See generally* Shareholders' Agreement.

[20] Compl. ¶ 42; Shareholders' Agreement Art. 11.1(c).

Dry Holdings, Inc.[21] The timing provisions in the Shareholders' Agreement covenants hinge on a Covenantors' "Effective Exit Date," which is defined in relevant part as "the earlier date on which . . . such Covenantor or the Executive Shareholder for which such Covenantor is a Principal cease to own any shares."[22]

The Shareholders' Agreement covenants are substantively similar to the covenants in the RC Agreement. Article 11.4 states that a Covenantor may not "carry on or be engaged in a Competitive Business or render services to, own, lend money to, guarantee the debts or obligations of, share in the earnings of or invest in the securities of any Person carrying on or engaged in a Competitive Business, in each case, anywhere within the Designated Territory[.]"[23]

Article 11.3(a) states that a Covenantor may not "at any time during the Restricted Period: [] solicit, interfere with or endeavour to entice away from a Company Entity, or any successor to any of its businesses, any of its clients, customers or accounts for the purpose of providing to such clients, customers or

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[21] Compl. ¶ 43; Shareholders' Agreement Schedule A.

[22] Shareholders' Agreement, Art. 11.1(e)(iii).

[23] *Id.* Art. 11.4. The Shareholders' Agreement defines a "Competitive Business" as either "throughout the period commencing on [December 15, 2023] and ending on the Effective Exit Date, any business which is, in whole or in part, competitive with the respective businesses of the Company Entities during such period" or "on or after the Effective Exit Date, any business which is, in whole or in part, competitive with the respective businesses of the Company Entities as at, or at any time during the two-year period immediately prior to the Effective Exit Date[.]" It defines the "Designated Territory" as anywhere in the United States of America.

accounts goods or services related to a Competitive Business anywhere within the Designated Territory[.]"[24]

Article 11.3(b) states that a Covenantor may not:

> "[at any time during the Restricted Period] offer employment or a retainer to, hire, retain or endeavour to entice away from a Company Entity, or any successor to any of its businesses, any Person who is or, at any time during the period of 365 days immediately prior to the making of such offer or endeavour or such hiring or retention, was an employee, independent contractor or consultant of a Company Entity or any successor to any of its businesses[.]"[25]

On April 15, 2024, Bone Dry, Webb, FirstService RHI, and FirstService CAM entered into a Stock Purchase Agreement, under which Bone Dry sold all of its FirstService RHI shares to FirstService CAM and Webb sold all his shares in RCA and FirstService RHI, relinquishing all of his equity in the Plaintiff entities.[26] Section 8(a) of the Stock Purchase Agreement provides that, except as set forth in Section 8(b), Webb's obligations under the Shareholders' Agreement were terminated effective April 15, 2024, while Section 8(b) provides that the continuing obligations under Article 11 and other provisions related to enforcement of the

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[24] *Id.* Art. 11.3(a). The Shareholders' Agreement describes the "Restricted Period" as, in relevant part, "the period commencing on December 15, 2023, and ending on the date which is two (2) years following the Effective Exit Date."

[25] *Id.* Art. 11.3(b).

[26] Compl. ¶¶ 51-52; *See* Compl., Ex. C (hereinafter "Stock Purchase Agreement").

Shareholders' Agreement's restrictive covenants remain in full force and effect for the stated periods.[27]

Webb's employment with Bone Dry was formally terminated on April 15, 2024—the date the Stock Purchase Agreement was executed—when he tendered his resignation, and, upon termination, he received $300,000 in severance running through April 2025.[28]

Plaintiffs allege Webb remains bound by restrictive covenants under the RC Agreement until December 15, 2025, under the Shareholders' Agreement until April 15, 2026, and under the 2021 acquisition agreement until July 30, 2026.[29] Around the time of his separation, Webb committed to speaking with his customers at Bone Dry's St. Simons Island branch to ask them to remain loyal customers despite his departure and expressed that he wished Bone Dry, its employees, and Plaintiffs no ill will.[30] However, shortly after his departure, Webb nevertheless began encouraging and facilitating the departure of Bone Dry employees to work for competitor and non-party Atacama Roofing, LLC, which operates out of Brunswick,

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[27] Compl. ¶¶ 54-55; Stock Purchase Agreement §§ 2.8(a)-(b).

[28] *Id.* ¶¶ 57, 60.

[29] *Id.* ¶ 61.

[30] *Id.* ¶¶ 62-63.

Georgia in the same county as Bone Dry's St. Simons location and is a direct competitor of Bone Dry.[31]

In or around May 2024, non-party Brian Kinney, Bone Dry's operations manager for its Athens branch, began working at Atacama. Kinney had little to no exposure to St. Simons customers while at Bone Dry, but after his departure, St. Simons customers followed to Atacama, at Webb's urging.[32] Approximately a year later, in May 2025, Webb publicly affiliated himself with Atacama, a fact which was reflected on Atacama's website, which noted that Webb joined the company in April 2025.[33]

Five months later, Plaintiffs brought this six-count complaint. All the counts are breach of contract claims. Counts I-III concern the RC Agreement. Count I alleges Webb breached Section 2.3(a) of the RC Agreement by working for Atacama, a direct competitor of Plaintiffs.[34] Count II alleges Webb breached Section 2.3(b) by diverting Bone Dry customers to Atacama.[35] Count III alleges Webb breached Section 2.3(c) by recruiting Bone Dry team members to Atacama.[36]

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[31] *Id.* ¶¶ 64-66.

[32] *Id.* ¶¶ 67-71.

[33] *Id.* ¶¶ 72-73.

[34] *Id.* ¶¶ 78-86.

[35] *Id.* ¶¶ 87-94.

[36] Compl. ¶¶ 95-100.

Counts IV-VI concern the Shareholders' Agreement. Count IV alleges Webb breached Article 11.4 of the Shareholders' Agreement for the same reasons articulated in Count I.[37] Count V alleges Webb breached Article 11.3(a) for the same reasons articulated in Count II.[38] Count VI alleges Webb breached Article 11.3(b) for the same reasons articulated in Count III.

Plaintiffs request judgment in their favor on all counts, and seek money damages, pre- and post-judgment interest, and other relief as is just and equitable.[39] They do not seek equitable relief.[40]

Webb moved to dismiss under Rule 12(b)(6) for failure to state a claim on grounds that the restrictive covenants in both agreements are unenforceable and Counts II, III, V, and VI are not well pleaded.[41] After oral argument, at the Court's request, the parties provided supplemental briefing on the issue of this Court's authority to blue-pencil agreements.[42]

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[37] *Id.* ¶¶ 101-109.

[38] *Id.* ¶¶ 110-118.

[39] *Id.* at 20.

[40] *Id.*

[41] *See generally* D.I. 16 (hereinafter "Op. Br.").

[42] D.I. 32; D.I. 33.

III. STANDARD OF REVIEW

On a Rule 12(b)(6) motion to dismiss, the Court: (i) accepts all well-pleaded factual allegations as true; (ii) credits vague allegations if they give the opposing party notice of the claim; (iii) draws all reasonable inferences for the non-moving party; and (iv) denies dismissal if recovery on the claim is reasonably conceivable.[43] The Court does not, however, accept conclusory allegations unsupported by the facts or draw unreasonable inferences in favor of the nonmovant.[44]

IV. ANALYSIS

A. As pled, the restrictive covenants are supported by consideration.

"Under Delaware law, a valid contract requires mutual assent to definite terms supported by consideration."[45] Delaware courts, however, must "limit [their] inquiry into consideration [only as] to its existence[.]"[46] Consideration is defined as "a benefit to a promisor or a detriment to a promisee pursuant to the promisor's request."[47] Past consideration, however, cannot form the basis for a binding

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[43] *Cent. Mortg. Co. v. Morgan Stanley Mortg. Cap. Holdings, LLC*, 27 A.3d 531, 535 (Del. 2011).

[44] *Windsor I, LLC v. CWCapital Asset Mgmt. LLC*, 238 A.3d 863, 871 (Del. 2020).

[45] *Donofrio v. Peninsula Healthcare Servs., LLC*, 2022 WL 1054969, at *4 (Del. Super. Apr. 8, 2022).

[46] *Osborn ex rel. Osborn v. Kemp*, 991 A.2d 1153, 1159 (Del. 2010).

[47] *Cont'l Ins. Co. v. Rutledge & Co., Inc.*, 750 A.2d 1219, 1232 (Del. Ch. 2000).

contract.[48] The effect of this rule–"contract modifications require new consideration to be enforceable."[49]

1. Plaintiffs adequately pled the restrictive covenants in the RC Agreement are supported by consideration.

Webb contends that the complaint does not adequately plead that the restrictive covenants in the RC Agreement are supported by consideration. As noted, Webb sold Bone Dry on July 30, 2021, and the RC Agreement purporting to restrict Webb's conduct was executed on December 15, 2023, over two years later. Webb notes that the complaint does not allege that Webb received any additional consideration in exchange for signing the RC Agreement.[50] Webb cites to the Court of Chancery's recent opinion in *N. Am. Fire Ultimate Holdings, LP v. Doorly*,[51] which held that "[a] contract that imposes new restrictive covenants on an existing

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[48] *Id.*

[49] *CFGI, LLC v. Common C Holdings LP*, 2024 WL 325567, at *5 (Del. Super. Jan. 29, 2024).

[50] Op. Br. 10.

[51] *N. Am. Fire Ultimate Holdings, LP v. Doorly* 2025 WL 736624 (Del. Ch. Mar. 7, 2025). This opinion was reversed by the Supreme Court in February of this year. *See Am. Fire Ultimate Holdings, LP v. Doorly*, 2026 WL 274647. However, the basis for the reversal was that the Court of Chancery improperly considered the value of the consideration at the time of attempted enforcement of the restrictive covenant, rather than at the time of contract formation. The Supreme Court did not disagree with the Court's holding regarding the necessity of consideration in imposing new restrictive covenants.

employee requires new consideration."[52] Because the RC Agreement imposes new obligations on Webb two years after the sale of Bone Dry—at which point Webb became an employee of the company—and because the complaint does not refer to any new consideration Webb received for entering into the RC Agreement, Webb contends the RC Agreements impose restrictions on him retroactively.[53]

In opposition, Plaintiffs point to the recitals section of the RC Agreement, which they note, are also incorporated into the body of the RC Agreement at Section 4.11.[54] The recitals state: "As [Webb] is a member of the Target, [Webb] will receive an immediate and direct benefit from the consummation of the [merger], including the receipt of significant monetary proceeds as a direct result of [the merger]."[55] Webb replies that the complaint and RC Agreement do not contain any information concerning the nature and value the consideration.[56]

Webb is correct that the complaint does not explicitly allege that Webb received new consideration for having agreed to the RC Agreement. He is also correct that, because the RC Agreement is a new agreement separate from the original transaction in which Webb sold Bone Dry, the covenants must be supported

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[52] *Id.* at *3.

[53] Op. Br. 11-12.

[54] D.I. 20 (Hereinafter "Ans. Br.") at 12-13; RC Agreement § 4.11.

[55] RC Agreement, Recitals.

[56] D.I. 26 (hereinafter "Reply Br.") at 4.

by new consideration to be enforceable. And the Court of Chancery has held that "[o]rdinarily, recitals are not binding and only provide context. But parties can make them binding" by incorporating the recitals into the agreement itself.[57]

Here, the parties opted to make the recitals a substantive part of the contract by adopting them into the body of the RC Agreement. Because the RC Agreement recitals stipulate that Webb will receive valuable consideration from the consummation of the merger, drawing all inferences in Plaintiffs' favor, it can be inferred that Webb received new and valuable consideration in exchange for agreeing to the covenants.[58] As to the value of the consideration, "[t]he contract-formation analysis of consideration turns on whether some consideration was exchanged at the time of contracting, not whether that consideration was "adequate" to support the accompanying restriction."[59]

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[57] *Glob. Capital Partners LLC v. Green Sapphire Holdings, Inc.*, 2026 WL 709819, at *30 (Del. Ch. Mar. 13, 2026).

[58] Plaintiffs' argument that the RC Agreement and the merger agreement should be treated as one contract is unavailing the argument. While Plaintiffs are correct that contemporaneous contracts executed *by the same parties* as to the same subject matter should be treated as one agreement, Plaintiffs do not allege that the RC Agreement and the merger agreement were between the same parties. The RC Agreement was between RAI and Webb. The merger agreement, while not attached to any of the filings, was between the business entities involved in the merger. The entities who were party to the merger agreement are listed in the recitals pages in the Shareholders' Agreement.

[59] *Payscale Inc. v. Norman*, --- A.3d ---, 2026 WL 774876, at *6 (Del. Mar. 19, 2026) (explaining "consideration for a restrictive covenant is reviewed at the time of

2. PLAINTIFFS ADEQUATELY PLED THE RESTRICTIVE COVENANTS IN THE SHAREHOLDERS' AGREEMENT ARE SUPPORTED BY CONSIDERATION.

Webb argues that the Shareholders' Agreement is not supported by valid consideration, because the entity receiving the benefits in the Shareholders' Agreement is Bone Dry Holdings, Inc.[60] Webb notes that he is not listed as a shareholder in the Shareholders' Agreement, and instead is merely listed as one of the two principals of the Shareholders' Agreement.[61] He cites Section 11.6 of the agreement, which reads:

> Each Covenantor acknowledges and agrees that: (a) neither the Company nor FirstServiceCo would not have [*sic*] entered into this Agreement but for such Covenantor's agreement to be bound by those of the provisions of this Article 11 to which such Covenantor is subject, which agreement is an essential element of this Agreement and forms an integral and immeasurably significant, important and valuable portion of the consideration to be received by each of the Company and FirstServiceCo for its having entered into this Agreement and for FirstServiceCo agreeing to bind itself under the Put Right hereunder; and (b) the obligations imposed on such Covenantor under this Article 11 are independent covenants, the performance of which are not conditioned on any action or obligation of the Company or FirstServiceCo under this Agreement. Each Covenantor further acknowledges and agrees that this Article 11 is in addition to (and not in substitution for or derogation from) any other confidentiality, non-solicitation and non-competition covenants which may, at any time and from time to time (and whether on, before or after the Effective Date),

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contracting and that 'somewhat contingent' consideration, which does not hold value at the time a party seeks to enforce the contract, still constitutes consideration.").

[60] Op. Br. 12-13.

[61] Op. Br. 13.

> be given by such Covenantor to or for the benefit of a Company Entity pursuant to any agreement in writing which had been executed and delivered by such Covenantor, including pursuant to the Merger Agreement.

Webb reads this acknowledgments provision as explicitly noting that only the Executive Shareholders (including Bone Dry Holdings, Inc.) received consideration, because only the Executive Shareholders held the described Put Right.[62] He also argues that the later Stock Purchase Agreement highlights this deficiency, because Bone Dry Holdings, Inc. was identified as the sole seller in that agreement.[63]

At this stage, it is reasonably inferable that Webb received consideration under the Shareholders' Agreement. Whether a contract is supported by consideration is a mixed question of law and fact, and drawing all inferences in Plaintiffs' favor, they have adequately alleged its existence.[64] Webb is named as a beneficial owner of Bone Dry Holdings, Inc., which was a party to the Shareholders' Agreement, and Webb was expressly named as a Covenantor. Bone Dry Holdings, Inc.—a company Webb was the beneficial owner of—received a valuable Put Right in exchange for Webb's covenants. The company eventually sold all its shares, presumably by

[62] Op. Br. 14-15.

[63] Op. Br. 15; Stock Purchase Agreement.

[64] *See Blagg v. HB2 Alternative Holdings, LLC*, 2024 WL 4836715, at *1 (Del. Super. Nov. 20, 2024) ("There remains a genuine issue of fact [] regarding whether consideration supported" the at-issue contract); *Seiden v. Kaneko*, 2017 WL 1093937, at *6 n.41 (Del. Ch. Mar. 22, 2017) ("[W]hether a contract is supported by adequate consideration is a mixed question of law and fact.").

exercising the Put Right, in a Stock Purchase Agreement in which Webb was the sole principal. Because it is reasonably conceivable that Webb received consideration from the Shareholders' Agreement, Plaintiffs have adequately pleaded the existence of consideration as to the Shareholders' Agreement.

B. As a Matter of Law, the Restrictive Covenants Are Unenforceable as Drafted.

While as a matter of Delaware law "individuals can agree to covenants that restrict their ability to work for a competitor,"[65] Delaware courts do not "mechanically enforce non-competes."[66] Instead, Delaware courts evaluate restrictive covenants "with an eye toward reasonableness, . . . and the advancement of legitimate business interests."[67] Accordingly, covenants must be (1) reasonable in geographic scope and temporal duration, (2) advance a legitimate economic interest of the party seeking its enforcement, and (3) survive the balancing of equities.[68]

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[65] *New Enter. Associates 14, L.P. v. Rich*, 295 A.3d 520, 576 (Del. Ch. 2023).

[66] *Intertek Testing Services NA Inc. v. Eastman*, 2023 WL 2544236, at *3 (Del. Ch. Mar. 16, 2023) (quoting *FP UC Hldg., LLC v. Hamilton*, 2020 WL 1492783, at *6 (Del. Ch. Mar. 27, 2020)).

[67] *Kodiak Bldg. Partners, LLC v. Adams*, 2022 WL 5240507, at *6 (Del. Ch. Oct. 6, 2022).

[68] *Id.* at *4.

"In the context of a sale of a business, the acquirer has a legitimate economic interest with regard to the assets and information it acquired in the sale."[69] Accordingly, covenants not to compete made in relation to the sale of a business are subject to a "less searching" inquiry than those made in relation to an employment contract.[70] Even in the context of a sale of a business, however, "such covenants must be tailored to the competitive space reached by the seller and serve the buyer's legitimate economic interests."[71] Delaware courts have repeatedly refused to enforce restrictive covenants barring competition that stretch beyond this space.[72] The same reasonableness test is applied to non-solicitation provisions.[73]

Webb argues that the non-compete provisions in both the RC Agreement and Shareholders' Agreement—as well as the non-solicitation provisions in the Shareholders Agreement—are overbroad, because they purport to bar Webb from competing anywhere in the United States.[74] The non-solicitation provisions in the

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[69] *Id.* at *8.

[70] *Tristate Courier & Carriage, Inc. v. Berryman*, 2004 WL 835886, at *10 (Del. Ch. Apr. 15, 2004).

[71] *Intertek*, 2023 WL 2544236, at *4.

[72] See *id.*; *Cleveland Integrity Servs., LLC v. Byers*, 2025 WL 658369, at *10 (Del. Ch. Feb. 28, 2025); *Weil Holdings II, LLC v. Alexander*, 2025 WL 689191, at *6 (Del. Ch. Mar. 4, 2025); *BluSky Restoration Contractors, LLC v. Robbins*, 2026 WL 599148, at *4 (Del. Ch. Mar. 4, 2026) (Report).

[73] *Sunder Energy, LLC v. Jackson*, 332 A.3d 472, 485 (Del. 2024) (applying the same reasonableness test to both non-compete and non-solicitation agreements).

[74] Op. Br. 21.

RC Agreement bar Webb from soliciting anywhere without geographic limitation.[75] Webb notes that the complaint does not allege Plaintiffs have any customers, operations, confidential information, or goodwill anywhere outside of two states: Georgia and South Carolina.[76]

Plaintiffs respond by pointing to two instances in which Delaware courts have upheld nationwide restrictive covenants in the context of the sale of a business.[77] However, in both of those cases (one of which was not even actually about a nationwide covenant, but rather a covenant restricting the seller from competing in 23 states) the relevant businesses operated either nationwide, or nearly nationwide.[78]

Here, the nationwide restrictive covenants extend far beyond the geographic areas in which the complaint alleges Plaintiffs do business, and the complaint does not allege they have any reach beyond the states of Georgia and South Carolina. "A non-competition agreement will only be enforced to protect the legitimate economic interests of the employer. Interests which the law has recognized as legitimate

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[75] Compl. ¶¶ 27-28; RC Agreement §§ 2.3(b)-(c).

[76] Op. Br. 21.

[77] Ans. Br. 18-21.

[78] *O'Leary v. Telecom Res. Serv., LLC*, 2011 WL 379300, at *5 (Del. Super. Jan. 14, 2011) (noting that "Plaintiffs' business operated nationwide before the sale" of the business); *Kan-Di-Ki, LLC v. Suer*, 2015 WL 4503210, at *20 (Del. Ch. July 22, 2015) (noting that the plaintiff's business operated in all but four of the states covered by the restricted area).

include protection of employer goodwill and protection of employer confidential information from misuse."[79]

First, the "Territory" under the RC Agreement and the "Designated Territory" under the Shareholders' Agreement are each defined as the entire United States. Taking the complaint's allegations as true, the business Webb sold operates branches in Georgia and serves customers in Georgia and South Carolina. There are no facts in the complaint from which the Court can reasonably infer that Plaintiffs have any operations or business outside of those two states.

Second, the RC Agreement forbids Webb from engaging in the "Business," which includes not only roofing services, but any other business in which any member of the Company Group was engaged during the preceding twelve months, or has "taken reasonably substantial steps to engage in."[80] Accordingly, this restriction extends to lines of business outside of roofing, that Webb never was alleged to have participated in, and (in the case of businesses the group has taken substantial steps toward) areas of business that Webb could not necessarily identify.

Similarly, the Shareholders' Agreement states that a Covenantor may not "carry on or be engaged in a Competitive Business or render services to, own, lend money to, guarantee the debts or obligations of, share in the earnings of or invest in

[79] *Kodiak*, 2022 WL 5240507, at *8.

[80] RC Agreement § 1.1(c).

the securities of any Person carrying on or engaged in a Competitive Business, in each case, anywhere within the Designated Territory[,]"[81] with no carve out for de minimis investment, defining a Competitive Business as any business that is "in whole or in part" competitive with the business of the Company Entities, and defining the Designated Territory (as discussed above) as the entire country. As written, this provision could prohibit Webb from buying shares in an index fund that owns a national homebuilder. Prohibitions this broad do not protect Plaintiffs' legitimate economic interests.

The non-solicitation provisions fare similarly because the non-solicitation provision of the Shareholders' Agreement contains a similarly broad nationwide restriction, and the non-solicitation provision of the RC Agreement contains no geographic limitation whatsoever. The incongruity between the geographic scope of the covenants and Plaintiffs' business equates to an unreasonably broad and unenforceable noncompete.

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[81] Shareholders' Agreement, Art. 11.4. The Shareholders' Agreement defines a "Competitive Business" as either "throughout the period commencing on [December 15, 2023] and ending on the Effective Exit Date, any business which is, in whole or in part, competitive with the respective businesses of the Company Entities during such period" or "on or after the Effective Exit Date, any business which is, in whole or in part, competitive with the respective businesses of the Company Entities as at, or at any time during the two-year period immediately prior to the Effective Exit Date[.]" It defines the "Designated Territory" as anywhere in the United States of America.

In the alternative, Plaintiffs ask the Court to enforce a provision in the RC Agreement purporting to entitle Plaintiffs to partial enforcement. The RC Agreement has a provision which states "if [Plaintiffs] seek[] partial enforcement of [the restrictive covenants] as to only a Territory, time, scope of activity or other limitation that is reasonable, then [Plaintiffs] shall be entitled to such reasonable partial enforcement."[82] Plaintiffs further argue that, in its discretion, the Court may blue-pencil the offending provisions.[83]

First, Plaintiffs do not seek partial enforcement of the restrictive covenants in the complaint. "A *post hoc* attempt to clarify allegations in a complaint in response to a motion to dismiss cannot be received as a supplement or amendment to the pleading itself."[84] Second, Plaintiffs are essentially asking the Court to treat the restrictive covenants as if they were drafted with narrower geography, narrower protected interests, and narrower covered conduct, and that this is effectively the same as blue-penciling.[85]

This Court lacks the authority to blue-pencil an agreement. The Court, and the parties in supplemental briefing submitted after argument, were only able to

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[82] RC Agreement § 2.4.

[83] Ans. Br. 29.

[84] *Murray v. Mason*, 244 A.3d 187, 193 (Del. Super. 2020), *modified* (Jan. 5, 2021) (internal quotations omitted).

[85] Reply Br. 18.

identify one case from the Superior Court even mentioning the doctrine of blue-penciling. In that case, the Court discussed blue-penciling principles in the context of a request to modify an unenforceable liquidated damages provision, citing only to Court of Chancery precedent and without asserting independent authority to blue-pencil, which it declined to do.[86] The Supreme Court, however, has specifically described blue-penciling as an "exercise of equitable authority," which strongly suggests that the power to blue-pencil an agreement is based in principles of equity, not law.[87]

V. CONCLUSION[88]

For the foregoing reasons, the Court grants Webb's motion to dismiss because every count in the complaint alleges Webb breached a restrictive covenant that this Court cannot enforce as drafted, and because the Court lacks authority to modify the restrictive covenants.

IT IS SO ORDERED.

/s/ *Patricia A. Winston*
Patricia A. Winston, Judge

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[86] *Newark Shopping Ctr. Owner, L.L.C. v. Saudades Grp.*, LLC, 2025 WL 655063, at *10 (Del. Super. Feb. 26, 2025).

[87] *Sunder Energy*, 332 A.3d at 485 (Del. 2024); *C&J Energy Servs., Inc. v. City of Miami Gen. Employees'*, 107 A.3d 1049, 1054 (Del. 2014).

[88] The Court need not reach Webb's arguments concerning the covenants' duration or that Counts II, II, V, and VI are not well pleaded, because the covenants fail for the reasons articulated above.