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FROM THE COMMITTEE ON OPINIONS

PROMETHEUS INNOVATION CORPORATION, a New Jersey Corporation, and JELANI ELLINGTON, an individual, Plaintiffs, v. HUNTINGTON LEARNING CENTERS, INC., a Delaware Corporation Defendant.	**SUPERIOR COURT OF NEW JERSEY** LAW DIVISION – BERGEN COUNTY DOCKET NO. **BER-L-2025-20** Civil Action **OPINION**

Argued: October 7, 2022
Decided: November 2, 2022

Evan M. Goldman, Esq., and Brett M. Buterick, Esq., appearing on behalf of Plaintiffs Prometheus Innovation Corporation, a New Jersey Corporation, and Jelani Ellington, an individual (from Greenspoon Marder LLP)

Sarah Weiselthier, Esq. and Scott McIntosh, Esq., appearing on behalf of Defendant Huntington Learning Centers, Inc., a Delaware Corporation (from Fisher & Phillips, LLP and Quarles & Brady, LLP, respectively)

FACTUAL BACKGROUND

Huntington Learning Centers, Inc., (hereinafter "Defendant") is a franchise of educational learning centers throughout the United States which offers in-center and online tutoring services. Defendant's learning centers are either run directly by Defendant, or by a franchisee who operates the learning center with a license from Defendant, allowing them to use the proprietary learning system Defendant has developed. The learning center at issue in the instant matter is located in Ridgewood, New Jersey (hereinafter the "Ridgewood Center").

Prometheus Innovation Corporation is a closely held corporation, whose sole shareholder is Jelani Ellington (hereinafter individually "Mr. Ellington" or "Prometheus" and collectively "Plaintiffs"). Mr. Ellington holds a Doctor of Management (PhD) from the University of Maryland, an MBA from Indiana University, an MS in Management from MIT, an MS in System

Engineering from MIT, and a BS in Mechanical Engineering from North Carolina A&T State University. In or around April 2019. Mr. Ellington inquired with Defendant about purchasing and operating the Ridgewood Center as a franchised location.

Mr. Ellington requested that Defendant provide him with the Ridgewood Center's performance records in the form of audited financial statements. Defendant eventually provided Mr. Ellington with thirty-eight (38) months' worth of unaudited financial statements for the Ridgewood Center. Defendant's Chief Financial Officer (hereinafter "CFO") confirmed the accuracy of the financial statements.

Defendant also provided Mr. Ellington with a Franchise Disclosure Document (hereinafter "FDD"), as it does to all prospective franchisees. The FDD expressly distinguished between franchised locations and corporately owned locations; it provided data regarding the differing financial performance of franchised locations versus locations that are corporately owned. The FDD made it clear that franchised locations would be subject to certain expenses that corporately owned locations did not incur. Such expenses included call center fees, coaching service fees, royalty fees, and advertising fees.

In July and August of 2019, Defendant began soliciting Mr. Ellington to purchase the Ridgewood Center. Huntington offered Mr. Ellington a tax credit to be paid at closing; this was added as incentive because of a perceived dip in the Ridgewood Center's performance figures during the month of June 2019. Defendant represented to Mr. Ellington that the Ridgewood Center's performance data that had been provided was in line with the performance figures he could expect while operating the Ridgewood Center himself.

Further, during negotiations, Mr. Ellington was advised that no other Huntington Learning Centers would be opened near the Ridgewood Center. Mr. Ellington raised concerns regarding

competition on multiple occasions, but claims to have been repeatedly reassured. On August 19, 2019, Plaintiffs entered into the Franchise Agreement (hereinafter the "Agreement") with Defendant. Plaintiffs sought and received a loan of $1,800,000, signed a term lease for the Ridgewood Center in the amount of $6,677.83 per month, and paid Defendant a total of $1,620,000 for the Ridgewood Center's assets. Mr. Ellington signed an Applicant's Application and Representations Cover Letter (hereinafter the "Cover Letter") and the Agreement whereby he agreed that Defendant made no promises or representations regarding the operating results or likelihood of success that would be achieved by Mr. Ellington upon taking control of the Ridgewood Center. Mr. Ellington also signed an Asset Purchase Agreement (hereinafter "APA") whereby Plaintiffs purchased the Ridgewood Center's assets.

After purchasing and taking control of the Ridgewood Center, Mr. Ellington realized the following: the Ridgewood Center required an immediate staff restructuring, the Ridgewood Center would now be subject to franchise fees and costs, there were material differences in the application of earned and unearned revenue, and the Ridgewood Center required operational changes in order to comply with Defendant's corporate standards of operation.

On August 21, 2019, two days after Mr. Ellington purchased and took control of the Ridgewood Center, Defendant announced it would be opening a new Huntington Learning Center in Ramsey, New Jersey (hereinafter the "Ramsey Center"), approximately five- and one-half miles from the Ridgewood Center. This location is well outside of the three-mile exclusive zone that was specifically granted to Plaintiffs in the Agreement. Since Mr. Ellington has taken control of the Ridgewood Center, it has allegedly experienced a drop in revenue of approximately twenty-five percent (25%).

Nearly two months after the parties signed the Agreement, the parties executed a General Release (hereinafter the "General Release") as well as a Services Amendment (hereinafter the "Amendment"), effective as of October 28, 2019, and October 30, 2019, respectively. Such documents were executed as Plaintiffs were now in the process of purchasing another Huntington Learning Center located in Westwood, New Jersey (hereinafter the "Westwood Center"). The Westwood Center is approximately five-and one-half miles from the Ridgewood Center, similar to the distance between the Ridgewood Center and the Ramsey Center. By its terms, the General Release operates as to release Defendant from all claims arising out of or relating to all prior agreements executed by Plaintiffs and Defendant. The General Release squarely included any claims arising out of the Agreement executed by the parties as part of the purchase of the Ridgewood Center.

Plaintiffs filed an Amended Verified Complaint against Defendant on June 16, 2020, claiming fraud, fraud by omission, negligent misrepresentation, and unjust enrichment. Plaintiffs allege, essentially, that Defendant's representatives failed to adequately disclose the circumstances under which Plaintiffs would be operating the Ridgewood Center and how it would now differ from the way the Defendant operated it. Plaintiffs claim that Defendant's conduct has resulted in $2,011,048 for direct and consequential damages, $1,872,827 for unjust enrichment, and $199,899 in total prejudgment interest.

STANDARD OF REVIEW

The New Jersey procedural rules state that a court shall grant summary judgment "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2(c). In Brill v.

Guardian Life Insurance Co., 142 N.J. 520 (1995), the Supreme Court set forth a standard for courts to apply when determining whether a genuine issue of material fact exists that requires a case to proceed to trial. Justice Coleman, writing for the Court, explained that a motion for summary judgment under R. 4:46-2 requires essentially the same analysis as in the case of a directed verdict based on R. 4:37-2(b) or R. 4:40-1, or a judgment notwithstanding the verdict under R. 4:40-2. Id. at 535-536. If, after analyzing the evidence in the light most favorable to the non-moving party, the motion court determines that "there exists a single unavoidable resolution of the alleged dispute of fact, that issue should be considered insufficient to constitute a 'genuine' issue of material fact for purposes of R. 4:46-2." Id. at 540.

RULE OF LAW AND DECISION

Plaintiff Released Majority of Claims by Signing the October 2019 Waiver

The General Release absolves Defendant of any liability for the complained of conduct. Where the parties have signed a liability release which operates to absolve one litigant of any potential liability for the complained of conduct, the trial court is well within its discretion to grant summary judgment in favor of the movant. See, e.g., Domanske v. Rapid-Am. Corp., 330 N.J. Super. 241, 247-48 (App. Div. 2000).

The General Release executed by the parties on October 28, 2019, bars Plaintiffs' claims for fraud, fraud by omission, negligent misrepresentation, and unjust enrichment. These claims are all based upon statements made by Defendant's representatives, or actions or omissions of the Defendant, prior to the time that the parties executed the General Release on October 28, 2019. Pursuant to the General Release, Plaintiffs released Defendant from liability for any representations made or actions taken prior to the execution date. Accordingly, all facts and

representations made by Defendant which Plaintiffs claim form the majority of the cause of action in the instant matter were waived at the time the General Release was signed.

Defendant Committed No Fraud in the Sale of the Subject Business

Under New Jersey law, the elements of a fraud claim are: "(1) a material misrepresentation of a presently existing or past fact; (2) knowledge or belief by the defendant of its falsity; (3) an intention that the other person rely on it; (4) reasonable reliance thereon by the other person and (5) resulting damages." Gennari v. Weichert Co. Realtors, 148 N.J. 582, 610 (1997). In order to constitute a fact, a statement's content must be susceptible of "exact knowledge" at the time it is made. Alexander v. CIGNA Corp., 991 F. Supp. 427, 435 (D.N.J.), aff'd, 172 F.3d 859 (3d Cir. 1998). "Statements as to future or contingent events, to expectations or probabilities, or as to what will or will not be done in the future, do not constitute misrepresentations, even though they may turn out to be wrong." Id.; Suarez v. Eastern Intern. College, 428 N.J. Super. 10, 29 (App. Div. Feb. 24, 2015) (stating that "[a]s to the claims of affirmative misrepresentation, [a] plaintiff must show the misrepresentation of a fact that exists at or before the time the representation is made").

I. Defendant's Non-Similar Financial Comparison Was Not Fraudulent

The financial statements provided by Defendant were accurate and therefore not fraudulent. Accurate financial statements may not form the basis of a fraud claim. Gennari, 148 N.J. at 610. Plaintiffs provide no facts or evidence upon which the Court can conclude that Defendant produced fraudulent or inaccurate unaudited financial statements. Plaintiffs' main issue with the unaudited financial statements provided by Defendant seemingly stems from the fact that Plaintiffs assumed that it would be able to replicate the numbers indicated in the financial statements once it assumed ownership and control of the Ridgewood Center. Defendant made no

such binding representation or assurance that Plaintiffs could recreate those numbers; Defendant merely certified that the financial statements were accurate.

Clearly, Plaintiffs just did not contemplate that as a franchised location it would incur significant fees which corporately owned locations do not. Plaintiffs' failure to arrive at this point was not the result of fraud on the part of Defendant, but because Plaintiffs failed to diligently research the circumstances surrounding the financial statements of the then-corporately owned Ridgewood Center. Mr. Ellington, a sophisticated businessman with five university degrees, should have understood that franchised locations incur fees that corporately owned locations do not.

Moreover, Plaintiffs were provided with the FDD, which laid out the different operating expenses incurred by a corporately owned location versus a franchised location. Defendant provided Plaintiffs with ample documentation upon which Plaintiff should have realized that corporately owned and franchised locations could expect different levels of income; it was not Defendant's duty to assess the ramifications for Plaintiffs.

II. The Alleged Misrepresentations Regarding Competition Are Not Fraudulent

Defendant made no fraudulent misrepresentations when it told Plaintiffs that no competing locations would open near the Ridgewood Center. "[S]tatements that can be categorized as 'puffery' or 'vague and ill-defined opinions' are not assurances of fact and thus do not constitute misrepresentations." Alexander, 991 F. Supp. at 435. Plaintiffs claim that Defendant fraudulently represented that no competing locations would open near the Ridgewood Center, and that Defendant's opening of the Ramsey Center rendered the prior statements fraudulent. Here the Agreement specifically provided for only a three-mile exclusive zone; any claims based upon competition from outside of the exclusive zone cannot survive.

While the Ridgewood and Ramsey Centers are relatively near each other, they are not competing in the sense that the exclusive zone has not been breached. If Plaintiffs objected to the opening of a location in Ramsey, New Jersey, approximately five-and-one-half miles from the Ridgewood Center, it should have negotiated a larger exclusive zone in the Agreement to prevent such a location from opening. Further, at the time that the Plaintiffs filed its Amended Complaint in June of 2020, the Ramsey Center had not yet opened. As such, Plaintiffs' Amended Complaint alleges fraud based on events which had not yet caused damages at the time of filing.

III. Plaintiffs Have Failed to Establish its Fraud and Fraud by Omission Claims Because of a Lack of Reasonable Reliance

The integration clause present in the Agreement precludes Plaintiffs' fraud and fraud by omission claims. Reasonable reliance by a plaintiff on an alleged misrepresentation is a required element of a fraud claim, and failure to establish reasonable reliance requires judgment as a matter of law for the defendant. Integration clauses or disclaimers in franchise agreements make attempted reliance on any prior representations not contained in the final agreement unreasonable as a matter of law. A court cannot find that reasonable reliance exists in a dispute between sophisticated businesses where there is an integration clause or disclaimer present in the subject contract.

The Agreement executed by the parties contains a detailed integration clause which bars Plaintiffs from relying on any representations or promises of any kind that are not contained in the Agreement itself. Thus, the various statements and representations which Plaintiffs allege have been breached by Defendant are not enforceable. As such, Plaintiffs' fraud and fraud by omission claims must fail.

Plaintiffs' Unjust Enrichment Claims Fails Because the Parties Executed a Written Contract

Plaintiffs are precluded from claiming unjust enrichment in the instant matter because of the very existence of the written Agreement. A claim for unjust enrichment is a quasi-contractual claim. When the parties have an actual contract governing the subject of the claims, a plaintiff may not proceed with a claim for unjust enrichment. "It is a well-settled principle of Delaware law that a party cannot recover under a theory of unjust enrichment if a contract governs the relationship between the contesting parties that gives rise to the unjust enrichment claim." Vichi v. Koninklijke Philips Elecs. N.V., 62 A.3d 26, 58 (Del. Ch. 2012); Wood v. Coastal States Gas Corp., 401 A.2d 932, 942 (Del.1979) ("Because the contract is the measure of plaintiffs' right, there can be no recovery under an unjust enrichment theory independent of it."); see also Restatement (Third) of Restitution & Unjust Enrichment § 2 (2011) ("A valid contract defines the obligations of the parties as to matters within its scope, displacing to that extent any inquiry into unjust enrichment.").[1]

Here, all of Plaintiffs' claims are based upon promises or representations made either within the Agreement itself or in the process of negotiating the Agreement. Moreover, the General Release signed by the parties included an integration clause, thus clarifying that the parties' entire relationship is governed by the Agreement and any statements made during negotiations are not actionable. As such, a claim for unjust enrichment fails as a matter of law.

Plaintiffs' Negligent Misrepresentation is Dismissed as a Matter of Law

As mentioned in the context of Plaintiffs' fraud and fraud by omission claims, Plaintiffs failed to establish any misrepresentations on Defendant's part concerning past or existing facts.

[1] The APA and the Agreement contain a choice of law provision dictating that Delaware law controls. As such, this claim is governed and therefore disposed of under Delaware law.

Plaintiffs further failed to establish reasonable reliance upon any alleged misrepresentations in light of the integration clauses and the various express disclaimers and acknowledgments in the Agreement and the APA. "The element of reliance is the same for fraud and negligent misrepresentation." Kaufman v. I–Stat Corp., 165 N.J. 94, 109 (2000). As such, Plaintiffs' negligent misrepresentation claim is dismissed as a matter of law, based upon a lack of proof of actionable misrepresentations and a lack of reasonable reliance.

Plaintiffs' Tortious Interference Claim Fails Because there is no Intent

Plaintiffs' claim for tortious interference with a prospective economic advantage fails for lack of any specific allegations supporting a claim of intentional interference on the part of Defendant. Under New Jersey law, "[t]o state a claim for tortious interference with prospective economic advantage, a plaintiff must show that: 1) he had a reasonable expectation of economic advantage; 2) the defendant interfered intentionally, with malice; 3) the defendant's interference caused the loss of his prospective gain; and 4) the injury caused damage." E Z Sockets, Inc. v. Brighton-Best Socket Screw Mfg. Inc., 307 N.J. Super. 546, 558-59 (Ch. Div. 1996).

I. Plaintiffs Cannot Establish that Defendant Acted Intentionally and Maliciously

Plaintiffs have failed to establish the second element of its tortious interference claim. In order to establish the second element, the plaintiff must allege and establish facts demonstrating that "the interference was done intentionally and with 'malice' . . . [M]alice is defined to mean that the harm was inflicted intentionally and without justification or excuse." MacDougall, 144 N.J. at 404. A successful tortious interference claim includes a showing by the plaintiff that the defendant committed interference, and that the defendant's conduct was unconscionable, meaning that such conduct transgressed generally accepted standards of morality. McLaughlin v. Weichert Co. Realtors, 218 N.J. Super. 63, 67 (App. Div.1987). "[M]ere failure to fulfill obligations

encompassed by the parties' contract, including the implied duty of good faith and fair dealing, is not actionable in tort." Perkins v. Washington Mut., FSB, 655 F.Supp.2d 463, 471 (D.N.J. 2009).

Here, Plaintiffs have not established any interference, let alone interference that was done intentionally and with malice. Plaintiffs do not allege that Defendant had any communications or other interactions with Plaintiffs' purported customer base which may have formed the basis of an interference claim. Plaintiffs allege three supposed forms of interference: (1) an alleged refusal to provide Plaintiffs with contact information for customers; (2) requiring Plaintiffs to sign a general release before entering an eTutoring amendment; and (3) requiring Plaintiffs to sign a purported territory exclusivity waiver before entering an eTutoring amendment. This conduct does not constitute tortious interference.

Defendant's conduct in the instant matter cannot be said to rise to the level of unconscionability which is necessary to support a tortious interference claim. Whether Defendant completed its contractual duties is irrelevant for this claim; the Court is merely required to determine whether the Defendant's conduct has transgressed generally accepted standards of morality. It is clear based upon a review of the evidence that Defendant's conduct did not rise to the level necessary to sustain a tortious interference claim. As such, Plaintiffs' claim for tortious interference with a prospective economic advantage is dismissed.

II. Plaintiffs Have Not Established a Reasonable Expectation of Economic Gain or the Loss of Same Due to Defendant's Conduct

Plaintiffs have failed to establish facts demonstrating a reasonable expectation of economic gain (first factor) or any loss of such prospective gain (third factor) caused by the purported interference. To establish a claim for tortious interference with prospective economic advantage, a "plaintiff must show that if there had been no interference[,] there was a reasonable probability

that the victim of the interference would have received the anticipated economic benefits." MacDougall, 144 N.J. at 404.

Plaintiffs merely state, in a conclusory manner, that Defendant's conduct has interfered with Plaintiffs' ability to operate the Ridgewood Center in a profitable manner. While Defendant may have announced plans to open the Ramsey Center shortly after the execution of the Agreement, Defendant was well within its rights to open a new Huntington Learning Center outside of the exclusive zone granted to Plaintiffs. Moreover, Plaintiffs expressly acknowledged in the Agreement that it would face competition, including solicitation of customers inside and outside of the exclusive zone. Any claims relating to such conduct were expressly waived in the Agreement. Thus, Plaintiffs' claim for tortious interference is dismissed.

Mr. Ellington Personally Lacks Standing as to all Counts

Mr, Ellington's claims in the Amended Complaint are dismissed, as he does not have a direct stake in the outcome of the instant action. "A corporation is regarded as an entity separate and distinct from its shareholders. It is a principle of corporation law that '[r]egard for the corporate personality demands that suits to redress corporate injuries which secondarily harm all shareholders alike are brought only by the corporation.'" Strasenburgh v. Straubmuller, 146 N.J. 527, 549 (1996). Where a corporate entity is the real party in interest, it owns the claims and must bring them, even when there is only a single shareholder. Doré v. Wormley, 690 F. Supp. 2d 176, 185 (S.D.N.Y. 2010) ("[a] shareholder—even the sole shareholder—does not have standing to assert claims alleging wrongs to the corporation") (quoting Jones v. Niagara Frontier Transp. Auth. (NFTA), 836 F.2d 731, 736 (2d Cir.1987)).

Prometheus, not Mr. Ellington, is the party to the Agreement and APA. As such, all claims based upon the Agreement, relating to the Agreement, or statements made intending to induce

Plaintiffs to enter into the Agreement, belong to Prometheus, not Mr. Ellington. As such, Mr. Ellington's claims must be dismissed as a matter of law as he does not personally have standing.

CONCLUSION

For the aforementioned reasons, Defendant's Motion for Summary Judgment is hereby **GRANTED**.