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IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY

ELIZABETH JOHNSON HARMER, **Plaintiff/Counter-Defendant,** **v.** **KATHERINE JOHNSON CANNATA and SIDNEY JOHNSON, JR.,** **Defendants/Counter-Plaintiffs,** **and** **KATHERINE JOHNSON CANNATA and SIDNEY JOHNSON, JR.,** **Counter-Claimants/ Third-Party Plaintiffs,** **v.** **WYATT-JOHNSON AUTOMOTIVE GROUP HOLDINGS, LLC; WYATT-JOHNSON AUTOMOTIVE, LLC; WJK, LLC; WYATT-JOHNSON NASHVILLE FORD, LLC; WYATT-JOHNSON VEHICLE SALES, LLC; and JOHNSON REALTY STRATEGIC INVESTORS, LLC,** **Third-Party Defendants.**	)	**Case No. 23-0314-BC** **JURY DEMAND**

MEMORANDUM AND ORDER

This matter came before the Court on December 17, 2024, upon Katherine Johnson Cannata's and Sidney Johnson, Jr.'s ("Defendants") Motion for Partial Summary Judgment. Defendants seek summary judgment on all claims brought by Plaintiff Elizabeth Johnson Harmer

("Plaintiff") based on any alleged acts or omissions prior to June 29, 2020, the date upon which the parties entered into the Family Settlement Agreement and two Redemption Agreements.

The Court, having reviewed the briefing and other materials submitted, as well as oral argument, is ready to rule.

Undisputed Material Facts[1]

Wyatt Johnson Automotive Group, Inc. ("WJAG") was a Tennessee corporation. At all material times prior to June 29, 2020, WJAG operated automobile dealerships and owned other related businesses including ABRA Auto Body+Glass, LLC, Volunteer Corporation, Auto Credit Corporation, and property located at 855 Kraft Street. Plaintiff and Defendants were shareholders of WJAG. Defendants became dealer principals of the dealerships owned by WJAG after their father's death in 2007 and began managing WJAG.

WJK, LLC ("WJK"), Wyatt-Johnson Automotive, LLC ("WJA"), Wyatt-Johnson Nashville Ford, LLC ("WJ Ford"), Wyatt-Johnson Vehicle Sales, LLC ("WJVS") are Tennessee limited liability companies (collectively with WJAG, "WJ Entities"). At all material times prior to June 29, 2020, WJK, WJA, WJ Ford, and WJVS operated automobile dealerships. Plaintiff and Defendants were members of WJK, WJA, WJ Ford, and WJVS. Defendants served as dealer principals of the dealerships owned by WJK, WJA, WJ Ford, and WJVS. Defendants managed WJK, WJA, WJ Ford, and WJVS.

[1] Courts have emphasized that a party opposing a motion for summary judgment may not simply rest on its pleadings, but must affirmatively oppose the motion. *Holland v. City of Memphis*, 125 S.W.3d 425, 428 (Tenn. Ct. App. 2003) (citations omitted). Such opposition may be made by pointing the court to specific evidence in the record that supports a party's position on each of these questions, and, thus, material facts may be deemed admitted in the absence of a statement controverting them by the opposing party. *Id*. In many of the responses to the statements of material facts, Plaintiff failed to point to specific evidence in the record that disputed the statement. The Court is not required to pore through the record to determine if there is evidence to support the non-moving party's response in opposition to each disputed statement. *Id*. Therefore, the Court finds the following statements of fact are both undisputed and material to the issues raised in this suit.

In 2018, Plaintiff and Defendants, along with their mother, sister, and others, had a series of family meetings with the family attorney, Mike Sontag, and a business/succession advisor, Hugh Roberts, in which they discussed the WJ Entities. In 2018, Plaintiff "thought it was wrong that [Defendants] had a greater ownership percentage than [she did]" in the WJ Entities. Specifically, she testified:

> Q: What was your understanding of what the assignment was?[2]
>
> A: To discuss if—any questions or concerns about ownership.
>
> Q: Did you have concerns about ownership?
>
> A: I did.
>
> Q: At this time, did you think it was wrong that Katherine and Sidney had a greater ownership percentage of the dealerships than you and Fran?
>
> A: I did, yes.

(8.8.24 Harmer Depo., 81:25 – 82: 9).

In 2018, Plaintiff believed that "the transparency was insufficient from [Defendants]" in their management of the WJ Entities. She was concerned "that [Defendants] were not providing enough financial information" to her, "as to the business reporting practices of [Defendants]," "as to the propriety of the related party debt" for the WJ Entities, and "about the salaries and bonuses that [Defendants] were paying themselves." She also had concerns about "a lot of money being spent" by Defendants and whether that should "be voted on" and that "Cannata was improperly taking benefits from" the WJ Entities. Finally, among her concerns in 2018, Plaintiff had a complaint that the WJ Entities were "such a big business with absolutely no governance."

[2] The assignment was in reference to an email from Hugh Roberts dated August 7, 2018 requesting the family to review and prepare topics identified as issues "to be addressed by the Family Business Council with the goal of resolving them by year end," which included "OWNERSHIP CONCERNS regarding the current 38%, 38%, 12%, 12% ownership percentages." The email did not distinguish between legacy and non-legacy dealerships.

On December 18, 2018, following a family meeting, Hugh Roberts sent an email to Plaintiff, Defendants, and others as follows:

> We covered a lot of issues and moved closer to establishing the basis for moving forward as a family and business. Mike Sontag will now develop a draft of a Family Settlement Agreement designed to deal with the following:
>
> - Information that the shareholders can expect to receive;
> - Issues of major importance that will require 3 of 4 family shareholders to agree upon before action is taken;
> - Options for buy-sell purposes, including what happens if someone dies, becomes disabled, wants to sell heir stock or a percentage of their stock, gets divorced, filed bankruptcy, etc.;
> - Clawback provision designed to protect all family units by stating that in the event Wyatt Johnson Inc. is sold at any time in the future, all four family units will receive 25% of the sales proceeds;
> - Language that confirms your intent to provide all members of the next Johnson family generation, regardless of the stock percentages owned by their parents, to be able to have an equal opportunity to become a leader in the business and own stock;
> - Language addressing the current loans in the C-corp, Wyatt Johnson, to include what happens if there are tax consequences involved in addressing these loans. The loans are to be treated as 25% for each of the four Johnson siblings.
>
> It is my understanding that the family members plan to meet again for the next Family Business Council meeting in February without any advisors present. I believe this is a very good idea and I trust will result in continued efforts to improve communication in an effort to improve your ability to work together. One of the issues you wanted to discuss at that time was to address personal guarantees. Between now and then you planned to determine exactly who is responsible for personal guarantees and to what degree.
>
> I am again grateful for the opportunity to work with each of you. I believe I speak for both Mike [Sontag] and Jeff [Mobley] in saying if any of us can be helpful in any way, we would be most willing to do so. Best wishes to each of you and your families for a special Christmas and wonderful New Year.

Throughout 2018 and through at least June 29, 2020, Bass Berry & Sims PLC ("Bass") and Mike Sontag represented Plaintiff and other members of the family.

In early 2019, Plaintiff also consulted with an attorney at Neal & Harwell, PLC. to represent her individually. In December 2019, Plaintiff hired John Voigt, an attorney at Sherrard, Roe, Voigt & Harbison, to represent her personally. In that same timeframe, Plaintiff also hired BDO, USA, a forensic accounting firm, "to understand the transaction, all the moving parts and the numbers, and be able to have someone to ask questions so they could understand it." Plaintiff is unaware of any information any one of her lawyers or accountants requested prior to June 29, 2020 that was not provided to them.

Effective June 29, 2020, Plaintiff, Defendants, and other owners of the WJ Entities entered into a transaction with Hudson Automotive Group ("Hudson") related to the automobile dealerships. Plaintiff (and Defendants and others) executed numerous agreements in connection with the transaction with Hudson. Those documents included a Redemption and Assignment Agreement for WJAG and a Redemption and Assignment Agreement for WJA, both of which were effective June 29, 2020 (collectively, the "Redemption Agreements"). Plaintiff does not dispute that she signed copies of a Redemption and Assignment Agreement for WJAG and a Redemption and Assignment Agreement for WJA; however, she attempts to dispute that the copies of the Redemption Agreements attached to Defendants' Motion are the same documents that she signed on June 25, 2020. However, Plaintiff testified as follows regarding the Redemption Agreements:

> Q: Do you agree that that is your signature on this redemption and assignment agreement?
>
> A: Yes, it looks like my signature.
>
> . . .

> Q: Are you claiming that this redemption and assignment—that there's been some sort of signature switch on this redemption and assignment agreement?
>
> A: I'm not claiming that.
>
> Q: What about Exhibit C? That's another redemption and assignment agreement for Wyatt-Johnson Automotive, LLC. Do you see that?
>
> A: I do see that.
>
> Q: Is that your signature?
>
> A: It does look like my signature.
>
> Q: Are you claiming that this is –there's any issue with this redemption and assignment agreement and you having signed it?
>
> A: I'm not claiming that.

(8.8.24 Harmer Depo., 207:16-208:20). Further, in Plaintiff's response to Defendants' Counterclaim, she responded as follows:

> 14. Another such agreement was the June 29, 2020 Redemption and Assignment Agreement relating to WJAG ("WJAG Redemption Agreement"). A true and correct copy of the WJAG Redemption Agreement is attached hereto as Exhibit B.
>
> In response to the averments of Paragraph 14, Plaintiff asserts that the referenced Redemption and Assignment Agreement relating to WJAG is a written document which speaks for itself and denies any of Defendants' interpretation that is contrary to the terms of that written document. Plaintiff denies any implication in Paragraph 14 that the referenced Redemption and Assignment Agreement was legally required in order to complete the transaction with Hudson.
>
> 15. Another such agreement was the June 29, 2020 Redemption and Assignment Agreement relating to WJ Toyota ("WJ Toyota Redemption Agreement"). A true and correct copy of the WJ Toyota Agreement is attached hereto as Exhibit C.
>
> In response to the averments of Paragraph 15, Plaintiff asserts that the referenced Redemption and Assignment Agreement relating to WJ Toyota is a written document which speaks for itself and denies any of Defendants' interpretation that is contrary to the terms of that written document. Plaintiff denies any implication in Paragraph 15 that the referenced Redemption and Assignment Agreement was legally required in order to complete the transaction with Hudson.

Plaintiff did not dispute that she signed the Redemption Agreements as referenced in the Counterclaim.

Effective June 29, 2020, Plaintiffs, Defendants, and others entered into a Family Settlement Agreement. Plaintiff does not dispute that she signed a copy of the Family Settlement Agreement; however, she attempts to dispute that the copy of the Family Settlement Agreement attached to Defendants' Motion is the same document that she signed on June 25, 2020. However, in Plaintiff's Complaint, she alleged that "the FSA is an enforceable contract between the parties, except for Section 2." (Compl., ¶ 156). She also responded as follows to Defendants' Counterclaim:

> 13. One such agreement was the June 29, 2020 Family Settlement Agreement ("FSA"). A true and correct copy of the FSA is attached hereto as Exhibit A.
>
> In response to the averments of Paragraph 13, Plaintiff asserts that the referenced Family Settlement Agreement (a copy of which Plaintiff admits is attached as Exhibit A to Defendants' pleading) is a written document which speaks for itself and denies any of Defendants' interpretation that is contrary to the terms of that written document. Plaintiff denies any implication in Paragraph 13 that the FSA was legally required in order to complete the transaction with Hudson.
> . . .
>
> 24. The FSA is an enforceable contract.
>
> Paragraph 24 states a legal conclusion, and therefore no response is required. To the extent the Court would require a response, Plaintiff admits the FSA was an agreement executed by the Parties thereto. Plaintiff further answers that the FSA is a written agreement which speaks for itself, and denies any of Defendants' interpretations that are contrary to the terms of that written document.

Plaintiff did not dispute that she signed the FSA as referenced in the Counterclaim.

Several drafts of the FSA circulated between Voigt and attorneys at Bass. On June 9, 2020, Voigt sent Plaintiff and others an email attaching a proposed draft of the FSA from Bass and advising as follows:

> Of particular note, and not unexpectedly, in Section 7 there is a mutual release whereby each of the "Johnson Children" waive and release all claims they might

> have against (i) each other and (ii) the “Johnson entities” arising out of the ownership and operation of the dealerships and - presumably - the sale.
>
> This may be the most important document you sign in connection with this transaction and, for that reason, I ask you to review it very carefully, along with the other documents, so that we can discuss it thoroughly Thursday morning.

On June 26, 2020, Voigt sent an email that contained a “suggested additional edit” to the FSA, which Voigt indicated was to “delay[] the effective date of the release contained in Paragraph 7 pending resolution of the family matters.” On June 28, 2020, Bass sent Voigt an email attaching a revised draft of the FSA, which had removed Voigt’s suggested edit, and which Voigt forwarded to Plaintiff.

To date, Plaintiff has received around $20 million from the sale of the WJ Entities. Plaintiff also has accepted payment pursuant to Section 5 of the FSA, for Abra Body Shop Business, the AutoCredit business, and 855 Kraft Street.

Prior to this litigation, the parties entered into a tolling agreement, which the parties extended. On December 2, 2022, Plaintiff filed a lawsuit against Defendants in the United States District Court for the Middle District of Tennessee. On March 2, 2023 with Defendants’ motion to dismiss pending, Plaintiff filed a notice of voluntary dismissal in the Federal Lawsuit. Plaintiff then filed this suit on March 8, 2023.

Legal Analysis

Summary Judgment

Summary judgment is appropriate when “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 and that the moving party is entitled to a judgment as a matter of law.” Tenn. R. Civ. P. 56.04. The moving party may satisfy its initial burden of production and shift the burden of production to the nonmoving party by demonstrating that the nonmoving party’s

evidence is insufficient as a matter of law at the summary judgment stage to establish the nonmoving party's claim or defense. *Rye v. Women's Care Center of Memphis, MPLLC*, 477 S.W.3d 235, 264 (Tenn. 2015). When the party seeking summary judgment makes a properly supported motion under Rule 56, the nonmoving party may not rest upon the allegations or denials of its pleading, but rather must set forth specific facts at the summary judgment stage showing there is a genuine issue of material fact for trial. *Id*. at 265.

When the moving party does not bear the burden of proof at trial, that party must either (i) affirmatively negate an essential element of the non-moving party's claim, or (ii) show that the non-moving party's evidence at the summary judgment stage is insufficient to establish the non-moving party's claim. *Rye*, 477 S.W.3d at 264. Where the moving party has made the initial showing, the burden of production then shifts to the nonmoving party to produce evidence to show that there is a genuine issue for trial. *TWB Architects, Inc. v. Braxton, LLC*, 578 S.W.3d 879, 888 (Tenn. 2019).

When evaluating motions for summary judgment, courts must decide: "(1) whether a *factual* dispute exists; (2) whether the disputed fact is *material* to the outcome of the case; and (3) whether the disputed fact creates a g*enuine* issue for trial." *Byrd v. Hall*, 847 S.W.2d 208, 214 (Tenn. 1993) (emphasis in original). A "material fact" is one that "must be decided in order to resolve the substantive claim or defense at which the motion is directed." *Id.* at 215. Irrelevant or unnecessary facts are not material. *Rye*, 477 S.W.3d at 251. A "genuine issue" exists when "a reasonable jury could return a verdict in the nonmoving party's favor." *Byrd*, 847 S.W.2d at 215.

"If reasonable minds could justifiably reach different conclusions based on the evidence at hand, then a genuine question of fact exists." *Green v. Green*, 293 S.W.3d 493, 514 (Tenn. 2009) (citing *Martin v. Norfolk S. Ry.*, 271 S.W.3d 76, 84 (Tenn. 2008); *Louis Dreyfus Corp. v. Austin*

Co., 868 S.W.2d 649, 656 (Tenn. Ct. App. 1993)). "If, on the other hand, the evidence and the inferences reasonably drawn from the evidence would permit a reasonable person to reach only one conclusion, then no material factual dispute exists, and the question can be disposed of as a matter of law." *Id*. (citing *Godfrey v. Ruiz*, 90 S.W.3d 692, 695 (Tenn. 2002); *Seavers v. Methodist Med. Ctr. of Oak Ridge*, 9 S.W.3d 86, 91 (Tenn. 1999)). In deciding a motion for summary judgment, the court must not weigh the evidence, but must "take the strongest legitimate view of the evidence in favor of the nonmoving party" and overrule the motion when there is a genuine dispute as to any material fact. *Byrd*, 847 S.W.2d at 210-211.

Claims at Issue

Defendants seek dismissal of Plaintiff's claims that are based on alleged acts or omissions occurring prior to June 29, 2020. Plaintiff brings claims of breach of fiduciary duty, breach of contract, and financial duress against Defendants, and a claim of promissory fraud solely against Defendant Cannata. The promissory fraud claim is not at issue in Defendants' Motion, as Plaintiff has advised that this claim arose after June 29, 2020. As to Count III for breach of contract, Plaintiff's counsel advised during oral argument that these claims arose after June 29, 2020, and, therefore, this claim is not subject to Defendants' Motion. As to Count IV for financial duress, Plaintiff's counsel advised during oral argument that Defendants are entitled to summary judgment on this claim.

As to Count I for breach of fiduciary duty, Plaintiff alleges that, "[a]s fiduciaries, Ms. Cannata and Sidney Jr. had a duty to account to Ms. Harmer for their disposition of all assets and funds they managed in a fiduciary capacity." (Compl., ¶ 133). She alleges that Defendants have breached their duties of loyalty and care by failing to disclose conflicts of interest, concealed material information including the "2008 and 2011 Transfers" and the siblings' respective

ownership percentages in the legacy and non-legacy dealerships, misled, dismissed, or ignored Plaintiff when she inquired about the operations, ownership, and finances of the family businesses, informed her that she had no right to any ownership interest in any non-legacy dealerships, and denied her access to records and information, among others. (*Id*. at ¶ 138). She also brings a similar claim under Count V pursuant to Tenn. Code Ann. § 61-1-401 *et seq*., the Revised Uniform Partnership Act, contending that a partnership existed between the siblings. She contends that the business operated as an "investment partnership" under Tennessee law, with assets pooled together and managed in a manner demonstrating a *de facto* partnership. Plaintiff's counsel advised during oral argument that these claims arise from actions before and after June 29, 2020.

Defendants contend they are entitled to summary judgment as a matter of law dismissing Plaintiff's claims that are based on alleged acts or omissions occurring prior to June 29, 2020 for two reasons: 1) Plaintiff's claims are barred by the three separate agreements she executed effective June 29, 2020, the Family Settlement Agreement and the two Redemption Agreements (collectively, the "Agreements"); 2) Plaintiff's claims are independently barred by the statute of limitations. The Court will address each argument separately.

The Agreements

Defendants argue that the explicit provisions of the Agreements bar Plaintiff's claims. Further, with respect to the claims that are not specifically addressed in the Agreements, they include global releases in which Plaintiff released "any and all" claims, known or unknown, relating to the ownership and operation of the WJ Entities.

The interpretation of a contract is a question of law. *Mark VII Transp. Co. v. Responsive Trucking, Inc*., 339 S.W.3d 643, 647–48 (Tenn. Ct. App. 2009) (citing *Pitt v. Tyree Org., Ltd.*, 90 S.W.3d 244, 252 (Tenn. Ct. App. 2002)). Each provision must be construed in light of the entire

agreement, and the language in each provision must be given its natural and ordinary meaning. *Id*. Moreover, Tennessee courts "'give primacy to the contract terms, because the words are the most reliable indicator—and the best evidence—of the parties' agreement when relations were harmonious, and where the parties were not jockeying for advantage in a contract dispute.'" *Individual Healthcare Specialists, Inc*., 566 S.W.3d at 694 (quoting Feldman, 21 Tenn. Practice § 8:14). When terms of a contract are not ambiguous, issues of contract interpretation are regularly considered issues of law, and the Court must interpret it as written rather than according to the unexpressed intention of one of the parties. *Strategic Acquisitions Grp., LLC v. Premier Parking of Tennessee, LLC*, No. E2019-01631-COA-R3-CV, 2020 WL 2595869, at *4 (Tenn. Ct. App. May 22, 2020).

Furthermore, the principle of construing separate instruments together to establish the total contract has been explained by the Tennessee Supreme Court:

> Other writings, or matters contained therein, which are referred to in a written contract may be regarded as incorporated by reference as a part of the contract and therefore, may be properly considered in the construction of the contract. Where a written contract refers to another instrument and makes the terms and conditions of such other instrument a part of it, the two will be construed together as the agreement of the parties.
>
> Construing contemporaneous instruments together means simply that if there are any provisions in one instrument limiting, explaining, or otherwise affecting the provisions of another, they will be given effect as between the parties themselves and all persons charged with notice so that the intent of the parties may be carried out and the whole agreement actually made may be effectuated.

McCall v. Towne Square, Inc., 503 S.W.2d 180, 183 (Tenn. 1973) (quoting 17 Am.Jur.2d, *Contracts* §§ 263–65); *see also* 11 *Williston on Contracts* § 30:25 (4th ed.) ("Generally, all writings which are part of the same transaction are interpreted together."). "The terms of separate contracts forming integral parts of a single transaction may be considered together." *Realty Shop, Inc. v. RR Westminster Holding, Inc.*, 7 S.W.3d 581, 599 (Tenn. Ct. App.

1999) (citing *McCall*, 503 S.W.2d at 182–83 (Tenn. 1973); *Stovall v. Dattel*, 619 S.W.2d 125, 127 (Tenn. Ct. App. 1981)).

The Court finds that the FSA and Redemption Agreements were all part of the same transaction; all of the parties were fully aware of the agreements, all were effective June 29, 2020, and the Redemption Agreements defined the consideration as those amounts to be determined pursuant to the FSA. All these agreements were entered into to facilitate the sale of the business. Under these circumstances, the Court concludes that the FSA and Redemption Agreements are to be construed together.

Defendants point to the FSA which provides that "certain challenges and conflicts typical to family owned and operated businesses have arisen . . . regarding the ownership, operation and/or management of the Wyatt-Johnson Entities," and that the parties explicitly agreed to the division of the proceeds based on the ownership of the various entities set forth therein. Further, that the Redemption Agreements explicitly provide that Plaintiff agreed to sell her membership interest for "[s]uch amount as determined pursuant to the Family Settlement Agreement, dated as of June 29, 2020," and that Plaintiff agreed that she "is knowledgeable about the business and financial condition of [WJAG/WJA]," "has had access to such information relating to [WJAG/WJA], including financial information, as such Seller has desired or requested," and "had the opportunity to ask questions of and receive answers from [WJAG/WJA]," among others. While the Court acknowledges that Plaintiff agreed to these terms and does not dispute that these are valid and enforceable agreements, the issue is whether the release language applies to bar or narrow Plaintiff's claims. Any limitation on whether an owner has the right to bring future claims related to the agreements requires an analysis of the contract as a whole, including the release language.

The scope of a release depends on the intent of the parties as expressed in the written contract and in light of the surrounding facts and circumstances under which the parties acted. *Boyd v. Martinez*, No. 22-6026, 2023 WL 4903173, at *9 (6th Cir. Aug. 1, 2023) (citing *Peatross v. Shelby Cnty.*, No. W2008-02385-COA-R3-CV, 2009 WL 2922797, at *3 (Tenn. Ct. App. Sept. 10, 2009)). When discerning the contracting parties' intentions, Tennessee courts are permitted to examine "the circumstances in which the contract was made, and the parties' actions in carrying out the contract." *Individual Healthcare Specialists, Inc. v. BlueCross BlueShield of Tennessee, Inc.*, 566 S.W.3d 671, 692 (Tenn. 2019). This rule of practical construction, however, does not permit a court to "vary, contradict, or supplement the contractual terms in violation of the parol evidence rule," particularly where the agreement at issue is a fully integrated contract. *Id*. at 698.

A general release ordinarily covers only "such matters as may fairly be said to have been within the contemplation of the parties when it was given." *Marlett v. Thomason*, No. M2006-00038-COA-R3CV, 2007 WL 1048950, at *6 (Tenn. Ct. App. Apr. 5, 2007) (quoting *Jackson v. Miller*, 776 S.W.2d 115, 118 (Tenn. Ct. App. 1989)). Corollary to this principle is that a claim "of which a party was ignorant when the release was given is not as a rule . . . embraced therein." *Id*. (quoting *Jackson*, 776 S.W.2d at 118). This is particularly true "where the releasor's ignorance of the claims in question is due to the releasee's concealment of them." *Id*. (quoting 76 C.J.S. § Release 66 (1994)).

Section 7 of the FSA provides:

> Release. Based on the payments contemplated by the transactions for the sale of dealership interests and operating real estate interests to Hudson Group and other steps noted above, the Johnson Children hereby release and forever discharge each other and the Johnson entities and their respective heirs, successors and assigns from any and all obligations, responsibilities, claims, controversies, suits, causes of action, damages, liabilities and demands, whatsoever, at law or in equity, whether known, unknown, accrued, unaccrued, relating to or arising out of the ownership

> and operation of the dealerships and the related assets and other matters provided for herein.

Section 11(d) further provides that "[e]ntry into this Settlement Agreement is not a waiver of any claim for breach of fiduciary duty against any person who is a party hereto, whether known, or unknown." It also provides in section 17:

> Final Acknowledgement. THIS WRITTEN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE JOHNSON CHILDREN AND THE JOHNSON ENTITIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

According to Sontag, he recalled Plaintiff's counsel, Voigt, asking for the carve-out in section 11(d). Further, that after the FSA was executed, Plaintiff, through either accountants or lawyers, was asking for information relating to the operations and management of the business prior to the sale. (9.17.24 Sontag Depo., 205:10 – 206:11; 240:11 – 241:15). In addition, on June 28, 2020, Voigt emailed Howard Lamar, an attorney at Bass who represented the owners and the business, the following:

> What happens if they've been taking money out in large amounts? Such as this mysterious 1.9m that was paid from Volunteer to WJBG (possibly paying for Sidney's toy inventory). Or, if they've been taking reinsurance money? Does number 7 release the ability to argue that . . .

Lamar responded, "I would assume 'if they have been taking money out in large amounts' . . . that would be fraud and the Release would not be valid."

The Redemption Agreements were entered into by WJAG and WJA and Plaintiff, along with her siblings and mother. Each includes a "Waiver and Release" in section 14 which provides as follows:

> Each Seller agrees that the Consideration payable in respect of the Subject Shares of such Seller constitutes full and adequate consideration for the Subject Shares. Effective as of the Closing, each Seller, on behalf of such Seller and his or her

> successors and permitted assigns, hereby irrevocably, unconditionally and forever (a) waives any rights that Seller has with respect to the Subject Shares, including pursuant to any shareholders agreement or similar agreement to which such Seller is a party and any other governing documents of [WJAG / WJA], and all claims in connection therewith, any rights of appraisal, any dissenter's rights, any rights of first refusal, and any similar rights that the Seller may have by virtue of, or with respect to, the Subject Shares owned by the Seller, including any right to bring claims by or on behalf of [WJAG / WJA] pursuant to the Purchase Agreement against any party thereof that such Seller may have by virtue of its ownership of the Subject Shares, and (b) except for claims pursuant to this Agreement, releases and discharges [WJAG / WJA], its members and its affiliates, and their respective directors, officers and agents (individually, a "Releasee" and, collectively, the "Releasees") from any and all claims, demands, debts, obligations and liabilities whatsoever, whether known or unknown, suspected or unsuspected, both at law and in equity, which Seller now has, has ever had or may hereafter have against any Releasee by virtue of, or with respect to, the Subject Shares owned by the Seller, and covenants to refrain from, directly or indirectly, asserting any claim or demand, or commencing, instituting or causing to be commenced, any proceedings of any kind against any Releasee based upon any matter purported to be released hereby and will indemnify the Releasees with respect to liabilities, costs, expenses, claims or damages arising from any claim, demand or proceeding by such Seller or any person claiming by or through such Seller based on any matter purported to be released hereby.

(WJAG Redemption Agreement at § 14; WJA Redemption Agreement at § 14).

The FSA was entered into in order to resolve issues surrounding the "ownership, operation and/or management of the Wyatt-Johnson Entities," and the parties agreed to sell the dealership operations to a third party and that "part of the resolution of those issues that have arisen among them related to the proposed sharing of the net proceeds from that sale." The parties agreed to split the proceeds according to the ownership set forth therein. Section 7 of the FSA releases "any and all . . . claims . . . at law or in equity, whether known, unknown, accrued, unaccrued, relating to or arising out of the ownership and operation of the dealerships and the related assets and other matters provided for herein." Thus, the release language in the FSA is general and clearly reflects an intent to release all claims within the parties' contemplation and in existence at the time of execution related to the ownership and operation of the businesses, which would include Plaintiff's

claims subject to Defendants' Motion. However, there is evidence in the record to suggest that, through Plaintiff's counsel, she sought a carve-out under section 11(d) to protect her interests by not waiving "any claim for breach of fiduciary duty against any person who is a party hereto, whether known, or unknown." After the parties executed the FSA, Plaintiff continually asked for and received information related to the businesses pre-closing.

Defendants contend that the Agreements are clear and unambiguous, while Plaintiff contends to the contrary. Plaintiff asserts that one could read the Agreements to demonstrate that she "was releasing claims related to the dealerships and their operations," but given the carve-out in Section 11(d), "one could also understand the parties meant to preserve breach of fiduciary duty claims related to past practices and events." (Plt.'s Resp. Brief, p. 31).

Contrary to Plaintiff's assertion in its response brief, the Court has not determined that the Agreements are ambiguous.[3] The Court allowed the parties to conduct discovery on the issue of the release to determine the intent of the parties as expressed in the written contract and in light of the surrounding facts and circumstances under which the parties acted. *See Boyd*, 2023 WL 4903173, at *9. When discerning intent, Tennessee courts may look at "the circumstances in which the contract was made, and the parties' actions in carrying out the contract." *Individual Healthcare Specialists, Inc.*, 566 S.W.3d at 692. The Court finds that the Agreements are clear and unambiguous.

Construing the Agreements together, the Court finds the parties, including Plaintiff, agreed to the ownership percentages and agreed to a broad release but also agreed to carve out limited claims for breach of fiduciary duty. However, such carve-out was not intended to allow the parties

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[3] A court speaks through its orders. *Alexander v. JB Partners*, 380 S.W.3d 772, 777 (Tenn. Ct. App. 2011) ("It is well settled, however, that a court speaks through its orders and not through the transcript.") (citing *Steppach v. Thomas*, 346 S.W.3d 488, 522 (Tenn. Ct. App. 2011)).

to affect the ownership percentages that were agreed to—instead, it allowed for breach of fiduciary duty claims that affected the amount received pursuant to the sale. When construing contracts, "[c]ommon sense must be applied to each case, rather than any technical rules of construction." *Individual Healthcare Specialists, Inc.*, 566 S.W.3d at 688 (citing *Barnes v. Black Diamond Coal Co.*, 101 Tenn. 354, 47 S.W. 498, 499 (1898)). This carve-out did not allow a party to go behind the ownership percentages that were expressly agreed to, but rather protect the parties from any information concealed or withheld during the sale process. This interpretation of the Agreements respects the purposes of the Agreements and the broad release language in all three. To hold otherwise would allow a party to go behind the purposes of the Agreements and change the ownership percentages that were explicitly agreed to and nullify the broad release provisions. The express intent of the FSA was to resolve amicably any outstanding issues of ownership, for both the legacy and non-legacy dealerships. "All provisions in the contract should be construed in harmony with each other, if possible, to promote consistency and to avoid repugnancy between the various provisions of a single contract." *Guiliano v. Cleo, Inc.*, 995 S.W.2d 88, 95 (Tenn. 1999) (citing *Rainey v. Stansell*, 836 S.W.2d 117, 118–19 (Tenn. Ct. App. 1992)). Such an interpretation preserves the intent of the Agreements and supports the broad release language, but also gives purpose to the limited carve-out as set forth in section 11(d) of the FSA. This reading enables all provisions to be read in harmony with each other, while reading it as suggested by the parties would either render the broad release language or the section 11(d) carve-out a nullity, which is not favored under the law. *Thornton v. Dutch Nats. Processing, LLC*, 629 F. Supp. 3d 777, 791 (M.D. Tenn. 2022) (citing I*n re Pyramid Operating Auth., Inc.*, 144 B.R. 795, 814 (Bankr. W.D. Tenn. 1992) ("It is a fundamental rule of contract construction that the entire contract, and each and all of its parts and provisions, including the signatures, must be given meaning, and force and

effect, if that can consistently and reasonably be done. An interpretation which gives reasonable meaning to all of its provisions will be preferred to one which leaves a portion of the writing useless, meaningless, or inexplicable."). The Court finds the Agreements to be clear and unambiguous as it relates to the release language and the carve-out in section 11(d) of the FSA.

Accordingly, Defendants' Motion is granted as to those claims attempting to change the ownership percentages as agreed to in the FSA. This includes Plaintiff's claim that she is entitled to a higher ownership percentage in the non-legacy dealerships. While Plaintiff contends that her right to a larger ownership interest was not disclosed to her, she agreed to the terms of the FSA that set forth those interests. She was aware of the 2008 and 2011 transfers at the time of signing the FSA that form the basis of her claim. Furthermore, Plaintiff has failed to dispute material facts or put forth disputed material facts demonstrating that her interests in the non-legacy dealerships were concealed from her. It is undisputed that in 2018, Plaintiff "thought it was wrong that [Defendants] had a greater ownership percentage than [she did]" in the WJ Entities, and she moved forward with signing the FSA and the Redemption Agreements. Plaintiff pointed to no evidence in the record to dispute that this included the legacy and non-legacy dealerships. Relying on allegations in the Complaint are improper at the summary judgment stage. *Holland*, 125 S.W.3d at 428; *Rye*, 477 S.W.3d at 265.

However, Plaintiff's claims relating to Cannata's purported acceptance of a reduced price for the dealership goodwill in exchange for Defendants' opportunity to invest in future dealership and real estate acquisitions with Hudson, the right to participate in future acquisitions with Hudson, Defendants' purported negotiation of a 30% "kicker" which would allow them to receive additional annual cash flow, the $5 million in cash each Defendant received following the sale in the form of excess real estate loan proceeds, and that the sale was carried out to remove Plaintiff

from the business, would remain as those claims relate to the amount Plaintiff received pursuant to the sale.

The record demonstrates that Cannata emailed her advisors around July 2019 that "our original expectations were that we'd be closer to 80mm, however, we'll agree to 70mm if we're also equity partners." Further, Jim Cameron, a dealership attorney, had previously advised Cannata that an initial $60 million dealership goodwill offer was "light by as much as $20 million." There were also several emails from Cannata indicating that she desired to buy out her siblings. In August and September 2019, she had negotiated Defendants' employment compensation plans with Hudson, which confirmed the 10% equity stake and $3 million each in "annual cash flow." Further, other purported rollover benefits were obtained. Plaintiff asserts that none of this information was disclosed to her before signing the FSA. Therefore, there are disputed issues of material fact that prevent summary judgment related to these claims.

Statute of Limitations

Defendants contend that the breach of fiduciary duty claims are barred by the statute of limitations. Defendants contend that the applicable statute of limitations is one year pursuant to Tenn. Code Ann. § 48-249-407, the Revised Limited Liability Company Act. Defendants argue that Plaintiff knew or should have known of her claims relating to the ownership and operation of the WJ Entities as of 2019, or at least by June 29, 2020 when the FSA went into effect, because it was entered to resolve Plaintiff's complaints regarding the ownership and operation of the WJ Entities.

Plaintiff, however, contends the applicable statute of limitations is three years because Plaintiff has brought claims against Defendants as joint shareholders and business partners. The parties also entered into a Tolling Agreement and disagree as to the effect of that agreement.

Regardless, the Court finds there are disputed issues of material fact as to when Plaintiff's claims arose. Ordinarily, whether a plaintiff discovered, or in the exercise of reasonable diligence, should have discovered an injury resulting from a defendant's act creates a genuine issue of fact, precluding disposition by summary judgment. *Riccardi v. Carl Little Constr. Co.*, No. E2020-00678-COA-R3-CV, 2021 WL 3137251, at *6 (Tenn. Ct. App. July 26, 2021) (citations omitted). The Court declines to find that the statute of limitations bars Plaintiff's claims at this stage.

Conclusion

Based on the undisputed material facts, the Court finds that the Agreements are clear and unambiguous which limit Plaintiff's claims.

IT IS THEREFORE ORDERED, ADJUDGED and DECREED that Defendants' Motion for Partial Summary Judgment is GRANTED IN PART and DENIED IN PART. Counts I and V for breach of fiduciary duty as they relate to any claim attempting to change the ownership percentages as agreed to in the FSA, are hereby DISMISSED, including any claim related to ownership percentages of the non-legacy dealerships; and Count IV for financial duress is hereby DISMISSED. All other requests for relief are DENIED.

Case Management

The parties are ORDERED to contact the Calendar Clerk within twenty-one (21) days of this Memorandum and Order to schedule a Rule 16 Conference to discuss further proceedings in this case.

It is so ORDERED.

ANNE C. MARTIN
CHANCELLOR, PART II
DAVIDSON COUNTY BUSINESS COURT

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