

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

KENNETH R. BURD, JR.,

Plaintiff,

v.

CHRISTOPHER MICHAEL RICHEY,
KINDRED SHAY SMITH, GREENRISE
TECHNOLOGIES, LLC, MID-TN
ACQUISITION, LLC, MTEC
HOLDINGS, INC., MTEP HOLDINGS,
INC., MID-TN EROSION & SEDIMENT
CONTROL, LLC, and MID-TN EROSION
PRODUCTS, LLC,

Defendants.

Case No. 22-0926-BC

MEMORANDUM AND FINAL ORDER

This matter came before the Court on January 20, 2023 upon Plaintiff's Motion to Alter or Amend the Court's Memorandum and Order entered November 15, 2022, and upon Defendants Christopher Michael Richey's ("Richey") and Shay Kindred Smith's ("Smith") renewed Motion to Dismiss pursuant to Tenn. R. Civ. P. 12.02(6).

Procedural History

On November 15, 2022, the Court granted the Defendants Greenrise Technologies, LLC and Mid-TN Acquisition, LLC's (collectively the "Greenrise Defendants") Motion to Dismiss and dismissed the claims against them with prejudice. The remaining Defendants'¹ Motions to Dismiss were denied at that time, but the Court ordered the Plaintiff to tender back the consideration he received under the Restrictive Covenant Agreement and amend his Complaint to reflect

¹ The remaining Defendants are METP Holdings, Inc., MTEC Holdings, Inc. (collectively the "Seller Defendants"); Defendants Mid-TN Erosion & Sediment Control, LLC and Mid-TN Erosion Products, LLC (collectively the "Operating Entities").

compliance with same before the litigation could continue. The Court allowed Defendants to renew their Motions to Dismiss if Plaintiff failed to comply.

On December 15, 2022, Plaintiff filed a Motion to Alter or Amend the Court's November 15, 2022 Order seeking to 1) clarify that Plaintiff is not required to tender back any funds in order to pursue individual claims against Defendants Richey and Smith that are not barred by the release contained in the Restrictive Covenant Agreement; and 2) modify the dismissal of Plaintiff's claims against the Greenrise Defendants to a dismissal without prejudice.

On December 30, 2022, Plaintiff filed a Notice of Voluntary Dismissal of Claims against the Seller Defendants and Operating Entities without prejudice, and the Court granted the relief in an Order entered on January 3, 2023. Also on December 30, 2022, Plaintiff filed his First Amended Complaint alleging the following: 1) intentional misrepresentation and fraudulent concealment against Defendants Smith and Richey; 2) breach of fiduciary duty against Defendant Smith; 3) breach of fiduciary duty against Defendant Richey; and 4) implied partnership against Defendant Richey. These claims were largely the same (if not exactly the same) as the claims pled in the initial complaint but for the removal of the entity defendants. On January 6, 2023, Defendants Richey and Smith filed a renewed Motion to Dismiss, seeking to dismiss all claims against them.

The Court will address each Motion in turn.

Motion to Alter or Amend

In the First Amended Complaint, Plaintiff has alleged claims against only the individual defendants. Plaintiff argues that his claims of fraud and breach of fiduciary duty against Defendants Richey and Smith are not barred by the language of the release set forth in the Restrictive Covenant Agreement. Plaintiff seeks clarification from this Court that he is not required to tender back the consideration he received under the agreement for the claims set forth in the

First Amended Complaint. Plaintiff also asks that the Court exercise its discretion to specify that Plaintiff's claims against the Greenrise Defendants are dismissed without prejudice. The Court declines to alter or amend its November 15, 2022 Order.

Motion to Dismiss

Defendants Richey and Smith renewed their Motion to Dismiss, arguing that Plaintiff has failed to tender back the consideration he received for signing the Restrictive Covenant Agreement and amend his complaint to reflect compliance with same as required by the Court's November 15, 2022 Order. In response, Plaintiff contends that the release language set forth in the Restrictive Covenant Agreement is not broad enough to include the claims set forth in the First Amended Complaint. The Court disagrees. The release language in the Restrictive Covenant Agreement releases "any and all claims . . . known or unknown, fixed or contingent, past, present or future, in law or in equity, relating to, arising out of, or in connection with any claims that [Plaintiff] may now have or may in the future have against the Company" ² The Court finds this language broad enough to include those claims set forth in the First Amended Complaint. In the original Complaint, Plaintiff alleges that Defendants engaged in a conspiracy to defraud him out of two companies that he owned with Defendants Richey and Smith—those two companies are defined as the "Company" in the release language. Plaintiff signed a Restrictive Covenant Agreement and received payment in exchange for what he believed was for his ownership interest in the companies, which Defendants dispute. The underlying issue is whether Plaintiff held an ownership interest in the companies; although Plaintiff's claims in the First Amended Complaint are not directly against the "Company" as that term is defined, his claims "relate to, arise out of, or are in connection with" claims he now has or may in the future have against the "Company." Therefore,

² The "Company" is defined as, each and collectively, defendants Mid-TN Erosion & Sediment Control, LLC and Mid-TN Erosion Products, LLC.

the Court finds that the claims alleged in the First Amended Complaint are barred by the broad release language as set forth in the Restrictive Covenant Agreement.

Conclusion

IT IS THEREFORE, ORDERED, ADJUDGED, and DECREED, that Plaintiff's Motion to Alter or Amend is DENIED.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED, that Defendants Richey and Smith's Motion to Dismiss is GRANTED and that Plaintiff's claims set forth in his First Amended Complaint are hereby DISMISSED without prejudice. Costs are taxed to Plaintiff.

It is so ORDERED.

s/Anne C. Martin

ANNE C. MARTIN
CHANCELLOR
BUSINESS COURT DOCKET
PILOT PROJECT

cc by U.S. Mail, email, or efilings as applicable to:

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RULE 58 CERTIFICATION

A copy of this Order has been served by U.S. Mail upon all parties or their counsel named above.

s/Megan Broadnax
Deputy Clerk & Master

1-24-23
Date