

IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE
AT NASHVILLE

WJ ROADSHOW, LLC, a Tennessee)
Limited Liability Company,)

Plaintiff/Counter-Defendant,)

v.)

Case No. 23-0582-BC - II
JURY DEMAND

JAM FACTORY, LLC, a Tennessee)
Limited Liability Company and RYAN)
O’NAN, individually,)

Defendants/Cross-Defendant.)

AND)

WHISKEY JAM, LLC a Tennessee)
Limited Liability Company and WARD)
GUENTHER,)

Defendants/Counter-Plaintiff,)

v.)

ROAR, LLC, a Tennessee Limited)
Liability Company,)

Third-Party Defendant.)

ORDER ON MOTION TO DISMISS

This matter came before the Court on May 21, 2024 upon Third-Party Defendant ROAR, LLC’s (“ROAR”) Motion to Dismiss Counts II and III in Defendant Ryan O’Nan’s (“O’Nan”) Answer, Crossclaim, Counterclaim, and Third-Party Complaint (“Third-Party Complaint”). ROAR brings this Motion under Tenn. R. Civ. Pro. 12.02(6) asserting O’Nan’s cross-claims are improper under Tenn. R. Civ. P. 13.07 and thus he fails to state a claim for which relief can be granted. Specifically, ROAR moves to dismiss the claims for breach of contract and unjust

enrichment and seeks attorney's fees and costs incurred pursuant to Tenn. Code Ann. §20-12-119(c).

The Court has the pleadings for consideration in relation to this motion, including the documents attached to the Third-Party Complaint. Having considered the pleadings, the relevant caselaw and the arguments of counsel, the Court is now ready to rule

MOTION TO DISMISS LEGAL STANDARD

A motion to dismiss based upon Tennessee Rule of Civil Procedure 12.02(6) requires a court to determine if the pleadings state a claim upon which relief may be granted. Tenn. R. Civ. P. 12.02(6); *Cullum v. McCool*, 432 S.W.3d 829, 832 (Tenn. 2013). A Rule 12.02(6) motion challenges “only the legal sufficiency of the complaint, not the strength of the plaintiff’s proof or evidence.” *Webb v. Nashville Area Habitat for Humanity, Inc.*, 346 S.W.3d 422, 426 (Tenn. 2011). A defendant filing a motion to dismiss “admits the truth of all the relevant and material allegations contained in the complaint, but . . . asserts that the allegations fail to establish a cause of action.” *Id.* (quoting *Brown v. Tenn. Title Loans, Inc.*, 328 S.W.3d 850, 854 (Tenn. 2010)) (alteration in original) (internal quotation marks omitted). The resolution of such a motion is determined by examining the pleadings alone. *Id.*; see also *Phillips v. Montgomery Cnty.*, 442 S.W.3d 233, 237 (Tenn. 2014).

Additionally, Rule 13.07 of the Tennessee Rules of Civil Procedure governs cross-claims, stating:

A pleading may state as cross-claim any claim by one (1) party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein or relating to any property that is the subject matter of the original action. Such a cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

Id. The Court must now determine whether O’Nan asserts proper claims in this action against ROAR.

**FACTUAL ALLEGATIONS IN THE COMPLAINT RELEVANT TO
ROAR’S MOTION**

A. O’Nan and Whiskey Jam, LLC Form and Operate WJR.

O’Nan formed WJ Roadshow, LLC (“WJR”), a live entertainment talent booking and production services company, with Ward Guenther (“Guenther”) on behalf of Whiskey Jam, LLC (“Whiskey Jam”) in October of 2019. O’Nan co-founded WJR—along with another Whiskey Jam-affiliated entity—with Guenther to create a synergy with these other business lines of Whiskey Jam and to appropriately account for the varying level of governance of financial rights that each of them were to have in each of their businesses together. O’Nan was also employed by ROAR, LLC, a limited liability company, the sole member of which is Jay Froberg (“Froberg”). In accordance with his employment arrangement with ROAR, O’Nan asserts he assigned his fifty percent (50%) financial interest in WJR to ROAR.

Over time, the parties and their representatives interchangeably used the terms “equity” and “revenue-participation” to describe the various parties’ participation in the entities attendant to this litigation. Despite this, at no time did ROAR have any equity in WJR. Each month, WJR would pay ROAR \$2,500.00 in rent in order to lease the space. This payment was separate and apart from the allocation and assignment of financial rights in WJR as discussed later herein.

B. O’Nan’s Employment With ROAR.

O’Nan was employed at ROAR starting on April 1, 2018, and was tasked with the goal of rebuilding the ROAR brand in the Nashville music community. As a part of his employment with ROAR, O’Nan and ROAR entered into an employment agreement (the “Employment Agreement”) which is reflected by the parties’ email correspondence on February 24, 2018. The

Employment Agreement, which predates O’Nan and Guenther’s formation of WJR, establishes the assignment of revenue from various O’Nan-related entities in exchange for salary and benefits. As the Employment Agreement notes, the logistics of this non-traditional arrangement required some effort between the parties in order to effectuate the terms of their agreement.

Additionally, the Employment Agreement notes that “should “[O’Nan] no longer be a ROAR employee, Whiskey Jam leaves with [O’Nan].” Parenthetically, the Employment notes that the foregoing applies to any entity “(other than any entity in which ROAR has invested and retained equity)”. O’Nan asserts at no time did ROAR ever invest in WJR nor did ROAR retain any equity in WJR.

In exchange for the revenue assignments, ROAR was to pay O’Nan a fixed salary and provide certain benefits. First, O’Nan’s base salary was to be \$200,000 per year. Second, O’Nan and his family were to join ROAR’s healthcare plan at the sole expense of ROAR. Third, O’Nan was set to receive a car allowance. Fourth, O’Nan was set to receive benefits related to reimbursements for his cell phone, computer, and any other technology reasonably required to perform his job functions for ROAR. ROAR paid its employees approximately \$75 per month towards these expenses. Finally, ROAR was to match O’Nan’s retirement contributions once ROAR established a company-sponsored 401K plan. O’Nan and ROAR ratified the terms of the Employment Agreement through their conduct. At no time did ROAR ever raise a claim of equity ownership in WJR, exercise governance rights in WJR, or raise an issue with it being paid solely as a holder of financial rights in WJR.

C. ROAR Breaches the Employment Agreement & O’Nan Terminates His Employment.

O’Nan fulfilled his obligations under the Employment Agreement. Subsequently once he and Guenther established WJR, he assigned his portion of that entities’ revenue to ROAR. Despite

this, O’Nan asserts ROAR did not fulfill its obligations under the Employment Agreement. ROAR did not pay for O’Nan and his family’s participation in ROAR’s health plan, ROAR did not pay O’Nan a car allowance, ROAR did not pay O’Nan a technology benefit for a cell phone, computer, or other technology reasonably required for O’Nan to fulfill his job functions. Additionally, ROAR did not establish an employer-sponsored 401k plan, and as a result, did not make any matching retirement contributions with respect to O’Nan.

O’Nan also asserts he was underpaid, and that ROAR further breached the Employment by claiming an equity ownership interest in WJR while it was only entitled to a financial assignment interest and by wrongfully retaining the 2022 year-end distribution of WJR despite O’Nan’s previous termination of ROAR’s financial participation in WJR. O’Nan’s share of this distribution should have been \$225,000.00 and O’Nan asserts he was entitled to this full amount. at a minimum, he asserts he should have been paid for the final three months of 2022 during which ROAR’s financial participation had been terminated. This amount is approximately \$56,250.00. Despite the foregoing, ROAR continued to receive 100% of the revenue assigned to it by O’Nan pursuant to the Employment Agreement.

O’Nan terminated his employment with ROAR, effective September 30, 2022. Termination of the Employment Agreement additionally terminated ROAR’s right to participate in the revenue assigned to it by O’Nan from various WJR entities.

WJR filed its Original Complaint on May 8, 2023, followed by a First Amended Complaint on January 26, 2024. In the First Amended Complaint, WJR asserted claims against Jam Factory, LLC, Whiskey Jam, Guenther, and O’Nan concerning the Defendants misconduct in connection with their distributions of assets owned by WJR and interference with customer contacts which caused WJR to suffer damages. On February 12, 2024, Whiskey Jam filed an Answer including, a

Cross-Claim against O’Nan and a Third-Party Claim against ROAR seeking a declaratory judgment as to the ownership interest of the parties in WJR. Additionally, Whiskey Jam asserted an alternative counterclaim against WJR seeking a judicial valuation of Whiskey Jam’s membership interest in WJR.

Subsequently on March 15, 2024, O’Nan filed an Answer including a Counter-Claim against WJR and a Cross-Claim against ROAR. First, O’Nan sought a declaratory judgment against WJR and ROAR regarding his interest in WJR. Second, O’Nan asserted a breach of contract claim, or in the alternative an unjust enrichment claim, based upon ROAR’s alleged breach of his Employment Agreement for ROAR’s claim that it owns an equity ownership interest in WJR. This is now before the Court on ROAR’s Motion to Dismiss the Cross-Claims brought forth by O’Nan.

LEGAL ANALYSIS

ROAR seeks dismissal of O’Nan’s breach of contract and alternative unjust enrichment claim asserting O’Nan has failed to state a claim for which relief can be granted. Specifically, except for O’Nan’s request for a declaratory judgment regarding ownership in Count I, ROAR asserts that the other claims are not related to the ownership structure of WJR, nor the other unlawful conduct by the other Defendants. Thus, ROAR asserts these claims are improper cross-claims because these claims do not fall under the purview of permissible cross-claims under Tenn. R. Civ. P. 13.07.

In his response in opposition, O’Nan asserts the following: (1) ROAR improperly asserts its motion to dismiss under Tenn. R. Civ. P. 12.02(6) to seek attorney’s fees under Tenn. Code Ann. § 20-12-119(c); (2) ROAR improperly examines the claims under Rule 13.07 because ROAR and O’Nan are not co-parties in this action and it should have been examined in part under Rule

14, or under Rule 13 as a counterclaim; and (3) notwithstanding a Rule 13 or Rule 14 analysis, the claims arise out of the same transaction or occurrence because the parties' conduct with respect to the negotiation, execution, and performance under the Employment Agreement, as well as the context surrounding it, are relevant to both the inquiry of ownership of WJR and O'Nan's claims regarding ROAR's breach of the Employment Agreement, thus they are proper.

The Court considers O'Nan's claims against ROAR to be cross-claims, as asserted in O'Nan's Answer to Plaintiff's First Amended Complaint and Cross-Claim against ROAR, because the claims are asserted against a co-party on the same side of the litigation. As such, the Court must now consider whether the claims are appropriate cross-claims under Rule 13.07. Under Rule 13.07, cross-claims are appropriate against a co-party if either of the following are met: (1) the claim arises out of the same transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein or (2) relating to any property that is the subject matter of the original action. *Id.*

Tennessee courts have applied a broad interpretation to the same transaction or occurrence analysis. In *Roberts*, the Court of Appeals relied on a Sixth Circuit case which applied a "logical relationship" test to determine whether claims arise out of the same "transaction or occurrence" as the phrase is used in the similar federal rule on compulsory counterclaims. *Roberts v. Vaughn*, No. W200801126COAR3CV, 2009 WL 1608981, at *7 (Tenn. Ct. App. June 10, 2009) (citing *Sanders v. First Nat'l Bank & Trust Co. in Great Bend*, 936 F.2d 273, 277 (6th Cir.1991) (determining whether a counterclaim was compulsory under Fed.R.Civ.P. 13(a)). Under this approach, claims arise out of the same transaction or occurrence if "the issues of law and fact raised by the claims are largely the same and whether substantially the same evidence would support or refute both claims." *Id.* (citing *Moore v. N.Y. Cotton Exch.*, 270 U.S. 593 (1926)). Similar to compulsory

counterclaims, cross-claims are permitted if those claims arise out of the same transaction or occurrence that is the subject of the original action, or a counterclaim.

Here, O’Nan asserts a breach of contract, or in the alternative, an unjust enrichment claim against ROAR for ROAR’s alleged misconduct in carrying out the Employment Agreement entered into by O’Nan and ROAR. The underlying causes of action in WJR’s First Amended Complaint arise out of alleged misconduct by the Defendants, in connection with their management of WJR. Likewise, the Third-Party Claim against ROAR by Whiskey Jam is seeking a declaratory judgment as to ROAR’s ownership interest in WJR. O’Nan alleges he assigned a financial interest in WJR to ROAR pursuant to his Employment Agreement, therefore asserting ROAR breached the Employment Agreement by seeking to claim an ownership interest in the company, among other things.

The Court finds O’Nan’s claims for breach of contract, and alternatively for unjust enrichment, against ROAR to be proper cross-claims under the Tennessee Rules of Civil Procedure and the applicable case law. A major issue in this case is the ownership structure of WJR and what ownership Whiskey Jam, O’Nan, and/or ROAR have in the company. Furthermore, the issue of the parties’ ownership is indistinguishable intertwined with WJR’s claims asserted in its’ First Amended Complaint regarding the Defendants alleged misconduct in managing WJR and Whiskey Jam’s alternative counterclaim against WJR seeking a judicial evaluation of their ownership interest in WJR.

Finally, any claim that ROAR has to an interest in WJR, as it claims in its Answer, directly results from its Employment Agreement with O’Nan, which forms the basis for O’Nan’s breach of contract cross-claim against ROAR. Thus, under the logical relationship test described above, O’Nan’s cross-claims arise out of the same transaction or occurrence as multiple other claims

asserted by the other parties. Additionally, the issues of law and fact raised by the claims regarding ownership are largely the same as O’Nan’s cross-claims and substantially the same evidence would be used to support or refute both claims, namely the governing documents of WJR and the Employment Agreement. The Court does not find that inclusion of O’Nan’s claims in this action would confuse or burden the parties in any way. In contrast, the Court finds these claims are related enough to the underlying action that inclusion would promote judicial economy and provide the parties with a time efficient resolution to their issues. Based on these findings, the Court finds O’Nan’s cross-claims are proper and ROAR’s Motion to Dismiss therefore cannot succeed under Tenn. R. Civ. Pro. 12.02(6).

It is therefore ORDERED, ADJUDGED, and DECREED that ROAR, LLC’s Motion to Dismiss Counts II and III in Defendant Ryan O’Nan’s (“O’Nan”) Answer, Crossclaim, Counterclaim, and Third-Party Complaint is hereby DENIED.

It is so ORDERED.

s/ Anne C. Martin

**ANNE C. MARTIN
CHANCELLOR
BUSINESS COURT DOCKET
PILOT PROJECT**

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