

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

ROBERT H. EDWARDS, M.D.,)
)
Plaintiff,)
)
VS.)
)
UROSITE PARTNERS f/k/a)
UROSITE, L.P.,)
)
Defendant.)

NF
NO. 15-946-BC

2015 NOV -4 PM 1:43
GLENK & MASTER
DAVIDSON CO. CHANCERY CT.
D.C. & M.

FILED

**MEMORANDUM AND ORDER: (1) DENYING PARTS I(C)
AND I(D) OF DEFENDANT'S MOTION TO DISMISS AND
(2) DENYING PLAINTIFF'S MOTION TO
REFER TO ARBITRATION**

This lawsuit was filed by a physician to establish that he remains a limited partner in the Defendant partnership. That is disputed by the Defendant who asserts it lawfully exercised its right to redeem the Plaintiff's interest on March 13, 2015. To prevail on his position, the Plaintiff seeks a declaratory judgment or specific performance, and recovery of damages and attorneys fees. He also seeks referral of part of his claims to arbitration, and for this case to be held in abeyance pending the outcome of the arbitration.

Filed three months ago, the case is being handled by Counsel and the Court by carving out preliminary issues of law to be decided initially which hopefully will streamline the litigation.

Presently before the Court to rule upon are two parts of a preliminary motion to dismiss (Parts I(C) and I(D)), filed by the Defendant, which ruling is also determinative of whether arbitration shall proceed.

As to Part I(C) of Defendant's Motion, the salutary purpose of preliminary motions to dismiss has clarified in the briefing and oral argument that "Dr. Edwards is not pursuing the claims addressed in Part I(C) of Urosite's memorandum, and Dr. Edwards' breach of contract claim is not a pre-2014 claim." October 8, 2014, *Plaintiff's Memorandum* at 6. Accordingly, Part I(C) of Defendant's motion to dismiss is denied as the claims the motion challenges are not being asserted by the Plaintiff.

As to Part I(D) of Defendant's Motion, it is in contention and is decided herein. Part I(D) of Defendant's Motion seeks dismissal of the Plaintiff's claim that the Defendant's right of redemption has expired (hereinafter the Plaintiff's "Expiration Claim"). This claim is found in paragraphs 15 and 22 of the Complaint. The basis asserted by the Defendant for dismissal is release. The Defendant asserts that the Plaintiff settled and released the Expiration Claim in a January 10, 2014 Separation Agreement and Mutual Release ("SA").¹ The Expiration Claim also is the matter the Plaintiff seeks to refer to arbitration.

¹The SA contains a confidentiality provision and has been filed under seal with the Court. References herein to words or sections in the SA are limited to generic provisions, ordinary words and references to the SA stated in the Complaint which is not under seal.

After studying the SA, the Partnership Agreement entered into by the Plaintiff and Defendant (“Urosite Partnership Agreement”), applying Tennessee law of contract construction, and applying the provisions of the SA and the Urosite Partnership Agreement to the facts alleged in the Complaint, the Court makes two rulings:

1. Based upon the text of the SA and not considering extrinsic circumstances, the Plaintiff did not settle and release his Expiration Claim in the SA. The Plaintiff’s Expiration Claim is still alive to be asserted in this case. The Defendant’s Motion to Dismiss the Plaintiff’s Expiration Claim is denied.

2. The Plaintiff’s Expiration Claim does not come within the purview of the arbitration clause of Article 15.1 of the Urosite Partnership Agreement but, instead, comes within the venue selection clause of section 12 of the SA. That provision provides venue in a state or federal court in the Middle District of Tennessee. The reason is that the Expiration Claim became ripe after and was triggered by a controversy arising out of the SA. The Plaintiff’s motion for arbitration is, then, denied, and the Expiration Claim shall be decided herein with the other claims.

These rulings are based upon the following law and analysis.

Background

Context for the above rulings is that the Plaintiff practiced medicine and was a partner, contract employee and then employee at will in Urology Associates, P.C. (the

“Practice”). This entity is not a party to the case and it is a separate entity from the Defendant.

Nevertheless, even though the Defendant and the Practice are separate entities, they are related. The Defendant entity was formed in 2000 by the Plaintiff and 21 other physician-shareholders of the Practice. Further, the Defendant entity was formed to purchase, own, manage and operate real and personal property located at the primary office location of the Practice. Complaint at ¶ 4. Thus, the Defendant is a commercial real estate venture formed by the partners of the Practice, which included the Plaintiff at the time the Defendant was formed in 2000.

Another way the Defendant is related to the Practice is that the Defendant’s governing document—the Urosite Partnership Agreement—provides that certain events which occur in the Practice are determinative of Defendant’s redemption rights. Section 9.2 of the Urosite Partnership Agreement provides that upon the Practice terminating the employment of a partner, such as the Plaintiff, the Defendant can redeem the partner’s interest.

Additional relevant background is that on June 30, 2011, the Plaintiff’s employment contract with the Practice terminated; however, the Plaintiff continued to practice medicine there as an employee at will without an employment agreement.

Thereafter, according to the Complaint at ¶¶ 6, 7, disputes arose between the Plaintiff and the Practice regarding retirement, compensation and other issues.

Effective December 31, 2013, the Practice terminated the Plaintiff’s employment.

In the face of these disputes, the Plaintiff, the Defendant and the Practice entered into the SA on January 10, 2014.

Parties' Positions on Whether Plaintiff Released in the SA His Claim That the Defendant's Redemption Rights Expired on June 30, 2011

The issue before the Court is construction of the Plaintiff's release in section 4(b) of the SA of claims he "ever had or now have . . . may claim to have in the future."

The Plaintiff's position is that when he entered into the SA on January 10, 2014, there existed between the parties a disagreement as to the status of the Defendant's redemption rights under the Urosite Partnership Agreement. The Plaintiff claims that in January of 2014, it was his position that the Defendant had no redemption rights. Plaintiff's belief was that those expired when the Defendant failed to exercise them within a reasonable time of the June 30, 2011 termination of Plaintiff's employment contract with the Practice. As of the January 10, 2014 execution of the SA, the Plaintiff claims Defendant's redemption rights had expired. The Plaintiff asserts that the wording of the SA reflects that he and the Defendant did not resolve, settle or release the Expiration Claim dispute but left its determination and resolution for another day.

The Defendant's position is that the text of the SA indicates that the Plaintiff released his claim that the Defendant's right to exercise the redemption had expired, particularly because the release in the SA speaks in terms of claims "ever had or now have."

Analysis

After studying the SA and the Urosite Partnership Agreement and considering the law, the Court concludes the Plaintiff did not release or settle his Expiration Claim.

In so ruling, the Court has used Tennessee law of contract construction which requires that the plain meaning be attributed to words and that every word be given effect. *Allmand v. Pauletic*, 292 S.W.3d 618, 630 (Tenn. 2009); *Wilson v. Moore*, 929 S.W.2d 367, 373 (Tenn. App. 1996)

Applying this rule to the SA requires the Court to give effect to “any”—the adjective which precedes and explains the redemption right of the Defendant in paragraphs 1(f) and 2 of the SA. The Court is persuaded by the Plaintiff’s argument that by using the words “any right” instead of “the right,” the SA conveys that the Plaintiff was not conceding, acknowledging, releasing or settling its position that the Defendant had failed to timely exercise its right to redeem and his position that the right had, therefore, expired by the time of the January 10, 2014 execution of the SA. The Plaintiff’s argument is that use of the word “any” left open whether the Defendant’s right of redemption still existed at the time of the SA. The Court concludes that this meaning is the outcome upon application of the Tennessee rules of contract construction.

Hence, the construction the Court attributes to the SA is that it linked the Defendant’s right, if any, to demand redemption of Plaintiff’s Urosite limited partnership interest to the provisions in the SA regarding Plaintiff’s practice in Davidson and Rutherford Counties, but

the SA did not release or settle the issue of whether the Defendant's redemption right had expired.

Thus, the Defendant's motion to dismiss the Expiration Claim because it was released in the SA is denied.

As to arbitration, however, the Court concludes the Plaintiff's Expiration Claim is not subject to that forum. The Plaintiff acknowledges that "Controversies that are connected to the Urosite Agreement and that are also regarding the Separation Agreement must be submitted to the Court, because the Separation Agreement was signed more recently." *Memorandum In Support of Motion to Refer to Arbitration*, September 10, 2015, at 5. Added to that is the Plaintiff's position in his October 8, 2015 *Memorandum* that it was not until after March 13, 2015, the date Defendant made its redemption demand, that the Plaintiff's Expiration Claim became ripe. From these positions of the Plaintiff, two conclusions follow.

First, because the Separation Agreement was signed more recently and the Plaintiff's Expiration Claim was not ripe until after the SA was signed, the Tennessee court venue selection clause of the SA controls the Expiration Claim, not the arbitration provision of the Urosite Partnership Agreement.

Secondly, the Expiration Claim does not rise to the level of a separate matter arising under the Urosite Partnership Agreement arbitration provision. Plaintiff's assertion of the Expiration Claim is part and parcel of the broader dispute of this lawsuit that the Plaintiff's

current activities in Davidson and Rutherford Counties have triggered the rights, if any, of the Defendant to demand redemption contained in paragraph 2 of the Urosite Partnership Agreement. Plaintiff's preservation of his Expiration Claim with the word "any" right in sections 1(f) and 2 of the SA places the Expiration Claim under the Tennessee venue selection clause of section 12 of the SA and outside of the arbitration provision of the Urosite Partnership Agreement.


It is therefore ORDERED that Part I(C) and Part I(D) of Defendant's Motion to Dismiss are denied.

It is further ORDERED that Plaintiff's Motion to Refer to Arbitration is denied.

From the foregoing rulings, the next step to move the case to disposition is ruling on Parts I(A) and (B), and II of Defendant's September 8, 2015 motion to dismiss.

It is ORDERED that on or before November 20, 2015, Plaintiff shall file its response to the remainder of Defendant's motion to dismiss. The Reply Deadline is December 8,

2015. Following that, the Court will notify counsel whether oral argument is necessary or if the Court shall rule on the papers.



ELLEN HOBBS LYLE
CHANCELLOR
TENNESSEE BUSINESS COURT
PILOT PROJECT

cc: Nader Baydoun
Stephen Knight
Camille Chandler
James Bowen
Elizabeth Gonser

 MAILED
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