IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

ROMAN ZRAZHEVSKIY and TATIANA MIRONOVA, Plaintiffs, v. WHITE RIVER ENERGY CORP., a Nevada corporation, JAY PUCHIR, an individual, and E3 TAX, LLC d/b/a E3 FAMILY OFFICE, a Missouri limited liability company, Defendants.	Case No. 5:26-cv-05135-TLB Chief Judge Timothy L. Brooks

DEFENDANTS WHITE RIVER ENERGY CORP. AND JAY PUCHIR'S REPLY IN SUPPORT OF THEIR MOTION TO DISMISS AND, IN THE ALTERNATIVE, TO STAY

Plaintiffs' Response (Dkt. 36) largely answers a motion Defendants did not file. The Motion does not seek dismissal of Count I's Section 3 breach-of-contract theory; the Brief in Support says so. Dkt. 34-1 at 2. Instead, the Motion seeks dismissal or a stay of "the alleged Section 5.1(b) indemnity-breach theory within Count I"; dismissal of the four counts pleaded against Mr. Puchir; dismissal of Ms. Mironova from the contract counts; and narrowing of the remaining counts and remedies. Dkt. 34 ¶¶ 1–12. Three of those requests are genuinely disputed, and each can be decided on the pleadings and the Agreement.

Three narrowing points are not disputed. Plaintiffs "do not contend that Mironova may enforce White River's express contractual obligations under Counts I and II in her own right"; they state that the First Amended Complaint (FAC) "does not seek unjust-enrichment recovery in addition to recovery under an enforceable contract"; and they "do not contend that attorneys'

fees are recoverable simply because this case includes contract claims." Dkt. 36 at 27–28. Defendants ask that those three points be carried into the order.

I. Section 5.1(a) indemnifies a pleaded breach of a representation; it does not make the Section 5.1(b) tax-credit indemnity ripe.

Plaintiffs' lead argument is textual: they argue that the Agreement's Section 5.1(b) opens "Without limiting the generality of the foregoing," so its conditions precedent do not limit Section 5.1(a). Dkt. 36 at 13. Defendants accept that premise. Section 5.1(b) does not limit Section 5.1(a). That is not the question.

The question is what Section 5.1(a) requires for indemnification. It indemnifies only losses "arising from any breach by the Seller of any of the Seller's representations, warranties and/or covenants contained herein." FAC Ex. A (ECF No. 27-1) § 5.1(a). A Section 5.1(a) claim therefore needs a pleaded breach of a representation, warranty, or covenant. Where Plaintiffs have pleaded one, Defendants have not moved to dismiss the Count I claim for it; the Motion does not seek dismissal of Count I's theory under Section 3 of the Agreement, including the Section 3.6 broker-commission theory, and asks only that Section 3.6 damages not duplicate the $600,000 sought elsewhere in the FAC. Dkt. 34 ¶ 10; Dkt. 34-1 at 2, 33–35.

What Section 5.1(a) does not do is make the tax-credit indemnity a present, freestanding claim. Count I invokes Section 5.1(a) expressly only for the alleged Section 3.6 breach, FAC ¶ 84, which the Motion leaves alone. But it separately alleges a breach by "failing and refusing to indemnify Plaintiffs upon the IRS's effective rejection of the Credits," FAC ¶ 85, without naming either subsection. Read under Section 5.1(b), that theory is premature, because an "effective rejection" is not the final, Tax Court–confirmed determination the parties made the trigger. Dkt. 34 ¶ 9. Read under Section 5.1(a), it requires a predicate "breach by the Seller of any of the Seller's representations, warranties and/or covenants." FAC Ex. A § 5.1(a). An IRS

rejection is not such a breach, and neither is declining to pay a Section 5.1(b) obligation that has not arisen. The only predicate left is the Section 3 theory, FAC ¶¶ 83, 91, and on that theory Section 5.1(a) is coextensive with Count I's damages claim. Dkt. 34-1 at 32.

The Court may decide this on the documents. "[I]n a case involving a contract, the court may examine the contract documents in deciding a motion to dismiss," *Stahl v. U.S. Dep't of Agric.*, 327 F.3d 697, 700 (8th Cir. 2003) (considering the agreement and a form exhibit attached to both the complaint and the Rule 12(b)(6) motion), and that is so "even if contract documents not attached to the complaint refute a breach-of-contract claim," *Zean v. Fairview Health Servs.*, 858 F.3d 520, 526 (8th Cir. 2017) (holding that a questionnaire and consent form submitted by the defendant were properly considered in deciding a Rule 12(b)(6) motion).

Plaintiffs' footnote does not close the gap. They argue that Section 5.1(b)'s sequence can never ripen in their favor because the IRS has repudiated the Credits, so insisting on that sequence would be futile. Dkt. 36 at 13 n.1. Maybe so, but futility is still not occurrence; indeed, it pleads the opposite. But the parties bargained for a defined trigger, and the consequence of a trigger that has not occurred is not judgment on the indemnity. It is dismissal without prejudice or a stay, which is the only relief the Motion seeks on this subclaim.

Plaintiffs also offer one sentence of the Ettinger letter as proof of what Section 5.1(a) supposedly means. Dkt. 36 at 13. That letter is counsel's advocacy answering a pre-suit demand; it does not construe the Agreement, and the Court need not rely on it in either direction. If the Court does consider it, the same paragraph from Mr. Ettinger states that the Section 3 representations are "specific and limited" and that "[n]one of them is a warranty of the Credits' federal-tax validity." Dkt. 36-2 at 2. Defendants address the letter in their response to Plaintiffs' Rule 201 motion, filed herewith.

II. The FAC pleads a distribution relationship with e3, not facts making e3's statements White River's.

Plaintiffs say e3's purchaser-facing statements are attributable to White River because "[t]he alleged authority arises from White River's conduct: approving e3 as a distribution partner, entering into" a written marketing arrangement, allocating credits, and compensating e3 for sales. Dkt. 36 at 8. In short, a partnership; Plaintiffs have confused the law of partnership with the law of agency. A marketing and distribution arrangement is not a grant of authority to speak for the principal about the federal-tax treatment of what is being distributed, and Plaintiffs cite no authority otherwise.

Under Nevada law, a party claiming apparent authority must prove "(1) that he subjectively believed that the agent had authority to act for the principal and (2) that his subjective belief in the agent's authority was objectively reasonable." *Great Am. Ins. Co. v. Gen. Builders, Inc.*, 113 Nev. 346, 352, 934 P.2d 257, 261 (1997) (stating the showing a party claiming apparent authority must make). Plaintiffs concede Count V as to White River reaches e3's statements only "to the extent White River made, supplied, authorized, approved, or ratified them." FAC ¶ 104. The facts Plaintiffs cite — the marketing arrangement, the approval of e3 as a distribution partner, the allocation of Credits, and e3's compensation, Dkt. 36 at 7–8 — describe a sales channel. They do not plead with particularity that White River supplied, authorized, or ratified the particular statements about the Credits' tax treatment on which Count V relies.

Rule 9(b) requires the inquiry to proceed statement by statement and defendant by defendant, and the Eighth Circuit has done exactly that. *Trooien v. Mansour*, 608 F.3d 1020, 1030 (8th Cir. 2010) (affirming dismissal of all misrepresentation claims against one defendant where the complaint "failed … to attribute any of the alleged misrepresentations" to him). As Defendants said in opening, this is not a request to carve a single claim into pieces. It is a request

to apply Rule 9(b) to each alleged misrepresentation and to let Count V proceed on those that satisfy it.

Agreement Section 4.6(c) narrows what remains, and Defendants' position is narrower than the one Plaintiffs answer. Plaintiffs invoke *Blanchard v. Blanchard*, 108 Nev. 908, 912, 839 P.2d 1320, 1322–23 (1992), which rejected a defense resting on provisions reciting that the buyer had not relied on the seller's representations because "integration clauses do not bar claims for misrepresentation." Dkt. 36 at 6. Defendants do not contend otherwise; the Motion seeks only to narrow Count V. The point is narrower. The Buyer represented that he acted "independently and without reliance upon the Seller … except that the Buyer has relied upon the Seller's express representations, warranties and covenants in this Agreement." FAC Ex. A § 4.6(c). Reliance on White River's express representations is preserved by that clause; a fraud theory that contradicts those terms is not. Plaintiffs plead one, but against e3: they allege that e3's assurance that "White River's purchase agreement provides a return of original capital" was false because Section 5.1(b) conditions any return of capital on a final, Tax Court–confirmed IRS determination. FAC ¶ 72. *Road & Highway Builders, LLC v. N. Nev. Rebar, Inc.*, 128 Nev. 384, 391, 284 P.3d 377, 381 (2012) (reversing a fraud finding where the claim "directly contradicts the terms of the contract").

III. Ms. Mironova cannot enforce an agreement she did not sign or a covenant implied in it, and each count against Mr. Puchir is derivative or unpleaded.

Plaintiffs' concession as to Counts I and II is expressly limited to those counts. Dkt. 36 at 27. Count III does not survive that limit, but not because of the concession. Section 8 of the Agreement provides that "[n]othing in this Agreement, expressed or implied, is intended to confer on any person other than the Parties or their respective heirs, successors and assigns any rights, remedies, obligations, or other liabilities under or by reason of this Agreement." FAC Ex.

A § 8. A covenant implied in the Agreement is a right arising by reason of it, and Section 8 withholds such rights from non-parties. Ms. Mironova is a non-party who, at most, benefits incidentally from performance, and that does not permit her to sue on the contract. *Lipshie v. Tracy Inv. Co.*, 93 Nev. 370, 380, 566 P.2d 819, 825 (1977) (a non-party who "might only have incidentally benefited by the performance of the agreement" cannot enforce it). She should be dismissed from Counts I through III. That dismissal reaches only her contract claims and decides no non-contract theory she asserts.

As to Mr. Puchir, the Motion seeks dismissal of the four counts pleaded against him: Counts IV, VII, VIII, and XIII. Dkt. 34 ¶ 1. Plaintiffs' personal-participation argument, Dkt. 36 at 8–10, governs liability for a tort pleaded against the officer; the FAC pleads no misrepresentation count against Mr. Puchir, because Counts V and VI are captioned against White River alone. FAC at 41, 46 (Count V and Count VI captions). The alter-ego count fares no better. Nevada requires unity of interest and ownership, and neither control nor shared officers supplies it. Nev. Rev. Stat. § 78.747(2); *Rowland v. Lepire*, 99 Nev. 308, 318, 662 P.2d 1332, 1338 (1983) (holding evidence that the corporation "was undercapitalized and that there was little existence separate and apart from" its two principal officers "insufficient to support a finding" that they were its alter ego). Count IV alleges a benefit to Mr. Puchir only "on information and belief," with no supporting fact to survive *Iqbal*, FAC ¶ 98, and the only declaration Count VIII seeks as to him is that he "is the alter ego of White River," FAC ¶ 132(d). Both fail with it.

Count XIII fails as to Mr. Puchir for two reasons. First, an officer acting in his corporate capacity cannot be the second party to a conspiracy with his own corporation. *Collins v. Union Fed. Sav. & Loan Ass'n*, 99 Nev. 284, 303, 662 P.2d 610, 622 (1983) (agents and employees

"cannot conspire with their corporate principal or employer where they act in their official capacities on behalf of the corporation and not as individuals for their individual advantage"); *accord Faulkner v. Ark. Children's Hosp.*, 347 Ark. 941, 962, 69 S.W.3d 393, 407 (2002) ("a corporation cannot conspire with itself"). The FAC pleads that Mr. Puchir acted as White River's CFO; it pleads no fact that he acted for his own individual advantage. Second, the combination with e3 on which Plaintiffs rely, Dkt. 36 at 26–27, is not pleaded as an agreement, whether it runs through White River or through Mr. Puchir. The FAC alleges the distribution arrangement, e3's compensation, communications sent through a shared "NATC Operations Team" channel, and "joint efforts of Puchir and Moriarty to address and minimize purchaser concerns about IRS treatment." FAC ¶ 152. A commercial relationship and parallel conduct are not a meeting of the minds to defraud, and where the object alleged is fraud the agreement must be pleaded with particularity.

IV. Defendants rest on the Motion as to Counts II, III, and VI, Count IV as to White River, the federal-tax portion of Count VIII, and the fee and punitive-damages requests.

Defendants rest on the Motion and the Brief in Support as to each of those counts and requests. Dkt. 34 ¶¶ 3–6, 8, 12. Nothing in this Reply waives any argument made in either.

CONCLUSION

Defendants respectfully request that the Court grant the Motion to the extent set forth in the Motion and the Brief in Support, and grant such other and further relief as is just and proper. Dated: September 30, 2026.

Respectfully submitted,

By: /s/ Michael J. Wynne*
Michael J. Wynne (TX Bar No. 00785289)
Cameron Powell* (DC Bar No. 459020)

GREGOR WYNNE ARNEY, PLLC
4265 San Felipe, Suite 700
Houston, Texas 77027
Telephone: (281) 450-7403
mwynne@gwafirm.com
cpowell@gwafirm.com

By: /s/ Kathryn E. Platt
Kathryn E. Platt (AR95177)
BRADY & PLATT, P.L.C.
2792 E. Millennium
P.O. Box 9298
Fayetteville, AR 72703-0021
Telephone: (479) 443-3334
kplatt@bradyplatt.com

ATTORNEYS FOR DEFENDANTS WHITE RIVER ENERGY CORP. & JAY PUCHIR

*Admitted Pro Hac Vice

CERTIFICATE OF SERVICE

I certify that on September 30, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record who are registered CM/ECF users.

By: /s/ Michael J. Wynne*
Michael J. Wynne

*Admitted Pro Hac Vice