9-28-2023

Saint Joseph Health System, et. al. v. Emory Healthcare, Inc., et al., Order on Cross Motions for Summary Judgment

John J. Goger
Superior Court of Fulton County, Metro Atlanta Business Case Division

IN THE SUPERIOR COURT OF FULTON COUNTY
BUSINESS CASE DIVISION
STATE OF GEORGIA

SAINT JOSEPH HEALTH SYSTEM, a Georgia nonprofit corporation; SJHS/JOC HOLDINGS, INC., a Georgia nonprofit corporation, and TRINITY HEALTH CORPORATION, an Indiana nonprofit corporation,	)	Civil Action File No. 2022CV362553
Plaintiffs,	)	
v.	)	
EHC/JOC HOLDINGS, LLC, a Georgia limited liability company and EMORY HEALTHCARE, INC., a Georgia nonprofit corporation,	)	
Defendants.	)	

ORDER ON CROSS MOTIONS FOR SUMMARY JUDGMENT

This matter comes before the Court on Plaintiffs' Motion for Partial Summary Judgment and Defendants Emory Healthcare, Inc. and EHC/JOC Holdings, LLC's Motion for Summary Judgment. Having reviewed the record and heard argument of counsel during a July 27, ,2023 hearing, the Court enters the following order.

1. INTRODUCTION

Plaintiffs Trinity Health Corporation ("Trinity"), Saint Joseph Health System ("SJHS"), and SJHS/JOC Holdings, Inc. ("SJHS Newco") brought this action against Defendants Emory Healthcare, Inc. ("EHC") and EHC/JOC Holdings, LLC

("EHC Newco").[1] The dispute involves the two members of a joint operating company that owns and operates various health-care entities, including Emory Saint Joseph's Hospital (the "hospital"). One member would like to sell its ownership interest to the other, and the parties dispute the enforceability of an agreement concerning the sale.

2. STATEMENT OF FACTS

2.1 Formation of an Entity to Own and Operate Emory Saint Joseph's Hospital and other Healthcare Entities

In December of 2011, SJHS Newco and EHC Newco formed a joint operating company called Emory/Saint Joseph's, Inc. (the "JOC"). (Defs.' SUMF ¶ 1; Pls.' Resp. to Defs.' SUMF ¶ 1.) They are the only two members of the JOC which owns the hospital as well as Emory Johns Creek Hospital, and a physician practice group. (Id. ¶¶ 4-5; Pls.' Resp. to Defs.' SUMF ¶¶ 4-5.) EHC Newco owns 51% of the membership interests in the JOC, and SJHS Newco owns the other 49%. (Id. ¶ 4; Pls.' Resp. to Defs.' SUMF ¶ 4.) EHC manages the JOC. (Id. ¶ 8; Pls.' Resp. to Defs.' SUMF ¶ 8.)

Effective December 31, 2011, the JOC, SJHS Newco, EHC Newco, EHC, and Trinity's predecessor entered into the Membership Agreement of Emory/Saint Joseph's, Inc. (the "Membership Agreement").[2] (Id. ¶ 9; Pls.' Resp. to Defs.' SUMF

[1] The parties are legally related as follows: The sole member of SJHS Newco is SJHS, and SJHS's sole member is Trinity. (Defs.' SUMF ¶ 2; Pls.' Resp. to Defs.' SUMF ¶ 2.) Trinity is an Indiana non-profit corporation that operates a multi-institutional, Catholic healthcare delivery system. (Pls.' SUMF ¶ 9; Defs.' Resp. to Pls.' SUMF ¶ 9.) The sole member of EHC Newco is EHC. (Defs.' ¶ 3; Pls.' Resp. to Defs.' SUMF ¶ 3.)

[2] A copy of the Membership Agreement is Defs.' Ex. 1.

¶ 9.) It established certain rights, duties, and restrictions regarding the JOC's operations. (Id. ¶ 10; Pls.' Resp. to Defs.' SUMF ¶ 10.) Article 10 of the Membership Agreement specifically addressed its term and termination. While the Membership Agreement has not ended or been terminated, certain portions of this provision are key to the present dispute. Section 10.1(d)(ii) specifically addressed "SJHS Newco's Exit Right" and describes a "Put Right" held by SJHS Newco. (Id. ¶ 12; Pls.' Resp. to Defs.' SUMF ¶ 12.) Should certain prescribed circumstances trigger it, SJHS could exercise the Put Right by providing written notice to EHC Newco. (Id. ¶ 13; Pls.' Resp. to Defs.' SUMF ¶ 13.) The written notice would then require EHC Newco to respond in one of three ways. (Id.) One such option would require EHC Newco to, "purchase from SJHS Newco all, but not less than all, of [its membership interest] . . . in accordance with a Membership Interest Purchase Agreement" which was attached to the Membership Agreement as Exhibit M. (Mem. Agr. § 10.1(d)(ii).) Consistent with its description above, Exhibit M is titled "Form of Membership Interest Purchase Agreement."[3] (Id. ¶ 14; Pls.' Resp. to Defs.' SUMF ¶ 14.) Exhibit M to the Membership Agreement left blank spaces to be filled in with a date, purchase price, and wire transfer instructions. (Ex. M 1.) It is undisputed that this "Put Right" obligation established in the Membership Agreement has never been exercised. (Id. ¶ 15; Pls.' Resp. to Defs.' SUMF ¶ 15.)

[3] A copy of Exhibit M is Defendants' Exhibit 6.

2.2 "Saint Joseph's" Service Mark

The hospital is Atlanta's longest-serving hospital, founded by the Sisters of Mercy in 1880, and the "Saint Joseph's" name has been used in connection with the provision of healthcare services in Atlanta since that time. (Id. ¶ 110; Pls.' Resp. to Defs.' SUMF ¶ 110.) Saint Joseph's Hospital of Atlanta, Inc. owns the service mark known as "SAINT JOSEPH'S" with the logo of a cross within a red circle, in connection with acute care hospital services to SJHS. (Pls.' SUMF ¶ 32; Defs.' Resp. to Pls.' SUMF ¶ 32.) Around the time the JOC was created and became its owner, Saint Joseph's Hospital of Atlanta, Inc. licensed the service mark to SJHS via a Service Mark License Agreement. (Id.) By its own terms, the Service Mark License Agreement automatically ends upon the termination or expiration of the Membership Agreement and can be discontinued if SJHS Newco no longer owns any membership interest in the JOC. (Id. ¶ 33; Defs.' Resp. to Pls.' SUMF ¶ 33.) In that event, the JOC would have a period of no longer than one year to phase out its use of the mark and re-assign it to SJHS. (Id.)

2.3 The Members of the JOC Discuss EHC Newco Purchasing SJHS Newco's Membership Interest

In 2019, after the JOC had been in operation for several years, the parties to the Membership Agreement discussed their goals for the JOC and the future of their relationship. (Id. ¶ 44; Defs.' Resp. to Pls.' SUMF ¶ 44.) Those discussions eventually focused on EHC Newco's potential buyout of SJHS Newco's 49%

interest in the JOC which would transform EHC Newco into the JOC's sole member. (Id. ¶ 44; Defs.' Resp. to Pls.' SUMF ¶ 44; Defs.' SUMF ¶¶ 16-17; Pls.' Resp. to Defs.' SUMF ¶¶ 16-17.)

Defendants contend, "Emory Saint Joseph Hospital's Catholic identity is fundamental to its mission and operations . . ." (Defs.' SUMF ¶ 111.) It is the only Catholic hospital in the Atlanta area. (Defs.' Ex. 52 (Gerety Dep.) 24.) However, Plaintiffs would no longer be able to supply that Catholic identity if SJHS Newco transferred its ownership interest in the hospital. (Pls.' SUMF ¶ 78; Defs.' Resp. to Pls.' SUMF ¶ 78.) In that event, the new owner "would need to find an alternative source of Catholic affiliation for the hospital. (Id.) In July of 2021, as the sale negotiations reached a critical point, Defendants expressly stated to Plaintiffs that maintaining this hospital's Catholic identity was "the most important non-financial aspect" of a possible sale and described it as a "foundational commitment." (Defs.' SUMF ¶ 117; Pls.' Resp. to Defs.' SUMF ¶ 117; Defs.' Ex. 15.) Accordingly, the parties discussed how the hospital could maintain its Catholic identity after such a transfer.

Plaintiffs worked with Defendants to address this issue. (Pls.' SUMF ¶ 80.) Plaintiffs researched other transactions where a non-Catholic health system came to own and control a Catholic hospital and that hospital was allowed to retain its Catholic identity. (Defs.' SUMF ¶¶ 119-120; Pls.' Resp. to Defs.' SUMF ¶¶ 119-120.) Based on their findings, Plaintiffs determined a potential option was to have

the Archdiocese of Atlanta (the "Archdiocese") act as a sponsor thereby allowing the hospital to maintain its Catholic identity should EHC Newco become its sole owner. (Id. ¶¶ 120-122; Pls.' Resp. to Defs.' SUMF ¶¶ 120-122.) Plaintiffs introduced this concept to representatives of the Archdiocese and scheduled a meeting with the Archbishop and his staff for September 27, 2021. (Pls.' SUMF ¶ 81; Defs.' Resp. to Pls.' SUMF ¶ 81.) By Plaintiffs' own description, they "spearheaded" early meetings with the Archdiocese. (Id.) On September 8, 2021, Plaintiffs shared some of their findings with Defendants and informed them of the September 27, 2021 meeting. (Defs.' SUMF ¶ 120; Pls.' Resp. to Defs.' SUMF ¶ 120.)

The day prior to the meeting, Tom Andrews, the President and CEO of SJHS, provided Defendants with a meeting outline. (Id. ¶ 128; Pls.' Resp. to Defs.' SUMF ¶ 128; Pls.' SUMF ¶ 4; Defs.' Resp. to Pls.' SUMF ¶ 4.) It reflected that Plaintiffs hoped to convey to the Archbishop that all interested parties wanted the hospital to retain its Catholic identity in the event of a transfer and request the Archdiocese favorably consider the request and begin negotiating a sponsorship agreement. (Id.) Subsequent to this September 27, 2021 meeting, the Archdiocese and the Defendants discussed a sponsorship arrangement for the hospital and began exchanging drafts of a formal agreement. (Id. ¶¶ 132-136; Pls.' Resp. to Defs.' SUMF ¶¶ 132-136.)

2.4 The MOU

In negotiating the transfer of SJHS Newco's membership interest in the JOC, the parties could not agree on a price. On September 27, 2021, the same date as the key early meeting with the Archdiocese to discuss possible sponsorship, the parties entered into a Valuation Process Memorandum of Understanding ("MOU").[4] (Id. ¶ 19; Pls.' Resp. to Defs.' SUMF ¶ 19.) The MOU "set out a binding process by which the parties will complete the valuation process," using a panel of three appraisers. (MOU Preface, ¶ B.1-10.) The MOU also set a timeline for the parties to develop the documents regarding the transfer (the "Transaction Documents") and close on the transfer (the "Transaction") (Id. ¶ B.11.)

2.5 The Appraisal Process

Pursuant to the MOU, three appraisal firms were engaged to conduct a valuation of the SJHS Newco membership interest in the JOC. (MOU ¶ B.2-3.) Both sides in the Transaction separately engaged an appraisal firm, and those two firms were tasked with selecting a third appraisal firm, ultimately deciding upon Stout Risius Ross, LLC ("Stout"). (Id.; Pls.' SUMF ¶ 61; Defs.' Resp. to Pls.' SUMF ¶ 61.) Subsequently, Trinity and EHC jointly retained Stout pursuant to an engagement letter dated October 1, 2021 (the "Engagement Letter") which contained a warranty provision.[5] (Defs.' SUMF ¶ 29; Pls.' Resp. to Defs.' SUMF ¶ 29; Eng.

[4] The MOU is Defs.' Ex. 5.
[5] The Engagement Letter is Defs.' Ex. 16.

Ltr. ¶ 7.) The MOU established a formula using the three appraisals to calculate the purchase price. (MOU ¶ B.10.) The formula attempted to neutralize the impact of any outlying appraisal setting the median appraisal as a benchmark value and establishing a floor or cap on the other appraisals in relation thereto. (Id.)

On November 22, 2021, after completing the agreed-upon investigative and comment phases, Stout issued a final report wherein it valued SJHS's 49% interest in the JOC at $411,600,000 (the "Stout Report"). (Pls.' SUMF ¶ 97; Defs.' Resp. to Pls.' SUMF ¶ 97.) That same day, Christopher Augostini and Dr. Qiang Xu, two of Defendants' representatives who were working on the Transaction, exchanged emails discussing the Stout Report.[6] (Pls.' Ex. DD.) These two expressed dismay over Stout's final conclusion. (Id.) They discussed how the MOU formula might apply based on Stout's appraisal and were postulating the Exit Value could be approximately $384 million. (Id.) Xu asked Augostini, "[w]ould you accept that number? . . . ." Augostini curtly replied, "[h]as to be under $350."[7] (Id.)

The other two appraisers issued their final reports. SJHS Newco's appraiser valued its interest at $434,762,000 while EHC Newco's appraiser valued that same

[6] Augostini was the Executive Vice President for Business Administration and Chief Financial Officer for Emory University. (Pls.' SUMF ¶ 23; Defs.' Resp. to Pls.' SUMF ¶ 23.) Defendants acknowledge he was on their leadership team that was making decisions about the Transaction. (Defs.' Resp. to Pls.' SUMF ¶ 19.) EHC's President and Chief Operating Officer, testified Augostini was one of two "main decision-makers . . ." (Pls.' Ex. 0 (Petersen Dep.) 47-48.) Xu was closely associated with Augostini and assisted with Defendants' "analysis and forecasting with regard to the valuation process." (Pls.' Ex. B (Augostini Dep) 77-78; Defs.' Resp. to Pls.' SUMF ¶ 24.)

[7] Defendants contend Augostini's email statement, "[h]as to be under 350," is cryptic and not easily understood. (Defs.' Reply 13.) They note that when deposing Augostini, Plaintiffs merely asked him to authenticate the email and made no attempt to clarify his meaning. (Id.; Pls.' Ex. B (Augostini Dep.) 148-149.)

interest at $267,022,000. (Pls.' SUMF ¶ 101; Defs.' Resp. to Pls.' SUMF ¶ 101.) Applying the formula established in the MOU to these three appraisals, the Exit Value was calculated at $391,880,667. (Id. ¶ 102; Defs.' Resp. to Pls.' SUMF ¶ 102.)

Defendants contend Stout's analysis contained numerous errors and that Stout failed to perform its appraisal duties in a diligent and competent manner thus rendering its input into the purchase price calculation as invalid.[8] (See generally Defs.' Resp. to Pls.' SUMF ¶¶ 97, 103.) On January 20, 2022 Defendants unilaterally invoked the warranty provision of the Stout Engagement Letter, identifying several areas of concern and requesting a correction of the Stout Report. (Pls.' SUMF ¶ 111; Defs.' Resp. to Pls.' SUMF ¶ 111.) On February 4, 2022, Stout's counsel responded that Stout found no merit in Defendants' objections. (Defs.' Ex. 38.) No corrected Stout Report was issued. (Defs.' SUMF ¶ 58; Pls.' Resp. to Defs.' SUMF ¶ 58.)

2.6 The Parties Exchange Drafts of Sale Documents

In the MOU, the parties agreed, "[t]he documents required to complete the Transaction will be developed in parallel with this valuation process to enable a closing of the Transaction on November 30, 2021 with an effective date and full

[8] Defendants describe their objections to the Stout valuation as primarily concerning its use of faulty projections about labor costs stemming from some COVID-related "anomalies." (Defs.' Mot. 5; Defs.' SAFD ¶ 93.)

payment of the Exit Value . . . on December 1, 2021 (the 'Transaction Documents')." (Id. ¶ 24; Pls.' Resp. to Defs.' SUMF ¶ 24; MOU ¶ B.11.)

With regard to documentation, the MOU stated, "[t]he Transaction Documents will include the terms and conditions set forth in Exhibit M to the Membership Agreement except as may be mutually agreed to by the Parties." (MOU ¶ B.11.) Additionally, the parties to the MOU agreed "time is of the essence and that they are committed to completing the Transaction as expeditiously as possible consistent with the timelines set forth in this MOU" but they expressly recognized those timelines were "aggressive" and, despite their best efforts, might not be met "for a variety of reasons outside of their control." (MOU ¶ B.13.) Accordingly, the MOU further provided, "if closing of the Transaction has not occurred or is not reasonably likely to occur by February 28, 2022, the Parties will meet to determine a revised timeline and modifications needed to this MOU." (Id.)

Consequently, as part of this process running "parallel" to the valuation, the parties began exchanging drafts of sale documents. (MOU ¶ B.11.) On November 8, 2021, Plaintiffs' attorney Linda Ross provided counsel for the Defendants an initial draft of a purchase agreement. (Defs.' SUMF ¶ 62; Pls.' Resp. to SUMF ¶ 62; Defs.' Ex. 40.) She explained that she used Exhibit M as a "starting point" but noted the "draft also contains various updates insofar as Exhibit M was created more than ten years ago." (Defs.' Ex. 40.) Ross acknowledged that both she and counsel for the Defendants agreed Exhibit M would provide the "framework and the bulk of

what [was] needed" to document the sale. (Defs.' Ex 9 (Ross Dep.) 69.) The red-lined version of Exhibit M Plaintiffs first proposed to the Defendants reflected revisions, deletions, and additions. (Defs.' SUMF ¶ 66; Pls.' Resp. to Defs.' SUMF ¶ 66.) It also contemplated yet-to-be-drafted ancillary agreements would be appended to the sale document, including among others an assignment of trademarks. (Id. ¶ 68; Pls.' Resp. to Defs.' SUMF ¶ 68.)

On December 21, 2021, approximately one month after the Stout Report was issued, Defendants' counsel responded with comments to the Plaintiffs' draft that also included its own set of additions, deletions, and revisions. (Id. ¶ 76; Pls.' Resp. to Defs.' SUMF ¶ 76; Defs.' Ex. 41.) One question raised by Defendants' counsel in this particular draft concerned Plaintiffs' intent regarding the assignment of trademarks. (Id. ¶ 84; Pls.' Resp. to Defs.' SUMF ¶ 84; Ex. 41 11 n. 2.)

On January 26, 2022, a few days after Defendants had formally invoked the warranty provision of the Stout Engagement Letter seeking corrections to the Stout Report, Plaintiffs' counsel responded with another draft of a closing document, marking up the version supplied by Defendants. (Id. ¶¶ 85-86, 92; Pls.' Resp. to Defs.' SUMF ¶¶ 85-86, 92; Ex. 43.) In the cover letter to this third iteration of the draft, Plaintiffs' counsel stated, "[a]s a next step, it seems like it would be best to arrange a call to discuss our respective thoughts vs. exchanging further redlines. Can we put something on the calendar for the end of next week?" (Defs.' Ex. 42.)

2.7 Disputes Arise Over the MOU's Reference to Exhibit M

As part of its timeline, the MOU established February 28, 2022 as the outermost closing deadline. (MOU ¶ B.11, 13.) It also imposed a requirement that, in the event of a dispute, senior management should attempt to resolve it informally before resorting to any legal or equitable remedies. (Id. ¶ B.14.) Consistent with this requirement, on February 10, 2022, executives from both sides discussed how they might move forward with the Transaction, addressing disputes related to the valuation process. (Defs.' SUMF ¶ 97; Pls.' Resp. to Defs.' ¶ 97.) This resolution attempt was unsuccessful. (Id.)

On February 14, 2022, Plaintiffs' counsel informed Defendants that Plaintiffs desired to close on the February 28, 2022 timeline established in the MOU, employing the Exit Value of $391,880,667 and documenting the sale with a form based on Exhibit M, implementing none of the changes or additions the parties had been negotiating during the prior three months. (Defs.' SUMF ¶¶ 98-99; Pls.' Resp. to Defs.' ¶¶ 98-99.) Defendants refused, describing Plaintiff's demand as "abrupt." (Defs.' SUMF ¶ 101; Pls.' Resp. to Defs.' SUMF ¶ 101.) They claimed Plaintiffs' demand to close on a $391 million transaction within the following two weeks was "inconsistent with the parties' agreements and course of conduct." (Id.) Defendants specifically noted the parties had failed to reach an agreement on what Defendants described as a "fundamental" issue regarding the use of the Saint Joseph's mark. (Id.)

On February 22, 2022, as part of its response to Plaintiffs' demand to close, Defendants invoked ¶ B.13 of the MOU, asserting a closing could not reasonably occur before February 28, 2022 and Plaintiffs were required to "meet and determine a revised timeline and modifications" to the MOU. (Id.) Further disagreements arose between the parties regarding the proper interpretation of this "meet and confer" provision. (See generally Defs.' SUMF ¶¶ 105-109; Pls.' Resp. to Defs.' SUMF ¶¶ 105-109.) The parties did engage in what Defendants describe as a "settlement conference" on March 18, 2022, but the dispute was not resolved. (Defs.' SUMF ¶ 107; Pls.' Resp. to Defs.' SUMF ¶ 107.)

One week thereafter, on March 25, 2023, Plaintiffs filed this suit. Defendants then ceased negotiations with the Archdiocese regarding a possible sponsorship agreement. (Pls.' SUMF ¶ 85; Defs.' Resp. to Pls.' SUMF ¶ 85.) Defendants deemed it "inappropriate" to continue such negotiations while litigating with Plaintiffs. (Id. ¶ 183.) Plaintiffs' corporate representative found no reason to doubt that Defendants exercised good faith in their negotiations with the Archdiocese. (Defs.' Ex. 52 (Gerety Dep.) 79-80.)

3. PROCEDURAL POSTURE

Plaintiff's Verified Complaint for Specific Performance contained three causes of action. With regard to Count I for breach of contract, Plaintiffs sought specific performance of the MOU requiring Defendants to immediately close on Plaintiffs' interest in the JOC and pay the purchase price of $391,880,667. (Compl.

¶¶ 57-65.) Alternatively, Plaintiffs sought monetary damages in that same amount. (Id. ¶ 66.). This alternate claim has since been withdrawn.[9] In Count II, Plaintiffs asserted a separate claim for breach of implied duty of good faith and fair dealing based on Defendants' failure to accept the Exit Value determined by the MOU's formula and by failing complete the Transaction. (Id. ¶¶ 67-77.) In Count III, Plaintiffs seek to recover their litigation expenses under O.C.G.A. § 13-6-11. (Id. ¶¶ 79- 80.) Plaintiffs also seek to recover pre-judgment interest under O.C.G.A. § 7-4-15. (Id. ¶¶ 66, 78.)

On April 27, 2022, Defendants filed their Answer and Counterclaims. In their first counterclaim, Defendants seek a declaratory judgment regarding the enforceability of the MOU asserting the Stout report "is not a valid input for the valuation process set forth in the MOU" as well as the parties' failure to reach a full agreement governing the sale of SJHS Newco's membership interest in the JOC. (Countercl. ¶¶ 53-65.) Count II for breach of contract is pled in the alternative. (Id. 67.) Should the MOU be deemed enforceable, Defendants assert Plaintiffs breached the MOU by failing to meet and determine a revised timeline for modifications once it became apparent the Transaction was not "reasonably likely" to close by February 28, 2022. (Id. ¶¶ 66-74; MOU ¶ B.13.) Defendants also claim Plaintiffs breached their implied duty of good faith and fair dealing "by refusing to negotiate the

[9] On June 27, 2023, while these motions were pending, Plaintiffs withdrew their alternate claim for damages so as "to simplify the case and focus on Plaintiffs' request for specific performance." (Pls.' Not. of Am. Of Complaint and Filing of the Ver. 1st Am. Compl. for Specif. Perf. 2)

documents required to complete the [] Transaction." (Id. ¶¶ 75-79; MOU ¶ B.11.) In light of these alleged breaches, Defendants assert their right to rescind the MOU. (Id. ¶¶ 82, 85.)

Based on Plaintiffs' unopposed motion, the case was transferred to the Metro Atlanta Business Case Division on April 25, 2022. The parties engaged in a significant period of fact and expert discovery that concluded on March 24, 2023. (3rd Am. CMO 1.) These cross motions for summary judgment were filed April 6, 2023 together with three *Daubert* motions. These motions were heard on July 27, 2023.[10]

4. STANDARD OF REVIEW

In Knaack v. Henley Park Homeowners Ass'n, Inc., 365 Ga. App. 375, 378, (2022), the Georgia Court of Appeals recently reiterated the long-held standard for granting summary judgment.

> Summary judgment is proper when there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. The burden on the moving party may be discharged by pointing out by reference to the affidavits, depositions and other documents in the record that there is an absence of evidence to support the nonmoving party's case. If the movant meets this burden, the nonmovant cannot rest on [their] pleadings, but rather must point to specific evidence giving rise to a triable issue (citations omitted).

See also O.C.G.A. § 9-11-56 (c), (e).

[10] The post-hearing consideration of this motion was deferred at the request of the parties so that they might pursue alternate dispute resolution efforts. Those efforts proved unsuccessful.

"On cross-motions for summary judgment, each party must show there is no genuine issue of material fact and that each, respectively, is entitled to summary judgment as a matter of law; either party, to prevail by summary judgment, must bear its burden of proof." (Citation omitted.) White v. Gens, 348 Ga. App. 145, 146 (2018).

In Fulton County v. Ward-Poag, 310 Ga. 289, 292 (2020), the Georgia Supreme Court reiterated the "well-established principles" guiding a trial court's consideration of a motion for summary judgment, stating, "[i]n reviewing the evidence, a court must construe all facts and draw all inferences in favor of the non-movant." Ward-Poag expressly relied on Messex v. Lynch, 255 Ga. 208, 210 (1985) which further provides, "[t]he party opposing the motion is to be given the benefit of all reasonable doubts in determining whether a genuine issue exists, and the trial court must give that party the benefit of all favorable inferences that may be drawn from the evidence."

5. ANALYSIS

As outlined above, the MOU established "parallel" processes whereby the Transaction Documents would be "developed" at the same time SJHS Newco's membership interests would be valued by the trio of appraisers. (MOU ¶ 11.) These summary judgment motions address both facets of the MOU. However, the Court finds issues regarding contract formation to be dispositive, eliminating the need to consider issues related to the valuation.

Plaintiffs contend this case is controlled by Goobich v. Waters, 283 Ga. App. 53 (2006) which concerned the sale of a business. (Pls.' Mot. 10-11.) In Goobich, the parties agreed upon an addendum whereby a previously non-binding letter of intent to sell the business became binding and provided that the "definitive" agreement would be later drawn by an attorney. Id. at 55. However, some subsequently obtained appraisals suggested the sellers may have undervalued the business, and "the deal soon failed." Id. The purchaser brought suit, and the trial court concluded no enforceable contract existed. The appellate court found this was error, determining the plain language of the addendum shows that the parties had reached a binding agreement on all material terms concerning the purchase and sale of the [business,]" and the contingency that the closing documents be prepared and executed did not render that agreement unenforceable. Id. at 57. The appellate court expressly noted, "[d]eferral of agreement on a nonessential term does not invalidate an otherwise valid contract (citation omitted)." Id. However, the instant record reflects issues concerning the hospital's Catholic identity and the Saint Joseph's mark were essential terms for EHC Newco to purchase SJHS Newco's interest in the JOC, and, unlike Goobich, these essential terms were unresolved.

At its core, "[a] contract is an agreement between two or more parties for the doing or not doing of some specified thing." O.C.G.A. § 13-1-1; see also O.C.G.A. § 13-3-2 ("The consent of the parties being essential to a contract, until each has assented to all the terms, there is no binding contract. . . .") Accordingly, agreements

to agree in the future may not be enforced under Georgia law. See Stephens v. Castano-Castano, 346 Ga. App. 284, 288 (2018) ("If a contract fails to establish an essential term, and leaves the settling of that term to be agreed upon later by the parties to the contract, the contract is deemed an unenforceable agreement to agree.")

Plaintiffs contend the issues Defendants raise about the Saint Joseph's mark and the retention of the hospital's Catholic identity are merely pretexts Defendants have invoked to avoid paying the binding purchase price determined under the MOU -- an amount much higher than Defendants had anticipated or felt was fair. (July 27, 2023 Hrg. Tr. 89, 95, 98-99.) Plaintiffs contend, "these non-price issues are either not in dispute or not material." (Id. 89.)

The record indisputably indicates these terms were material, and Defendants clearly communicated their import to Plaintiffs. In November of 2019, as the parties were just beginning to discuss a buyout, representatives from both sides had a preliminary meeting. In describing that meeting, Andrews, the SJHS President and CEO relayed, "we told them what was important to us, and they told us what was important to them." (Defs. Opp'n. Ex. 29 (Andrews Dep.) 46.) Foremost among the items Defendants told Plaintiffs were important to them were the retention of the Catholic identity for the hospital and the continued use of the Saint Joseph's "brand." (Id. 44-50.) In an internal communication strategizing about the potential sale, Andrews described these two issues as "leverages" Plaintiffs could use in negotiations. (Id. 45.)

As the sale negotiations continued, retaining the Catholic identity for the hospital was addressed in email correspondence between the parties. (Defs.' Ex. 15; Defs.' SUMF ¶ 117; Pls.' Resp. to Defs.' SUMF ¶ 117.) This July 2021 email chain pre-dated the MOU and summarized discussions between the parties as to how the valuation might proceed. (Id.) In a latter portion of the email chain, Peterson, EHC's President and Chief Operating Officer told Defendants' representatives,

> just realized I was silent on the most important non-financial aspect – our commitment to maintain the Catholic identity of Emory Saint Joseph's Hospital. If we believe this commitment should be memorialized in our valuation process binding agreement, that's fine. Just didn't want my omission to be seen as backing away from that foundational commitment.

(Id.)

Plaintiffs further suggest that even if these terms about the hospital's Catholic identify and the use of the mark were essential, they were not really in dispute. For example, Plaintiffs argue Defendants have failed to produce "a scintilla of evidence that the Archdiocese won't give them Catholic identity." (July 27, 2023 Hrg. Tr. 90.) Indeed, Plaintiffs have presented evidence that the Archdiocese was receptive to a sponsorship agreement with Defendants. (Spotanski Aff. ¶ 12.) With regard to the mark, as part of the briefing for these motions, Plaintiffs argued an agreement regarding the mark was not "integral" to the Transaction and could have been negotiated separately.[11] (Id.)

[11] During oral argument, Plaintiffs' counsel changed tack, stating "our clients are willing to license the name Saint Joseph's to Emory going forward for free." (July 27, 2023 Hrg. Tr. 75.)

Plaintiffs' argument that these issues were likely to have been resolved is well taken. However, the fact remains no agreement was reached. While negotiations regarding these issues may have seemed promising and close to resolution, once the Transaction became binding, the bargaining posture of all parties would drastically change. Issues that initially appeared easy to address could become more complicated with this change, and Defendants could be sorely disadvantaged in negotiating to obtain agreements on these key issues having already purchased SJHS Newco's ownership interest in the JOC. As outlined in AgSouth Farm Credit, ACA v. West, 352 Ga. App. 751, 761 (2019), "[i]f there was in fact any essential part of the contract upon which the minds of the parties had not met, or upon which there was not an agreement, ***even though the negotiations evidenced a complete willingness, or even an announced determination, to agree in the future***," no binding contract is created. (Citation omitted and emphasis supplied.) In the final analysis, whether the parties were close to an agreement on these essential terms is of no bearing. As this very dispute embodies, parties can be extremely close to striking a deal only to witness it break down.

While Plaintiffs claim the MOU was a binding agreement that addressed all essential terms, this stance is not supported by the plain language of the MOU. The MOU established a binding process for valuing SJHS Newco's membership interest in the JOC. As to the other aspects of the transaction, the MOU provides, *"**[t]he documents required to complete the Transaction will be developed***" at the same

time as the valuation process was occurring and these Transaction Documents "***will include the terms and conditions set forth in Exhibit M . . . except as may be mutually agreed to by the parties.***" (emphasis supplied)." (MOU ¶ B.11.)

Plaintiffs assert the key word in the subject provision is "required" as in the only documents being addressed by the MOU were those absolutely "required" for the Transaction to close. (Pls.' Resp. 14.) They argue, "[w]hile the parties here allowed for the possibility of adding further terms, no further essential terms were required, and any nonessential terms would not prevent the transfer of the ownership interest." (Pls.' Mot. 12.)

Defendants take an entirely different view. They contend the parties envisioned more than one document would be required to "complete" the Transaction, hence the choice of the plural form of the word "documents." They also note the MOU states those documents "will be developed." The MOU's statement that the closing documents would be "developed" as opposed to "drafted" indicates the parties understood some aspects of the sale remained subject to negotiation. See generally O.C.G.A. § 13-2-2 (2) (in construing contracts, "[w]ords generally bear their usual and common signification. . . .") (Defs.' Mot. 14.) Accordingly, Defendants argue, the MOU's subsequent statement that, unless the parties agreed otherwise, the "Transaction Documents will include the terms and conditions of Exhibit M," indicates Exhibit M would be a starting point for the Transaction Documents that were to be "developed." (Id. 15; MOU ¶ B.11.)

"The cardinal rule of contract construction is to ascertain the intent of the parties, as evidenced by the language of the contract because the law obligates [a court] to enforce the plain terms of the contract into which the parties entered (citation and punctuation omitted)." PraultShell, Inc. v. River City Bank, 366 Ga. App. 70, 73 (2022). The plain language of the subject provision – with the use of the plural "documents" and the indication they needed to be "developed" -- supports the Defendants' view that the parties contemplated the need to reach additional agreements before closing.

To the extent that the MOU may be ambiguous as to whether additional documentation was "required" to close the Transaction, parol evidence also supports the interpretation that the parties contemplated negotiating additional sale documents. See Moore v. Lovein Funeral Home, Inc., 358 Ga. App. 10, 13 (2020) ("Where ambiguities exist, the court may look outside the written terms of the contract and consider all the surrounding circumstances to determine the parties' intent.") First, as outlined above, parol evidence reflects Plaintiffs were aware Defendants considered the retention of the hospital's Catholic identity as a "foundational" element of any transfer deal. Indeed, Plaintiffs actively assisted Defendants' efforts to obtain a sponsorship agreement with the Archdiocese.[12] (See

[12] This sponsorship agreement involving the Archdiocese may have been one of the unspecified "reasons outside of [the parties'] control" mentioned in the MOU as possibly causing a delay in the February 28, 2022 closing date. (MOU ¶ B.13.)

e.g. Defs.' SUMF ¶¶ 117, 119-123; Pls.' Resp. to Defs.' SUMF ¶¶ 119-123; Defs.' Ex. 15.)

Additionally, parol evidence reflecting Plaintiffs' efforts to prepare the sale documentation suggests they understood additional documents and/or terms would be negotiated in order for the sale to close. Plaintiffs began discussing the terms of the closing documents beginning in early November of 2021 and swapped drafts over the ensuing months. (See e.g. Defs.' SUMF ¶¶ 62, 76, 85-86, 92; Pls.' Resp. to Defs.' SUMF ¶¶ 62, 76, 85-86, 92.) Most notably, Plaintiffs prepared the first draft of the transaction documentation, marking up a copy of Exhibit M with a variety of additions, deletions, and revisions. (Defs.' SUMF ¶ 64; Pls.' Resp. to Defs.' SUMF ¶ 64.) Among their proposed changes to Exhibit M, were references to certain placeholder agreements that had yet to be negotiated which included an assignment of the Saint Joseph's mark. (Id. ¶ 68; Pls.' Resp. to Defs.' SUMF ¶ 68.)[13]

In sum, the very language of the MOU, not to mention the conduct of the parties, indicate the parties had yet to reach a binding agreement on all the contract's terms.

6. CONCLUSION

In light of all the foregoing, the Court **ORDERS:**

[13] Plaintiffs did not suggest that Exhibit M, standing alone, would be a sufficient closing document until after the parties' February 10, 2022 conference when they were unable to resolve the differences about the valuation and how the Transaction should proceed.(Defs.' SUMF ¶¶ 97-99; Pls.' Resp. to Defs.' SUMF ¶¶ 97-99.)

a. Defendants Emory Healthcare, Inc. and EHC/JOC Holdings, LLC's Motion for Summary Judgment is **GRANTED** on Count I of their Counterclaim as the Court declares the MOU to be an unenforceable agreement to agree.

b. Plaintiffs' Motion for Partial Summary Judgment is **DENIED**.

c. All pending *Daubert* motions are **MOOT**.

In light of the Court's determination that the MOU was unenforceable, there remain no issues or disputes for the Court to resolve. Accordingly, this constitutes a final order, and the Clerk is directed to mark the file as **CLOSED**.

So Ordered this 28th day of September, 2023.

/s/ John J. Goger
JOHN J. GOGER, SENIOR JUDGE
Superior Court of Fulton County
Atlanta Judicial Circuit
Metro Atlanta Business Case Division

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