STATE OF NORTH CAROLINA GUILFORD COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 22 CVS 9346
JOSHUA T. LANGLEY, Plaintiff, v. AUTOCRAFT, INC. Defendant.	**ORDER AND OPINION ON DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**
RANDOLPH COUNTY JOSHUA T. LANGLEY, Plaintiff, v. KEITH R. CLAPP, Defendant.	24 CVS 208

1. Before starting his second stint of employment with Autocraft, Inc., Plaintiff Joshua T. Langley ("Langley") drafted a document that he contends entitles him to a ten percent ownership interest in the business after he completed five years of work. The owner of Autocraft, Keith R. Clapp ("Clapp"), disputes this assertion and has refused to honor the alleged agreement, prompting this lawsuit. At issue is whether the document drafted by Langley is an enforceable contract.

2. Defendants argue that it is not, and they move pursuant to Rule 56 of the North Carolina Rules of Civil Procedure (the "Rule(s)") for summary judgment

(the "Motion"), (ECF No. 63). Having considered the Motion, the related briefing, the arguments of counsel at a hearing on the Motion held 4 June 2024, and other relevant matters of record, the Court hereby **GRANTS** the Motion.

Carruthers & Roth, P.A., by Kevin A. Rust, for Plaintiff Joshua T. Langley.

Tuggle Duggins P.A., by Denis E. Jacobson, Brandy L. Mansouraty, Daniel D. Stratton, and Alexandria B. Morgan, for Defendants Autocraft, Inc. and Keith R. Clapp.

Earp, Judge

I. FACTUAL AND PROCEDURAL BACKGROUND

3. The Court does not make findings of fact on a motion for summary judgment. Instead, the Court summarizes material facts it considers to be uncontested. *See, e.g., Vizant Techs., LLC v. YRC Worldwide, Inc.*, 373 N.C. 549, 551 (2020).

4. Autocraft was formed by Clapp on 20 March 2000 to manufacture precision machine components. (Br. Supp. Defs.' Mot. Summ. J. ["Defs.' Br. Supp"] Ex. B ["Autocraft Dep."] 157:19-21, ECF No. 63.3.) Since its formation, Clapp has owned 100% of the stock in Autocraft and has been the sole member of the board of directors. (Autocraft Dep. 19:2-8, 45:18-46:6, 162:5-10.)

5. Around 2013 or 2014, Autocraft employed Langley as a computer numerical control machine programmer / machinist. (Defs.' Br. Supp. Ex. A ["Langley Dep."] 33:15-20, 36:1-6, ECF No. 63.2.) Langley voluntarily resigned from this position in January 2015 to work for a different company. (Langley Dep. 36:17-25.)

On 16 August 2016, Clapp texted Langley indicating that if Langley decided to leave his current employer, he should give Clapp "a holler." (Langley Dep. 45:23-46:2, Ex. 1.) Clapp and Langley subsequently met to discuss the possibility of Langley returning to Autocraft. (Langley Dep. 49:13-23, Ex. 2, Ex. 3, Ex. 4, Ex. 5.)

6. After some discussion, Langley recorded the terms of his new employment arrangement on paper and asked Clapp to sign the document in the parking lot of a Hooters restaurant.[1] (Langley Dep. 76:24-25, 77:15-17, Ex. 6; Autocraft Dep. 82:14-20.). The document ("Agreement") is dated 28 December 2016 and provides:

Josh Langley's Autocraft Contract

- $125,000/per year Salary starting on hire date
  - $2403.85/per week
  - Paycheck every other week (Bi-weekly)
  - Salary pay/No punch of time clock/Flexible hours
  - 40-42 hours/per week max
  - Leave work by 5:00 PM daily (subject to Josh's decision)
  - 2% cost of living raise per year giving [sic] on hire date of each year
  - 5% Christmas bonus at end of each year
- 10% ownership of Autocraft Technologies at 5 year mark from start date
  - Contingent upon Josh's decision to be 10% owner
  - Review books and debt at 4 year mark
  - Owner finance the other 90% over the following 5-10 years
- 3 weeks paid vacation with use of vacation any time of year including winter
- All programming with very little set-up
- Computer Setup
  - Strong Laptop so I can use at work and home
  - 24-27 inch dual monitor setup
  - Logitech performance mx mouse
- MSC to bring in CAPS system to help with keeping tools in stock

[1] Sharon Clapp separately signed the document the following day. (Langley Dep. 70:19-20.)

    - I will need MSC login and access to CAPS system to help
- Keep an open understanding about my schooling (College)
- Bobcad schooling in Florida for 3 days (ASAP)
- Mandatory 14-30 day notice upon Josh Langley's leave if necessary
- Josh Langley is guaranteed employment for at least 10 years.

This contract is guaranteed for the next 20 years with Keith Clapp alive or dead and as long as Autocraft Technologies is still a functioning business. All above is guaranteed for the next 20 years with nothing to change except at Josh Langley's discretion from the signed date below.

(Joshua T. Langley's Resp. Br. to Defs.' Mot. Summ. J. ["Pl.'s Br. Opp."] Ex. A, ECF No. 66.2.)

7. Following execution of the Agreement, Langley began working for Autocraft in January 2017. (Langley Dep. 85:16-19; Autocraft Dep. 14:23-25.) Autocraft subsequently terminated Langley on 22 August 2022. (Langley Dep. 220:20-22.)

8. At issue is the Agreement's provision pertaining to a "10% ownership of Autocraft Technologies at 5 year mark from start date." Despite being employed by Autocraft for more than five years, Langley did not review the "books and debt at [the] 4 year mark" and did not receive a ten-percent ownership interest in Autocraft. He now sues seeking the value of this ten-percent interest.

9. The record reflects little agreement on the facts. These issues of fact, however, do not preclude summary judgment. As explained below, the sole issue is whether the document drafted by Langley is an enforceable contract requiring the transfer of an ownership interest in Autocraft. The Court concludes that it is not.

10. Langley initiated this action by filing a Complaint for breach of contract and declaratory judgment against Autocraft in Guilford County Superior Court on

19 December 2022 (the "Guilford Action"). While being deposed as Autocraft's 30(b)(6) witness, however, Clapp testified that he signed the Agreement in his individual capacity and not on behalf of Autocraft. (Autocraft Dep. 17:23-18:15.) Accordingly, Langley filed a second action against Clapp individually, this time in Randolph County Superior Court on 1 February 2024 (the "Randolph Action").[2]

11. By Order dated 14 March 2024, the Court consolidated the Guilford and Randolph Actions. (*See* Order on Consent Mot. to Consolidate, ECF No. 57.)

12. Defendants filed the Motion on 2 April 2024. After full briefing, the Court held a hearing on the Motion on 4 June 2024, at which all parties were represented by counsel. (Not. of Hr'g, ECF No. 75.)

13. The Motion is now ripe for disposition.

II. LEGAL STANDARD

14. "Summary judgment is appropriate 'if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law.'" *Da Silva v. WakeMed*, 375 N.C. 1, 10 (2020) (quoting N.C. R. Civ. P. 56(c)). "A genuine issue of material fact 'is one that can be maintained by substantial evidence.'" *Curlee v. Johnson*, 377 N.C. 97, 101 (2021) (quoting *Ussery v. Branch Banking & Tr. Co.*, 368 N.C. 325, 335 (2015)).

[2] Langley also sued Sharon Johnson, (formerly Sharon Clapp), Clapp's ex-wife. However, after deposing Ms. Johnson on 26 March 2024, (ECF No. 58), Langley voluntarily dismissed his claims against her on 28 March 2024, (ECF No. 60).

"Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion and means more than a scintilla or a permissible inference." *DeWitt v. Eveready Battery Co.*, 355 N.C. 672, 681 (2002) (cleaned up).

15. The party moving for summary judgment "bears the burden of establishing that there is no triable issue of material fact[.]" *Cummings v. Carroll*, 379 N.C. 347, 358 (2021) (citation and quotation marks omitted). A movant may satisfy its burden by proving that "an essential element of the opposing party's claim does not exist, cannot be proven at trial, or would be barred by an affirmative defense, or by showing through discovery that the opposing party cannot produce evidence to support an essential element of [the] claim[.]" *Dobson v. Harris*, 352 N.C. 77, 83 (2000) (citations omitted). "[T]he trial judge must view the presented evidence in a light most favorable to the nonmoving party." *Belmont Ass'n v. Farwig*, 381 N.C. 306, 310 (2022) (quoting *Dalton v. Camp*, 353 N.C. 647, 651 (2001)).

III. ANALYSIS

16. Of Defendants' several arguments in support of summary judgment, one is dispositive—the Agreement's last sentence, giving Langley the unfettered discretion to change its terms, renders illusory Langley's consideration for an agreement to transfer a ten percent ownership interest in Autocraft to him.

17. "The elements of a claim for breach of contract are (1) existence of a valid contract and (2) breach of the terms of that contract." *Supplee v. Miller-Motte Bus. Coll., Inc.*, 239 N.C. App. 208, 216 (2015) (citation omitted). "[A] valid contract

requires (1) assent; (2) mutuality of obligation; and (3) definite terms." *Charlotte Motor Speedway, LLC v. Cnty. of Cabarrus*, 230 N.C. App. 1, 7 (2013).

18. "One of the elements of a valid contract is a promise, which has been defined as an assurance that a thing will or will not be done." *Bowman v. Hill*, 45 N.C. App. 116, 117 (1980). "An apparent promise which, according to its terms, makes performance optional with the promisor no matter what may happen, or no matter what course of conduct in other respects he may pursue, is in fact no promise." *Id.* at 117-18.

19. Here, the Agreement provides: "All above is guaranteed for the next 20 years with nothing to change except at Josh Langley's discretion[.]" Accordingly, the Agreement confers upon Langley "an unlimited right to determine the nature or extent of his performance[,]" rendering the consideration provided by Langley illusory. *Wellington-Sears & Co. v. Dize Awning & Tent Co.*, 196 N.C. 748, 752 (1929); *see also Sears Roebuck & Co. v. Avery*, 163 N.C. App. 207, 219 (2004) ("One of the commonest kind of promises too indefinite for legal enforcement is where the promisor retains an unlimited right to decide later the nature or extent of his performance. This unlimited choice in effect destroys the promise and makes it merely illusory.").

20. Plaintiff cites the North Carolina Supreme Court's recent opinion in *Canteen v. Charlotte Metro Credit Union* for the proposition that a unilateral change-of-terms provision does not make a contract illusory. No. 10A23, 2024 N.C. LEXIS 347 (N.C. May 23, 2024). In *Canteen*, plaintiff opened a checking account with

defendant Charlotte Metro Credit Union (the "Credit Union") and entered into a standard membership agreement. *Id.* at **2. The membership agreement contained a "Notice of Amendments" provision which provided:

> Except as prohibited by applicable law, [defendant] may change the terms of this Agreement. We will notify you of any change in the terms, rates, or fees as required by law. We reserve the right to waive any term in this Agreement. Any such waiver shall not affect our right to future enforcement.

Id. (alteration in original).

21. In 2021, the Credit Union amended its membership agreement to require arbitration for certain disputes. *Id.* at **3. Pursuant to the "Notice of Amendments" provision in the membership agreement, the Credit Union sent plaintiff notice of the amendment on three occasions. *Id.* The notices provided that members could opt-out of the amendment and included instructions on how to do so. *Id.* at **4. Plaintiff did not opt-out of the agreement to arbitrate and filed a class action complaint against the Credit Union. *Id.* at **5. Following the Credit Union's filing of a motion to stay the action and to compel arbitration, plaintiff argued that the "Notice of Amendments" provision made the Credit Union's consideration for the agreement illusory. *Id.* at **7 n. 3.

22. Relying on the California Court of Appeals' decision in *Badie v. Bank of Am.*, 67 Cal. App. 4th 779 (1998), and the North Carolina Court of Appeals' decision in *Sears Roebuck and Co. v. Avery*, 163 N.C. App. 207 (2004), the Supreme Court held that "[c]hange-of-terms provisions permit unilateral amendments to a contract so long as the changes reasonably relate back to the universe of terms discussed and anticipated in the original contract." *Canteen*, 2024 N.C. LEXIS 347, at **16. This

is so because "changes which relate back to the 'universe of terms' of the original agreement are consistent with the covenant of good faith [and fair dealing]." *Id.* at **11 (citing *Sears*, 163 N.C. App. at 218).

23. The Agreement here differs from those at issue in *Sears* and *Canteen*. In both of those cases, the agreements were standardized forms not individually negotiated. *See Sears*, 163 N.C. App. at 215 ("An adhesion contract is typically a standardized form offered to consumers of goods and services on essentially a take it or leave it basis without affording the consumer a realistic opportunity to bargain and under such conditions that the consumer cannot obtain the desired product or services except by acquiescing in the form contract." (citation and quotation marks omitted)). As explained in the Restatement 2d of Contracts:

> One of the purposes of standardization is to eliminate bargaining over details of individual transactions, and that purpose would not be served if a substantial number of customers retained counsel and reviewed the standard terms. Employees regularly using a form often have only a limited understanding of its terms and limited authority to vary them. Customers do not in fact ordinarily understand or even read the standard terms. They trust to the good faith of the party using the form and to the tacit representation that like terms are being accepted regularly by others similarly situated. But they understand that they are assenting to the terms not read or not understood, subject to such limitations as the law may impose.

Restatement 2d of Contracts § 211, cmt. b.

24. Our Supreme Court observed that in the consumer context, "change-of-terms provisions are a necessary and efficient way for companies to update contractual provisions without cancelling accounts and renegotiating contractual terms every time modification may be required." *Canteen*, 2024 N.C. LEXIS 347, at **12. Additionally, while consumers may not have the power to negotiate under an

adhesion contract, "the market provides a way for consumers to respond to policies with which they disagree . . . [C]ompetitor companies can provide alternatives for consumers, forcing improvements or updates to products or services, including terms to satisfy consumers' desires." *Id.* at **12 n. 5.

25. But the Agreement in this case is not a standardized form. It not one that is "essential to a system of mass production and distribution." Restatement 2d of Contracts § 211, cmt. a. Instead, it was individually negotiated.

26. Furthermore, as acknowledged by the Court of Appeals in *Sears*, "an otherwise illusory contract may be remedied because a limitation on a promisor's freedom of choice 'may be supplied by law.'" *Sears*, 163 N.C. App. at 220. Important to the Supreme Court's decision in *Canteen* was the fact that "the Notice of Amendments provision explicitly limited its scope by stating '[e]xcept as prohibited by applicable law.'" *Canteen*, 2024 N.C. LEXIS 347, at **14-15; *cf. Patrick v. Altria Grp. Distrib. Co.*, 570 S.W.3d 138, 144 (Mo. Ct. App. 2019) ("The fact that an employer has the unilateral right to amend an arbitration agreement may not render the agreement illusory, if the employer's power to modify the agreement is meaningfully restricted."). There is no similar language restricting Langley's ability to change the Agreement's terms here.[3] Accordingly, Langley's consideration for the Agreement

[3] The membership agreement in *Canteen* also included a "Governing Law" provision, which provided:

> This Agreement is governed by the credit union's bylaws, federal laws and regulations, the laws, including applicable principles of contract law, and regulations of the state in which the credit union's main office is located, and local clearinghouse rules, as amended from time to time.

was illusory, making a promise to transfer a ten percent ownership interest to him unenforceable.

IV. CONCLUSION

27. **WHEREFORE**, the Court **GRANTS** Defendants' Motion for Summary Judgment. The Guilford Complaint and the Randolph Complaint are **DISMISSED** with prejudice. Plaintiff's Motion to Reopen Discovery, (ECF No. 71), is **DENIED** as moot.

IT IS SO ORDERED, this the 23rd day of July, 2024.

/s/ Julianna Theall Earp
Julianna Theall Earp
Special Superior Court Judge
for Complex Business Cases

Id. at **2-3. Accordingly, the credit union did not have *carte blanche* to amend the membership agreement.