STATE OF NORTH CAROLINA COUNTY OF WAKE	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 18-CVS-12318
VALUE HEALTH SOLUTIONS INC. and NEIL RAJA, Plaintiffs, v. PHARMACEUTICAL RESEARCH ASSOCIATES, INC. and PRA HEALTH SCIENCES, INC., Defendants.	**ORDER ON DEFENDANTS' MOTION FOR LEAVE TO FILE MOTION FOR PARTIAL SUMMARY JUDGMENT AND SUMMARY JUDGMENT**

1. **THIS MATTER** is before the Court on Defendants Pharmaceutical Research Associates, Inc. and PRA Health Sciences, Inc.'s (collectively, "PRA" or "Defendants") Motion for Leave to File Motion for Partial Summary Judgment and Summary Judgment ("Motion," ECF No. 199).

2. **THE COURT**, having considered the Motion, the briefs and other submissions of the parties, the arguments of counsel, and all other applicable matters of record, **CONCLUDES**, in its discretion, that the Motion should be **GRANTED** for the reasons set forth below.

FACTUAL AND PROCEDURAL BACKGROUND

3. As the Court has previously summarized, "[t]his lawsuit involves a dispute between the parties in connection with PRA's acquisition of Value Health Solutions ('VHS') and its proprietary software (the 'Software'). The Plaintiffs in this

action are VHS and its founder, Neil Raja." *Value Health Sols., Inc. v. Pharm. Rsch. Assocs.*, 2024 NCBC LEXIS 140, at *2 (N.C. Super. Ct. Nov. 6, 2024).

4. Plaintiffs filed their original Complaint on 5 October 2018. (ECF No. 5.) Since then, this case has followed a lengthy and procedurally complicated path, which is more thoroughly summarized in prior opinions of this Court and the North Carolina Supreme Court. *See, e.g., Value Health Sols., Inc. v. Pharm. Rsch. Assocs.*, 385 N.C. 250 (2023); *Value Health Sols.*, 2024 NCBC LEXIS 140, at *2–3; *Value Health Sols., Inc. v. Pharm. Rsch. Assocs.*, 2021 NCBC LEXIS 37, at *2–4 (N.C. Super. Ct. Apr. 5, 2021); *Value Health Sols., Inc. v. Pharm. Rsch. Assocs.*, 2020 NCBC LEXIS 65, at *1–14 (N.C. Super. Ct. May 22, 2020).

5. On 22 May 2020 and 5 April 2021, the Court entered Orders dismissing certain claims asserted by Plaintiffs and ultimately granting summary judgment as to all of Plaintiffs' remaining claims. *See Value Health Sols.*, 2020 NCBC LEXIS 65, at *37–39; *Value Health Sols.*, 2021 NCBC LEXIS 37, at *83–84.

6. On 22 October 2021, Plaintiffs appealed this Court's rulings to the North Carolina Supreme Court. (ECF No. 153.)

7. On 1 September 2023, the Supreme Court affirmed all but one of this Court's rulings. Specifically, the Supreme Court reversed this Court's entry of summary judgment against Plaintiffs on the issue of PRA's alleged breaches of Sections 2.6(a)(iv)-(vii) and 2.6(b) of the parties' Asset Purchase Agreement ("APA," ECF No. 201.1) (the "Remanded Claim") and remanded that claim for trial. *See Value Health Sols.*, 385 N.C. at 282–83.

8. On 26 October 2023, this Court entered a Supplemental Case Management Order, ("Supplemental CMO," ECF No. 166), which set forth parameters for additional discovery on certain issues identified by the Supreme Court with respect to the Remanded Claim. The Supplemental CMO also required the parties to seek leave of Court prior to filing any new motions for summary judgment. (Supplemental CMO ¶ 4.)

9. On 14 October 2024, and after nearly a year of supplemental discovery, Defendants filed the current Motion seeking leave to file new motions for summary judgment on three discrete issues.

10. First, Defendants seek leave to file a motion for partial summary judgment on the issue of whether PRA's internal use of the Software to perform clinical trial services for its customers constitutes an "External Sale" of the Software as defined in the APA, despite the absence of a conveyance to those customers of any rights to access or use of the Software themselves.

11. Second, Defendants request permission to file a motion for summary judgment on the issue of whether a third-party, Takeda Pharmaceuticals ("Takeda"), paid any consideration to PRA in exchange for a license or right to access the Software sufficient for PRA's contracts with Takeda to constitute an External Sale under the APA.

12. Third, Defendants seek leave to file a motion for partial summary judgment on the issue of whether Plaintiffs are barred by the applicable statute of limitations from claiming that PRA breached Section 2.6(b) of the APA by improperly

conditioning sales of its Software upon completion of certain milestones listed in the APA.

13. In response, Plaintiffs contend that the Motion should be denied in all respects and that Defendants should not be permitted to file *any* new motions for summary judgment.

14. The Motion has been fully briefed, came on for a hearing via Webex on 18 December 2024 at which all parties were represented by counsel, and is now ripe for resolution.

ANALYSIS

15. At the outset, the Court wishes to emphasize that the present Motion does not ask the Court to decide whether Defendants would be entitled to *prevail* on a new summary judgment motion, but rather, only whether they should be permitted to *file* such a new motion.

16. Plaintiffs oppose Defendants' request on essentially two grounds: the "law of the case" doctrine and the "prevention" doctrine.

17. The Supreme Court of North Carolina has summarized the law of the case doctrine as follows:

> [A]s a general rule when an appellate court passes on a question and remands the cause for further proceedings, the questions there settled become the law of the case, both in subsequent proceedings in the trial court and on subsequent appeal, provided the same facts and the same questions which were determined in the previous appeal are involved in the second appeal.
>
> However, the doctrine of the law of the case contemplates only such points as are actually presented and necessarily involved in determining the case. The doctrine does not apply to what is said by the reviewing

> court, or by the writing justice, on points arising outside of the case and not embodied in the determination made by the Court. Such expressions are *obiter dicta* and ordinarily do not become precedents in the sense of settling the law of the case.

Hayes v. Wilmington, 243 N.C. 525, 536 (1956); *see also Waters v. N.C. Phosphate Corp.*, 61 N.C. App. 79, 84 (1983) (noting that "[t]he doctrine of law of the case does not apply to dicta, but only to points actually presented and necessary to the determination of the case").

18. Moreover, "[i]t is the rule in this State that an additional forecast of evidence does not entitle a party to a second change at summary judgment on the same issues." *Fox v. Green*, 161 N.C. App. 460, 463 (2003) (cleaned up). That said, however, "[s]ubsequent motions for summary judgment *are* allowed when they present legal issues different than those raised in prior motions." *Id.* at 462–63 (emphasis added).

19. As for the prevention doctrine, Delaware[1] courts have held that

> The prevention doctrine provides that where a party's breach by nonperformance contributes materially to the non-occurrence of a condition of one of his duties, the non-occurrence is excused.
>
> To establish that a party's breach contributed materially to the non-occurrence of a condition, it is not necessary to show that the condition would have occurred but for the lack of cooperation. It is only required that the breach have contributed materially to the non-occurrence. A breach "contributed materially" to the non-occurrence of a condition if the conduct made satisfaction of the condition less likely. But if it can be shown that the condition would not have occurred regardless of the lack of cooperation, the failure of performance did not contribute materially to its non-occurrence and the rule does not apply. The burden of showing this is properly thrown on the party in breach.

[1] The parties agree that the substantive law of Delaware applies to the Remanded Claim.

Snow Phipps Grp., LLC v. KCAKE Acquisition, Inc., 2021 Del. Ch. LEXIS 84, at *109–10 (Del. Ch. Apr. 30, 2021) (cleaned up).

20. The Court must now independently examine each of the three issues raised by Defendants in order to determine whether either the law of the case doctrine or the prevention doctrine serves to preclude them from being made the subjects of a new summary judgment motion.

A. PRA's Internal Use of the Software for Clinical Trials

21. As noted above, Defendants seek leave to file a motion for partial summary judgment on the issue of whether PRA's *internal* use of the Software to perform clinical trial services for its customers qualified as "External Sales" of the Software under the terms of the APA.

22. Plaintiffs respond that such a motion would be improper because the Supreme Court has already determined that a genuine question of material fact exists as to this issue such that the law of the case doctrine precludes reconsideration of the issue through a new motion for summary judgment.

23. The Court is unable to agree with Plaintiffs and instead finds that the law of the case doctrine is inapplicable because the Supreme Court did not discuss in its opinion the question of whether PRA's internal use of the Software could constitute an External Sale under the APA.

24. In its opinion, our Supreme Court addressed how the APA defines an External Sale under the APA. *See Value Health Sols.*, 385 N.C. at 259 ("The APA defines 'External Sale' as 'the sale of one or more licenses to the [Software] by [PRA]

or one of its Affiliates to a third party which is not (i) an Affiliate of [PRA] or (ii) using such license(s) in connection with providing services to [PRA] and/or any of its Affiliates.'").

25. The Supreme Court's analysis on this subject was largely focused on the question of when a client's contractual payment of consideration to PRA should be deemed to be a payment in exchange for the conveyance of a license for the client to use the Software (so as to trigger the External Sale provision of the APA).

26. Plaintiffs' contention that even PRA's purely internal use of the Software to conduct clinical trials for a client can constitute an External Sale appears to be a new theory of recovery that is being asserted by Plaintiffs for the first time in this litigation. In any event, it is clearly a theory that is not expressly addressed in the Supreme Court's opinion. Although this Court will, of course, be required to ultimately resolve the issue by applying the principles set out in the Supreme Court's decision regarding the definition of External Sale, that does not change the fact that the Supreme Court did not decide (or, for that matter, even mention) the question of whether—or under what circumstances—PRA's purely internal use of the Software can constitute an External Sale.

27. Consequently, the law of the case doctrine does not bar Defendants' filing of a new motion for summary judgment on this issue.

28. Nor is PRA precluded from doing so under the prevention doctrine. That doctrine—as defined above—has no bearing on a purely *definitional* question such as this one that can be resolved simply by means of contractual interpretation—that is,

determining whether a certain type of use of the Software meets the stated criteria for an External Sale.

29. Therefore, since neither the prevention doctrine nor the law of the case doctrine prohibits Defendants from filing a new motion for summary judgment on this discrete issue, Defendants shall be permitted to do so.

B. Whether PRA's Contractual Relationship With Takeda Constituted an External Sale

30. Defendants next seek leave to file a motion for summary judgment on the issue of whether Takeda paid any consideration to PRA in exchange for a license or right to access the Software such that its contracts with PRA constituted an External Sale under the APA.

31. Plaintiffs respond that the law of the case doctrine precludes the filing of a new motion for summary judgment on this issue because the Supreme Court has already conclusively decided that an issue of fact for trial exists as to whether the Takeda contract qualifies as an "External Sale." The Court disagrees.

32. The Supreme Court specifically stated the following on this issue:

> The plain meaning of "sale" is: "the transfer of property . . . for a price." *Sale*, MERRIAM-*Webster's Collegiate* DICTIONARY (11th ed. 2007). In the context of the Takeda Master Services Agreement (MSA), Section 7.02(b) of the MSA refers to the transfer as "License to [PRA] Owned Technology." As the trial court found, " 'License' is a familiar term when used in connection with software, typically meaning a limited right to access and use a software product owned by another entity."
>
> The Takeda MSA closely mirrors the APA definition of "External Sale." As part of a bundle including the use of the software and providing services to Takeda, and in exchange for a price of approximately $491 million over a term of years, PRA transferred a license to Takeda; Takeda is neither an affiliate of PRA nor providing a service to PRA.

. . .

> [H]ere, in this circumstance, the Takeda MSA specifically included, for a price, the transfer of a license to use "PRA[ ] Owned Technology." What is unknown is whether the Takeda MSA was drafted such that Takeda was required to pay consideration to acquire and use a license of the [Software]. Therefore, defendants' failure to pay for the transfer of the license to Takeda under the MSA, as required by the APA, may be a breach of contract.
>
> We hold that the Takeda contract could be an "External Sale." This Court remands this issue to the trial court to determine whether the Takeda MSA was drafted such that Takeda was required to pay consideration to acquire and use a license of the [Software].

Id. at 273–74.

33. As the above-quoted language demonstrates, the Supreme Court did not actually make a definitive ruling on this issue.

34. Instead, the Supreme Court expressly remanded the issue with instructions for this Court to "*determine* whether the Takeda MSA was drafted such that Takeda was required to pay consideration to acquire and use a license of the [Software]." *Id.* at 274, 282 (emphasis added).

35. If the Supreme Court had intended to conclusively rule that a jury issue existed as to whether the Takeda contracts constituted an External Sale, it would have made little sense for it to have directed this Court on remand to make a determination on this issue. The far more logical interpretation is that the Supreme Court was unable to make such a determination itself based on the limited record before it. The Court's ruling on PRA's forthcoming summary judgment motion will be precisely the type of determination contemplated by the Supreme Court.

36. In addition, the prevention doctrine is not implicated. The Takeda issue solely relates to whether a contractual relationship between PRA and a client satisfies the APA's definition of External Sale. Nothing about that question triggers the prevention doctrine.

C. Effect of Statute of Limitations on Plaintiffs' Claim for Breach of APA Section 2.6(b)

37. Finally, Defendants seek leave to file a motion for partial summary judgment on the issue of whether Plaintiffs' claim that PRA breached Section 2.6(b) of the APA by improperly conditioning sales of its Software upon completion of certain milestones contained in the APA is barred by the statute of limitations.

38. Specifically, Defendants seek to argue that a portion of Plaintiffs' claim for breach of Section 2.6(b) is time-barred based on evidence that Plaintiffs allegedly first became aware of this alleged breach in June or July 2015—more than three years prior to their filing of this lawsuit.

39. The law of the case doctrine clearly does not apply to this issue. In its opinion, the Supreme Court stated the following with regard to an argument by PRA premised on the statute of limitations:

> To preserve an issue *for appeal*, N.C. R. App. P. 10(a)(1) requires a party to have "presented to the trial court a timely request, objection, or motion . . . and to obtain a ruling upon the party's request, objection, or motion." While defendants *did* plead that some or all of plaintiffs' claims are time barred, this argument was not presented to the trial court and no ruling was obtained. Therefore, we decline to reach the issue of whether any claim is time barred by the statute of limitations, because this issue is not before this Court.

Id. at 272 (emphasis added).

40. Thus, the Supreme Court could not have made any clearer the fact that it was declining to address the statute of limitations issue. Furthermore, its opinion lacks any language suggesting that Defendants are barred from *ever* obtaining a ruling on their statute of limitations argument by this Court. Therefore, assuming the defense has been properly preserved, the Court sees no reason why this issue cannot be addressed in a new summary judgment motion.

41. Furthermore, it is not clear to the Court how the prevention doctrine would serve to preclude a summary judgment motion on this issue.

42. Therefore, Defendants shall be permitted to file a motion for summary judgment on the above-referenced statute of limitations issue.

CONCLUSION

For the reasons discussed herein, Defendants' Motion is **GRANTED**. **THEREFORE**, **IT IS ORDERED** as follows:

a. Defendants shall be permitted to file a new motion for summary judgment (or partial summary judgment) on all three of the proposed issues set out in their Motion.

b. The parties are hereby **DIRECTED** to confer and submit a proposed briefing schedule on the upcoming summary judgment motion on or before **3 February 2025**.

SO ORDERED, this the 27th day of January, 2025.

/s/ Mark A. Davis
Mark A. Davis
Special Superior Court Judge
for Complex Business Cases