STATE OF NORTH CAROLINA MECKLENBURG COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 21 CVS 13907
JORDAN HARRIS, Plaintiff, v. TEN OAKS MANAGEMENT, LLC, Defendant.	**ORDER AND OPINION ON MOTIONS FOR SUMMARY JUDGMENT**

1. Jordan Harris is a former employee of Ten Oaks Management, LLC ("Ten Oaks"). In this lawsuit, he claims that Ten Oaks refused to pay incentive compensation guaranteed by his employment agreement. Both parties have moved for summary judgment. For the following reasons, the Court **DENIES** their motions.

Hull & Chandler, P.A., by Nathan M. Hull and Joseph Armand Volta, for Plaintiff Jordan Harris.

Moore & Van Allen, PLLC, by Karin M. McGinnis, Caroline F. Savini, Elizabeth Weisner, and Rashaad Bryon Hamilton, for Defendant Ten Oaks Management, LLC.

Conrad, Judge.

I. BACKGROUND

2. The Court does not make findings of fact when ruling on motions for summary judgment. The following background, drawn from the evidence submitted by the parties, provides context for the Court's analysis and ruling only.

3. Ten Oaks styles itself as "a family office that focuses on investing in corporate divestitures, such as the acquisition of divisions or subsidiaries from large

corporate entities." Its founders are Mike Hahn and Matt Magan. (Hahn Aff. ¶¶ 2, 3, ECF No. 46.10; Magan Aff. ¶¶ 2, 3, ECF No. 46.11.)[1]

4. In April 2020, Harris joined Ten Oaks as an "Investment Professional" tasked with sourcing deals for the firm. His employment agreement promised him a modest base salary plus the potential to earn more lucrative incentive compensation based on his success in finding and managing deals. The incentives included a cash bonus "for each deal" that Harris "sourced"—$5,000 if the deal resulted in a letter of intent and another $10,000 if the deal closed. The incentives also included "5% of Ten Oaks' equity share in any company" that Harris "sources." For deals sourced by someone else, Harris could earn $5,000 by assisting with project management. (Ex. 1 to Harris Dep., ECF 46.2 ["Emp. Agrmt."]; *see also* Hahn Aff. ¶ 8; Harris Aff. ¶¶ 5, 6, ECF No. 57.25.)

5. Harris's stint at Ten Oaks was short. The firm fired him in September 2020, barely five months after he started. That led to this dispute. After ending Harris's employment, Ten Oaks paid him $10,000 in outstanding incentive compensation, half of which was supposedly for project management on a deal involving the acquisition of the European division of a company called ScanSource, Inc. Harris demanded more—an extra $10,000 and 5% equity in the acquired entity—on the ground that he had sourced the ScanSource deal. (*See, e.g.*, Hahn Aff. ¶¶ 13, 14; Harris Aff. ¶¶ 19, 20; Magan Aff. ¶¶ 10, 11.)

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[1] The parties repeatedly filed multiple identical copies of the same exhibits, including affidavits of key witnesses and essential documents. Harris's employment agreement, for example, appears in at least ten different locations. For simplicity, the Court will cite one location, not all, for these exhibits.

6. Each side agrees that two people cannot source the same deal; there can be only one. Ten Oaks contends that Hahn, not Harris, sourced the ScanSource deal. Its basis for that contention is that Hahn made the first contact. Searching the internet, he gleaned that ScanSource had tried without success to divest one or more of its foreign divisions. He also identified someone he believed to be a useful insider: Andrew Catlin, Manager, Corporate Strategy at ScanSource. In early August 2020, Hahn contacted Catlin through the social-media website LinkedIn to pitch Ten Oaks' capabilities. The two men spoke soon after. Catlin recalls generally discussing "ScanSource's efforts to divest its European division" and promising to convey Hahn's interest to his "management team." Hahn and Catlin had no further contact. (*See* Catlin Aff. ¶¶ 4, 9, 10, ECF No. 46.8; Hahn Aff. ¶¶ 10, 11, & Exs. 1–3; Hahn Dep. 189:5–8, 197:22–198:21.)[2]

7. Harris concedes much of this but contends that Hahn's efforts were a dead end and that it was his own pursuit of ScanSource that led to the eventual deal. At Hahn's request, Harris began to "blitz" ScanSource. The day after Hahn spoke with Catlin, Harris spoke with Joe More, a Vice President at ScanSource who oversaw its finance teams in Europe, Latin America, and Brazil. At that point, More told Harris that ScanSource already had a deal in the works with another buyer for its European

[2] The record includes several exhibits with overlapping but distinct excerpts of deposition testimony for certain witnesses. For ease of reference, the excerpts of Hahn's testimony appear at ECF Nos. 46.3, 50.3, 57.3, 62.2, 66.2, and 68.2; the excerpts of Harris's testimony appear at ECF Nos. 46.3, 50.3, 54.1, 57.3, 62.2, 66.2, 68.1, and 69.1; and the excerpts of Magan's testimony appear at ECF Nos. 46.4, 50.4, 54.2, 57.4, 62.3, 66.2, 67.1, 68.3, and 69.2. The parties filed many of these excerpts and associated exhibits provisionally under seal. In a separate order issued today, the Court has denied the motions to seal with respect to all but a handful of marginally relevant documents.

division. Within a few weeks, though, negotiations with the other buyer had stalled, and More then followed up with Harris to gauge Ten Oaks' interest. Harris responded favorably before passing the reins to Magan to explore acquisition terms. By the end of August 2020, Ten Oaks had submitted a formal bid, and negotiations were under way. (*See* Harris Aff. ¶¶ 17, 18, 28; More Aff. ¶¶ 3, 4, 9, 13–18, ECF No. 57.18; *see also* Exs. 3, 27, 37, 38 to Harris Dep.; TOM_458, ECF No. 57.10.)

8. According to Harris, there was never a question that he had sourced the ScanSource deal. Hahn and Magan implied as much, he says, by praising him for making inroads with More and telling him that the deal would make him wealthy. Later, after Ten Oaks fired Harris, the parties discussed separation terms. Their recollections differ, but for his part, Harris claims that Hahn and Magan acknowledged that he had sourced the ScanSource deal and assured him that Ten Oaks would pay up if the deal closed. (*See* Harris Aff. ¶ 21; Harris Dep. 228:22–231:17; Magan Dep. 137:5–12; Ex. 15 to Magan Dep.)

9. Meanwhile, the deal went forward and was a success. ScanSource signed a letter of intent in October, and Ten Oaks closed the deal in November. To complete the transaction, Ten Oaks formed SSE Holdings, Inc. (a holding company), which, in turn, executed a purchase agreement with ScanSource and acquired its European division. Harris now claims that he is entitled to a 5% stake in SSE Holdings or the equivalent value of that interest, which he pegs at nearly $2 million. (*See* Ex. 10 to Magan Dep.; Am. Compl. ¶¶ 51, 52, ECF No. 14.)

10. A single claim for breach of Harris's employment agreement remains at issue.[3] (*See* Am. Compl. ¶¶ 57–61.) Both parties have moved for summary judgment, their motions have been fully briefed, and the Court held a hearing on 14 February 2023. The motions are ripe for decision. (ECF Nos. 46, 50.)

II.
ANALYSIS

11. Summary judgment is appropriate when "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." N.C. R. Civ. P. 56(c). In ruling on a motion for summary judgment, the Court must consider the evidence in the light most favorable to the nonmoving party, drawing all inferences in the nonmoving party's favor. *See, e.g.*, *Morrell v. Hardin Creek, Inc.*, 371 N.C. 672, 680 (2018).

12. The moving party "bears the initial burden of demonstrating the absence of a genuine issue of material fact." *Liberty Mut. Ins. Co. v. Pennington*, 356 N.C. 571, 579 (2002). The moving party meets its burden "by proving that an essential element of the opposing party's claim is nonexistent, or by showing through discovery that the opposing party cannot produce evidence to support an essential element of his claim . . . ." *DeWitt v. Eveready Battery Co.*, 355 N.C. 672, 682 (2002) (citations and quotation marks omitted). If the moving party makes that showing, "the burden shifts to the nonmoving party to 'produce a forecast of evidence demonstrating that

[3] In an earlier opinion, the Court dismissed a veil-piercing theory that Harris had asserted. *See generally Harris v. Ten Oaks Mgmt., LLC*, 2022 NCBC LEXIS 62 (N.C. Super. Ct. June 20, 2022).

the nonmoving party will be able to make out at least a prima facie case at trial.' " *Cummings v. Carroll*, 379 N.C. 347, 358 (2021) (quoting *DeWitt*, 355 N.C. at 682). The nonmoving party "may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." N.C. R. Civ. P. 56(e).

A. Harris's Motion

13. Harris's motion for summary judgment is not based on his employment agreement. It is based instead on a separation agreement that he contends he and Ten Oaks negotiated when the firm fired him. Magan supposedly offered to give Harris equity in the ScanSource deal in return for his promise to assist with handing off his contacts to others at the firm. Harris claims to have accepted the offer, resulting in a new contract that, in his view, modifies and supersedes his employment agreement. On that basis, Harris contends that Ten Oaks breached the separation agreement by refusing to pay incentive compensation after the ScanSource deal closed and that he is entitled to equity in the deal even if he did not source it under his original employment agreement.

14. This theory comes out of left field. It has no basis in the amended complaint, which alleges only that Ten Oaks breached the April 2020 employment agreement's requirement to compensate Harris for deals that he sourced. Nothing in the amended complaint suggests that the parties formed a new contract in September 2020, that this new contract supplanted the employment agreement, or that Harris was promised equity in the ScanSource deal whether or not he sourced it. Because Harris

did not plead this novel theory, it cannot support the entry of summary judgment. *See Fund 19-Miller, LLC v. Isbill*, 2021 N.C. App. LEXIS 624, at *11–12 (N.C. Ct. App. Nov. 16, 2021) (unpublished) ("Litigants are unable to assert new theories of recovery that were not alleged in the complaint at summary judgment because these belated changes fail to provide sufficient notice of the events or transactions which produced the claim to enable the adverse party to understand the nature of it and the basis for it." (citation and quotation marks omitted)); *see also, e.g.*, *Bradshaw v. Maiden*, 2020 NCBC LEXIS 106, at *19–20 (N.C. Super. Ct. Sept. 15, 2020) (declining to consider novel theory of recovery that party failed to plead); *Wake County v. Hotels.com, L.P*, 2012 NCBC LEXIS 63, at *30–33 (N.C. Super. Ct. Dec. 19, 2012) (same).

15. In his reply brief, Harris asks for leave to amend his complaint again. The Court declines this request. A reply brief is the wrong means for seeking leave to amend. And in any event, the request is untimely, coming two months after the close of fact discovery, a year after the amended complaint, and more than fourteen months after the original complaint. Harris knew about his discussions with Magan before he filed this lawsuit; he could have—and should have—raised this theory long ago. An amendment so late in the game would surely prejudice Ten Oaks, necessitate additional discovery, and unreasonably prolong resolution of the contract dispute that Harris actually pleaded. *See, e.g.*, *Wilkerson v. Duke Univ.*, 229 N.C. App. 670, 679 (2013) (affirming denial of motion to amend filed during summary judgment for reasons of undue delay and undue prejudice); *see also Willard v. Barger*, 2020 NCBC

LEXIS 117, at *28 n.13 (N.C. Super. Ct. Oct. 9, 2020) (declining to allow plaintiffs to amend complaint through brief in support of summary judgment); *Media Network, Inc. v. Mullen Advert. Inc.*, 2006 NCBC LEXIS 9, at *6–7 (N.C. Super. Ct. May 24, 2006) (denying leave to amend due to "undue delay" when party knew relevant facts but waited a year after filing complaint to seek leave to amend).

16. Accordingly, the Court denies Harris's motion.

B. Ten Oaks' Motion

17. Ten Oaks contends that Harris did not source the ScanSource deal and therefore cannot maintain his claim for breach of the employment agreement. The dispute, according to Ten Oaks, boils down to a question of contract interpretation. In its view, the term "source" means to find or identify a deal opportunity, and the undisputed evidence shows that Hahn identified the ScanSource deal when he made first contact with Catlin.

18. Harris disputes that interpretation. He defines "source" to mean making a meaningful contact leading to a deal and contends that his contact with More was meaningful in ways that Hahn's contact with Catlin was not. As Harris sees it, Hahn merely identified ScanSource as a target company.[4]

19. The parties' interpretive dispute is the place to start. The goal of contract interpretation is to ascertain the intent of the parties when the contract was made. *See, e.g.*, *Morrell*, 371 N.C. at 681. "If the plain language of a contract is clear, the intention of the parties is inferred from the words of the contract. Intent is derived

[4] Harris's opposition brief also repeats many of the arguments contained in his motion for summary judgment. The Court rejects these arguments for the reasons discussed above.

not from a particular contractual term but from the contract as a whole." *State v. Philip Morris USA Inc.*, 359 N.C. 763, 773 (2005) (citations and quotation marks omitted).

20. Here, the plain language supports Ten Oaks' interpretation. The word "source" when used as a verb ordinarily means "find" or something similar—as in, to find where a product or service can be obtained.[5] That is how the employment agreement uses the word. It treats "source" and "find" as interchangeable terms: Harris was to receive a cash bonus "for each deal sourced," meaning that he would be paid $5,000 if he "*finds* a deal that results in an accepted Letter of Intent" and another $10,000 if the same "deal results in a successful acquisition by Ten Oaks." (Empl. Agrmt. (emphasis added).) In ordinary usage, the word "find" means to discover or come upon something, usually through searching, effort, or study.[6] Because "source" and "find" are one and the same, sourcing a deal under the employment agreement means discovering the deal through effort.

21. Harris does not dispute that the employment agreement uses "source" and "find" interchangeably. Nor does he dispute the ordinary meaning of these words. Rather, he bases his competing interpretation on his own subjective understanding

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[5] *See Source*, Merriam-Webster Dictionary, http://merriam-webster.com/dictionary/source (last visited July 31, 2023) ("to specify the source of (something, such as quoted material)"); *Source*, Collins Dictionary, http://collinsdictionary.com/us/dictionary/english/source (last visited July 31, 2023) ("to find or acquire a source").

[6] *See Find*, Merriam-Webster Dictionary, http://merriam-webster.com/dictionary/find (last visited July 31, 2023) ("to come upon by searching or effort" or "to discover by study or experiment"). The word also sometimes means to come upon accidentally (for example, finding a penny in a parking lot), though no one contends that would be an appropriate definition in this context. *See id.*

and his expert's testimony. Neither persuades. Having agreed to the plain terms of the contract, Harris is "bound by" them regardless of his subjective understanding. *Atl. & E. Carolina Ry. Co. v. Wheatly Oil Co.*, 163 N.C. App. 748, 752 (2004) (citation and quotation marks omitted); *see also Vestal v. Vestal*, 49 N.C. App. 263, 268 (1980) ("It is not the understanding or intent of one of the parties that controls the interpretation of a contract, but the agreement of both parties."). And Harris may not use expert testimony to contradict the ordinary meaning of nontechnical terms, which "source" and "find" undoubtedly are. *See, e.g.*, *Smith v. Childs*, 112 N.C. App. 672, 681 (1993).

22. Moreover, the text and structure of the agreement refute Harris's interpretation. His definition hinges on whether a contact leads to a deal, but the agreement distinguishes the initial step of finding a deal (sourcing) from later steps of consummating the deal (project management, securing letters of intent, and closing). Indeed, the agreement promises partial compensation for sourcing a deal that results in a letter of intent even when that deal falls through and does not close. Defining "source" as contact that leads to a deal would therefore make little sense.

23. In sum, the contract language is unambiguous, making its interpretation a question of law for the Court to decide. *See Metcalf v. Black Dog Realty, LLC*, 200 N.C. App. 619, 633 (2009). To "source" a deal means to "find" a deal—that is, to discover a deal through effort.[7]

[7] Having agreed with Ten Oaks that the contract is unambiguous, the Court need not address its contradictory argument that the contract is so indefinite that it is unenforceable.

24. Ten Oaks contends that resolving the interpretive issue in its favor is dispositive because the undisputed evidence shows that Hahn researched ScanSource and made first contact with Catlin before involving Harris. The Court disagrees. Even under the interpretation proposed by Ten Oaks and adopted by the Court, the question of who sourced the ScanSource deal—Hahn or Harris—remains a genuine issue of material fact.

25. Viewed in the light most favorable to Harris, the evidence suggests that Hahn found a target company as opposed to a deal involving the divestiture of ScanSource's European division. When Hahn asked Harris to "blitz" ScanSource, for example, he referred generally to ScanSource's efforts "to jettison some international units" but nothing more concrete. (Ex. 25 to Harris Dep.) Likewise, after speaking with Catlin, Hahn told Magan and Harris generally that ScanSource was "looking for 'easy button' buyers for their international units." (Hahn Aff. Ex. 3.) To be sure, Catlin recalls discussing "ScanSource's efforts to divest its European division" with Hahn. (Catlin Aff. ¶ 10.) But as Hahn conceded in his deposition, it is not enough to "hear about a divestiture." (Hahn Dep. 231:11–23.) In Magan's words, a deal must be "an actionable investment opportunity." (Magan Dep. 93:9–10; *see also* Magan Dep. 10:1–2; 63:24–64:1.) Ten Oaks has not pointed to undisputed evidence that Hahn found an actionable deal as opposed to a target of interest.

26. In fact, some evidence suggests that when Hahn and Catlin spoke about the deal, there was no actionable deal to be found. More's testimony is that ScanSource was actively negotiating with a buyer for its European division. The same week that

Hahn spoke with Catlin, More told Harris that he would keep Ten Oaks "in mind *should an opportunity arise* for the sale and subsequent purchase [of] ScanSource Europe's assets." (More Aff. ¶¶ 13, 14 (emphasis added).) It was only after ScanSource's negotiations with the other buyer fell through that More contacted Harris to discuss a potential deal between ScanSource and Ten Oaks.

27. In his affidavit, More also states his "opinion that Jordan Harris sourced the transaction between Ten Oaks and ScanSource for the divestiture of ScanSource's European assets." (More Aff. ¶ 22.) Ten Oaks objects to the statement as inadmissible lay opinion testimony. The Court does not rely on More's opinion and therefore need not decide its admissibility. The other statements in More's affidavit—related to the status of the divestiture of the European division and his interactions with Harris and others at Ten Oaks—are admissible and support Harris's view of the facts.

28. Clouding the picture further is evidence that Hahn and Magan acknowledged that Harris had sourced the ScanSource deal. According to Harris, Magan praised him for "getting" the ScanSource deal and crowed that compensation for the deal would make him wealthy. (Harris Dep. 228:3–229:8.) Contemporaneous texts between Hahn and Magan are similar. After Ten Oaks obtained a letter of intent with ScanSource, Magan asked Hahn if he had sent Harris "the $5k on ScanSource." Hahn responded that "We sent him 5K on 9/17 – I think to your point we still owe him 5K for signed LOI." (Ex. 13 to Hahn Dep.)

29. From this evidence, a reasonable jury could conclude that Hahn found a target of interest rather than an actionable deal; that no actionable deal existed at the time Hahn spoke with Catlin; that Harris found the actionable deal when More contacted him after negotiations with another buyer stalled; and that Hahn and Magan acknowledged that Harris had sourced the deal. On the other hand, a reasonable jury could also conclude, as Ten Oaks contends, that Hahn sourced the deal before Harris contacted More and that Harris's efforts are better categorized as project management. The Court's duty is not to decide which conclusion is more compelling; it is only to decide whether genuine issues of material fact exist. They do, and they are for the jury to decide.

30. Accordingly, Ten Oaks is not entitled to summary judgment.

III.
CONCLUSION

31. For these reasons, the Court **DENIES** each party's motion for summary judgment.

SO ORDERED, this the 31st day of July, 2023.

/s/ Adam M. Conrad
Adam M. Conrad
Special Superior Court Judge
for Complex Business Cases