

STATE OF MICHIGAN

IN THE 6TH CIRCUIT COURT FOR THE COUNTY OF OAKLAND

Daniel J. Dempsey, an individual, and
Chameleon Power, Inc., a Michigan
corporation,

Case No. 2025-213563-CB

Plaintiffs,

Hon. Victoria Valentine

v.

Hyphen Solutions, LLC, a Texas limited
liability company,

Defendant.

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OPINION AND ORDER REGARDING DEFENDANT'S MOTION FOR SUMMARY
DISPOSITION UNDER MCR 2.116(C)(8)

At a session of said Court, held in the
County of Oakland, State of Michigan
July 9, 2025

HONORABLE VICTORIA A. VALENTINE

This matter is before the Court on Defendant's Motion for Summary Disposition pursuant to MCR 2.116 (C)(8). The Court has reviewed the parties' submissions and heard

oral argument. For the reasons below, the Court GRANTS Defendant's Motion under MCR 2.116(C)(8).

FACTUAL OVERVIEW

Plaintiffs, Daniel J. Dempsey, an individual, and Chameleon Power, Inc., ("Chameleon") filed a Complaint against Defendant Hyphen Solutions LLC ("Hyphen"), alleging breaches of two contracts: an Asset Purchase Agreement ("APA") and an Employment Agreement ("EA"). It is undisputed that Hyphen paid Chameleon more than \$22 million dollars for Chameleon's assets under the APA. What is at issue is whether Hyphen owes Chameleon an additional "Revenue Milestone Payment" ("RMP") of between \$1 million to \$3 million.

On January 1, 2022, Plaintiffs, Chameleon, as "Seller" and Dempsey, as Chameleon's "Sole Shareholder," along with Defendant Hyphen as "Buyer" signed an Asset Purchase Agreement ("APA"), which is governed by Delaware law.¹ Under the APA, Hyphen agreed to purchase certain assets of Chameleon, including Chameleon's photographic visualization software.² The APA included a provision for a "Revenue Milestone Payment" ("RMP") of up to \$3,000,000 to be paid by Hyphen (Buyer) to Chameleon (Seller) no later than thirty business days after the first anniversary of the "Integration Date."³ This payment was conditional upon Hyphen achieving certain business revenue thresholds.⁴

Under the APA "Integration means and shall be deemed to be completed at the

¹ Complaint ¶¶ 2, 14 and 15 and Exhibit 1: Asset Purchase Agreement § 1.1. ("APA" attached thereto).

² Complaint ¶2 and Exhibit 1: APA § 1.1.

³ Complaint ¶16 and Exhibit 1: APA, § 1.5(c) and p A-5, which defines "Integration" and "Integration."

⁴ Complaint ¶16 and Exhibit 1: APA, §1.5(c).

earliest of: (i) the date on which the activity described in Exhibit C [to the APA] is completed; (ii) the date on which Buyer [Hyphen] elects to operate the Software independently of Buyer's software and systems (without completing the activity described in Exhibit C [to the APA]; or (iii) the date on which Sole Shareholder's employment with Buyer is terminated by Buyer without cause."⁵ The APA required both Buyer (Hyphen) and Seller (Chameleon) to use "commercially reasonable efforts" following the Closing to complete the Integration "as soon as practicable." The Buyer (Hyphen) was responsible for the costs and resources needed for Integration and agreed to devote timely and all reasonably needed resources to the task.⁶

Additionally, on January 28, 2022, Plaintiff Daniel J. Dempsey signed an Employment Agreement ("EA") with Defendant Hyphen, which is governed by Delaware law, becoming the Vice President of Visualization.⁷ Dempsey's duties under the EA were detailed in Exhibit A attached to the EA, and include supervising/managing Chameleon Power operations, assigning job responsibilities, hiring staff, and supervising/managing Integration activities and supervising/managing sales/marketing for the Chameleon-related business.⁸ The EA references the APA and the concept of Integration.⁹

On January 27, 2023—one year later—Hyphen terminated Dempsey's employment without cause.¹⁰ This termination triggered certain provisions of the EA, including Dempsey's

⁵ Complaint, ¶¶ 20-21 and Exhibit 1: APA §5.1 and page A-5.

⁶ Complaint, ¶28 and Exhibit 1: APA §5.1 and page A-5 attached to APA.

⁷ Complaint, ¶ 15 and Exhibit 2: Employment Agreement ("EA"), and page A-1 attached thereto.

⁸ Complaint, ¶¶ 35-38 and Exhibit 2: Employment Agreement ("EA"), and page A-1 attached thereto.

⁹ Complaint Exhibit 2: EA, §§2, 4 fn 1 and §14.

¹⁰ Complaint, ¶22.

right to “Compensation Upon Termination” as set forth in his Employment Agreement (EA).¹¹ Plaintiffs do not allege that Hyphen failed to satisfy those “Compensation Upon Termination” obligations under the EA.

Dempsey’s termination also triggered the net \$7 million “Integration Payment” under the APA, which Hyphen was required to make to Chameleon.¹² Again, the Complaint does not allege that Hyphen failed to satisfy this contractual obligation.

Lastly, Dempsey’s termination triggered the “Integration Date” under the APA.¹³ Under the APA, Chameleon’s right to RMP is based on Hyphen’s “Business Revenue” during the one-year period beginning on the “Integration Date”-- January 27, 2023 through January 27, 2024.¹⁴ It is undisputed that Hyphen’s Business Revenue during this period was \$2,516,204, which falls below the minimum threshold of \$4,084,450.20 required to trigger even the lowest \$1 million payment.¹⁵

Plaintiffs contend that Hyphen failed to devote timely and all reasonably needed resources to complete the Integration and failed to use commercially reasonable efforts as required by the APA. They also allege that Hyphen prevented Dempsey from completing Integration and fulfilling his Integration-related duties under the EA. Plaintiffs assert that Hyphen acted in bad faith, failing to provide the necessary resources, cooperation, and decision-making authority needed for Dempsey to manage the Integration and sales operations effectively, thereby hindering the potential for the MRP payment.¹⁶

¹¹ Complaint, Exhibit 2: EA, §5.

¹² Complaint, ¶¶16, APA §§1.5(b) and 5.1.

¹³ Complaint, ¶¶20-21 and Exhibit 1: APA §5.1 and page A-5.

¹⁴ Complaint, ¶¶16, 26 and Exhibit 1: APA § 1.5(c).

¹⁵ Complaint, ¶¶16, 27.

¹⁶ Complaint, ¶¶4, 29, 40, 48, 54 and 58.

Plaintiffs filed the instant Complaint asserting four causes of action: (Count I) Breach of the Asset Purchase Agreement (“APA”) ; (Count II) Breach of the Covenant of Good Faith and Fair Dealing in connection with the APA; (Count III) Breach of the Employment Agreement (“EA”); and (Count IV) Breach of the Covenant of Good Faith and Fair Dealing in connection with the EA.

In lieu of filing an Answer, Defendant Hyphen filed a Motion for Summary Disposition pursuant to MCR 2.116(C)(8), seeking dismissal of:¹⁷

- All claims asserted against Defendant Dempsey, which consist of: Count I: Breach of Asset Purchase Agreement; Count III: Breach of Employment Agreement; and Count IV: EA-Breach of Covenant of Good Faith and Fair Dealing.
- The APA-Breach of the Covenant of Good Faith and Fair Dealing claim asserted against Defendant Chameleon (Count II).

STANDARD OF REVIEW

A motion for summary disposition pursuant to MCR 2.116(C)(8) tests the legal sufficiency of the complaint, not whether the complaint can be factually supported. *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159-160 (2019); *Pawlak v Redox Corp*, 182 Mich App 758, 763 (1990). A motion for summary disposition based on the failure to state a claim upon which relief may be granted is to be decided on the pleadings alone. *Bailey v Schaaf*, 494 Mich 595, 603; (2013); *Parkhurst Homes, Inc v McLaughlin*, 187 Mich App 357, 360 (1991).

“All well-pleaded factual allegations are accepted as a true and construed in a light most favorable to the nonmovant.” *Maiden v Rozwood*, 461 Mich 109, 119 (1999); *Wade v*

¹⁷ If granted, the motion would leave only Count I (Breach of the APA) pending.

Dep't of Corrections, 439 Mich 158, 162 (1992). Summary disposition is proper when the claim is so clearly unenforceable as a matter of law that no factual development can justify a right to recovery. *Parkhurst Homes*, 187 Mich App at 360; *Spiek v Dep't of Transportation*, 456 Mich 331, 337 (1998).

ANALYSIS

A. Covenant of Good Faith and Fair Dealing- (Counts II and IV)

Under Delaware law, the implied covenant of good faith and fair dealing “is a limited and extraordinary legal remedy” and it is “not an equitable remedy for rebalancing economic interests that could have been anticipated.” *Glaxo Group Ltd v DRIT LP*, 248 A3d 911, 920 (Del 2021) (quoting *Nemec v. Shrader*, 991 A.2d 1120, 1128 (Del. 2010)). It is “best understood as a way of implying terms in [an] agreement, whether employed to analyze unanticipated developments or to fill gaps in the contract’s provisions.” *Dunlap v. State Farm Fire and Cas. Co.*, 878 A2d 434, 441 (Del. 2005) (quoting *E.I. DuPont de Nemours & Co. v. Pressman*, 679 A2d 436, 443 (Del. 1996)).

The implied covenant “does not establish a free-floating requirement that a party act in some morally commendable sense,” *Allen v El Paso Pipeline GP Co, LLC*, 113 A3d 167, 182-83 (Del Ch 2014)(citing *Gerber v Enter Prods Hldgs, LLC*, 67 A3d 400, 418 (Del 2013) nor does it “require that a party have acted in subjective good faith.” *Id* at 183 (citing *ASB Allegiance Real Estate Fund v Scion Breckenridge Managing Member, LLC*, 50 A3d 434, 442, 444 (Del Ch 2012).

It “does not apply when the contract addresses the conduct at issue, but only when the contract is truly silent concerning the matter at hand.” *Oxbow Carbon & Mins. Hldgs, Inc*

v Crestview-Oxbow Acq, LLC, 202 A3d 482, 507 (Del. 2019); see also *Dunlap*, 878 A2d at 441 “[O]ne generally cannot base a claim for breach of the implied covenant on conduct authorized by the terms of the agreement.” (citation omitted). “An implied covenant claim should not be considered separate from the breach of contract claim where, as here, a plaintiff alleges the same underlying facts in support of the breach of contract claim.” *Harris v Innovate Biopharmaceuticals, Inc.*, 2019 WL 5173782 *8 (Del Super Court, 2019). See also *Rheault v. Halma Holdings Inc.*, 2023 WL 8005318,*13 (D. Del. 11/7/2023) (dismissing a claim for breach of the implied covenant of good faith and fair dealing “as impermissibly duplicative of [the] breach claim[]” because it was “based on the same conduct” and “factual bases” as the breach claim).

The first logical step in assessing an implied covenant claim is to determine whether the contract has a gap. *Miller v. HCP & Co.*, 2018 WL 656378, *9 (Del Ch Feb. 1, 2018), *aff’d sub nom. Miller v. HCP Trumpet Invs, LLC*, 194 A3d 908 (Del. 2018). The party claiming the covenant has been breached bears the burden to identify the contractual gap. *I Am Athlete, LLC v IM EnMotive, LLC*, 2024 WL 4904685 * 8 (Del Super, 11/27/2024, (citing *Miller v HCP & Co.*, 2018 WL 656378, *9 (Del. Ch. Feb. 1, 2018), *aff’d sub nom. Miller v HCP Trumpet Invs, LLC*, 194 A.3d 908 (Del. 2018)). Of course, if the contract explicitly addresses the matter at hand, there is no gap for the implied covenant to fill. “[T]he implied covenant cannot be used to circumvent the parties’ bargain” when “[e]xisting contract terms control.” *Dunlap*, 878 A.2d at 441.

Here the APA expressly provides a contractual standard governing the parties’ conduct post-closing. Section 5.1 provides that “Buyer and Seller shall each use

commercially reasonable effort following the Closing to complete the Integration (as defined in this Agreement, page A-5) as soon as practicable following the Closing Date.”¹⁸ The APA also provides that Hyphen “agrees to bear the costs of and responsibility for the Integration” and “shall devote, on a timely basis, all resources reasonably needed to complete the Integration as soon as practicable.”¹⁹ See *Himawan v Cephalon*, 2018 WL 6822708 (Del 2018), where the court dismissed the claim for implied breach of the implied covenant of good faith and fair dealing for failure to state a claim where a merger agreement similarly required the defendant to use “*commercially reasonable efforts*.”

Plaintiffs allege in Count I that Hyphen breached the Asset Purchase Agreement (APA) by failing to comply with its obligations under Section 5.1. Specifically, Plaintiffs cite a series of omissions and actions by Hyphen that purportedly resulted in monetary damages totaling \$3 million:²⁰

- (i) Failing to devote or hire personnel reasonably needed to complete actual Integration as soon as practicable as described in Exhibit C (see Exhibit 1: APA pp. C-1 to C-3) of the APA. (Exhibit 1: APA pp. 27-28 §5.1).
- (ii) Failing to provide human and financial resources to complete actual Integration (per APA, Exhibit C) resulting in the inability to generate Business Revenue from the Integrated software products from Plaintiff Chameleon’s pre-Closing customers and Defendant Hyphen’s new and existing customers. (Exhibit 1: APA pp. 27-28 §5.1).
- (iii) Failing to devote or hire the reasonably requisite number of sales and other staff and employees needed to promote/sell Plaintiff Chameleon-based products. (Exhibit 1: APA pp. 27-28 §5.1).
- (iv) Failing to devote or hire sufficient personnel to provide services and/or products to pre-Closing Plaintiff Chameleon customers resulting in loss of customers and Business Revenue. (Exhibit 1: APA pp. 27-28 §5.1).

¹⁸ Complaint Exhibit 1, §5.1 of APA. (Emphasis added).

¹⁹ Complaint Exhibit 1, §5.1 of APA.

²⁰ Complaint, ¶¶ 46-50. (Citations omitted).

- (v) Refusing to hire and/or replace staff/employees to levels needed to serve existing and secure new customers for Plaintiff Chameleon as demonstrated by Plaintiff Chameleon's historic performance. (Exhibit 1: APA pp. 27-28 §5.1).
- (vi) Failing to devote on a timely basis resources reasonably needed to complete actual Integration so that Business Revenue could be earned through the Integrated software product during the First Anniversary period. (Exhibit 1: APA pp. 27-28 §5.1).
- (vii) Failing to replace Plaintiff Dan Dempsey with a reasonable and viable option to serve and respond to the requests of existing and potential new customers after terminating Plaintiff Dan Dempsey's employment. (Exhibit 1: APA pp. 27-28 §5.1).
- (viii) Such other acts and omissions identified during the course of proceedings in this civil action.

Similarly, Plaintiff's Count II—AP-Breach of the Covenant of Good Faith and Fair Dealing—mirrors the above factual allegations asserted in support of the Breach of Contract claim in Count I. The allegations relating specifically to the Breach of Covenant of Good Faith and Fair Dealing are as follows:²¹

- (i) Failing to provide and devote human and financial resources following closing to complete Integration per Exhibit C of the APA as soon as possible;
- (ii) Failing to devote or hire personnel reasonably needed to complete APA Exhibit C Integration as soon as possible;
- (iii) Denying and/or ignoring Plaintiff Dan Dempsey's requests for human and financial resources to complete APA Exhibit C Integration;
- (iv) Failing to devote or hire the reasonably needed number of sales and other employees to promote/sell Plaintiff Chameleon-based products including APA Exhibit C Integrated products;
- (v) Failing to devote or hire sufficient personnel to provide services and/or products to pre-Closing Plaintiff Chameleon customers;
- (vi) Refusing to hire and/or replace employees to levels needed to serve existing and secure new customers; and,
- (vii) Failing to hire a replacement for Plaintiff Dan Dempsey and failing to authorize and/or provide resources to remaining staff to complete Integration and serve Plaintiff Chameleon's pre-closing customers after terminating Plaintiff Dan Dempsey's employment.

²¹ Complaint, ¶¶ 52-55.

Likewise, Plaintiff's claim for Breach of the Employment Agreement (Count III) closely parallels the factual allegations underlying their claim for Breach of the EA-Covenant of Good Faith and Fair Dealing (Count IV). The allegations relating to Breach of the Employment Agreement are as follows:²²

- (i) Failing to permit Plaintiff Dan Dempsey to expend needed time and/or Defendant Hyphen's resources and to provide Plaintiff Dan Dempsey the requisite authority to complete Integration of the systems and software of Chameleon and Defendant Hyphen as described in the APA (Exhibit 2: EA p. 2 §2).
- (ii) Denying and/or ignoring Plaintiff Dan Dempsey's requests for human and financial resources to complete Integration resulting in the inability effectively to supervise, manage, and participate in sales and marketing for Plaintiff Chameleon-related business and inability to generate and loss of Business Revenue (Exhibit 2: EA p. 2 §2, p. A-1 ¶¶1, 3).
- (iii) Failing to allow Plaintiff Dan Dempsey to supervise and manage day-to-day operations related to Plaintiff Chameleon's business activities, including assigning job responsibilities and activities of former Chameleon employees and new employees hired to work in "Chameleon-related" business (Exhibit 2: EA p. A-1 ¶1).
- (iv) Failing to provide Plaintiff Dan Dempsey the reasonably required number and/or skilled employees needed to manage and supervise Plaintiff Chameleon-related sales and business (Exhibit 2: EA p. A-1 ¶2).
- (v) Failing to hire and/or assign to Plaintiff Chameleon sufficient personnel for Plaintiff Dan Dempsey to manage and supervise provision of reasonable services and/or products for Plaintiff Chameleon-related business resulting in loss of customers, sales opportunities, and Business Revenue (Exhibit 2: EA p. A-1 ¶¶2,3).
- (vi) Refusing to hire and/or replace employees to levels needed to serve existing and secure new customers for Plaintiff Chameleon as demonstrated by Plaintiff Chameleon's pre-Closing historic performance in its core business (Exhibit 2: EA p. A-1 ¶¶2,3).
- (vii) Failing to devote, on a timely basis, resources reasonably needed to complete APA Exhibit C Integration so that Business Revenue could be earned through the Integrated software product during the First Anniversary period (Exhibit 2: EA p. 1 §2, p. A-1 ¶¶1-3; Exhibit 1: APA pp. 27-28 §5.1).

²² Complaint, ¶¶ 56-59.

- (viii) Such other acts and omissions identified during the course of proceedings in this civil action.

Similarly, Plaintiff's Count IV—EA-Breach of the Covenant of Good Faith and Fair Dealing—mirrors the allegations set forth in support of Count III—Breach of the Employment Agreement. Count IV relies on substantially the same acts and omissions alleged in Count III, and likewise asserts that these actions resulted in monetary damages in the principal amount of \$3 million, which are as follows:²³

- (i) Failing to permit Plaintiff Dan Dempsey to expend needed time and/or Defendant Hyphen's resources and to provide Plaintiff Dan Dempsey the requisite authority to complete APA Exhibit C Integration of the systems and software of Plaintiff Chameleon and Defendant Hyphen as described in the APA;
- (ii) Denying and/or ignoring Plaintiff Dan Dempsey's requests for human and financial resources to complete APA Exhibit C Integration;
- (iii) Failing to allow Plaintiff Dan Dempsey to supervise and manage day-to-day operations related to Plaintiff Chameleon's business activities, including assigning job responsibilities and activities of former Chameleon employees and new employees hired to work in "Chameleon-related" business;
- (iv) Failing to provide Plaintiff Dan Dempsey the number and/or requisitely skilled employees needed to manage and supervise Plaintiff Chameleon-related sales and business;
- (v) Failing to hire and/or assign to Plaintiff Chameleon related operations sufficient personnel for Plaintiff Dan Dempsey to manage and supervise provision of reasonable services and/or products for Plaintiff Chameleon-related business;
- (vi) Refusing to hire and/or replace staff/employees to levels needed to allow Plaintiff Dan Dempsey a reasonable opportunity to manage and supervise activities to serve existing and secure new customers for Plaintiff Chameleon as demonstrated by Plaintiff Chameleon's pre-Closing historic performance in its core business;

²³ Complaint, ¶¶ 61-64.

- (vii) Failing to devote on a timely basis resources reasonably needed to complete APA Exhibit C Integration so that Business Revenue could be earned through the Integrated software product during the First Anniversary period; and,
- (viii) Such other acts and omissions identified during the course of proceedings in this civil action.

Consequently, after reviewing the Complaint, the Court finds that Plaintiffs' breach of covenant claims—Count II (APA – Breach of Covenant of Good Faith and Fair Dealing) and Count IV (EA – Breach of Covenant of Good Faith and Fair Dealing)—fail to identify any contractual gap that would warrant the implication of additional terms. Instead, these claims merely restate the allegations underlying the breach of contract claims asserted in Counts I and III. As the Delaware Supreme Court has held, “the implied covenant cannot be used to circumvent the parties’ bargain” when “[e]xisting contract terms control.” *Dunlap v. State Farm Fire & Cas. Co.*, 878 A.2d 434, 441 (Del. 2005). Accordingly, Counts II and IV are hereby dismissed.

B. Plaintiff Dempsey’s Claim for Breach of the APA (Count I)

Under Delaware law, “‘standing’ refers to the right of a party to invoke the jurisdiction of a court to enforce a claim or to redress a grievance.” *Dover Historical Soc v City of Dover Planning Com’n*, 838 A2d 1103, 1110 (2023). The party invoking the jurisdiction of the court bears the burden of establishing standing. *Dover Historical Soc*, *supra* at 1109. The Supreme Court of Delaware has found:

To establish standing, a plaintiff or petitioner must demonstrate first, that he or she sustained an “*injury-in-fact*”; and second, that the interests he or she seeks to be protected are within the zone of interests to be protected. The requirements for Article III constitutional standing have been identified by the United States Supreme Court and were

recently summarized by the United States Court of Appeals for the Third Circuit, as follows:

(1) the plaintiff must have suffered an injury in fact—an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) there must be a causal connection between the injury and the conduct complained of—the injury has to be fairly traceable to the challenged action of the defendant and not the result of the independent action of some third party not before the court; and (3) it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision. *Dover Historical Soc*, supra at 1110. (Emphasis added).

Under Michigan law, standing refers to a party's right initially to invoke a trial court's power to adjudicate a claimed injury in fact. *Saugatuck Dunes Coastal Alliance v Saugatuck Twp*, 509 Mich 561, 592 (2022). “The purpose of the standing doctrine is to assess whether a litigant's interest in the issue is sufficient to ‘ensure sincere and vigorous advocacy.’” *Lansing Sch Ed Ass’n v Lansing Bd of Ed*, 487 Mich 349, 355 (2010) (citation omitted). Standing involves whether a particular litigant is a proper party to request adjudication of an issue and not whether the issue is justiciable. *Id.* Therefore, one with a legal cause of action has standing. *Id.* at 372.

Hyphen argues that Dempsey lacks standing to assert a breach of contract claim under the APA because the alleged injuries stem from harm suffered by the corporation, not by Dempsey personally. Specifically, Hyphen contends that Dempsey has not alleged any individualized damages arising from the alleged breach of the APA. Instead, any right to the Revenue Milestone Payment (RMP) arises under the Asset Purchase Agreement (APA), which is payable solely to Chameleon—the designated “Seller”—not to Dempsey in his individual capacity.

Hyphen cites and relies on this Court’s prior decision in *Hwang v Kahn*, Case No. 25-

212238-CB,²⁴ in support of its argument that Dempsey, as an individual shareholder, lacks standing to enforce contractual rights belonging to Chameleon, the corporation. In *Hwang*, the Court held that an individual shareholder could not assert claims for injuries allegedly suffered by the corporation. However, the Court finds Hyphen’s reliance on this case to be inapposite under the facts presented here. In *Hwang*, the plaintiff brought suit in his individual capacity concerning loans made to non-party entity, KMT International LLC, of which he was CEO. The claims did not involve any loans made to Hwang personally. By contrast, in this case, Mr. Dempsey is not merely a shareholder—he is a signatory to the APA both as President and CEO of Chameleon, and as its sole shareholder. This dual role, particularly his status as a signatory to the APA, distinguishes this matter from the facts in *Hwang*.

Dempsey argues that he has standing by virtue of being a party to the APA and has a right to sue to enforce the APA. His status as a party, however, fails to save his claims from a motion under MCR 2.116(C)(8). The Complaint provides no basis to find that Dempsey has alleged damages suffered by him personally. As previously noted, under Delaware law, the elements of breach of contract are: (1) a contractual obligation; (2) a breach of that obligation by the defendant; and (3) *resulting damage to the plaintiff*. *H-M Wexford LLC v Encorp, Inc*, 832 A 2d 129, 140 (Del Ch 2003).

The APA, which is attached to the Complaint, identifies Hyphen as the “Buyer,”

²⁴ Hyphen also cites to this Court’s Opinion in *Masakowski v Krstovski*, Case No. 22-193375-CB, where the Court stated that “any cause of action alleging harm done to the corporate entities at issue would belong to those corporate entities.” *Id*, p 7.

Chameleon Power Inc. as the “Seller,” and Mr. Dempsey as the “Sole Shareholder.”²⁵ Under the APA, the RMP was payable solely to Chameleon the Seller, not to Dempsey, the sole shareholder:

(c) *Revenue Milestone Payment*. In addition to the Closing Payment and Integration Payment, no later than thirty (30) Business Days after the first anniversary of the Integration Date (the “*First Anniversary*”), Buyer shall pay to **Seller** up to \$3,000,000.00 upon the satisfaction of any milestone described below, such amount to be determined as follows (the “*Revenue Milestone Payment*”).²⁶

Additional provisions of the APA also bind only Chameleon as “Seller” and Hyphen as “Buyer”:

Section 1.1 Purchase and Sale of Assets. In accordance with and subject to the terms and provisions set forth herein, at the Closing, **Seller** shall upon receipt of the Closing Payment sell, convey, transfer, assign and deliver to Buyer, and **Buyer shall purchase and acquire from Seller**, free and clear of all Encumbrances (other than Permitted Encumbrances), all of Seller's right, title and interest in the following properties and assets, whether tangible or intangible, used or held for use by Seller in connection with the Business (other than the Excluded Assets) (collectively, the “*Assets*”).²⁷

Section 1.5 Purchase Price; Payment of Purchase Price. The total consideration to be **paid by Buyer to Seller** in consideration of the sale, conveyance, transfer, assignment and delivery of the Assets is, subject to this Section 1.5, an amount up to \$26,000,000.00 payable as follows (the “*Purchase Price*”).²⁸

- (a) *Closing Payment*. On the Closing Date, Buyer shall pay to **Seller** an aggregate amount equal to (i) \$15,000,000.00 . . .²⁹
- (b) *Integration Payment*. In addition to the Closing Payment, Buyer shall pay to **Seller** \$8,000,000.00 (the “*Integration Payment*”).³⁰

²⁵ APA, p 1.

²⁶ Complaint, ¶16, quoting APA ¶1.5(c).

²⁷ Complaint, ¶16 quoting APA, Article 1, § 1.1.

²⁸ Complaint, ¶16 quoting APA, Article 1, § 1.5.

²⁹ Complaint, ¶16 quoting APA, Article 1, § 1.5(a).

³⁰ Complaint, ¶16 quoting APA, Article 1, § 1.5(b).

According to the terms of the APA, all payments—including the key RMP payment in question—were to be made solely to Chameleon, the “Seller.” Therefore, Dempsey has not demonstrated that he suffered any actual injury from the alleged breach of the APA. Consequently, Count I is dismissed as to Dempsey, because he lacks a legal basis to assert a claim for breach of the APA.

C. Breach of the Employment Agreement (Count III)

Under Delaware law the elements of breach of contract are: (1) a contractual obligation; (2) a breach of that obligation by the defendant; and (3) *resulting damage to the plaintiff*. *H-M Wexford LLC v Encorp, Inc*, 832 A 2d 129, 140 (Del Ch 2003). The standard remedy for breach of contract is premised on the reasonable expectations of the parties that existed before or at the time of the breach. *Diamond Fortress Techs v EverID Inc*, 274 A 3d 287, 305 (Del. Super Ct 2022). “It is well-settled that breach of contract damages ‘are designed to place the *injured party*. . . in the same place as he would have been if the contract had been performed.’” *Diamond Fortress Technologies, Inc v EverID*, 274 A3d 287, 305 (Super 2022).

Plaintiff Dempsey asserts that his express and reasonable expectations under the Employment Agreement (EA) included Hyphen’s specific obligation to achieve and pay the Revenue Milestone Payment (RMP), which he claims was stated to be between \$1 million and \$3 million. He further contends that, under Delaware law, when a contract—such as the EA—incorporates the terms and conditions of another agreement, such as the Asset

Purchase Agreement (APA), the two documents are to be read together as comprising the full agreement between the parties.³¹

Hyphen disputes this interpretation. It argues that the *EA* does not entitle Dempsey—or Chameleon—to the RMP. Rather, Hyphen contends that any right to the RMP arises solely under the *APA*, which expressly identifies Chameleon as the "Seller" and provides that the "Buyer shall pay to Seller up to \$3,000,000.00 upon the satisfaction of any milestone described below." Thus, according to Hyphen, any entitlement to the RMP belongs exclusively to Chameleon under the *APA*—not to Dempsey under the *EA*.

The Court agrees with Hyphen. Dempsey's claims under the Employment Agreement (*EA*) must be dismissed because he has failed to allege a concrete and particularized injury to himself. Moreover, dismissal is appropriate for failure to state a claim, as Dempsey has not alleged the essential element of damages resulting from any breach of the *EA*. While the Complaint seeks \$3 million in damages for the alleged breach, it contains no factual allegations showing that Dempsey, in his individual capacity, suffered those damages—or any damages at all—due to Hyphen's conduct.

The Court further notes that Dempsey—not Chameleon—is the party to the *EA* and the one asserting the breach claims. Yet, the damages he seeks—the \$3 million "RMP"—relate to amounts allegedly owed under the Asset Purchase Agreement (*APA*) to Chameleon as the "Seller," not to Dempsey as an individual. The Complaint does not allege that

³¹ Plaintiff's Response, 7, citing *Golovan v Univ of Delaware*, 73 F Supp3d 442, 453 (D Del 2014).

Dempsey personally was harmed by Hyphen's conduct under the EA or that he has any direct entitlement to the RMP.

Crucially, the EA contains no provision referencing or entitling Dempsey to the RMP. Any claim for the RMP arises solely under the APA and belongs to Chameleon. Although Dempsey is the sole shareholder of Chameleon, the Court emphasizes that under Delaware corporate law, a corporation is a separate legal entity from its shareholders. See *Klauder v. Echo/RT Holdings LLC*, 152 A3d 581 (Del. 2016); 2016 WL 7189917, at *2. Accordingly, Dempsey lacks standing to assert claims for damages under the EA based on alleged damages owed to Chameleon under a separate agreement.

For these reasons, the Court finds that Dempsey has failed to allege a distinct and personal injury arising from the alleged breach of the EA. His claims under the EA are therefore dismissed.

CONCLUSION

Based on the above:

IT IS HEREBY ORDERED that Defendant's Motion for Summary Disposition as to Count I (Breach of APA) is GRANTED as to Dempsey only.

IT IS HEREBY ORDERED that Defendant's Motion for Summary Disposition as to Count II (APA-Breach of Covenant of Good Faith and Fair Dealing) is GRANTED.

IT IS HEREBY ORDERED that Defendant's Motion for Summary Disposition as to Count III (Breach of Employment Agreement) is GRANTED.

IT IS HEREBY ORDERED that Defendant's Motion for Summary Disposition as to Count IV (EA-Breach of Covenant of Good Faith and Fair Dealing) is GRANTED.

This is not a final order and does not close the case.

IT IS SO ORDERED.



DATED: 7/9/25