STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

ROCKET MORTGAGE, LLC,

Plaintiff,

Case No. 22-010100-CB

-v-

Hon. Muriel D. Hughes

HOUSE OF LENDING, ANTHONY ALRIHANI, ALEX BEIDOUN, BRIAN ARNOLDY, SEAN ARNOLDY, ~~ALLEN ALRIHANI~~, ANGELA BAYDOUN, AUTUMN DECANT, ROZINA HAIDAR, NADIRA HOLDEN, MOHAMMAD-HUSSEIN RAMEZ IBRAHIM, and DOMINIC KARJO, jointly and severally,

Defendants.

OPINION AND ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY DISPOSITION DISMISSING BRIAN ARNOLDY'S AND SEAN ARNOLDY'S COUNTERCLAIMS

At a session of said Court held in the Coleman A. Young Municipal Center, Detroit, Wayne County, Michigan,
on
this: 7/10/2024

PRESENT: Muriel D. Hughes
Circuit Judge

This civil matter is before the Court on a motion for summary disposition filed by Plaintiff/Counter-Defendant Rocket Mortgage, LLC ("Rocket") on Counterclaims of Defendants/Counter-Plaintiffs Brian Arnoldy and Sean Arnoldy. For the reasons stated below, the Court grants the motion.

I. BACKGROUND

Rocket filed a complaint against Defendants House of Lending, Anthony Alrihani, Alex Beidoun, and Rocket Mortgage's former employees (called "team members"), including Brian Arnoldy, Sean Arnoldy, Allen Alrihani, Angela Baydoun, Autumn Decant, Rozina Haidar, Nadira Holden, Mohammed-Hussein Ramez Ibrahim, and Dominick Karjo.

The defendants all resigned from their positions at Rocket Mortgage sometime in June or July of 2022. Thereafter, Defendant team members began working for House of Lending. Relative to the motion now before the Court, on June 20, 2022, Sean Arnoldy resigned from Rocket, and, on July 3, 2022, Brian Arnoldy resigned from Rocket.

On September 14, 2022, Brian Arnoldy and Sean Arnoldy filed a counter-complaint against Rocket,[1] alleging breach of contract and unjust enrichment in connection with their incentive-based compensation earned in June 2022 on the basis of their compensation plans.

More specifically, Sean Arnoldy alleges that Rocket breached the employment contract with him by failing to pay him his monthly base commission earned before his resignation (Count I). In Count II, Brian Arnoldy alleges that Rocket breached the employment contract with him by failing to pay him the commissions he earned before his resignation. Counts III and IV allege that Rocket has been unjustly enriched by its refusal to pay Sean Arnoldy's and Brian Arnoldy's commissions they earned in June 2022.

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[1] Five days later, on September 19, 2022 Brian Arnoldy and Sean Arnoldy filed their "First Amended Answer to Complaint, Affirmative Defenses, and Counterclaims." It does not appear that the counterclaims in the amended version are different from the original countercomplaint.

When they began employment with Rocket, all of the defendants, including Brian Arnoldy and Sean Arnoldy, signed employment agreements with Rocket. These agreements contain confidentiality, noncompete, and non-solicitation provisions. In their agreements, Defendants agreed to keep confidential and not use or disclose any proprietary/confidential information including Rocket Mortgage's clients, prospects, referral sources, financial information, marketing plans, training materials, trade secrets, and work product. The agreements also contain confidentiality provisions, "No Raiding of Clients" provisions, "No Raiding of Employees" provisions, and return of property provisions. The team members also agreed to post-employment noncompete restrictions, which provides:

SECTION 11. Covenant Not To Compete

> 11.1 Obligations. During your employment with the Company and for 9 months after your employment ends for any reason, you will not, directly or indirectly, for yourself or on behalf of or in connection with any other person or entity, within the Restricted Territories: (a) engage in any employment, business or activity that is competitive with the Business of the Company in the same or similar capacity as you performed during your employment with the Company; (b) own, manage, maintain, consult with, operate, acquire any interest in, or otherwise assist or be connected with any entity or business that competes, directly or indirectly, or is seeking to compete, directly or indirectly, with the Business of the Company; or (c) undertake any efforts or activities toward pre-incorporating, incorporating, financing, or commencing any business or activity that is competitive with the Business of the Company. These prohibited activities include businesses and activities that have a physical presence or take place in the Restricted Territories, as well as the solicitation of business in the Restricted Territories from outside such territories.
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> 11.2 Definitions. "Business of the Company" means: (a) any business in which the Company is or becomes engaged during your employment; and (b) any business known to you in

> which the Company contemplated becoming engaged during your employment. "Restricted Territories" means: (a) Wayne, Oakland, Macomb, Genesee, Washtenaw or Livingston county (State of Michigan); (b) Cuyahoga, Erie, Lake, Geauga, Summit, Medina, Lorain, or Portage county (State of Ohio); or (c) Maricopa, Pima or Pinal county (State of Arizona).
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> [Emphasis added].

Pursuant to Section 9.1 of these agreements, they are to "be construed in accordance with the laws of the State of Michigan…" Brian Arnoldy's Restricted Stock Units Award Agreement was to be construed on the laws of Delaware.

Under the Arnoldys' Compensation Plan, which incorporates incentive-based pay, any breach of the covenant not to compete, covenant not to solicit other employees or clients results in forfeiture of incentive-based pay not yet paid. [Rocket's Exhibit E, Section 5]. Section 5 also states in pertinent part:

> You may receive (but are not guaranteed) incentive-based pay post-employment, provided that all of the conditions in the Terms for Incentive Pay and this Comp Plan have been met.
> …
> [Emphasis added].

Under Section 3.2(a), Rocket also has the sole and exclusive authority to adjust incentive-based pay.

In addition to the Compensation Plans, both Arnoldys had incentive pay plans, which both provide in relevant part:

> 1.2 Eligibility. To be eligible to receive incentive-based pay under these Terms and your Comp Plan, you must: (i) acknowledge that you are bound by these Terms and your Comp Plan; (ii) comply with all of the terms and conditions of, and satisfy all of the eligibility requirements in, these Terms and your Comp Plan; (iii) follow all Company employment and lending guidelines, policies, rules, standards, plans, and handbooks; (iv) comply with applicable state and

> federal laws and regulations; and (v) comply with the terms contained in any employment agreement signed by you. Additional eligibility rules that apply to you are set forth in your Comp Plan.
> [Rocket's Exhibit D] [Emphasis added].
>
> ...
>
> 2.2 After Employment. You will not accrue or be paid incentive-based pay if you are not employed with Company on the applicable payroll date, unless your Comp Plan specifically provides otherwise.
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> [Id.] [Emphasis added].

Brian Arnoldy's and Sean Arnoldy's final earnings statements from Rocket Mortgage, dated July 1, 2022, show that they each received all base compensation owed. Brian Arnoldy also received incentive-based pay for the loans that he closed in May 2022, an overtime payment, and a contest award payment. Sean Arnoldy received incentive-based pay for the loans that he closed in May 2022. Neither received the incentive-based pay for the loans that they assisted in closing in June 2022, which would have been paid out at the end of July 2022.

Amanda Brady, Rocket's Director of Compensation, testified in a deposition that the reason that Rocket withheld Brian Arnoldy's incentive-based pay for loans he closed in June 2022 was that he was not employed on the date of payout. [Rocket's Exhibit A, p. 64, ln 13-16].

As Director of Mortgage Banking, Sean Arnoldy also had a floor-based pay plan. According to the Leader Floor table, a Director of Mortgage Banking receives a floor amount of $6,000 each month. Brady testified that Sean Arnoldy was not eligible to

receive floor-based pay[2] because he was not employed with Rocket on the payout date. [Id., p. 67, ln 7-12]. According to the floor-based pay plan, upon separation, an employee is entitled to a prorated amount of the "floor" pay based on the "amount of business days worked." [Rocket's Exhibit E].

Now before the Court is Rocket's motion for summary disposition as to Brian Arnoldy's and Sean Arnoldy's counterclaims. Discovery closed on February 28, 2024.

II. STANDARDS FOR DETERMINING MOTIONS FOR SUMMARY DISPOSITION

Rocket bases its motion on MCR 2.116(C)(10). In reviewing a motion under MCR 2.116(C)(10), a court must consider the pleadings, admissions, affidavits, and other relevant documentary evidence submitted in the light most favorable to the nonmoving party. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). If no genuine issue of material fact is established, the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *West v General Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

The moving party has the initial burden of supporting its position through documentary evidence. *Quinto v Cross and Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). The burden then shifts to the opposing party to establish the existence of a genuine issue of material fact. *Id.* The non-moving party ". . . may not rest on the mere allegations or denials of his or her pleadings, but must, by affidavit or otherwise provided

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[2] Floor-based pay is a minimum guarantee of incentive pay, which is paid in addition to the achieved "Aviator Flight Tiers incentive pay."

in this rule, set forth specific facts showing that there is a genuine issue for trial." MCR 2.116 (G)(4). If the opposing party fails to do so, the motion for summary disposition is properly granted. *Id.*; *Quinto, supra* at 363. Finally, a "reviewing court may not employ a standard citing the mere possibility that the claim might be supported by evidence produced at trial. A mere promise is insufficient under our court rules." *Maiden, supra* at 121.

III. DISCUSSION

Preliminarily, the Court notes that, in its previous Opinion and Order dated April 19, 2024, it has already ruled that, under Michigan law, as to the noncompete covenants in the employment agreements, Rocket Mortgage has a legitimate business interest in protecting its client lists and business practices. The Court also ruled that the noncompete covenants are not against public policy, are reasonable under MCL 445.77S4A(A) and case law, and are enforceable. The Court also ruled that the restrictive covenants in Brian Arnoldy's RSU Award Agreement are reasonable and enforceable under Delaware law.

A. Breach of Contract

As to the counterclaims of Brian Arnoldy and Sean Arnoldy, in support of its motion, Rocket asserts that the incentive-based pay was not paid to Brian Arnoldy and Sean Arnoldy because neither were employed at Rocket at the time of the applicable payment dates. In response, the Arnoldys assert that the Terms for Incentive pay "are clear that" they "may receive compensation under their Compensation Plans." They further contend that the plans "provide that they may receive incentive-based pay post-employment."

"'A party asserting a breach of contract must establish by a preponderance of the evidence that (1) there was a contract (2) which the other party breached (3) thereby resulting in damages to the party claiming breach.'" *Zwiker v Lake Superior State Univ*, 340 Mich App 448, 477–478; 986 NW2d 427 (2022), quoting *Miller-Davis Co v Ahrens Constr, Inc*, 495 Mich 161, 178; 848 NW2d 95 (2014).

There is no dispute that several contracts exist governing the parties' duties and rights. Here, the rules of contract interpretation must be applied to those agreements. Given that consideration, the Court is required to interpret the parties' agreements. "The primary goal of contract interpretation is to honor the parties' intent. When the contract is unambiguous, the parties' intent is gleaned from the actual language used." *Prentis Family Found v Barbara Ann Karmanos Cancer Inst*, 266 Mich App 39, 57; 698 NW2d 900 (2005) [Citations omitted]. The "primary task is to ascertain the intent of the parties at the time they entered into the agreement, which we determine by examining the language of the agreement according to its plain and ordinary meaning." *Altobelli v Hartmann*, 499 Mich 284, 295; 884 NW2d 537 (2016) [Citation omitted]. "Dictionary definitions may be used to determine the ordinary meaning of undefined terms." *San Marino Iron, Inc v Haji*, 341 Mich App 634, 639; 991 NW2d 828 (2022) [Citation omitted].

"A fundamental tenet of our jurisprudence is that unambiguous contracts are not open to judicial construction and must be *enforced as written.*" *Rory v Continental Ins Co,* 473 Mich 457, 468; 703 NW2d 23 (2005) [Emphasis in original]. A contract will be susceptible to only one interpretation if it is clear and unambiguous, however inartfully worded or clumsily arranged. *Farm Bureau Mut Ins Co v Nikkel, et al,* 460 Mich 558,

566; 596 NW2d 915 (2003). On the other hand, a contract is ambiguous if its words may reasonably be understood in different ways. "When contractual language is unambiguous reasonable people cannot differ concerning the application of disputed terms to certain material facts, and summary disposition should be awarded to the proper party." *Island Lake Arbors Condo Ass'n v Meisner & Assoc, PC*, 301 Mich App 384, 393; 837 NW2d 439 (2013) [Citations and quotation marks omitted].

Where a written contract is ambiguous, a factual question is presented as to the meaning of its provisions, requiring a factual determination as to the intent of the parties in entering the contract. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 469; 663 NW2d 447 (2003). Thus, the fact finder must interpret the contract's terms, in light of the apparent purpose of the contract as a whole, the rules of contract construction, and extrinsic evidence of intent and meaning. *Id.* "In interpreting a contract whose language is ambiguous, the jury should also consider that ambiguities are to be construed against the drafter of the contract." *Id.* at 470.

The Arnoldys contend that their agreements expressly provide that they "may receive" such payment. Additionally, Sean Arnoldy's Compensation Plan, applicable to his role as a director of mortgage banking, expressly states that directors who leave during the month may receive a prorated floor based on the amount of business days worked. They argue that the word "may," as used in Section 5 of the Compensation Plans, can be interpreted in different ways. In reply, Rocket also maintains that the Compensation Plan must be read in conjunction with the Terms of Incentive Pay. Rocket also asserts that no ambiguity can be read into the Compensation Plan where the word "may" is used.

There is no doubt that both Brian Arnoldy and Sean Arnoldy agreed to the terms of the Compensation Plan and the Terms for Incentive Pay. Rocket has provided evidence that Brian Arnoldy electronically signed the Terms for Incentive pay on June 19, 2016 and Sean Arnoldy electronically signed the Terms for Incentive Pay on July 16, 2016. [Rocket's Exhibit D, Terms for Incentive Pay, p. 2-3].

According to the plain language of Section 2.2 of the Terms for Incentive Pay, Rocket employees will not accrue or be paid incentive-based pay if they are not employed with Rocket on the applicable payroll date, unless their "Comp Plan specifically provides otherwise."

The applicable "Comp Plans" for Brian and Sean Arnoldy do not specifically provide that they will receive incentive-based pay even if they are not employed with Rocket on the applicable payroll date. In fact, the Compensation Plan's Section 5 plainly states that an employee "**may receive (but are not guaranteed)"** incentive-based pay post-employment. "The word 'shall' is generally used to designate a mandatory provision, while 'may' designates discretion." *Am Fedn of State, Cnty. & Mun Employees, AFL-CIO Michigan Council 25 v Highland Park Bd of Ed*, 214 Mich App 182, 192; 542 NW2d 333 (1995), citing *Mollett v Taylor,* 197 Mich App 328, 339; 494 NW2d 832 (1992). In addition, with the primary goal of contract interpretation to honor the parties' intent, if the parties intended Section 5 to mandate incentive-based pay post-employment, the word "shall" would have been used instead of the word "may" and the parenthetical clause, "but are not guaranteed," would not have been included in the sentence. The terms of the contract are clear and unambiguous that the incentive-based pay was not guaranteed after separation but permissive pursuant to the terms of the agreement. Brian Arnoldy and Sean

Arnoldy do not dispute that they were not employed by Rocket at the time the incentive-pay for June 2022 was paid. Sean Arnoldy resigned from his employment with Rocket on June 20, 2022. [Rocket's Exhibit C, Sean Arnoldy Deposition, p. 94]. Brian Arnoldy resigned from his employment with Rocket on July 3, 2022. [Rocket's Exhibit B, Brian Arnoldy Deposition, p. 19]. The incentive-based pay was paid out by Rocket when Brian Arnoldy and Sean Arnoldy were no longer employed with Rocket. As explained above, Amanda Brandy testified that the reason why Brian Arnoldy and Sean Arnoldy did not receive the incentive-based pay was because they were no longer employed on the date of the payout. [Rocket's Exhibit A, Brady Deposition, p. 55, ln18-21; p. 64, ln13-16; p. 114-116].

Therefore, there is no genuine issue of material fact that Brian Arnoldy and Sean Arnoldy are not entitled to incentive-based pay for June 2022 because they were not employed with Rocket on the date of the payout. Under the Terms for Incentive Pay and the Compensation Plans, Rocket did not breach these agreements as the Terms require Brian Arnoldy and Sean Arnoldy to be employed at the time of the incentive-based payout. Accordingly, summary disposition in favor of Rocket as to the counterclaims brought by Brian Arnoldy and Sean Arnoldy for breach of contract is appropriate.

Rocket also argues that the Arnoldys were no longer eligible for the incentive-based compensation because they breached their non-compete provisions when they were employed with House of Lending. The Court need not address this argument based on the Court's ruling that the Arnoldys were not entitled to incentive-base pay because they were not longer employed at Rocket on the date of the payout for incentive-based pay for June 2022.

B. Unjust Enrichment

Rocket next argues that there is no basis exists for Brian Arnoldy's and Sean Arnoldy's unjust enrichment claims because an express contract exists covering the terms of incentive-based pay for the Arnoldys. Rocket also claims that, even if there was no applicable contract, there is no genuine issue of material fact regarding whether there is inequity. Rocket asserts that it never requested an unfair retention of a benefit, and never coerced Brian Arnoldy or Sean Arnoldy to forego their incentive pay. Nor did it ever induce the retention of incentive pay by mistake.

In response, the Arnoldys claim that, under MCR 2.111(A)(2), they may plead alternative counts and theories of recovery. They also argue that the evidence supports their unjust enrichment claims. Specifically, they contend that they conferred benefits on Rocket. Rocket does not dispute that the Arnoldys did what Rocket required of them to receive incentive compensation and that they earned such compensation. However, they claim that Rocket's retention of the compensation it purportedly owes them is manifestly unjust.

In its reply, Rocket argues summary disposition is proper as to the unjust enrichment claims because courts have rejected the alternate pleading theory when an express contract exists. Rocket also argues that it is clear from the Arnoldys' Response Brief that their claims for incentive-based pay are rooted in and rely on the particular contracts.

"Unjust enrichment" is an equitable theory that allows a trial court to imply a contract in order to prevent the unjust enrichment of a party. *Zwiker, supra* at 482. Whether a specific party has been unjustly enriched is generally a question of fact, but

whether a claim for unjust enrichment can be maintained is a question of law. *Jackson v Southfield Neighborhood Revitalization Initiative,* __Mich App__; __NW3d__; 2023 WL 6164992 (2023) at *21.

"'A claim of unjust enrichment requires the complaining party to establish (1) the receipt of a benefit by the other party from the complaining party and (2) an inequity resulting to the complaining party because of the retention of the benefit by the other party.'" *Id,* quoting *Karaus v Bank of NY Mellon*, 300 Mich App 9, 22-23; 831 NW2d 897 (2012). "Courts may not imply a contract under an unjust-enrichment theory if there is an express agreement covering the same subject matter." *Zwiker, supra* at 482; 986 NW2d 427 (2022), citing *Belle Isle Grill Corp v Detroit*, 256 Mich App 463 478; 666 NW2d 271 (2003). However, Brian and Sean Arnoldy argue that, even though there is a contract covering the subject matter of incentive pay post-employment, they can bring their breach of contract claims and unjust enrichment claims in the alternative. The Court disagrees. The Court of Appeals explained:

> These rules, allowing simultaneous and alternative claims for breach of contract and unjust enrichment, no longer appear to be good law when both claims are asserted against the *same* defendant, with whom the plaintiff has an express contractual relationship. As noted above, in such situations Michigan courts now hold that the existence of the express contract bars the quantum meruit claim.
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> *Morris Pumps v Centerline Piping, Inc*, 273 Mich App 187, 199; 729 NW2d 898 (2006), citing *Belle Isle Grill Corp, supra* [Italics in original] [Emphasis added].

Because Brian Arnoldy and Sean Arnoldy assert their breach of contract claims and unjust enrichment claims against Rocket concerning their incentive-base pay, and their incentive-based pay is governed by the terms of express contracts, they cannot

alternatively bring a claim for unjust enrichment. Thus, summary disposition as to Brian Arnoldy's and Sean Arnoldy's claims for unjust enrichment is appropriate as a matter of law. *Maiden, supra;* MCR 2.116(C)(10).

IV. CONCLUSION

There is no genuine issue of material fact that Brian Arnoldy and Sean Arnoldy are not entitled to incentive-based pay for June 2022 because they were not employed with Rocket on the date of the payout. MCR 2.116(C)(10). Under the Terms for Incentive Pay and the Compensation Plans, Rocket did not breach these agreements as the Terms require Brian Arnoldy and Sean Arnoldy to be employed at the time of the incentive-based payout. Accordingly, summary disposition in favor of Rocket as to the counterclaims brought by Brian Arnoldy and Sean Arnoldy for breach of contract is appropriate.

Because there is are express contracts covering the subject matter of incentive pay, the Arnoldys cannot alternatively bring a claim for unjust enrichment. *Morris, supra.* Thus, summary disposition in favor of Rocket as to Brian Arnoldy's and Sean Arnoldy's claims for unjust enrichment is appropriate as a matter of law. *Maiden, supra;* MCR 2.116(C)(10).

For the reasons stated in the foregoing Opinion,

IT IS ORDERED that the motion for summary disposition filed by Plaintiff/Counter-Defendant Rocket Mortgage, LLC on the Counterclaims of Defendants/Counter-Plaintiffs Brian Arnoldy and Sean Arnoldy is hereby **GRANTED IN ITS ENTIRETY;**

IT IS ORDERED that the Counter-Complaint filed by Brian Arnoldy and Sean Arnoldy is hereby **DISMISSED IN ITS ENTIRETY WITH PREJUDICE;**

IT IS FURTHER ORDERED that this **DOES NOT RESOLVE** the last pending claim and **DOES NOT CLOSE THE CASE.**

IT IS SO ORDERED.

/s/ Muriel D. Hughes

DATED: July 10, 2024

Circuit Judge