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10/25/2022 7:46 PM
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IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY

DANIELLE ELDREDGE, DYLAN FINNEY, MARGARET FORSHEE, WILLIAM K. FORSHEE, DENISE HICKS, MARTIN LARITZ, WESLEY KENNEDY, ISRAEL OVALLE, and KATIE TASHIJAN,	)	**Case No. 21-1285-BC**
Plaintiffs,	)	**JURY DEMAND**
v.	)	
MEDALOGIX, LLC,	)	
Defendant.	)	

MEMORANDUM AND ORDER

This matter came before the Court on September 22, 2022 on Defendant's Motion for Summary Judgment. Plaintiffs Danielle Eldredge ("Eldredge"), Dylan Finney ("Finney"), Margaret Forshee ("Forshee"), Denise Hicks ("Hicks"), Martin Laritz ("Laritz"), Wesley Kennedy ("Kennedy"), Israel Ovalle ("Ovalle"), and Katie Tashijan ("Tashijan") (collectively referred to as "Plaintiffs"),[1] were former employees of Defendant Medalogix, LLC ("Medalogix" or the "Company"). This lawsuit arises out of a dispute regarding the Company's right to repurchase certain incentive stock options that Plaintiffs received as part of their employment with Medalogix, the terms of which are set forth in an Incentive Units Offer Letter (the "Options Agreement"). In May of 2019, after all Plaintiffs had voluntarily left their employment with the Company, Medalogix sent each Plaintiff a letter titled "Class B Common Units Repurchase Notice" (the "Repurchase Notice") informing Plaintiffs that Medalogix would be repurchasing their options. It

[1] On May 25, 2022, the Court entered an Order of Voluntary Dismissal as to the claims made by Plaintiff William Forshee without prejudice.

is the Plaintiffs' position that the Options Agreement only allowed Medalogix to repurchase their options upon their death or disability, not upon their voluntary termination.

On December 20, 2021, Plaintiffs initiated this action against Medalogix for breach of contract, or alternatively promissory estoppel, and violation of the Tennessee Securities Act of 1980 ("TSA"), codified at Tenn. Code Ann. § 48-1-101, *et seq*. Medalogix seeks summary judgment as to all Plaintiffs' claims on the basis that it was entitled to repurchase the options based on the Options Agreements and the Company's operating agreements and that Plaintiffs' claims under the TSA are time-barred. The Court, having reviewed the extensive briefing and other materials submitted, as well as oral argument, is ready to rule.

Undisputed Material Facts

Plaintiffs are all former employees of Medalogix, a data analytics company focused on the home health market. Medalogix is organized under the laws of Delaware, with its principal place of business in Nashville, Tennessee. Because it was a startup, each Plaintiff took a lower salary in exchange for equity when beginning their employment with Medalogix. Plaintiffs began their employment with Medalogix at various times between 2013 and 2015 and executed an Options Agreement with the Company, which granted each Plaintiff the option to purchase a specified number of Class B Units[2] in Medalogix for a particular "strike price" (the "Options").[3] The Options

[2] Throughout the record, these units are referred to interchangeably as "Class B Units" and "Class B Common Units."

[3] Each Plaintiff executed an Options Agreement that was dated as follows:

-Danielle Eldredge – October 28, 2014
-Katie Tashijan (formerly Katherine Cunningham) – October 28, 2014
-Israel Ovalle – October 28, 2014
-Denise Hicks (formerly Denise Galbraith) – April 6, 2015
-Dylan Finney – May 20, 2015
-Margaret Forshee – December 31, 2015
-Martin Laritz – December 31, 2015
-Wesley Kennedy – December 31, 2015

Agreement also provided that the terms would be governed by Medalogix's Operating Agreement, although the parties dispute which version governs the Options Agreements. The Options Agreement for each Plaintiff, other than Hicks, were virtually identical. All the Options Agreements provided in relevant part:

> Reference is made to the Fourth Amended and Restated Operating Agreement dated as of August 8, 2014 (as it may be amended, modified, supplemented or restated from time to time, the "Operating Agreement") of Medalogix, LLC, a Delaware limited liability company (the "Company"), among the Company and the other parties signatory thereto. Capitalized terms used in this Incentive Units Offer Letter (this "Letter") and not defined herein shall have the meanings ascribed to them in the Operating Agreement.
>
> The Company hereby grants to [___] (the "Participant") on the date hereof (the "Grant Date"), subject to the Participant's payment of a purchase price of $[_____] per Granted Unit, [____] Class B Units of the Company (the "Granted Units").
>
> The Granted Units shall be subject to vesting and shall become vested Class B Units ("Vested Incentive Units") in accordance with the provisions set forth below . . .

The Options vested in accordance with a vesting schedule set forth in each Options Agreement, which provided a "Date of Vesting," "Incentive Units" distributed to each employee, and the particular "Strike Price," set at either $0.79 or $1.00 per Class B Unit, depending on the vesting schedule. The number of Options that each Plaintiff received, and the amount vested when their employment was voluntarily terminated, is as follows:

-Danielle Eldredge: 47,250 granted; 47,250 vested
-Dylan Finney: 121,026 granted; 90,526 vested
-Margaret Forshee: 66,520 granted; 66,520 vested
-Denise Hicks: 15,000 granted; 3,750 vested
-Martin Laritz: 62,000 granted; 14,500 vested
-Wesley Kennedy: 202,850 granted; 81,900 vested
-Israel Ovalle: 63,000 granted; 42,000 vested
-Katie Tashjian: 25,200 granted; 12,600 vested

For all Plaintiffs but Hicks, the section of the Options Agreement that discusses the Company's rights to repurchase the Options provides as follows:

(b) Effect of Termination of Employment, Death or Disability on Granted Units.

(i) Upon receipt of written notice (the "Severance Date") of the death or Disability of the Participant, the Company shall have the right to repurchase all or any portion of each of the Granted Units of the Participant in accordance with the paragraphs (i) and (iii) immediately below. Additionally, upon termination of employment with the Company for any reason (whether for a "Cause Event" as defined in the Employment Agreement or not), the Participant shall become an "assignee" within the meaning of Section 18-702 of the Delaware Limited Liability Company Act with regard to all of the Participant's limited liability company interest in the Company.

(ii) In the event that the Company wishes to exercise its rights pursuant to paragraph (i) above, the Company shall deliver to the Incentive Unitholder whose Granted Units are being repurchased (or his, her, or its heirs or representatives), a written notice (the "Incentive Unitholder Repurchase Notice") that sets forth (i) the number of Granted Units the Company is repurchasing, and (ii) the anticipated closing date of such transaction.

(iii) Any repurchase of Granted Units by the Company pursuant to the terms hereof shall be consummated within ten (10) days following delivery of an Incentive Unitholder Repurchase Notice. Unless otherwise expressly provided in an employment or similar agreement between a holder of Granted Units and the Company, repurchase of Granted Units by the Company pursuant to the terms hereof shall be made, (a) in respect of any Incentive Unitholder or assignee who has committed a Violation Event (as determined by the Board in good faith), in cash at a price per Incentive Unit equal to the cost of an Incentive Unit on the date such Granted Units were purchased or issued to such Incentive Unitholder or assignee, and (b) in respect of any Incentive Unitholder who has died, become disabled or whose employment with the Company has been terminated for any reason not described in Section (i) of this paragraph, in cash at a price per Incentive Unit equal to the fair market value of an Incentive Unit (as determined by the Board in good faith) on such date of repurchase.

Hicks' agreement varied slightly and provided as follows:

(b) Effect of Termination of Employment, Death or Disability on Granted Units.

(i) Upon receipt of written notice (the "Severance Date") of the death or Disability of the Participant, *or commission by the Participant of a Violation Event*, the Company shall have the right to repurchase all or any portion of each of the Granted Units of the Participant in accordance with paragraphs (ii) and (iii) immediately below. Additionally, upon termination of employment with the Company for any reason (whether for a Violation Event or not), *the Company shall have the right to purchase all unvested Class B Common Units of the Participant at a purchase price of $.01 per Unit* and the Participant shall become an "assignee" within the meaning

of Section 18-702 of the Delaware Limited Liability Act with regard to all of the *Participant's remaining Units (including vested Units) to the extent that the Company does not exercise its option to purchase.*

. . .

(iii) Any repurchase of Granted Units by the Company pursuant to the terms hereof shall be consummated within ten (10) days following delivery of an Incentive Unitholder Repurchase Notice. Unless otherwise expressly provided in an employment or similar agreement between a holder of Granted Units and the Company, repurchase of Granted Units *(other than a repurchase pursuant to (b)(i) above)* by the Company pursuant to the terms hereof shall be made, (a) if the Participant has committed a Violation Event (as determined by the Board in good faith), in cash at a price per Granted Unit equal to the cost of a Granted Unit on the date such Granted Units were purchased or issued to the Participant, and (b) if the Participant dies or incurs a Disability, in cash at a price per Granted Unit equal to the fair market value of a Class B Common Unit (as determined by the Board in good faith) on such date of repurchase.

(Emphasis added).

In addition, each Plaintiffs' Options Agreement, including that of Hicks, further provided in relevant part:

(f) Condition to Effectiveness. This Letter and the transactions contemplated hereby, including, without limitation, the issuance of the Granted Units, shall not be effective until the Participant delivers an executed copy of the Joinder Agreement, attached hereto Exhibit A, to the Company whereby the Participant will become party to, bound by and obligated to comply with, the terms and provisions of the Operating Agreement prior to the effectiveness of the grant of Granted Units hereunder.

…

While this Letter explains certain rights and benefits with respect to the Granted Units held by the Participant, the Participant hereby agrees that to the extent anything set forth in this Letter conflicts with the terms and conditions of the Operating Agreement, the Operating Agreement shall control. **Furthermore, except as otherwise expressly set forth herein, all determinations with respect to the Granted Units shall be made by the Board, in its sole discretion.**

. . .

This Letter may be modified or amended, and provisions hereof may be waived, by an instrument in writing signed solely by the Company. Notwithstanding the foregoing, any amendment or modification which would materially and adversely

> affect the Participant's rights hereunder shall not be effective without the Participant's consent.
>
> This Letter shall be governed by the laws of Tennessee without reference to the principles of conflicts of law, and may be executed in multiple counterparts, any of which shall be considered an original, and all of which, taken together, shall constitute one and the same Incentive Units Offer Letter.

(Emphasis added).

None of the Plaintiffs were terminated for cause; all Plaintiffs voluntarily ended their employment with Medalogix by 2018. Further, none of the Plaintiffs exercised his or her Options rights at the price set forth in the Options Agreements. In May 2019, the Board of Managers of Medalogix (the "Board"), acting by unanimous written consent, authorized the redemption of Plaintiffs' vested but unexercised Options for a purchase price equal to what the Board deemed to be the fair market value of $0.69/unit, less payment of the exercise price for those Options. Subsequently that same month, Medalogix sent a "Repurchase Notice" to each of the Plaintiffs informing them that it was redeeming their vested but unexercised Options for $0.69/unit, which was less than the "strike price" for those Options and, therefore, it did not owe Plaintiffs any additional consideration. As applicable to each of the Plaintiffs, the Repurchase Notice provided as follows:

> As you know, Medalogix, LLC (the "Company") previously granted you options to purchase . . . Class B Common Units in the Company (the "Granted Units"), the terms and conditions of which are set forth in that certain [Options Agreement].
>
> As set forth in the [Options Agreement], your right to purchase the Granted Units requires payment of $0.79 per unit for [certain] Class B Common Units and $1.00 per unit for the remaining. . . Class B Common Units, as applicable. As further set forth in the [Options Agreement], when your employment with the Company ended, the Company obtained the right to repurchase your Granted Units at the fair market value of those units. The current fair market value of the Granted Units is $0.69 per unit.
>
> The purpose of this letter is to inform you that the Company has decided to exercise its right to repurchase the Granted Units. Because the fair market value of those Granted Units is less than the amount you owe the Company for those Granted

> Units, the Company owes you no additional consideration, and all the Granted Units shall be considered redeemed and canceled.

Previously, on August 24, 2018, the Company's founders, Dan Hogan and Gerald Andrady, sold their Class A Common Units to the Company for $0.69/unit. In a letter dated November 19, 2018, the Company submitted a tender offer to the holders of Class A Common and Class B Common Units, offering to purchase their units at $0.69/unit.[4] Plaintiffs Forshee and Finney, who owned Class B Common Units outright (unlike the other Plaintiffs), voluntarily sold those units to the Company in January 2019 for the price of $0.69/unit.[5] The correspondence also provided that the Class A Common Units have voting rights, while the Class B Common Units do not have voting rights, that Class A Common Units "are generally issued to investors in capital raising transactions," while Class B Common Units "are issued as equity incentives to employees," and that both "have the same rights to receive distributions in a liquidation event." Further, that on August 24, 2018, the Company sold 2,666,666 of the Company's Class A-2 Common Units to Amedisys Holding, LLC ("Amedisys") at a price of $1.25/unit and that the price was higher because Class A-2 Common Units are senior to Class A and Class B Common Units with respect to their right to receive distributions, particularly in a liquidation event.

At the time of the repurchase of Plaintiffs' unexercised and vested Options, the Company was operating under the Sixth Amended and Restated Operating Agreement dated August 24, 2018 ("Sixth Amended Operating Agreement"). The Sixth Amended Operating Agreement provided in relevant part:

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[4] In that letter, identified as Ex. 13 to Andrew Bates' Declaration, the Executive VP and COO for Medalogix, provided that "[t]he Class A Units and the Class B Units are collectively referred to herein as the 'Units.' The purchase price of $0.69 per Unit is the same price the Company paid to purchase 3,700,000 Class A Units from the Company's founders, Dan Hogan and Gerald Andrady, on August 24, 2018."

[5] The units voluntarily sold to the Company by these Plaintiffs are not at issue in this case.

4.1 Capital Contributions.

(c) Equity Incentives.

(i) The Board, or any committee authorized by the Board, may adopt, and may maintain, one or more equity incentive plans or agreements providing for the issuance of Class B Common Units to employees, consultants, directors, managers or others providing services to the Company or its Affiliates (Equity Incentives), which Equity Incentives may be issued as options to purchase Class B Common Units or Class B. The terms and conditions of each Equity Incentive (which do not need to be the same) must be approved by the Board or such committee; provided, however, that any options to purchase Class B Common Units that are granted by the Board after the date hereof shall have an exercise price of no less than $1.15 per Class B Common Unit. **The Board or such committee shall have the exclusive authority to make all interpretations and determinations arising out of or relating to the Equity Incentives. Any such interpretation or determination made in good faith shall be final and binding on all interested parties.** Without limiting the generality of the foregoing, the Board or such committee shall have the full power and authority to take any and all actions (including the creation of equity incentive plans and sub-plans) that it deems necessary, advisable or desirable for purposes of administering the Equity Incentives or satisfying applicable securities, tax or other laws of various jurisdictions.

. . .

13.7 Choice of Law. This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of Delaware, without giving effect to the conflicts of law principles thereof.

(Emphasis added). The Fourth Amended and Restated Operating Agreement ("Fourth Amended Operating Agreement"), which was referenced in each Plaintiffs' Options Agreement, includes an identical choice of law provision, but does not include a comparable provision as set forth in Section 4.1(c)(i).

Shortly after the Repurchase Notice was sent to Plaintiffs, on June 24, 2019, Encompass Health publicly announced that it had made an equity investment in Medalogix via a press release issued through PR Newswire. On or around the same date, Medalogix posted a copy of Encompass's press release on its website, and various other social media platforms, including Twitter, Facebook and LinkedIn. Immediately following this announcement, news of Encompass's

investment in Medalogix was published by various media sources, including the Nashville news media and various health care and financial services trade publications. All Plaintiffs, other than Finney, follow Medalogix on either Twitter, Facebook, and/or LinkedIn. It is disputed whether Plaintiffs actually saw the notification on their social media feeds or via any other media source.

Plaintiffs initiated this action on December 20, 2021, asserting that Medalogix breached the Options Agreements by redeeming their Options without meeting the conditions set forth therein. Furthermore, Plaintiffs alternatively assert a claim for promissory estoppel based on alleged assertions that the value of the Options would substantially increase and promises by Medalogix executives that Plaintiffs would keep their vested Options even if they left voluntarily. Plaintiffs' last claim alleges that Medalogix violated the TSA at Tenn. Code Ann. § 48-1-122(c) by misrepresenting the value of the company and failing to inform Plaintiffs of the Encompass Health investment when it sent Plaintiffs the Repurchase Notice in May 2019.

Legal Analysis

Summary Judgment

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 the moving party is entitled to a judgment as a matter of law." Tenn. R. Civ. P. 56.04. The moving party may satisfy its initial burden of production and shift the burden of production to the nonmoving party by demonstrating that the nonmoving party's evidence is insufficient as a matter of law at the summary judgment stage to establish the nonmoving party's claim or defense. *Rye v. Women's Care Center of Memphis, MPLLC*, 477 S.W.3d 235, 264 (Tenn. 2015). When the party seeking summary judgment makes a properly supported motion under Rule 56, the nonmoving party may not rest upon the allegations or denials

of its pleading, but rather must set forth specific facts at the summary judgment stage showing there is a genuine issue of material fact for trial. *Id*. at 265.

When evaluating motions for summary judgment, courts must decide: "(1) whether a *factual* dispute exists; (2) whether the disputed fact is *material* to the outcome of the case; and (3) whether the disputed fact creates a g*enuine* issue for trial." *Byrd v. Hall*, 847 S.W.2d 208, 214 (Tenn. 1993) (emphasis in original). A "material fact" is one that "must be decided in order to resolve the substantive claim or defense at which the motion is directed." *Id.* at 215. Irrelevant or unnecessary facts are not material. *Rye,* 477 S.W.3d at 251. A "genuine issue" exists when "a reasonable jury could return a verdict in the nonmoving party's favor." *Byrd*, 847 S.W.2d at 215. "If reasonable minds could justifiably reach different conclusions based on the evidence at hand, then a genuine question of fact exists." *Green v. Green*, 293 S.W.3d 493, 514 (Tenn. 2009) (citing *Martin v. Norfolk S. Ry.*, 271 S.W.3d 76, 84 (Tenn. 2008); *Louis Dreyfus Corp. v. Austin Co.*, 868 S.W.2d 649, 656 (Tenn. Ct. App. 1993)). "If, on the other hand, the evidence and the inferences reasonably drawn from the evidence would permit a reasonable person to reach only one conclusion, then no material factual dispute exists, and the question can be disposed of as a matter of law." *Id*. (citing *Godfrey v. Ruiz*, 90 S.W.3d 692, 695 (Tenn. 2002); *Seavers v. Methodist Med. Ctr. of Oak Ridge*, 9 S.W.3d 86, 91 (Tenn. 1999)).

If there has not been adequate time for discovery, the nonmoving party may submit affidavits to seek a continuance to engage in additional discovery pursuant to Tenn. R. Civ. P. 56.07. Motions under Tenn. R. Civ. P. 56.07 must be accompanied by an affidavit explaining why the non-moving party has not been able to obtain and present the evidentiary material needed to oppose the summary judgment motion. Tenn. R. Civ. P. 56.07; *Kenyon v. Handal*, 122 S.W.3d 743, 753 n.7 (Tenn. Ct. App. 2003).

Breach of Contract Claim

Plaintiffs allege that Medalogix breached the Options Agreements "by purporting to 'repurchase' Plaintiffs' options (for no value) when it did not have that right." (Compl. ¶ 36). At summary judgment, Plaintiffs contend that this claim rests on two separate theories—that Medalogix 1) purported to exercise a repurchase right it did not have; and 2) did not pay Plaintiffs a fair price for their options.

A plaintiff alleging breach of contract must prove "the existence of a valid and enforceable contract, a deficiency in the performance amounting to a breach, and damages caused by the breach." *Fed. Ins. Co. v. Winters*, 354 S.W.3d 287, 291 (Tenn. 2011) (citing *ARC LifeMed, Inc. v. AMC–Tenn., Inc.*, 183 S.W.3d 1, 26 (Tenn. Ct. App. 2005)). "A cardinal rule of contractual interpretation is to ascertain and give effect to the intent of the parties." *Cooper v. Patel*, 578 S.W.3d 40, 47 (Tenn. Ct. App. 2018) (quoting *Crye-Leike, Inc. v. Carver*, 415 S.W.3d 808, 816 (Tenn. Ct. App. 2011)). This determination of the intention of the parties is generally treated as a question of law because the words of the contract are definite and undisputed, and in deciding the legal effect of the words, there is no genuine factual issue left for a jury to decide. *Planters Gin Co. v. Fed. Compress & Warehouse Co.*, 78 S.W.3d 885, 889-90 (Tenn. 2002) (citing 5 Joseph M. Perillo, Corbin on Contracts, § 24.30 (rev. ed. 1998); *Doe v. HCA Health Services of Tenn., Inc.*, 46 S.W.3d 191, 196 (Tenn. 2001)). "When the language of the contract is plain and unambiguous, courts determine the intentions of the parties from the four corners of the contract, interpreting it and enforcing it as written." *Cooper*, 578 S.W.3d at 47 (quoting *Crye-Leike*, 415 S.W.3d at 816). "In such a case, the contract is interpreted according to its plain terms as written, and the language used is taken in its 'plain, ordinary, and popular sense.'" *Id.* (quoting *Crye-Leike*, 415 S.W.3d at 816). In analyzing a claim for breach of contract, the Tennessee Supreme Court stated that:

> We first recognize the foundational principles in all of Tennessee contract law. The common thread in all Tennessee contract cases—the cardinal rule upon which all other rules hinge—is that courts must interpret contracts so as to ascertain and give effect to the intent of the contracting parties consistent with legal principles.

Individual Healthcare Specialists, Inc. v. BlueCross BlueShield of Tenn., Inc., 566 S.W.3d 671, 688 (Tenn. 2019) (citing *Wallis v. Brainerd Baptist Church*, 509 S.W.3d 886, 899 (Tenn. 2016); *Dick Broad. Co., Inc. of Tenn. v. Oak Ridge FM, Inc.*, 395 S.W.3d 653, 659 (Tenn. 2013); *Clark v. Sputniks, LLC*, 368 S.W.3d 431, 441 (Tenn. 2012); *Allmand v. Pavletic*, 292 S.W.3d 618, 630 (Tenn. 2009); *Allstate Ins. Co. v. Watson*, 195 S.W.3d 609, 611 (Tenn. 2006); *Frizzell Constr. Co. v. Gatlinburg, L.L.C.*, 9 S.W.3d 79, 85 (Tenn. 1999)). The court further opined that:

> the strong strain of textualism in Tennessee caselaw demonstrates resolve to keep the written words as the lodestar of contract interpretation. Tennessee has rejected firmly any notion that courts are a fallback mechanism for parties to use to "make a new contract" if their written contract purportedly fails to serve their "true" intentions. Tennessee courts "give primacy to the contract terms, because the words are the most reliable indicator—and the best evidence—of the parties' agreement when relations were harmonious, and where the parties were not jockeying for advantage in a contract dispute."

Id. at 694 (citations omitted). In addition, the law in Tennessee provides that "courts will not make a new contract for parties who have spoken for themselves, *Petty v. Sloan*, 197 Tenn. 630, 640, 277 S.W.2d 355, 359 (1955), and will not relieve parties of their contractual obligations simply because these obligations later prove to be burdensome or unwise." *Vargo v. Lincoln Brass Works, Inc.*, 115 S.W.3d 487, 492 (Tenn. Ct. App. 2003) (citing *Boyd v. Comdata Network, Inc.*, 88 S.W.3d 203, 223 (Tenn. Ct. App. 2002)).

As to ambiguity, contractual language "is ambiguous only when it is of uncertain meaning and may fairly be understood in more ways than one." *Allstate Ins. Co.*, 195 S.W.3d at 611 (citing *Farmers–Peoples Bank v. Clemmer*, 519 S.W.2d 801, 805 (Tenn. 1975). When contractual language is found to be ambiguous, the court must apply established rules of construction to

determine the intent of the parties. *Planters Gin Co.*, 78 S.W.3d at 890. An ambiguous provision in a contract generally will be construed against the party drafting it. *Hanover Ins. Co. v. Haney*, 425 S.W.2d 590, 592 (Tenn. 1968); *Vargo v. Lincoln Brass Works, Inc.*, 115 S.W.3d 487, 492 (Tenn. Ct. App. 2003). Furthermore, when a contractual provision is ambiguous, a court is permitted to use parol evidence, including the contracting parties' conduct and statements regarding the disputed provision, to guide the court in construing and enforcing the contract. *Allstate Ins. Co.*, 195 S.W.3d at 611-12 (citing *Memphis Housing Auth. v. Thompson*, 38 S.W.3d 504, 512 (Tenn. 2001); *Fidelity–Phenix Fire Ins. Co. of New York v. Jackson*, 181 S.W.2d 625, 631 (Tenn. 1944); *Vargo*, 115 S.W.3d at 494).

Right to Repurchase

Medalogix initially contends that the Board had exclusive and final discretion to determine the meaning of the Options Agreements and make all determinations and interpretations with respect to administration of the Options, including the valuation of the Class B Units, and that Plaintiffs are bound by that determination. Medalogix relies on section (g) of the Options Agreement and section 4.1(c)(i) of the Sixth Amended Operating Agreement. As set forth above, section (g) of all Plaintiffs' Options Agreements provided in relevant part:

> While this Letter explains certain rights and benefits with respect to the Granted Units held by the Participant, the Participant hereby agrees that to the extent anything set forth in this Letter conflicts with the terms and conditions of the Operating Agreement, the Operating Agreement shall control. **Furthermore, except as otherwise expressly set forth herein, all determinations with respect to the Granted Units shall be made by the Board, in its sole discretion.**

(Emphasis added). Medalogix contends that not only did Plaintiffs expressly agree that all determinations with respect to the Options would be made by the Board "in its sole discretion," but that each Plaintiff also acknowledged and agreed that the Options Agreements were subject to and controlled by the Company's Operating Agreement, both as that agreement existed at the time

Plaintiffs signed the Options Agreement and "as it may be amended, modified, supplemented or restated from time to time," as set forth in each Options Agreement. Thus, Medalogix contends that each Plaintiff reaffirmed the Board's discretionary authority regarding their Options in Section 4.1(c)(i) of the Sixth Amended Operating Agreement:

> **The Board or such committee shall have the exclusive authority to make all interpretations and determinations arising out of or relating to the Equity Incentives. Any such interpretation or determination made in good faith shall be final and binding on all interested parties.** Without limiting the generality of the foregoing, the Board or such committee shall have the full power and authority to take any and all actions (including the creation of equity incentive plans and sub-plans) that it deems necessary, advisable or desirable for purposes of administering the Equity Incentives.

(Emphasis added). Essentially, Medalogix contends that Plaintiffs waived the right to challenge the Board's decision to repurchase their Options. While Plaintiffs assert that the Options Agreements only permit repurchase of unexercised Options upon death or disability, Medalogix contends that Plaintiffs granted the Board exclusive, final and binding authority to decide this question and Plaintiffs are bound by the Board's interpretation. Plaintiffs argue that the Options Agreement references, and is only governed by, the Fourth Amended Operating Agreement which does not contain comparable language regarding the Board's exclusive authority as it does in the Sixth Amended Operating Agreement. However, this argument is without merit as it directly contradicts the plain terms of the Options Agreement, which provides that the Plaintiffs would be subject to any amendments, modifications, or restatements of the Company's Operating Agreement.[6]

[6] Plaintiffs also appear to argue that Medalogix was not permitted to amend the Operating Agreement and add the delegation of authority contained in Section 4.1(c)(i) without Plaintiffs' consent. However, under the Fourth Amended Operating Agreement, Medalogix only needed the consent of its "Members" to amend the Operating Agreement if it "materially and adversely affects the rights of a Member" as set forth in Section 13.2. In the Operating Agreements, "Member" is defined as one "who acquires Units from a holder of Units or from the Company," which would not include a holder of Options. Only two of the Plaintiffs, Finney and Forshee, owned units outright and had the right to approve or disapprove of amendments to the Operating Agreement that materially or adversely affected their rights. Both Finney and Forshee signed the Fifth Amended and Restated Operating Agreement which modified a Member's

Regardless of this broad authority, Medalogix also asserts that under the plain language of the Options Agreement and the Sixth Amended Operating Agreement, it has the right to repurchase the Options upon Plaintiff separation from the Company for any reason. To the contrary, Plaintiffs contend that Medalogix could only repurchase the vested Options upon the death or disability of the participant, or in the case of Hicks, upon death, disability, or commission of a "Violation Event," pursuant to Section (b)(i) of the Options Agreement and that Medalogix is attempting to re-write the Options Agreement by expanding its own repurchase rights. Alternatively, Plaintiffs argue that the parties' competing interpretations demonstrate ambiguity.

For all Plaintiffs but Hicks, section (b)(i) of the Options Agreement provide:

> (b) Effect of Termination of Employment, Death or Disability on Granted Units.
>
> (i) Upon receipt of written notice (the "Severance Date") of the death or Disability of the Participant, the Company shall have the right to repurchase all or any portion of each of the Granted Units of the Participant in accordance with the paragraphs (i) and (iii) immediately below. Additionally, upon termination of employment with the Company for any reason (whether for a "Cause Event" as defined in the Employment Agreement or not), the Participant shall become an "assignee" within the meaning of Section 18-702 of the Delaware Limited Liability Company Act with regard to all of the Participant's limited liability company interest in the Company.

To begin, the heading of this section, "Effect of Termination of Employment, Death or Disability on Granted Units," suggests that the section will discuss the parties' rights with respect to the units upon the participant's death, disability, or termination of employment with the Company, and, notably, does not differentiate between voluntary termination or termination for cause. *See Pryority P'ship v. AMT Properties, LLC,* No. E2020-00511-COA-R3-CV, 2021 WL 915607, at *11 (Tenn. Ct. App. Mar. 10, 2021) (citing *Advanced Banking Servs., Inc. v. Zones, Inc.*, No.

right to approve or disapprove of amendments to the Operating Agreement to apply only in instances where it treated particular Members differently from other Members. And, even though her signature was not required, Forshee approved and signed the Sixth Amended Operating Agreement, which included the broad delegation of authority.

E2017-02095-COA-R3-CV, 2018 WL 4775642, at *5 (Tenn. Ct. App. Oct. 3, 2018) (headings or titles within contracts may be considered in analysis of contract language). Next, the first sentence of this paragraph is clear that Medalogix had the obligatory right to purchase a participant's Options upon death or disability. The second sentence indicates that, upon termination from the Company for any reason, the participant becomes an "assignee" as that term is defined in Del. Code Ann. tit. 6, § 18-702. That statute provides:

> (a) A limited liability company interest is assignable in whole or in part except as provided in a limited liability company agreement. The assignee of a member's limited liability company interest shall have no right to participate in the management of the business and affairs of a limited liability company except as provided in a limited liability company agreement or, unless otherwise provided in the limited liability company agreement, upon the vote or consent of all of the members of the limited liability company.
>
> (b) Unless otherwise provided in a limited liability company agreement:
>
> (1) An assignment of a limited liability company interest does not entitle the assignee to become or to exercise any rights or powers of a member;
>
> (2) An assignment of a limited liability company interest entitles the assignee to share in such profits and losses, to receive such distribution or distributions, and to receive such allocation of income, gain, loss, deduction, or credit or similar item to which the assignor was entitled, to the extent assigned; and
>
> (3) A member ceases to be a member and to have the power to exercise any rights or powers of a member upon assignment of all of the member's limited liability company interest. Unless otherwise provided in a limited liability company agreement, the pledge of, or granting of a security interest, lien or other encumbrance in or against, any or all of the limited liability company interest of a member shall not cause the member to cease to be a member or to have the power to exercise any rights or powers of a member.
>
> (c) Unless otherwise provided in a limited liability company agreement, a member's interest in a limited liability company may be evidenced by a certificate of limited liability company interest issued by the limited liability company. A limited liability company agreement may provide for the assignment or transfer of any limited liability company interest represented by such a certificate and make other provisions with respect to such certificates. A limited liability company shall not have the power to issue a certificate of limited liability company interest in bearer form.

> (d) Unless otherwise provided in a limited liability company agreement and except to the extent assumed by agreement, until an assignee of a limited liability company interest becomes a member, the assignee shall have no liability as a member solely as a result of the assignment.
>
> **(e) Unless otherwise provided in the limited liability company agreement, a limited liability company may acquire, by purchase, redemption or otherwise, any limited liability company interest or other interest of a member or manager in the limited liability company. Unless otherwise provided in the limited liability company agreement, any such interest so acquired by the limited liability company shall be deemed canceled.**

Del. Code Ann. tit. 6, § 18-702 (emphasis added). Plaintiffs contend that this reinforces its argument (except for Hicks) that the Company does not have repurchase rights except for death or disability, because this statute provides that they would retain their equity but no longer participate in the management of the business. *Id*. at § 18-702(a). However, it should be noted that the Options did not provide Plaintiffs with outright equity in the Company, and, therefore, they could not participate in the management of the business by just remaining an Options holder. Further, reading the entirety of the statute, § 18-702(e) clearly grants Medalogix the permissive right to repurchase its equity interests unless expressly prohibited by the Operating Agreement. The Operating Agreement does not prohibit Medalogix from repurchasing its Class B Units, including any Options to repurchase units, from the Plaintiffs or any other holder. In fact, the Options Agreements and Sixth Amended Operating Agreement give the Board broad discretionary authority to make interpretations and determinations arising out of or relating to the Options. Thus, under this sentence in Section (b)(i) of the Option Agreement, Medalogix had the statutory right to redeem the Options if the participant's employment was terminated for any reason.[7]

[7] Plaintiffs contend that Medalogix's reliance on Delaware law is misplaced because Section (g) of the Options Agreement provides that it "shall be governed by the laws of Tennessee," and that there is no comparable Tennessee statute to 6 Del. C. § 18-702. In response, Medalogix contends that it is a Delaware limited liability company and that the Delaware Limited Liability Company Act governs the relationships between Medalogix and its equity holders, as provided in the Operating Agreement, the terms of which are governed by Delaware law. Further, Medalogix contends if there is ever a conflict between the two agreements, the Operating Agreement controls. The Court agrees that this reference to Delaware law is valid and enforceable under the terms of the agreements.

This interpretation is also consistent with the language set forth in paragraph (b)(iii) of the Options Agreement for all Plaintiffs except Hicks, which entitles the Company to deliver a Repurchase Notice to a participant "whose employment with the Company has been terminated for any reason not described in Section (i) of this paragraph," and, further, specifies the repurchase price as "the fair market value of an Incentive Unit (as determined by the Board in good faith) on such date." The Options Agreement sets forth a repurchase price for the redemption of the former employees' Options whose employment terminated for reasons other than death or disability, including in the event of a voluntary termination without cause.

As to Hicks, Plaintiffs contend her Options Agreement is completely different in Section (b)(iii) and demonstrates that the Company could have written the agreements to expressly provide that upon termination for any reason, the Company shall have the right to repurchase the Options. Plaintiffs argue that it only gave the Company the right to repurchase *unvested* Options upon separation from the Company for any reason. Medalogix admits that in the Hicks' Options Agreement, the pricing mechanism language to repurchase the Options upon termination for any reason is removed from Section (b)(iii); however, Medalogix contends that all Plaintiffs agreed they would be bound by the Operating Agreement and any amendments, and that any conflicts between the two is trumped by the Operating Agreement, which gave broad and exclusive discretion to the Board to interpret the Options Agreement. Further, that the Company still retained the statutory right to redeem the Options if the participant's employment was terminated for any reason under Del. Code Ann. tit. 6, § 18-702(e). The Court agrees. Although Hicks' Options Agreement does not contain the language in Section (b)(iii) that sets forth a repurchase price for the redemption of the Options of former employees whose employment terminated for reasons other than death or disability, it does provide that the Options holder becomes an "assignee" upon

termination for any reason as that term is defined in § 18-702 of the Delaware Limited Liability Company Act (the "Delaware LLC Act"). The sentence provides in relevant part that "[a]dditionally, upon termination of employment with the Company for any reason (whether for a Violation Event or not) . . . the Participant shall become an 'assignee' within the meaning of Section 18-702 of the Delaware Limited Liability Act with regard to all of the Participant's remaining Units (including vested Units) to the extent that the Company does not exercise its option to purchase." Thus, if the Company chose not to repurchase Hicks' vested units upon her termination, she became an "assignee" under § 18-702(e), which gave the Company the statutory right to redeem the Options if the participant's employment was terminated for any reason at any time thereafter.

Plaintiffs' argument revolves around only certain provisions in the Options Agreement. However, "[t]he proper construction of a contractual document is not dependent on . . . any single provision of it, but upon the entire body of the contract and the legal effect of it as a whole. The whole contract must be considered in determining the meaning of any or all of its parts." *Aetna Cas. & Surety Co. v. Woods*, 565 S.W.2d 861, 864 (Tenn. 1978) (citations omitted). The Court declines to find the Options Agreements are ambiguous. "A contract term is not ambiguous merely because the parties to the contract may interpret the term in different ways." *Staubach Retail Services–Southeast LLC v. H.G. Hill Realty Co.*, 160 S.W.3d 521, 526 (Tenn. 2005). Instead, the Court finds that Medalogix's interpretation of the Options Agreement harmonizes the Company's rights under the Options Agreement with the statutory right to redeem the Options under the Delaware LLC Act and the terms of the Sixth Amended Operating Agreement which give the Company broad discretionary authority to make determinations relating to the Options. Further, it also gives effect to the entirety of paragraph (b) of the Options Agreement, as opposed to

subparagraph (b)(i) alone. Thus, the Court finds that the terms of the Options Agreement are clear and unambiguous and provide the Company the right to repurchase the Options upon a Plaintiffs' termination from the Company, even if voluntarily without cause.

Fair Market Value

Plaintiffs also contend that Medalogix breached the Options Agreement by failing to pay Plaintiffs a fair price for their Options. Plaintiffs argue that summary judgment is inappropriate because there is a question of fact as to whether the Board's determination of the valuation of the units was made in good faith. As evidence of bad faith, Plaintiffs point to the unit prices at various points in time and that the Company failed to mention it was about to receive a substantial equity investment from Encompass just a few weeks after the repurchase. Further, that the Company was ultimately successful after the Encompass investment, which would have resulted in the Plaintiffs receiving consideration for their Options.[8]

In response, Medalogix contends that Plaintiffs did not allege bad faith in their Complaint and that the Board had the discretion and authority to determine the fair market value of the units under the Options Agreement and the Sixth Amended Operating Agreement. Further, that there is evidence demonstrating that between 2018 and 2019, both Class A Common Units and Class B Common Units were sold at $0.69/unit, while certain Class A Units with preferential treatment rights were sold at $1.25/unit. Thus, short of some disputed fact that the Board abused its discretion or engaged in bad faith, Medalogix contends it is entitled to summary judgment.

[8] Plaintiffs admit there is no evidence in the record regarding the Company's ultimate success, but points to public SEC filings demonstrating that in May 2021, a private equity company, The Vistria Group, acquired a majority stake in Medalogix. Although Plaintiffs admit the value of that deal is unknown at this time, another company that had previously invested $7 million into the Company in 2018, Amedisys, later claimed a $31.1 million gain on its original investment. Matters of public record, such as SEC disclosure documents, may be judicially noticed. *Indiana State Dist. Council of Laborers v. Brukardt*, No. M2007-02271-COA-R3-CV, 2009 WL 426237, at *9 (Tenn. Ct. App. Feb. 19, 2009).

However, Plaintiffs dispute this and contend the varied pricing demonstrates a lack of good faith, relying in part on the November 19, 2018 tender offer of Class A and Class B Common Units and the Company's purchase of Class A Common Units on August 24, 2018 from Mr. Andrady, indicating that both were purchased by the Company at $0.69/unit. Plaintiffs also allege in their Complaint and point to their declarations in which they state that other former employees similarly situated were not included in the repurchase and that this also demonstrates a lack of good faith if the Repurchase Notices were not sent to all former employees who were Options holders.

Plaintiffs' statements regarding other former employees who were not included in the repurchase is inadmissible hearsay and cannot be considered at this stage. *In re Est. of Miller*, No. E2016-01047-COA-R3-CV, 2017 WL 2820084, at *4 (Tenn. Ct. App. June 29, 2017) (citing *Meyers v. First Tenn. Bank, N.A.*, 503 S.W.3d 365, 379 (Tenn. Ct. App. 2016) ("To consider facts at the summary judgment stage, they . . . must be admissible in evidence . . . . If they are inadmissible 'heresay,' we cannot consider them on summary judgment"). However, Plaintiffs also sought relief under Tenn. R. Civ. P. 56.07, seeking additional discovery.

"The purpose of Rule 56.07 is to allow all parties a 'reasonable opportunity' to proffer evidence in support of or opposition to a motion for summary judgment." *F & M Bank v. Fleming*, No. M2020-01086-COA-R3-CV, 2021 WL 4438550, at *5 (Tenn. Ct. App. Sept. 28, 2021) (citations omitted). "[Rule] 56.07 is intended to serve as an additional safeguard against an improvident or premature grant of summary judgment." *Id.* (quoting *Kenyon v. Handal*, 122 S.W.3d 743, 753 n.7 (Tenn. Ct. App. 2003)). In this case, after a Rule 16 Conference, the Court stayed discovery pending resolution of Medalogix's summary judgment motion. The only discovery in this case has been extremely limited, and the parties have not served any written discovery or taken any depositions. Plaintiffs seek additional discovery, in particular as it relates

to this issue, as well as related to Medalogix's share price during the relevant period and what steps Medalogix took to determine the share price. This would include subpoenas to several former Medalogix employees.

After consideration of the Rule 56.07 motion, and the status of discovery in this case, the Court GRANTS Plaintiffs' request to conduct additional discovery.

Promissory Estoppel Claim

In the alternative, Plaintiffs bring a claim of promissory estoppel, relying on statements made by Medalogix executives over the years that the Company would not repurchase their Options and that those Options would substantially increase in the future. Medalogix contends that this claim fails because the Options Agreement and the Operating Agreement address the conduct of which Plaintiffs complain and that promissory estoppel is not available to change the terms of existing contracts.

Tennessee courts describe the doctrine of promissory estoppel as follows: "A promise which the promisor should reasonably expect to induce action or forbearance of a definite and substantial character on the part of the promisee and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise." *Adams v. Delk Indus., Inc.*, No. 3:19-CV-00878, 2021 WL 354096, at *13 (M.D. Tenn. Feb. 2, 2021) (citing *Alden v. Presley*, 637 S.W.2d 862, 864 (Tenn. 1982) (quoting Restatement (First) of Contracts § 90)). To succeed on their promissory estoppel claim, Plaintiffs are required to show (1) that a promise was made; (2) that the promise was unambiguous and not unenforceably vague; and (3) that they reasonably relied upon the promise to their detriment. *Chavez v. Broadway Elec. Serv. Corp.*, 245 S.W.3d 398, 404 (Tenn. Ct. App. 2007). A claim of promissory estoppel is not dependent upon the existence of an express contract between the parties. *EnGenius Entertainment, Inc. v.*

Herenton, 971 S.W.2d 12, 19 (Tenn. Ct. App. 1997). "The key element in finding promissory estoppel is, of course, the promise." *Amacher v. Brown–Forman Corp.*, 826 S.W.2d 480, 482 (Tenn. Ct. App. 1991). Tennessee does not liberally apply the doctrine of promissory estoppel; to the contrary, it limits application of the doctrine to "exceptional cases where to enforce the statute of frauds would make it an instrument of hardship and oppression, verging on actual fraud." *Chavez*, 245 S.W.3d at 406 (citing *Shedd v. Gaylord Entertainment Co.*, 118 S.W.3d 695, 700 (Tenn. Ct. App. 2003)).

Medalogix argues that Tennessee courts do not allow promissory estoppel claims to proceed "[w]here the parties have an enforceable contract . . . and merely dispute its terms, scope or effect." *Sparton Tech., Inc. v. Util-Link, LLC*, 248 F. App'x 684, 690 (6th Cir. 2007); *see also Lansky v. Prot. One Alarm Monitoring, Inc.*, No. 2:17-CV-2883-SHM-DKV, 2018 WL 3077803, at *7 (W.D. Tenn. June 21, 2018). Despite this, Tennessee courts have permitted promissory estoppel claims to proceed alongside breach of contract claims "where a claim of promissory estoppel was advanced to expand the terms of, not change the terms of, an existing contract." *Adams v. Delk Indus., Inc.*, No. 3:19-CV-00878, 2021 WL 354096, at *15 (M.D. Tenn. Feb. 2, 2021) (citing *Sparton Tech., Inc.*, 248 F. App'x at 690; *Bill Brown Constr. Co. v. Glens Falls Ins. Co.*, 818 S.W.2d 1, 9–11 (Tenn. 1991)).

In their response brief, Plaintiffs concede that this claim would be barred if the Options Agreement was determined to be valid and enforceable. Specifically, Plaintiffs argued that "[u]nless and until Medalogix concedes, or the Court conclusively rules, that the Options Agreements are valid contracts to which there is no defense to enforcement, it is premature and incorrect for Medalogix to argue that those agreements bar Plaintiffs' promissory estoppel claims." (Plaintiffs' Resp., p.23). Medalogix does not dispute the validity or enforceability of these

agreements, and the Court finds the Options Agreement is valid and an enforceable agreement. Therefore, Medalogix's motion for summary judgment as to this claim is GRANTED, and this claim is DISMISSED.

Tennessee Securities Act Claim

Although Plaintiffs assert that Medalogix failed to disclose that Encompass was preparing to make an equity investment in violation of the TSA, Medalogix moves for summary judgment asserting that Plaintiffs knew, or should have known through the exercise of reasonable diligence, about Encompass's investment in Medalogix because it was publicly announced in June 2019 via various sources.

In contrast, Plaintiffs assert that summary judgment in inappropriate because they dispute when they knew of the Encompass investment, creating a genuine issue of material fact. Further, Plaintiffs believe summary judgment is inappropriate even if Plaintiffs should have known of the investment prior to June 2021. An important issue is whether Plaintiffs had reason to believe Medalogix mispresented the share price in the Repurchase Notice, which Plaintiffs assert they did not know until 2021. For these reasons, Plaintiffs believe the motion for summary judgment should be denied.

Medalogix asserts that Plaintiffs claim under the TSA is barred by the two-year statute of limitations set forth in Tenn. Code Ann. § 48-1-122(h), which provides:

> No action shall be maintained under this section unless commenced before the expiration of five (5) years after the act or transaction constituting the violation or the expiration of two (2) years after the discovery of the facts constituting the violation, or after such discovery should have been made by the exercise of reasonable diligence, whichever first expires.

Thus, this statute incorporates the discovery rule, "which provides that the statute of limitations begins to run not only when the plaintiff possesses actual knowledge of a claim, but also when the

plaintiff possesses actual knowledge of 'facts sufficient to put a reasonable person on notice that he [or she] has suffered an injury as a result of wrongful conduct.'" *Cumberland & Ohio Co. of Tex. v. Coffman*, No. 3:09-CV-0182, 2012 WL 5331258, at *5 (M.D. Tenn. Oct. 29, 2012) (citing *Redwing v. Catholic Bishop for the Diocese of Memphis*, 363 S.W.3d 436, 459 (Tenn. 2012)). Medalogix contends that Plaintiffs were put on notice of the facts underlying the claim on June 24, 2019, thirty (30) months before they filed their lawsuit. Thus, they contend that the Plaintiffs should have, through the exercise of reasonable diligence, been aware of Encompass's investment in Medalogix when it was publicly announced in June 2019. Medalgoix contends that the discovery rule is an objective standard and that no reasonable factfinder could conclude that Plaintiffs, had they exercised reasonable diligence, would not have known about the Encompass investment when it was announced in June 2019.

Medalogix relies on the following undisputed evidence in support of its contention that Plaintiffs were on inquiry notice of the Encompass Health equity investment in Medalogix: 1) on June 24, 2019, Encompass Health publicly announced that it had made an equity investment in Medalogix via a press release issued through PR Newswire; 2) on or about June 24, 2019, Medalogix posted a copy of Encompass's press release on its website, as well as Twitter, Facebook and LinkedIn; 3) all Plaintiffs, other than Finney, follow Medalogix on Twitter, Facebook and/or LinkedIn; and 4) immediately following the announcement of the Encompass investment by Encompass and Medalogix, news of Encompass's investment in Medalogix was published by various media sources. Plaintiffs contend that they had no actual knowledge of the equity investment, and, further, that they either did not actively review their social media feeds and/or did not recall ever seeing any postings from the Company related to Encompass Health's June 2019 investment. Medalogix contends that Plaintiffs should have exercised reasonable diligence

and should have discovered the Encompass investment in Medalogix at that time; further, that they have not alleged any facts showing they made reasonable efforts to learn about the investment prior to 2021.

Despite the accessibility and prevalence of breaking news with the internet and social media, the Court cannot find as a matter of law that Plaintiffs are charged with constructive knowledge of the Encompass investment in June 2019. While Medalgoix contends that there is no dispute that a reasonable investor would open their Twitter or other social media and view their feeds, the Court disagrees. The Tennessee Supreme Court has explained that

> "[w]hether the plaintiff exercised reasonable care and diligence in discovering the injury or wrong is usually a question of fact." *Shadrick*, 963 S.W.2d at 737 (quoting *Wyatt v. A–Best Co.*, 910 S.W.2d 851, 854 (Tenn. 1995)); *see also McIntosh v. Blanton*, 164 S.W.3d 584, 586 (Tenn. Ct. App. 2004) ("The determination of when a reasonable person should know that his injury was caused by some wrongful or negligent act is generally a question for the trier of fact."). Indeed, our Court of Appeals has stated that "where the resolution of the issue depends upon the question of whether due diligence was exercised under the circumstances, and where differing inferences might reasonably be drawn from the uncontroverted facts, the issue is not appropriate for summary judgment." *Hathaway v. Middle Tenn. Anesthesiology, P.C.*, 724 S.W.2d 355, 360 (Tenn. Ct. App. 1986). Similarly, courts in other jurisdictions have determined that the fact-dependent nature of the discovery rule's application makes it an unlikely candidate for disposition on summary judgment in both medical malpractice cases, *see Walk v. Ring*, 202 Ariz. 310, 44 P.3d 990, 996 (2002) ("[S]ummary judgment is warranted only if the [plaintiff's] failure to go forward and investigate is not reasonably justified."), and other contexts, *see Soutiere v. Betzdearborn, Inc.*, 189 F.Supp.2d 183, 191 (D. Vt. 2002) (stating in toxic tort case that "[o]nly if reasonable minds cannot differ on the question of knowledge should the issue be determined as a matter of law").

Sherrill v. Souder, 325 S.W.3d 584, 596-97 (Tenn. 2010); *see also Coffey v. Coffey*, 578 S.W.3d 10, 22 (Tenn. Ct. App. 2018) ("For the purposes of . . . the discovery rule . . . whether a plaintiff exercised reasonable care and diligence in discovering her injury is usually a fact question for the trier of fact to determine."")). The Court cannot reasonably infer based upon the undisputed facts that Plaintiffs had constructive knowledge of Encompass's investment in Medalgoix by actively

and consistently checking their social media feeds. In fact, Plaintiffs dispute that they followed Medalogix on every social media platform—Twitter, Facebook and LinkedIn—and Medalogix admits that Finney did not follow the Company on any form of social media. Plaintiffs argue that by the time Medalogix sent the Repurchase Notices in May 2019, Plaintiffs were no longer shareholders and no longer worked at the Company. Some of them moved out of state and others had always worked remotely. None of the Plaintiffs recall seeing the press releases, social media posts, and/or news articles. Whether Plaintiffs acted as a reasonable investor and should have, through the exercise of reasonable diligence, been aware of Encompass's investment in Medalogix when it was publicly announced in June 2019, is a question of fact for the jury. Therefore, Medalogix's motion for summary judgment as to this claim is DENIED.

Conclusion

IT IS THEREFORE ORDERED, ADJUDGED and DECREED that Medalogix's Motion for Summary Judgment is GRANTED in part and DENIED in part. The Court GRANTS summary judgment to Medalogix in part by finding that it had the right to repurchase the Class B Common Units from the Plaintiffs. Thus, Plaintiffs' breach of contract claim relying on any lack of repurchase right under the Options Agreement is hereby DISMISSED.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that the Court GRANTS summary judgment to Medalogix on Plaintiffs' promissory estoppel claim. Thus, that claim is hereby DISMISSED.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that the Court DENIES Medalogix summary judgment on Plaintiffs' TSA claim.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that the Court GRANTS Plaintiffs' Rule 56.07 Motion and Plaintiffs' request to conduct additional discovery, but limited

to Medalogix' share price during the relevant period, what steps Medalgoix took to determine the share price, former employees who were Options holders and did not receive a Repurchase Notice, and discovery on the remaining claims. Thus, the stay on discovery set forth in the Court's June 9, 2022 Order is hereby LIFTED. The Court will RESET the hearing on summary judgment as to this remaining issue after a reasonable time to conduct discovery.

Case Management

Given the Court's ruling on Medalogix's Motion for Summary Judgment, the Court will set a Rule 16 Conference in which the Court will address a scheduling order going forward. It is, therefore, ORDERED that by **November 4, 2022**, the parties shall contact the Calendar Clerk, Megan Broadnax, at 615.862.5720, regarding their availability for a Rule 16 Conference within the next thirty (30) days. The Court will then issue an Order setting the Rule 16 Conference.

It is so ORDERED.

s/Anne C. Martin

ANNE C. MARTIN
CHANCELLOR
BUSINESS COURT DOCKET
PILOT PROJECT

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