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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-118

No. COA21-420

Filed 15 February 2022

Wake County, No. 19 CVS 14445

VANGUARD SPORTS GROUP, LLC, a North Carolina Limited Liability Company,
Plaintiff,

v.

BRETT T. SMITH, an individual, BUTTON SPORTS VENTURES, LLC, a North
Carolina Limited Liability Company, and DOES 1-10, Defendants.

Appeal by defendants from order entered 17 February 2021 by Judge G. Bryan
Collins in Wake County Superior Court. Heard in the Court of Appeals 26 January
2022.

*Kim Riley Law, by Rebecca J. Riley, pro hac vice and Andrew F. Kim, pro hac
vice, and Nexsen Pruet, PLLC, by R. Daniel Boyce, for plaintiff-appellee.*

*CYLG, P.C., by R. Anthony Young, for defendants-appellants Brett T. Smith
and Button Sports Ventures, LLC.*

TYSON, Judge.

¶ 1

Appeal by Brett T. Smith (“Smith”) and Button Sports Ventures, LLC,
(collectively “Defendants”) from an order granting summary judgment in favor of

Vanguard Sports Group, LLC (“Plaintiff”). We reverse and remand.

I. Background

¶ 2 John Marshall Branion, III (“Branion”) was employed by Athletes First, LLC as the east coast director of operations from 2001 until September 2014. Athletes First is an athletic talent representation agency, employing sports agents primarily representing professional football players in the National Football League (“NFL”). Smith began working as an agent for Athletes First in 2010.

¶ 3 Branion left Athletes First in September 2014 to start Plaintiff as a competing agency. Branion executed Plaintiff’s operating agreement on 19 September 2014. The operating agreement does not contain a rule of equal dignities, requiring amendments thereto to be in writing. Smith alleged Branion asked him to leave Athletes First to join him at Plaintiff and offered him a five percent ownership interest in Plaintiff as partial consideration.

¶ 4 Smith left Athletes First and joined Plaintiff on 1 February 2015 as principal and director of operations. Smith alleged he was paid a modest salary, in addition to his five percent equity interest, because Plaintiff was not generating profits at the time. Smith further alleged his five percent equity interest was recognized in internal discussions and written communications between himself, Branion, and to people outside of Plaintiff upon which he and they relied.

¶ 5 In November 2016, Plaintiff agreed to and accepted an investment from M.L.S.

Investments, LLC. Smith alleged his five percent interest was reflected in the proposed operating agreement for the restructured company.

¶ 6 During a National Football League Players Association (“NFLPA”) arbitration held on 17 April 2017, Smith testified and was asked if he had “an equity stake in [Plaintiff]?” Smith replied: “Not really, No.”

¶ 7 In September 2017, Plaintiff accepted a convertible loan from Von Miller, Sr, the father of a client of Plaintiff. The draft operating agreement prepared during due diligence for the loan reflected Smith’s five percent interest in Plaintiff.

¶ 8 In 2019, disagreements between Smith and Branion arose regarding Smith’s equity interest and representation of NFL player clients. Smith resigned on 5 July 2019.

¶ 9 Plaintiff filed this declaratory judgment action on 23 October 2019. Defendants filed a motion to compel arbitration with the NFLPA on 11 August 2020. A consent order was entered compelling arbitration for all causes of action on 19 August 2020, except for Smith’s alleged equity interest in Plaintiff.

¶ 10 Plaintiff filed a motion for summary judgment on 25 September 2020. Following a hearing on 30 November 2020, the trial court granted Plaintiff’s motion for summary judgment by order 17 February 2021. Defendants appeal.

II. Jurisdiction

¶ 11 Jurisdiction lies in this Court pursuant to N.C. Gen. Stat. § 7A-27(b)(1) (2021).

III. Issue

¶ 12 Defendant argues the trial court erred when it granted summary judgment in favor of Plaintiff.

IV. Analysis

A. Standard of Review

¶ 13 North Carolina Rule of Civil Procedure 56(c) allows a moving party to obtain summary judgment upon demonstrating “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits” show they are “entitled to a judgment as a matter of law” and “there is no genuine issue as to any material fact.” N.C. Gen. Stat. § 1A-1, Rule 56(c) (2021).

¶ 14 A material fact is one supported by evidence that would “persuade a reasonable mind to accept a conclusion.” *Liberty Mut. Ins. Co. v. Pennington*, 356 N.C. 571, 579, 573 S.E.2d 118, 124 (2002) (citation omitted). “An issue is material if the facts alleged would . . . affect the result of the action.” *Koontz v. City of Winston-Salem*, 280 N.C. 513, 518, 186 S.E.2d 897, 901 (1972).

¶ 15 When reviewing the allegations and proffers at summary judgment, “[a]ll inferences of fact from the proofs offered at the hearing must be drawn against the movant and in favor of the party opposing the motion.” *Boudreau v. Baughman*, 322 N.C. 331, 343, 368 S.E.2d 849, 858 (1988) (citation omitted). Summary judgment is not appropriate where matters of credibility and determining the weight of the

evidence exist. *Moore v. Fieldcrest Mills, Inc.*, 296 N.C. 467, 470, 251 S.E.2d 419, 422 (1979).

¶ 16 “[O]nce the party seeking summary judgment makes the required showing, the burden shifts to the nonmoving party to produce a forecast of evidence demonstrating specific facts, as opposed to allegations, showing that he can at least establish a *prima facie* case at trial.” *Pacheco v. Rogers & Breece, Inc.*, 157 N.C. App. 445, 448, 579 S.E.2d 505, 507 (2003) (citation omitted).

¶ 17 On appeal, “[t]he standard of review for summary judgment is *de novo*.” *Forbis v. Neal*, 361 N.C. 519, 524, 649 S.E.2d 382, 385 (2007) (citation omitted).

B. 17 February 2021 Order

¶ 18 Defendants argue the trial court erred by granting Plaintiff’s motion for summary judgment. Defendants assert the trial court’s holding: “The parties submitted no evidence tending to show that the Operating Agreement was amended, either in writing or orally, in any way at any time pursuant to the Act.” is erroneous. We agree.

¶ 19 The terms and interpretation of an operating agreement of a North Carolina limited liability company are governed by N.C. Gen. Stat. § 57D-2-30. “The operating agreement governs the internal affairs of an LLC and the rights, duties, and obligations of (i) the interest owners, and the rights of any other persons to become interest owners, in relation to each other, the LLC, and their ownership interests or

rights to acquire ownership interests[.]” N.C. Gen. Stat. § 57D-2-30(a) (2021). The terms of the operating agreement require Branion’s approval of any amendments, but does not require the amendment to be in writing.

¶ 20 Genuine issues of material fact exist involving Smith’s purported five percent equity interest as an inducement to leave his employment and join Plaintiff, during particularly discussions involving Branion during the due diligence of the convertible loan and outside investments. In the light most favorable to Smith, these disputed facts could constitute an acknowledgement of Smith’s equity interest.

¶ 21 Our Court has long held “where there is a need to ‘find facts’ then summary judgment is not an appropriate device to employ, provided those facts are material.” *Robertson v. Hartman*, 90 N.C. App. 250, 253, 368 S.E.2d 199, 201 (1988) (citation omitted). Defendants forecasted evidence of internal and external communications which references Smith’s purported five percent equity interest in Plaintiff. *See Pacheco*, 157 N.C. App. at 448, 579 S.E.2d at 507. Viewed in the light most favorable to Defendants, the inducement of Smith to join Plaintiff and the email communications during the due diligence of the convertible loan and outside investment forecast evidence to survive the motion for summary judgment. We reverse the trial court’s entry of summary judgment and remand for further proceedings.

V. Conclusion

VANGUARD SPORTS GROUP V. SMITH

2022-NCCOA-118

Opinion of the Court

¶ 22 Viewed in the light most favorable to Defendants and giving them the benefit of any disputed inferences, Plaintiff was not entitled to summary judgment. The genuine issues of material fact surrounding Smith’s purported equity interest preclude and survive Plaintiff’s motion for summary judgment.

¶ 23 The trial court’s order for summary judgment is reversed and this cause is remanded for further proceedings or trial. *It is so ordered.*

REVERSED AND REMANDED.

Judges ARROWOOD and CARPENTER concur.

Report per Rule 30(e).