IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

CLIFFORD L. BRITTON	*	
	*	
Plaintiff,	*	
	*	
v.	*	Civil No. JFM 08-536
	*	
TECHNOLOGY, AUTOMATION &	*	
MANAGEMENT, INC.,	*	
	*	
Defendant.	*	
	*****	

MEMORANDUM OPINION

Plaintiff Clifford L. Britton has brought suit against defendant Technology, Automation & Management, Inc. ("TeAM"), alleging breach of contract and unjust enrichment. Specifically, plaintiff alleges that his Stockholders Agreement and Deferred Compensation Agreement with defendant were unconscionable adhesion contracts whose enforcement has unjustly enriched defendant. (Compl. ¶¶ 19-35.) Defendant has moved to dismiss plaintiff's claims on the grounds that the terms of the agreements were neither procedurally nor substantively unconscionable, and that plaintiff has failed to state a claim for unjust enrichment. (Def.'s Mot. to Dismiss at 1-2.) For the reasons that follow, I will grant defendant's motion to dismiss in part and deny it in part.

I.

The facts, as alleged in plaintiffs' complaint, are as follows. In December 1999, defendant hired plaintiff as its Program Operations Manager/Business Development. (Compl. ¶ 9.) On March 1, 2001, plaintiff was issued 102,410 shares of the Non-Voting Common Shares of TeAM, allegedly "in recognition of his outstanding service to TeAM and his having generated

millions of dollars worth of business for TeAM." (*Id.* ¶ 10.) At approximately the same time, plaintiff and defendant entered into a Stockholders Agreement and a Deferred Compensation Agreement. (*Id.* ¶¶ 11-12.) Plaintiff alleges that, on August 8, 2007, he and Charles G. Davis, President of TeAM, mutually agreed that plaintiff would resign from TeAM effective immediately, and plaintiff ceased his employment on that date. (*Id.* ¶ 13.) On August 15, 2007, plaintiff received a separation letter dated August 8, 2007, which stated: "It is with great regret that we must end your employment with TeAM, Inc. Unfortunately, we have no other positions available . . . ." (*Id.* ¶ 14; Ex. C.)

On September 5, 2007, defendant's attorneys allegedly advised plaintiff that he had been terminated "for cause," which plaintiff contends is false and contradicts the separation letter. (*Id.* ¶¶ 15-16.) The Stockholders Agreement provided that "[i]n the event that a Stockholder is terminated 'for cause,' said Stockholder's stock shall be deemed offered for sale to the Company and the remaining stockholders . . . at the Adjusted Book Value of such shares . . . ." (*Id.* Ex. A, Stockholders Agreement § 1.F.(1).) The Deferred Compensation Agreement provided that "a Participant shall forfeit any and all otherwise vested rights in the amount of DCU [Deferred Compensation Unit] benefits standing in his or her Participant Account if the Board of Directors determines in its sole and absolute discretion that the Participant has been terminated for cause . . . ." (*Id.* Ex. B, Employee Deferred Compensation Unit Plan ("EDCUP") § 7(c).)

In accordance with the Stockholders Agreement and Deferred Compensation Agreement, TeAM redeemed plaintiff's shares on November 30, 2007 at the adjusted book value and denied plaintiff his benefits under the Deferred Compensation Agreement. (*Id.* ¶¶ 17-18.) Alleging that defendant's actions constituted a breach of contract, plaintiff requests compensatory damages of

at least $300,000 and attorney fees. (*Id.* ¶ 35.)

II.

In *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1974 (2007), the Supreme Court held that, in order to survive a motion to dismiss, a plaintiff must plead plausible, not merely conceivable, facts in support of his claim. The complaint must state "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do . . . . Factual allegations must be enough to raise a right to relief above the speculative level . . . ." *Id.* at 1965. "[O]nce a claim has been stated adequately, it may be supported by showing any set of facts consistent with the allegations in the complaint." *Id.* at 1960. In considering a motion to dismiss, a court must "accept the factual allegations of the complaint as true and must view the complaint in the light most favorable to the plaintiff." *GE Inv. Private Placement Partners II v. Parker*, 247 F.3d 543, 548 (4th Cir. 2001).

III.

Plaintiff alleges that defendant breached the Stockholders Agreement and Deferred Compensation Agreement because (1) the agreements were unconscionable adhesion contracts that should not have been enforced (Compl. ¶¶ 22-24), and (2) defendant's decision to terminate plaintiff for cause was arbitrary and capricious (*id.* ¶¶ 13-18, 25-29). I will address these arguments, and the grounds upon which defendant moves to dismiss them, in turn.

A.

The doctrine of unconscionability contains both procedural and substantive components. *Doyle v. Fin. Am., LLC*, 918 A.2d 1266, 1274 (Md. Ct. Spec. App. 2007). The "prevailing view," which Maryland has adopted, is that "[procedural and substantive unconscionability]

must *both* be present in order for a court to exercise its discretion to refuse to enforce a contract or clause under the doctrine of unconscionability.'" *Id.* (emphasis added) (quoting *Holloman v. Circuit City*, 894 A.2d 547, 560 (Md. 2006) (Bell, C.J., and Greene, J., dissenting)); *see also Walther v. Sovereign Bank*, 872 A.2d 735, 744-47 (Md. 2005)). While procedural unconscionability refers to "the process by which an agreement is reached and the form of an agreement, including the use therein of fine print and convoluted or unclear language," substantive unconscionability refers to "contractual terms that are unreasonably or grossly favorable to one side and to which the disfavored party does not assent." *Id.* at 744 (internal citations omitted).

Plaintiff alleges that four terms in the Stockholders Agreement and Deferred Compensation Agreement were unconscionable: (1) that a stockholder's shares would be sold at the adjusted book value upon termination for cause;[1] (2) that the determination of the adjusted book value by TeAM's accountants was final and conclusive; (3) that the vested rights under the Deferred Compensation Agreement are forfeited if the employee is terminated for cause; and (4) that the determination of "termination for cause" was in the sole and absolute discretion of a majority of the Board of Directors. (Compl. ¶¶ 23-24.)

I conclude that the terms of these four provisions were neither procedurally nor substantively unconscionable. As defendant points out, plaintiff's complaint "is completely devoid of any allegation that could be construed as procedural unconscionability." (Def.'s Mem.

[1] Plaintiff alleges as one of the "unconscionable terms" the following: "The purchase of the employee's shares by the Company after termination for cause are at the substantially reduced value of Adjusted Book Value." (Compl. ¶ 23.) Although defendant declines to address this allegation because it contends this was not a term in either the Stockholders Agreement or the Deferred Compensation Agreement (Def.'s Mem. at 6 n.2), I find that it reasonably can be read as an allegation that section § 1.F.(1) of the Stockholders Agreement, set forth *supra*, is unconscionable.

at 7.) Plaintiff attempts to make up for this omission by contending for the first time in his opposition brief that the Stockholders Agreement "was provided to [plaintiff] on a take-it or leave-it basis to be signed the same day with no opportunity to have counsel review." (Pl.'s Opp'n at 2.) This argument is meritless, however. Plaintiff acknowledged in signing the Stockholders Agreement that he had the opportunity to seek the advice of independent counsel in connection with the agreement.[2] (Compl. Ex. A, Stockholders Agreement § 15.D.)

These four terms also were not substantively unconscionable. As to the first term, the Stockholders Agreement provided that if a Stockholder is terminated for cause, his stock "shall be deemed offered for sale to the Company and the remaining stockholders . . . at the Adjusted Book Value of such shares . . . ."[3] (*Id.* at § 1.F.(1).) Plaintiff alleges that defendant breached the Stockholders Agreement "when it redeemed Britton's shares for the Adjusted Book Value instead of the Fair Market Value to which Britton was entitled." (*Id.* ¶ 27.) Because I find that redeeming shares at their adjusted book value if the employee was terminated for cause is not "unreasonably or grossly favorable to one side," I find no substantive unconscionability in this provision. *Walther*, 872 A.2d at 744. To the extent plaintiff's contention is that defendant breached the provision because it was not justified in terminating plaintiff "for cause," I address that *infra*.

As to the second term, the Stockholders Agreement provided: "The determination of

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[2] In the alternative, plaintiff requests leave to amend the complaint to plead procedural unconscionability. (Pl.'s Opp'n at 2 n.1.) I deny plaintiff's request because I find, *infra*, that the four terms plaintiff challenges were not substantively unconscionable, and thus plaintiff's claim would fail even if the terms were procedurally unconscionable.

[3] The Stockholders Agreement defines "adjusted book value" to "mean[] the dollar amount, calculated on the accrual basis of accounting in accordance with generally accepted accounting principles, of the net aggregate stockholders' equity of the Company that is allocated to the class of stock being transferred, and then divided by the total number of outstanding shares of stock in such class." (Compl. Ex. A., Stockholders Agreement § F.(2).)

Adjusted Book Value made by the accountants currently engaged by the Company shall, for purposes of this agreement, be final, conclusive, and binding upon all parties." (Compl. Ex. A, Stockholders Agreement § 1.F.(2)(h).) Plaintiff does not allege, nor do I find, that the final and binding nature of the determination was grossly unfavorable to plaintiff. Rather, in contending that "the calculation of the Adjusted Book Value of Britton's Stock was erroneous, inequitable and understated," plaintiff apparently takes issue with the calculation of the adjusted book value by defendant's accountants. (*Id.* ¶ 28.) Because the Stockholders Agreement sets forth precisely how defendant's accountants must calculate adjusted book value (*see id.* Ex. A, Stockholders Agreement § F.(2)(a)-(I)), and plaintiff presents no plausible set of facts alleging that those accountants strayed from those calculation requirements, this claim must be dismissed.[4]

As to the third term, the Deferred Compensation Agreement provided that a plan participant who has been terminated for cause "shall forfeit any and all otherwise vested rights in the amount of DCU benefits standing in his . . . Account . . . ." (*Id.* Ex. B, EDCUP § 7(c).) Plaintiff alleges that defendant breached this provision "when it refused to pay Britton benefits under the Deferred Compensation Plan." (*Id.* ¶ 29.) Just as with the first term above, because I find that requiring an employee to forfeit benefits if he was terminated for cause is not "unreasonably or grossly favorable to one side," I find no substantive unconscionability in this provision. *Walther*, 872 A.2d at 744. Again, to the extent plaintiff's contention is that defendant breached the provision because it was not justified in terminating plaintiff "for cause," I address

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[4] Plaintiff does allege that defendant's accountants might have been improperly influenced in their calculation of adjusted book value by Charles G. Davis. (Pl.'s Opp'n at 5 (alleging that Davis has received "excessive compensation[,] . . . interest free loans[,] . . . cars, country club memberships, [and] nanny and housekeeping services" from TeAM).) However, these allegations - not even mentioned in the Complaint and not in any way linked by plaintiff to the accountants' calculation - fall short of *Twombly*'s requirement that plaintiff plead plausible, not merely conceivable, facts in support of his claim to survive a motion to dismiss. 127 S. Ct. at 1974.

that *infra*.

As to the fourth term, both the Stockholders Agreement and the Deferred Compensation Agreement provided that "termination for cause" "shall be . . . determined in the sole and absolute discretion of a majority of the Board of Directors voting at a duly authorized meeting of Directors . . . ."[5] (Compl. Ex. A, Stockholders Agreement § 1.F.(1); Ex. B, EDCUP § 7(c).) Plaintiff apparently alleges that such a provision is unconscionable on its face. (*Id.* ¶¶ 23, 25.) In *Towson University v. Conte*, 862 A.2d 941 (Md. 2004), however, the Maryland Court of Appeals upheld the broad discretion of employers to terminate an employee for cause. Specifically, the court held that where a plaintiff challenges his employer's decision to terminate him for cause, "a jury may not review whether the factual bases for termination actually occurred or whether they were proved by a preponderance of the evidence submitted for its review." *Id.* at 950.

Instead, the proper role of a jury "is to review the *objective* motivation, *i.e.*, whether the employer acted in objective good faith and in accordance with a reasonable employer under similar circumstances when he decided there was just cause to terminate the employee." *Id.* (emphasis in original). The court explained that "[t]he jury's inquiry should center on whether an employer's termination was based upon any arbitrary, capricious, or illegal reason, or on facts not reasonably believed to be true by the employer. But the fact-finding prerogative remains

[5] The Board of Directors' determination must be "based upon one of the following grounds . . . : (I) fraud, misappropriation of assets, embezzlement or other acts of similar dishonesty, (ii) conviction of a felony involving moral turpitude, (iii) illegal use of drugs or excessive use of alcohol in the workplace, (iv) intentional and willful misconduct that may subject the Company to criminal or civil liability, (v) breach of Stockholder's duty of loyalty, including the diversion or usurpation of corporate opportunities properly belonging to Company; (vi) willful disregard for Company policies and procedures, or (vii) insubordination or deliberate refusal to follow the instruction of the Board of Directors." (Compl. Ex. A, Stockholders Agreement § 1.F.(1); Ex. B (EDCUP § 7(c).)

with the employer, absent some express intention otherwise." *Id.* Accordingly, I conclude that the provision granting defendant's Board of Directors with the sole and absolute discretion to determine whether to terminate an employee for cause is not substantively unconscionable, and I turn to the analysis of whether defendant's decision was arbitrary or capricious.[6]

B.

Plaintiff alleges that after he and President of TeAM, Charles G. Davis, "mutually agreed that [plaintiff] would resign from TeAM" and confirmed this by a separation letter dated August 8, 2007, defendant concluded almost a month later, "in contradiction of the Separation Letter," that plaintiff had been terminated for cause. (Compl. ¶¶ 13-16.) Plaintiff disputes that his termination from TeAM was for cause. (*Id.* ¶ 16.) Further, plaintiff argues in his opposition brief that his termination was arbitrary and capricious because Davis, allegedly the sole member of the Board of Directors, "is the prosecutor, judge and jury in this case and can make any decision based on any pretext he wants, even after the fact, which is binding on [plaintiff], regardless of [Davis's] ulterior motives that would create a financial windfall for TeAM." (Pl.'s Opp'n at 4.) Plaintiff also alleges that Davis, to the detriment of other shareholders, received excessive compensation and interest free loans from TeAM; charged cars, country club memberships, and nanny and housekeeping services to TeAM; and allocated, but did not pay, seventy thousand dollars of profits to plaintiff over several years. (*Id.* at 5.)

I conclude that plaintiff has pled sufficient facts in support of his claim that defendant's

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[6] As noted *infra*, plaintiff alleges that Charles G. Davis, the President of TeAM, was the sole member of TeAM's board of directors. While that fact may be relevant in determining whether defendant's decision to terminate plaintiff for cause was arbitrary and capricious, it is not relevant to the question of substantive unconscionability, because there is nothing inherently unconscionable about authorizing a single person to make employment termination decisions.

decision to terminate him for cause was arbitrary and capricious. In particular, the apparent discrepancy between the text of the separation letter and TeAM's contention that plaintiff was terminated for cause raises a plausible inference that the termination decision was arbitrary and capricious. The separation letter, dated August 8, 2007, stated that TeAM "great[ly] regret[ted] that we must end your employment" and "[u]nfortunately . . . [had] no other positions available . . . ." (Compl. Ex. C.) Thanking plaintiff "for all [his] efforts during [his] tenure with TeAM," the separation letter made no mention of its alleged decision to terminate plaintiff for cause or of any grounds upon which it was justified to do so under the Stockholders Agreement and the Deferred Compensation Agreement. (*Id.*)

Defendant contends in its motion to dismiss that "[a] majority of the TeAM Board of Directors voting at a duly authorized meeting concluded that Mr. Britton's termination was 'for cause' on the grounds of breach of duty of loyalty, misappropriating company assets, willfully disregarding TeAM policies and procedures, and insubordination or deliberate refusal to follow the instructions of the Board of Directors." (Def.'s Mem. at 4.) These are all potentially valid grounds upon which defendant's Board of Directors could have terminated plaintiff for cause. (*See supra* note 5, Compl. Ex. A, Stockholders Agreement § 1.F.(1); Ex. B, EDCUP § 7(c).) If defendant produces evidence supporting its Board of Directors' determination to terminate plaintiff for cause, it might succeed on a motion for summary judgment. At this stage, however, plaintiff has pled a plausible set of facts in support of his claim that defendant's decision to terminate him for cause "was based upon an[] arbitrary, capricious, or illegal reason, or on facts not reasonably believed to be true by [defendant]. " *Towson University*, 862 A.2d at 950.

IV.

Plaintiff's second claim is that defendant "would be unjustly enriched if it is allowed to purchase Britton's stock in TeAM at the Adjusted Book Value . . . [or] to deny Britton's vested rights under the Deferred Compensation Plan." (Compl. ¶¶ 32, 34.) Plaintiff alleges that he has conferred a benefit on defendant by "his outstanding service to TeAM and his having generated millions of dollars worth of business for TeAM," for which plaintiff received 102,410 non-voting common shares of TeAM. (*Id.* ¶ 10.)

I conclude that plaintiff's unjust enrichment claim must be dismissed. "Unjust enrichment and quantam meruit, both 'quasi-contract' causes of action, are remedies to provide relief for a plaintiff when an enforceable contract does not exist but fairness dictates that the plaintiff receive compensation for services provided."[7] *Dunnaville v. McCormick & Co.*, 21 F. Supp. 2d 527, 535 (D. Md. 1998) (Legg, J.). As the Maryland Court of Appeals has explained, "[q]uasi-contractual remedies . . . are not to be created when an enforceable express contract regulates the relations of the parties with respect to the disputed issue. Courts have recognized this principle and have stated their unwillingness to resort to the doctrine of unjust enrichment to override a contractual plan provision." *County Comm'rs of Caroline County, Md. v. Dashiell & Sons, Inc.*, 747 A.2d 600, 608 (Md. 2000).

Plaintiff's unjust enrichment claim fails because enforceable contracts existed between plaintiff and defendant in the form of the Stockholders Agreement and the Deferred Compensation Agreement. *See Dunnaville*, 21 F. Supp. 2d at 535; *Dashiell*, 747 A.2d at 608. Plaintiff argues for the invalidation of these agreements on the ground that consideration was

[7] Under Maryland law, "a claim of unjust enrichment is established when: (1) the plaintiff confers a benefit upon the defendant; (2) the defendant knows or appreciates the benefit; and (3) the defendant's acceptance or retention of the benefit under the circumstances is such that it would be inequitable to allow the defendant to retain the benefit without the paying of value in return." *Benson v. State*, 887 A.2d 525, 546 (Md. 2005).

lacking. (Pl.'s Opp'n at 5.) Specifically, plaintiff contends that "TeAM reserved the right to change these agreements at its sole and absolute discretion[,] [and] [t]hus their promises may be deemed illusory and the agreements would become unenforceable . . . ." (*Id.*)

This argument is unavailing. The agreements unequivocally state that TeAM did not have the right to change them at its discretion. (*See* Compl. Ex. A, Stockholders Agreement § 19 ("[N]o such amendment shall adversely affect the interests of any Stockholder who does not agree to such an amendment."); Ex. B, EDCUP § 10 ("No such amendment, modification or termination will, however, adversely affect the right of a Participant to receive the payment of any DCU benefits in which the Participant is vested at the time of such amendment, modification or termination . . . .").) Further, the Stockholders Agreement expressly provided consideration in the form of shares in the company. The agreement's provision that the shares would be redeemed at their adjusted book value if the stockholder was terminated for cause does not change the fact that they were initially granted as consideration.

For the foregoing reasons, I grant defendant's motion to dismiss in part and deny it in part. A separate order to that effect is being entered herewith.

Date: June 16, 2008

/s/
J. Frederick Motz
United States District Judge

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	*	
Plaintiff,	*	
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	*	
TECHNOLOGY, AUTOMATION & MANAGEMENT, INC.,	*	
	*	
	*	
Defendant.	*	
	*****	

ORDER

For the reasons stated in the accompanying Memorandum Opinion, it is, this 16th day of June 2008

ORDERED that defendant's motion to dismiss is granted in part and denied in part.

/s/
J. Frederick Motz
United States District Judge