

Kruchten v Eastman Kodak Co.
2022 NY Slip Op 33409(U)
October 4, 2022
Supreme Court, New York County
Docket Number: Index No. 656302/2020
Judge: Joel M. Cohen
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SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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BRAD KRUCHTEN, Plaintiff, - v - EASTMAN KODAK COMPANY, COMPUTERSHARE INC., COMPUTERSHARE TRUST COMPANY, N.A. Defendants.	<table border="0"> <tr> <td style="padding-right: 10px;">INDEX NO.</td> <td style="border-bottom: 1px solid black; padding-left: 10px;">656302/2020</td> </tr> <tr> <td style="padding-right: 10px;">MOTION DATE</td> <td style="border-bottom: 1px solid black; padding-left: 10px;">N/A, 09/26/2022</td> </tr> <tr> <td style="padding-right: 10px;">MOTION SEQ. NO.</td> <td style="border-bottom: 1px solid black; padding-left: 10px;">002 004</td> </tr> </table> <p style="text-align: center;">DECISION + ORDER ON MOTION</p>	INDEX NO.	656302/2020	MOTION DATE	N/A, 09/26/2022	MOTION SEQ. NO.	002 004
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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 124, 125, 127, 128, 129, 135, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151 were read on this motion for SUMMARY JUDGMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 130, 131, 132, 133, 134 were read on this motion for SUMMARY JUDGMENT.

“[W]hen there is no genuine issue to be resolved at trial, the case should be summarily decided” (*Andre v Pomeroy*, 35 NY2d 361, 364 [1974]). “Summary judgment is a drastic remedy, to be granted only where the moving party has tender[ed] sufficient evidence to demonstrate the absence of any material issues of fact and then only if, upon the moving party’s meeting of this burden, the non-moving party fails to establish the existence of material issues of fact which require a trial of the action” (*Sosa v 46th St. Dev. LLC*, 101 AD3d 490, 492-93 [1st Dept 2012], internal citations omitted).

The Court concludes that there are issues of fact requiring trial concerning, *inter alia*, whether Plaintiff communicated to Defendants his intention and direction to exercise all of his available vested Non-Qualified Stock Options (“NSQOs”) and whether Defendants breached the

applicable Award Agreements or other obligations owed to Plaintiff in connection with the exercise of his NSQOs.

However, Plaintiff's claim for breach of the Employment Agreement (which provides for attorneys' fees to the prevailing party) cannot be sustained. The Employment Agreement provides Plaintiff with the right to *participate* in the Omnibus Incentive Plan (the "Plan"), but does not govern transactions under the Plan (NYSCEF 51, § 4.1[c]). Moreover, each Award Agreement contains a merger clause which states, "[t]his Award Agreement and the Plan constitute the entire agreement and understanding of the parties with respect to the...NSQOs" (NYSCEF 45, at 4, 7, 10). The merger clause evinces "the parties' intent that the agreement 'is to be considered a completely integrated writing'" (*Jarecki v Shung Moo Louie*, 95 NY2d 665, 669 [2001], internal citation omitted). Thus, the Award Agreements "require the full application of the parol evidence rule...to bar the introduction of extrinsic evidence to alter, vary or contradict the terms of the writing" (*Id.*, internal citation omitted).

Plaintiff relies on *PETRA CRE CDO 2007-1, Ltd v Morgans Grp. LLC*, 84 AD3d 614 [1st Dept 2011] for the argument that the Employment Agreement is intertwined with the Plan and Award Agreements and must be construed together. This argument is unavailing. The agreements at issue in *PETRA* were loan documents originating from one omnibus loan agreement, whereas here the Award Agreements granting the NSQOs were issued separately over a period of years and were not "executed at substantially the same time" (*PETRA*, 84 AD3d at 615).

Williamson v Moltech Corp., 261 AD2d 538 [2d Dept 1999] and *Powe v Cambium Learning Co.*, 2009 WL 2001440 [SDNY Jul. 9, 2009] are similarly unavailing to Plaintiff. The agreements at issue in those cases contained provisions specifically conferring rights with respect

to the exercise of stock options, and thus the agreements were found to be related in subject matter (*see e.g., Powe*, at *6 [finding “the exercise [of stock options] was explicitly contemplated [in the employment agreements]”]; *Williamson*, 261 AD2d at 539 [“the employment agreement also set forth the basic terms of the plaintiff’s rights to exercise the stock options”]). Here, by contrast, Plaintiff has not offered any evidence indicating the Employment Agreement and the Award Agreements originated from a singular arrangement or that the Employment Agreement is related in subject matter with the Plan and Award Agreements. Plaintiff has likewise failed to show the Employment Agreement conferred any rights or obligations with respect to the exercise of the NSQOs at issue. Accordingly, the fee-shifting provisions contained in the Employment Agreement are inapplicable in this action.

Therefore, it is:

ORDERED that Defendants’ motion for summary judgment (Motion Sequence No. 04) is **granted** insofar as it relates to the branch of Plaintiff’s First Cause of Action claiming breach of the Employment Agreement and is otherwise **denied**; it is further

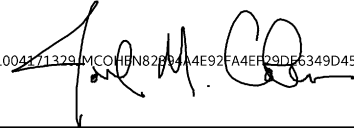
ORDERED that Plaintiff’s motion for summary judgment (Motion Sequence No. 02) is **denied**; it is further

ORDERED that the parties upload a copy of the transcript of the proceedings to NYSCEF upon receipt; and it is further

ORDERED that the parties’ counsel appear for an initial pretrial conference on **November 3, 2022, at 10:00 a.m.** to discuss trial logistics and scheduling.

This constitutes the Decision and Order of the Court.

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JOEL M. COHEN, J.S.C.

10/4/2022
DATE

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: