SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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HOULIHAN LOKEY CAPITAL, INC.

Plaintiff,

- v -

MARIADB PLC, AS SUCCESSOR TO MARIADB CORPORATION AB,

Defendant.

INDEX NO.	653340/2023
MOTION DATE	05/17/2024
MOTION SEQ. NO.	002

DECISION + ORDER ON MOTION

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 98, 99, 100

were read on this motion for PARTIAL SUMMARY JUDGMENT.

Plaintiff Houlihan Lokey Capital, Inc. ("Houlihan" or "Plaintiff") moves for partial summary judgment on its breach of contract claim against Defendant MariaDB PLC ("MariaDB" or "Defendant"). Houlihan asks that the Court find that it is entitled to a Sale Fee and attorneys' fees pursuant to an Engagement Letter executed between the parties (NYSCEF 44 ["Engagement Letter"]).

For the reasons stated below, Plaintiff's motion is granted as to liability and denied as to damages.[1]

[1] Given the Court's grant of summary judgment in Plaintiff's favor as to Defendant's liability for breach of contract, it would appear that Plaintiff's remaining claim for unjust enrichment (as to which neither side sought summary judgment) is duplicative and can be dismissed (*Globalx, Inc. v Hogwarts Capital, LLC*, 226 AD3d 535, 536 [1st Dept 2024]). This issue can be addressed at the pretrial conference.

BACKGROUND[2]

In April of 2021, MariaDB Corporation AB retained Houlihan Lokey to act as its lead financial advisor and/or placement agent to provide financial advisory and investment banking services in connection with any proposals for a "Financing Transaction" and a "Sale Transaction" as defined in the parties' agreement (Engagement Letter § 1). Under the agreement, MariaDB agreed to pay Houlihan a Sale Fee upon the consummation of a Sale Transaction, and a Financing Fee upon the consummation of a Financing Transaction (Engagement Letter § 2 [c]).

MariaDB subsequently consummated two related transactions: (1) first, a Series D financing in which affiliates of Angel Pond Holdings Corporation ("APHC"), a special purpose acquisition company ("SPAC"), and certain other investors would participate, and (2) a de-SPAC transaction pursuant to which MariaDB and APHC would merge, with the publicly traded APHC entity as the surviving corporation and re-named "MariaDB plc." While MariaDB paid Houlihan an approximately $3 million Financing Fee, it has not paid the $6,286,850.68 Sale Fee that Houlihan contends it is owed as a result of the de-SPAC transaction. MariaDB argues that no

[2] The following facts are undisputed unless otherwise noted (*see generally* NYSCEF 72 [Defendant's Response to Plaintiff's Statement of Undisputed Material Facts]).

Sale Fee is owed because the de-SPAC transaction did not constitute a Sale Transaction under the Engagement Letter.

DISCUSSION

Summary judgment is properly granted when there are no genuine disputes of material fact (*see, e.g., Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). A party is entitled to summary judgment "if, upon all of the papers and proof submitted, the cause[s] of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party" (CPLR 3212 [b]). The burden to establish a right to summary judgment is a heavy one: the facts must be viewed in the light most favorable to the non-moving party and every available inference must be drawn in the non-moving party's favor (*see De Lourdes Torres v Jones*, 26 NY3d 742, 763 [2016]). Where the party seeking summary judgment makes a *prima facie* showing of its claim, it then becomes the burden of the summary judgment opponent to present admissible evidence showing the existence of a triable issue of fact or a defense warranting denial of summary judgment (*see Vega v Restani Const. Corp.*, 18 NY3d 499, 503 [2012]). Mere conclusions, allegations or assertions are insufficient to raise a triable issue of fact (*see Fair v Fuchs*, 219 AD2d 454, 455-56 [1st Dept 1995]).

The interpretation of an unambiguous contract is a question of law properly determined by the court on a motion for summary judgment (*see 301 E. 60th St. LLC v Competitive Sols. LLC*, 217 AD3d 79, 84 [1st Dept 2023]). Whether a contract is ambiguous is also a matter of law to be determined by the court (*Duane Reade, Inc. v Cardtronics, LP*, 54 AD3d 137, 141 [1st Dept 2008]).

I. The Engagement Letter is Unambiguous

In dispute is whether MariaDB was obligated to pay a "Sale Fee" to Houlihan on the grounds that the de-SPAC transaction between MariaDB and APHC constituted a "Sale Transaction" under the contract (*see* Engagement Letter §§ 1, 2 [b]). MariaDB argues that notwithstanding the broad definition of "Sale Transaction" under the contract, extrinsic evidence shows that the parties intended that the Sale Fee would only be owed to Houlihan if MariaDB consummated a transaction resulting in a change of control.

The Engagement Letter defines "Sale Transaction" as "a merger, consolidation, joint venture, partnership, spin-off, split-off, business combination, tender or exchange offer, recapitalization, acquisition, sale, distribution, transfer or other disposition of assets or equity interests, or other transaction, involving any portion of the business, assets or equity interest of the Company . . . or any right or option to acquire any of the foregoing" (Engagement Letter § 1). While this language is broad, it is not ambiguous. As defined, a Sale Transaction is not limited to a "full sale" or transactions involving a change of control, as several of the listed transaction types (*e.g.*, "recapitalization") often do not (and certainly do not necessarily) involve changes of control. MariaDB attempts to interject ambiguity by pointing to the fee schedule for Sale Transactions (Engagement Letter § 2 [b]). It argues that this schedule reflects the parties' understanding that a Sale Fee would only be owed for a transaction that provided substantial value to MariaDB because it contemplates values "in the range of $800 million or more" (NYSCEF 73 [Memorandum in Opposition] at 12). This argument makes too much of too little, as the fee schedule provides a percentage award to Houlihan for deal value *up to* $800 million and makes no reference to a change in control (Engagement Letter § 2 [b]).

Because the Engagement Letter is fully integrated and unambiguous, MariaDB's appeal to extrinsic evidence is unavailing. When a contract is fully integrated, the Court is obliged "to require full application of the parol evidence rule in order to bar the introduction of extrinsic evidence to vary or contradict the terms of the writing" (*Schron v Troutman Sanders LLP*, 20 NY3d 430, 436 [2013] [internal quotations omitted]; Engagement Letter § 8 [integration clause]). Extrinsic evidence is only admissible to vary the terms of a contract if the contract is ambiguous (*see, e.g. W.W.W. Assoc. v Giancontieri*, 77 NY2d 157, 162 [1990]). An agreement is unambiguous "if the language it uses has a definite and precise meaning, unattended by danger of misconception in the purport of the [agreement] itself, and concerning which there is no reasonable basis for a difference of opinion" (*Greenfield v Philles Records*, 98 NY2d 562, 569 [2002] [internal quotations omitted]). As noted above, the Court finds that the contractual definition of Sale Transaction is not ambiguous.

II. The de-SPAC Transaction was a Sale Transaction Under the Engagement Letter

Based on the summary judgment record, the Court finds that the de-SPAC transaction is a "Sale Transaction," as that term is defined in the Engagement Letter. The Business Combination Agreement ("BCA") between MariaDB and APHC provides that APHC will merge with a new holding company "for the purpose of amalgamating APHC and [MariaDB]" and that the new holding company "will acquire all the assets and liabilities of [MariaDB] . . . in exchange for the issue to the shareholders of [MariaDB]" of shares in the holding company, "the surviving entity following the Merger" (NYSCEF 58 [Business Combination Agreement Excerpts]). Even if one did not consider this to be a "business combination" or "merger" in a colloquial sense, the transaction constituted a disposition of MariaDB's assets, which is within the definition of "Sale

Transaction" in the Engagement Letter. Further, the transaction resulted in a disposition of equity, as the de-SPAC sponsor obtained a 7% stake in the new company following the redemption (NYSCEF 97 [Oral Argument Transcript] 40:1-3, 43:2-4).

Even if the Court were to consider extrinsic evidence, this conclusion would not change. MariaDB largely relies on post-hoc deposition testimony about MariaDB's stated goal of identifying a strategic acquirer and certain documents from Houlihan reflecting its intent to pursue that goal. But MariaDB's hopes about what Houlihan might achieve cannot vary the express terms of the Engagement Letter. Further, the parties specifically referenced a SPAC transaction as an option in the lead up to the Engagement Letter (*see* NYSCEF 41 [Pitch Deck] ["In parallel with capital raise process, also reach out to select larger strategics, majority PE buyout firms and SPACs for a targeted 'market check[.]' Even if MariaDB chooses not to sell, the 'market check' sets a benchmark for investors…Unless the pro forma business *receives an outsized offer from a strategic/PE/SPAC*, complete the capital raise and execute on business plan for continued growth and potential IPO"] [emphasis added]). While MariaDB discounts this as a "51-slide, pre-engagement, generic pitch deck" (NYSCEF 73 at 9), this same proposal appears in a concise email from a director at Houlihan Lokey "propos[ing] a framework" to MariaDB's CFO (NYSCEF 40). Thus, if anything, the extrinsic evidence weighs in favor of Houlihan's interpretation.

The Engagement Letter is unambiguous in its requirement that if both a Financing Transaction and Sale Transaction occurred, a Sale Fee would be owed in addition to a Financing Fee, even if one transaction was consummated to effectuate the other (Engagement Letter § 2 [c]). MariaDB argues that awarding the Sale Fee produces an absurd result because MariaDB

only received a $2.6 million cash infusion due to the >99% redemption rate among the APHC shareholders and because Houlihan did not perform substantial work on the de-SPAC transaction (NYSCEF 73 at 14-15). The Engagement Letter, however, does not tie Houlihan's entitlement to a Sale Fee to substantial performance from Houlihan (*see* Engagement Letter § 2 [b] [requiring Sale Fee "upon the consummation of *any* Sale Transaction"] [emphasis added]). In fact, the agreement provides that if MariaDB consummates or agrees to enter into a Sale Transaction within 12 months of termination, Houlihan would still be entitled to a Sale Fee, with no provision that Houlihan needed to have rendered services related thereto (Engagement Letter § 2 [c]).

While a Sale Fee (even if only in the minimum amount of $3 million) may be viewed in retrospect as disproportionate to the net cash received by MariaDB in the de-SPAC transaction, it is not for the Court to change the parties' unambiguous agreement. Indeed, MariaDB's counsel noted in comments on the proposed Engagement Letter (NYSCEF 43) that the fee arrangement was "risky," but that was a risk MariaDB decided to take. That said, the calculation of the Sale Fee under the terms of the agreement raises questions that require further analysis.

III. The Amount of the Sale Fee Cannot be Determined on the Current Record

The Engagement Letter provides that the Sale Fee shall be 1.2% of the "Transaction Value" of a Sale Transaction with a "Transaction Value" of up to $800 million, with a "Minimum Sale Fee" of $3 million (Engagement Letter § 2 [b]). For transactions pursuant to which MariaDB received securities as consideration, the "Transaction Value" is calculated as follows: "(i) if such securities are traded on a stock exchange, the securities will be valued at the

average last sale or closing price for the ten trading days immediately prior to the closing of the Sale Transaction …" (Engagement Letter § 2 [b]).

Houlihan submits that the average closing price of APHC shares over the 10 days prior to closing was $10.21 (NYSCEF 72 ¶ 28), resulting in a Transaction Value of $628,070,890.00 and a net fee of $6,288,850.68 owed to Houlihan.[3] MariaDB contends that this formula does not apply because the value of the APHC shares has no relevance to the actual value received by MariaDB in the de-SPAC transaction, as MariaDB only received approximately $2.6 million from the APHC trust after more than 99% of the APHC investors redeemed their shares prior to the close of the de-SPAC (NYSCEF 72 [Defendant's Separate Statement of Material Facts in Dispute] ¶ 14). Further, under the terms of the BCA, MariaDB shareholders did not receive APHC shares as consideration; rather, MariaDB was to receive shares of Irish Holdco, which subsequently received all the assets of APHC (NYSCEF 58).

The Court is unable to reach a definitive conclusion as to the calculation of the Sale Fee based on the summary judgment record. The de-SPAC transaction does not fit neatly within the calculation provisions, including the use of Irish Holdco shares and the fact that by the time of closing only a small fraction of shares remained unredeemed, leaving a small net amount to MariaDB. Although the contract provides for a minimum Sale Fee of $3 million, which sets the floor, the Court cannot conclude that Houlihan's calculation of a Sale Fee more than double that

[3] The Engagement Letter provides that the Sale Fee shall be reduced by $1.25 million to account for fees owing to a nonparty (Engagement Letter Exhibit 1).

amount is the result mandated by the clear terms of the agreement as applied to the complex circumstances of the de-SPAC transaction.

And while MariaDB's assertion of an "absurd" result does not persuade the Court to disregard the fact that the de-SPAC transaction was a Sale Transaction, the assertion has greater resonance in considering how the Sale Fee calculation was intended to work when applied to such a transaction. The Engagement Letter does indicate that the Sale Fee was intended to bear a relationship to the value generated by the Sale Transaction. While Defendant presented argument on the absurdity of paying *any* sale fee, it did not develop its opposition to the proposed fee amount in the same detail. Accordingly, the Court grants summary judgment on the issue of liability but cannot yet reach a determination as to the amount of damages.

IV. Houlihan is Entitled to Contractual Indemnification for its Attorneys' Fees and Expenses

Finally, Houlihan contends that the Engagement Letter provides for Houlihan to recover its attorneys' fees and expenses incurred in connection with this dispute (NYSCEF 1 ¶ 8). "Inasmuch as a promise by one party to a contract to indemnify the other for attorney's fees incurred in litigation between them is contrary to the well-understood rule that parties are responsible for their own attorney's fees, the court should not infer a party's intention to waive the benefit of the rule unless the intention to do so is unmistakably clear from the language of the promise" (*Hooper Assocs., Ltd. v AGS Computers, Inc.*, 74 NY2d 487, 492 [1989]). Though unusual, the language of the Engagement Letter here is clear in its provision for one-way fee shifting (*see Moelis & Co. LLC v Ocwen Fin. Corp.*, 203 AD3d 469, 472 [1st Dept 2022] [finding similar one-way fee-shifting language in an investment banking agreement enforceable

where the agreement provided for reimbursement of costs incurred in "enforcing this agreement"]).

The Engagement Letter provides that MariaDB "agrees to provide indemnification, contribution, and reimbursement" to Houlihan in accordance with Schedule A of the Engagement Letter (Engagement Letter § 4). Schedule A to the Engagement Letter provides that MariaDB must "reimburse" Houlihan for all expenses incurred in connection with a variety of claims "brought by or against any person or entity (including, without limitation, any shareholder or derivative action *or any claim to enforce the Agreement*), arising out of or related to Houlihan Lokey's engagement under…the agreement" (Engagement Letter Schedule A [emphasis added]).

New York courts have found broad language providing for indemnification not to apply to suits between contracting parties where none of the claims eligible for indemnification "exclusively or unequivocally [refer] to claims between the parties themselves" (*Hooper Assoc., Ltd.*, 74 NY2d at 492). The *Hooper* court, however, relied in part on other provisions of the agreement requiring one party to give the other notice of any claim subject to indemnification, which language is not present in the Houlihan-MariaDB engagement letter (*id.* at 492-93). Nor did the indemnification clause in *Hooper* specifically include claims brought to enforce the agreement (*id.*; *see also Moelis & Co.*, 203 AD3d at 472). Further, the Engagement Letter explicitly says the claims may be brought "*by or against* any person or any entity" (Engagement Letter Schedule A [emphasis added]).

Accordingly, it is

ORDERED that Plaintiff's motion for partial summary judgment is **granted** as to liability on its cause of action for breach of contract and is otherwise denied (with the issue of damages reserved for trial); it is further

ORDERED that Plaintiff shall, after trial, recover from Defendant attorneys' fees and costs reasonably incurred in Plaintiff's enforcement of the Engagement Letter; and it is further

ORDERED that the parties appear for an initial pretrial conference on **February 26, 2025 at 2:30 p.m.**, or as soon thereafter as counsel are available, to determine scheduling and logistics for trial.

This constitutes the Decision and Order of the Court.

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2/14/2025
DATE

JOEL M. COHEN, J.S.C.

CHECK ONE:		**CASE DISPOSED**			X	**NON-FINAL DISPOSITION**	
		GRANTED		**DENIED**	X	**GRANTED IN PART**	**OTHER**
APPLICATION:		**SETTLE ORDER**				**SUBMIT ORDER**	
CHECK IF APPROPRIATE:		**INCLUDES TRANSFER/REASSIGN**				**FIDUCIARY APPOINTMENT**	**REFERENCE**