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

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JEFFREY WEINBERG,

Plaintiff,

- v -

MCG EQUITY PARTNERS LLC, MERIDIAN CAPITAL GROUP, LLC

Defendants.

INDEX NO. 651268/2025

MOTION DATE 03/05/2025

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 11, 17, 18, 19, 20, 21, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 81, 82, 90, 91, 93, 94, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112

were read on this motion for SUMMARY JUDGMENT IN LIEU OF COMPLAINT.

Plaintiff Jeffrey Weinberg ("Plaintiff" or "Weinberg") moves for summary judgment in lieu of complaint, alleging that Defendants MCG Equity Partners, LLC ("MEP") and Meridian Capital Group, LLC ("MCG," together with MEP, "Defendants") failed to meet unconditional payment obligations under a settlement agreement between the parties (NYSCEF 4 "Letter Agreement") arising out of an April 2019 dispute concerning Plaintiff's membership and equity interests in MEP. Defendants oppose and cross-move for dismissal of the action and for sanctions. For the reasons discussed below, Plaintiff's motion is granted as to Defendant MEP and denied as to Defendant MCG. Defendants' motion to dismiss is granted as to MCG and is otherwise denied.

Pursuant to CPLR 3213, a plaintiff makes out a prima facie case for summary judgment in lieu of a complaint by submitting proof of an instrument "for the payment of money only" and the defendants' failure to make payment according to its terms (*see Seaman-Andwall Corp. v*

Wright Mach. Corp., 31 AD2d 136, 137 [1st Dept 1968]; *Oak Rock Fin., LLC v Rodriguez*, 148 AD3d 1036, 1039 [2d Dept 2017]). An "instrument for the payment of money only" is one that "requires the defendant to make a certain payment or payments and nothing else" (*Seaman-Andwall Corp.*, 31 AD2d at 137; *Weissman v Sinorm Deli, Inc.*, 88 NY2d 437, 444 [1996]). "Once the plaintiff submits evidence establishing its prima facie case, the burden then shifts to the defendant to submit evidence establishing the existence of a triable issue of fact with respect to a bona fide defense" (*Griffon V. LLC v 11 East 36th, LLC*, 90 AD3d 705, 707 [2d Dept 2011]).

The Letter Agreement provides that "for good and sufficient consideration…[MEP] agrees to pay or cause to be paid to you…the following amounts on the following schedule (collectively, the "Fixed Payments")," and that if such payments are not made, "all remaining Fixed Payments shall become immediately due and payable" (NYSCEF 4 at 1-2).[1] The agreement further provides that "[f]or the avoidance of doubt, neither the termination of [Plaintiff's] employment (for any reason…) nor the facts underlying such termination shall have any effect on the Company's obligations to you" under the Fixed Payments and Acceleration provisions (*id.* at 2). Additionally, the parties agreed that the prevailing party in any litigation arising out of this agreement is entitled to recover reasonable attorney's fees and expenses from the non-prevailing party (*id.* at 8).

Defendants concede that they have not made all of the Fixed Payments according to the terms of the agreement (NYSCEF 82 [Jarashow Aff.] ¶ 3).[2] They contend, however, that the Letter Agreement was superseded by a term sheet executed by the parties following MEP's

[1] The unredacted version of this document is filed as NYSCEF 18.
[2] The unredacted version of this document is filed as NYSCEF 64.

default in 2024 (*id.* ¶ 4; NYSCEF 31 ["Term Sheet"]). While Defendants refer to this document as the "Binding Term Sheet" (NYSCEF 81 at 1),[3] the Term Sheet specifically provides that it is "non-binding" except for certain provisions, and that if the parties fail to enter into a definitive agreement by October 10, 2024, that the Term Sheet "will expire and be of no further force and effect" except for confidentiality obligations therein (Term Sheet at 3). The parties extended that deadline to November 25, 2025, but did not reach a definitive agreement by that date or any time thereafter (NYSCEF 75).[4]

Defendants assert that no agreement was reached because Plaintiff failed to negotiate in good faith as required by the Term Sheet, but Defendants attach correspondence in which they state (through counsel) that "from the execution of the Term Sheet through November 22, 2024, the parties negotiated in good faith" but "[s]urprisingly, on December 6, 2024, Meridian received a text message…proposing a list of new material terms for the Agreement that…conflict with[] the Term Sheet" (NYSCEF 90 at 8, quoting NYSCEF 76).[5] Given that the conduct alleged to be bad faith occurred after the expiration of the Term Sheet, Defendants' argument is unavailing (*see Ness v Fellus*, 92 AD3d 551, 552 [1st Dept 2012] [affirming grant of summary judgment in lieu of complaint after finding that defendant's argument was refuted by correspondence between the parties]). Further, the Term Sheet provides that unless and until a definitive agreement is reached, the Letter Agreement remains in full force and effect (Term Sheet at 3). Accordingly, the Letter Agreement was not superseded by the Term Sheet and does not create a disputed issue of fact as to Plaintiff's entitlement to relief.

[3] The unredacted version of this document is filed as NYSCEF 63.
[4] The unredacted version of this document is filed as NYSCEF 39.
[5] The unredacted version of this document is filed as NYSCEF 40.

Defendants oppose on several other grounds. First, they argue that the Letter Agreement is not an instrument for the payment of money only because proof outside the Letter Agreement is required to determine the amount owed to Weinberg, namely the Term Sheet, which includes a term modifying one of the Fixed Payments (NYSCEF 81 at 19). As discussed above, however, the Term Sheet expired and this provision is of no binding force or effect, so this argument fails. Moreover, Defendants do not allege—and the Term Sheet does not provide—that the payment they made to Weinberg in consideration for entering the Term Sheet was meant to off-set any of the Fixed Payments.

Second, Defendants argue that summary judgment in lieu of complaint is inappropriate because Plaintiff breached certain provisions (including the implied covenant of good faith and fair dealing) in the Letter Agreement. Specifically, Defendants assert that Weinberg was obligated to perform his duties as a broker for MCG until a certain date "in the same manner and to the same level as he had prior to the Letter Agreement" (NYSCEF 81 at 17). The Letter Agreement itself does not oblige Weinberg to perform at a certain standard; rather, it states that Weinberg's employment shall continue for four years unless, among other conditions, he is terminated for cause as defined (NYSCEF 4 at 4). Moreover, the Letter Agreement specifically states that the termination of Weinberg's employment shall have no effect on MEP's obligations to make the Fixed Payments (*id.*).[6] Because these additional provisions do not affect or limit Defendants' unconditional obligation to make payment, they are not grounds to deny Plaintiff's

[6] The alleged breach of the implied covenant of good faith and fair dealing is based on the same conduct and cannot be used to vary this express language in the Letter Agreement (*see A.D.E. Sys., Inc. v Energy Labs, Inc.*, 183 AD3d 791, 791 [2d Dept 2020] ["It is universally recognized the scope of conduct prohibited by the covenant of good faith is circumscribed by the purposes and express terms of the contract"]).

motion (*see Park Union Condominium v 910 Union St., LLC*, 140 AD3d 673, 674 [1st Dept 2016] [finding that an instrument was within the scope of CPLR 3213 because it "required no additional performance by plaintiff as a condition precedent to payment or otherwise made defendant[s'] promise to pay something other than unconditional"]; *Fortress Credit Corp. v Cohen*, 2024 NY Slip Op 33509[U], 6 [Sup Ct, NY County 2024], *affd* 2025 NY Slip Op 01060 [1st Dept 2025]).

Third, Defendants argue that Plaintiff's motion should be denied because there is a related action pending between the same parties (*Jeffrey Weinberg v Meridian Capital Group LLC and MCG Equity Partners LLC*, Index No. 653283/2025 [Second Action]). While the instant motion was being briefed, Plaintiff brought the Second Action concerning Defendants' separate, prospective obligations in the Letter Agreement that are not the subject of this motion. While there is some overlap between the actions in that Defendants make similar arguments about the effect of the Term Sheet, this is not a ground to deny Plaintiff the expedited procedure under CPLR 3213 with respect to the portion of the parties' agreement that is for an unconditional payment of money only (*i.e.*, the Fixed Payments). The cases upon which Defendants rely do not compel a different result (*see Filmvideo Releasing Corp. v Lochsley Hall, Inc.*, 33 AD2d 1002, 1003 [1st Dept 1970] [reversing grant of summary judgment on second action to enforce a note because dismissal of an earlier action seeking rescission of the note had been reversed while the appeal was pending]; *Sable v Surowitz*, 57 AD2d 781 [1st Dept 1977] [affirming denial of summary judgment where there were disputed issues of fact and recommending consolidation of two actions for malpractice and unpaid professional fees, respectively]).

Finally, Defendants seek to dismiss Defendant MCG from this action. This branch of the cross-motion is granted pursuant to CPLR 3211(a)(7), as the plain language of the Letter Agreement provides that MEP, not MCG, shall make the Fixed Payments or cause them to be made (NYSCEF 4 at 1). Defendants seek sanctions for Plaintiff naming MCG as a party despite this language. The request is denied, as MCG is a party to the Letter Agreement generally, and Plaintiff had at least a plausible argument because that the "cause to be made" language could include MEP directing MCG to make payment. Defendants additionally seek sanctions because Plaintiff made false representations about the amount owed by failing to raise the Term Sheet, which purportedly modified certain Fixed Payments, in its motion. As discussed above, however, Defendants' contentions regarding the Term Sheet are (in this case, at least) unavailing.

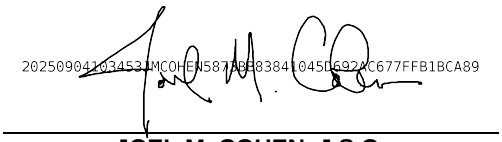
Accordingly, it is

ORDERED that Plaintiff's motion for summary judgment in lieu of complaint is **granted** as against Defendant MEP in the amount of $6,334,000 plus prejudgment interest and reasonable attorney's fees, and is **denied** as to Defendant MCG; it is further

ORDERED that Defendants' motion to dismiss this action is **granted** insofar as the claim against Defendant MCG is dismissed, and is otherwise **denied**; and it is further

ORDERED that Plaintiff shall submit a proposed judgment and an application for its reasonable attorney's fees within 14 days of the date of this decision and order, and Defendants may oppose Plaintiff's proposed judgment and fee application within 14 days thereof.

This constitutes the decision and order of the Court.



9/4/2025
DATE

JOEL M. COHEN, J.S.C.

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