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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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CHEMEON SURFACE TECHNOLOGY,
LLC,

Plaintiff,

v.

METALAST INTERNATIONAL, INC. *et al.*,

Defendants.

Case No. 3:15-cv-00294-MMD-VPC

ORDER

AND RELATED CLAIMS

I. SUMMARY

The dispute stems from the breakup of a business and disagreement over the terms of a subsequent settlement agreement. Before the Court is Defendants-Counterclaimants David M. Semas (“Semas”) and Metalast International, Inc.’s (“MII”) (collectively, “Defendants”) Motion for Partial Summary Judgment on Counterclaim for Breach of Contract (“Motion”). (ECF No. 130.) Counter-defendants Chemeon Surface Technology, LLC, Dean S. Meiling and Madylon Meiling (collectively, “Chemeon”) have responded (ECF No. 137) and Defendants have replied (ECF No. 147).

II. RELEVANT BACKGROUND

The facts as relevant to the claim for breach of contract raised in the Motion are as follows. MII managed Metalast International, LLC (“the LLC”) when the LLC was placed into receivership in April 2013. (ECF No. 137-1 at 5.) Chemeon’s predecessor

1 acquired the assets of the LLC in November 2013. (ECF No. 137-6.) Semas filed for
2 bankruptcy the next month. (ECF No. 137 at 5.) The LLC filed creditor claims against
3 Semas and initiated an adversary action.¹ (*Id.*)

4 In the adversary action, the parties participated in a court mediated settlement
5 conference on January 27, 2015. (ECF No. 130-1.) The parties reached a settlement,
6 the terms of which were placed on the record (“Settlement Agreement”). (ECF No. 130-
7 1.) The terms at issue in the Settlement Agreement are as follows (“Disputed
8 Provision”):

9 That there is a trademark regarding the name Metalast. There is a
dispute regarding ownership. That dispute has been resolved as follows:

10 Metalast Surface Technology through the Meilings will continue to
11 use the mark for 90 days following entry of the order approving the
settlement agreement by Judge Beesley, if he does approve it. At the end
12 of that 90-day period, Metalast Surface Technology, the Meilings, and any
other entity in which the Meilings have an interest, will no longer be able to
13 use the name Metalast in any fashion or manner whatsoever. Following
that 90 days, the mark will be owned by Mr. and Mrs. Semas, or any entity
14 in which they choose to transfer that mark.

15 (ECF No. 130-1 at 6:24-7:11.) On March 11, 2015, Judge Beesely approved the
16 settlement, triggering the 90 period for use of “the mark” by the Meilings. (ECF No. 130
17 at 3.) At the end of that period on June 10, 2015, Chemeon “continued to use the
18 ‘Metalast’ name on Chemeon’s website, marking materials” and other company
19 documents, and referred to Chemeon as “formerly Metalast.” (*Id.* at 3.)

20 After Chemeon initiated this action, Defendants asserted counterclaims. (ECF
21 No. 51.) Defendants seek summary judgment on its counterclaim for breach of the
22 Settlement Agreement.

23 **III. DISCUSSION**

24 “The purpose of summary judgment is to avoid unnecessary trials when there is
25 no dispute as to the facts before the court.” *Nw. Motorcycle Ass’n v. U.S. Dep’t of Agric.*,
26 18 F.3d 1468, 1471 (9th Cir. 1994). Summary judgment is appropriate when the

27 ¹According to Chemeon, the adversary action involved ownership of the Metalast
28 word mark and log mark registrations. (ECF No. 137 at 5.)

1 pleadings, the discovery and disclosure materials on file, and any affidavits “show there
2 is no genuine issue as to any material fact and that the movant is entitled to judgment
3 as a matter of law.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 330 (1986). In evaluating a
4 summary judgment motion, a court views all facts and draws all inferences in the light
5 most favorable to the nonmoving party. *Kaiser Cement Corp. v. Fishbach & Moore, Inc.*,
6 793 F.2d 1100, 1103 (9th Cir. 1986). “The usual rule of interpretation of contracts is to
7 read provisions so that they harmonize with each other, not contradict each other. That
8 task of construction is for the court.” *Peterson v. Minidoka Cty. Sch. Dist. No. 331*, 118
9 F.3d 1351, 1359 (9th Cir.), *amended by* 132 F.3d 1258 (9th Cir. 1997).

10 In opposing summary judgment, Chemeon does not suggest that any disputed
11 facts exist to preclude summary judgment. In fact, the parties agree that the Settlement
12 Agreement is unambiguous and may be construed as a matter of law, but they disagree
13 as to its construction. (ECF No. 137 at 8; ECF No. 147 at 2.) Defendants contend the
14 Settlement Agreement is unambiguous that Chemeon is absolutely prohibited from
15 using the “name Metalast in any fashion or manner whatsoever” after June 10, 2015.
16 (ECF No. 130 at 4-6.) Chemeon counters that Defendants’ absolute ban construction is
17 not supported by the express language of the Settlement Agreement, which addresses
18 the “name” of the company and not the “mark.” (ECF No. 137 at 10.) Chemeon further
19 argues that even if the Settlement Agreement supports Defendants’ absolute ban
20 interpretation, such a construction ignores existing Ninth Circuit law, leads to an unfair
21 result and infringes on Chemeon’s First Amendment right to make truthful commercial
22 speech. (*Id.* at 11-19.) Chemeon contends the Settlement Agreement does not prohibit
23 Chemeon from referring to its past association with Metalast. The Court agrees with
24 Chemeon that the Settlement Agreement does not impose an absolute ban on the use
25 of the Metalast name and accordingly denies Defendants’ Motion as presented.

26 Interpretation of a contract is a question of law. *See Shelton v. Shelton*, 78 P.3d
27 507, 510 (Nev. 2003). “A basic rule of contract interpretation is that ‘[e]very word must
28 be given effect if at all possible.’” *Musser v. Bank of Am.*, 964 P.2d 51, 54 (Nev. 1998)

1 (alteration in original) (quoting *Royal Indem. Co. v. Special Serv. Supply Co.*, 413 P.2d
2 500, 502 (Nev. 1966)). Additionally, when construing a contract, a court should consider
3 the contract as a whole and “should not interpret a contract so as to make meaningless
4 its provisions.” *Phillips v. Mercer*, 579 P.2d 174, 176 (Nev. 1978). Under contract law
5 generally, when a term is unambiguous, a court must construe it from the language
6 contained within it. *Chwialkowski v. Sachs*, 834 P.2d 405, 406 (Nev. 1992). A contract is
7 unambiguous if it is not susceptible to more than one interpretation. See *Margrave v.*
8 *Dermody Props.*, 878 P.2d 291, 293 (Nev. 1994). A court’s goal is to effectuate the
9 parties’ intent, but when their intent is not clearly expressed in the contract language, it
10 may also consider the circumstances surrounding the agreement. *Sheehan & Sheehan*
11 *v. Nelson Malley & Co.*, 117 P.3d 219, 223–24 (Nev. 2005).

12 Here, the exchanges relating to the Disputed Provision crystalize the parties’
13 intent as to the scope of the prohibition on the use of the trademark in the name
14 “Metalast.” As Judge Zive noted, the parties were resolving their “dispute regarding
15 ownership” of “a trademark regarding the name Metalast.” (ECF No. 130-1 at 6:24-7:1.)
16 The parties agreed that the Meilings “will continue to use the mark” for the agreed 90
17 day time period, after they “will no longer be able to use the name Metalast in any
18 fashion or manner whatsoever.” (*Id.* at 7:2-8.) They also agreed that after the 90 day
19 time period, “the mark will be owned by Mr. and Mrs. Semas.” (*Id.* at 7: 9-10.) The
20 agreement thus involved the ownership and use of the trademark name “Metalast.” This
21 was also evidenced in counsel for Semas’ assertion that “[w]e want to make sure that
22 there’s no confusion in the marketplace and that the new mark that you adopt, the new
23 name, is not confusingly similar.” (*Id.* at 17:15-17.) Judge Zive affirmed that “[t]he new
24 name cannot be confusing in the marketplace.” (*Id.* at 17:19.) The parties did not
25 expressly state that the Meilings cannot use the word “Metalast” or refer to their past
26 association with “Metalast.” Viewed in the context of the parties’ dispute over the use of
27 the trademark name and the discussion on the record as to the use of the trademark
28 going forward, the Settlement Agreement does not provide for an absolute ban on the

1 use of the word “Metalast” in any context whatsoever as Defendants contend in their
2 Motion.

3 The Court’s construction against an absolute ban is consistent with the Ninth
4 Circuit Court of Appeal’s interpretation of a similar contractual provision in the context of
5 a dispute over the ownership and use of a trademark name. In *Kassbaum v.*
6 *Steppenwolf Prods., Inc.*, 236 F.3d 487, 489 (9th Cir. 2000), the agreement at issue
7 provided for Kassbaum, a former member of the band Steppenwolf, and others to
8 “waive, relinquish and release any and all of their individual or collective rights in the
9 name “STEPHENWOLF” or any other word or phrase incorporating the name
10 “STEPPENWOLF” for any purpose whatsoever.” The agreement further required
11 Kassbaum to give up any “trademark, trade name, service mark, or service name rights
12 . . . in the name “STEPHENWOLF.” *Id.* The court first discussed the history relating to
13 the parties’ dispute as to the ownership and control over the use of the trademark in the
14 name Steppenwolf. *Id.* at 491-92. The court found that “[u]nder these circumstances, it
15 is clear that the contract’s broad language ‘for any purposes whatsoever,’ and ‘all other
16 uses of the name ‘STEPPENWOLF’ in the entertainment industry’ refers to the use of
17 the *trade name* Steppenwolf, and not to the simple use of the name to provide
18 accurate historical information that would not lead reasonable people to think
19 Kassbaum’s new band was Steppenwolf.” *Id.* at 492 (emphasis in original). As the
20 court observed, “[t]aken out of context, the language ‘name STEPPHENWOLF’ and “‘or
21 any purposes whatsoever’ might be read so broadly as to preclude Kassbaum from
22 writing ‘Steppenwolf’ on the sidewalk in chalk.” *Id.* at 491.

23 Similarly here, Defendants’ broad reading of the Disputed Provision, taken out of
24 context, would also lead to an equally absurd result. Defendants attempt to distinguish
25 *Kassbaum* by arguing that Chemeon’s use of the phrases “formerly Metalast” and
26 “formerly known as Metalast” essentially misstates its relationship with Metalast and
27 suggests Metalast products no longer exist. (ECF No. 130 at 6.) This may be a valid
28 point. However, Defendants’ Motion does not present the issue of whether such use of


1 the Metalast name breached the Settlement Agreement. Instead, Defendants' Motion
2 argues that the Settlement Agreement is unambiguous that Chemeon is absolutely
3 prohibited from using the "name Metalast in any fashion or manner whatsoever" after
4 June 10, 2015. (ECF No. 130 at 4-6.) The Court does not interpret the Settlement
5 Agreement to unambiguously impose such an absolute ban. For this reason, summary
6 judgment is denied.

7 **IV. CONCLUSION**

8 The Court notes that the parties made several arguments and cited to several
9 cases not discussed above. The Court has reviewed these arguments and cases and
10 determines that they do not warrant discussion as they do not affect the outcome of the
11 Motion.

12 It is therefore ordered that Defendants' Motion for Partial Summary Judgment on
13 Counterclaim for Breach of Contract (ECF No. 130) is denied.

14 DATED THIS 15th day of March 2017.

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17 MIRANDA M. DU
18 UNITED STATES DISTRICT JUDGE
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