United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19-7003 **September Term, 2019**

FILED ON: MARCH 10, 2020

PAUL ANDREW LEITNER-WISE,
APPELLANT

v.

KONIAG, INC.,
APPELLEE

Appeal from the United States District Court
for the District of Columbia
(No. 1:17-cv-01859)

Before: SRINIVASAN, *Chief Judge,* ROGERS, *Circuit Judge*, and SILBERMAN, *Senior Circuit Judge*

J U D G M E N T

This appeal was considered on the record from the United States District Court for the District of Columbia and on the briefs of the parties. *See* FED. R. APP. P. 34(a)(2); D.C. CIR. R. 34(j). The Court has afforded the issues full consideration and has determined that they do not warrant a published opinion. *See* D.C. CIR. R. 36(d). It is

ORDERED AND ADJUDGED that the judgment of the district court be affirmed for the reasons stated in the memorandum accompanying this judgment.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing *en banc*. *See* FED. R. APP. P. 41(b); D.C. CIR. R. 41(a)(1).

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/

Daniel J. Reidy
Deputy Clerk

Paul Andrew Leitner-Wise v. Koniag, Inc.
No. 19-7003

MEMORANDUM

Appellant Paul Leitner-Wise sued Koniag, Inc. on four counts arising from a series of transactions involving Leitner-Wise Rifle Company, Inc. Leitner-Wise had founded the Company in 1998, and in 2004 he sold a majority interest to Koniag's subsidiaries. That same year, Leitner-Wise invented a "Self-Cleaning Gas Operating System for a Firearm," which he later patented. In 2005, Leitner-Wise entered into an employment agreement with Leitner-Wise Rifle Company to serve as the Company's Chief Technical Officer. Leitner-Wise assigned the rights to his invention to the Company, which agreed to pay him certain royalties. Koniag's subsidiaries sold their majority stake in the Company to an acquisition group in early 2006. Koniag paid no royalties to Leitner-Wise after that point. Later in 2006, Leitner-Wise left the Company and agreed to release any and all of his claims against it by way of a termination agreement. Leitner-Wise alleges that the Company went on to sell its interest in the invention for $5,000,000 in 2008.

Leitner-Wise sued Koniag in the district court for breach of contract and unjust enrichment on the theory that Koniag had failed to pay him royalties under the 2005 employment agreement. Leitner-Wise also brought claims for fraudulent inducement and conversion, alleging that Koniag had lured him into entering unspecified "agreements" under the false pretense that Koniag intended to continue the Company as a going concern funded by a private offering. Halfway through discovery, Koniag moved for summary judgment. Leitner-Wise did not file a timely opposition. Instead, two weeks after his opposition was due, Leitner-Wise moved to hold Koniag's motion in abeyance and requested an extension of time to complete discovery. The district court granted summary judgment for Koniag for three independent reasons and denied Leitner-Wise's motion to permit further discovery. Leitner-Wise now appeals.

We affirm on the first ground relied upon by the district court, that in the 2006 termination agreement, Leitner-Wise released Koniag of the claims at issue here. In that contract, Leitner-Wise agreed to—

> release and discharge the Company, and any subsidiary or affiliated organization of the Company and their current or former officers, directors, stockholders, corporate affiliates . . . from any and all claims, charges, complaints, demands, actions, causes of action, suits, rights, debts, sums of money, costs, accounts, covenants, contracts, agreements, promises, omissions, damages, obligations, liabilities and expenses . . . of every kind and nature, known or unknown, which [he] ever had or now ha[s] against the Released Parties, including, but not limited to . . . all claims arising out of the [2005 employment agreement] . . . all wrongful discharge claims, common law tort, defamation, breach of contract and other common law claims and any claims under any other federal, state, or local statutes . . . .

J.A. at 332–33. By the time Leitner-Wise signed the termination agreement in 2006, Koniag's subsidiaries had sold their majority interest in Leitner-Wise Rifle Company. Koniag was thus a "former . . . corporate affiliate[]" of the Company within the plain terms of the agreement. And the exhaustive list above easily covers all four of Leitner-Wise's causes of action. Since the termination agreement's release provision is "free from ambiguity," it governs the parties and thus forecloses Leitner-Wise's suit. *Berczek v. Erie Ins. Grp.*, 529 S.E.2d 89, 91 (Va. 2000).[1]

Leitner-Wise argues that the terms of the royalty clause in his 2005 employment agreement survived the 2006 release, because the royalty clause stated that "[p]ayment of royalties under this section shall not be withheld or terminated regardless of any Termination of [Leitner-Wise] for any reason." J.A. at 44. But that provision, as the district court rightly concluded, did not prevent Leitner-Wise from separately releasing whatever rights or claims would otherwise survive his termination, which is exactly what he did in the 2006 termination agreement. Leitner-Wise also contends that the release in the termination agreement was unsupported by consideration and thus is void. The release expressly states, however, that it was executed "[i]n exchange for" the execution of the termination agreement itself and the execution of a separate equities purchase agreement. J.A. at 332. In the termination agreement, the Company gave Leitner-Wise a release of all possible claims it might have against *him*. And the equities purchase agreement provided that Leitner-Wise would receive $96,000.80 in exchange for his shares of the Company. Leitner-Wise's release was supported by consideration.

We perceive no abuse of discretion in the district court's denial of Leitner-Wise's motion to hold summary judgment in abeyance and permit further discovery. The request was untimely, and Leitner-Wise did not demonstrate excusable neglect for his tardiness. *See* Fed. R. Civ. P. 6(b)(1)(B); *Citizens' Protective League v. Clark*, 178 F.2d 703, 704 (D.C. Cir. 1949) (per curiam). Moreover, additional discovery would not plausibly have made any difference since Leitner-Wise's claims are foreclosed by the unambiguous terms of the 2006 release. We affirm the judgment of the district court.

[1]The termination agreement states that it is to be governed by the law of Virginia where not otherwise preempted by federal law. The district court honored that choice of law clause, and the parties do not dispute that approach on appeal. *Cf. Mariner Water Renaturalizer of Wash., Inc. v. Aqua Purification Sys., Inc.*, 665 F.2d 1066, 1068 n.3 (D.C. Cir. 1981) (per curiam). In any event, we apply the District of Columbia's choice of law rules when sitting in diversity, *e.g., Gray v. Am. Express Co.*, 743 F.2d 10, 16–17 (D.C. Cir. 1984), and the District honors choice of law clauses when there is a reasonable relationship with the state specified, *Whiting v. AARP*, 637 F.3d 355, 361 (D.C. Cir. 2011) (citing *Norris v. Norris*, 419 A.2d 982, 984 (D.C. 1980)). That condition is satisfied here, where Leitner-Wise Rifle Company—Leitner-Wise's employer at the time and a party to the termination agreement—was a Virginia corporation.