

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MARCEL MORSCHBACH,)
)
 Plaintiff,)
)
 v.) C.A. No. 01-262 GMS
)
 HOUSEHOLD INTERNATIONAL INC.,)
 and BENEFICIAL CORPORATION,)
)
 Defendants.)

MEMORANDUM AND ORDER

I. INTRODUCTION

On April 23, 2001, the plaintiff, Dr. Marcel Morschbach (“Morschbach”), filed a complaint in the above-captioned action against the defendants Household International, Inc. (“Household”) and Beneficial Corporation (“Beneficial”). In his complaint, Morschbach alleges claims for breach of contract and unjust enrichment.

Presently before the court are the parties’ cross-motions for summary judgment. For the reasons that follow, the court will grant the defendants’ motion for summary judgment.

II. STANDARD OF REVIEW

The court may grant summary judgment “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c); *see also Boyle v. County of Allegheny, Pennsylvania*, 139 F.3d 386, 392 (3d Cir. 1998). Thus, the court may grant summary judgment only if the moving party

shows that there are no genuine issues of material fact that would permit a reasonable jury to find for the non-moving party. *See Boyle*, 139 F.3d at 392. A fact is material if it might affect the outcome of the suit. *Id.* (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-248 (1986)). An issue is genuine if a reasonable jury could possibly find in favor of the non-moving party with regard to that issue. *Id.* In deciding the motion, the court must construe all facts and inferences in the light most favorable to the non-moving party. *Id.*; *see also Assaf v. Fields*, 178 F.3d 170, 173-174 (3d Cir. 1999).

With these standards in mind, the court will describe the facts that led to the motions presently before the court.

III. BACKGROUND

Morschbach has served as the Chief Executive Officer of Beneficial Bank A.G. (the “Bank”) from July 1, 1994 to the present. The Bank is a German stock corporation, with its principle place of business in Stuttgart, Germany. It was wholly-owned by BFC Insurance Agency of America (“BFC”), a Wyoming corporation having its principle place of business in New Jersey. BFC was a subsidiary of the defendant, Beneficial.

On April 28, 1998, BFC sold the Bank to Banque Sofinco, a French banking corporation. On June 30, 1998, a wholly-owned subsidiary of Household merged with Beneficial

1. Employment Agreements

Morschbach’s employment at the Bank was governed by two successive employment contracts. The first contract became effective on July 1, 1994 and terminated on June 30, 1997. Morschbach’s second contract with the Bank became effective July 1, 1997 and will terminate

on June 30, 2002 (the “Contract of Employment” or “Contract”). Morschbach and the Bank are the only parties to the Contract of Employment.

In 1997, BFC decided to sell the Bank. As recited in the agreement between the Bank and Morschbach (the “Bonus Agreement”), the sale “might directly or indirectly” affect Morschbach. Thus, the Bank agreed to pay Morschbach a bonus equivalent to “one year’s remuneration.” The Bonus Agreement further stated that the rights and obligations under the Contract of Employment between Morschbach and the Bank were not to be affected and would continue in full force and effect.

2. Stock Options

In 1990, Beneficial adopted a Non-Qualified Stock Option Plan (the “Plan”) to attract and retain experienced key management employees and directors, and to provide incentives for them to improve operations and increase profits. The Plan achieved these goals by affording these employees an opportunity to acquire stock ownership in Beneficial. The only qualifications to the of the Plan were that (1) the optionee be an employee, and (2) that the optionee be employed by Beneficial or a subsidiary of Beneficial. The Plan specifically provided that, if the optionee’s employment is terminated with Beneficial or any of its subsidiaries, for any reason, the option shall expire and cease to be exercisable immediately upon such termination. There is nothing in the Plan which is linked to the Contract of Employment.

Beneficial entered into three Non-Qualified Stock Option Agreements (the “Agreements” or “Agreement”) with Morschbach, who was an employee of a Beneficial subsidiary at the time. The first Agreement, dated November 15, 1994, gave Morschbach the right and option to purchase

up to 2,000 shares of Beneficial common stock over a specified period of time. Beneficial granted Morschbach a similar option on November 15, 1995, giving Morschbach the right and option to purchase up to 3,000 shares of Beneficial common stock. The third Agreement, dated November 20, 1996, gave Morschbach the right and option to purchase up to 5,000 shares of Beneficial common stock.

Each of the Agreements provided that 25% of the total shares subject to the agreement vested, and could be purchased, on the first, second, third, and fourth anniversaries of the date of the Agreement.

Under the 1994 Agreement, Morschbach exercised options on 500 shares on November 22, 1995, options on 500 shares on November 15, 1996, and options on 500 shares on November 20, 1997. Under the 1995 Agreement, Morschbach exercised options on 750 shares on November 15, 1996 and options on 750 shares on November 20, 1997. Under the 1996 Agreement, Morschbach exercised options on 1,250 shares on November 20, 1997.

Each of Morschbach's Agreements also contained paragraph 2(d)(i), which provides that, "[i]f the Optionee shall cease to be employed by the Company [defined as Beneficial and all its subsidiaries]:

- i. For any reason other than those specified at (ii) through (v) of this Section, the Option shall expire to the extent that it is unexercised at the time of such termination of unemployment.¹

¹Sections 2(d)(ii) through (v) of the Agreement deal with death, disability, and retirement.

Each Agreement makes clear that the grant of options to Morschbach does not invoke a right of continued employment. Specifically, “[t]his option shall not confer upon Optionee any right with respect to continuance of employment by the Company, nor shall it interfere in any way with the right of his employer to terminate his employment at any time.”

On the date BFC sold the Bank, Morschbach held unvested options to purchase 500 shares under the 1994 Agreement, 1,500 shares under the 1995 Agreement, and 3,759 shares under the 1996 Agreement.

On June 30, 1998, several months after BFC sold the Bank, a wholly-owned subsidiary of Household merged with Beneficial. On July 10, 1998, Morschbach sought to exercise his remaining 5,750 expired options. He took the position that “all options which were not yet exercisable at the date of the merger of Beneficial Corporation into Household International can be exercised with the change of control.”

By letter dated July 22, 1998, Household advised Morschbach that, since his options had expired and were not outstanding at the time of the merger, the change of control vesting acceleration did not apply. This was so because Morschbach’s unexercised options had already expired on April 28, 1998. The merger occurred on June 30, 1998, and the change of control vesting provision applied only to options outstanding on the merger date.

Morschbach commenced the present suit on April 23, 2001.

IV. DISCUSSION

1. Wrongful Termination

Morschbach first alleges that “Beneficial, BFC Insurance Agency of America and the

Bank . . . wrongfully terminated [his] July 1, 1997 five-year employment contract by causing the Bank to be sold to Banque Sofinco.” The court disagrees.

Morschbach offers no legal support for his position that, on these facts, Beneficial must be held liable for its business decision to divest itself of certain subsidiaries.² The July 1, 1997 Contract of Employment is clearly between Morschbach and the Bank. Neither Beneficial, nor BFC was a party to that Contract.³ Indeed, even after Beneficial sold the Bank, Morschbach continued his employment with the Bank pursuant to his Contract of Employment. Thus, he cannot now argue that his Contract of Employment was terminated by Beneficial’s sale of its subsidiary.

Moreover, even were the court to conclude that he had been terminated, Morschbach has simply adduced no evidence from which a reasonable fact-finder could determine that Beneficial’s actions were in fact wrongful. Morschbach has simply argued that the wrongfulness of Beneficial’s actions was to engage in a routine corporate practice that left him working for the same Bank, which was now owned by a different parent. He thus appears to believe that Beneficial should not have engaged in this divestiture merely because he preferred to work for a subsidiary

²Instead, Morschbach cites to numerous cases in support of his theory that he was not an at-will employee. *See e.g., Sapp v. Casey Employment Servs, Inc.*, 1989 WL 133628, *5 (Del. Ch. Nov. 3, 1989). Even were the court to agree that Morschbach was not an at-will employee of the Bank’s, this does not change the fact that he simply did not sign a contract with Beneficial.

³It is settled law that, absent a piercing the corporate veil argument, a parent corporation is not liable for contractual obligations of a wholly-owned subsidiary. *See Nobers v. Crucible, Inc.*, 602 F. Supp. 703, 706 (W.D. Pa. 1985). Thus, on the present facts, Beneficial, a non-signatory to the employment contract, cannot now be held liable for allegedly breaching its subsidiary’s contract.

of Beneficial. Be that as it may, Beneficial's lack of sensitivity to Morschbach's employment wishes alone cannot support a cause for wrongful termination.

Accordingly, the court finds that Morschbach has advanced no legal theories in favor of his position. Indeed, he bases this claim merely on his discontent over now working for a company that is no longer a Beneficial subsidiary. On these facts, no reasonable factfinder could conclude that Beneficial wrongfully terminated Morschbach.⁴ Summary judgment on this claim is granted.

2. Morschbach's Right to Purchase Expired Options Under the Contract of Employment and the Stock Option Agreements

Morschbach's second argument is that, under the Contract of Employment and the Non-Qualified Stock Option Agreements, he was granted the right to purchase Beneficial stock. He contends that this right to purchase the stock survived the Bank's sale. On these facts, the court must again disagree.

The ability to purchase stock is governed by the Plan and by the Stock Option Agreements. The express purpose of the Agreements is to "attract and retain able and experienced key management employees and directors and to provide an incentive to those persons to improve operations and increase profits by affording them an opportunity to acquire stock ownership in Beneficial Corporation." Morschbach's Agreements state clearly and unequivocally that once he ceases to be employed by Beneficial or its subsidiaries, he loses the right to purchase the

⁴Morschbach has not joined the Bank as a party to this lawsuit, nor has he alleged any wrongdoing on its part.

unvested options he holds. *See* Stock Option Agreements ¶ 2(d)(i). The reason behind this provision is clear. There is simply no business justification to leave unvested options to purchase stock on presumably favorable terms in the hands of individuals who have no association or connection with that business.

Furthermore, the Agreements go one step further. They make it absolutely clear that the grant of options do not give rise to an employment relationship. Thus, when the employee ceases to work for Beneficial, that employee has no further claim against Beneficial on the basis of these Agreements. Specifically, the Agreements state that they do “not confer upon [employee] any right with respect to continuance of employment by the Company, nor shall it interfere in any way with the right of his employer to terminate his employment at any time.” Therefore, the Agreements are stand-alone grants, which do not tie into any other agreement or contract.

The same is true of the Contract of Employment. This is an agreement between Morschbach and the Bank. Beneficial is not a party. Beneficial’s stock or the grant of stock options is not mentioned. The Contract of Employment focuses solely on the terms and conditions of the employment relationship.

In response, Morschbach argues that his case is similar to that of *Crane v. Perfect Film & Chemical Corp.*, 38 A.D.2d 288 (N.Y. App. Div. 1972). While it is true that the court there found that the sale of the plaintiff’s employer by the parent company constituted a wrongful termination of the plaintiff’s right to exercise his stock options, a critical fact makes that case distinguishable from Morschbach’s case. *See id.* at 291. In that case, the court explicitly found that the stock options were a part of the employment contract and, therefore, could not be aborted

without just cause. *See id.* Moreover, the plaintiff in *Crane* was effectively divested of options he had already earned. *See id.* at 289. As stated above, on the present facts, the Agreements clearly stated that they were separate and apart from the employment contract, and the options at issue remained unvested. Thus, *Crane* is distinguishable.

Finally, Morschbach has no claim against either Beneficial or Household arising out of the change-of-control provision in the Agreements. In order for that provision to operate, he must have been an employee of Beneficial or its subsidiaries at the time of Household's purchase of Beneficial. Since his employer was no longer affiliated with Beneficial at the time Household purchased Beneficial, the change-of-control provision does not apply.

3. Unjust Enrichment

Finally, Morschbach argues that the defendants have been unjustly enriched by accepting his services, yet denying him the right to exercise the stock options granted under the Agreements. For the following reasons, the court disagrees.

Under Delaware law, a claim for unjust enrichment must meet the following elements: (1) an enrichment; (2) an impoverishment; (3) a relation between the enrichment and the impoverishment; (4) the absence of justification; and (5) the absence of a remedy provided by law. *See Jackson Nat. Life Ins. Co. v. Kennedy*, 741 A.2d 377, 393-94 (Del. Ch. 1999). Morschbach has adduced no evidence that would meet these elements.

In fact, by bringing this claim, Morschbach appears to have a fundamental misunderstanding about how his options worked. Although they were awarded on a date certain, they could only be exercised over a four-year period. One of the express purposes of the option is "to retain"

Morschbach as a Beneficial employee during those four years. Thus, he had to remain employed by Beneficial for that entire period to collect his options in full. If he left the employ of Beneficial before that period, he simply lost the ability to exercise all of his options. Were Morschbach's theory to be correct, he would have been entitled to all of the options on the day they were awarded, without having to wait for four years.

Accordingly, because Morschbach was not entitled to the full value of his options on the date they were granted, he has made no showing that the defendants were in any way unjustly enriched. The court will grant summary judgment on this claim.⁵

V. CONCLUSION

There remain no genuine issues of material fact in this case. The court will thus grant the defendant's motion for summary judgment.

For the foregoing reasons, IT IS HEREBY ORDERED that:

1. The Defendants' Motion for Summary Judgment (D.I. 10) is GRANTED;
2. The Plaintiff's Cross-Motion for Summary Judgment (D.I. 12) is DENIED.
3. Judgment BE AND IS HEREBY ENTERED in favor of the Defendants.

Date: February 6, 2002

Gregory M. Sleet
UNITED STATES DISTRICT JUDGE

⁵Because the court finds that there cannot be a claim for unjust enrichment on these facts, it will not address whether this claim is barred by the Statute of Limitations.