

Music Industry Executive Lawsuit Against Record Label Partially Dismissed

Article By:

Scott E. Waxman

Marissa Leon

In [Todd Moscovitz v. Theory Entertainment LLC](#) (C.A. No. 2019-0780-MTZ), the Court of Chancery of the State of Delaware (the “Court”) narrowed the claims in a lawsuit challenging the buyout of a music industry executive’s ownership interest in a record label he co-founded.

Todd Moscovitz, a music industry executive (“Moscovitz”) co-founded Theory Entertainment LLC, a Delaware limited liability company (the “Company”) with an initial investment of \$500,000 in exchange for 25% of the Company’s equity. Thereafter, several members invested in the Company and Moscovitz’s ownership was diluted to 11.9%. The Company and its members entered into an operating agreement permitting the issuance of new incentive units (as amended and restated, the “LLC Agreement”). The LLC Agreement included an issuance plan, which empowered the manager of the Company, in its sole discretion, to grant incentive units (the “Initial Plan”). The Initial Plan also gave the Company’s manager discretion to condition the Award Agreement on forfeitures and repurchase restrictions tied to a termination “for cause” by an investor in the Company.

Moscovitz received 0.1% of incentive units pursuant to the Initial Plan and executed an award agreement (the “Award Agreement”) as contemplated by the LLC Agreement and Initial Plan. Under the Award Agreement, if an investor were terminated “for cause”, the investor would forfeit all unvested ownership units and the Company would have the right to repurchase all of such investor’s vested units for \$0.10 per unit, instead of the fair market value.

Moscovitz filed a lawsuit after he submitted a formal notice of resignation (the “Resignation Notice”) to challenge the Company’s right to enforce its repurchase right. According to the Company, the Resignation Notice triggered a termination “for cause” under the Award Agreement because Moscovitz failed to provide the Company with 90 days’ written notice of his voluntary termination. Moscovitz sent letters attempting to revoke his original resignation and purporting to resign in a manner that would not trigger the Company’s repurchase rights. The Company moved to dismiss Moscovitz’s lawsuit on the grounds that the terms of the LLC Agreement, the Initial Plan and the Award Agreement authorized their conduct.

The Court analyzed Moscovitz’s first count that the Award Agreement was invalid for lack of

consideration and that therefore Moscowitz was not bound by its terms. The Court found that the plain contract language of the Award Agreement indicated that there was consideration for executing the Award Agreement and therefore dismissed the first count. The Court found that the Award Agreement was enforceable and supported by consideration. Moscowitz's second claim was that the Company acted improperly under the Award Agreement by concluding Moscowitz's resignation was a termination "for cause" and electing to repurchase Moscowitz's units and terminate his status as a member. The Court determined that the Award Agreement was unambiguous based on its plain language. If Moscowitz opted to resign effective immediately, he effectuated a termination "for cause", and therefore would have to endure the contractual consequences of his decision. Moscowitz failed to state a claim for breach of the Award Agreement according to the Court. The Court also found that even if Moscowitz was correct that his termination was not "for cause", the Company had the right to purchase some or all of the units within one year of his resignation. Finally, the Court held that Moscowitz could still recover on several of his other claims by proving either that his original resignation letter was not effective because of purported conditions he put on his departure, or that he later validly revoked the resignation. The Court did not dismiss the remaining claims from Moscowitz.

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