SUPERIOR COURT OF THE STATE OF DELAWARE

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JUDGE

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Date Submitted: September 18, 2025
Date Decided: December 15, 2025

RE: *Fidelity National Information Services, Inc. et al. v. Christopher Rentner et al.*, C.A. No. N24C-09-089 SKR CCLD
Plaintiffs' Motion to Strike Defendants' Third and Fifth Affirmative Defenses

Dear Counsel:

This letter decision resolves Plaintiffs' Motion to Strike Defendants' Third and Fifth Affirmative Defenses (the "Motion").[1] For the reasons explained below, the Motion is GRANTED.

[1] *See* Motion (D.I. 30.) (hereinafter "Mot.").

I. FACTUAL AND PROCEDURAL BACKGROUND[2]

The above-captioned matter is a contract dispute between an investor and the startup in which it invested. In December 2022, Plaintiff Fidelity National Information Services, Inc., through its subsidiary Fidelity Information Services, LLC, (together, "Plaintiffs" or "FIS") invested in Defendant Emerging Industry Technologies, Inc. d/b/a Spence Labs ("Spence Labs").

Around the same time, Plaintiffs, Spence Labs, and Defendant Christopher Renter ("Rentner" and together with Spence Labs, "Defendants")—Spence Labs's founder and CEO—began to negotiate a broader commercial partnership. But in early 2023, Plaintiffs terminated negotiations.

In August 2023, Defendants sued Plaintiffs in the United States District Court for the Northern District of Illinois for breach of contract and fraud in connection with the failed partnership (the "Illinois Action").[3] That litigation is ongoing.

On September 9, 2024, Plaintiff filed its Complaint (the "Complaint") in this action, also for breach of contract and fraud-related damages.[4] Defendants moved

[2] Unless stated otherwise, facts are taken from the Court's ruling provided on July 2, 2025 (the "July Opinion") (D.I. 28) (hereinafter "July Op.").

[3] *See Emerging Industry Techs, Inc v. Fidelity Nat'l Info. Servs., Inc.*, Case No. 23-cv-5922 (N.D. Illinois).

[4] *See* Complaint (D.I. 1) (hereinafter "Compl.").

for dismissal in favor of the Illinois Action,[5] which the Court denied for the reasons stated in the July Opinion.

On July 17, 2025, Defendants filed their Answer and Affirmative Defenses to the Complaint (the "Answer").[6] On August 6, 2025, Plaintiffs filed the Motion.[7] On August 15, 2025, Defendants filed their Response to the Motion (the "Response").[8] The Court heard oral arguments on September 18, 2025, and took the matter under advisement.[9]

II. STANDARD OF REVIEW

Pursuant to Rule 12(f), the Court may "order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter."[10] The "standard for a motion to strike is similar to that for a motion to dismiss."[11] "Motions to strike 'are granted sparingly, and then only if clearly warranted, with doubt being resolved in favor of the pleading.'"[12]

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[5] D.I. 13.

[6] *See* Answer (D.I. 29) (hereinafter "Ans.").

[7] *See* Mot.

[8] *See* Response (D.I. 32) (hereinafter "Resp.").

[9] *See* Judicial Action Form (D.I. 35); Transcript (D.I. 36) (hereinafter "Tr.").

[10] Super. Ct. Civ. R. 12(f).

[11] *Id.*

[12] *Heisenberg Principals Fund IV, LLC v. Bellrock Intel., Inc.*, 2018 WL 3460433, at *1 (Del. Super. July 17, 2018) (quoting *Pack & Process, Inc. v. Celotex Corp.*, 503 A.2d 646, 661 (Del. Super. 1985)).

III. DISCUSSION

Plaintiffs have moved to strike Defendants' Third Affirmative Defense and Fifth Affirmative Defense. The Court addresses each in turn.

A. Third Affirmative Defense ("Failure of Consideration")

Defendants style the Third Affirmative Defense as a defense for "Failure of Consideration."[13] In full, Defendants contend that:

> Plaintiffs are not entitled to any relief because its corporate representative to the Spence Board of Directors failed to fulfill his fiduciary duty to Spence and its stockholders by failing to act in the best interest of Spence's stockholders, including failing to consider whether or not a proposed sale of Spence would be in the best interest of the corporation, and its stockholders.[14]

Plaintiffs move to strike this defense on the basis that it alleges a breach of fiduciary duty and is thus within the jurisdiction of the Court of Chancery.[15]

Defendants respond that the Superior Court has jurisdiction over this defense because it is a defense for "failure of consideration," which is an enumerated affirmative defense under Superior Court Rule 8(c).[16]

Plaintiffs' argument carries the day. The Third Affirmative Defense is not a "failure of consideration" defense. A failure of consideration defense is applicable

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[13] Ans. p. 32.

[14] *Id.*

[15] Mot. p. 4. *See Reybold Ventures Gp. XI-A, LLC v. Atlantic Meridian Crossing, LLC*, 2009 WL 143107, at *2 (Del. Super. Jan. 20, 2009) (Striking affirmative defense and related counterclaim alleging breach of fiduciary duty in the Superior Court).

[16] Resp. p. 3.

when a contract becomes "unenforceable because some supervening cause has made performance impossible."[17] Hence, a prerequisite to the defense is that there is an enforceable contract at issue. But the Third Affirmative Defense does not address a contractual issue. Rather, it expressly raises a fiduciary duty concern regarding a board-related governance issue.

At oral argument, Defendants proposed amending this defense to allege a breach of obligations under a stock agreement and deemphasize fiduciary duties.[18]

As previewed at oral argument, Defendants are free to move to amend or pursue this defense in the proper forum. With that said, Defendants should not read this ruling as an indication that the Court believes such a pursuit would be successful.

B. Fifth Affirmative Defense ("Waiver")

In full, the Fifth Affirmative Defense alleges: "Plaintiffs' Complaint alleges matters which should have been brought in litigation presently pending in the Northern District of Illinois and Plaintiffs' failure to bring such mandatory counterclaims constitutes a waiver of the claims."[19]

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[17] *Hensel v. U.S. Electronics Corp.*, 262 A.2d 648, 651 (Del. 1970) (explaining limits of a "failure of consideration" defense).

[18] Tr. p. 23:11–16. "[W]e've been doing our own due diligence on this and looking back through your stuff, you know, we think we could probably expand on this in, you know, several more ways in which the corporate defendants did not fulfill their obligations under the stockholder agreement."

[19] Ans. p. 32.

Plaintiffs move to strike the Fifth Affirmative Defense because the July Opinion already concluded that Plaintiffs could lawfully bring this action in Delaware.[20] Regardless of whether the counterclaims should have also been raised in the Illinois Action, Plaintiffs contend, the Court has already ruled that the claims can be heard here.[21]

Defendants provide two responses. First, that the issue of waiver was not resolved in the July Opinion because Defendants are now raising it as an invocation of the claim-splitting doctrine.[22] Second, at oral argument, Defendants argued that the July Opinion did not fully resolve the *McWane* analysis, so Defendants are entitled to discovery regarding why Plaintiffs brought this action in Delaware.[23]

The Court resolved Defendants' first argument in the July Opinion.[24] The claim splitting doctrine applies when a claim is raised in a subsequent action that should have in fairness been asserted in the first action.[25] The Court already concluded that the parties' valid and enforceable forum selection clauses permitted Plaintiffs to raise their claims in Delaware in the first instance and that Plaintiffs'

[20] Mot. p. 6.

[21] *Id.*

[22] Resp. p. 5.

[23] Tr. 24:7–19.

[24] *See* July Op.

[25] *See J.L. v. Barnes*, 33 A.3d 902, 918 (Del. 2011) (citing *Mells v. Billops*, 482 A.2d 759, 761 (Del. 1984)).

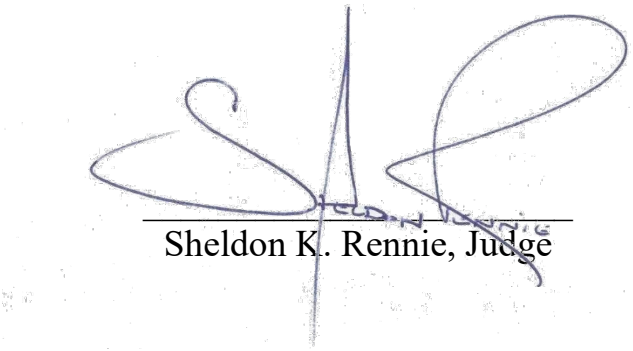
participation in the Illinois Action did not constitute a waiver of that contractual right.[26] Defendants have not provided a basis to relitigate the Court's ruling that Plaintiffs properly raised their claims in this jurisdiction.

Defendants' second argument was raised for the first time at oral argument. New arguments presented for the first time at oral argument will not be considered by the Court and are deemed waived.[27]

IV. CONCLUSION

For the foregoing reasons, Plaintiffs' motion to strike is hereby GRANTED.

IT IS SO ORDERED.



Sheldon K. Rennie, Judge

[26] *See* July Op. p. 8.

[27] *See, e.g., Martinez v. E.I. DuPont de Nemours & Co., Inc.*, 2012 WL 6845678, at *4 (Del. Super. Dec. 5, 2012) (noting that Superior Court Rule 7(b) "requires litigants to advance all arguments, with supporting grounds, in their written papers[.]"); *see also In re Nat'l City Corp. S'holder Litig.*, 998 A.2d 851, 2010 WL 2585282, at *2 (Del. 2010) (TABLE) ("New legal arguments cannot be presented for the first time at oral argument.").