

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

WESTERLY WINDS USA, INC.,)
)
 Plaintiff,)
)
 v.) C.A. No. N25C-06-139 SKR
)
REICHEN ALLEN KUHL,)
)
 Defendant.)

Submitted: February 19, 2026
Decided: May 20, 2026

MEMORANDUM OPINION AND ORDER

Upon Consideration of Plaintiff’s Motion for Judgment on the Pleadings,
GRANTED

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Wilmington, Delaware, *Attorneys for Plaintiff Westerly Winds USA, Inc.*

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Rennie, J.

I. INTRODUCTION

This contract dispute arises from a loan agreement between Plaintiff Westerly Winds USA, Inc. and Defendant Reichen Allen Kuhl. Plaintiff agreed to lend Defendant \$1,000,000, which Defendant agreed to repay by the maturity date of May 14, 2025. Defendant admits that he failed to repay the loan by the specified date. However, Defendant contends that the parties' communications and conduct implicitly waived the maturity date. Plaintiff disputes any such waiver. Before the Court is Plaintiff's Motion for Judgment on the Pleadings (the "Motion"), seeking a determination that the contractually specified maturity date remains enforceable. For the reasons set forth below, the Motion is **GRANTED**.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. The Parties and Their Agreements

Westerly Winds USA, Inc. is a Delaware corporation.¹ Reichen Allen Kuhl is an individual residing in Florida.² On August 14, 2024, the parties executed a Senior Secured Promissory Note (the "Note").³ Under the terms of the Note, Plaintiff loaned Defendant a principal amount of \$1,100,000, consisting of \$1,000,000 of funding and a \$100,000 original issue discount.⁴ As security for the loan, Defendant

¹ Complaint (D.I. 1) ¶ 7 [hereinafter "Compl."]; Answer (D.I. 4) p. 5 [hereinafter "Ans."].

² Compl. ¶ 8; Ans. p. 6.

³ Compl. ¶ 13; Ans. p. 8; *see* Note (Compl. Ex. A) [hereinafter "Note § __"]. The parties agree that the Note is a valid and binding contract. Compl. ¶ 25, Ans. p. 13.

⁴ Compl. ¶ 13; Ans. p. 8; Note § 1.

pledged his shares in LeaseLock, Inc., a Texas corporation (“LeaseLock”), as collateral.⁵ The Note specified a maturity date nine months from execution, establishing May 14, 2025, as the final date for repayment.⁶ Failure to satisfy the balance by this date constituted an event of default.⁷

B. The Integration and the No-Oral-Modification Clauses

Section 16 of the Note contains an integration clause. It provides that the Note constitutes the parties’ “entire agreement” and “supersedes any and all prior agreements, negotiations, correspondence, understandings and communications among the parties, whether written or oral[.]”⁸ Additionally, Section 15 contains a No-Oral-Modification Provision. It explicitly mandates that “[a]ny amendment of this Note . . . must be in writing and signed by the Borrower and the Lender.”⁹

C. The Commercial Context and Partial Performance

The parties dispute the primary purpose of the Note. Plaintiff contends that Defendant solicited the loan solely to finance a real estate transaction.¹⁰ While Defendant formally denies this allegation,¹¹ he also admits that he ultimately used the funds for that purpose.¹² Defendant instead characterizes the Note as one

⁵ Note § 3.

⁶ Compl. ¶ 14; Ans. p. 9; Note § 2(a).

⁷ Compl. ¶ 16; Ans. p. 9; Note § 8(a)(i).

⁸ Note at § 16.

⁹ *Id.* at § 15.

¹⁰ Compl. ¶ 2.

¹¹ Ans. p. 2.

¹² *Id.* at p. 19.

component of a broader, multi-step commercial transaction to facilitate the sale of LeaseLock shares to Plaintiff.¹³ According to Defendant, the parties structured their arrangement as follows:

Step 1: The parties execute the Note.

Step 2: Plaintiff circulates a Participation Agreement for investors to purchase a participation interest in the Note.¹⁴

Step 3: The investors (the “Participants”) form a special-purpose vehicle (“SPV”) to purchase Defendant’s shares for \$1,500,000.¹⁵

Step 4: The SPV purchases the shares in installments, and Defendant immediately remits the proceeds to Plaintiff to pay down the Note balance.¹⁶

Step 5: Upon satisfaction of the Note, Defendant retains the remaining \$400,000.¹⁷

The transaction partially proceeded under this framework. The parties executed the Note, distributed the Participation Agreement, and formed the SPV. On December 5, 2024, Defendant and the SPV executed a Stock Transfer Agreement (“STA”).¹⁸ That same day, the SPV purchased an initial tranche of shares.¹⁹

¹³ *Id.* at p. 17.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at pp. 17–18.

¹⁸ *Id.* at p. 11.

¹⁹ Compl. ¶ 20, Ans. p. 11.

Defendant remitted the proceeds to Plaintiff, reducing the outstanding loan balance to \$846,000.80.²⁰ Following this initial transaction, the SPV ceased further share purchases, and Defendant ceased making payments on the Note.²¹

D. The Communications and Alleged Waiver

Defendant relies on three separate sequences of communications to argue that the parties waived or modified the May 14, 2025 maturity date:²²

- The August 2024 Exchange: On August 11, 2024—three days prior to executing the Note—Defendant requested “leeway on the maturity date” if the secondary transactions were delayed.²³ Plaintiff responded that extending the date was the “intention and baseline,” noting that the parties retained the “ability to jointly amend the agreement (including extending the maturity date if required).”²⁴ Plaintiff’s counsel subsequently recommended extending the initial draft term to nine months, noting that the parties could “always amend” if more time was required.²⁵
- The October 2024 Exchange: In late September and October 2024, Plaintiff stated that it hoped to execute “several secondary transactions totaling the full

²⁰ Compl. ¶ 20, Ans. p. 11.

²¹ Compl. ¶ 16, Ans. p. 9.

²² See Ans. pp. 18–21.

²³ *Id.* at p. 18.

²⁴ *Id.*

²⁵ *Id.*

\$1.5M between now and Christmas[,]”²⁶ and reaffirmed that it was “looking to close . . . the balance before Christmas.”²⁷

- The December 2024 Exchange: On December 7, 2024, Defendant inquired via email whether the Participants would be ready to proceed before Christmas.²⁸ Plaintiff’s agent responded, “Yes hopefully [sic] the case” but noted that the “[b]alance . . . will be early Q1 as the bigger . . . investors [sic] lining up for then.”²⁹

E. Procedural History

Plaintiff filed its Complaint on June 12, 2025, approximately one month after the contractually specified maturity date.³⁰ Defendant filed his Answer on August 15, 2025.³¹ On October 28, 2025, Plaintiff filed the present Motion,³² and Defendant filed his answering brief on December 9, 2025.³³ The Court heard oral argument on February 19, 2026, and took the matter under advisement.³⁴ This decision follows.

²⁶ *Id.* at p. 19.

²⁷ *Id.*

²⁸ *Id.* at p. 20.

²⁹ *Id.*

³⁰ *See* Compl.

³¹ *See* Ans.

³² Motion (D.I. 9) [hereinafter “Mot.”].

³³ Answering Brief (D.I. 16) [hereinafter “Ans. Br.”].

³⁴ D.I. 18 (Judicial Action Form); *see also* Transcript (D.I. 19) [hereinafter “Tr.”].

III. PARTIES' CONTENTIONS

Plaintiff argues that the clear and unambiguous intent reflected within the four corners of the Note must control. Because Defendant failed to satisfy the balance by May 14, 2025, Plaintiff contends Defendant is in default.³⁵ Defendant maintains that Plaintiff's post-execution communications and conduct confirm: (i) the existence of a broader, integrated commercial transaction, and (ii) a waiver of Plaintiff's contractual right to demand full payment by the May 14, 2025, maturity date.

IV. STANDARD OF REVIEW

On a motion for judgment on the pleadings under Superior Court Civil Rule ("Rule") 12(c), the Court views the facts pleaded, and the inferences drawn from such facts, in the light most favorable to the non-moving party.³⁶ The Court considers all pleadings, including the complaint, answer, "documents integral to the pleadings," and facts subject to judicial notice.³⁷

The Court will grant a motion for judgment on the pleadings "only when no material issue of fact exists and the movant is entitled to judgment as a matter of law."³⁸ Affirmative defenses will stave off judgment at this juncture if they "raise

³⁵ Mot. ¶ 5.

³⁶ Del. Super. Ct. Civ. R. 12(c); *Davis v. Tristar Claims Mgmt. Servs., Inc.*, 2024 WL 885440, at *2 (Del. Super. Feb. 29, 2024).

³⁷ *Jimenez v. Palacios*, 250 A.3d 814, 827 (Del. Ch. 2019), *aff'd.*, 237 A.3d 68 (Del. 2020).

³⁸ *Davis*, 2024 WL 885440, at *3.

material issues of fact” and are supported “with more than just summary pleading.”³⁹ On the other hand, conclusory, single-sentence boilerplate recitations of affirmative defenses are insufficient to defeat an otherwise well-supported motion for judgment on the pleadings.⁴⁰

V. ANALYSIS

The dispositive question before the Court is whether Defendant has pleaded a reasonably conceivable factual basis to conclude that Plaintiff waived or modified the Note’s maturity date through its post-execution conduct.

A. Legal Framework Governing Oral Waiver and Modification

Delaware courts recognize that parties may waive or modify a contract if their actions demonstrate a mutual intent to alter its terms.⁴¹ However, oral waivers of written contracts are disfavored.⁴² The party alleging a waiver must demonstrate a clear, specific, and direct intention to alter the express terms, leaving no doubt as to the parties’ mutual intent to change their solemnized agreement.⁴³ While a party alleging an oral waiver faces a strenuous evidentiary standard, Delaware courts are

³⁹ *Festival Fun Parks, LLC v. MS Leisure Co.*, 2023 WL 8714994, at *5 (Del. Super. Dec. 18, 2023) (quoting *GreenStar IH Rep, LLC v. Tutor Perini Corp.*, 2017 WL 5035567, at *8 (Del. Ch. Oct. 31, 2017), *aff’d*, 186 A.3d 799 (Del. 2018)).

⁴⁰ *Id.*

⁴¹ *Roberts v. Moffa Constr. Co. LLC*, 2024 WL 5184100, at *6 (Del. Super. Dec. 20, 2024) (citing *Good v. Moyer*, 2012 WL 4857367, at *6 (Del. Super. Oct. 10, 2012)).

⁴² *CPC Mikawayaya Hldgs., LLC v. MyMo Intermediate, Inc.*, 2022 WL 2348080, at *13 n.104 (Del. Ch. June 29, 2022) (quoting in full *Symbiont.io, Inc. v. Ipreo Hldgs., LLC*, 2021 WL 3575709, at *52 (Del. Ch. Aug. 13, 2021) (internal citations omitted)).

⁴³ *Id.*

generally reluctant to resolve this question at the pleadings stage due to the fact-intensive nature of the inquiry.⁴⁴

Further, a contractual provision requiring modifications to be in writing can itself be waived orally or through a course of conduct.⁴⁵ Historically, Delaware courts have concluded that when an oral modification was adequately pled, it was reasonably conceivable that the parties also waived the no-oral-modification provision.⁴⁶

Defendant relies on two primary cases to support his position, but both are factually and legally distinct from the pleadings here.

In *Good v. Moyer*, the plaintiff, the defendant corporation, and its president entered into a stock purchase agreement.⁴⁷ The agreement designated the president as the sole obligor.⁴⁸ Despite a written-amendment only clause, the Court found a modification conceivable because the president allegedly explicitly represented, post

⁴⁴ *Id.* at *13.

⁴⁵ *See id.* at *14 n.113. At oral argument, Defendant argued that this case does not present an “incurable voidness” situation in which the parties’ subsequent conduct could not waive a contractual requirement, akin to *Holifield v. XRI Investment Holdings LLC*, 304 A.3d 896, 926 (Del. 2023). Tr. 33:15–19. While parties’ alleged subsequent conduct can be considered as a basis for waiver as a general rule, Defendant’s allegations do not provide a reasonably conceivable basis to conclude that Plaintiff waived the May 14, 2025, maturity date through subsequent conduct.

⁴⁶ *CPC Mikawayaya Hldgs.*, 2022 WL 2348080, at *13; *Simon Prop. Gp, L.P. v. Brighton Collectibles, LLC*, 2021 WL 6058522, at *3 (Del. Super. Dec. 21, 2021)).

⁴⁷ *Good v. Moyer*, 2012 WL 4857367, at *1.

⁴⁸ *Id.* at *2.

execution, that the corporation would make the payments, and the corporation subsequently performed by paying two installments directly to the plaintiff.⁴⁹

In *Simon Property Group, L.P. v. Brighton Collectibles, LLC*, a tenant alleged an oral lease modification to reduce rent temporarily during the pandemic shutdowns, notwithstanding the existence of a no-oral-modification provision in the lease.⁵⁰ This Court held that the landlord's routine acceptance of the tenant's reduced payments could demonstrate a bilateral intent to modify.⁵¹

B. Application to the Motion

Defendant provides no similarly conceivable basis for a conduct-based waiver of the maturity date. Unlike the bilateral course of performance in *Good* and *Simon Property*, none of the communications proffered by Defendant support his contention.

1. *The August Exchange*. As a matter of law, the August Exchange cannot establish a post-execution waiver or modification because it predates the execution of the Note.⁵² Even if considered, the exchange contradicts Defendant's argument. While Plaintiff and its counsel acknowledged Defendant's request for flexibility,

⁴⁹ *Id.* at *5–7.

⁵⁰ *Simon Prop. Gp., L.P.*, 2021 WL 6058522, at *4

⁵¹ *Id.* (citing *Pepsi-Cola Bottling Co. of Asbury Park v. PepsiCo, Inc.*, 297 A.2d 28, 33 (Del. 1972)).

⁵² See *In re Coinmint, LLC*, 261 A.3d 867, 897 (Del. Ch. 2021) (“[I]ntegration clauses proscribe the Court's consideration of all oral and written communications and agreements that occurred prior to the agreement[.]”).

they did not offer an informal accommodation. Instead, they explicitly stated that any extension of the maturity date would require a formal joint amendment.⁵³

2. *The October and December Exchanges.* The communications from October and December are substantively unavailing. Plaintiff's statements that it was "looking" to close the transaction by Christmas and was "hopeful[]" that stakeholders would fulfill their obligations are noncommittal.⁵⁴ Cautious optimism regarding a parallel transaction cannot reasonably be construed as a clear, unequivocal intent to modify an express contractual maturity date. Accordingly, the Answer fails to assert a conceivable factual basis for waiver or modification.

3. *The Step-Transaction Doctrine.* Defendant's reliance on the step-transaction doctrine is misplaced.⁵⁵ This doctrine treats formally distinct transactions related to the transfer of specific property as components of a single transaction to fulfill the parties' core expectations.⁵⁶ It typically applies to prevent a party from avoiding an aggregate corporate or tax obligation by deploying piecemeal technical

⁵³ Although the Note's integration clause disclaims the August Exchange as an agreement, the Court considers it for its insight into Plaintiff's tolerance for informal handshake modifications. A close reading of the alleged communications is informative; rather than reassure Defendant with a "don't worry about it," "we'll figure it out as we go," or even just leave the issue unaddressed, Plaintiff expressly reiterated its intent to adhere to the amendment procedure set forth in the Note.

⁵⁴ Ans. pp. 19–20.

⁵⁵ Defendant does not argue that the at-issue transaction triggers the step-transaction doctrine directly. Instead, Defendant proffers that he "anticipates discovery will also reveal information to support the step-transaction doctrine's end result test." Ans. Br. ¶ 18.

⁵⁶ *Coughlan v. NXP B.V.*, 2011 WL 5299491, at *7 (Del. Ch. Nov. 4, 2011).

steps.⁵⁷ The doctrine is inapplicable here. The maturity date is an express, unambiguous provision of the Note. Delaware courts refrain from applying the step transaction doctrine to interpret a contract when doing so would contravene the parties' plain intent within the four corners of the agreement.⁵⁸

C. Other Affirmative Defenses

Defendant asserts additional affirmative defenses, none of which raise a material issue of fact sufficient to survive judgment on the pleadings.⁵⁹ As an initial matter, the Second Affirmative Defense incorporates the identical arguments raised in the First Affirmative Defense,⁶⁰ and fails for the same reasons set forth above. The remaining defenses are similarly deficient and unsupported by the record. In his Third Affirmative Defense, Defendant alleges fraudulent inducement but fails to plead justifiable reliance, which is a required element of the claim under Delaware law.⁶¹ The Fourth Affirmative Defense alleges failure to mitigate damages,⁶² however Defendant fails to identify any specific remedial actions that Plaintiff could

⁵⁷ *Id.*

⁵⁸ *Coughlan*, 2011 WL 5299491, at *8. The step-transaction doctrine may not be a viable defense in the Superior Court. Its invocation here is vanishingly rare, and the Court of Chancery recently noted that it is “one manifestation of the general equitable principle that a court of equity will ‘look beyond form to the substance of an arrangement.’” *XRI Inv. Hldgs. LLC v. Holifield*, 283 A.3d 581, 616 (Del. Ch. 2022) (*rev'd on other grounds Holifield v. XRI Inv. Hldgs. LLC*, 304 A.3d 896 (Del. 2023)) (quoting *Gatz v. Ponsoldt*, 925 A.2d 1265, 1280 (Del. 2007)).

⁵⁹ Ans. pp. 21–22.

⁶⁰ Ans. p. 21.

⁶¹ See *iSense, LLC v. bioMerieux, Inc.*, 2025 WL 3633124, at *3 (Del. Ch. Dec. 4, 2025) (“Reliance is a required element of a fraud-based affirmative defense.”).

⁶² Ans. p. 22.

have taken, nor does he state how such mitigation could be quantified.⁶³ Finally, the Fifth Affirmative Defense asserts that Plaintiff failed to satisfy conditions precedent to repayment, yet Defendant fails to identify or articulate any conditions in the contract.⁶⁴ To the extent Defendant attempts to make new arguments in reliance on these defenses in subsequent briefing, those arguments are waived.⁶⁵

The Note remains enforceable as written. Because Defendant admits that he has failed to repay the loan, he is in breach. Plaintiff is entitled to damages in the amount of the remaining principal balance plus pre- and post-judgment interest.

D. Attorneys Fees

Finally, Plaintiff asserts that it is entitled to contractually shifted attorneys' fees under the terms of the Note.⁶⁶ Under Delaware law, parties may shift fees through a contractual provision if it constitutes a "clear and unequivocal agreement in connection with a dispute between parties involving a failure to fulfill obligations under the contract."⁶⁷ Plaintiff seeks recovery under Section 14 of the Note, which provides that Defendant shall reimburse Plaintiff for "all out-of-pocket fees and

⁶³ See *BTG Int'l, Inc. v. Wellstat Therapeutics Corp.*, 2017 WL 4151172, at *20 (Del. Ch. Sep. 19, 2017) (denying affirmative defense of failure to mitigate damages).

⁶⁴ Ans. p. 22.

⁶⁵ See *North Am. Leasing, Inc. v. NASDI Hldgs., LLC*, 276 A.3d 463, 470 (Del. 2022) (holding that when a party moved for partial summary judgment on a specific issue, the other party waived all issue-related affirmative defenses it failed to invoke in opposing the motion).

⁶⁶ Compl. ¶ 30.

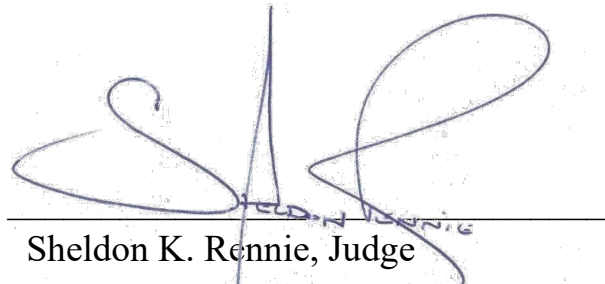
⁶⁷ *Winshall v. Viacom Int'l Inc.*, 2019 WL 5787989, at *5 (Del. Super. Nov. 6, 2019) (quoting *Deere & Co. v. Exelon Generation Acqs, LLC*, 2016 WL 6879525, at *1 (Del. Super. Nov. 22, 2016)).

expenses, including attorneys' fees and expenses, incurred by [Plaintiff] in the enforcement or attempted enforcement of any of the Obligations[.]”⁶⁸ The Court will defer ruling on this claim,⁶⁹ and Defendant shall file a stipulated schedule for supplemental briefing on attorneys' fees by May 27, 2026.

VI. CONCLUSION

For these reasons, Plaintiff's Motion for Judgment on the Pleadings is **GRANTED**.

IT IS SO ORDERED.



Sheldon K. Rennie, Judge

⁶⁸ Note § 14(b).

⁶⁹ See, e.g., *Braga Invest. & Advisory, LLC v. Yenni*, 2023 WL 3736879, at *18 (Del. Ch. May 31, 2023) (holding that specific language, such as a reference to a prevailing party, is a “hallmark” of a fee-shifting provision).