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Bellator Sport Worldwide, LLC Plaintiff, v. Quinton "Rampage" Jackson Defendant.	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION: BURLINGTON COUNTY Docket No.: C-025-15 Civil Action **ORDER**

THIS MATTER having been brought to this Court by plaintiff Bellator Sport Worldwide, LLC ("Bellator"), by and through its attorneys, Blank Rome LLP, a Pennsylvania LLP, for an Order, pursuant to R. 4:52, for a preliminary injunction in this matter and the matter having been opposed by defendant; and oral argument having occurred on April 2, 2015; and for good cause shown;

IT IS on this 7th day of April, 2015

1. Bellator's motion pursuant to R. 4:52 be and hereby is granted;

2. Defendant Quinton "Rampage" Jackson is preliminarily enjoined and restrained from, directly or indirectly, negotiating with, or fighting for any Mixed Martial Arts promoter, including but not limited to the Ultimate Fighting Championship, during the term of his exclusive contract to fight on behalf of Bellator;

3. Defendant Quinton "Rampage" Jackson is enjoined and restrained from, fighting for the Ultimate Fighting Championship or any other Mixed Martial Arts promoter on April 25, 2015 against Fabio Maldonado in Montreal, Canada; and

4. A true copy of this Order shall be served by Bellator's counsel upon all counsel of record within three (3) days of the date of receipt of this Order from the Court.

Karen L Suter

Hon. Karen Suter, P.J.Ch.

This motion was:

✓ Opposed

___ Unopposed

For reasons stated on the record on 4/7/15 + with the court's Statement of Reasons also on 4/7/15.

PREPARED BY THE COURT

BELLATOR SPORT WORLDWIDE, LLC,

Plaintiff,

v.

QUINTON "RAMPAGE" JACKSON,

Defendant.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
BURLINGTON COUNTY

DOCKET NO. C-25-15

CIVIL ACTION

STATEMENT OF REASONS

Seth J. Lapidow, Esq., Michael A. Rowe, Esq., BLANK ROME LLP.
Attorneys for Plaintiff Bellator Sport Worldwide, LLC.

Bruce I. Goldstein, Esq., McCUSKER, ANSELMI, ROSEN & CARVELLI, P.C.
Attorney for Defendants Quinton Jackson.

This application was opposed.
Proof of service was provided.

Pending before the court is Plaintiff's R. 4:52 application for preliminary restraints. On March 2, 2015, Plaintiff filed a complaint alleging that Defendant breached an exclusive promotional agreement and an Order to Show Cause seeking to enjoin Defendant from participating in an upcoming fight promoted by Plaintiff's competitor. For the reasons discussed below, the court will GRANT the application for preliminary restraints.

FACTUAL BACKGROUND

This litigation arises out of a dispute between Plaintiff Bellator Sport Worldwide, LLC ("Bellator"), a promoter in the sport industry of Mixed Martial Arts ("MMA"), and Defendant Quinton "Rampage" Jackson, an MMA fighter who is under contract with Plaintiff. By way of background, MMA is a sport involving full-contact combat between fighters, who fight one

another by employing various martial arts techniques and styles. Bellator asserts it is the second largest promoter in this industry after Ultimate Fighting Championship ("UFC"), who is alleged to be its primary competitor. (Certification of Scott Coker dated February 25, 2015 ("Coker Cert.") ¶ 9)

MMA fighters individually contract with an MMA promoter, such as Bellator or UFC, who then arranges fights between fighters based on their weight class. (Id. ¶ 6) All of these fights occur within an MMA promoter's "league" – that is, an MMA promoter organizes fights between the fighters with whom it has contracted. (Ibid.) Because promoters derive revenue from ticket sales, television ratings, pay-per-view sales, merchandise sales, and rates paid by sponsors and advertisers, Bellator contends their success is dependent on both their fighters' skill and ability to attract fans. (Id. ¶ 7)

Defendant is a veteran MMA fighter who previously competed in UFC's league for a number of years. (Certification of Quinton Jackson dated March 20, 2015 ("Jackson Cert.") ¶ 1) After a significant victory in 2002, Defendant rose in popularity in the sport and eventually won the UFC title in a championship fight in 2007. (Coker Cert. ¶ 17) Defendant's fighting career and popularity continued; for several years he retained his championship title and, in 2010, he co-starred in the movie The A-Team. (Id. ¶ 18) In 2011, however, Defendant lost his title to a competitor, and then lost a series of matches thereafter through 2013. (Ibid.) After these losses, Defendant left UFC after fighting a final match in January 2013. (Jackson Cert. ¶ 1)

Defendant was then approached by Plaintiff, and the two entered into a "Promotional and Entertainment Agreement." (Id. ¶ 3; see also Coker Cert. Ex. A (the "Agreement")) As implied by its title, the Agreement essentially has two parts: a promotional agreement whereby Defendant would fight in Plaintiff's league for compensation and Plaintiff would serve as Defendant's

exclusive promoter (Agreement ¶ 2), and an entertainment agreement whereby Plaintiff would provide a number of "entertainment opportunities" to Defendant that would give him opportunities to potentially develop his career in either the music, film, or professional wrestling industries in exchange for the right to exploit and market Defendant as part of its brand, use Defendant's identity in marketing materials, video games, apparel, and other merchandise (id. ¶¶ 6-10).

Originally, the term of this agreement was to last to the later of either Defendant's completion of five fights in Plaintiff's league, or the passage of twenty-four months' time. (Id. ¶ 14(A)) Defendant would be compensated in two ways for these fights: a flat rate for each Pay-Per-View ("PPV") fight, ranging from $200,000 for the first fight to $450,000 for the last, and two separate bonuses depending on the number of PPV buys ("PPV bonus") and tickets sold for spectators at the live venue ("gate bonus"). (Id. ¶¶ 4-5) The Agreement did not then address or provide for any compensation for Defendant for non-PPV fights airing on basic cable. (See id. ¶¶ 2-6)

Under the terms of the Agreement, Defendant would only receive a PPV bonus if the PPV buys exceeded 190,000 purchases, and would only receive a gate bonus if the total receipts for tickets sold at a given venue exceeded $400,000. (Id. ¶ 4) The portion of the Agreement addressing the threshold for PPV buys also required that Plaintiff "shall deliver to [Defendant], promptly following [Plaintiff's] receipt from its pay-per-view distributors and licensees that telecast the Bout in the PPV Territory, a copy of a summary report of pay-per-view buys in the PPV Territory, which [Plaintiff] receives from distributors." (Id. ¶ 4(A)(i)(2)) This section further requires that each PPV report "be accompanied by any additional payment to [Defendant] of any amount which such report indicates is then due to [Defendant] pursuant to this section" and that the number of PPV buys reported on the PPV report "shall be binding upon Plaintiff and Defendant

with respect to the calculation of the PPV Payment to Defendant pursuant to this Agreement." (Ibid.)

As for the "entertainment opportunities" under the Agreement, Plaintiff – which is reportedly owned by Viacom, Inc. ("Viacom") – agreed to provide entertainment opportunities involving and access to Spike TV ("Spike"), Paramount Pictures Corporation ("Paramount"), and MTV Networks ("MTV"), all of which reportedly are also subsidiaries of, or are owned by, Viacom. (Id. at ¶¶ 6-10) Specifically, Plaintiff agreed to the following: (1) that it would work with Spike to produce four reality TV episodes to air on Spike; (2) that it and Spike would retain and pay for a screenwriter to work with Defendant in writing a screenplay that would be presented to executives at Paramount for potentially developing a film starring Defendant; (3) that it would collaborate with TNA/Impact Wrestling ("Impact Wrestling") – a professional wrestling program that was under contract with Spike at the time – to develop and build Defendant as a professional wrestler; (4) that it would secure a "Red Carpet" appearance at MTV's Video Music Awards for Defendant and arrange for him to meet with MTV executives to discuss a potential career in the music industry; and (5) that it and Spike would generally engage in a public relations campaign to promote Defendant's reputation and brand. (Ibid.) In addition to the other perks under the Agreement, Defendant received a 2013 Tesla Sport Automobile as a signing bonus. (Id. ¶ 3)

Lastly, the Agreement also contains several provisions regarding breach by the parties and, specifically with regard to an alleged breach by Plaintiff, states that if Defendant "believes in good faith that [Plaintiff] has breached this Agreement . . . , [Plaintiff] shall have a period of forty-five (45) days after receipt of written notice of such breach from [Defendant] in which to cure such breach." (Id. ¶ 23(F)) If Plaintiff cures the breach within that forty-five day period, the Agreement would "remain in full force and effect." (Ibid.) However, if Plaintiff fails to cure the breach, the

provision grants Defendant "the option to terminate [the] Agreement, by so notifying in writing[.]" (Ibid.) Then, for a twelve month period, Plaintiff would be entitled to notice of any offers from other promotional entities and have the ability to "match" these offers. (Id. ¶ 24(B)(i))

Defendant's first fight for Plaintiff was scheduled for November 2, 2013, which was to be a PPV fight. (Certification of Anthony McGann dated March 20, 2015 ("McGann Cert.") ¶ 24) However, due to an injury sustained by Defendant's opponent in that match, a new fight was scheduled for November 15, 2013 against a different opponent. (Id. ¶ 24-25) This fight did not take place on PPV; instead, it was broadcast live on Spike. (Ibid.)

After that fight, which Defendant won, the parties executed two addenda modifying the Agreement: Addendum B and Addendum C. (See Coker Cert. Ex. A, Addendum B and C to the Agreement) Addendum B extended the term of the Agreement by one fight and eliminated the twenty-four month provision. (Addendum B ¶ 2) It also modified the Agreement's provisions on Defendant's compensation for bouts. (Id. ¶ 3) In particular, the Addendum addresses Defendant's compensation for non-PPV bouts and grants a flat rate for fights similar to the rate granted for PPV fights under the Agreement. (Ibid.) In addition, this Addendum allows Defendant to earn a bonus on non-PPV fights depending on Spike's ratings for the match, increases his compensation for PPV fights, grants him a bonus if he retains the championship title in Plaintiff's league at the end of the season, and ensures that he is to receive at least $50,000 in sponsorships generated by Plaintiff or related to Defendant's entertainment opportunities. (Ibid.) Lastly, as a bonus for signing this addendum, Defendant received $100,000. (McGann Cert. ¶ 31) Addendum C, executed on the same date, provides that Plaintiff is to provide certain promotional and marketing assets to Defendant's company in conjunction with the sale of apparel by Defendant's company. (See Addendum C ¶ A)

Defendant continued to fight in Plaintiff's league, and subsequently fought in a second match on February 28, 2014, which he won. (McGann Cert. ¶ 26) Like the first match, this match was also broadcast on Spike rather than PPV. (Ibid.) Defendant's third fight took place on May 17, 2014, and was, in contrast to the other fights, broadcast on PPV. (Id. ¶¶ 27, 32) As with the November 2013 fight, Defendant won both of these fights. (Coker Cert. ¶ 24) Defendant did not, however, receive a gate bonus for any of the fights, as the sales did not exceed $400,000 in sales. Defendant now complains the venue for the fight was too small to generate these sales. He also did not receive a PPV bonus for the May 2014 fight broadcast on PPV. (Jackson Cert. ¶¶ 17, 23) According to the parties, Spike's president informally told Defendant's manager, Anthony McGann, that the PPV buys for the match were 100,000, which is under the 190,000 threshold in the Agreement for the PPV bonus. (Coker Cert. ¶ 35; McGann Cert. ¶ 33) However, plaintiff admits that no report or summary of PPV buys was provided to Defendant or his manager pursuant to the Agreement. (Coker Cert. ¶¶ 35, 36; McGann Cert. ¶ 33)

In June 2014, relations between Plaintiff and Defendant strained and the parties entered into negotiations to further amend the Agreement. (Coker Cert. ¶ 27; McGann Cert. ¶ 60) After these renegotiations failed, Defendant's manager alleges he sent a letter to Plaintiff claiming that Plaintiff had failed to perform its obligations under the Agreement. (McGann Cert. Ex. K) Defendant alleges that this letter was sent on September 11, 2014. (McGann Cert. ¶ 63) Plaintiff, however, claims that it never received the letter, and only learned of the "notice of breach" by way of an email from Defendant's manager sent on October 15, 2014. (Coker Cert. ¶ 34)

The September 11, 2014 letter states Plaintiff failed to honor the Agreement by insufficiently promoting Defendant's fights, selecting small venues for the fights that precluded Defendant from collecting a gate bonus, and not scheduling Defendant for PPV fights, thereby

precluding him from collecting a PPV bonus. (McGann Cert. Ex. K at 4) The letter also alleges that Plaintiff breached the covenant of good faith and fair dealing, engaged in unfair business practices, and fraudulently induced Defendant into entering into contracts based on alleged representations made by Plaintiff concerning its budget for promoting Defendant, movie rights for Defendant's screenplay, and a reality TV series starring Defendant. (Id. Ex. K at 4-5) In addition to this letter, Defendant alleges that his manager sent an email to Plaintiff's president, Scott Coker, on October 13, 2014 which attached this letter. (Id. Ex. L)

On October 15, 2014, Defendant's manager then sent another email to Coker alleging that Plaintiff breached the Agreement by failing to supply a PPV report of the May 2014 fight containing the distributor/licensee summary as allegedly required in the Agreement, and then requested a copy of the original of the report. (Ibid.) This report was not provided to Defendant. (Coker Cert. ¶ 36) Thereafter, on November 21, 2014, Defendant's manager sent a notice of termination of the Agreement to Plaintiff. (McGann Cert. Ex. M)

Following the termination notice, Defendant entered into negotiations with UFC. (Id. ¶ 68) Plaintiff apparently learned of these negotiations on December 4, 2014, and allegedly notified UFC that Defendant was still under contract. (Coker Cert. ¶ 38) In late December 2014, Defendant entered into a contract with UFC, and a fight was thereafter scheduled to take place between Defendant and another MMA fighter on April 25, 2015 in Montreal, Canada. (McGann Cert. ¶¶ 68, 69)

On March 2, 2015, Plaintiff filed this complaint alleging Defendant breached his contract with Bellator and an Order to Show Cause seeking to enjoin Defendant from participating in the upcoming April 25, 2015 UFC fight in Montreal. Plaintiff contends Defendant breached the Agreement by signing with UFC. Plaintiff requests enforcement of the Agreement's exclusivity

clauses by enjoining Defendant from fighting in the upcoming match under UFC. Defendant filed his opposition on March 20, 2015, arguing that his rescission of the Agreement was proper because Plaintiff had breached several of its material terms. Plaintiff filed its reply on March 27, 2015, and the parties appeared for oral argument on April 2, 2015.

LEGAL ANALYSIS

Irreparable Harm

The law is clear that the issuance of an interlocutory injunction requires the review and analysis of four factors and the public interest. Crowe v. DeGoia, 90 N.J. 126, 132-4 (1982); Waste Management of New Jersey v. Union County Utilities Authority, 399 N. J. Super. 508, 519 (App. Div. 2008). Each factor must be "clear and convincingly demonstrated." Id. The factors to be proven by the movant are as follows:

> [A] reasonable probability of success on the merits; that a balancing of the equities and hardships favors injunctive relief; that the movant has no adequate remedy at law and that the irreparable injury to be suffered in the absence of injunctive relief is substantial and imminent; and that the public interest will not be harmed.
>
> [Id., at 519]

The issuance of an interlocutory injunction "must be squarely based on an appropriate exercise of sound judicial discretion." Id. at 520. That is so because the injunction remains "the strongest weapon at the command of the court of equity," Id. at 538 (quoting Light v. Nat'l Dyeing and Printing Co., 140 N.J. Eq. 506, 510 (Ch. 1947)), but "often remains the most effective means to avoid an inequity." Ibid. (citing Banach v. Cannon, 356 N.J. Super. 342, 347 (Ch. Div. 2002)).

Plaintiff contends he has satisfied these factors and that, as such, the Defendant must be restrained from participating in a fight on April 25, 2015 with a combatant who has not contracted

with Plaintiff. Plaintiff maintains that, unless restraints are entered against Defendant, it will suffer irreparable harm because Defendant's fight on April 25, 2015 is a breach of his exclusive contract with the Plaintiff and is with Plaintiff's main competitor, the UFC. Also, Plaintiff contends it has shown a reasonable probability of success on the merits of its underlying contract claim, namely that Defendant has breached his exclusive contract with Plaintiff. This remedy is significant to the Plaintiff because Defendant is alleged to be a "star" in the field of mixed martial arts (MMA) with international name recognition and popularity, and the loss of whom, from the ranks of Plaintiff's stable of fighters to that of its competition, is alleged to be very significant. It is equally significant to Defendant, who seeks to maximize his various career opportunities in his remaining years as a fighter and who has been training for the upcoming fight for several weeks. At the heart of the issue, however, is the allegation by Plaintiff of a breach by Defendant of an exclusive, personal services contract for a well-recognized "star" in the MMA sport and entertainment industry.

Parties' Arguments

Plaintiff contends that an injunction is appropriate because Defendant contractually agreed that his services are "special, unique, unusual and extraordinary in character" and have value that cannot be compensated by damages at law, and that the loss of services of a unique and extraordinary talent results in irreparable harm under established law. Plaintiff further argues that by agreeing to fight under the UFC, Plaintiff will be irreparably harmed "far beyond economic losses." (Pl. Br. at 17) Plaintiff claims that it spent substantial effort to rebuild Defendant's brand after Defendant suffered several losses fighting for UFC, and that it now stands to lose all of this invested effort. (Ibid.)

In addition to losing this investment, Plaintiff also contends that Defendant's participation in the upcoming fight will cause it to suffer reputational damage in the MMA community. (Ibid.) As evidence of this latter claim, Plaintiff states that "[t]he MMA social networking sphere is filled with negative chatter about Bellator simply because Jackson took the precipitous action that he did and has said the things he has said." (Id. at 18) Thus, if an injunction is not issued, harm will result in that "[o]ther fighters and their managers [will] take this kind of seismic disruption as a cue that they and their fighters can simply ignore their contracts and likewise bolt for a perceived better opportunity[.]" (Id. at 17-18)

Defendant counters that none of Plaintiff's harm here is immediate or irreparable, and that, even if Plaintiff prevails on its breach of contract claim, it can be fully compensated through monetary damages. Defendant also argues that any reputational damage incurred by Plaintiff as a result of Defendant's statements on social networking sites undermines its argument that an injunction is necessary to prevent such damage, as any alleged damage has already occurred. Further, Defendant notes that much of the publicity of the litigation "was generated by Plaintiff itself in reporting the filing of its Verified Complaint and the instant application" (Def. Br. at 28), and that Plaintiff's failure to seek judicial intervention prior to March 2015, even though it learned of Defendant's contract with UFC as early as December 2014, belies its claims of irreparable harm.

Analysis

The type of agreement and issues involved here are similar to those of cases treating promotional agreements entered into by boxers and their promoters.

In one such case, Marchio v. Letterlough, 237 F. Supp. 2d 580 (E.D. Pa. 2002), a professional boxer entered into a promotional agreement with the plaintiff for a three-year term

during which the plaintiff would act as the boxer's manager, schedule all fights for the boxer, and promote the boxer and his reputation, in exchange for the boxer's agreement not to retain any other promoter. Id. at 583. When the boxer attempted to hire another promoter in addition to the plaintiff, the plaintiff sought an injunction to prevent him from participating in the fight, which the court ultimately granted. Id. at 581. Other courts have reached a similar result, see, e.g., Arias v. Solis, 754 F. Supp. 290 (E.D.N.Y. 1991); Madison Square Garden Boxing, Inc. v. Shavers, 434 F. Supp. 449 (S.D.N.Y. 1977).

Other courts have denied injunctive relief where the plaintiff has failed to establish irreparable harm. See, e.g., Wolf v. Torres, 1987 U.S. Dist. LEXIS 3084 (S.D.N.Y. Apr. 16, 1987); Star Boxing v. Tarver, 2002 U.S. Dist. LEXIS 24506 (S.D.N.Y. Dec. 19, 2002). In Star Boxing, a boxer entered into an agreement with the plaintiff, a corporation engaged in promoting boxers, that gave the plaintiff exclusive promotional rights for three years, and required the plaintiff to arrange at least four bouts per year for the boxer. Id. at *1-2. The boxer sought to arrange a bout through a different promoter, and the plaintiff filed suit to enjoin the match. Ibid. The plaintiff argued that if the boxer participated in another match arranged by a different promoter during the exclusivity period, it would suffer irreparable damage in that its reputation would be harmed and it would lose the opportunity to arrange future bouts for the boxer that could raise the plaintiff's standing as a promoter in the boxing world, such as championship bouts. Id. at *5-6. The court denied the request for an injunction, finding that the plaintiff's alleged harm was primarily economic in nature, such as the allegations of reputational harm. Id. at 5-11. The court also rejected the plaintiff's argument of lost opportunities to expand its brand because the boxer had the option of rejecting any proposed fight from the promoter. Ibid.

Applying these cases to the facts, here both parties contractually agreed to a series of ongoing obligations where Defendant, in exchange for entertainment opportunities and compensation, agreed that he would fight exclusively under Plaintiff's league and brand for a set period of time and set number of fights. This benefit to Plaintiff cannot be expressed through purely monetary relief: by exclusively fighting against other MMA fighters promoted by Plaintiff, Defendant helped increase the overall quality of skill of Plaintiff's league as well as its brand recognition among not just Defendant's fan base but also MMA fans in general.

While the cases cited by the parties, Star Boxing and Marchio, are instructive, they are both distinguishable from the present case in that they involved a boxer attempting to sign an agreement with a promoter *in addition* to their current manager or promoter for the promotion of a fight. Here, in contrast, Defendant signed an agreement to fight exclusively in bouts arranged by Plaintiff, *all* of which were against other fighters also under contract with Plaintiff in similar agreements. In other words, Plaintiff will lose a fighter in whom it has invested significant resources as part of an effort to raise the quality of its league in an overall strategy to better compete in the MMA marketplace. Indeed, one important benefit to Plaintiff under the Agreement is that, given the limited pool of successful and well-known MMA athletes, any fighter that defects from one promoter to another not only deprives the former promoter of a benefit, but also boosts the latter promoter's reputation in the process. Both parties agree that Defendant is a unique asset in MMA athletics, the loss of whom is significant. If Defendant is permitted to fight outside his contract, then the harm will be done. This constitutes irreparable harm that cannot be rectified by monetary damages alone. Accordingly, the court finds that irreparable harm will occur if Defendant is not enjoined in this matter.

Probability of Success on the Merits[1]

Parties' Arguments

Plaintiff argues that it is likely to succeed on the merits of its breach of contract claim against Defendant; it notes that the existence of the Agreement itself is undisputed, and that it is also undisputed that Defendant has renegotiated a new contract with UFC despite his having only fought in three of the required six matches. As for Defendant's allegation that Plaintiff failed to provide the PPV report after the May 2014 fight, Plaintiff claims that its failure to provide this report is not a material breach and, regardless, it substantially complied with this requirement by informing Defendant of the PPV buy numbers rather than supplying it with the actual report. Further, Plaintiff's president, Scott Coker, alleges that Defendant did not request this report when Spike's president, Kevin Kay, told Defendant of the PPV numbers after the May 2014 match, and only requested the report in the October 15, 2014 email. (Coker Cert. ¶ 35)

Defendant disagrees with Plaintiff's characterization of the PPV report and argues the Agreement's provision requiring the production of the PPV report is a material term because, in addition to the number of PPV buys, it also contains important information regarding money spent on promoting and marketing the PPV event. (Def. Br. at 38; see also McGann Cert. ¶¶ 32-35) In addition to allegedly breaching the Agreement by not providing the PPV report, Defendant also alleges that Plaintiff breached the Agreement in a variety of other ways. Specifically, Defendant alleges that Plaintiff: (1) failed to promote or properly market Defendant; (2) scheduled events in

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1 As for settled legal right, Defendant does not refute that Plaintiff has such a right here. (See Def. Br.) Regardless, it is clear that Plaintiff's underlying right to the benefit of a contract is a settled legal right. See Gaglia v. Kirchner, 317 N.J. Super. 292 (App. Div. 1999).

small venues for broadcast on live television "so as to destroy the substance and benefit of the MMA portion of the agreement"; (3) failed to provide draft screenplays, and failed to provide access to Paramount Pictures; (4) did not perform its reality television obligations in good faith; and (5) threatened to bench Defendant until 2016. (Def. Br. at 38)

In support of these contentions, Defendant claims that he was promised by Plaintiff that Plaintiff had a $25 million budget earmarked for marketing the fights, that Plaintiff made numerous representations in conjunction with the entertainment opportunities, and that Plaintiff's previous president, Bjorn Rebney, made a number of assurances that they would primarily schedule PPV fights for Defendant.

Analysis

To satisfy this factor, Plaintiff must show by clear and convincing evidence that there is a reasonable probability that Defendant has or will breach his contract with the Plaintiff by fighting with a non-Bellator fighter on April 25, 2015. Although Defendant takes issue with the Plaintiff's allegations, the court finds that plaintiff, by clear and convincing evidence, has shown a reasonable probability of success on the merits of the breach of contract claim. The court is mindful that its role here is not to determine the underlying contract dispute. That issue is for another day, following discovery, if appropriate, and a hearing. But the fact that the parties have different views on the contract claim does not preclude the court from issuing a preliminary injunction where the material facts are not reasonably in dispute, Waste Management, supra, 399 N.J. Super. at 528, and, of course, where the other Crowe v. DeGoia factors are satisfied.

It is reasonably probable that Defendant's fight with a non-Bellator opponent violates the exclusive services provision of the contract that Defendant agreed to on May 29, 2013, as amended

on January 17, 2014. Defendant does not dispute that he entered into this written contract with Plaintiff, giving it rights as Defendant's "exclusive promoter" of future fights within the terms of the Agreement (McGann Cert. ¶ 17), or that Bellator has "the exclusive unrestricted worldwide rights to secure, promote, arrange, present, coordinate, create and produce all MMA, martial arts, and unarmed combatant contests . . . to be engaged in by" him while the contract is in existence (Agreement ¶ 2), as well as the right to use Defendant Jackson's "names, images, [and] likenesses . . . for the purpose of advertising and/or exploiting [Plaintiff's] . . . events and brand." (Id. ¶ 11(B) Defendant also does not dispute that the original contract term was for two years but that, on January 17, 2014, Defendant and Plaintiff agreed to a modification of the contract term, whereby the contract, whose effective date was May 29, 2013, would be modified so that Defendant was required to participate in five fights promoted by Bellator after January 17, 2014. (See Addendum B ¶ 2)

It is further undisputed by Defendant that he received the payments due under the Agreement: namely, a 2013 Tesla sport automobile valued at $129,603 as a signing bonus (Agreement ¶ 3), an additional $100,000 signing bonus (Addendum B ¶ 1), and, furthermore, was guaranteed purses for non-PPV fights in increasing $25,000 increments from $200,000 for the first fight to $300,000 for the fifth fight. (Ibid.) Defendant was paid $650,000 for the purses and fights he participated in and $50,000 for sponsorships. (Coker Cert. ¶ 23; see Addendum B ¶ 3)

Moreover, there is no dispute regarding the Agreement's various other payment provisions, such as Defendant's entitlement to payments ranging from $200,000 to $400,000 for PPV fights (see Addendum B ¶ 2), his entitlement to a payment of four dollars ($4) for each "buy" over 190,000 buys for any live telecast PPV event (Agreement ¶ 4(A)(i)), or his entitlement to a

percentage of the net gate receipt or net site receipt actually received by Bellator over $400,000 (Id. ¶ 4(A)(ii)).

Nor does Defendant dispute other provisions of the written contract, namely that he was afforded the opportunity to obtain legal counsel. (Id. ¶ 39) It is undisputed that this Agreement has a provision stating that it is fully integrated, meaning that it contains the parties' "full and complete understanding . . . and shall supersede all prior representations," whether written or oral and, further, the contract provided the parties "relied upon no oral or written representations or understanding of any nature except as set forth in writing herein" (id. ¶ 35).

Although Defendant contends there are factual issues about Plaintiff's compliance with the written contract, the court finds that Plaintiff has clearly and convincingly shown a reasonable probability of compliance with the contract's material terms. Paragraph 3 of Addendum B provides that Bellator "has the sole right to place any bout on either Pay-Per-View or on a Non-Pay-Per-View distribution platform." (Addendum B ¶ 3) To the extent Defendant says that Plaintiff breached the contract by not putting all his fights on a PPV platform or by asserting the contract is a "PPV contract," it is reasonably probable Plaintiff will prevail on this claim given the express language of the contract cited above which says that "sole right" is Bellator's. Further, Defendant's citation to the course of negotiations leading up to the contract cannot be used to vary the express language of the contract, see Conway v. 287 Corportate Ctr. Assoc., 187 N.J. 259 (2006), nor can the covenant of good faith and fair dealing stand alone from the express provisions of the contract. Wilson v. Amerada Hess Corp., 168 N.J. 236, 251 (2001).

Choice of Fight Location and Fight Promotion

Paragraph 12 provides that "Promoter shall promote and Fighter shall participate in the bouts . . . Promoter may secure, promote, arrange, present, coordinate, create and produce Bouts in any manner Promoter chooses, including the use of Tournament formats, individual bouts, or any other structure Promoter desires, and Fighter shall not unreasonably refuse to participate in offered bouts." (Agreement ¶ 12(B)) To the extent Defendant contends that Plaintiff did not adequately promote his fights, including the May 2014 fight with King Mo Lawal, the court finds that it is reasonably probable that Plaintiff will prevail on this claim because the contract cited above provides Bellator may promote "in any manner Promoter chooses[.]" This is consistent with Paragraph 12(D) of the Agreement, which provides that "all Bouts shall be on dates and at sites to be designated by Promoter, in its sole and absolute discretion." Further, Defendant's only "evidence" as to Plaintiff's alleged inadequate promotion is his own self-serving opinion. (See Jackson Cert. ¶ 22) This is not an adequate basis.

Also, based on Section 12(D) of the contract, it is reasonably probable and likely that Plaintiff will prevail in defending its selection of venues for the fights given Bellator's "sole and absolute discretion" on this issue.

Reality Television Show

The Agreement provided for a reality show. Specifically, Bellator and Spike TV "shall produce, promote, and broadcast four (4) reality-based television program episodes featuring and focusing on Fighter[.]" (Agreement ¶ 6(A)) Defendant does not dispute he was paid $140,000 for his appearance, which was consistent with the contract provision of $35,000 per episode. (Agreement ¶ 6(B)) The Agreement further provided that, "taking into account the production,

ratings and audience response to Reality Episodes, Promoter, Fighter and Spike TV may collectively decide to, in good faith negotiate to produce a multiple-episode reality-based television program series to begin production in calendar year 2014. (Id. ¶ 6(C))

Defendant does not dispute a production company was paid $1 million to produce four episodes of "Rampage4 Real" and that all were shown on Spike TV. (Jackson Cert. ¶¶ 38, 39) Defendant does not contest that the shows also showed footage outside the gym. It is reasonably probable that Plaintiff will prevail on its claims that, the timing when the shows were shown, who was to be included in the shows, the lack of a guarantee Defendant would be satisfied or that this even would result in a TV series are not provisions of this contract. To the extent Defendant says these claims form the basis for this breach of contract claim, he is not likely to prevail.

Feature Film Opportunities

As for the possible feature film opportunities, the Agreement provides that Bellator and Spike TV will "retain and pay the costs/fees of a screenwriter to work directly with [Defendant] . . . to develop . . . a [screenplay] for a potential feature film focused on fighter." (Agreement ¶ 7(A) Three potential screen play writers were to be provided to Defendant and he could pick one. (Id. 7(A)(i)) The writer was to create a draft and a polish for Defendant. (Id. ¶ 7(A)(ii)) This then was to be presented to Paramount Pictures executives for their "evaluation and analysis for potential development" (id. ¶ 7(A)(i-ii), (C)). Bellator and Spike TV were to secure "and continue to secure direct access to and communication with Paramount Pictures . . . to [attempt] to develop film opportunities for Fighter with Paramount." (Id. ¶ 7(B))

Defendant does not dispute that a meeting was held between him and the President of Paramount pictures to discuss movie ideas or that Bellator supplied access to screen writers. He

selected one and Bellator paid for the development of a screenplay. Defendant contends he was offended by the writer's "gross delays" and storyline. (Jackson Cert. ¶ 32) However, Plaintiff is reasonably likely to prevail on its claim because the Agreement does not guarantee the Defendant any particular outcome on the film opportunities, including that a film would be successfully made.

Pay-Per-View Summary Reports

Here, the contract provides that Bellator would provide summary reports of PPV buys following a PPV fight. (Agreement ¶ 4(A)(i)(2)) Plaintiff does not contest Defendant's claim that written reports were not provided but contends the Defendant's representative prevented Bellator from providing them by threatening to disclose the reports publicly. However, Defendant also does not dispute he or his agent was orally advised of the PPV buy figures or that he accepted a $200,000 payment from Bellator when he raised this issue about the reports. Although Defendant contends this failure was a material breach that allowed termination of the contract, the actual numbers of PPV buys is not disputed by Defendant. The PPV buys relate to the contract because Defendant would receive additional compensation should these buys surpass 190,000 buys. (Ibid.) However, Defendant's claim for breach of contract is not that he should receive additional compensation because the numbers given to him by Bellator were wrong; rather, he appears to want the reports for what he believes is evidence of his claim that the fight was not adequately promoted or that he was not appropriately marketed.

The court has already addressed the promotion provisions of the Agreement and that the Agreement leaves promotion rights to the Plaintiff. Moreover, there is no marketing provision set forth in the Agreement requiring, for example, a minimum or maximum amount to be spent on the promotion of Defendant's fights. Thus, it is reasonably probable Plaintiff will prevail on its

contract claim, even without having produced the written reports, because the buy numbers that drive the Defendant's compensation figures are not in dispute. Moreover, logically, Defendant offers no rationale for why Plaintiff would *not* want to market and promote one of its primary fighters.

Gate Site Bonus

Under the Agreement, Defendant shall receive 30% of net gate receipts or net site receipts actually received by Bellator above $400,000. (Agreement ¶ 4(A)(iii)) Defendant calculates that to achieve this, the venue where the fight is held must exceed 12,000 seats. Plaintiff's three fights for Defendant were in venues with fewer seats. Therefore, he claims this breached the contract because he could not achieve compensation under this provision.

However, Plaintiff is reasonably likely to prevail on this claim because the contract provides that the sites and dates for the bouts were at Bellator's "sole and absolute discretion." The Defendant does not dispute this provision of the contract, so it is difficult to see how Defendant will prevail on this.

Wrestling Contract

Defendant complains that the portion of the Agreement relating to wrestling opportunities was not achieved (see Agreement ¶¶ 8, 9), but Defendant does not actually allege that Bellator terminated Defendant's opportunities with TNA; rather, TNA's contract was with Spike TV, a separate party (McGann Cert. ¶ 53). Accordingly, the court finds that Plaintiff is likely to succeed on the merits of this issue.

Defendant's Alleged Breach

Finally, Plaintiff is reasonably likely to prevail on its breach of contract claim because it does appear that Defendant has not followed the terms of the Agreement. Although the Agreement includes provisions for termination for either party, for Defendant to terminate, however, the Agreement provides two bases: a) Plaintiff fails to make any payment to Defendant; or b) Defendant believes in good faith that Plaintiff has breached. (Agreement ¶ 23(E, F)) If either of these occurs, Defendant is to give written notice to Plaintiff so it can cure. (Ibid.) Depending upon the alleged violation, Plaintiff either has a fourteen day cure period (for an alleged breach related to compensation) or a forty-five day cure period for all other issues. (Ibid.) If Plaintiff does not cure, Defendant is to give written notice of termination. (Id. ¶ 23(F))

If that occurs, the Agreement provides that Defendant can negotiate with other "promotional entities" but must give Plaintiff five days written notice of any offer to then allow Plaintiff to "match" the offer's material terms or reject it. (Id. ¶ 24(B, D)) If Plaintiff were to match, Defendant, then, would be prohibited under the Agreement from accepting the offer from the other "promotional entity." (Id. ¶ 24(E)) Here, Defendant does not dispute that he did not follow the notice and matching provisions of the Agreement. Thus the court finds that Plaintiff is reasonably likely to prevail on its claim that it did not have the opportunity to match whatever offer Defendant has for the April 25th fight.

Although Defendant contends he corresponded with Plaintiff on September 11, 2014 regarding certain claims, he does not dispute that he did not raise then the issues raised now about the PPV report. This was raised in October 2014, but Defendant allegedly "terminated" the Agreement by letter dated November 21, 2014. Defendant does not dispute this either. Therefore, Defendant does not dispute that he did not follow the termination procedures in the Agreement,

wait the required forty-five days, or present Plaintiff with the opportunity to match whatever arrangement he made for the April 25th fight.

The court concludes after an in-depth analysis of the Plaintiff's and Defendant's claims as has been set forth that plaintiff is reasonably likely to succeed on the merits of its breach of contract claim against Defendant.

Balance of Equities

Parties' Arguments

Lastly, Plaintiff maintains that the equities weigh in its favor because allowing Defendant to fight in the upcoming UFC match will deprive it of "both money and effort [spent] in rebuilding Jackson's reputation and status." (Pl. Br. at 34) In contrast, Plaintiff avers that Defendant will not suffer hardship should the injunction issue, arguing that "it is not an unreasonable burden on a fighter to refrain from fighting for a competitor until his contractual obligations are satisfied." (Ibid.)

Defendant disagrees, and argues that while Plaintiff's threat of harm is only a potential loss of revenue from future fights, Defendant contends that there is strong likelihood that his career would be irreparably damaged from being unable to participate in the upcoming fight, as he only has a limited number of years left in his career. Thus, when combined with Plaintiff's alleged failure to promote Defendant during the term of their contract, Defendant argues that disallowing him from competing in the upcoming match will bring "his successful career as an MMA fighter . . . to a crushing conclusion, and Plaintiff will have effectively put Jackson out of business." (Def. Br. at 42)

Analysis

The court finds that the equities weigh in favor of Plaintiff, as allowing Defendant to participate in the UFC match will deprive Plaintiff of having a well-known and successful fighter in its league, a benefit for which it was entitled under the contract, and confer this benefit upon its primary competitor. While the court is not unmindful of Defendant's concerns, Defendant has not disputed Plaintiff's contention he was aware of the extent and duration of the exclusivity provisions of the Agreement. Further, Defendant's argument cannot be the sole basis for denying injunctive relief, as it would likely be true for *any* athlete breaching an exclusive services agreement. In any event, Plaintiff has represented a willingness to arrange further fights for Defendant consistent with the Agreement. This factor favors Plaintiff.

Given these findings, the court therefore will enter injunctive relief in favor of Plaintiff, and enjoin Defendant from participating in the upcoming non-Bellator (UFC) match.

Karen L. Suter

Karen L. Suter, P.J.Ch.

Dated: April 7, 2015.
This application was opposed.