IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

RONALD MCALLISTER, Plaintiff, v. THE ST. LOUIS RAMS, LLC, Defendant.	)))))))))	No. 4:16-cv-00172-SNLJ

DEFENDANT'S OPPOSITION TO PLAINTIFF MCALLISTER'S MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS AS TO LIABILITY IN COUNT IV (BREACH OF CONTRACT)

INTRODUCTION

McAllister's Motion for Judgment on the Pleadings on his two breach of contract claims fails as a matter of law. It is premised on an erroneous interpretation of the two Personal Seat License ("PSL") Agreements; and regardless, it requires adjudication of all of the issues raised by the contract including the Rams' defenses, some of which require factual determinations and rely on matters outside the pleadings and, thus, cannot properly be considered by this Court in connection with a motion for judgment on the pleadings under Rule 12(c) of the Federal Rules of Civil Procedure.

On the merits, McAllister is not entitled to judgment on his breach of contract claims. The two PSL Agreements at issue in his Complaint, by their express terms, expired at the earlier of 2025 *or* if the Rams' home games were no longer played at the Stadium at America's Center. The Agreements "remain[ed] valid only as long as NFL football [was] played at the Stadium by the Rams, up to a maximum of thirty (30) years." Compl. Exh. A ¶ 12(A) (ECF No. 1-1 at 3); *see also* Compl. Exh. B ¶ 11(A) (ECF No. 1-2 at 3). The PSL Agreements only provided rights to the licensees – whether it was the right to purchase tickets (at issue in *Arnold* and *Envision*) *or*

the right to obtain refunds of "deposits" for those tickets (at issue here) − so long as the contracts were in force. Though McAllister asserts that the right to obtain "refunds" for "deposits" somehow survived the expiration of the Agreements, there is no language in the contracts to this effect. The PSL Agreements − and all of the attendant rights and obligations − expired when Rams' home games were no longer to be played in the Stadium at America's Center (the "Stadium").

Critically, the PSL Agreements also expressly provided that the Rams have "no liability" to licensees if they do not play all of their home games in the Stadium through the year 2025. Compl. Exh. A ¶¶ 2, 12(A); Compl. Exh. B ¶¶ 2, 11(A) (ECF Nos. 1-1 at 2-3, 1-2 at 2-3). To accept McAllister's proposed interpretation of the PSL Agreements − a reading that requires the Rams to pay money to licensees because the team is no longer playing games in the Stadium − improperly requires this Court to ignore these clear and unambiguous contractual terms and conditions. Each licensee, including McAllister, was made aware of and acknowledged the possibility that the PSL Agreements may expire prior to 2025, but nonetheless choose to enter into them. Compl. Exh. A ¶ 12(A); Compl. Exh. B ¶ 11(A) (ECF Nos. 1-1 at 3, 1-2 at 3).

In an attempt to avoid the clear language of the PSL Agreements, McAllister characterizes the Rams' relocation from St. Louis to Los Angeles as a "discretionary" termination of the PSL Agreements. Pl.'s Mem. in Supp. at 1 (ECF No. 36 at 5). As set forth above, McAllister's proposed interpretation fails because the PSL Agreements were conditioned upon and "only valid as long as" the Rams played in the Stadium. Compl. Exh. A ¶¶ 2, 12(A); Compl. Exh. B ¶¶ 2, 11(A) (ECF Nos. 1-1 at 2-3, 1-2 at 2-3). However, even if the obligation to refund "deposits" somehow survived expiration of the PSL Agreements (which it did not), the PSL Agreements were subject to and conditioned upon the underlying *Stadium Lease* between

the Rams and the Regional Convention and Sports Complex Authority ("RSA") and the St. Louis Convention & Visitors Commission ("CVC").[1] Compl. Exh. A ¶ 12(A); Compl. Exh. B ¶ 11(A) (ECF Nos. 1-1 at 3, 1-2 at 3). The RSA and CVC, however, breached the Stadium Lease which the PSL Agreements were subject to and conditioned upon. *See* AAA Arbitration Award, attached hereto as **Exhibit 1**, at 9-11; Letter from Kathleen Ratcliffe, President, CVC, to Kevin Demoff (July 3, 2013), attached hereto as **Exhibit 2**; Letter from James Shrewsbury, Chairman, RSA, to Kevin Demoff (July 3, 2013), attached hereto as **Exhibit 3**. Critically, the Rams did not relocate until *after* the RSA's and CVC's breach of the Stadium Lease.

Thus, McAllister's argument that the Rams somehow exercised a "discretionary" right to "terminate" PSL Agreements thereby triggering a duty to "refund deposits" simply is not supported by the underlying facts. Because of this and the other factual issues outside the pleadings raised by Plaintiff's breach of contract claims, they cannot properly be adjudicated on a motion for judgment on the pleadings. This alone is fatal to Plaintiff's Motion for Judgment on the Pleadings.

Though it lacks merit, McAllister's Motion for Judgment on the Pleadings on his breach of contract claims disposes of his theoretically inconsistent illusory contract claims. By asking this Court to enter *judgment* on his breach of contract claims, Plaintiff has elected his remedy, thereby abandoning the factual basis for his inconsistent non-contractual, equitable claims. McAllister admitted the PSL Agreements were binding contracts and cannot reserve the contradictory factual allegations that the Agreements were illusory and non-enforceable. *See* Compl. ¶¶ 73-88, Counts I-III (ECF No. 1 at 20-23).

[1] The RSA owns the Stadium at America's Center and the CVC was the Rams' landlord. *See* Stadium Lease, attached hereto as **Exhibit 4**, at 1-3.

ARGUMENT

I. Plaintiff's Proposed Interpretation of the PSL Agreements is Not Supported by the Express Terms of the Contracts.

The PSL Agreement at issue in this case is a limited license agreement. "A license agreement is a contract governed by the general principles of contract law." *Monsanto Co. v. Garst Seed Co.*, 241 S.W.3d 401, 406 (Mo. App. E.D. 2007). When determining the parties' intent as expressed in a written instrument, Missouri courts look to the entire agreement and consider it as a whole. *See Brackett v. Easton Boot & Shoe Co.*, 388 S.W.2d 842, 848 (Mo. 1965); *Textor Const., Inc. v. Forsyth R-III Sch. Dist.*, 60 S.W.3d 692, 698 (Mo. App. S.D. 2001). When possible, Missouri courts will adopt an interpretation of a contract that gives effect to all of the contract's provisions. *Wildflower Cmty. Ass'n, Inc. v. Rinderknecht*, 25 S.W.3d 530, 534 (Mo. App. W.D. 2000). The language used in a single clause or sentence does not control if it is contrary to the evident purpose and intention of the contracting parties as shown by review of the whole document. *See Sonoma Mgmt. Co. v. Boessen*, 70 S.W.3d 475, 481 (Mo. App. W.D. 2002) ("Seeming contradictions must be harmonized away if possible, and the court's interpretation should not reach an absurd or unreasonable result.") (citations omitted).

When, as here, the language of the contract is plain and straightforward, the Court should ascertain the intent of the parties by looking only to the words of the contract and giving those words their "plain, ordinary, and usual meaning." *State ex rel. Vincent v. Schneider*, 194 S.W.3d 853, 859-60 (Mo. 2006) (en banc). When considered in their entirety, the PSL Agreements (and *all* of their attendant rights) clearly and unequivocally expired when the Rams relocated from St. Louis. The right to receive a "refund" of a "deposit" for a seat did not, as Plaintiff maintains, somehow survive expiration of the PSL Agreements. Thus, Plaintiff is not entitled to judgment on the pleadings on his breach of contract claims.

The provisions of the PSL Agreements expressly limit the term of the Agreements until the earlier of the year 2025 *or* the Rams' no longer playing games at the Stadium. Section 1 of both contracts, titled **CPSL License Fee and Stadium Area**, state that the PSL Agreements are "subject to the terms and conditions" set forth in the Agreements. Compl. Exh. A ¶ 1; Compl. Exh. B ¶ 1 (ECF Nos. 1-1 at 2, 1-2 at 2). Critically, Section 11 of the Rams PSL Agreement and Section 12 of the FANS PSL Agreement, titled **Additional Terms**, expressly provide that the PSL Agreements only remained valid as long as the Rams played NFL games at the Stadium. Section 12(A) of the FANS PSL Agreement provides, in relevant part:

> Licensee acknowledges that the Stadium will be managed, maintained and operated by The Regional Convention and Visitors Commission (the "Stadium Manager") pursuant to certain agreements between the Stadium Manager and The Regional Convention and Sports Complex Authority (the "Authority") (collectively the "Stadium Agreements"). All rights granted to Licensee pursuant to this Agreement are subject to the terms and conditions of the Stadium Agreements and those other agreements signed in connection with the RAMS agreement to relocate to St. Louis. *Licensee acknowledges that this Agreement remains valid only as long as NFL Football is played at the Stadium by the Rams, up to a maximum of thirty (30) years . . . Licensee understands and acknowledges the possibility that the RAMS may not play its games in the Stadium or St. Louis for the entire term contemplated by this License . . . .*

Compl. Exh. A ¶ 12(A) (ECF No. 1-1 at 3) (emphasis added). Similarly, Section 11(A) of the Rams PSL Agreement provides, in relevant part:

> Licensee acknowledges that the Stadium will be managed, maintained and operated by The Regional Convention and Visitors Commission (the "Stadium Manager") pursuant to certain agreements between the Stadium Manager and The Regional Convention and Sports Complex Authority (the "Authority") (collectively the "Stadium Agreements"). *All rights granted to Licensee pursuant to this Agreement are subject to the terms and conditions of the Stadium Agreements and those other agreements signed in connection with the Team's agreement to relocate to St. Louis. Licensee understands and acknowledges the possibility that the Team may not play its games in the Stadium or St. Louis for the entire term contemplated by this License . . . .*

Compl. Exh. A ¶ 11(A) (ECF No. 1-2 at 3) (emphasis added).

Parties to a contract are free to set an expiration date whereby all rights and obligations arising under the contracts expire and are no longer valid. *Chicago United Indus., Ltd. v. City of Chicago*, 669 F.3d 847, 853 (7th Cir. 2012). Here, the PSL Agreements contain an expiration date – the earlier of 2025 *or* the team no longer playing in the Stadium. Compl. Exh. A ¶ 1; Compl. Exh. B ¶ 1 (ECF Nos. 1-1 at 1, 1-2 at 1). Even McAllister concedes this fact. "As far as Mr. McAllister is concerned, his PSLs came to an end" when the Rams no longer played games in the Stadium. Pl.'s Mem. in Supp. at 12 (ECF No. 36 at 16). Any obligation imposed upon the Rams by the PSL Agreements – including the duty to "refund part or all of a Licensee's deposit" for a seat license – necessarily expired with the contracts.

Contrary to McAllister's argument (Pl.'s Mem. in Supp. at 5-7 (ECF No. 36 at 9-11)), the Rams cannot terminate a license that previously expired by its express terms. If parties intend that a duty created by an agreement survives the agreement's term, they must expressly state so in its terms. *HGS Homes, Inc. v. Kelly Residential Grp., Inc*., 948 S.W.2d 251, 255 (Mo. App. E.D. 1997). However, nothing in Section 7 of the FANS Agreement or Section 8 of the Rams Agreement, titled **Reservation of Rights by Licensor**, suggests (much less expressly states) that the Rams' duty to refund deposits somehow survived expiration of the Agreements. Rather, as written, the "refund" provision simply provided the Rams with a non-controversial right to limit the number of seats sold to any Licensee and, if a deposit had been made, to refund all or a portion of it back. Compl. Exh. A ¶ 7(A); Compl. Exh. B ¶ 6(A) (ECF Nos. 1-1 at 2, 1-2 at 2).

To adopt Plaintiff's proposed interpretation would require this Court to improperly ignore other terms and conditions of the PSL Agreements which make clear that the Rams are not required to pay any refunds after relocation. *See Wildflower Cmty. Ass'n, Inc.*, 25 S.W.3d at 534. Both PSL Agreements also expressly provide that the Rams have "no liability" for the team's

"failure to play Games in the Stadium." Compl. Exh. A ¶ 2; Compl. Exh. B ¶ 2 (ECF Nos. 1-1 at 2, 1-2 at 2).

Moreover, by their express terms, the PSL Agreements were subject to and conditioned upon the underlying Stadium Agreements, including the Stadium Lease, between the Rams and the CVC and RSA. Compl. Exh. A ¶ 12(A); Compl. Exh. B ¶ 11(A) (ECF Nos. 1-1 at 3, 1-2 at 3). Thus, the Rams had the right to relocate without financial consequence in the event that the Stadium Manager (the CVC) or the Authority (the RSA) breached the Stadium Lease (as, in fact, happened here. *See* § II *infra*.

The Licensees agreed to purchase the PSLs with knowledge that the Rams may relocate away from the Stadium after breach of the Stadium Agreements and they would not be entitled to any compensation from the Rams. Each Licensee, including McAllister, was made aware of and acknowledged the possibility that: (a) their right to purchase tickets could expire prior to 2025; and (b) the Rams would not be liable for the failure to play games in the Stadium. Compl. Exh. A ¶¶ 2, 12(A); Compl. Exh. B ¶¶ 2, 11(A) (ECF Nos. 1-1 at 2-3, 1-2 at 2-3). Nonetheless, McAllister chose to enter into the PSL Agreements. Plaintiff's suggestion that he and other Licensees were damaged by the loss of a contingent expectancy to purchase Rams tickets through 2025 (Pl.'s Mem. in Supp. at 1, 6 (ECF No. 36 at 5, 10) simply is belied by the terms of the PSL Agreements. For this reason, too, Plaintiff has failed to prove he has been damaged as required to obtain even partial judgment on his breach of contract claims. *Alternative Med. & Pharmacy, Inc. v. Express Scripts, Inc.*, No. 4:14 CV 1469 CDP, 2016 WL 468647, at *6 (E.D. Mo. Feb. 8, 2016).

If the Rams terminated a Licensee's PSL Agreement prior to expiration and that Licensee had paid a "deposit," the Licensee may have had a valid claim for a refund for some portion the

"deposit." But that is not the allegation here. The limited license agreements *expired* – and were not *terminated* as Plaintiff maintains – upon relocation. To adopt Plaintiffs' contorted interpretation of the PSL Agreement, this Court would have to violate accepted rules of contract interpretation. Plaintiffs' proposed interpretation ignores the express intent of the parties, fails to give effect to all the provisions of the contract, and fails to read the contract as a whole.

II. The Court Cannot Enter Judgment for Plaintiff on His Breach of Contract Claims Without Improperly Considering Matters Outside of the Pleadings.

Pursuant to Rule 12(c) of the Federal Rules of Civil Procedure, a court may only grant a motion for judgment on the pleadings when the moving party has clearly established that no material issues of fact remain to be resolved and the party is entitled to judgment as a matter of law. *U.S. v. Any & All Radio Station Transmission Equip.*, 207 F.3d 458, 462 (8th Cir. 2000). The Court should accept all well-pleaded facts as true and draw reasonable inferences in favor of the non-moving party. *Coons v. Mineta*, 410 F.3d 1036, 1039 (8th Cir. 2005). However, a Rule 12(c) motion is not an appropriate means to dispose of a case when any material facts are in dispute and judgment cannot be reached without a review of materials outside the pleadings, materials embraced by the pleadings, and exhibits attached to the pleadings. *See Nolan v. Thompson*, No. 05-4237-CV-C-SOW, 2006 WL 2088338, at *1 (W.D. Mo. July 25, 2006) (denying motion for judgment on the pleadings because matters outside the pleadings must be considered to determine merits of the claim); *see also* 5C Charles Alan Wright & Arthur Miller, Fed. Practice & Procedure § 1367 (3d ed. 2010)).

Here, even if the Court accepts McAllister's proposed contractual interpretation, the Rams dispute that they breached the PSL Agreements. As set forth below, many of the issues raised by McAllister's breach of contract claims involve material issues of fact that are not

embraced by the pleadings and that cannot be adjudicated without review of materials outside the pleadings. Thus, Plaintiff's Motion for Judgment on the Pleadings must be denied.

A. Even if the PSL Agreements Did Not Expire When the Rams Relocated to Los Angeles, the Court Must Consider the Underlying Stadium Lease and the Arbitration Award Interpreting the Stadium Lease In Order to Adjudicate Plaintiff's Breach of Contract Claims.

As set forth above, both PSL Agreements were made subject to and conditioned on the underlying Stadium Lease agreement between the RSA and the Rams. The PSL Agreements provide:

> Licensee acknowledges that the Stadium will be managed, maintained, and operated by the Regional Convention and Visitors Commission (the "Stadium Manager") pursuant to certain agreements between the Stadium Manager and The Regional Convention and Sports Complex Authority (the "Authority") (collectively the "Stadium Agreements"). All rights granted to Licensee pursuant to this Agreement are subject to the terms and conditions of the Stadium Agreements and those other agreements signed in connection with the [Team's] agreement to relocate to St. Louis.

Compl. Exh. A ¶ 12(A); Compl. Exh. B ¶ 11(A) (ECF Nos. 1-1 at 3, 1-2 at 3).

The Stadium Lease, one of the "Stadium Agreements" upon which the PSL Agreements were conditioned, was unlike any other team's lease with municipal stadium authorities in the NFL in that it promised the Rams a "First Tier" NFL stadium, defined as a stadium that ranks in the top 25% of all of the 31 stadiums in the NFL. Exh. 4, Annex 1 ¶ 1.3. Executed in 1995, the Stadium Lease provides that the "First Tier" status of the Stadium was to be measured on two separate dates: March 1, 2005 and March 1, 2015 (the "Measuring Dates"). *Id.* The Stadium Lease also spelled out in great detail the Authority's improvement obligations using 15 objective metrics that measured compliance with the First Tier obligation. *Id.*

Under the terms of the Stadium Lease, the parties agreed upon negotiation and a dispute resolution procedure. Before the 2015 Measuring Date, the parties were required to exchange

proposals over a five month period in 2012 as part of mandatory negotiations to reach agreement on necessary Stadium improvements to meet the "First Tier" obligation. *Id.* If agreement was not reached, "First Tier" disputes were to be resolved by three objective, independent, decision-makers in an arbitration. *Id.* at 33-34, Annex at ¶ 1.4. The Stadium Lease also provided that the cost of "First Tier" improvements were to be paid exclusively by the Authority with funding coming from the City of St. Louis, St. Louis County and the State of Missouri – referred to as "the Sponsors." Exh. 4 at 1. Additionally, the Stadium Lease provided the Rams with a single agreed upon remedy – relocation – in the event the Authority and the Sponsors failed to construct "First Tier" improvements. *Id.* at 29. Despite protracted negotiations between the Rams and the Authority, the Stadium failed to qualify as a "First Tier" facility for a number of years. In 2013, a three-member arbitration panel awarded the Rams a "First Tier" improvement plan in accordance with the Stadium Lease. Exh. 1 at 9-11. The Authority and the Sponsors, however, refused to fund and construct the required improvements. *See* Exhs. 2, 3. After the arbitration award was issued in favor of the Rams, the RSA informed the Rams, that "consistent with the interested parties' fiduciary responsibilities and with the taxpayer's best interests in mind," it had "determined that it would not be prudent to implement the Edward Jones Dome[2] alternations suggested in the arbitrators' March 20, 2013 Final Award." Exh. 3.

On the same day, the CVC informed the Rams that "[a]s the CVC is not the owner of the Facilities, the Sponsors have the ultimate financial responsibility for any improvements." Exh. 2. Because the RSA and the Sponsors decided not to implement the "First Tier" improvements awarded to the Rams by the binding arbitration, the CVC informed the Rams that is was "not in a

[2] The Stadium was known at that time as the Edward Jones Dome. *See* Exh. 1 at 2.

position to commit to the St. Louis Rams, LLC regarding the financing or as to otherwise implementing such improvements." Exh. 3.

The Rams did *not* relocate from St. Louis until after the RSA and CVC refused to implement the arbitration award, a decision that breached the Stadium Lease. Exh. 4 at 33-34, Annex ¶ 1.4. At that point, the PSL Agreements were "subject to" an underlying agreement that had been breached, and thus the PSL Agreements became conditioned upon the Rams' contractual remedies for that breach. Compl. Exh. A ¶ 12(A); Compl. Exh. B ¶ 11(A) (ECF Nos. 1-1 at 3, 1-2 at 3). Thus, Plaintiff's suggestion that the Rams exercised some "discretionary" right to "terminate" the PSL Agreements by relocating is not supported by the facts.

A license confers the right to enter another's land (*e.g.,* a stadium or other venue) in order to watch a specific event. *See Soderholm v. Chicago Nat'l League Ball Club, Inc.*, 587 N.E.2d 517, 520 (Ill. App. Ct. 1992) (holding that a Chicago Cubs season ticket is "a series of revocable licenses" that entitle "the licensee a right to enter upon the licensor's land and use it for a specific purpose . . ."); *see also License*, Black's Law Dictionary (10th ed. 2014). A license, by definition, is confined to a specific premises for a specific purpose. *Id.* Here, the premises were defined in the Stadium Lease as the Stadium. Unremarkably, the PSL Agreements that governed the licenses to the Stadium were subject to and conditioned upon that Stadium Lease. When the RSA and CVC breached the Stadium Lease by failing to construct "First Tier" improvements, the Rams sole contractual remedy was relocation. The Rams now cannot be held liable for exercising their entirely lawful remedy under the breached Stadium Lease.

This particular factual issue must be determined in order to issue judgment on the Plaintiff's breach of contract claims. Because it raises matters that are not presented to the court by the pleadings, McAllister's Motion for Judgment on the Pleadings fails. *See Fleishour v.*

Stewart Title Guar. Co., 640 F. Supp. 2d 1088 (E.D. Mo. 2009) (in insurance coverage dispute, court would not grant judgment on the pleadings where discovery was required to determine whether defendant-insurer had offered to pay an amount equal to the loss in property value, thereby discharging its duty to defend); *see also Pit River Tribe v. Bureau of Land Mgmt.*, 793 F.3d 1147, 1159 (9th Cir. 2015) ("[U]nder Federal Rule of Civil Procedure 12(c), a plaintiff is not entitled to judgment on the pleadings if the defendant's answer raises issues of fact or affirmative defenses."). However, the Rams intend to present these issues fully, if necessary, in a future Motion for Summary Judgment.

B. Other Issue Central to Plaintiff's Breach of Contract Claims Require the Court to Consider Matters Outside the Pleadings.

A number of other issues related to Plaintiff's breach of contract claims raise factual issues that are not presented by the pleadings and, thus, are not appropriate for adjudication in a motion for judgment on the pleadings. For instance, in order to prevail on his breach of contract claims, McAllister must prove, among other elements, the existence of damage arising from the breach. *Berringer v. JPMorgan Chase Bank, N.A.*, 16 F. Supp. 3d 1044, 1047 (E.D. Mo. 2014). Here, McAllister maintains that he was damaged because the Rams did not refund all or part of some unidentified "deposit." Pl.'s Mem. in Supp. at 7 (ECF No. 36 at 11). Neither McAllister's Memorandum in Support of his Motion for Judgment on the Pleadings nor his Complaint, however, identify any "deposit" he paid that would qualify for a "refund" under the Reservation of Rights provisions in Sections 7 and 8 of the PSL Agreements. Pl.'s Mem. in Supp. at 7 (ECF No. 36 at 11); Compl. ¶ 4 (ECF No. 1 at 2).

While McAllister alleges that he paid $1,000 for each of his personal seat licenses (Compl. ¶ 4 (ECF No. 1 at 2); Pl.'s Mem. in Supp. at 7 (ECF No. 36 at 11)), the Rams maintain that those payments were "License Fees" due pursuant to Paragraph 1 of the Agreements. That

the "License Fee" is not the same as the "deposit" is evidenced by Section 4 of the FANS Agreement, titled **Refunds**. It provides that: "If the Rams do not move to St. Louis by September 1, 1996, all CPSL payments made by Licensee will be refunded to Licensee without interest." If a "deposit" was the same as a "License Fee," Section 4 of the FANS Agreement too would have referred to "deposits." Thus, whether McAllister paid a "deposit" that would qualify for a refund under the Reservation of Rights provisions in the PSL Agreements raises fact issues that cannot be determined by a court in ruling on a motion for judgment on the pleadings.

Similarly, whether the Rams could be held responsible to pay any refunds of deposits that may be required under the FANS Agreement raises factual issues not presented in the pleadings as the Rams were *not* a party to the FANS Agreement. Compl. Exh. A ¶ 12(B) (ECF No. 1-1 at 3). Who received and retained any monies that may have constituted "deposits" under the Reservation of Rights provisions simply is not answered on the face of the pleadings, and is disputed. For all of these reasons, McAllister's Motion for Judgment on the Pleadings fails.

III. Plaintiff Elected to Pursue a Judgment on His Breach of Contract Claims And Thus Has No Factual Basis To Support His Theoretically Inconsistent Equitable Claims.

McAllister's Complaint primarily asserts claims that the PSL Agreements are illusory. The first count seeks a declaratory judgment that the "purported PSL agreements between them and the Rams are, in fact, illusory contracts of no force and effect." Compl. ¶ 3 (ECF No. 1 at 3). It also seeks restitution of the unused portion of the PSL and money had and received by the Rams in keeping monies paid for the unusable portions. *Id.* Only "in the alternative, in the event that the Court finds that there is a valid contract between the Rams and PSL holders," does McAllister seek damages for breach of contract. *Id.*

Contrary to the vast majority of the allegations in his complaint, McAllister now asks this Court to enter judgment on the pleadings finding a breach of the PSL Agreements. To obtain a

judgment on his breach of contract claims, McAllister, as a matter of law, had to admit that there was a binding, enforceable contract between the Rams and himself. *See Any & All Radio Station Transmission Equip.*, 207 F.3d at 462.[3] By so doing, he has affirmatively elected the factual basis for his theory of recovery for breach of contract, and no longer has any basis on which to assert his theoretically inconsistent illusory contract claims. *Arnold v. AT&T, Inc.*, No. 4:10-cv-2429-SNLJ, 2012 WL 1441417, at *14 (E.D. Mo. Apr. 26, 2012).

The "normal[]" rule is that plaintiffs "can allege inconsistent theories of recovery in their complaint, and need not choose which to proceed upon until trial." *Id.* at *14 (citing *Trimble v. Pracna*, 167 S.W.3d 706, 711 (Mo. banc 2005) ("a party must elect between theories of recovery that are inconsistent, even though pled together as permitted by Rule 55.10, before submitting the case to the trier of fact.")). However, once a plaintiff asserts "as a matter of law" that "the plaintiffs and the defendants entered into a written contractual relationship," there is no longer any "factual basis by which to maintain their claim for unjust enrichment grounded in 'quasi-contract.'" As this Court held, "[t]his isn't a matter of 'inconsistent theories' when one theory is completely devoid of any factual basis for recovery." *Arnold*, 2012 WL 1441417, at *14.

McAllister cannot merely ask this Court to accept one of his allegations for purposes of judgment on the pleadings while reserving the other contrary allegations. By bringing this motion and submitting this case for decision, McAllister has abandoned any factual basis on which to base his non-contractual illusory contract claims.

[3] Though McAllister states that his motion for judgment "accepts the Rams' allegations that these documents are contracts, notwithstanding his claim that they are illusory" (Pl.'s Mem. in Supp. at 3 n. 6 (ECF No. 36 at 7 n. 6)), the Rams make no such "allegation." The Rams have not brought a claim against anyone. Rather, McAllister chose to concede the existence of a contract by bringing the Motion for Judgment on the Pleadings.

CONCLUSION

For the foregoing reasons, Defendant The St. Louis Rams, LLC respectfully requests that the Court deny Plaintiff's for Partial Judgment on the Pleadings as to Liability in Count IV (Breach of Contract).

Dated: August 15, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of August 2016, the foregoing was served by operation of the Court's electronic filing system upon counsel of record.

/s/ Amy E. Sestric