

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Byelick v. Ryvyl Inc.

Byelick · No. 24-cv-01096-GPC-SBC · Decided September 2, 2025

OPINION

Byelick v. Ryvyl Inc.

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 11 J. DREW BYELICK, an individual, Case No.: 24-cv-01096-GPC-SBC 12 Plaintiff,

ORDER DENYING PLAINTIFF'S

13 v. MOTION FOR PARTIAL

SUMMARY JUDGMENT

14 RYVYL INC. (f/k/a GREENBOX POS), a Nevada corporation, 15 [ECF No. 43] Defendant.

16 17 18 Before the Court is Plaintiff J. Drew Byelick's motion for partial summary 19 judgment.

ECF No. 43. Defendant RYVYL Inc. ("Ryvyl") opposed the motion, ECF

20 No. 47, and Byelick replied, ECF No. 50. The Court finds the matter suitable for

21 decision on the papers pursuant to Civil Local Rule 7.1(d)(1). For the reasons below, the 22

Court DENIES Byelick's motion for partial summary judgment without prejudice.

23 BACKGROUND

24 I. Factual Background 25 Byelick worked at Ryvyl, a publicly traded company, from June 2022

to March 26 2023. ECF No. 26 ("FAC") ¶¶ 69, 89; ECF No. 47-1, Declaration of Fredi Nisan

("Nisan 27 1 Decl.") ¶¶ 9–10. Most recently, Byelick was Ryvyl's CFO. FAC ¶ 89; Nisan Decl. ¶

9. 2 Byelick relocated from Texas to San Diego, California to become Ryvyl's CFO. FAC ¶ 3 12.

4 Byelick alleges that Ryvyl, through pre-hire interviews and conversations with 5 Chairman Ben

Errez, CEO Fredi Nisan, COO Min Wei, Ryvyl's HR director, and two 6 Ryvyl board members

(Bill Cargol and Dennis James), made numerous 7 misrepresentations and concealed information

from him regarding Ryvyl's financial 8 health, its SEC filings, and its internal controls and

operations. Id. ¶¶ 55-65. Byelick 9 alleges that he relied on these misrepresentations and

concealments in making his 10 decision to accept Ryvyl's offer of employment. Id. ¶ 67. Nisan,

however, denies that he 11 intentionally withheld or concealed any material information in those

conversations. 12 Nisan Decl. ¶ 8. 13 In January 2023, Ryvyl announced that its new auditor,

Simon & Edwards, 14 "reported numerous material misstatements and inaccuracies" in Ryvyl's

"2021 SEC 15 filings, as well as material deficiencies in [Ryvyl's] internal controls[.]" FAC ¶ 30;

Nisan 16 Decl. ¶ 10, Exhibit C. On March 26, 2024, Ryvyl filed a Form 10-K with the SEC, 17 which disclosed to the public that its 2021 and 2022 financial statements were no longer 18 reliable and would be restated. FAC ¶ 35. Nisan denies having knowledge of the 19 deficiencies or the need for restatements “until long after [Byelick] was hired by Ryvyl.” 20 Nisan Decl. ¶ 8. 21 Byelick alleges that he recommended that Ryvyl restate “all prior material 22 misstatements and inaccuracies, including but not limited to” alleged improper “insider 23 transactions.” FAC ¶ 31; see also id. ¶ 16. However, Byelick alleges that CEO Nisan 24 and Chairman Errez “continuously and repeatedly refused to agree to restate” the “insider 25 transactions.” Id. Because Ryvyl would not cooperate with Byelick’s recommended 26 27 1 remedial efforts, Byelick felt forced to resign, and subsequently did resign on March 4, 2 2024. Id. ¶ 33, 69; Nisan Decl. ¶ 10. 3 II. Procedural History 4 Ryvyl’s disclosure of inaccuracies in its financial statements and subsequent 5 restatement of numerous financial statements resulted in a separate securities fraud class 6 action lawsuit. See Cullen v. RYVYL Inc., 2024 WL 4536471 (S.D. Cal. Oct. 21, 2024). 7 Byelick was initially named as a Defendant in Cullen. Id. at *2 n.3. However, the Court 8 dismissed the claims against Byelick with prejudice. Id. 9 Byelick subsequently filed the instant lawsuit against Ryvyl. ECF No. 1. On

10 January 19, Byelick filed the FAC, and Ryvyl moved to dismiss the FAC on February 3, 11 2025. ECF No. 28. The Court granted Ryvyl’s motion to dismiss in part and denied it in 12 part without leave to amend. ECF No. 40. Byelick’s remaining claims are for intentional 13 misrepresentation, fraudulent concealment, and wrongful constructive discharge in 14 violation of fundamental public policy. See id. Byelick now moves for summary 15 judgment on his intentional misrepresentation and fraudulent concealment claims. ECF

16 No. 43-2.

17 Byelick moved for partial summary judgment on July 3, 2025—before the parties 18 submitted a joint discovery plan, ECF No. 42 at 3; before Magistrate Judge Steve B. Chu 19 held an Early Neutral Evaluation (“ENE”) and Case Management Conference, ECF No. 20 45; before Magistrate Judge Chu issued a scheduling order regulating discovery, ECF No. 21 46; and, most notably, before Ryvyl submitted written discovery to Byelick, ECF No. 47- 22 5, Declaration of Paul Huston (“Huston Decl.”) ¶ 3.

23 DISCUSSION

24 “The court shall grant summary judgment if the movant shows that there is no 25 genuine dispute as to any material fact and the movant is entitled to judgment as a matter 26 of law.” Fed. R. Civ. P. 56(a). The movant must establish that it is entitled to judgment 27 1 as a matter of law through its “pleadings, depositions, answers to interrogatories, and 2 admissions on file, together with the affidavits, if any[.]” Fed. R. Civ. P. 56(c). 3 “Although [Federal Rule of Civil Procedure 56] allows a motion for summary 4 judgment to be filed at the commencement of an action, in many cases the motion will be 5 premature until the nonmovant has had time to file a responsive pleading or other pretrial 6 proceedings have been had.” Fed. R. Civ. P. 56, Advisory Committee’s

Notes (2010 7 Amendments, Note to Subdivision (b)). Indeed, “[c]ourts have denied ... pre-discovery 8 motions for summary judgment as premature despite technical compliance with the 9 timing provisions of Rule 56.” *Anthony v. County of San Diego*, 1134611, 2025 WL 10 1134611, at *1 (S.D. Cal. Apr. 16, 2025); see *Williams v. Yuan Chen*, No. S-10-1292- 11 CKD-P, 2011 WL 4354533, at *3 (E.D. Cal. Sept. 16, 2011) (denying plaintiff’s 12 summary judgment motion as premature where defendant had not yet filed an answer and 13 the court had not yet issued a discovery order); see also *Burlington N. Santa Fe R.R. Co. 14 v. Assiniboine & Sioux Tribes of Fort Peck Reservation*, 323 F.3d 767, 773 (9th Cir. 15 2003) (finding that when “a summary judgment motion is filed so early in the litigation, 16 before a party has had any realistic opportunity to pursue discovery relating to its theory 17 of the case,” the court should find the motion premature and allow the parties to take 18 discovery). Rule 56(d) specifically provides: “[i]f a nonmovant shows by affidavit or 19 declaration that, for specified reasons, it cannot present facts essential to justify its 20 opposition, the court may: (1) defer considering the motion or deny it; [or] (2) allow time 21 to obtain affidavits or declarations or take discovery[.]” Fed. R. Civ. P. 56(d). 22 Byelick’s motion is supported only by his own declaration and a statement of facts 23 that he claims are undisputed.¹ See ECF No. 43-1; ECF No. 43-3, Declaration of J. Drew 24 25 26 1 The facts Byelick lists are drawn largely from publicly available sources such as SEC filings, case law, and securities statutes, rules, and regulations. See ECF No. 43-1; see also Byelick Decl. 27 1 Byelick (“Byelick Decl.”). Without expressing an opinion on the merits of Byelick’s 2 claims, the Court notes that Ryvyl disputes many of his proffered facts. See generally 3 Nisan Decl.; see also ECF No. 47-6 (Ryvyl’s responses and objections to Byelick’s 4 statement of undisputed material facts). And, as Ryvyl points out in its responses and 5 objections, many of Byelick’s proclaimed undisputed facts are merely legal conclusions. 6 See ECF No. 43-1 at 5 (“Both RYVYL CEO Nisan and CFO Chung were on actual or 7 constructive notice...”). 8 Further, while Byelick argues that his allegations and the documents already on the 9 record are sufficient to warrant summary judgment, the reality is that his claims may 10 hinge on fact-intensive inquiries, such as whether Ryvyl “knowingly and intentionally 11 concealed” material facts about the company’s financials from him. Without the benefit 12 of discovery, Ryvyl, or the Court, cannot adequately determine whether genuine disputes 13 exist as to any material facts relevant to these inquiries. See *Huston Decl.* ¶¶ 3–4 (noting 14 that Ryvyl did not issue written discovery until after Byelick filed the instant motion and 15 that Ryvyl asked Byelick to “withdraw the Motion because it is premature”). 16 Accordingly, the Court finds that Byelick’s motion is premature and that deciding a 17 summary judgment motion on the merits is not appropriate at this juncture. See *Turner v. 18 County of San Diego*, No. 14-CV-2003-JAH (JLB), 2016 WL 6804998, at *6–8 (S.D. 19 Cal. Oct. 3, 2016) (denying plaintiff’s summary judgment motion “as premature and 20 unsupported by evidence” where plaintiff filed the motion on the same day defendant 21 filed its answer and “before the magistrate judge issued an order regulating discovery or 22 the parties submitted a joint discovery plan”); see also *Sernoffsky v. Novak*, No.

23-cv- 23 0039-MMA-MSB, 2023 WL 8439561, at *3 (S.D. Cal. Dec. 4, 2023) (“courts have found 24 pre-discovery summary judgment motions premature and have denied such premature 25 summary judgment motions”) (collecting cases). 26 / / / 27

1 CONCLUSION

2 For the above reasons, the Court DENIES Byelick’s motion for partial summary 3 judgment without prejudice. The Court VACATES the hearing scheduled for September 4 ||5, 2025. Byelick may file a new motion for summary judgment after taking discovery.” 5 IT IS SO ORDERED. 6 7 Dated: September 2, 2025 2 Ss 8 Hon. athe Cee 9 United States District Judge 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 PO 26 ||? Because it does not impact the Court’s decision, the Court DENIES Byelick’s motion for judicial 07 notice, ECF No. 49, as moot. 28 24-cv-01096-GPC-SBC