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KING COUNTY, WASHINGTON
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SUPERIOR COURT CLERK
BY Josephina Pech
DEPUTY

The Honorable Samuel Chung

SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

OAK HARBOR CAPITAL SPECIAL OPPORTUNITIES MASTER FUND, LP; OHCSOF GP, LLC; And OAK HARBOR CAPITAL, LLC, Plaintiffs, v. AHP SERVICING, LLC, a Delaware limited liability company; and JORGE NEWBERY, an individual, Defendants.	No. 23-2-25722-7 SEA **COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW** ***Clerk's Action Required***

This matter came before the Court for a bench trial before the Honorable Samuel Chung on September 2, 3, 4, and 8, 2025, on claims brought by Plaintiffs Oak Harbor Capital Special Opportunities Master Fund, LP ("OHCSOMF"), OHCSOF GP, LLC ("OHCSOF"), and Oak Harbor Capital LLC ("Oak Harbor Capital") for breach of contract, conversion, and turnover of assets against Defendants AHP Servicing, LLC ("AHP") and Jorge Newbery. Plaintiffs appeared by counsel Bradley S. Keller and M. Victoria Molina of Byrnes Keller Cromwell LLP. Defendants appeared by counsel Jeffrey B. Coopersmith, Eric A. Lindberg, and Rachel E. Hay of Corr Cronin LLP. The Court considered the testimony of the witnesses at trial, the exhibits admitted into evidence, the arguments of counsel, and the records and files herein. On September

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26, 2025, the Court issued its oral ruling finding in favor of Defendants, which is incorporated by reference herein.

I. FINDINGS OF FACT

Based on the evidentiary record presented at trial, the Court finds as follows:

A. Background

1. This action concerns two written agreements executed in December 2022 between Plaintiffs ("Oak Harbor Entities") and Defendant AHP Servicing, LLC ("AHP"): (a) a Demand Promissory Note, and (b) a State Court Litigation Claims Purchase Agreement ("SCLC or Purchase Agreement"). Plaintiffs' Exhibits 1 and 2. Regarding the transactions at issue in this case, defendant Jorge Newbery was at all times acting on behalf of AHP, and William Weinstein was at all times acting on behalf of the Oak Harbor entities.

2. Plaintiffs, the Oak Harbor entities, are controlled by William Weinstein, an attorney and an experienced purchaser of distressed assets. Mr. Weinstein purchases consumer debts from banks who have written off these debts and sell them for a small percentage of the loan face value. In 2007, he purchased a portfolio of consumer debts for $41 million dollars with a face of $2 billion dollars. Mr. Weinstein has institutional investors who provide funds to his companies. Oak Harbor is one of about 40 funds that Mr. Weinstein has created.

3. Defendant AHP is a mortgage loan servicing company managed by CEO Jorge Newbery, a resident of Barrington, Illinois. Mr. Newbery testified that he started his business American Homeowners Preservation as a non-profit to give back some money to homeowners but that AHP is now a for profit company focusing on default mortgages.

4. Prior to the transactions at issue in this case, Mr. Newbery and Mr. Weinstein had conducted some business together relating to debt collections and were familiar with each other.

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However, they had not previously contracted with each other for the sale and purchase of state court litigation claims ("SCLCs"), which are judgments obtained against consumers for credit card debts and enforceable against real property.

5. In December 2022, Mr. Weinstein asked Mr. Newbery whether AHP would be interested in purchasing a portfolio of SCLCs. Earlier in 2022, Mr. Weinstein had tried to market about 10,000 of these SCLCs for $10,000,000 but was not successful in finding a buyer. *See* Defendants' Exs. 29-31.

6. Mr. Newberry was interested in the SCLCs due to a promise of steady flow of cash recoveries from these judgments. Still, Mr. Newberry was concerned about AHP's potential exposure and financial risk, so he asked and received a "put back" remedy provision as a part of the contract. Under the put back clause, AHP would be able to return the SCLCs that AHP did not realize. Mr. Weinstein also promised that the SCLCs represent at least $100,000,000 in valid and enforceable claims. Mr. Newberry did not have much time to conduct extensive due diligence and largely relied on Mr. Weinstein who was eager to close the transaction before the end of the year. *See* Defendants' Ex. 45. Some of the material terms, like the cash down payment, were not finalized and left for the parties to resolve at a later time.

B. <u>The Purchase Agreement and Secured Demand Note</u>

7. On December 30, 2022, Mr. Newberry signed the Purchase Agreement and Promissory Note. *See* Plaintiffs' Exs. 1-2. The Note is between OHCSOMF LP and AHP. Mr. Newbery individually was not a party to the Purchase Agreement or Note. Mr. Newbery also did not personally guarantee the Note.

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8. Under the Purchase Agreement, the sellers of the SCLCs were not the Oak Harbor entities, but instead Keydally Capital Ltd. ("Keydally"), an Irish-registered company, and Pallida, LLC, ("Pallida"), a Delaware company. Keydally is a nominee entity controlled by Mr. Weinstein and Keydally is the sole member of Pallida. Oak Harbor Capital manages Pallida. Defendants' Ex. 9. Evidence showed that Mr. Newberry was unfamiliar with these entities but did not ask about them to Mr. Weinstein.[1]

9. The total contract purchase price was $12,153,885.85, to be financed by a $2,000,000 cash contribution from the Buyer and a Promissory Note, "which the Buyer is issuing to Oak Harbor in the amount of $10,153,885.85." The Purchase Agreement contained a "Put Remedy." It stated:

> 4. Put Remedy. The Buyer may at any time within the twenty fourth month following the Closing Date, and only within that limited window, put all and not part of the unrealized SCLs back to the Seller for their Purchase Price, as reduced for any realizations made on the SCLs following the Closing.

10. The Promissory Note is between OHCSOMF LP and AHP. Mr. Newbery individually was not a party to the Purchase Agreement or Note. Mr. Newbery also did not personally guarantee the Note.

11. The Promissory Note provided for a specific priority order of payments from the proceeds of the SCLCs. Section 2.1 stated:

> 2.1 General. Maker shall make monthly payments of the Principal Amount and accrued interest thereon to Lender and apply all proceeds of the Collateral (as defined below) in accordance with the following waterfall order of payment:

[1] Mr. Newberry admitted on cross examination that he was familiar with Paul Birkett, and that Paul Birkett maybe be involved in some way because the signor for Keydally was Darrah Birkett. However, he did not inquire this further with Mr. Weinstein.

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a. First, to pay the fees and out of pocket costs of Maker in servicing and managing the Collateral, which shall include without limitation a $100,000 per annum servicing fee and all collection agency and legal fees and costs related to the Collateral;
b. Second, to Lender, all accrued unpaid interest under the Note;
c. Third, to Maker, Maker's $2,000,000 cash contribution to fund the acquisition of the Collateral;
d. Fourth, 80% to Lender to be applied toward the unpaid principal balance under the Note and 20% to Maker; and
e. Fifth, the remainder, 80% to Maker and 20% to Lender.

Plaintiffs' Ex. 1.

12. After the parties executed the two agreements, Mr. Weinstein and his managers provided training to AHP's representatives on how to work the SCLCs. Ms. Dodd testified that she gave them access to Oak Harbor's specialized collection program called "Blossom."

13. While AHP worked on recovering on these SCLCs through its lawyers, Mr. Weinstein's companies also kept working on many of these claims despite the fact that they had been sold to AHP. There was no formal assignment of specific SCLCs to the buyer, and Ms. Dodd testified that she and her team had continued their recoveries on claims which had started prior to the sale. Ms. Dodd admitted that she never saw the Promissory Note provision requiring the seller to transfer 80% of the proceeds from the Collateral to AHP.

14. Similarly, to fulfill the $2 million "cash contribution" under the Purchase Agreement and the Promissory Note, Mr. Weinstein and Mr. Newberry negotiated to transfer certain debts between them based on their other business deals. However, they were never able to come to a final agreement.[2]

[2] Mr. Newberry admitted that in his company's accounting system, he recorded this $2 Million as a short term liability, meaning that it was to be paid within 1 year.

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15. After the purchase of the SCLCs, AHP did not obtain the types of returns from its collection efforts AHP had expected. Evidence showed that AHP lacked local lawyers, especially in Texas, to work on the SCLCs and that AHP was also not paying the lawyers who withdrew from AHP collection work. Mr. Weinstein testified that Mr. Newberry was personally taking millions of dollars from the recoveries on SCLCs. However, there was no proof or evidence presented supporting Mr. Weinstein's assertions.

16. In May 2023, Mr. Weinstein requested Mr. Newberry to amend the Purchase Agreement to allow Mr. Weinstein to take back some of the SCLCs that he had sold to AHP. Mr. Newberry testified that Mr. Weinstein told him that this would be only about 30 SCLCs amounting to $10,000. Mr. Newberry agreed to the amendment but discovered that Mr. Weinstein was taking back far more SCLCs and that recoveries from these SCLs would not be shared with AHP. Mr. Newberry felt betrayed by Mr. Weinstein and combined with the low rate of returns from the SCLCs, he regretted this transaction.

17. In September 2023, Mr. Newberry wanted to "put back" the remaining SCLCs under the Purchase Agreement's "Put Remedy" provision.[3] However, Mr. Weinstein refused to accept the put back and in October 2023, Mr. Weinstein told Mr. Newbery that AHP should wait until January 1, 2023 to exercise the Put Remedy, stating that the $2,000,000.00 owed would be "expunged" upon exercise of it. *See* Def. Ex. 78.

18. Mr. Weinstein and Mr. Newberry continued their negotiations. Then, in December 2023, Plaintiffs filed the current lawsuit demanding payments on the Promissory Note.

[3] Mr. Newberry testified that he did not know that the "Put Back" provision language stated that it can only be exercised during the "24th" month after the sale and not "within" 24 months. Mr. Newberry admitted that he had not read the provision carefully.

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Until this time, Plaintiffs had not made any formal demand for payment under the Promissory Note, and AHP made no separate payments for principal or interests under the Note.

19. On December 26, 2024, AHP again exercised the Put Remedy, this time within the twenty-fourth month following the Closing Date. AHP provided an accounting of recoveries on the SCLCs along with its exercise of the Put Remedy.

II. CONCLUSIONS OF LAW

Based on the records contained in the above reference matter and the evidence presented to the Court, the Court enters the following conclusions of law:

A. Plaintiffs' Claims for Breach of Contract, Conversion, and Turnover

21. The Court has jurisdiction over the parties and subject matter. Venue is proper in King County Superior Court.

22. The Court finds that the Promissory Notes and the Purchase Agreement are integrated agreements which must be construed together. Where two or more contracts are part of the same transaction and relate to the same subject-matter, are known to all the parties, and are delivered at the same time to accomplish an agreed purpose, such contracts must be construed together as parts of the same transaction; and this is so even though the contracts are not executed between the same parties. American Pipe & Const. Co., v. Harbor Const. Co., 51 Wash. 2d. 258, 265 (1957).

23. Plaintiffs claimed breach of contract, conversion, and sought turnover of the SCLCs. Plaintiffs alleged that AHP breached the agreement by realizing millions in the SCLCs and failing to make payments to Plaintiffs under the waterfall, and that interest is due under the Note.

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24. Under Washington law, a demand note is payable on demand unless a contrary intent appears from the face of the instrument. See, GMAC v. Everett Chevrolet, Inc., 179 Wn. App. 126, 317 P.3d 1074 (2014). If there is no contrary intention that appears either expressly or impliedly on the face of the note that the note must be paid or is otherwise "payable immediately on the date of its execution." Id., at 136.

25. The Court interprets the "waterfall" provision in the Note as establishing the contrary intent under GMAC v. Everett Chevrolet. It set the priority of payments, with the first payment due to AHP for its fees, costs, and $100,000.00 per annum management fee. AHP never received $200,000.00 for the two years spent servicing the SCLCs, as the agreement provided, or for its costs and fees.

26. Instead, applying the service fee of $100,000.00 due to AHP on an annual basis, there was a net loss of $85,938.60 that AHP should have received before any payment on interest was due under the Note.

27. Plaintiffs presented evidence that they collected approximately $773,000.00 on the SCLCs from late December 2022 to present. Plaintiff's Ex. 79. Plaintiffs did not share the proceeds of this collection with AHP under the waterfall to pay AHP's servicing fees and other costs, as they were required to and as was first in priority under the waterfall schedule. Plaintiffs did not disclose their collection of these funds until trial. Based on the waterfall provision in the Note, the Court finds that AHP therefore had no obligation to pay Plaintiffs interest on the Note unless and until the prior waterfall levels were satisfied.

28. Finally, the Court finds that the parties did not reach an agreement on the payment of $2,000,000 cash contribution. As stated above, at the time the two agreements were entered,

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Mr. Weinstein and Mr. Newberry agreed that they would agree to complete this provision by exchanging other debts to which the parties were never able.

29. The Court further finds that AHP could and did exercise the put under the Purchase Agreement on December 23, 2024, within the contractual 24th-month window. The Court finds that the term "unrealized" in the put remedy means judgments on which no recovery or collections had been made. It does not require a showing that such judgments were not enforceable. The Court rejects Mr. Weinstein's argument that this meant claims which cannot be realized and finds his testimony on this issue not credible. The Court will not read ambiguity into a contract where there is none. See, Mut. of Enumclaw v. USF Ins. Co., 164 Wn.2d 411, 424 n.9 (2008) (when a contract presents no ambiguity and no extrinsic evidence is required to make sense of the contract terms, contract interpretation is a question of law). Accordingly, the Court concludes that AHP properly exercised the Put Remedy and put back all SCLCs which had not been collected.

C. Defendants' Fraud Defense

32. Much of the evidence at trial centered around Defendants' claims of fraud. Defendants presented evidence, including deposition testimony, which established that Keydally, one of the sellers, was owned by Darragh Birkett, an Irish sandwich shop owner with no experience in managing distressed assets, and that Mr. Weinstein had paid Mr. Birket 6,000 Euros to sign documents related to Keydally which Mr. Birkett had no understanding of. *See* Defendants' Exs. 84; 86.

33. Defendants presented evidence that the Keydally transaction was for the purpose of inflating the value of the SCLCs and inducing Mr. Newbery into believing he was purchasing the assets from a legitimate third-party seller as opposed to Oak Harbor.

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34. Mr. Newbery testified he did not know Pallida and Keydally were shell companies with nominee figureheads when he entered the transaction with Plaintiffs.

35. Defendants presented evidence that Plaintiffs' purported sale of the SCLCs to Keydally prior to the sale to AHP was used by Plaintiffs to increase the sales price of the SCLCs' price from approximately $10 million to approximately $12 million after Plaintiffs' effort to sell the SCLCs through Mission Capital was unsuccessful. *See* Plaintiffs' Exhibit 22.

36. Defendants did not prove all nine elements of fraud particularly AHP's claim that it reasonably relied on any representations by the Oak Harbor entities. Both parties' representatives were experienced businesspeople and Mr. Newbery's cursory reading of contracts and overall lack of due diligence do not support reasonable reliance under the clear, cogent, and convincing standard.

III. ORDER

37. Accordingly, it is hereby ORDERED that judgment shall be entered in favor of Defendants AHP Servicing, LLC and Jorge Newbery. All other claims and defenses are denied.

IT IS SO ORDERED.

DATED this 28th day of October 2025.

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