

UNPUBLISHED**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 19-1488

BARRINGTON BOYD,

Plaintiff - Appellant,

v.

TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF AMERICA;
TIAA-CREF INDIVIDUAL AND INSTITUTIONAL SERVICES, LLC,

Defendants - Appellees.

Appeal from the United States District Court for the Western District of North Carolina, at Charlotte. Graham C. Mullen, Senior District Judge. (3:17-cv-00224-GCM)

Submitted: April 3, 2020

Decided: May 29, 2020

Before GREGORY, Chief Judge, and HARRIS and QUATTLEBAUM, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Kristen E. Finlon, ESSEX RICHARDS, Charlotte, North Carolina, for Appellant. Rebecca K. Lindahl, Michaela C. Holcombe, KATTEN MUCHIN ROSENMAN LLP, Charlotte, North Carolina, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Barrington Boyd appeals the district court’s order denying his partial motion for summary judgment and granting his former employer Teachers Insurance & Annuity Ass’n of America and TIAA-CREF Individual and Institutional Services, LLC (“TIAA”)’s motion for summary judgment. On appeal, Boyd’s sole claim is that TIAA breached a settlement agreement by including language on the Financial Industry Regulatory Authority, Inc. (“FINRA”)’s Form U5 related to his termination that was not bargained for. Finding no error, we affirm.

We “review[] de novo [a] district court’s order granting summary judgment.” *Jacobs v. N.C. Admin. Office of the Courts*, 780 F.3d 562, 565 n.1 (4th Cir. 2015). “A district court ‘shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.’” *Id.* (quoting Fed. R. Civ. P. 56(a)). When a “district court’s grant of summary judgment disposed of cross-motions for summary judgment, we consider each motion separately on its own merits to determine whether either of the parties deserves judgment as a matter of law.” *Defenders of Wildlife v. N.C. Dep’t of Transp.*, 762 F.3d 374, 392 (4th Cir. 2014) (internal quotation marks omitted).

To establish a breach of contract claim under North Carolina law, a plaintiff must establish “(1) existence of a valid contract and (2) breach of the terms of the contract.” *Wells Fargo Ins. Servs. USA, Inc. v. Link*, 827 S.E.2d 458, 472 (N.C. 2019) (brackets and internal quotation marks omitted). In interpreting the terms of the contract, “[i]f the language is clear and only one reasonable interpretation exists, the courts must enforce the

contract as written; they may not, under the guise of construing an ambiguous term, rewrite the contract or impose liabilities on the parties not bargained for and found therein.” *Hodgin v. Brighton*, 674 S.E.2d 444, 446 (N.C. Ct. App. 2009) (internal quotation marks omitted).

We conclude that the settlement agreement did not prohibit TIAA from including the disputed language on the Form U5. The settlement agreement was clearly directed at amending the termination explanation in the U5. However, FINRA required TIAA to provide an explanation for the amendment. The settlement agreement was silent as to how to explain the amendment. TIAA’s explanation provides context to the reason for termination contained in both U5s. As a licensed security professional represented by counsel in drafting the settlement agreement, the district court rightfully concluded that Boyd cannot claim ignorance of the fact that FINRA required an explanation for the amendment to excuse his failure to negotiate language for the amendment. *See Helms v. Schultze*, 588 S.E.2d 524, 527 (N.C. Ct. App. 2003) (“[T]he court’s only duty is to determine the legal effect of the language used and to enforce the agreement as written.” (internal quotation marks omitted)). Moreover, the mere fact that the agreement was silent as to how TIAA should have explained the amendment does not render the settlement agreement ambiguous.* *See Myers v. Myers*, 714 S.E.2d 194, 198 (N.C. Ct. App. 2011)

* In light of our conclusion that TIAA did not breach the settlement agreement, we need not address the parties’ arguments as to whether Boyd waived his claim by subsequently negotiating a second amendment to the U5 in December.

(recognizing contract “is ambiguous if the writing leaves it uncertain as to what the agreement was” (brackets and internal quotation marks omitted)).

Therefore, we affirm the district court’s order. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED