

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND
BUSINESS COURT**

**PIONEER METAL FINISHING, LLC,
Plaintiff,**

v.

**Case No. 14-140283-CK
Hon. James M. Alexander**

**PARTS FINISHING GROUP, INC, ET AL,
Defendants.**

OPINION AND ORDER RE: SUMMARY DISPOSITION

This matter is before the Court on Defendants’ motion for partial summary disposition. In their motion, Defendants seek dismissal of Plaintiff’s Count II for Fraud in the Inducement because said claim is “identical to [Plaintiff’s] breach of contract claim” except for its label.

According to its Amended Complaint, Plaintiff generally claims that this lawsuit arises from “Defendants’ breach of numerous representations, warranties, covenants, and agreements set forth in a November 4, 2012 Asset Purchase Agreement . . . whereby Defendants sold to Pioneer their metal finishing and custom coating business.”

Plaintiff argues that, in connection with the sale, Defendants “made several representations regarding the quality and condition of the assets [Plaintiff] purchased.” But “[a]lmost immediately after the asset purchase transaction closed,” Plaintiff claims that it “discovered many of Defendants’ representations were unreliable, misleading, and in some cases, demonstrably false.”

Examples of the alleged misrepresentations include: (1) the ventilation system in one plant was not functional – returning contaminated air back into the plant; (2) another plant’s boiler system, phosphate processing line, chain-on-edge conveyor, and dip spin line were not properly maintained; (3) an oxidizer at one plant was undersized and posed a “serious explosion hazard,” (4) “serious and systemic safety and environmental concerns” at another facility, and (5) improper employment practices, including “systemic discrimination based upon ethnicity.”

Plaintiff filed its two-count, Amended Complaint on August 15, 2014 – alleging claims of breach of contract and fraud in the inducement. Relevant to the current motion, Plaintiff’s breach of contract claim alleges:

The Defendants’ actions detailed above constitute material breaches of the [Asset Purchase Agreement], including, but not necessarily limited to, Sections 3.05 (Financial Information), 3.06 (Absence of Undisclosed Material Liabilities), 3.09 (Government Permits), 3.10 (Compliance with Laws), 3.11 (Environmental Matters), 3.14 (Employee Benefits), 3.15 (Taxes), 3.18 (Employment and Labor Matters), 3.23 (Condition of Assets), 5.01 (Conduct of Business Prior to the Closing), 5.05 (Notifications), and 7.02 (Conditions to Obligations of the Purchaser). [Amended Complaint, at paragraph 113].

Similarly, Plaintiff’s fraud in the inducement claim alleges:

As set forth above, prior to Closing, Defendants made a number of material representations in the [Asset Purchase Agreement], including, but not necessarily limited to, Sections 3.05 (Financial Information), 3.06 (Absence of Undisclosed Material Liabilities), 3.09 (Government Permits), 3.10 (Compliance with Laws), 3.11 (Environmental Matters), 3.14 (Employee Benefits), 3.15 (Taxes), 3.18 (Employment and Labor Matters), 3.23 (Condition of Assets), 5.01 (Conduct of Business Prior to the Closing), 5.05 (Notifications), and 7.02 (Conditions to Obligations of the Purchaser). [Amended Complaint, at paragraph 116].

Defendants argue they are entitled to summary disposition of Plaintiff’s “fraud” claim because it is “substantively identical to its Count I breach of contract claim.” And, Defendants argue, if Plaintiff’s theory that it was “defrauded” because it alleges that representations and

warranties contained in a written contract were not true, “then every breach of contract in every case would also be a ‘fraud.’”

To their end, Defendants move for summary disposition under MCR 2.116(C)(8), which tests the legal sufficiency of the complaint. All well-pled factual allegations are accepted as true and construed in a light most favorable to the nonmovant. *Wade v Dept of Corrections*, 439 Mich 158; 483 NW2d 26 (1992). A motion under this subrule may be granted only where the claims alleged are “so clearly unenforceable as a matter of law that no factual development could possibly justify recovery.” *Id.* When deciding such a motion, the court considers only the pleadings. MCR 2.116(C)(G)(5).

Defendants argue that they are entitled to summary disposition of Plaintiff’s fraud claim for several reasons. First, Defendants argue that said claim is improper because it is not based on any promise of future conduct. Next, Defendants argue that said claim is barred by the economic loss doctrine.

With respect to the economic-loss doctrine, Plaintiff argues that said doctrine has only been applied in claims relating to the sale of goods. While there is some dicta that the doctrine may have broader application, Plaintiff argues that the Court should not be persuaded by such comments. But the Court notes that both parties rely heavily on *Rinaldo’s Constr v Mich Bell Tel Co*, 454 Mich 65; 559 NW2d 647 (1997) in support of their positions, and *Rinaldo’s* involved a contract for services, not goods.

The *Rinaldo’s* Court clarified that a plaintiff may not simply recast its contract claim as a tort, reasoning “the threshold inquiry is whether the plaintiff alleges violation of a legal duty separate and distinct from the contractual obligation.” *Id.* at 84.

The *Rinaldo's* Court concluded that a plaintiff may not maintain a tort claim when it “does not allege violation of an independent legal duty distinct from the duties arising out of the contractual relationship.” *Id.* at 85. Michigan Courts have consistently reiterated this concept. See *Sherman v Sea Ray Boats*, 251 Mich App 41 52; 649 NW2d 783 (2002) (reasoning “Michigan case law expressly provides that an action in tort may not be maintained where a contractual agreement exists, unless a duty, separate and distinct from the contractual obligation, is established.”).

Plaintiff argues that the very essence of the economic-loss doctrine is “to force the parties to allocate risks in their contract, then enforce those terms” – citing to *Huron Tool & Engineering Co v Precision Consulting Services, Inc*, 209 Mich App 365; 532 NW2d 541 (1995). The Court, again, notes that *Huron Tool* rejected application of the economic loss doctrine to solely claims involving the sale of goods under UCC. *Id.* at 374.

The *Huron Tool* Court reasoned that “[t]here is a danger that tort remedies could simply engulf the contractual remedies and thereby undermine the reliability of commercial transactions. Once the contract has been made, the parties should be governed by it.” *Id.* at 371, quoting *Williams Electric Co, Inc v Honeywell, Inc*, 772 F Supp 1225, 1237-1238 (ND FL 1991).

The *Huron Tool* Court continued that this doctrine “encourages parties to negotiate economic risks through warranty provisions and price. . . . [And] the doctrine shields a defendant from unlimited liability for all economic consequences of a negligent act, particularly in a commercial setting, thus keeping the risk of liability reasonably calculable.” *Id.* at 371 (internal quotations and citations omitted).

To this end, Defendants claim that the parties **did negotiate** the remedies for a breach of the warranties and representations contained in the Asset Purchase Agreement. In Section 8.06

of the Agreement, Plaintiff and Defendants “acknowledge and agree that, following the Closing, the indemnification provisions of Sections 5.09, 8.02 and 8.03 shall be **the sole and exclusive remedies** of [Plaintiff] . . . for any breach by [Defendants] of the representations and warranties in this Agreement.” (emphasis added).

As a result, Defendants argue that Plaintiff expressly agreed that their remedies were limited to those permitted under the Agreement. The Court agrees. And this finding is consistent with the *Huron Tool* Court’s conclusion that “where the only misrepresentation by the dishonest party concerns the quality or character of the goods sold, the other party is still free to negotiate warranty and other terms to account for possible defects in the goods.” *Huron Tool*, 209 Mich App at 373.

Further, Plaintiff mistakenly relies on a provision found in Section 8.04(b) in support of their fraud claim. The provision is simply a limitation on indemnification (damages) provision – not a remedies provision. Said provision provides, in relevant part: “Losses arising out of or resulting from the fraud of an Indemnifying Party shall not be subject to any of the limitations set forth in this Section.”

Read together with Section 8.06, Section 8.04 simply provides an exception on indemnification limitations **if** Plaintiff had a **valid** fraud claim – not just a relabeled contract claim.

Plaintiff’s Amended Complaint alleges precisely the same “wrongs” for both its breach of contract and its fraud claim – that Defendants intentionally made false and misleading statements in certain representations and warranties that were contained **in the parties’ Agreement**. As a result, in its fraud claim, Plaintiff fails to allege any duty separate and distinct from those provided in the parties’ written Agreement.

For all of the above reasons, considering only the pleadings, and accepting all well-pled factual allegations as true, the Court concludes that Plaintiff's fraud claim (Count II) is "so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." As a result, Defendants' motion for summary disposition under MCR 2.116(C)(8) is GRANTED, and Plaintiff's Count II is DISMISSED.

IT IS SO ORDERED.

December 17, 2014
Date

/s/ James M. Alexander
Hon. James M. Alexander, Circuit Court Judge