

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

LANCIA JEEP HELLAS, S.A.,

Plaintiff,

v

Case No. 2014-142918-CZ

Hon. Wendy Potts

CHRYSLER GROUP INTERNATIONAL
LLC, et al,

Defendants.

OPINION AND ORDER RE: DEFENDANTS' MOTION FOR PARTIAL SUMMARY
DISPOSITION

At a session of Court
Held in Pontiac, Michigan

On
SEP 11 2015

Defendants Chrysler Group International, LLC, Fiat S.P.A, and Fiat Group Automobiles S.P.A. are vehicle manufacturers, and Plaintiff Lancia Jeep Hellas S.A. is a Greek distributor of Defendants' vehicles. In October 2010, Lancia, then known as Chrysler Jeep Dodge Hellas S.A., sued the same Defendants, Chrysler Group International, LLC, Fiat S.P.A, and Fiat Group Automobiles S.P.A., claiming breach of a Distribution Agreement, among other theories. The parties settled and dismissed that case in June 2011. Lancia filed this action in 2014 against the same Defendants asserting six separate claims for breach of the settlement agreement, as well as claims alleging fraudulent inducement, implied contract theories, and violation of Greek laws.

Defendants now move for summary disposition of most of Plaintiff's claims under MCR 2.116(C)(8), which tests the legal sufficiency of the complaint. *Maiden v Rozwood*, 461 Mich 109, 119-120; 597 NW2d 817 (1999). In deciding a (C)(8) motion, the Court accepts all well-

pleaded factual allegations as true and construes them in a light most favorable to the nonmoving party. *Maiden, supra*. The Court may grant the motion if the claims are clearly unenforceable as a matter of law and no factual development could possibly justify recovery. *Id.*

Defendants first assert that the integration clause in the settlement agreement bars Lancia's fraudulent inducement claim, citing *Hamade v Sunoco, Inc*, 271 Mich App 145; 721 NW2d 233 (2006). A party to an integrated agreement generally cannot rely on parol evidence of pre-contract representations to support a claim of fraud. *Hamade, supra* at 169-70. However, this principle does not bar all fraud claims arising from the negotiation of an agreement. An integration clause bars a claim that the parties had a collateral agreement or understanding that was not incorporated in the agreement, but it does not bar a claim that a party made misrepresentations to induce another party to enter into a contract. *Barclae v Zarb*, 300 Mich App 455, 481; 834 NW2d 100 (2013). "[F]raud will invalidate a contract when a party's assent to said contract is induced through *justified* reliance upon a fraudulent misrepresentation. A merger clause can render reliance unjustified as to agreements, promises or understandings related to performances that are not included in the written agreement." *Barclae, supra* at 482, quoting *Star Ins Co v United Commercial Ins Agency, Inc*, 392 F Supp 2d 927, 928-929 (ED Mich, 2005) (emphasis in original).

Here, Lancia is claiming that it was fraudulently induced to enter into the settlement agreement based on Defendants' representation that they intended to develop a complete line of Lancia vehicles. Although Lancia is not claiming that the parties entered into a collateral agreement, it is claiming that it relied on Defendants' promises to perform obligations not included in the settlement agreement. Thus, this case is nearly indistinguishable from *Hamade*, where the plaintiff also alleged fraudulent inducement based on his reliance on certain promises

Defendants made before they entered into the agreement. Because the integration clause renders Lancia's reliance on Defendants' pre-contractual promises unjustifiable, the fraud claim fails as a matter of law. *Barclae, supra; Hamade, supra.*

Lancia asserts that its fraud action is allowable because the release clause of the settlement agreement reserves its right to pursue a claim "related to the negotiation or breach of this agreement." However, Lancia cannot rely on a carve-out in the release clause to invalidate the integration clause. Although the release and integration clauses serve two distinct purposes, and appear to be somewhat inconsistent, they are both part of the same agreement and must be read in harmony if possible. The Court must "give effect to every word, phrase, and clause in a contract and avoid an interpretation that would render any part of the contract surplusage or nugatory." *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 468; 663 NW2d 447 (2003). If the Court were to conclude that the release language allows Lancia to pursue damages based on Defendants' alleged pre-contractual promises, that interpretation would render the integration clause meaningless. Contrary to Lancia's claim, the integration clause does not negate the release language. Lancia still has the right to pursue a claim based on the settlement negotiations, provided that the claim is not barred by the integration clause. Because Lancia's fraud claim based on alleged pre-contractual promises of performance is barred by the integration clause, it cannot be salvaged by the release language. For all of these reasons, Defendants are entitled to summary disposition of Lancia's Count 1 claiming fraud.

Defendants next assert that Lancia's Count 2 fails because it is based on an alleged breach of a duty of good faith and fair dealing, which is not a valid claim. Defendants are correct that, as a general rule, there is no cause of action for breach of an implied covenant of good faith and fair dealing. *Gorman v American Honda Motor Co*, 302 Mich App 113, 133-34; 839 NW2d

223 (2013). Although the Court may imply a covenant of good faith and fair dealing where one party to an agreement has complete discretion on how to perform its obligations, *Burkhardt v City National Bank*, 57 Mich App 649, 652; 226 NW2d 678 (1975), Lancia fails to explain how that principle applies here. Lancia cites no portion of the settlement agreement giving Defendants unfettered discretion on how to perform their obligations. Thus, Defendants are entitled to summary disposition of Lancia's Count 2 alleging breach of a duty of good faith and fair dealing.

Defendants also argue, and the Court agrees, that Lancia's Count 3 alleging "frustration of purpose" fails as a matter of law. Frustration of purpose is a defense to contract performance, not a cause of action. *Liggett Restaurant Group, Inc v City of Pontiac*, 260 Mich App 127, 133-34; 676 NW2d 633 (2003). Because Lancia cites no published Michigan case holding that the frustration of purpose doctrine can be used to assert an affirmative claim for damages, Defendants are entitled to summary disposition of Lancia's Count 3 alleging breach of contract based on frustration of purpose.

Defendants further assert that Lancia's Counts 6 and 7 fail because Defendants did not repudiate or "constructively terminate" the agreement. Repudiation requires a statement or conduct showing Defendants did not to perform under the agreement. *Stoddard v Manufacturers Nat'l Bank*, 234 Mich App 140, 163; 593 NW2d 630 (1999). Although Fiat announced that it was terminating the Lancia distribution agreement, it was entitled to do so under the agreement. Lancia cannot premise a repudiation theory on Defendants' exercise of a right they enjoyed under the agreement. Thus, Lancia's Count 7 alleging breach of the settlement agreement based on a repudiation theory fails as a matter of law. Because Count 6 alleging constructive termination is based on the same factual allegations as Count 7, and Michigan law does not

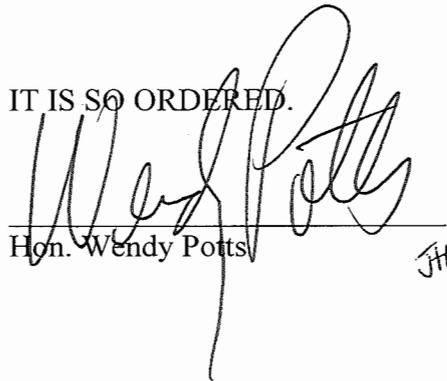
support a claim for constructive termination outside the employment context, this claim also fails. Thus, Defendants are entitled to summary disposition of Lancia's Counts 6 and 7.

In their final argument, Defendants assert that Lancia's Count 8 alleging promissory estoppel and Count 9 alleging unjust enrichment must be dismissed because the parties have an express, enforceable agreement covering the same subject matter. *HJ Tucker & Assoc, Inc v Allied Chucker & Engineering Co*, 234 Mich App 550, 573; 595 NW2d 176 (1999). Lancia correctly notes that it is entitled to plead alternative and inconsistent theories of relief. MCR 2.111(A)(2)(b). However, neither party is disputing the existence or validity of the settlement agreement. Lancia alleges in its complaint, and Defendants admit in their answer, that the settlement agreement is enforceable and governs the parties' relationship. To the extent that Lancia is asserting an implied contract other than the settlement agreement, that contract would be barred by the integration clause for the reasons stated above. Because both parties plead the existence and enforceability of an express agreement, Lancia's implied contract theories fail as a matter of law, and Defendants are entitled to summary disposition of Counts 8 and 9.

For all of these reasons, the Court grants Defendants' motion and dismisses Lancia's Count 1 alleging fraud, Count 2 alleging breach of a duty of good faith and fair dealing, Count 3 alleging breach based on frustration of purpose, Count 6 alleging constructive termination, Count 7 alleging repudiation, Count 8 alleging promissory estoppel, and Count 9 alleging unjust enrichment.

Dated: **SEP 11 2015**

IT IS SO ORDERED.



Hon. Wendy Potts

JH