

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

**ATCO INDUSTRIES, INC.,  
Plaintiff,**

v.

**Case No. 15-145091-CB  
Hon. James M. Alexander**

**MARTINREA AUTOMOTIVE STRUCTURES (USA), INC.,  
Defendant.**

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**OPINION AND ORDER RE: SUMMARY DISPOSITION**

This matter is before the Court on Defendant’s motion for summary disposition. In its motion, Defendant seeks dismissal of Plaintiff’s Counts II and III for Fraudulent and Innocent Misrepresentation and Count IV for Exemplary Damages. Defendant’s motion does not seek dismissal of Plaintiff’s remaining claim for Breach of Contract (Count I).

Plaintiff is in the business of third-party quality control sorting for numerous national and international suppliers and manufacturers. Plaintiff, in part, is hired by automobile parts suppliers to assure quality control for auto manufacturers. Defendant is an automotive parts supplier that contracted Plaintiff to provide sorting services at Defendant’s Springfield, Tennessee plant.

The parties initially contracted in September 2013, but ultimately entered into several written agreements. For each specific job, Defendant provided Plaintiff with “sort criteria” or work instructions that detailed the specific work that Plaintiff was to perform.

In its Complaint, Plaintiff alleges that, after only a few weeks, Defendant complained that Plaintiff was passing through inspection parts that did not meet Defendant’s guidelines. Defendant also stopped paying for Plaintiff’s services based on said improper sorting.

Plaintiff, on the other hand, claims that Defendant doctored photos of the origin of defective parts – to make it look like Plaintiff passed said parts. Plaintiff also claims that Defendant was re-using parts bins that Plaintiff previously stamped with appropriate certifications – “to fraudulently deliver unsorted parts to the manufacturer under the pretext of the parts having been sorted by Plaintiff.”

Plaintiff also claims that Defendant notified the auto manufacturer and accused Plaintiff of responsibility for the defective parts that actually resulted from Defendant’s own conduct.

Plaintiff claims that it inspected the “defective” parts and found no sign of the “witness inspection marks” that would have existed if Plaintiff had inspected them. Plaintiff also claims that Defendant was “reworking” previously rejected parts (instead of scrapping them as required) and forwarded the same to the manufacturer without Plaintiff’s knowledge.

Plaintiff claims that it continued to perform under the contract until February 28, 2014, when it ceased services due to Defendant’s nonpayment in an effort to mitigate its damages and claims that it is owed \$410,959.82 for its services under the parties’ agreements.

To recover its damages, Plaintiff filed the present Complaint on breach of contract, fraudulent and negligent misrepresentation, and exemplary damages claims.

Defendant now moves 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).

## **1. Count IV – Exemplary Damages**

Defendant first claims that it is entitled to summary of Plaintiff’s “exemplary damages” claim because such claim is not an independent cause of action and such damages are unavailable in the breach of a commercial contract.

In support, Defendant cites *Kewin v Massachusetts Mutual Ins Co*, 409 Mich 401; 295 NW2d 50 (1980) for the proposition that “absent allegation and proof of tortious conduct **existing independent of the breach**, . . . exemplary damages may not be awarded in common-law actions brought for breach of a commercial contract.” *Id.* at 420-421 (emphasis added); citing *Harbaugh v Citizens Telephone Co*, 190 Mich 421; 157 NW 32 (1916).

In response, Plaintiff concedes that exemplary damages are not awarded in straight breach of commercial contract cases, but Plaintiff claims that it alleges independent torts (its fraud claims), on which, to base its exemplary damages request.

In other words, Plaintiff concedes that its exemplary damages request cannot survive if its fraudulent and innocent misrepresentation claims fail. And Defendant claims that Plaintiff’s fraud claims are based entirely on the parties’ dispute regarding the sorting services provided under the agreements.

## **2. Counts II and III – Fraudulent and Innocent Misrepresentation**

With respect to Plaintiff’s fraud claims, Defendant argues that, under the economic-loss doctrine, it is entitled to dismissal of Plaintiff’s misrepresentation claims because Plaintiff’s remedy exists in contract alone.

“The economic loss doctrine, simply stated, provides that “[w]here a purchaser’s expectations in a sale are frustrated because the product he bought is not working properly, his

remedy is said to be in contract alone, for he has suffered only ‘economic’ losses.’” *Neibarger v Universal Coops*, 439 Mich 512, 520; 486 NW2d 612 (1992)

In support of its motion, Defendant cites *Huron Tool & Eng’g Co v Precision Consulting Services, Inc*, 209 Mich App 365, 373; 532 NW2d 541 (1995), which heavily relied on *Neibarger* and held “the doctrine is not limited to the UCC.” *Huron Tool*, 209 Mich App at 374. Our Supreme Court has also applied this doctrine to a contract for services. See *Rinaldo’s Constr v Mich Bell Tel Co*, 454 Mich 65, 84-85, 559 NW2d 647 (1997).

The *Huron Tool* Court allowed a **fraud in the inducement** claim survive because it “redresses misrepresentations that induce the buyer to enter into a contract but that do not in themselves constitute contract or warranty terms subsequently breached by the seller.” *Huron Tool*, 209 Mich App at 375. But the Court cautioned about other types of fraud, reasoning that its holding “heeds the Supreme Court’s admonition to avoid confusing contract and tort law. The danger of allowing contract law to ‘drown in a sea of tort’ exists only where fraud and breach of contract claims are factually indistinguishable.” *Huron Tool*, 209 Mich App at 375, citing *Neibarger*, 439 Mich at 528-529.

Defendant argues that Plaintiff “does not distinguish [Defendant’s] alleged misrepresentations that comprise the fraud claims from the breach of contract claim – each claim concerns the services performed pursuant to the contract for sorting.” The Court agrees.

A careful examination of Plaintiff’s Complaint reveals that both of its fraud counts are based on allegations that Defendant made representations related to its performance under the contract.<sup>1</sup> It appears that Plaintiff alleges specific breaches of the parties’ agreement, and then,

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<sup>1</sup> See paragraph 60 of Complaint, where Plaintiff alleges that Defendant “intentionally made false representations of material facts to Plaintiff regarding Plaintiff’s responsibility for failing to discover and sort defective parts.” See also paragraph 69, where Plaintiff alleges that it “would not have continued to perform [the contracted] sorting operations if Defendant had not made the representations.”

in its fraud counts, simply refers back to the same allegations and inserts “Defendant” into conclusory statements that mirror each of the fraud elements. Plaintiff, however, fails to allege fraud that is factually distinguishable from its breach of contract claims.

Plaintiff also fails to identify a separate and distinct legal duty between the parties outside of their written contracts, and as a result, fails to establish that Plaintiff had any other obligations outside of the parties’ contracts. *Fultz v Union-Commerce Assoc*, 470 Mich 460, 467; 683 NW2d 587 (2004) (holding “If no independent duty exists, no tort action based on a contract will lie.”).

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 claims (Counts II and III) are “so clearly unenforceable as a matter of law that no factual development could possibly justify recovery.” As a result, Defendant’s motion for summary disposition of under MCR 2.116(C)(8) is GRANTED, and Plaintiff’s Counts II and III are DISMISSED.

Further, because Plaintiff concedes that its exemplary damages claim may only exist if founded on an independent tort claim, and said claims were dismissed, Plaintiff’s Count IV for exemplary damages is similarly DISMISSED.

**IT IS SO ORDERED.**

April 22, 2015  
Date

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