

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

JVIS-USA, LLC, a Michigan limited liability company and JVIS MANUFACTURING, LLC, a Michigan limited liability company, d/b/a, JVIS USA MANUFACTURING, LLC,

Plaintiffs,

vs.

Case No. 2013-2742-CB

NARTRON CORPORATION, n/k/a GEN X MICROSYSTEMS and a/k/a OLDNAR CORPORATION, a Michigan corporation and UUSI, LLC, d/b/a NARTRON, a Michigan limited liability company,

Defendants,

and

UUSI, LLC, d/b/a NARTON, a Michigan limited liability company,

Defendant/Counter and Third-Party Plaintiff

vs.

JVIS-USA, LLC, a Michigan limited liability company and JVIS MANUFACTURING, LLC, a Michigan limited liability company, d/b/a, JVIS USA MANUFACTURING, LLC

Counter-Defendants,

and

FUTABA CORPORATION OF AMERICA, a foreign corporation, THOMAS J. GRONSKI, RANDY GRIFFIN, and GINA TERRY,

Third-Party Defendants.

FILED
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CARMELLA SABAUGH
MACOMB COUNTY CLERK
MT. CLEMENS, MICHIGAN

OPINION AND ORDER

Defendants have filed a motion for summary disposition of Plaintiffs' fraud claim and affirmative defense regarding fraud. Plaintiffs have filed a response and request that the motion be denied.

I. Factual and Procedural History

Plaintiffs JVIS-USA, LLC and JVIS Manufacturing, LLC (collectively, "Plaintiffs") are Tier I suppliers of automotive parts for Chrysler. Defendant is a Tier II supplier of circuit boards and other electronic components ("Parts") used in the interiors that Plaintiffs supply to Chrysler. Specifically at issue in this case is the cockpit module Plaintiffs supply Mayco International, LLC ("Mayco") to Chrysler for use in the 2014 Chrysler Jeep Grand Cherokee. Defendant was retained by Plaintiffs to develop and produce printed circuit board assemblies ("PCBs") for the module.

The parties' relationship eventually fell apart with Plaintiffs ultimately utilizing third parties to satisfy its need for the PCBs. On May 5, 2016, Plaintiffs filed their first amended complaint ("Complaint") against Defendants. Count VI of the Complaint purports the state a claim for fraud. Similarly, affirmative defense no. 10 to Defendants' counter-complaint is that Defendants' claims are barred by reason of their' fraudulent conduct.

On August 11, 2016, Defendants filed their instant motion for summary disposition of Count VI of the Complaint, as well as affirmative defense no. 10. On September 1, 2016, Plaintiffs filed their response to the motion in which they request that the motion be denied. On September 2, 2016, Defendants filed a reply brief in

support of their motion. On September 12, 2016, the Court held a hearing in connection with the motion and took the matter under advisement.

II. Standard of Review

Summary disposition may be granted pursuant to MCR 2.116(C)(8) on the ground that the opposing party has failed to state a claim upon which relief may be granted. *Radtke v Everett*, 442 Mich 368, 373-374; 501 NW2d 155 (1993). A motion under MCR 2.116(C)(9) tests the sufficiency of a defendant's pleadings by accepting all well-pleaded allegations as true. *Id.* If the defenses are so clearly untenable as a matter of law that no factual development could possibly deny plaintiff's right to recovery, then summary disposition under this rule is proper. *Id.* Further, a court may look only to the parties' pleadings in deciding a motion under MCR 2.116(C)(8) or (9). *Id.*

A motion under MCR 2.116(C)(10), on the other hand, tests the factual support of a claim. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). In reviewing such a motion, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties in the light most favorable to the party opposing the motion. *Id.* Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Id.* The Court must only consider the substantively admissible evidence actually proffered in opposition to the motion, and may not rely on the mere possibility that the claim might be supported by evidence produced at trial. *Id.*, at 121.

III. Arguments and Analysis

Defendants assert that Plaintiffs' fraud claim and defense should be dismissed because they are not separate and distinct from Plaintiffs' breach of contract claim. Misrepresentations related to the fulfillment of a contractual duty may not give rise to an independent action in tort. *Cooper v Auto Club Ins. Ass'n*, 481 Mich 399, 410; 751 NW2d 443 (2008). Accordingly, to maintain their fraud claim, the law requires plaintiffs to establish the "violation of a legal duty separate and distinct from the contractual obligation." *Rinaldo's Constr Corp. v. Michigan Bell Tel Co.*, 454 Mich 65, 84; 559 NW2d 647 (1997). This rule is commonly known as the economic loss doctrine. Claims based upon fraud in the inducement are exempt from the economic loss doctrine. *Huron Tool and Engineering Co., v Precision Consulting Services, Inc.*, 209 Mich App 365; 532 NW2d 541 (1995).

Plaintiffs assert in this case that their fraud claims and affirmative defenses arise out of false statements made, and the suppression of facts, before, during and after Defendants' May 26, 2011 PowerPoint presentation in which they allegedly stated that they had the present and open capacity to produce 240,000 PCBs, plus all of its other work, while only using 61% of their production capacity. Plaintiffs further assert that Defendants' statements and suppression of facts induced them into entering into the contract at issue in this case. Based on this position, it is clear that Plaintiffs' fraud claim and defense sound in fraud in the inducement and are thus exempt from the economic loss doctrine.

Defendants additionally aver that Plaintiffs' fraud claim and defense should be dismissed because the parties' contract was in place prior to May 26, 2011, and as a

result, any allegedly fraudulent conduct occurring on that date could not have induced Plaintiffs into entering into a contract that already existed. In support of their position, Defendants rely on a May 18, 2011 PowerPoint presentation Plaintiffs presented to Chrysler in which they listed Defendants as a member of the team that would be contributing to the end product Chrysler required. (See Defendants' Exhibit M.) Further, Defendants aver that they began sending Plaintiffs quotes on May 3, 2011, which indicates that the contract was formed before Defendants engaged in the allegedly fraudulent conduct. (See Defendants' Exhibit I.)

In response, Plaintiffs rely on the testimony of their former account manager, Todd Stehney, in which he stated that the parties were merely engaged in a "quoting process" in May 2011, and that no contract had been formed. (See Plaintiffs' Exhibit 2, at 11.) Further, Mr. Stehney testified that Plaintiffs were not awarded the project from Chrysler until August 2011, that after that date the purchase orders forming the contract were issued, and that the purchase orders constitute the parties' contract. (*Id.* at 13.)

In this case the parties dispute the terms of the parties' contract. Specifically, the parties' dispute includes whether Defendants' quotes or Plaintiffs' purchase orders, or a combination of the two, constitute their contract. Without being able to determine what terms constitute the parties' contract, including the date that controlling document(s) were issued, it is impossible to determine whether the contract at issue was executed before or after the allegedly fraudulent conduct took place. As a result, the Court is satisfied that a genuine issue of material fact exists as to whether the allegedly fraudulent conduct took place before or after the parties' contract was formed.

In addition, Defendants also aver that Plaintiffs fraud claim and defense should be dismissed as a matter of law because they did not rely on the alleged statements regarding capacity in deciding to enter into the contract with Defendants. Specifically, Defendants contend that Chrysler required Plaintiffs to work with Defendants and that as a result it was Chrysler's directive rather than Defendants' statements regarding capacity that caused Plaintiffs to choose to work with Defendants. In support of their position, Defendants rely on the deposition of Plaintiffs' representative Arthur Hariskos at which he testified that the parties' relationship was an arranged marriage by Chrysler. (See Defendants' Exhibit D, at 54-55, 62.)

In response, Plaintiffs rely on the testimony of their president, Jason Murar, in which he stated that Plaintiffs would not have sourced Defendants into the project had they known that Defendants did not have the capacity and equipment necessary to meet the projects requirements. (See Plaintiffs' Exhibit 1, at 73.)

Based on the testimony of Mr. Murar, the Court is satisfied that a genuine issue of material facts exists as to whether Plaintiffs' relied on Defendants' allegedly fraudulent conduct. As a result, Defendants' position that there is not genuine issue of material fact on the issue of reliance is without merit.

Finally, Defendants aver that Plaintiffs fraud claim and defense should be dismissed because that the alleged statements were promises of future performance, and that such promises cannot form the basis for a fraud claim. Failure to carry out a promise to do a future act is not actionable fraud. *Mich Nat Bank v H-D-H Studios*, 73 Mich App 12; 250 NW2d 531 (1976). In this case, Plaintiffs fraud claims are not based on a promise of future conduct. Rather, Plaintiffs claim/defense is based on

Defendants' alleged representation that they had the present capacity to meet the contractual requirements. Further, Plaintiffs have provided evidence supporting their position that Defendants made statements that they had the current capacity to meet the contract's requirements. (See Plaintiffs' Exhibits 1 and 20.) Consequently, the Court is convinced that at a minimum a genuine issue of material fact exists as to whether statements at issue were promises regarding future conduct or statements of present fact. As a result, the Court is satisfied that Defendants' position does not warrant summary disposition in their favor.

Conclusion

For the reasons discussed above, Defendants' motion for summary disposition of Plaintiffs' fraud claim and defense is DENIED. In compliance with MCR 2.602(A)(3), the Court states this Opinion and Order does not resolve the last claim and does not close the case.

IT IS SO ORDERED.

Date: OCT 13 2018

Kathryn A. Viviano
Hon. Kathryn A. Viviano, Circuit Court Judge