

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

FLAVIA DE VENY,

Plaintiff,

Case No: 2022-191889-CB
Hon. Victoria Valentine

v.

P & C GROUP 1, INC., a
Michigan corporation, and
ARVIND PRADHAN, jointly
and severally,

Defendants.

BOGAS & KONCIUS, PC
Kathleen L. Bogas (P25164)
Brian E. Koncius (P69278)
Attorneys for Plaintiff
31700 Telegraph Road, Suite 160
Bingham Farms, MI 48025
(248) 502-5000
office@kbogaslaw.com

Clark Hill PLC
Robert M. Vercruysse (P21810)
500 Woodward Avenue, Suite 3500
Detroit, Michigan 48226-3435
(313) 965-8325
rvercruysse@clarkhill.com

Anne-Marie V. Welch (P70035)
151 South Old Woodward Ave. Ste. 151
Birmingham, MI 48009
(248) 988-1810
awelch@clarkhill.com
Attorneys For Defendants

OPINION AND ORDER

At a session of said Court held on the
24th day of August 2022 in the County of
Oakland, State of Michigan

PRESENT: HON. VICTORIA A. VALENTINE

This matter is before the Court on Defendants' motion for summary disposition pursuant to MCR 2.116 (C)(8), which seeks to dismiss counts II (Fraudulent Misrepresentation) and III (Negligent Misrepresentation) of Plaintiff's First Amended Complaint.

The Court, after reviewing the briefs, after hearing oral argument on August 24, 2022, and

being fully advised in the premises, respectfully DENIES Defendants' Motion for the reasons set forth below.

I. FACTS

A. Employment Agreement

Plaintiff and Defendants entered into negotiations for Plaintiff to join Defendant P&C in the capacity of President and Chief Executive Officer (CEO).¹ At the time of these negotiations, Defendants provided Plaintiff with information and documents pertaining to the financial and operational health of P&C, which Plaintiff alleges Defendants represented to Plaintiff contained accurate information.² In reliance on the information and documents provided by Defendants, Plaintiff agreed to become employed by Defendant P&C as President and CEO effective May 21, 2018 and agreed to an Employment Agreement that sets forth compensation and benefits, as well and further compensation based on P&C's performance.³

The May 2018 Agreement contained a merger clause, which provided as follows:

Entire Agreement. This Agreement, those documents expressly referred to herein and other documents of even date herewith embody the complete agreement and understanding among the parties and **supersede and preempt any prior understandings, agreements or representations by or among the parties, written or oral, which may have related to the subject matter hereof in any way.** EXECUTIVE AGREES THAT THIS AGREEMENT REPLACES ALL EXISTING EMPLOYMENT, BONUS, SEVERANCE, LONG AND SHORT TERM INCENTIVE PLANS, AND SIMILAR PLANS OR ARRANGEMENTS BETWEEN EXECUTIVE AND ANY OF THE COMPANY ENTITIES ("PRIOR BENEFITS"), AND EXECUTIVE

¹ Plaintiff's First Amended Complaint, ¶ 6.

² Plaintiff's First Amended Complaint, ¶ 7.

³ Plaintiff's First Amended Complaint, ¶18 and Exhibit A attached thereto.

AGREES THAT SHE IS NOT ENTITLED TO ANY PRIOR BENEFITS AS OF THE EFFECTIVE DATE AND THAT ANY AND ALL SUCH EXISTING AGREEMENTS ARE CANCELLED AND TERMINATED AS OF THE EFFECTIVE DATE.⁴

The May 18, 2018, Employment Agreement was followed by an Amended Employment Agreement dated May 23, 2019⁵ and another Amended Employment Agreement dated December 31, 2020.⁶ Both of these Amended Employment Agreements contain the same Merger Clause contained in the May 18, 2018, Agreement.⁷

B. The Alleged Pre-Employment Misrepresentations

Plaintiff alleges that, during her employment with P&C, she discovered Defendants had misrepresented the financial and operational health of P&C during negotiations for Plaintiff to become President and CEO of Defendant Company, including, but not limited to, the following:

- a. Defendants provided financials that were not audited by a third party auditor (nor was Plaintiff informed of such);
- b. Defendants never disclosed that third party financial audits were two years in arrears;
- c. Defendants provided grossly misleading financials with company Net Income before Taxes (what Plaintiffs bonuses were to be measured on) that showed as net positive for 2017 Actual and 2018 Projected, Post-audit 2017 financials, completed after Plaintiff was hired, reflected a net percent difference of 375% to the negative between actual Operating Income versus that reflected in the 2017 financials Plaintiff was provided AND a net percent difference of 658% to the negative between actual Net Income before Taxes versus that reflected in the 2017 financials

⁴ Plaintiff's First Amended Complaint, Exhibit A ¶ 9 (b) (emphasis added).

⁵ Plaintiff's First Amended Complaint, Exhibit B.

⁶ Plaintiff's First Amended Complaint, Exhibit C.

⁷ Plaintiff's First Amended Complaint, Exhibit B ¶ 9 (b); Exhibit C ¶ 9 (b).

Plaintiff was provided, differences too egregious and losses too material to be unknown by Defendants;

- d. Defendants provided Enterprise Valuations for 2017 and 2018 that were materially different than actuals which negatively impacted what Plaintiffs Long-Term Incentive Plan ("LTIP") was based on;
- e. Defendants never disclosed that P&C had no means of borrowing at the time to finance substantial key programs and company endeavors. All that had been shared with Plaintiff by Defendants was that they were in the process of getting some financing needed to fund a very large program and operate P&C and that such financing would be completed prior to Plaintiffs employ P&C. That funding did not occur;
- f. Defendants never disclosed that P&C was financially distressed;
- g. Defendants never disclosed that P&C was under an Accommodation Agreement with a key customer as a result of material unpaid payables owed to that customer;
- h. Defendants never disclosed that a key customer was threatening to revoke a new program and material business with P&C, which would result in the loss of one-third of the Defendant Company's revenues, because it was extremely concerned about P&C's financial health and its ability to operate and launch new programs;
- i. Defendants never disclosed that the Defendant Company was well overdue with the vast majority of its supply base (with material amounts in aged accounts payable over 60+ days) and that it had not been current in years; and
- j. Defendants never disclosed other substantial expenses P&C was incurring such as the debt associated with Prahba (an affiliated captive insurance) and the consultant fees for groups such as Huron and Angle Advisors.⁸

⁸ Plaintiff's First Amended Complaint, ¶ 27.

Plaintiff also discovered the financial documents provided to her prior to her entering into the Employment Agreement with Defendants were false, including, but not limited to:

- a. 2016 and 2017 financial records were not audited. As previously stated, post-audit 2017 financials, completed after Plaintiff was hired, reflected a net percent difference of 375% to the negative between actual Operating Income versus that reflected in the 2017 financials Plaintiff was provided AND a net percent difference of 658% to the negative between actual Net Income before Taxes versus that reflected in the 2017 financials Plaintiff was provided, differences too egregious and losses too material to be unknown by Defendants.
- b. Reflected current liabilities for 2016 and 2017 that equate to a net percent difference of 27% and 9% to the negative respectively, versus the same numbers in the post-audit 2016 and 2017 financials;
- c. Several documents were provided that reflected 2017 actual EBITDA [Earnings Before Interest, Taxes, Depreciation and Amortization] and 2018 projected EBITDA. These documents were used to negotiate Plaintiffs Employment Agreement terms.

Differences between all EBITDA financials provided to actual post-audited financials were materially disparate. One such document provided on April 29, 2018, reflected a net percent difference of 87% to the negative between actual 2017 Adjusted EBITDA post-audit versus that reflected in the 2017 financials Plaintiff was provided AND a net percent difference of 57% to the negative between actual 2018 Adjusted EBITDA post-audit versus that reflected in the 2018 projected financials Plaintiff was provided. Such differences are too egregious and losses too material to be unknown by Defendants; and

- d. Prior to Plaintiffs employment and when negotiating her Employment Agreement, Plaintiff was provided one Base Enterprise Value (EV) by Defendants for 2017 and two Base Projected EVs for 2018, values which Plaintiff's Long-Term Incentive Plan were to be measured on. Actual post-audit financials, completed after Plaintiff was hired, reflected a net percent difference of 97% to the negative

between actual 2017 Enterprise Value versus that reflected in the 2017 financials Plaintiff was provided AND a net percent difference of between 61% and 64% to the negative between actual 2018 Adjusted Enterprise Value versus that reflected in both of the 2018 projected financials Plaintiff was provided. Such differences are too egregious and losses too material to be unknown by Defendants.⁹

In her misrepresentation claims (Counts II and III), Plaintiff alleges that the misrepresentations affected her potential bonus and stock options (Long Term Incentive Plan) that were provided in the Employment Agreement.¹⁰

On July 19, 2021, Plaintiff delivered her notice to Defendant stating that she was "terminating my employment, and my Employment Agreement, for Good Reason (as defined in Section 6 of the Employment Agreement). My termination for Good Reason shall be effective as of July 30, 2021."¹¹ Plaintiff then filed the instant case, alleging breach of contract, fraudulent misrepresentation and negligent misrepresentation. Defendant files this Motion for Summary Disposition seeking to dismiss counts II (Fraudulent Misrepresentation) and III (Negligent Misrepresentation) of Plaintiff's First Amended Complaint, claiming these counts are barred by the contract's integration/merger clause.

II. STANDARD OF REVIEW

A motion for summary disposition brought under MCR 2.116(C)(8) tests the legal sufficiency of the Complaint on the basis of the pleadings alone. *Beaudrie v Henderson*, 465 Mich 124, 129 (2001). All well-pleaded factual allegations are accepted as true and construed in the light most favorable to the nonmovant. *Wade v Dep't of Corrections*, 439

⁹ Plaintiff's First Amended Complaint, ¶ 28.

¹⁰ Plaintiff's First Amended Complaint, ¶¶ 37-39, 45-47.

¹¹ Plaintiff's First Amended Complaint, ¶ 25.

Mich 158, 162-63 (1992). A motion under MCR 2.116(C)(8) may be granted when the claims alleged are "so clearly unenforceable as a matter of law that no factual development could possibly justify recovery."⁵ *Id.* at 163. And once a document is attached as part of the pleading, the instrument becomes part of that pleading "even for purposes of review under MCR 2.116(C)(8)." See *Laurel Woods Apartments v Roumayah*, 274 Mich App 631, 635, (2007).

II. ANALYSIS

The merger clause at issue provides as follows:

Entire Agreement. This Agreement, those documents expressly referred to herein and other documents of even date herewith embody the complete agreement and understanding among the parties and **supersede and preempt any prior understandings, agreements or representations by or among the parties, written or oral, which may have related to the subject matter hereof in any way.** EXECUTIVE AGREES THAT THIS AGREEMENT REPLACES ALL EXISTING EMPLOYMENT, BONUS, SEVERANCE, LONG AND SHORT TERM INCENTIVE PLANS, AND SIMILAR PLANS OR ARRANGEMENTS BETWEEN EXECUTIVE AND ANY OF THE COMPANY ENTITIES ("PRIOR BENEFITS"), AND EXECUTIVE AGREES THAT SHE IS NOT ENTITLED TO ANY PRIOR BENEFITS AS OF THE EFFECTIVE DATE AND THAT ANY AND ALL SUCH EXISTING AGREEMENTS ARE CANCELLED AND TERMINATED AS OF THE EFFECTIVE DATE.¹²

Defendant primarily relies on *Hamade v Sunoco, Inc*, 271 Mich App 145 (2006) and *UAW-GM Human Resource Center v KSL Recreation Corp*, 228 Mich App 486 (1998) for the premise that unless the alleged fraud invalidates the integration/merger clause itself, an integration/merger

¹² Plaintiff's First Amended Complaint, Exhibit A ¶ 9 (b) (emphasis added).

clause precludes reliance on fraud and/or on the alleged misrepresentations made prior to the Agreement.

Plaintiff argues that it is **not** alleging that there was a prior separate agreement between the parties that was not memorialized in or that contradicts the terms of the Employment Agreements, where in such instances a merger provision may bar the fraud claims. Rather, Plaintiff argues that were *factual statements/representations* not otherwise evidenced in the Employment Agreements that induced her to enter into those agreements and that impacted the compensation and benefit formulas set forth in those Employment Agreements.

Plaintiff primarily relies on the unpublished¹³ case of *Jenson v Gallagher*, 2014 WL 667790 and the federal cases of *Dhadphale FBO v Delaney*, 2019 WL 3997150 and *Star Ins Co v United Commercial Ins Agency, Inc*, 392 F Supp2d 927 (ED Mich 2005), which discuss the distinction between (1) misrepresentations of fact made by one party to another to induce that party to enter into a contract and (2) collateral agreements or understandings between two parties that are not expressed in a written contract. As such, Plaintiff argues that under the first scenario the integration/merger provision does not preclude her misrepresentation claims under Counts II and III because they allege misrepresentations of fact made to induce her to enter into the employment agreement.

The Court finds the cases upon which Plaintiff relies persuasive because they address the situation at hand—alleged misrepresentations made to induce Plaintiff to enter into the

¹³ Unpublished decisions of this Court are not binding, MCR 7.215(C)(1), but they can be “instructive or persuasive,” *Paris Meadows, LLC v City of Kentwood*, 287 Mich App 136 n 3 (2010).

employment agreement. In the unpublished opinion¹⁴ of *Jenson v Gallagher*, 2014 WL 667790, the Court distinguished the facts in the cases of *Hamade v Sunoco, Inc*, 271 Mich App 145 (2006)¹⁵ and *UAW-GM Human Resource Center v KSL Recreation Corp*, 228 Mich App 486 (1998)¹⁶ upon which Defendant relies, from the facts therein and reversed the summary disposition granted in favor of defendant. The Court found “[i]n the case at bar, the misrepresentation did not concern the need for a particular clause in the contract. Rather, it went directly to plaintiffs' desire in purchasing the property at all. That is, it fraudulently induced them to sign the contract.” *Id.*, * 3.

The *Jenson* Court also quoted approvingly from *Star Ins Co v United Commercial Ins Agency, Inc*, 392 F Supp 2d 927 (ED Mich 2005), upon which Plaintiff relies:

It is true that a merger clause can be worded so as to preclude a party to a contract from bringing forth evidence of prior or even contemporaneous collateral *agreements* between the parties to the contract, even when such agreements were allegedly an inducement for entering into the contract. *UAW–GM Human Resource Center v KSL Recreation Corp*, 228 Mich App 486, 502; 579 NW2d 411 (1998). In the *UAW–GM* case, the representation was that the hotel had all union employees. Yet, Defendant in the present case has not alleged that there were collateral agreements between the parties in this matter outside of the parties' written contracts. Defendant has alleged that Plaintiffs and Third–Party Defendant made fraudulent misrepresentations which induced it to enter into the contract in the first instance and to remain in the contract instead of exercising the termination option.

¹⁴ Again Unpublished decisions of this Court are not binding, MCR 7.215(C)(1), but they can be “instructive or persuasive,” *Paris Meadows, LLC v. City of Kentwood*, 287 Mich App 136 n 3, 783 NW2d 133 (2010). ”

¹⁵ In *Hamade v Sunoco, Inc*, 271 Mich App 145 (2006), “plaintiff's claim could not survive the integration clause because he could not show that he was defrauded into believing that there was no integration clause or that the contract did, in fact, include an exclusive territory clause. *Id.*” That is, the plaintiff knew that he was signing an agreement that did not contain an exclusive territory clause.” *Jenson*, *supra* * 3.

¹⁶ “[T]he *UAW–GM* court did not bar a fraud claim in all cases in which the underlying contract has a merger clause, the court simply held that in that case the “plaintiff made no allegations of fraud that would invalidate the contract or the merger clause.” *Jenson*, *supra*. at *5 quoting *Star Ins Co v United Commercial Ins Agency, Inc*, 392 F Supp 2d 927, 928-929 (ED Mich 2005).

There is an important distinction between (a) representations of fact made by one party to another to induce that party to enter into a contract, and (b) collateral agreements or understandings between two parties that are not expressed in a written contract. It is only the latter that are eviscerated by a merger clause, even if such were the product of misrepresentation. It stretches the *UAW–GM* ruling too far to say that any pre-contractual factual misrepresentations made by a party to a contract are wiped away by simply including a merger clause in the final contract. Such a holding would provide protection for disreputable parties who knowingly submit false accountings, doctored credentials and/or already encumbered properties as security to unknowing parties as long as they were savvy enough to include a merger clause in their contracts. In fact, the *UAW–GM* court considered the effect of fraud allegations on a contract with a merger clause and determined that evidence was admissible to prove fraud that would “invalidate the merger clause itself, i.e., fraud relating to the merger clause *or fraud that invalidates the entire contract including the merger clause*.” 3 Corbin, Contracts, § 578.” *Id.* at 503. Further, the section of Corbin On Contracts cited by *UAW–GM*, § 578, states that a merger clause “even though it is contained in a complete and accurate integration does not prevent proof of fraudulent misrepresentations by a party to the contract, or of illegality, accident or mistake.” 6 Corbin, Contracts, § 578, p. 114 (reprinted as published in the 1960 edition of Volume 3). *Id.** 4.

Similarly, in *Dhadphale v Delaney*, unpublished, 2019 WL 3997150 (ED Mich, August 23, 2019), which cites to *Jenson v Gallagher*, the alleged fraud was based on representations about one defendant's experience and eagerness to manage the business and another defendant's representation about his willingness and ability to contribute \$500,000 to the business venture. Defendant contended that because these alleged misrepresentations were orally made outside of the operating agreement, which contained a merger clause, Plaintiff's reliance on them could not be reasonable. The *Dhadphale* Court, which cited to *UAW-GM Human Resource Center v KSL Recreation Corp*, 228 Mich App 486 (1998) upon which Defendant here relies, disagreed. The Court held:

Applying Michigan law on reasonable reliance, this argument must fail. First, Michigan courts “have not adopted a *per se* rule making reliance on prior

statements unreasonable after a contract containing a merger clause is signed.” *Diamond Comput Sys, Inc v SBC Comm, Inc*, 424 F Supp 2d 970, 985 (ED Mich 2006). More fundamentally, a plaintiffs’ reliance on an oral statement outside of a written contract between the parties is only deemed *de facto* unreasonable under Michigan law “if this oral representation is ‘*contradicted*’ by a written contract between the parties or otherwise conflict[s] with a written document that is readily available to the plaintiff.” *Miller v CVS Pharm, Inc*, 779 F Supp 2d 683, 689 (ED Mich 2011) (quoting *Chimko v Shermeta*, No. 264845, 2006 WL 2060417, *3 (Mich Ct App Jul. 25, 2006) (unpublished) (per curiam)). **Here, Plaintiffs are not arguing that Delaney’s alleged misrepresentations prior to execution of the operating agreement conflicted with the agreement or somehow altered its terms. To the contrary, Plaintiffs assert that Delaney’s oral misrepresentations induced them to sign the operating agreement in the first place.** As explained by the Michigan Court of Appeals in *Jenson v Gallagher*, “[t]here is an important distinction between (a) representations of fact made by one party to another to induce that party to enter into a contract, and (b) collateral agreements or understandings between two parties that are not expressed in a written contract.” No. 312739, 2014 WL 667790, *2 (Mich Ct App 2014) (per curiam). Critically, “[i]t is only the latter that are eviscerated by a merger clause.” *Id.*; see *UAW-GM Human Res Ctr V KSL Recreation Corp*, 579 NW2d 411, 419 (Mich Ct App 1998) (explaining that even where a contract contains a valid merger clause, fraud relating to the merger clause or fraud that invalidates the entire contract could vitiate the merger clause or the contract). Plaintiffs in the instant case are arguing that Delaney’s representations enticed them to enter into the operating agreement, not that those representations formed any competing contract not reflected in, or contradicted by, the operating agreement. **Delaney’s argument that the integration clause forecloses any assertion by Plaintiffs that they reasonably relied on his oral statements is therefore without merit. *Id.* *5 (emphasis added).**

Based on the reasoning set forth above, the Court finds that Defendant’s argument, that the integration clause forecloses any assertion by Plaintiff that she relied on prior oral statements, without merit. Rather, Plaintiff asserts that oral misrepresentations made by Defendants prior to the execution of the employment agreement induced her to sign the employment agreement. She specifically alleges that Defendants misrepresented the financial

and operational health of P&C during negotiations for Plaintiff to become President and CEO of Defendant Company, including, but not limited to, the following:

- a. Defendants provided financials that were not audited by a third party auditor (nor was Plaintiff informed of such);
- b. Defendants never disclosed that third party financial audits were two years in arrears;
- c. Defendants provided grossly misleading financials with company Net Income before Taxes (what Plaintiffs bonuses were to be measured on) that showed as net positive for 2017 Actual and 2018 Projected, Post-audit 2017 financials, completed after Plaintiff was hired, reflected a net percent difference of 375% to the negative between actual Operating Income versus that reflected in the 2017 financials Plaintiff was provided AND a net percent difference of 658% to the negative between actual Net Income before Taxes versus that reflected in the 2017 financials Plaintiff was provided, differences too egregious and losses too material to be unknown by Defendants;
- d. Defendants provided Enterprise Valuations for 2017 and 2018 that were materially different than actuals which negatively impacted what Plaintiffs Long-Term Incentive Plan ("LTIP") was based on;
- e. Defendants never disclosed that P&C had no means of borrowing at the time to finance substantial key programs and company endeavors. All that had been shared with Plaintiff by Defendants was that they were in the process of getting some financing needed to fund a very large program and operate P&C and that such financing would be completed prior to Plaintiffs employ P&C. That funding did not occur;
- f. Defendants never disclosed that P&C was financially distressed;
- g. Defendants never disclosed that P&C was under an Accommodation Agreement with a key customer as a result of material unpaid payables owed to that customer;
- h. Defendants never disclosed that a key customer was threatening to revoke a new program and material business with P&C, which would result in the loss of one-third of the Defendant Company's revenues,

because it was extremely concerned about P&C's financial health and its ability to operate and launch new programs;

- i. Defendants never disclosed that the Defendant Company was well overdue with the vast majority of its supply base (with material amounts in aged accounts payable over 60+ days) and that it had not been current in years; and
- j. Defendants never disclosed other substantial expenses P&C was incurring such as the debt associated with Prahba (an affiliated captive insurance) and the consultant fees for groups such as Huron and Angle Advisors.¹⁷

Plaintiff has plead enough to state a plausible fraud claim that would not be barred by the inclusion of the integration clause.

Defendant next argues that Plaintiff cannot establish that her reliance on the misrepresentations is reasonable and/or unjustified as a matter of law to sustain claims for fraudulent misrepresentation and/or negligent misrepresentation respectively.

A party's reliance on a misrepresentation in a fraud action must be reasonable. *Bergen v Baker*, 264 Mich App 376, 389 (2004). And “[t]here can be no fraud where a person has the means to determine that a representation is not true.” *Nieves v Bell Industries, Inc*, 204 Mich App 459, 464 (1994). This basic rule, that a party cannot claim fraud when he or she “had the means to determine for him-or herself the truth of the matter,” however, only applies when the party was “either presented with the information and chose to ignore it or had some other indication that further inquiry was needed.” *Alfieri v Bertorelli*, 295 Mich App 189, 194-195 (2012).¹⁸

¹⁷ Plaintiff's First Amended Complaint, ¶ 27.

¹⁸ The Court notes that Defendants cite to *Alfieri v Bertorelli*, 295 Mich App 189 (2012). (See Defendants' Motion for Partial Summary Disposition, p 17).

“A claim for negligent misrepresentation requires plaintiff to prove that a party justifiably relied to [her] detriment on information prepared without reasonable care by one who owed the relying party a duty of care.” *Alfieri v Bertorelli*, 295 Mich App 189, 194 (2012), quoting *Unibar Maintenance Servs, Inc. v Saigh*, 283 Mich App 609, 621 (citations and quotation marks omitted).

To support its claim, Defendant cites to *Fejedelem v Kasco*, 269 Mich App 499 (2006), which the Court finds is in opposite to the facts herein. There, unlike here, defendant informed plaintiff that the documents were unaudited, and some figures were estimates. The Court, therefore, found that because plaintiff was directly given considerable evidence that certain financial information was incomplete and unreliable, plaintiff was negligent for nonetheless relying on it. *Id.* at 503–504. Here, there are no allegations that Defendant informed Plaintiff that the documents presented were unaudited or that some figures were estimates.

The Court also finds the facts in *City Nat Bank of Detroit v Rodger & Morgenstein*, 155 Mich App 318, 325 (1986), upon which Defendants also relies, distinguishable. There, Plaintiff Bank had sought reassurance that certain managing partners of Westland Towers Apartments had authority to consent to the extension of a letter of credit Plaintiff Bank had issued in favor of the partnership. In response, Plaintiff Bank received an opinion letter from defendant law firm, which acted as counsel for Westland Towers Apartments. The legal issue presented there was whether Plaintiff Bank had stated a cause of action against Defendant law firm for negligent misrepresentation based on the opinion letter received and Plaintiff Bank’s detrimental reliance thereon.

The trial court granted Defendant’s motion for summary disposition, which was affirmed

by the Court of Appeals. The Court of Appeals held that representations by the law firm were statements of opinion, against whom bank could not recover for negligent misrepresentation based on partnership's failure to repay letter of credit. The Court found that Plaintiff Bank's reliance on a legal opinion was not justifiable, and thus precluded Plaintiff Bank from recovering from Defendant law firm for negligent misrepresentation, where Plaintiff Bank's own counsel had the ability to determine the authority of managing partners.

Here, however, Plaintiff is not alleging she relied on legal opinions issued by Defendants' legal counsel. Rather, she alleges she relied on the above delineated **factual** misrepresentations, made by Defendants regarding the "financial and operational health of P & C during negotiations."¹⁹ Moreover Plaintiff argues that she did not have reason to suspect the information provided to her by Defendants was inaccurate. She argues she was presented with data concerning a private entity by its owner and highest-ranking person who would have been knowledgeable as to these matters. It would have been unreasonable for her to suspect anything untoward about the substance of the information and she was in no position to conduct an independent audit of these materials.

Further, Plaintiff alleges that during her employment and on a number of occasions, Defendant Pradhan refused to adhere to the Employment Agreement regarding Plaintiff's "title, authority, duties and/or responsibilities."²⁰ Plaintiff "repeatedly put Defendants on notice of the breach of her Employment Agreement, each time with promises made by Defendants that the breach would be rectified and cease."²¹ Plaintiff alleges that Defendant

¹⁹ Plaintiff's First Amended Complaint, ¶ 27.

²⁰ Plaintiff's First Amended Complaint, ¶ 15

²¹ Plaintiff's First Amended Complaint, ¶ 16.

Pradham's actions, which were in breach of Plaintiff's Employment Agreement, accelerated in the months leading up to Plaintiff's Termination with Good Reason."²²

Plaintiff further alleges that:

- Defendant Pradhan held "private meetings with suppliers, customers and other entities which were of strategic importance to the P & C, and he actively excluded Plaintiff from such meetings, notwithstanding her role as President and CEO of Defendant Company, effectively usurping her authority."²³
- Defendant Pradhan "directed funds in and out of Defendant Company's accounts without Plaintiff's prior knowledge or consent."²⁴
- Defendant Pradhan, without consultation with or advance notice to Plaintiff, instituted unilateral financial actions taken by Defendant Pradhan such as instituting significant pay increases to all U.S. plant employees.²⁵
- Defendant Pradhan repeatedly directed other members of the Executive Leadership Team, and others both internal and external to Defendant Company, on matters material to the Company, without engaging, informing, or consulting Plaintiff."²⁶

Based upon the above, the Court finds that MCR 2.116 (C)(8) Plaintiff has clearly stated a claim upon which relief may be granted for both fraudulent and negligent misrepresentation.

As a result, Defendants' Motion for Summary Disposition under MCR 2.116(C)(8) is respectfully **DENIED**.

IT IS SO ORDERED.

²² Plaintiff's First Amended Complaint, ¶ 17.

²³ Plaintiff's First Amended Complaint, ¶ 18.

²⁴ Plaintiff's First Amended Complaint, ¶ 19.

²⁵ Plaintiff's First Amended Complaint, ¶ 21.

²⁶ Plaintiff's First Amended Complaint, ¶ 22.

THIS IS NOT A FINAL ORDER AND DOES NOT CLOSE OUT THE CASE.

