

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

**KENNETH SPINDLER, an individual,
and WILLIAM STOVER, an individual,**

Plaintiffs/Counter-Defendants,

**Case No. 23-199232-CB
Hon. Michael Warren**

v

**NRL HOLDINGS, LLC, a Michigan limited
liability company, BRIAN CHOUINARD, an
individual, ANTHONY GOFF, an individual,
and ADAM LONG, an individual.**

Defendants/Counter-Plaintiffs.

**OPINION AND ORDER REGARDING
PLAINTIFFS' MOTION FOR SUMMARY DISPOSITION OF DEFENDANTS'
COUNTERCLAIM PURSUANT TO MCR 2.116(C)(7), (8), AND (10)**

**At a session of said Court, held in the
County of Oakland, State of Michigan
September 20, 2024**

PRESENT: HON. MICHAEL WARREN

OPINION

**I
Overview**

The Plaintiffs' Verified Complaint arises out of the December 2022 merger of Vassar Tech Holdings, LLC ("VT") with and into NRL Holdings, LLC ("NRL"). The

Plaintiffs are two members of NRL who did not approve of the merger. They filed suit against NRL and three individual managers of NRL (Brian Chouinard, Anthony Goff, and Adam Long (collectively, the “Individual Defendants”)).

In turn, the Defendants filed a Counterclaim against the Plaintiffs alleging that Stover breached the terms of the revolving line of credit with NRL (Count I), Stover committed fraud, silent fraud and fraudulent concealment (Count II), Stover and Spindler tortiously interfered with NRL’s business relationships (Count III), Stover and Spindler conspired to tortiously interfere with NRL’s business relationships (Count IV), and finally, that Spindler breached the terms of a business opportunity agreement (Count V).

Before the Court is the Plaintiffs’ Motion for Summary Disposition of Defendants’ Counterclaim pursuant to MCR 2.116(C)(7), (8), and (10). Oral argument is dispensed as it would not assist the Court in its decision-making process.¹

At stake is whether the Defendants’ Counterclaim in connection with breach of contract (Counts I and V) is deficient because it does not comply with MCR 2.113(C)?

¹ MCR 2.119(E)(3) provides courts with discretion to dispense with or limit oral argument and to require briefing. MCR 2.116(G)(1) specifically recognizes application of MCR 2.119(E)(3) to summary disposition motions. Subrule (G)(1) additionally authorizes courts to issue orders establishing times for raising and asserting arguments. This Court’s Scheduling Order clearly and unambiguously set the time for asserting and raising arguments, and legal authorities to be in the briefing – not to be raised and argued for the first time at oral argument. Therefore, both parties have been afforded due process as they each had notice of the arguments and an opportunity to be heard by responding and replying in writing, and this Court has considered the submissions to be fully apprised of the parties’ positions before ruling. Because due process simply requires parties to have a meaningful opportunity to know and respond to the arguments and submissions which has occurred here, the parties have received the process due.

Because these claims are based on contracts but the written instruments are not attached to the Counter Complaint, the answer is “yes” and summary disposition is warranted pursuant to MCR 2.116(C)(8).

Also at stake is whether the Defendants have provided evidence to support their breach of contract claim against Stover (Count I)? Because the Defendants have not provided evidence that NRL submitted a written request for funds that Stover refused to honor, summary disposition of Count I is appropriate for this independent reason pursuant to MCR 2.116(C)(10).

Further at stake is whether Count II for fraud, silent fraud, and fraudulent concealment against Stover meets the particularity requirements of MCR 2.112(B)(1)? Because Count II does not allege a misrepresentation made by Stover or a duty owed by Stover with the particularity required by MCR 2.112(B)(1), summary disposition under MCR 2.116(C)(8) is warranted.

Additionally at stake is whether summary disposition of Count III is warranted because the Defendants have not demonstrated that there is evidentiary support for each required element of their claim for tortious interference with a business relationship or expectancy? Because the Defendants have failed to show that there is a genuine issue of material fact that the Plaintiffs engaged in an intentional interference that induced or caused a breach or termination of a business relationship or expectancy, the answer is “yes,” and summary disposition is warranted pursuant to MCR 2.116(C)(10).

Also at stake is whether the Counterclaim in connection with civil conspiracy is defective as a matter of law because the underlying tort (tortious interference with a business relationship or expectancy) is subject to dismissal as noted above? Because the Defendants' civil conspiracy requires a separate actionable tort, the answer is "yes," and summary disposition of Count IV is warranted.

Further at stake is whether the Counterclaim in connection with allegations that Spindler breached the Business Opportunity Agreement fails as a matter of law because the parties executed a broad release that terminated the Business Opportunity Agreement? Because the release explicitly bars the breach of contract allegation and the Defendants have not demonstrated that the release is voidable due to fraud, the answer is "yes," and summary disposition is warranted under MCR 2.116(C)(7).

Finally at stake is whether sanctions are appropriate under MCR 1.109(E)(6)? Because the Plaintiffs have not met the high bar to justify the imposition of sanctions, the answer is "no."

II The Controversy

NRL is a Michigan limited liability company with its headquarters in Pontiac, Michigan.² NRL is the owner and operator of a marijuana growing and manufacturing

² Verified Complaint ¶ 3.

business that provides products for sale at the Nature's Releaf retail stores in Burton, Michigan, Grand Rapids, Michigan, and Mancelona, Michigan.³ FC Investment Holdings, LLC ("FC Investment") is a real estate holding company that holds NRL's real estate assets.⁴ FC Investment is not a party to this case, but it is involved in some of the transactions that gave rise to the suit.

The Plaintiffs are members and owners of NRL.⁵ Prior to December 31, 2022, Spindler owned 18.66% of the outstanding membership interests in NRL, and Stover owned 2.41% of the outstanding membership interests.⁶

Two of the named Individual Defendants, Brian Chouinard and Anthony Goff, are managers of NRL who owned 25.52% and 22.10%, respectively, of the outstanding membership interests in NRL prior to December 31, 2022.⁷ The third Individual Defendant, Adam Long, was appointed to serve as a manager of NRL along with Chouinard and Goff in 2022.⁸

³ *Id.* ¶¶ 9-10.

⁴ Counter Complaint ¶ 1.

⁵ Verified Complaint ¶ 15.

⁶ *Id.* ¶¶ 16-17.

⁷ *Id.* ¶¶ 12-13.

⁸ *Id.* ¶ 14.

A
The Revolving Line of Credit Promissory Note

In the summer of 2019, Stover made two loans to FC Investment with a total principal balance of \$326,250.⁹ In October 2019, Stover and NRL entered into a Revolving Line of Credit Promissory Note (the “Promissory Note”) in which Stover agreed to make advances to NRL in the amount \$1,000,000.¹⁰ The Promissory Note was secured by mortgages on two pieces of real estate located in Owosso and Burton.¹¹ In consideration for entering into the Revolving Line of Credit Promissory Note, the parties agreed that the initial loans in the amount of \$326,250 would convert into equity in NRL.¹²

Stover made four advances to NRL pursuant to the Promissory Note in late 2019 and early 2020 for a total of \$921,376.¹³ After the Owosso property securing the Promissory Note was sold in November 2020, Stover alleges that “the balance I was owed was paid and NRL made no additional written requests of me for any advances.”¹⁴ However, the Defendants have alleged that Stover “refused to make advances to

⁹ Counter Complaint ¶¶ 2-5.

¹⁰ *Id.* ¶¶ 6-7.

¹¹ Plaintiffs’ Motion for Summary Disposition of Defendants’ Counterclaim Pursuant to MCR 2.116(C)(8), (8), and (10), Exhibit A, p 3.

¹² Counter Complaint ¶ 8.

¹³ Plaintiffs’ Motion for Summary Disposition of Defendants’ Counterclaim Pursuant to MCR 2.116(C)(8), (8), and (10), Exhibit C ¶ 3.

¹⁴ *Id.* ¶¶ 5-6.

Counter-Plaintiff NRL Holdings under the Revolving Line of Credit Note” with the intent to harm NRL and disrupt its operations.¹⁵

B

The Business Opportunity Agreement and Mutual Release

In April 2020, Spindler, Chouinard and Goff (along with non-party Steven Goff) entered into an agreement to share opportunities for licensed marijuana businesses.¹⁶ Pursuant to the Business Opportunity Agreement, the parties were prohibited from participating in marijuana businesses unless they first shared the opportunity with the other parties to the agreement.

On March 6, 2021, the parties to the Business Opportunity Agreement (and others) entered into a Mutual Release, Settlement, and Restructuring Agreement (the “Mutual Release”).¹⁷ The Mutual Release expressly terminated the Business Opportunity Agreement and provided that “none of the Parties shall have any rights or obligations as among each other with respect to the Business Opportunity Agreement.”¹⁸

The Defendants allege that in March 2021, Stover and Spindler formed High Peak Farms, LLC with the intent of competing with NRL.¹⁹ The Defendants further allege that

¹⁵ Counter Complaint ¶¶ 9, 12.

¹⁶ Defendants’ Response to Plaintiffs’ Motion for Summary Disposition and Motion for Leave to Amend its Counter Complaint, Exhibit C.

¹⁷ Plaintiffs’ Motion for Summary Disposition of Defendants’ Counterclaim Pursuant to MCR 2.116(C)(8), (8), and (10), Exhibit E.

¹⁸ *Id.*, p 3.

¹⁹ Counter Complaint ¶ 27.

Spindler engaged in conduct that violated the terms of the Business Opportunity Agreement because he formed Mid Michigan Investment Holdings, LLC in February 2021, and this company is now the real estate holding company for High Peak Farms, LLC.²⁰

The Defendants filed their Counterclaim in April 2023 alleging breach of contract against Stover (Count I), fraud, silent fraud, and fraudulent concealment against Stover (Count II), tortious interference with a business relationship or expectancy against Stover and Spindler (Count III), civil conspiracy against Stover and Spindler (Count IV), and breach of contract against Spindler (Count V). The Plaintiffs now move for summary disposition pursuant to MCR 2.116(C)(7), (C)(8), and (C)(10).

III Standards of Review

A MCR 2.116(C)(7)

Summary disposition may be granted where “[e]ntry of judgment, dismissal of the action, or other relief is appropriate because of release” MCR 2.116(C)(7). A party is not required to submit any material in support of a motion under MCR 2.116(C)(7); the motion can be evaluated on the pleadings alone. *Maiden v Rozwood*, 461 Mich 109, 119 (1999). “The contents of the complaint are accepted as true unless contradicted by

²⁰ Defendants’ Response to Plaintiffs’ Motion for Summary Disposition and Motion for Leave to Amend its Counter Complaint, pp 10-11.

documentation submitted by the movant.” *Id.* “A party may support a motion under MCR 2.116(C)(7) by affidavits, depositions, admissions, or other documentary evidence.” *Id.* at 119.

“In reviewing the motion, a court must review all documentary evidence submitted by the parties, accepting as true the contents of the complaint unless affidavits or other appropriate documents specifically contradict them.” *Yono v Dep’t of Transp (Yono I)*, 495 Mich 982, 982-983 (2014); see also MCR 2.116(G)(5). “If the movant properly supports his or her motion by presenting facts that, if left un rebutted, would show that there is no genuine issue of material fact that the movant [is entitled to summary disposition], the burden shifts to the nonmoving party to present evidence that establishes a question of fact.” *Yono v Dep’t of Transp (On Remand) (Yono II)*, 306 Mich App 671, 679-680 (2014), rev’d on other grounds, 499 Mich 636 (2016). “If the trial court determines that there is a question of fact as to whether the movant [is entitled to summary disposition], the court must deny the motion.” *Yono II*, 306 Mich App at 680, citing *Dextrom v Wexford Co*, 287 Mich App 406, 431 (2010).

B

MCR 2.116(C)(8)

A motion for summary disposition pursuant to MCR 2.116(C)(8) tests the legal sufficiency of the complaint, not whether the complaint can be factually supported. *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159-160 (2019); *Pawlak v Redox Corp*, 182

Mich App 758 (1990). A motion for summary disposition based on the failure to state a claim upon which relief may be granted is to be decided on the pleadings alone. *Bailey v Schaaf*, 494 Mich 595, 603 (2013); *Parkhurst Homes, Inc v McLaughlin*, 187 Mich App 357 (1991). Exhibits attached to pleadings may be considered under MCR 2.116(C)(8) because they are part of the pleadings pursuant to MCR 2.113(C). *El-Khalil*, 504 Mich at 163. Matters of public record may also be considered. MCR 2.113(C)(1)(a). See also *Dalley v Dykema Gossett*, 287 Mich App 296, 301 n 1; (2010) (court documents are matters of public record that may be considered on a motion under MCR 2.116[C][8]).

“All well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant.” *Maiden*, 461 Mich at 119 (1999); *Wade v Dep’t of Corrections*, 439 Mich 158, 162 (1992). Summary disposition is proper when the claim is so clearly unenforceable as a matter of law that no factual development can justify a right to recovery. *Parkhurst Homes*, 187 Mich App at 360; *Spiek v Dept of Transportation*, 456 Mich 331, 337 (1998).

“[T]he mere statement of a pleader’s conclusions, unsupported by allegations of fact, will not suffice to state a cause of action.” *ETT Ambulance Serv Corp v Rockford Ambulance, Inc*, 204 Mich App 392, 395 (1994).

C
MCR 2.116(C)(10)

A motion for summary disposition pursuant to MCR 2.116(C)(10) tests the factual support for a claim or defense. See, e.g., MCR 2.116(G)(3)(b); *Quinto v Cross & Peters Co*, 451 Mich 358, 362 (1996). Accordingly, “[i]n evaluating a motion for summary disposition brought under this subsection, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion.” *Maiden*, 461 Mich at 119-120; MCR 2.116(C)(10); MCR 2.116(G)(4); *Quinto*, 451 Mich at 358. The moving party “must specifically identify the issues” as to which it “believes there is no genuine issue” of material fact and support its position as provided in MCR 2.116. MCR 2.116(G)(4).

Under Michigan law, the moving party may satisfy its burden of production under MCR 2.116(C)(10) by demonstrating to the court that the non-moving party’s evidence is insufficient to establish an essential element of the nonmoving party’s claim. *Quinto*, 451 Mich at 361. If the moving party properly supports its motion, the burden “then shifts to the opposing party to establish that a genuine issue of disputed fact exists.” *Id.* at 362. If the moving party fails to properly support its motion for summary disposition, the nonmoving party has no duty to respond and the trial court should deny the motion. MCR 2.116(G)(4). See also *Meyer v City of Center Line*, 242 Mich App 560, 575 (2000) (concluding that the trial court erred when it granted an improperly supported motion for summary disposition under MCR 2.116(C)(10)).

In all cases, MCR 2.116(G)(4) squarely places the burden on the parties, not the trial court, to support their positions. A reviewing court may not employ a standard citing mere possibility or promise in granting or denying the motion, *Maiden*, 461 Mich at 121-120 (citations omitted), and may not weigh credibility or resolve a material factual dispute in deciding the motion. *Skinner v Square D Co*, 445 Mich 153, 161 (1994). Rather, summary disposition pursuant to MCR 2.116(C)(10) is appropriate if, and only if, the evidence, viewed most favorably to the non-moving party fails to establish any genuine issue regarding any material fact, and the moving party is entitled to judgment as a matter of law. *Quinto*, 451 Mich at 362, citing MCR 2.116(C)(10) and (G)(4); *Maiden*, 461 Mich at 119-120 (1999). A genuine issue of material fact exists when the record leaves open an issue upon which reasonable minds might differ. *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 160 (2019) (citation omitted). Granting a motion for summary disposition under MCR 2.116(C)(10) is warranted if the substantively admissible evidence shows that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law. *Quinto*, 451 Mich at 362-363.

IV
Count I (Breach of Contract)
(Against Plaintiff/Counter-Defendant Stover)

In Count I, the Defendants allege that Stover breached the terms of the Promissory Note by “closing the line of credit once he received his equity in NRL Holdings, LLC.”²¹

²¹ Counter Complaint ¶ 19.

A **The Law**

Under Michigan law “[a] party asserting a breach of contract must establish by a preponderance of the evidence that (1) there was a contract (2) which the other party breached (3) thereby resulting in damages to the party claiming breach.” *Miller-Davis Co v Ahrens Constr, Inc*, 495 Mich 161, 178 (2014). A court’s “goal in contract interpretation is to give effect to the intent of the parties, to be determined first and foremost by the plain and unambiguous language of the contract itself.” *Wyandotte Elec Supply Co v Electrical Technology Sys, Inc*, 499 Mich 127, 143-144 (2016). “[I]t has long been the law in this state that courts are not to rewrite the express terms of contracts.” *McDonald v Farm Bureau Ins Co*, 480 Mich 191, 199-200 (2008). See also *Kendzierski v Macomb County*, 503 Mich 296, 311-312 (2019) (emphasis in original) (“A fundamental tenet of our jurisprudence is that unambiguous contracts are not open to judicial construction and must be *enforced as written*” and a court “will not create ambiguity where the terms of the contract are clear”).

B **Analysis**

1 **Summary Disposition is Warranted under MCR 2.116(C)(8)**

As a preliminary matter, the Plaintiffs correctly point out that where a cause of action is based on a written agreement, “a copy of the instrument or its pertinent parts must be attached to the pleading” unless an exception to this rule applies. MCR 2.113(C).

The requirement to attach the written instrument to the complaint is mandatory. *Stocker v Clark Ref Corp*, 41 Mich App 161, 165 (1972) (interpreting an identical provision of former GCR 1963, 113.4). Where the complaint fails to attach the relevant agreement upon which a claim is based, the claim is insufficient as a matter of law, and summary disposition is appropriate under MCR 2.116(C)(8). See *Woodward Nursing Home, Inc v Med Arts, Inc*, unpublished per curiam opinion of the Court of Appeals, issued Jan. 24, 2006 (Docket No. 262794), p 3 (holding that because the plaintiff did not attach a copy of the written contract to the complaint, the pleadings were legally insufficient to state a claim for breach of contract).

Here, in Count I, the Defendants allege that Stover was “contractually bound and obligated” to make advances to NRL pursuant to the Promissory Note.²² The Defendants further allege that Stover breached the Promissory Note by failing to make the required advances.²³ The Defendants did not attach a copy of the Promissory Note as required by MCR 2.113(C). Accordingly, the Defendants’ claim for breach is contract is legally insufficient and summary disposition is warranted pursuant to MCR 2.116(C)(8).

2

Summary Disposition is also Warranted Under MCR 2.116(C)(10)

The Plaintiffs also argue that the Defendants’ claim for breach of contract fails because there is no factual basis for the claim. The Defendants argue that Stover “refused

²² Counter Complaint ¶ 17.

²³ *Id.* ¶ 19.

to honor the terms of the Revolving Line of Credit Note by refusing to make advances to Counter-Plaintiff NRL Holdings.”²⁴ Additionally, the Defendants allege that Stover “breached his obligations by closing the line of credit once he received his equity in NRL Holdings, LLC.”²⁵

As an initial matter, the Defendants’ allegation that Stover refused to make *any* advances to NRL pursuant to the Promissory Note is contradicted by Stover’s testimony. Rather, Stover states that he made advances totaling \$921,376 from October 2019 to January 2020.²⁶

In their response to the Plaintiffs’ motion, the Defendants appear to advance a modified version of their claim. Now, the Defendants allege that although Stover *initially* made advances under the Promissory Note, in January 2020 he “failed to continue funding the Company through October 22, 2023.”

The mechanics for advancing funds under the Promissory Note are described as follows:

Advances under this Note are to be a written request by an authorized representative of NRL. The authorized Representative of NRL is Brian Chouinard. Upon receiving any such request from NRL, Stover shall make available to NRL the amount requested in the Advance in immediately available funds not later than 2:00 pm (Detroit, Michigan

²⁴*Id.* ¶ 9.

²⁵ *Id.* ¶ 19.

²⁶ Plaintiffs’ Motion for Summary Disposition, Exhibit C, Affidavit of William Stover ¶ 3.

time) on the second business day following the date of the request.²⁷

Under the Promissory Note, Stover was required to make the funds available after receiving a *written request* from Brian Chouinard on behalf of NRL. The written request functions as a condition precedent to Stover's payment. "A 'condition precedent' is a condition that must be met by one party before the other party is obligated to perform" *Archambo v Lawyers Title Ins Corp*, 466 Mich 402, 411 (2002). "A condition is distinguished from a promise in that it creates no right or duty in and of itself but is merely a limiting or modifying factor." *Knox v Knox*, 337 Mich 109, 118 (1953). "If the condition is not fulfilled, the right to enforce the contract does not come into existence." *Id.* "Whether a provision in a contract is a condition the nonfulfillment of which excuses performance depends upon the intent of the parties, to be ascertained from a fair and reasonable construction of the language used in the light of all the surrounding circumstances when they executed the contract." *Id.*

Stover states in his affidavit that "Requests for advances under the Revolving Line of Credit Promissory Note were required to be made in writing. After the sale of the Owosso property, the balance I was owed was paid and NRL made no additional written requests of me for any advances."²⁸ The Defendants do not dispute that they did not make additional written requests of Stover for advances under the Promissory Note. Rather,

²⁷ Plaintiffs' Motion for Summary Disposition, Exhibit B, Revolving Line of Credit Promissory Note, p 2.

²⁸ *Id.*, Exhibit C ¶ 6.

the affidavit of Brian Chouinard is silent on the matter, stating only that Stover was informed of the sale of the Owosso property and was agreeable to the sale.

Absent a written request from Brian Chouinard as a representative of NRL, Stover was not obligated to advance funds under the Promissory Note. Stover has alleged in his affidavit that the Defendants did not make any such written requests, and the Defendants have failed to submit evidence that rebuts this assertion. Accordingly, the evidence shows that Stover did not have an obligation under the Promissory Note to advance funds, and his failure to do so was not a breach. The Defendants have not met their burden under MCR 2.116(C)(10) to submit evidence that would support their breach of contract claim, and summary disposition in the Plaintiffs' favor is warranted.²⁹

V
Count II (Fraud, Silent Fraud, and Fraudulent Concealment)
(Against Plaintiff/Counter-Defendant Stover)

A
The Law

In Count II, the Defendants allege that Stover entered into the Promissory Note with no intention of honoring its' terms, and instead used it as a part of a scheme to receive equity in NRL.

²⁹ As such, the Court need not need analyze the separate argument that the sale of the property securing the Promissory Note also relieved Stover of his obligation to advance funds under the terms of the Promissory Note.

1

Fraud

To recover for fraud, a plaintiff must prove the following elements: (1) the defendant made a material representation; (2) the representation was false; (3) when the defendant made the representation, the defendant knew that it was false, or made it recklessly, without knowledge of its truth as a positive assertion; (4) the defendant made the representation with the intention that the plaintiff would act upon it; (5) the plaintiff acted in reliance upon it; and (6) the plaintiff suffered damage. *Bergen v Baker*, 264 Mich App 376, 382 (2004).

When pleading a cause of action involving fraud, the circumstances alleged to constitute fraud must be stated with particularity. MCR 2.112(B)(1). See also *Stephens v Worden Ins Agency, LLC*, 307 Mich App 220, 229–30 (2014) (“Fraud claims must be pleaded with particularity, addressing each element of the tort”). Because of this heightened pleading standard, fraud “is not to be lightly presumed, but must be clearly proved . . . by clear, satisfactory and convincing” evidence. *Cooper v Auto Club Ins Ass’n*, 481 Mich 399, 414 (2008) (citations and quotations omitted).

2 Silent Fraud³⁰

Michigan courts have long recognized a claim for silent fraud for “the suppression of a material fact, which a party in good faith is duty-bound to disclose” because it is “equivalent to a false representation and will support an action in fraud.” *M&D, Inc v WB McConkey*, 231 Mich App 22, 29 (1998) (citations and quotations omitted). Thus, in order to prove a claim of silent fraud, “a plaintiff must show that some type of representation that was false or misleading was made and that there was a legal or equitable duty of disclosure.” *Id.* at 32. Stated another way, a plaintiff must prove that the defendant knew of a material fact but concealed or suppressed the truth through false or misleading statements or actions with the intent to deceive. *Roberts v Saffell*, 280 Mich App 397, 404 (2009). “A plaintiff cannot merely prove that the defendant failed to disclose something; instead, ‘a plaintiff must show some type of representation by words or actions that was false or misleading and was intended to deceive.’” *Lucas v Awaad*, 299 Mich App 345, 364 (2013).

In general, there is a duty to disclose in the context of fiduciary relationships, but “there is no duty to disclose in an ordinary contract setting except when a party is

³⁰ The Counterclaim lists both silent fraud and fraudulent concealment, but under Michigan law, these are two different names for the same cause of action. *Titan Ins Co v Hyten*, 491 Mich 547 (2012) (observing that Michigan law recognizes causes of action for “actionable fraud, also known as fraudulent misrepresentation; innocent misrepresentation; and silent fraud, also known as fraudulent concealment”).

responding to a specific inquiry.” *Mercurio v Huntington Nat’l Bank*, ___ Mich App ___, ___ (2023) (Docket No. 361855), slip op at 8.

B Analysis

In support of Count II, the Defendants allege:

22. When Counter-Defendant William Stover entered into the Revolving Line of Credit Note, he had no intention of honoring its’ terms.

23. Instead, Counter-Defendant William Stover entered into the Revolving Line of Credit Note as part of a fraudulent scheme to receive equity in NRL Holdings, LLC.

24. Counter-Plaintiff NRL Holdings, LLC relied on Counter-Defendant William Stover’s fraudulent misrepresentations to its detriment.

25. As a direct and proximate cause of Counter-Defendant William Stover’s conduct Counter-Plaintiff NRL Holdings has incurred substantial damages.

As an initial matter, the Counterclaim does not make clear what “misrepresentation” Stover is alleged to have made to support a claim for fraud. Under Michigan law, “an action for fraudulent misrepresentation must be predicated upon a statement relating to a past or an existing fact.” *Hi-Way Motor Co v Int’l Harvester Co*, 398 Mich 330, 336 (1976). In the instant case, the claim for fraud is deficient because it does not allege any such misrepresentation with the particularity demanded by MCR 2.112(B)(1). Because the Defendants have failed to plead all the required elements of a claim for fraud, summary disposition is warranted under MCR 2.116(C)(8).

The silent fraud allegation is similarly deficient as it is not particularly clear what “material fact” was concealed or suppressed through false or misleading statements or actions. Certainly, this element is not pled with the specificity required by MCR 2.112(B)(1).

Additionally, the Defendants have failed to plead that Stover had a legal duty to disclose whatever material fact they believe was withheld. Prior to his execution of the Promissory Note and corresponding Agreement, Stover was a lender to FC Investment.³¹ As noted above, “there is no duty to disclose in an ordinary contract setting except when a party is responding to a specific inquiry.” *Mercurio*, ___ Mich App ___, slip op at 8. The Court can only speculate as to what legal duty the Defendants believe Stover owed to disclose whatever material fact they believe was withheld. In the end, the Defendants have failed to plead all the required elements of silent fraud with the requisite particularity. Accordingly, summary disposition of the entirety of Count II is warranted pursuant to MCR 2.116(C)(8).

³¹ Plaintiffs’ Motion for Summary Disposition, Exhibit A, Agreement, p 1.

VI
Count III (Tortious Interference with a Business Relationship or Expectancy)

In Count III, the Defendants allege that both Stover and Spindler intentionally and improperly interfered with NRL's business relationships and expectancies with other third-party lenders and vendors.

A
The Law

To establish a prima facie claim of tortious interference with a business relationship or expectancy, a plaintiff must establish the following elements: (1) the existence of a valid business relationship or expectancy, (2) knowledge of the relationship or expectancy on the part of the defendant, (3) an intentional interference by the defendant inducing or causing a breach or termination of the relationship or expectancy, and (4) resultant damage to the plaintiff. *Hope Network Rehab Servs v Mich Catastrophic Claims Ass'n*, 342 Mich App 236, 245-246 (2022).

The Court of Appeals recently expanded upon the third required element:

With respect to the third element, interference alone will not support a claim under this theory. [T]o satisfy the third element, the plaintiff must establish that the defendant acted both intentionally and either improperly or without justification. A tortious-interference-with-a business-relationship claim requires an allegation of a per se wrongful act or the doing of a lawful act with malice and unjustified in law for the purpose of invading the contractual rights or business relationship of another. If the defendant's conduct was not wrongful per se, the plaintiff must demonstrate

specific, affirmative acts that corroborate the unlawful purpose of the interference. *Id.* at 246 (citations and quotations omitted).

Under Michigan law, “[a] wrongful act per se is an act that is inherently wrongful or an act that can never be justified under any circumstances.” *Badiee v Brighton Area Sch*, 265 Mich App 343, 367 (2005). If the defendant’s conduct was not wrongful per se, then the plaintiff must plead “specific, affirmative acts that corroborate the unlawful purpose of the interference.” *CMI Int’l, Inc v Internet Int’l Corp*, 251 Mich App 125, 131 (2002).

B Analysis

In support of Count III, the Defendants plead the following:

27. On or about March 30, 2021 Counter Defendants Stover and Spindler formed High Peak Farms, LLC with the purpose of competing with Counter-Plaintiff NRL Holdings, LLC.

28. Counter Defendants Stover and Spindler are intentionally and improperly interfering with Counter-Plaintiff NRL Holdings’ business relationship and expectancy with other third-party lenders and vendors.

29. Counter Defendants Stover and Spindler are using inside information, gained from Company meetings, to interfere with and frustrate the Company’s efforts to receive financing and expand its business operations.

30. Counter Defendants Stover and Spindler have intentionally interfered with the Company’s business relationships and expectations.

31. Counter Defendants Stover and Spindler’s actions are anticompetitive in nature and designed to further the

interests of High Peak Farms, LLC at the expense of Counter-Plaintiff NRL Holdings.

32. As a direct and proximate cause of Counter-Defendants' actions, Counter-Plaintiff NRL Holdings, LLC has suffered damages.

The Plaintiffs allege that Count III suffers from a number of deficiencies, both in its pleading and in its evidentiary support. Here, the Court will focus its analysis on the Plaintiffs' argument that the Defendants have not demonstrated that there is evidence to support each required element of a claim for tortious interference with a business relationship or expectancy. Specifically, the Counterclaim alleges that the Plaintiffs "are intentionally and improperly interfering with Counter-Plaintiff NRL Holdings' business relationship and expectancy with other third party lenders and vendors" and they interfered with and frustrated "the Company's efforts to receive financing and expand its business operations."³² The claim is silent as to what specific relationships with "lenders and vendors" the Plaintiffs stand accused of interfering with, and what specific breaches or terminations of those relationships resulted from the Plaintiffs' alleged interference.

Both Spindler and Stover have submitted affidavits in support of their motion for summary disposition that show the third element of a tortious interference claim (an intentional interference by the defendant inducing or causing a breach or termination of

³² Counterclaim ¶¶ 28-29.

the relationship or expectancy) is not met. Specifically, both Stover and Spindler's affidavits aver:

I am aware that NRL alleges that I intentionally and improperly interfered with NRL's relationships with unidentified lenders and vendors, and possibly others. I have not done so.

I am also aware that NRL alleges that I have used its unspecified "inside information" to interfere with and frustrate its efforts to obtain financing and expand its operations. I have not done so.

I am unaware of any business relationship or expectancy of NRL that was improperly terminated as a result of anything that I did.³³

Accordingly, the Stover and Spindler affidavits are sufficient to establish that the third element of a tortious interference claim is not met. The burden then shifts to the Defendants to present evidence that a genuine issue of material fact exists. The Defendants have not done so. Their response brief focuses on issues related to the CRA permits and argues that the Plaintiffs have "engaged in fraud to protect High Peak Farms from adverse action by the CRA while they attempt to exploit the situation against NRL Holdings."³⁴ Nowhere do they clarify, with argument or evidence, what third party lender or vendor relationships the Plaintiffs have interfered with as alleged in the Counterclaim, and what specific breaches or terminations resulted from the Plaintiffs' alleged interference. Mr. Chouinard's affidavit is silent on the issue, and the Defendants

³³ Plaintiffs' Motion for Summary Disposition, Exhibit C ¶¶ 7-9 and Exhibit L ¶¶ 2-4.

³⁴ Defendants' Response to Plaintiffs' Motion for Summary Disposition and Motion for Leave to Amend its' Counter-Complaint, pp 7-9.

have not submitted any other evidence that would show there is a material issue of fact as to the third element of their tortious interference claim. In the end, the Defendants have failed to meet their burden under MCR 2.116(C)(10), and summary disposition in favor of the Plaintiffs is warranted.

VII

Count IV (Civil Conspiracy)

In Count IV, the Defendants allege that Stover and Spindler agreed and acted in concert to interfere with the business relationships and expectations of NRL.

A

The Law

“A civil conspiracy is a combination of two or more persons, by some concerted action, to accomplish a criminal or unlawful purpose, or to accomplish a lawful purpose by criminal or unlawful means.” *Swain v Morse*, 332 Mich App 510, 530 (2020) (citation omitted). “[A] claim for civil conspiracy may not exist in the air; rather, it is necessary to prove a separate, actionable tort.” *Advocacy Organization for Patients & Providers v Auto Club Ins Ass’n*, 257 Mich App 365, 384 (2003) (citation omitted). Proof of a civil conspiracy may be established through circumstantial evidence and may be premised on inference. *Temborius v Slatkin*, 157 Mich App 587, 600 (1986). Direct proof of an agreement need not be shown, nor is it necessary to show a formal agreement. “It is sufficient if the circumstances, acts and conduct of the parties establish an agreement in fact.” *Id.*

B Analysis

The Plaintiffs argue that because the Defendants' conspiracy claim alleges an agreement to tortiously interfere with NRL's business relationships but their underlying claim for tortious interference fails, the claim for civil conspiracy must also fail. They make a valid point. *Early Detection Ctr, PC, v New York Life Ins Co*, 157 Mich App 618, 632 (1986) (holding that "since plaintiffs have failed to state any actionable tort theories in their proposed amended complaint, the conspiracy theory must also fail"). Accordingly, summary disposition of the Defendants' civil conspiracy claim in the Plaintiffs' favor is also warranted.

VIII Count V (Breach of Contract) (Against Plaintiff/Counter-Defendant Spindler)

In Count V, the Defendants allege that Spindler breached the terms of the Business Opportunity Agreement with Defendants Chouinard and Goff by forming High Peak Farms, LLC on March 30, 2021 without first offering the opportunity to Chouinard and Goff.³⁵ Although the Defendants concede that the parties executed a Mutual Release on March 6, 2021 which terminates the obligations under the Business Opportunity Agreement,³⁶ they now allege that (1) Spindler engaged in prohibited activity prior to the

³⁵ Counter Complaint ¶¶ 44-45.

³⁶ Plaintiffs' Motion for Summary Disposition of Defendants' Counterclaim Pursuant to MCR 2.116(C)(7), (8), and (10), Exhibit E.

March 6, 2021 execution of the Mutual Release, and (2) “the Mutual Release is voidable due to fraud in the inducement.” Spindler argues that even if these allegations were true, the terms of the broad Mutual Release, which includes a release of all claims “known or unknown, suspected or unsuspected, in law or in equity, previously existing, now existing or which may hereafter accrue by reason of any facts existing as of the date hereof. . .” bar this claim.³⁷

A The Law

Michigan law is well settled that “[t]he scope of a release is controlled by the intent of the parties as it is expressed in the release.” *Gortney v Norfolk & W Ry Co*, 216 Mich App 535, 540 (1996) (citations omitted). Consequently, “[i]f the text in the release is unambiguous, we must ascertain the parties’ intentions from the plain, ordinary meaning of the language of the release.” *Id.* “The fact that the parties dispute the meaning of a release does not, in itself, establish an ambiguity.” *Cole v Ladbroke Racing Mich, Inc*, 241 Mich App 1, 14 (2000) (citation omitted).

A release is invalid if “(1) the releasor was acting under duress, (2) there was misrepresentation as to the nature of the release agreement, or (3) there was fraudulent or overreaching conduct to secure the release.” *Brooks v Holmes*, 163 Mich App 143, 145 (1987). However, a release may only be challenged on the basis that it was procured by

³⁷ Plaintiffs’ Motion for Summary Disposition of Defendants’ Counterclaim Pursuant to MCR 2.116(C)(7), (8), and (10), Exhibit E § 8.

fraud when “plaintiffs tender the consideration they received in exchange for the release.” *Rinke v Auto Moulding Co*, 226 Mich App 432, 436 (1997). Further, “[t]he Michigan Supreme Court has held that a plaintiff must tender any consideration received in exchange for a release before or simultaneously with the filing of a suit that contravenes that release.” *Id.* (citing *Stefanac v Cranbrook Ed Community (After Remand)*, 435 Mich 155, 176 (1990)).

Fraud in the inducement to enter a contract “renders the contract voidable at the option of the defrauded party.” *Samuel D Begola Servs, Inc v Wild Bros*, 210 Mich App 636, 640 (1995). To establish fraud in the inducement, a party must show:

(1) the defendant made a material representation; (2) the representation was false; (3) when the defendant made the representation, the defendant knew that it was false, or made it recklessly, without knowledge of its truth and as a positive assertion; (4) the defendant made the representation with the intention that the plaintiff would act upon it; (5) the plaintiff acted in reliance upon it; and (6) the plaintiff suffered damage.³⁸

Where the contract at issue has an integration clause which releases all antecedent claims, “only certain types of fraud would vitiate the contract.” *UAW-GM Hum Res Ctr v KSL Recreation Corp*, 228 Mich App 486, 503 (1998). Therefore, “while parol evidence is generally admissible to prove fraud, fraud that relates solely to an oral agreement that was nullified by a valid merger clause would have no effect on the validity of the

³⁸ *Custom Data Sols, Inc v Preferred Cap, Inc*, 274 Mich App 239, 243 (2006) (citations omitted).

contract.” *Id.* Indeed, where there is a valid merger clause, “the only fraud that could vitiate the contract is 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.” *Id.*

Consequently, fraud will invalidate a contract when a party’s assent to the contract is induced through *justified* reliance upon a fraudulent misrepresentation. *Barclae v Zarb*, 300 Mich App 455, 482 (2013), quoting *Star Ins Co v United Commercial Ins Agency, Inc*, 392 F Supp 2d 927, 928–929 (ED Mich, 2005). However, a merger clause can render that reliance unreasonable as to agreements, promises, understandings, or representations not included in the agreement. See *Hamade v Sunoco Inc (R & M)*, 271 Mich App 145, 171 (2006) (holding that the plaintiff’s fraud claims must fail where a valid integration clause renders reliance on the alleged misrepresentations unreasonable as a matter of law).

B Analysis

1

Summary Disposition is Warranted under MCR 2.116(C)(8)

Again, the Plaintiffs correctly point out that this cause of action is based on a written agreement, and “a copy of the instrument or its pertinent parts must be attached to the pleading” unless an exception to this rule applies. MCR 2.113(C). Where the complaint fails to attach the relevant agreement upon which a claim is based, the claim is

insufficient as a matter of law, and summary disposition is appropriate under MCR 2.116(C)(8). See *Woodward Nursing Home, Inc v Med Arts, Inc*, unpublished per curiam opinion of the Court of Appeals, issued Jan. 24, 2006 (Docket No. 262794), p 3 (holding that because the plaintiff did not attach a copy of the written contract to the complaint, the pleadings were legally insufficient to state a claim for breach of contract).

Because Count V is based on the breach of the Business Opportunity Agreement but the contract was not attached to the Counterclaim, summary disposition is warranted under MCR 2.116(C)(8).

2

Summary Disposition is Also Warranted under MCR 2.116(C)(7)

The Plaintiff is also entitled to summary disposition pursuant to MCR 2.116(C)(7) because the breach of contract claim against Spindler is barred by the Mutual Release. The Mutual Release is very broad, and it includes all claims “known or unknown, suspected or unsuspected, in law or in equity, previously existing, now existing, or which may hereafter accrue by reason of any facts existing as of the date hereof. . . .” Thus, any claims brought under the Business Opportunity Agreement for allegedly starting a competing marijuana business without offering the opportunity to participate in that business to Chouinard and Goff would be covered by the Mutual Release.

The Defendants now allege that the Mutual Release is voidable due to Spindler's alleged fraudulent activity in obtaining the release. Specifically, Brian Chouinard's affidavit alleges that

Mr. Spindler led the Company to believe that he had not engaged in any undisclosed Restricted Business Opportunities and we relied upon that information in entering into the Mutual Release.

Had Mid Michigan Investment Holding and/or High Peak Farms been disclosed, we would not have executed the Mutual Release at that time.

Had Mr. Spindler disclosed the Restricted Business Opportunity, we would have participated in the opportunity or otherwise would have negotiate the Mutual Release differently.³⁹

However, the Mutual Release includes a comprehensive no-reliance provision:

The Parties acknowledge that, in entering into this Agreement, they are not relying, nor have they relied, upon any agreements, conditions, covenants, negotiations, promises, representations, understandings, either oral or written, that are not set forth in this Agreement. Except for the representations set forth in this Agreement, the Parties further acknowledge that, in entering into this Agreement, they are not relying, and have not relied, upon statements made in negotiations or the accuracy of representations relating to the subject matter of this Agreement made to them before the date of this Agreement by any other Party or by the agents of any Party.⁴⁰

³⁹ Defendants' Response to Plaintiffs' Motion for Summary Disposition and Motion for Leave to Amend its' Counter Complaint, Exhibit B ¶¶ 5-7.

⁴⁰ Plaintiffs' Motion for Summary Disposition of Defendants' Counterclaim Pursuant to MCR 2.116(C)(7), (8) and (10), Exhibit E § 19.

Further, even if there was a misrepresentation leading to the execution of the Mutual Release, the Mutual Release provides that “[t]he Parties also agree that no Party has the right to rescind this Agreement after closing based on any allegation or claim of misrepresentation, but that a Party may seek damages based on the difference between the fact misrepresented and the true facts.”⁴¹

Consequently, even if Spindler made misrepresentations about the undisclosed Restricted Business Opportunities as Chouinard alleges in his affidavit, the parties to the Mutual Release agreed that they were not relying on and had not relied upon “statements made in negotiations or the accuracy of representations relating to the subject matter of this Agreement made to them before the date of this Agreement by any other Party or by the agents of any Party.” Any such reliance on Spindler’s statements was therefore unreasonable as a matter of law. *Hamade*, 271 Mich App at 171 (“[T]he valid integration clause renders reliance on the representation unreasonable as a matter of law”). Such reliance will not render the Mutual Release voidable.

In the end, the Mutual Release bars a breach of contract claim based on the Business Opportunity Agreement, and summary disposition of Count V is warranted pursuant to MCR 2.116(C)(7).

⁴¹ *Id.* § 18.

IX Sanctions

In the Plaintiffs' motion, they request that this Court impose sanctions pursuant to MCR 1.109(E)(6). Here, the Plaintiffs have failed to show that sanctions are warranted. The purpose of imposing sanctions "is to deter parties and attorneys from filing documents or asserting claims and defenses that have not been sufficiently investigated and researched or that are intended to serve an improper purpose." *BJ's & Sons Constr Co, Inc v Van Sickle*, 266 Mich App 400, 405 (2005) (quotation marks and citation omitted). A party should not be penalized for asserting a claim that "initially appears viable but later becomes unpersuasive." *Louya v William Beaumont Hosp*, 190 Mich App 151, 163 (1991). "Not every error in legal analysis constitutes a frivolous position." *Kitchen v Kitchen*, 465 Mich 654, 663 (2002).

The mere fact that a court rejects a party's legal position does not mean that the party's position was frivolous. *Id.* "The determination whether a claim or defense is frivolous must be based on the circumstances at the time it was asserted." *Jerico Constr, Inc v Quadrants, Inc*, 257 Mich App 22, 36 (2003) (citation omitted). "That the alleged facts are later discovered to be untrue does not invalidate a prior reasonable inquiry." *Id.*

In this case, although the Plaintiffs' motion for summary disposition is granted and the Defendants' Counterclaim is dismissed, the Plaintiffs have not shown that the counterclaim was frivolous when filed. In the end, then Plaintiffs have failed to show that

sanctions are warranted. Indeed, the higher courts have established an exceedingly high threshold for granting sanctions and have reversed trial courts for awarding them under similar circumstances. See, e.g., *Davis v Wayne County Commission*, unpublished per curiam opinion of the Court of Appeals, issued May 11, 2023 (Docket No. 362547), p 1 (“The trial court clearly erred in concluding that Davis’s complaint was devoid of arguable legal merit and intended to harass”); *Thayer v Dipple*, unpublished per curiam opinion of the Court of Appeals, issued May 11, 2023 (Docket No. 362213), p 1 (“The circuit court granted the Thayers’ motion to impose sanctions against Siudara based on ‘deliberate misrepresentations to the Court. ‘We vacate the court’s order and remand for further proceedings consistent with this opinion’”); *Mass2Media, LLC v Cimini*, unpublished per curiam opinion of the Court of Appeals, issued March 30, 2023 (Docket Nos. 357973, 360357) (finding that sanctioning a party who was found to have based his entire case on lies was erroneous when the dispute boils down to a contract dispute). Accordingly, sanctions are not warranted and the Plaintiffs’ request for sanctions is denied.

ORDER

Based on the foregoing Opinion, the Plaintiffs' Motion for Summary Disposition is GRANTED AND THE COUNTERCLAIM IS DISMISSED.

ANY REQUEST TO AMEND THE COUNTERCLAIM IN LIGHT OF THIS OPINION AND ORDER MUST BE MADE BY SEPARATE MOTION TO BE FILED NO LATER THAN OCTOBER 2, 2024 OR IT WILL BE DEEMED ABANDONED.

/s/ Michael Warren

HON. MICHAEL WARREN
CIRCUIT COURT JUDGE

