

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

VIBRACOUSTIC USA, INC.,

Plaintiff/Counter-Defendant,

v

Case No. 24-210780-CB
Hon. Michael Warren

NEXTEER AUTOMOTIVE CORPORATION,

Defendant/Counter-Plaintiff.

OPINION AND ORDER GRANTING IN PART AND DENYING IN PART
DEFENDANT/COUNTER-PLAINTIFF'S
MOTION FOR PARTIAL SUMMARY DISPOSITION

At a session of said Court, held in the
County of Oakland, State of Michigan
October 28, 2025

PRESENT: HON. MICHAEL WARREN

OPINION

I
Overview

This cause of action arises out of a dispute regarding the automotive parts sourcing contract for Vibracoustic USA, Inc. to provide certain custom designed vibration control technology parts to Nexteer Automotive Corporation. Vibracoustic alleges that Nexteer illegitimately terminated the contract without notice and without proper cause, leaving Vibracoustic exposed to millions of dollars in liability. In particular, Vibracoustic alleges

Breach of Contract (Count I), Repudiation of Contract (Count II), Fraudulent Representation (Count III), Negligent Misrepresentation (Count IV), and Silent Fraud (Count V).

Before the Court is the Defendant/Counter-Plaintiff's Motion for Partial Summary Disposition. Oral argument is dispensed as it would not assist the Court in its decision-making process.¹

At stake is whether Vibracoustic can proceed to trial on Count III (Fraudulent Misrepresentation) when, viewed in the light most favorable to Vibracoustic, the claim alleges that Nexteer fraudulently induced Vibracoustic to enter into a revised purchase order? Because fraudulent inducement is an exception to the economic loss doctrine, the answer is "yes," and the Motion is denied as to Count III with regard to this allegation. However, a subsequent allegation about continued performance of the revised purchase order is barred by the economic loss doctrine.

Also at stake is whether Vibracoustic can proceed to trial on its fraud related claims Count IV and V when those claims are indisputably rooted in a breach of contract?

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, all 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 the claims are barred by the economic-loss doctrine, the answer is “no,” and summary disposition of Counts IV and V is warranted.

II Background

Vibracoustic, a global automotive supplier of automotive vibration control technology, supplied Nexteer with custom designed bushings for specific applications in multiple programs and vehicle platforms under seven purchase orders (“POs”) and thirteen part numbers (collectively, the “Parts”).² Nexteer is a tier one automotive supplier of power steering systems.³ In October 2016, Nexteer issued PO UD10470 for Vibracoustic to supply Parts to Nexteer for assemblies sold to General Motors; the PO specified the volume (maximum capacity rate or “MCR”) of Parts that Nexteer could order.⁴ In May 2021, Nexteer issued PO UD12721 for Vibracoustic to supply additional Parts.⁵

The same year, Vibracoustic declared Nexteer in breach of contract for ordering volumes that exceeded the agreed MCRs, and a subsequent contractual dispute arose regarding whether Vibracoustic could demand pricing adjustments.⁶ In response to Vibracoustic’s threats to stop shipping, Nexteer updated PO UD10470 “under protest” to

² Complaint, ¶ 7. The purchase orders at issue are UD10470, UD12721, UD10033, 9019726, 9019727, 901722 and 901723. The part numbers are 38212103, 38212104, 38211979, 38224286, 38224294, 38224296, 38288784, 26116873, 26118065, 38205991 (a/k/a 38223149), 38205992 (a/k/a 38223150), 26108437 and 26145149.

³ *Id.* ¶ 8.

⁴ *Id.* ¶¶ 9-10.

⁵ *Id.* ¶ 11.

⁶ *Id.* ¶¶ 12-15.

meet Vibracoustic's demanded price increases.⁷ Vibracoustic objected to the under-protest language⁸ and refused to ship unless Nexteer removed the under-protest language from the face of the PO, so Nexteer re-issued the PO without the added language.⁹ Under the terms of the revised PO, Vibracoustic would supply Parts at increased volumes (MCRs), and Nexteer would pay for Parts at an adjusted piece price.¹⁰ Vibracoustic invoiced at the adjusted price and Nexteer routinely paid the adjusted price.¹¹

Unless extended by agreement of the Parties, the supply relationship for PO UD10470 was scheduled to terminate on March 1, 2025.¹² Pursuant to industry practice, Vibracoustic contacted Nexteer in advance to confirm a winddown plan.¹³ In July 2024, Vibracoustic representatives met with Nexteer's Purchasing Manager to discuss a winddown plan, in light of the March 2025 contract termination.¹⁴ Nexteer's Purchasing Manager acknowledged that March 1, 2025 was the termination date and until that date Vibracoustic would continue to supply Nexteer with Parts.¹⁵ Nexteer conducted no further meetings with Vibracoustic and continued to issue releases for part deliveries.¹⁶ The Parties continued under the revised PO at the higher pricing until Nexteer resourced

⁷ *Id.* ¶ 15.

⁸ The PO language inserted by Nexteer was "price adjustment made under protest."

⁹ *Id.* ¶ 16.

¹⁰ *Id.* ¶ 17. Revised POs were PO UD10470 Rev. 155 and PO UD12721 Rev. 76.

¹¹ *Id.* ¶ 19.

¹² *Id.* ¶ 23.

¹³ *Id.*

¹⁴ *Id.* ¶ 24.

¹⁵ *Id.*

¹⁶ *Id.* ¶ 25.

to a different supplier and terminated all POs on October 1, 2024 without notice and without providing an opportunity to cure alleged breaches.¹⁷ Nexteer declared that it would not pay open invoices totaling \$3,952,868.32, as it was setting off Vibracoustic's payables based on Nexteer's breach claims, including the forced price increases.¹⁸ According to Vibracoustic's General Terms, Nexteer cannot take setoffs on claims that have not been expressly accepted by Vibracoustic or have not been fully adjudicated.¹⁹

In Count I (Breach of Contract), Vibracoustic alleges that the parties entered into a contract, Parts were supplied pursuant to the contract, Nexteer accepted the Parts, invoices were subsequently issued – requiring payment within 60 days, and the Nexteer has breached the contract by (1) not paying the invoices as required and (2) refusing to increase the piece price due to material cost increases.²⁰ Vibracoustic further alleges that Nexteer breached its duty of good faith and fair dealing when it terminated the contract for so-called just cause and/or convenience.²¹ In Count II (Repudiation of Contract), Vibracoustic avows that Nexteer has stated it will not pay the Vibracoustic invoices, taking setoffs on unadjudicated claims, and said statement is a repudiation of the parties' contract.²² Vibracoustic alleges that because of Nexteer's breaches, Vibracoustic has

¹⁷ *Id.* ¶ 28.

¹⁸ *Id.*

¹⁹ *Id.* ¶ 31.

²⁰ *Id.* ¶¶ 34-41.

²¹ *Id.* ¶ 42.

²² *Id.* ¶¶ 31, 51-52.

suffered damages in the amount \$7,252,868.32 for unpaid invoices, obsolescent material/WIP/finished goods, and supply chain exposure.²³

In Counts III (Fraudulent Misrepresentation) and IV (Negligent/Innocent Misrepresentation), Vibracoustic asserts that Nexteer committed fraud when Nexteer made false representations and assurances, if not intentionally then recklessly or negligently, regarding its agreement to pay the increased Parts' prices and source Parts through the end of the contract period.²⁴ Finally, in Count V (Silent Fraud), Vibracoustic alleges that Nexteer had a duty to disclose truthful information relating to (1) its plan to terminate POs for cause without advance notice to Vibracoustic and (2) its belief that Vibracoustic was in breach of contract in the years prior to the October 1, 2024 termination, during which Nexteer continued to purchase parts.²⁵

III The Arguments

Nexteer moves for partial summary disposition under MCR 2.116(C)(8) and (10). In particular, Nexteer argues that Vibracoustic cannot sustain its fraud claims for Fraudulent Misrepresentation (Count III), Negligent Misrepresentation (Count IV), and Silent Fraud (Count V) because they wholly arise from the commercial relationship created and governed by contract, therefore they are barred under both the economic-loss doctrine and the separate-and-distinct-duty test.

²³ *Id.* ¶ 43.

²⁴ *Id.* ¶¶ 56-63.

²⁵ *Id.* ¶¶ 69-70.

In response, Vibracoustic argues that the fraud claims are not barred by the economic loss doctrine because they are distinguishable from its contract claims since they do not relate to the performance of the contract. Vibracoustic also argues that the Nexteer's venture into the law of the "separate-and-distinct duty" doctrine is an irrelevant diversion because that doctrine applies only to services contracts. Because the parties agree that the contract was one for the sale of goods governed by the UCC, the application of the separate-and-distinct test is erroneous.

IV Standards of Review

A 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). *Id.* 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 v Rozwood*, 461 Mich 109, 119 (1999). See also *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. *Spiek v Dept of Transportation*, 456 Mich 331, 337 (1998); *Parkhurst Homes*, 187 Mich App 357.

B
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 v Rozwood*, 461 Mich 109, 119-120 (1999); 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.

V The Allegations

In its Complaint, Vibracoustic alleges as follows:

COUNT III -- FRAUDULENT MISREPRESENTATION

56. Nexteer's false representations and assurances, as alleged above, were material to Vibracoustic's decision to continue supplying the parts.

57. Nexteer's false representations and assurances described above were made with the intent to induce Vibracoustic to continue supplying the parts.

58. At the time Nexteer made the representation and assurances, it intended for Vibracoustic to rely on them and Nexteer knew they were false or made with reckless disregard for the truth.

59. Vibracoustic did in fact reasonably rely on Nexteer's false representations and assurances. Among other things, Vibracoustic continued to supply parts, and incurred expenses in expanding its manufacturing capacity to meet increased MCRs, and incurred expenses and potential liability related to orders for material and components need to supply parts at least up to March 1, 2025.

60. Vibracoustic learned, by reason of Nexteer's October 1, 2024, notice of termination and subsequent actions, including non-payment of Vibracoustic's invoices, that Nexteer's past representations and assurances were false.

61. As a direct and proximate result of Nexteer's false representations and assurances, Vibracoustic has been damaged in an amount that will be proven at trial.

COUNT IV -- NEGLIGENT/INNOCENT MISREPRESENTATION

63. Nexteer made each of the foregoing misrepresentations, if not intentionally, then recklessly or negligently, as positive assertions without knowledge of their truth and in violation of its duty to exercise reasonable care in making such misrepresentations to Vibracoustic.

64. Nexteer had a legal or equitable duty, as alleged above, to disclose truthful information, including information pertaining to Nexteer's plan to terminate purchase orders for cause and/or convenience without advance notice to Vibracoustic.

65. Nexteer had a legal or equitable duty, as alleged above, to disclose that in years preceding the October 1, 2024 termination, while it continued to issue purchase parts from Vibracoustic at stated purchase order prices, that it deemed that Vibracoustic was in breach of contractual obligations warranting termination.

66. The above representations and assurances were material and Nexteer intended at the time that they were made that Vibracoustic would rely on the representations and assurances.

67. Vibracoustic suffered damages due to its reliance on Nexteer's representations, assurances and failure to disclose material information.

COUNT V -- SILENT FRAUD

69. Nexteer had a legal or equitable duty to disclose truthful information pertaining to Nexteer's plan to terminate purchase orders for cause and/or convenience without advance notice to Vibracoustic.

70. Nexteer had a legal or equitable duty to disclose that in years preceding the October 1, 2024 termination, while it continued to issue purchase parts from Vibracoustic at stated purchase order prices, that Nexteer deemed that Vibracoustic was in breach of contractual obligations.

71. The above representations and assurances were material and Nexteer intended at the time that they were made that Vibracoustic would rely on the representations and assurances.

72. Vibracoustic suffered damages due to its reliance on Nexteer's representations, assurances and failure to disclose material information.

VI The Law

A The Law on the Economic Loss Doctrine

The economic loss doctrine is a judicially created doctrine that bars tort claims for economic damages resulting from commercial transactions. Under the economic loss doctrine, economic losses are only recoverable in contract, not tort. *Neibarger v Universal Coops, Inc*, 439 Mich 512, 520-523 (1992) (explaining that the economic loss doctrine provides that “where a purchaser’s expectations in a sale are frustrated because the product he bought is not working properly, his remedy is said to be in contract alone, for he has suffered only economic losses”). See also *Quest Diagnostics, Inc v MCI WorldCom, Inc*, 254 Mich App 372, 376 (2002). “[C]ourts generally have distinguished fraud in the inducement as the only kind of fraud claim not barred by the economic loss doctrine.” *Huron Tool & Engineering Co v Precision Consulting Servs, Inc*, 209 Mich App 365, 370-371 (1995) (““Fraud in the inducement, however, addresses a situation where the claim is that one party was tricked into contracting. It is based on *pre-contractual* conduct which is, under the law, a recognized tort” (citation omitted) (emphasis added)). The Court of Appeals has explained the exception as follows:

. . . [W]e decline to adopt defendants’ position that the economic loss doctrine precludes any fraud claim. Fraud in the inducement presents a special situation where parties to a contract appear to negotiate freely— which normally would constitute grounds for invoking the economic loss doctrine—but where in fact the ability of one party to negotiate fair terms and make an informed decision is undermined by the other party’s fraudulent behavior. In contrast, where the only misrepresentation by the dishonest party concerns the quality or character of the goods sold, the other party is still free to negotiate warranty and other terms to account for possible defects in the goods.

[*Huron Tool*, 209 Mich App at 372-373.]

“A claim of fraud in the inducement, by definition, redresses misrepresentations that induce the buyer to enter into a contract but that do not in themselves constitute contract or warranty terms subsequently breached by the seller.” *Id.* at 375.

B **The Law on the Separate and Distinct Doctrine**

The “separate and distinct duty” doctrine raised by Nexteer applies exclusively to actions involving service contracts, not contracts for goods. See *Rinaldo’s Const Corp v Michigan Bell Tel Co*, 454 Mich 65, 84 (1997).²⁶

²⁶ See also *Fraser Engine Rebuilder, Inc v Lancaster*, unpublished per curiam opinion of the Court of Appeals, issued June 8, 2023 (Docket No. 360110), p 10.

VII Analysis

A The Separate and Distinct Duty Doctrine is Inapplicable

The “separate and distinct duty” doctrine raised by Nexteer applies exclusively to actions involving service contracts, not contracts for goods. See *Rinaldo’s Const Corp*, 454 at 84. Because this action exclusively centers on a contractual dispute regarding the purchase and sale of automotive parts, this doctrine is inapplicable.

B The Economic Loss Doctrine Bars Counts IV and V, But Not Count III

1 Rules of Construction

Although Michigan Courts recognize that the economic loss doctrine bars some claims in tort that could be addressed under an existing contract, the doctrine is not absolute. Courts must “look to the four corners of plaintiff’s complaint, accept all factual allegations as true” and determine whether a “plaintiff’s fraud claim is viable apart from its contractual claims.” *Huron Tool*, 209 Mich App at 375. A plaintiff’s allegations of fraud must be extraneous to the contractual dispute in order to fall outside the ambit of the economic loss doctrine. *Id.* at 374. In other words, misrepresentations that relate to a party’s performance of the contract do not give rise to an independent cause of action in tort. *Id.*

Application to Count III

In Count III, Vibracoustic alleges that Nexteer committed fraud when it made materially false representations with the intent to induce Vibracoustic to continue supplying the Parts, leading to Vibracoustic's decision to continue supplying the Parts under the revised PO.²⁷ Elaborating further in its Response to the instant Motion, Vibracoustic alleges that the first instance of fraud occurred when Vibracoustic declared Nexteer in breach (due to its demand for part volumes that exceeded MCRs) and the parties set out to negotiate a new contract:

During negotiations in and around June 2021 over the new Contract, the parties agreed to new pricing and other terms, including increased MCRs, but Nexteer initially issued a purchase order that stated: "price adjustment made under protest." After further negotiations, Nexteer represented that that it would accept the revised pricing, and it issued a new purchase order without the "protest" language. Nexteer's removal of the "under protest" language was a material misrepresentation because Nexteer never intended to pay the full agreed-upon price. Nexteer's misrepresentation was made with the intent to induce Vibracoustic to enter into the new Contract. Nexteer never intended to pay the full adjusted pricing agreed upon in the new Contract. Vibracoustic reasonably relied on Nexteer's misrepresentations that it would pay the increased pricing (not "under protest") by continuing to supply Nexteer with increased MCR at cut costs.²⁸

In its Response, Vibracoustic alleges a second instance of fraud that occurred in July 2024, when Nexteer stated that it would continue to purchase parts pursuant to the

²⁷ First Amended Complaint, ¶¶ 56-59.

²⁸ Plaintiff's Response, p 4.

operative contract through March 1, 2025. Vibracoustic contends this statement was a misrepresentation because at the time it was made, Nexteer was already planning to terminate the contract. Vibracoustic alleges the misrepresentation was purposeful and made with the intent to induce it to continue to supply parts through March 2025.²⁹

The insertion and subsequent removal of the “price adjustment made under protest” term from the contract during negotiations relates to whether a new contract (ore revised PO) was made. Vibracoustic argues that Nexteer agreed to the higher price when it issued the revised PO. Hence, Vibracoustic’s allegation of fraud regarding the “under protest” term constitutes fraud in the inducement if proven. In other words, if Nexteer never intended to pay the price adjustment and hoodwinked Nexteer into producing the Parts pursuant to the revised PO, that deceit constitutes fraudulent inducement.

However, Nexteer’s statement during the Parties’ July 2024 meeting that it would continue performance “status quo” pursuant to the operative PO, and its allegation that this fraudulently induced Vibracoustic to continue supplying Parts under the existing contract, is axiomatically interwoven with contractual performance. An alleged representation regarding Nexteer’s continued performance on the current agreement is exactly the type of representation that is barred under the economic loss doctrine. Furthermore, it is nonsensical for Vibracoustic to allege that it was fraudulently induced

²⁹ *Id.* p 5.

into continuing to perform under an obligatory contract that was duly executed by the Parties years prior.

3

Application to Counts IV and V

In Count IV (Negligent/Innocent Misrepresentation), Vibracoustic alleges that Nexteer committed fraud when it made reckless or negligent misrepresentations regarding (1) Nexteer's plan to terminate the Contract for cause without advance notice to Vibracoustic and (2) Nexteer's belief that Vibracoustic was in breach of contractual obligations warranting termination.³⁰

In Count V (Silent Fraud), Vibracoustic alleges Nexteer committed fraud (1) when it failed to disclose its belief that Vibracoustic breached the contract and (2) when it failed to provide advance notice of its contract termination.³¹

Both Count IV and V unambiguously relate to actions, obligations, and performance under the contract, namely notice of breach and termination requirements. These claims do not allege conduct extraneous to the scope of the contract. Vibracoustic takes issue with the Nexteer's alleged failure to disclose (i) Nexteer's belief that Vibracoustic was in breach of the contract and (ii) Nexteer's anticipated termination of the contract. The only source for such a duty to disclose would be the parties' contract. Vibracoustic's fraud-based claims are indistinguishable from its contract claims because

³⁰ First Amended Complaint, ¶¶ 64-65.

³¹ *Id.* ¶¶ 69-70.

they clearly relate to the performance and rights under the contract (e.g., notice and disclosure requirements, contract duration and termination requirements, pricing and volume terms, conditions of breach, etc.). Therefore, they are barred under the economic loss doctrine.³²

For the reasons set forth above, summary disposition of the Plaintiff's fraud claims is warranted under MCR 2.116(C)(8).

ORDER

Based on the foregoing Opinion, Defendant/Counter-Plaintiff's Motion for Partial Summary Disposition is **GRANTED** in full as to Count IV (Negligent Misrepresentation), and Count V (Silent Fraud) and **DENIED IN PART AND GRANTED** as to Count III (Fraudulent Misrepresentation) as indicated above.

/s/ Michael Warren

HON. MICHAEL WARREN
CIRCUIT COURT JUDGE



³² Furthermore, both claims (Count IV and V) appear to be subsumed by the claim for fraudulent misrepresentation (Count III).