IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

ALLTRISTA PLASTICS, LLC, d/b/a JARDEN PLASTIC SOLUTIONS,	)	C.A. No. N12C-09-094 JTV
Plaintiff,	)	
v.	)	
ROCKLINE INDUSTRIES, INC.,	)	
Defendant.	)	

Submitted: May 10, 2013
Decided: September 4, 2013

Joseph J. Bellew, Esq., Cozen O'Connor, Wilmington, Delaware. Attorney for Plaintiff.

James J. Freebery, Esq., and Noriss Cosgrove Kurtz, Esq., McCarter & English, Wilmington, Delaware. Attorney for Defendant.

Upon Consideration of Plaintiff's
Motion to Dismiss Defendant's
Counterclaims and Affirmative Defenses
GRANTED IN PART
DENIED IN PART

VAUGHN, President Judge

OPINION

In this case, the plaintiff, Alltrista Plastics, LLC d/b/a Jarden Plastic Solutions ("Jarden") sued the defendant, Rockline Industries, Inc. ("Rockline"), for breach of a Supply Agreement. In its answer, Rockline denied that it breached the contract and asserted several affirmative defenses seeking, *inter alia*, rescission due to mutual mistake and fraud in the inducement. Rockline also asserted several counterclaims against Jarden for breach of contract; intentional misrepresentation; negligent misrepresentation; breach of the covenant of good faith and fair dealing; breach of the implied warranty of fitness for a particular purpose; promissory estoppel; and unjust enrichment. Jarden now moves to dismiss Rockline's affirmative defenses seeking rescission and all of Rockline's counterclaims except for the breach of contract claim. This is the Court's opinion regarding Jarden's motion.

FACTS

The following facts are taken from the pleadings and the exhibits attached thereto. To the extent that the facts are in dispute, the Court relies on the factual allegations contained in Rockline's counterclaims because it is the non-moving party.

Jarden is an Indiana limited liability company that manufactures, designs, and produces plastic containers that are used in packaging consumer products. Rockline is a Wisconsin corporation that manufactures, markets, and sells various household products, including wet wipes.

In January 2009, Jarden approached Rockline with a proposal to manufacture plastic canisters for use by Rockline in packaging its consumer wet wipes. According to Rockline, Jarden repeatedly represented to Rockline that it could manufacture

plastic canisters that would meet Rockline's packaging requirements. On November 12, 2009, Rockline and Jarden executed a Letter of Understanding outlining the preliminary terms and conditions under which the two parties would agree to enter into a supply agreement for the production and sale of canisters to the private wet wipe market. In the Letter of Understanding, Jarden agreed to develop a tool that could manufacture plastic canisters and Rockline agreed to pay Jarden $400,000, the first $200,000 of which was due and paid by Rockline upon executing the Letter of Understanding. Rockline also agreed to purchase a minimum amount of canisters from Jarden each year for three years starting in 2010.

Following the execution of the Letter of Understanding, Rockline provided Jarden with a list of validation criteria that the canisters were required to pass in order to meet Rockline's requirements. Jarden then created a prototype tool that produced one canister at a time ("the single-cavity tool") to demonstrate to Rockline its ability to successfully manufacture a canister that would meet Rockline's needs.

On September 30, 2010, Jarden presented canister design options to Rockline and represented that the options presented would meet Rockline's requirements. Rockline selected a canister design and, according to Rockline, agreed to enter into a Supply Agreement based upon the representations of Jarden's representatives.

On November 2, 2010, Jarden and Rockline entered into the final Supply Agreement whereby Jarden agreed to build a tool at Rockline's expense that could produce cylindrical canisters to house Rockline's wet wipes. In exchange, Rockline agreed to pay Jarden an additional $300,000 for the production of the tool, payable upon validation of the tool, and after which time Rockline would retain ownership of

the tool. Rockline also agreed to purchase at least 13,000,000 canisters from Jarden each year for three years at an agreed-upon price.

On November 4, 2010, February 3, 2011, and March 11, 2012, Rockline placed purchase orders for canisters produced from the single-cavity tool for further trial testing, which Jarden manufactured and delivered to Rockline. Rockline subjected the canisters to its validation tests in order to determine if the canisters met their specified criteria. Based on its evaluation of the canisters, Rockline approved of the canisters produced from the single cavity tool and also authorized Jarden to manufacture a tool that could produce eight canisters at a time ("the eight-cavity tool"), which was the tool that would be used in the final manufacturing process. According to Rockline, Jarden told Rockline that the canisters produced from the single-cavity tool were representative of the canisters that ultimately would be produced from the final eight-cavity tool.

Jarden then manufactured plastic canisters produced from the eight-cavity tool and delivered them to Rockline, who subjected the canisters to its validation tests. According to Rockline, the canisters produced from the eight-cavity tool did not meet its requirements with regard to the canisters' ability to be stacked.

Over the next couple of years, Jarden unsuccessfully attempted to produce canisters that would meet Rockline's requirements, conducting more than ten trial production runs of canisters that were manufactured using iterations of the eight-cavity tool, none of which met Rockline's requirements. According to Rockline, the most recent trial canisters, delivered to Rockline in February 2012, experienced denting, buckling, and cracking while being stacked in Rockline's warehouse.

Rockline notified Jarden of the canisters' failure on March 21, 2012 and invited Jarden to come to Rockline's facility to inspect the damaged canisters. A representative from Jarden did visit Rockline's facility on March 27 and observed the defective canisters. On multiple occasions after that visit, Rockline requested that Jarden provide Rockline with information to help determine the cause of the canisters' failures, and, according to Rockline, Jarden never responded. Because the trial canisters did not meet Rockline's requirements, Rockline never validated or approved the canisters manufactured from the eight-cavity tool.[1]

On September 17, 2012, Jarden sued Rockline alleging that it breached the Supply Agreement. Specifically, Jarden sought damages for the balance of the cost of the tool and modifications to the tool, which it totals at $542,346; the total cost of the unfulfilled minimum purchase orders of 13,000,000 canisters a year for three years at $0.19 a canister; and a termination fee of $1,500,000 for terminating the agreement without cause in the first year of the Supply Agreement.

On November 30, 2012, Rockline answered the complaint and asserted counterclaims against Jarden for breach of contract, intentional misrepresentation, negligent misrepresentation, breach of the covenant of good faith and fair dealing, breach of the implied warranty of fitness for a particular purpose, promissory estoppel, and unjust enrichment. Rockline also asserted several affirmative defenses seeking, *inter alia*, rescission of the Supply Agreement due to mutual mistake and

[1] In its complaint, Jarden alleges that the tool was validated by Rockline on July 13, 2011. Rockline denies that the tool was ever validated.

fraud in the inducement.

Jarden now moves to dismiss all of Rockline's counterclaims except for the breach of contract claim and the affirmative defenses seeking rescission.

STANDARD OF REVIEW

When deciding a Motion to Dismiss for failure to state a claim upon which relief can be granted, the complaint must give general notice of the claim asserted.[2] The complaint will not be dismissed unless it is clearly without merit as to either a matter of law or fact, or if "it appears with reasonable certainty that the plaintiff could not prove any set of facts that would entitle him to relief."[3] The Court will limit its review of the motion to dismiss to the well-pleaded allegations in the complaint, but will draw all reasonable factual inferences in favor of the non-moving party.[4]

DISCUSSION

A. Rockline's Counterclaims

Jarden moves to dismiss Rockline's counterclaims II through VII alleging intentional misrepresentation, negligent misrepresentation, breach of the covenant of good faith and fair dealing, breach of the implied warranty of fitness for a particular purpose, promissory estoppel, and unjust enrichment under Superior Court Civil Rule 12(b)(6) for failure to state a claim upon which relief can be granted. Jarden also moves to dismiss Rockline's promissory estoppel and unjust enrichment

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[2] *Doe v. Cahill*, 884 A.2d 451, 458 (Del. 2005).

[3] *Diamond State Tel. Co. v. Univ. of Del.*, 269 A.2d 52, 58 (Del. 1970).

[4] *Cahill*, 884 A.2d at 458.

counterclaims under Rule 12(b)(1) for lack of subject matter jurisdiction. I will address each of these claims *seriatim*.

(1) Intentional Misrepresentation

To plead a claim for fraud or intentional misrepresentation under Delaware law, a plaintiff must allege: (1) a false representation, usually one of fact, made by the defendant; (2) with knowledge or belief of its falsity or with reckless indifference to the truth; (3) with intent to induce action or inaction; (4) that plaintiff's response was taken in justifiable reliance on the representation; and (5) an injury resulting from such reliance.[5]

In Rockline's counterclaim against Jarden, Rockline alleges that Jarden approached Rockline in 2009 and repeatedly made claims that it had the ability to produce a canister that would satisfy all of Rockline's needs and specifications. Rockline further alleges that Jarden told it that the canisters produced from the single-cavity tool were representative of the canisters that would be produced from the final eight-cavity tool.

Rockline claims that these statements were false representations; that Jarden knew its representations were untrue at the time they were made, or, alternatively, the representations were made recklessly without caring whether they were true; that Jarden made the representations with the intent to induce Rockline to enter into the Supply Agreement; that Rockline relied on those representations to their detriment and Rockline's reliance was reasonable; and that Rockline was injured as a result of

[5] *Van Lake v. Sorin CRM USA, Inc.*, 2013 WL 1087583, at *12 (Del. Super. Feb. 15, 2013).

the reliance. Rockline also states that it "would not have signed the Supply Agreement if Jarden Plastic had not misrepresented its ability to manufacture canisters that met Rockline's requirements and misrepresented that it would produce canisters from an eight-cavity production tool that were the same as the sample Prototype Canisters made from the single-cavity Prototype Tool."[6]

Based on the allegations contained in Rockline's counterclaim, which must be accepted as true, it is clear that Rockline has sufficiently pleaded a claim for intentional misrepresentation.

Jarden contends, however, that Rockline's intentional misrepresentation counterclaim should be dismissed, because the plaintiff cannot sue for a party's alleged intent to fail to perform the contract. Rockline counters that it is not alleging that Jarden misrepresented their *intention* to perform the contract, but rather, that Jarden misrepresented their *ability* to produce a canister that would meet Rockline's needs. I agree with Rockline's characterization of the pleadings. In its counterclaim, Rockline specifically alleges that Jarden's "representations about its *ability* to manufacture canisters that met Rockline's requirements were false."[7] Although it is true that Delaware Courts have held that "[a] breach of contract claim cannot be turned into a fraud claim simply by alleging that the other party never intended to

[6] Ans. ¶ 42.

[7] Ans. ¶ 37 (emphasis added).

perform,"[8] representing one's ability to manufacture a canister that will meet the needs of another party is a statement of fact, which, if false, can give rise to an intentional misrepresentation claim.[9]

Jarden next contends that Rockline's intentional misrepresentation claim is barred under the economic loss doctrine. "The economic loss doctrine is a judicially created doctrine that prohibits recovery in tort where a product has damaged only itself (*i.e.*, has not caused personal injury or damage to *other* property) and, the only losses suffered are economic in nature."[10] In essence, the economic loss doctrine prohibits certain claims in tort where overlapping claims based in contact adequately address the injury alleged, because, the theory is, contract law provides a better and more specific remedy than tort law.[11] Moreover, the doctrine supports the parties' ability to allocate the risks of the business transaction.[12]

This Court, however, has held that the doctrine's bar on tort claims is not absolute. Claims of fraud that go directly to the inducement of the contract, rather

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[8] *Mark Fox Grp., Inc. v. E.I. duPont de Nemours & Co.*, 2003 WL 21524886, at *6 (Del. Ch. July 2, 2003) (quoting *Diamond Elec., Inc. v. Delaware Solid Waste Auth.*, 1999 WL 160161, at *7 (Del. Ch. Mar. 15, 1999)).

[9] *See BAE Sys. N. Am. Inc. v. Lockheed Martin Corp.*, 2004 WL 1739522, at *7 (Del. Ch. Aug. 3, 2004) (stating that representing false statements as true can give rise to a common law fraud claim).

[10] *Danforth v. Acorn Structures, Inc.*, 608 A.2d 1194, 1195 (Del. 1992).

[11] *Brasby v. Morris*, 2007 WL 949485, at *6 (Del. Super. Mar. 29, 2007) (citing Am. L. Prod. Liab. 3d § 60:41).

[12] *Id.*

than its performance, are not barred by the economic loss doctrine.[13] This exception applies only when the claims at issue arise independently of the underlying contact.[14]

As mentioned above, Rockline has adequately pleaded a cause of action for intentional misrepresentation. That misrepresentation claim arises out of facts independent of Rockline's breach of contract claim—*i.e.*, Jarden's alleged representations that it had the ability to manufacture canisters that would meet Rockline's needs, which were made prior to, and allegedly induced Rockline into, the Supply Agreement.[15] Therefore, Rockline's misrepresentation claim is not barred by the economic loss doctrine.

Lastly, Jarden contends that Rockline cannot pursue a claim for intentional misrepresentation because it is barred by the Supply Agreement's integration clause, which generally provides that there are no representations made outside of the

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[13] *Id.* at *7.

[14] *Id.* (citing *Werwinski v. Ford Motor Co.*, 286 F.3d 661, 676 (3d Cir. 2002)).

[15] *Cf. Brasby*, 2007 WL 949485, at *7 (dismissing a claim for fraud, because "[t]he statements and assurances for which Plaintiff bases his claim were all made at a point in time *following the formation of a valid contract*," and thus, "the fraud claims do not arise independently of the underlying contract" (emphasis added)).

The Court notes that in its opening brief, Jarden quoted language from *AQSR India Private, Ltd. v. Bureau Veritas Holdings, Inc.*, 2009 WL 1707910 (Del. Ch. June 16, 2009), which held that "where an action is based entirely on a breach of the terms of a contract between the parties, and not on a violation of an independent duty imposed by law, a plaintiff must sue in contract and not in tort." Op. Br. at 2 (quoting *AQSR India Private, Ltd.*, 2009 WL 1707910 at *12). Jarden, however, provided no application of the rule to this case and the Court is unsure whether it was attempting to argue that the rule applied here. To the extent that it was, the Court finds that the claim is without merit, because, as mentioned, Rockline's intentional misrepresentation claim rests on facts independent of the breach of the contract claim.

agreement.[16] Rockline counters that under Delaware law the integration clause contained in the Supply Agreement does not bar its claim for intentional misrepresentation because it contains no explicit language stating that Rockline is not relying on representations made outside of the Supply Agreement. Section 23 of the Supply Agreement states:

> The Agreement sets forth the entire understanding between the Parties with respect to the subject matter herein, and supersedes and replaces the terms of any and all prior discussions, agreements or understanding between the parties. There are no covenants, promises, agreements, warranties, representations, conditions or understandings, either oral or written, between the Parties with regard to the subject matter herein other than as set forth in the agreement.

In *Norton v. Poplos*, the Delaware Supreme Court held that a fraud in the inducement claim was not barred even when there is an integration clause in the contract.[17] Over the years since the Supreme Court's ruling in *Norton*, however, the Court of Chancery has held that integration clauses may bar fraud claims in some instances.[18] The Court of Chancery distinguished the integration clause presented in *Norton* as being between relatively unsophisticated parties in a real estate contract

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[16] Jarden raised this argument for the first time in its reply brief. Rockline then requested that it be permitted to file a sur-reply brief to address this additional claim, which the Court granted.

[17] 443 A.2d 1, 6 (Del. 1982).

[18] *See e.g.*, *Abry Partners V, L.P. v. F & W Acquisition LLC*, 891 A.2d 1032 (Del. Ch. 2006); *Kronenberg v. Katz*, 872 A.2d 568 (Del. Ch. 2004); *H-M Wexford LLC v. Encorp, Inc*., 832 A.2d 129 (Del. Ch. 2003); *Great Lakes Chem. Corp. v. Pharmacia Corp*., 788 A.2d 544 (Del. Ch. 2001).

that contained boilerplate, unnegotiated disclaimer language.[19]

In *Abry Partners V, L.P. v. F & W Acquisition LLC*, the Court of Chancery held that "sophisticated parties to negotiated commercial contracts may not reasonably rely on information that they contractually agreed did not form a part of the basis for their decision to contract."[20] Recently, in *RAA Mgmt., LLC v. Savage Sports Holdings, Inc.*,[21] the Delaware Supreme Court approved of the line of cases distinguishing *Norton* based on the sophistication of the parties and the use of carefully negotiated disclaimer language, and further held that "*Abry Partners* accurately states Delaware law and explains Delaware's public policy in favor of enforcing contractually binding written disclaimers of reliance on representations outside of a final agreement of sale or merger."[22]

Rockline contends that the integration clause in this case is similar to the one presented in *Kronenberg v. Katz*[23] and, consistent with the holding in that case, its claim for fraud should not be deemed barred by the Supply Agreement's integration clause. I agree. In *Kronenberg*, then-Vice Chancellor Strine grappled with the "tension" between *Norton* and the more recent Court of Chancery cases, but noted

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[19] *See e.g.*, *Kronenberg*, 872 A.2d at 590.

[20] 891 A.2d 1032, 1057 (Del. Ch. 2006) (quoting *H-M Wexford LLC v. Encorp, Inc.*, 832 A.2d 129, 142 n.18 (Del. Ch. 2003)).

[21] 45 A.3d 107 (Del. 2012).

[22] *Id.* at 118-19.

[23] 872 A.2d 568 (Del. Ch. 2004).

that it was unnecessary to resolve that issue because the integration clause presented in *Kroenberg* was different from those previous cases.[24] In particular, the court noted that there was no clear anti-reliance language that stated that the plaintiff was not relying on statements made outside of the agreement.[25] The court went on to summarize the state of Delaware law on this point, stating:

> [F]or a contract to bar a fraud in the inducement claim, the contract must contain language that, when read together, can be said to add up to a clear anti-reliance clause by which the plaintiff has contractually promised that it did not rely upon statements outside the contract's four corners in deciding to sign the contract. The presence of a standard integration clause alone, which does not contain explicit anti-reliance representations and which is not accompanied by other contractual provisions demonstrating with clarity that the plaintiff had agreed that it was not relying on facts outside the contract, will not suffice to bar fraud claims. Rather, in that circumstance, the defendant will remain at risk if the plaintiff can meet the difficult burden of demonstrating fraud.[26]

The language used in the contract at issue in *Kronenberg* is similar to the language used in the Supply Agreement here. That is, it does not contain clear language that states that Rockline was not relying on agreements or representations made outside of the contract. Because the Supply Agreement's integration clause

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[24] *Id.* at 591.

[25] *Id.*

[26] *Id.* at 593.

contains no explicit anti-reliance language, Rockline is not barred from bringing a claim for intentional misrepresentation against Jarden.

Accordingly, Jarden's motion to dismiss Rockline's intentional misrepresentation claim is ***denied***.

(2) Negligent Misrepresentation

In Count III of its counterclaim, Rockline states virtually identical allegations as it did for its intentional misrepresentation claim, and Jarden moved to dismiss Rockline's counterclaim for negligent misrepresentation under Rule 12(b)(6) for failure to state a claim upon which relief can be granted.

However, jurisdiction over the subject matter of the case is an indispensable ingredient of any judicial proceeding, and thus, "a threshold inquiry must be made to determine whether a Court has proper jurisdiction over the claim before it."[27] The Court may raise the issue of subject matter jurisdiction *sua sponte*.[28] "Whenever a question of subject matter jurisdiction is brought to the attention of the trial court, the issue must be decided before any further action is taken, and the issue of jurisdiction must be disposed of regardless of the form of motion."[29]

It is well-settled that the Court of Chancery has exclusive jurisdiction over

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[27] *Texcel v. Commercial Fiberglass*, 1987 WL 19717, at *2 (Del. Super. Nov. 3, 1987).

[28] *Boyce Thompson Inst. v. MedImmune, Inc*, 2009 WL 1482237, at *10 (Del. Super. May 19, 2009) (citing Del. Super. Ct. Civ. R. 12(h)(3) ("Whenever it appears by suggestion of the parties or otherwise that the Court lacks jurisdiction of the subject matter, the Court shall dismiss the action.")).

[29] *Texcel*, 1987 WL 19717, at *2.

claims of negligent misrepresentation.[30] "The one exception to the exclusive jurisdiction of the Court of Chancery would be cases where the negligent misrepresentation claim is raised in the context of the Consumer Fraud Act."[31]

It is clear that Rockline's counterclaim for negligent misrepresentation is not premised on an alleged violation of the Consumer Fraud Act. The Court notes, however, that it must look beyond the labeling of the claim and examine its substance to determine the true nature of the allegation.[32] As mentioned, Rockline stated virtually identical allegations in its negligent misrepresentation claim as it did in its intentional misrepresentation claim. Because Rockline has sufficiently pleaded a claim for intentional misrepresentation in its second counterclaim, Jarden's motion to dismiss Rockline's negligent misrepresentation claim is ***granted***.

(3) Implied Covenant of Good Faith and Fair Dealing

Rockline alleges in Count IV of its counterclaims that Jarden breached the implied covenant of good faith and fair dealing. Rockline states that the trial canisters produced from the eight-cavity tool failed during validation testing, which made the canisters commercially unusable and prevented the parties from agreeing to final specifications for the canisters. Rockline alleges that it attempted on several

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[30] *Van Lake v. Sorin CRM USA, Inc.*, 2013 WL 1087583, at *11 (Del. Super. Feb. 15, 2013).

[31] *Iacono v. Barici*, 2006 WL 3844208, at *5 (Del. Super. Dec. 29, 2006).

[32] *See Radius Servs., LLC v. Jack Corrozi Const., Inc.*, 2009 WL 3273509, at *2-3 (Del. Super. Sept. 30, 2009) (permitting the plaintiff to treat its claim for negligent misrepresentation as one for intentional misrepresentation); *Van Lake v. Sorin CRM USA, Inc.*, 2013 WL 1087583, at *12 (Del. Super. Feb. 15, 2013) (treating the plaintiff's claim for negligent misrepresentation as one for simple negligence); *Atwell v. RHIS, Inc.*, 2006 WL 2686532, at *1 (Del. Super. Aug. 18, 2006).

occasions to ask Jarden to assist them in determining the reasons why the canisters failed, but Jarden refused to respond to Rockline's repeated requests for assistance. This failure to assist Rockline in determining the reasons why the canisters failed, Rockline alleges, was a breach of the implied covenant of good faith and fair dealing.

Jarden moved to dismiss this claim, because, Jarden contends, Rockline has simply alleged a breach of the express terms of the Supply Agreement and "Rockline cannot argue that the basis of its breach-of-contract claim also constitutes a breach of the implied covenant of good faith and fair dealing."[33]

Rockline contends that the implied covenant of good faith and fair dealing required Jarden to work with Rockline to determine the reasons why the canisters failed so that the failures would not be repeated. It further contends that Jarden violated the spirit of the Supply Agreement, because Jarden withheld information about the composition of the canisters and refused to work with Rockline to identify the cause of the canisters' failures. Rockline contends that the express terms of the Agreement are silent with regard to this exchange of information between the parties, and therefore, Jarden's motion should be denied.

The implied covenant of good faith and fair dealing inheres in every contract governed by Delaware law and "requires a party in a contractual relationship to

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[33] In its reply brief, Jarden also contends for the first time that the Supply Agreement bars Rockline's claim for breach of the implied covenant of good faith and fair dealing because its integration clause "disavows any covenants other than those set forth in the agreement." However, the covenant is implied into every contract in Delaware, and as such, "the presence of an integration clause in a contract, alone, does not preempt a claim based on the implied covenant of good faith and fair dealing." *Fitzgerald v. Cantor*, 1998 WL 842316, at *1 n.5 (Del. Ch. Nov. 10, 1998).

refrain from arbitrary or unreasonable conduct which has the effect of preventing the other party to the contract from receiving the fruits of the bargain."[34] "The implied covenant does not apply when 'the subject at issue is expressly covered by the contract.'"[35]

Thus, to state a claim for breach of the implied covenant, Rockline "must allege a specific implied contractual obligation, a breach of that obligation by the defendant, and resulting damage to the plaintiff."[36] "General allegations of bad faith conduct are not sufficient."[37] Because the implied covenant has a narrow purpose, it is only rarely invoked successfully.[38]

I find that Rockline has sufficiently pleaded a claim for breach of the implied covenant of good faith and fair dealing. Rockline contends that there was an implied obligation that the parties would work together to determine why the canisters failed. Jarden's failure to assist Rockline in this manner, Rockline contends, was unreasonable and prevented Rockline from receiving the fruits of its bargain. Although Jarden contends that Rockline has simply alleged a breach of the express

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[34] *Dunlap v. State Farm Fire & Cas. Co.*, 878 A.2d 434, 442 (Del.2005) (internal quotation omitted).

[35] *Airborne Health, Inc. v. Squid Soap, LP*, 984 A.2d 126, 145-48 (Del. Ch. 2009) (quoting *Dave Greytak Enters., Inc. v. Mazda Motors of Am., Inc*., 622 A.2d 14, 23 (Del. Ch.1992), *aff'd*, 609 A.2d 668 (Del.1992)).

[36] *Fitzgerald v. Cantor*, 1998 WL 842316, at *1 (Del. Ch. Nov. 10, 1998).

[37] *Kuroda v. SPJS Holdings, L.L.C*., 971 A.2d 872, 888 (Del. Ch. 2009).

[38] *Id.*

terms of the Supply Agreement, Jarden cites no specific provision in the Supply Agreement that it alleges would govern the injury suffered by Rockline.[39]

The Court notes that Section 4(a) of the Supply Agreement, which provides for the specifications and quality assurance of the canisters, states that "Jarden and Rockline shall work together to reach agreed upon Specifications. Once the parties reach agreed upon Specifications, Jarden shall materially conform to the respective specifications as set forth in Exhibit A hereto." Exhibit A of the Supply Agreement evidently was left blank because the parties could not agree to certain specifications due to the trial canisters' failure.

Section 4(a) of the Supply Agreement expressly requires that Jarden and Rockline work together to reach agreed upon specifications with regard to the canisters. That provision does not squarely address Rockline's alleged implied obligation here—*i.e.*, that Jarden and Rockline would work together to determine why the canisters failed. Because the contract lacks specific language governing the implied obligation here,[40] Jarden's motion to dismiss Rockline's claim for breach of the implied covenant of good faith and fair dealing is ***denied***.

(4) Implied Warranty of Fitness for a Particular Purpose

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[39] In its opening brief, Jarden states "[t]o the extent that [Rockline's claim] is based on the claim that the canisters did not conform to Rockline's specifications, that issue is covered by the express provisions of the Agreement." Op. Br. at 4 (citing "Agreement at 1").

[40] *See Alliance Data Sys. Corp. v. Blackstone Capital Partners V L.P.*, 963 A.2d 746, 770 (Del. Ch. 2009) ("[T]he implied covenant only applies where a contract lacks specific language governing an issue and the obligation the court is asked to imply advances, and does not contradict, the purposes reflected in the express language of the contract."), *aff'd*, 976 A.2d 170 (Del.2009).

In Count V, Rockline alleges that Jarden knew the particular purpose for which Rockline required the canisters and that Rockline relied on Jarden's skills, judgment, and expertise to furnish canisters that met Rockline's requirements. As such, Rockline alleges, Jarden impliedly warranted that the canisters would be fit for Rockline's particular purpose under 6 *Del. C.* § 2-315, and that that warranty was breached when Jarden failed to produce canisters that met Rockline's needs.

Jarden moved to dismiss Rockline's implied warranty claim by simply contending that a party cannot sue for a breach of the implied warranty of fitness for a particular purpose when the action is based on the same facts that constitute a viable breach of contract claim. Jarden, however, cites no authority for this proposition and the Court can find none. Clearly a party may sue for both breach of contract and breach of the implied warranty of fitness for a particular purpose when the claims arise from the same factual basis.

In its reply brief, Jarden contends that the breach of the implied warranty claim is barred by the integration clause in Section 23 of the Supply Agreement.

The implied warranty of fitness for a particular purpose is set forth in § 2-315 of the Delaware Uniform Commercial Code, which states:

> Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under [Section 2-316] an implied warranty that the goods shall be fit for such purpose.[41]

[41] 6 *Del. C.* § 2-315.

Section 2-316 provides for the exclusion or modifications of implied warranties. It states in relevant part that "[l]anguage to exclude all implied warranties of fitness is sufficient if it states, for example, that 'There are no warranties which extend beyond the description of the face hereof.'"[42]

Section 23 of the Supply Agreement states that "[t]here are no covenants, promises, agreements, warranties, representations, conditions or understandings, either oral or written, between the Parties with regard to the subject matter herein other than as set forth in the agreement." This language is substantially similar to that of § 2-316(2) and is sufficient to exclude the implied warranty of fitness for a particular purpose. Therefore, Jarden's motion to dismiss Rockline's claim for breach of the implied warranty of fitness for a particular purpose is ***granted***.

(5) Promissory Estoppel

In Count VI of its counterclaims, Rockline alleges that Jarden promised to manufacture canisters that would meet Rockline's requirements and cost less than the canisters Rockline had been using, which induced Rockline to enter into the Supply Agreement. Rockline further alleges that Jarden intended Rockline to rely on these promises and that Rockline did reasonably rely on the promises by making payments to Jarden totaling $270,983.99 toward the development of a workable tool. Ultimately, none of the canisters met Rockline's requirements. Rockline alleges that to avoid injustice, Jarden must be required to refund all amounts paid by Rockline

[42] 6 *Del. C.* § 2-316(2).

and compensate them for the damages that it incurred as a result of Jarden's failure to fulfill its promises.

Jarden moved to dismiss this claim under Rule 12(b)(1) for lack of subject matter jurisdiction and Rule 12(b)(6) for failure to state a claim upon which relief can be granted. Because jurisdiction over the subject matter of the case is an indispensable ingredient of any judicial proceeding, I will address that contention first.[43]

With regard to its Rule 12(b)(1) claim, Jarden simply contends that this Court does not have subject matter jurisdiction over a claim for promissory estoppel because it is "equitable in nature." It cites no cases stating that this Court lacks subject matter jurisdiction over claims for promissory estoppel. In fact, contrary to Jarden's unsupported assertion, it is well-settled that this Court does have the jurisdiction to hear such claims.[44]

Jarden also moved to dismiss Rockline's promissory estoppel claim under Rule 12(b)(6), contending that "promissory estoppel does not apply when claims arise from a contract supported by valid consideration."

Rockline responds and contends that its claim is based on the alleged misrepresentations made by Jarden that induced Rockline into executing the Supply

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[43] *Texcel v. Commercial Fiberglass*, 1987 WL 19717, at *2 (Del. Super. Nov. 3, 1987) ("Whenever a question of subject matter jurisdiction is brought to the attention of the trial court, the issue must be decided before any further action is taken, and the issue of jurisdiction must be disposed of regardless of the form of motion.").

[44] *See e.g.*, *Chrysler Corp. (Delaware) v. Chaplake Holdings, Ltd.*, 822 A.2d 1024, 1031 (Del. 2003); *Reeder v. Sanford Sch., Inc.*, 397 A.2d 139, 142 (Del. Super. 1979).

Agreement and induced it into making substantial payments for the development of the canister production tool.

Promissory estoppel involves "informal promises for which there was no bargained-for exchange but which may be enforceable because of antecedent factors that caused them to be made or because of subsequent action that they caused to be taken in reliance."[45] The purpose of the promissory estoppel doctrine is to prevent injustice.[46] The Supreme Court has held that promissory estoppel "is more accurately viewed as a consideration substitute for promises which are reasonably relied upon, but which would otherwise not be enforceable."[47] Or, if there is an enforceable contract, promissory estoppel will apply only if the contract governs other aspects of the parties' relationship and not when the relied-upon promises were incorporated into the contract.[48] Accordingly, courts must be careful that they do not apply the doctrine of promissory estoppel when there is an existing contract that governs the issue before the Court.[49]

In order to establish a claim for promissory estoppel, a plaintiff must show by

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[45] *Lord v. Souder*, 748 A.2d 393, 404 (Del. 2000) (Lamb, V.C., concurring) (citing Eric Holmes Mills, et al., *Corbin on Contracts*, § 8.1, at 5 (Rev. ed.1996)).

[46] *Ramone v. Lang*, 2006 WL 905347, at *14 (Del. Ch. Apr. 3, 2006).

[47] *Lord*, 748 A.2d at 400 (citing Eric Holmes Mills, et al., *Corbin on Contracts*, § 8.12, at 101 (Rev. ed.1996)).

[48] *See Grunstein v. Silva*, 2009 WL 4698541, at *8 (Del. Ch. Dec. 8, 2009) (citing *Chrysler Corp. (Delaware) v. Chaplake Holdings, Ltd.*, 822 A.2d 1024, 1033-34 (Del. 2003)).

[49] *See Lord*, 748 A.2d at 404-05; *Ramone*, 2006 WL 905347, at *14

clear and convincing evidence that: (I) a promise was made; (ii) it was the reasonable expectation of the promisor to induce action or forbearance on the part of the promisee; (iii) the promisee reasonably relied on the promise and took action to his detriment; and (iv) such promise is binding because injustice can be avoided only by enforcement of the promise.[50]

At this stage in the litigation, it is too early to determine whether the payments made by Rockline under its promissory estoppel claim are governed by the Supply Agreement, and therefore, subject to dismissal. Rockline specifically alleges that it reasonably relied on Jarden's promise that it would develop a workable tool, which was made prior to entering into the Supply Agreement, by paying Jarden $270,983.99. The Court notes, however, that it appears that Rockline alleges at least some damages that arise from a breach of the contract itself.

In their Letter of Understanding, the parties agreed that Rockline would pay Jarden $400,000, the first $200,000 of which was due, and was in fact paid by Rockline, upon the execution of the Letter of Understanding on November 12, 2009. The Letter of Understanding also indicates that Rockline paid a $50,000 fee on February 1, 2009, which was applied to testing and analysis, although it is unclear whether this money went towards testing of the tool.

The Supply Agreement, which was the parties' final agreement executed on November 2, 2010, states that "Rockline's payment of $200,000 on or about November 12, 2009 will be credited towards the Tool cost."

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[50] *Lord*, 748 A.2d at 399.

It is unclear at this point what payments have been made and what promises Rockline allegedly relied upon. To the extent that Rockline has made payments that are expressly contemplated by the Supply Agreement, it must seek to recover that money under its breach of contract claim. If there are additional relied-upon promises made with regard to the development of the tool that are not expressly governed by the Supply Agreement, Rockline may seek to recover those costs under a promissory estoppel theory. Because it is too early to determine what specific promises and payments have been made, Jarden's motion to dismiss Rockline's promissory estoppel claim is ***denied***.

(6) Unjust Enrichment

In Count VII of its counterclaims, Rockline alleges that it paid Jarden's invoices for trial canisters, tooling development, and market protection during canister development. Because Rockline has not received a working canister, Rockline alleges, Jarden was unjustly enriched by retaining the money paid to it by Rockline.

As with the promissory estoppel claim, Jarden contends that this Court lacks subject matter jurisdiction to hear Jarden's unjust enrichment claim because it is equitable in nature. Rockline counters and contends that a claim for unjust enrichment is recognized at law by Delaware courts.

In its brief, Jarden cites no case law to support its contention that this Court lacks jurisdiction to hear claims for unjust enrichment. Rather, it cites this Court's

decision in *Reybold Venture Grp. XI-A, LLC v. Atl. Meridian Crossing, LLC*[51] for the proposition that this Court must dismiss equitable claims for want of jurisdiction. That case, however, dismissed a counterclaim for breach of fiduciary duty—a claim clearly within the jurisdiction of the Court of Chancery—but also noted that the Superior Court has previously retained jurisdiction over a separate claim for unjust enrichment, because "[u]nlike the claim for breach of fiduciary duty, [the unjust enrichment] claim entails no special trust relationship between the parties, and therefore the nature of the remedy is dispositive."[52] Accordingly, it is clear that this Court does have jurisdiction to hear claims for unjust enrichment.[53]

Jarden also moves to dismiss Rockline's claim for unjust enrichment pursuant to Rule 12(b)(6) because, it contends, a claim of unjust enrichment is unavailable if a contract governing the relationship between the parties gives rise to the claim.

Rockline contends that its payment of invoices to Jarden were based on Jarden's false promises regarding its ability to produce a suitable canister. Furthermore, those payments came before the execution of the Supply Agreement and the Agreement does not contemplate all of the payments made by Rockline to Jarden.

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[51] 2009 WL 143107 (Del. Super. Jan. 20, 2009).

[52] *Id.* at 2 (quoting *Grace v. Morgan*, 2004 WL 26858, at *3 (Del. Super. Jan. 6, 2004)).

[53] Jarden contends in its reply brief that this Court has jurisdiction over unjust enrichment claims if the plaintiff seeks money damages only and not equitable relief. *See Grace*, 2004 WL 26858, at *3. Because Rockline seeks equitable relief in the form of rescission, Jarden contends, the Court does not have subject matter jurisdiction to hear the claim. As discussed *infra* Part B, the Court finds that Rockline does not seek equitable relief, and therefore, Jarden's claim is without merit.

It concludes that "[b]ecause Rockline's unjust enrichment claim seeks damages in addition to what is available under the Supply Agreement, both unjust enrichment and breach of contract claims can be pursued."

Unjust enrichment is "the unjust retention of a benefit to the loss of another, or the retention of money or property of another against the fundamental principles of justice or equity and good conscience."[54] The elements of unjust enrichment are: (1) an enrichment, (2) an impoverishment, (3) a relation between the enrichment and impoverishment, (4) the absence of justification, and (5) the absence of a remedy provided by law.[55]

"Courts developed unjust enrichment, or quasi-contract, as a theory of recovery to remedy the absence of a formal contract,"[56] and, similar to promissory estoppel, "[a] claim for unjust enrichment is not available if there is a contract that governs the relationship between parties that gives rise to the unjust enrichment claim."[57] Thus, "[w]hen the complaint alleges an express, enforceable contract that controls the

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[54] *Kuroda v. SPJS Holdings, L.L.C.*, 971 A.2d 872, 891 (Del. Ch. 2009) (quoting *Schock v. Nash*, 732 A.2d 217, 232 (Del.1999)).

[55] *Nemec v. Shrader*, 991 A.2d 1120, 1130 (Del. 2010).

[56] *ID Biomedical Corp. v. TM Technologies, Inc.*, 1995 WL 130743, at *15 (Del. Ch. Mar. 16, 1995).

[57] *See Kuroda*, 971 A.2d 872, 891; *ID Biomedical Corp.*, 1995 WL 130743, at *15 ("A party cannot seek recovery under an unjust enrichment theory if a contract is the measure of the plaintiff's right.").

parties' relationship . . ., a claim for unjust enrichment will be dismissed."[58]

As mentioned, Rockline alleged that it paid Jarden's invoices for trial canisters, tooling development, and market protection during canister development, but has not received a working canister produced from the eight-cavity tool to date. Accepting those allegations as true, the unjust retention of those benefits can give rise to a claim for unjust enrichment.

In response, Jarden contends that the contract governs the payments of the invoices, and therefore, Rockline's unjust enrichment claim must be dismissed. However, as with the promissory estoppel claim, it is too early to determine whether the contract specifically addresses the payments alleged here. Moreover, Rockline contends that the payments are not governed by the Supply Agreement, because they came before the execution of the contract and were not incorporated into the Supply Agreement. Accordingly, Jarden's motion to dismiss Rockline's unjust enrichment claim is ***denied***.

B. Rockline's Affirmative Defenses

Jarden also moved to dismiss Rockline's affirmative defenses three and seven seeking rescission due to mutual mistake and fraud in the inducement respectively under Rule 12(b)(1) for lack of subject matter jurisdiction, because, Jarden contends, rescission is an equitable remedy and subject to the jurisdiction of the Court of Chancery.

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[58] *Bakerman v. Sidney Frank Importing Co., Inc.*, 2006 WL 3927242, at *18 (Del. Ch. Oct. 10, 2006).

Rockline contends that rescission is a remedy also recognized at law in Delaware and that it is an appropriate remedy because Rockline only seeks to have the contract rescinded and monetary damages awarded to restore Rockline to its original condition.

In *E.I. Du Pont De Nemours & Co. v. HEM Research, Inc.*, Chancellor Allen observed the following:

> It is perhaps not commonly appreciated that rescission is a remedy awarded by law courts. A court of law may, upon adjudication of a contract dispute, determine, where the elements of the claim are proven, that a contract has been rescinded, and enter an order restoring plaintiff to his original condition by awarding money or other property of which he had been deprived. Equitable rescission, on the other hand, which is otherwise known as cancellation, is a form of remedy in which, in addition to a judicial declaration that a contract is invalid and a judicial award of money or property to restore plaintiff to his original condition is made, further equitable relief is required. Thus, the remedy of equitable rescission typically requires that the court cause an instrument, document, obligation or other matter affecting plaintiff's rights and/or liabilities to be set aside and annulled, thus restoring plaintiff to his original position and reestablishing title or recovering possession of property.[59]

Because Rockline only seeks to have the contract rescinded and to be restored

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[59] *E.I. Du Pont De Nemours & Co. v. HEM Research, Inc.*, 1989 WL 122053, at *3 (Del. Ch. Oct. 13, 1989) (citations omitted) (dismissing the plaintiff's claim for rescission because rescission at law was an adequate remedy, and therefore, the Court of Chancery lacked equitable jurisdiction).

to its original condition by the awarding of money damages, this Court does have jurisdiction to hear the affirmative defenses seeking rescission due to mutual mistake and fraud in the inducement. Therefore, Jarden's motion to dismiss Rockline's affirmative defenses seeking rescission is ***denied***.

CONCLUSION

For the foregoing reasons, Jarden's Motion to Dismiss Rockline's counterclaims is ***granted in part*** with regard to Rockline's claims for negligent misrepresentation and breach of the implied warranty of fitness for a particular purpose and ***denied in part*** with regard to Rockline's claims for intentional misrepresentation, breach of the covenant of good faith and fair dealing, promissory estoppel, and unjust enrichment. Jarden's Motion to Dismiss Rockline's affirmative defenses seeking rescission is ***denied***.

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.

oc: Prothonotary
cc: Order Distribution
File