IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

OUTDOOR TECHNOLOGIES, INC.,)	
Plaintiff,)	
V.)	C.A. No. 99C-09-151-JRS
ALLFIRST FINANCIAL, INC., F/K/A)	
FIRST MARYLAND BANCORP, a)	
Maryland corporation; ALLFIRST)	
BANK, F/K/A FIRST NATIONAL)	
BANK OF MARYLAND, a United)	
States Association; and ALLFIRST)	
FINANCIAL CENTER, N.A., F/K/A)	
FIRST OMNI BANK, N.A., a United)	
States Association,)	
)	
Defendants.)	

Date Submitted: February 9, 2001 Date Decided: April 12, 2001

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT. **GRANTED.**

Kathleen M. Miller, Esquire, SMITH, KATZENTSTEIN & FURLOW, LLP, Wilmington, Delaware, 19899; Andrew C. Kassner, Esquire, DRINKER, BIDDLE & REATH, LLP, Philadelphia, Pennsylvania. Attorneys for Plaintiff.

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SLIGHTS, J.

I. INTRODUCTION

My predecessor on the Court has stated that "[t]he facts of this case look like a payment systems hypothetical written by a law school professor." As usual, an apt observation from a wise jurist. Plaintiff, Outdoor Technologies, Inc. ("Outdoor"), presented a check for payment to defendants, Allfirst Financial Center, N.A. f/k/a First Omni Bank, N.A. ("Omni"), Allfirst Financial, Inc. f/k/a Maryland Bankcorp ("Bancorp") and Allfirst Bank f/k/a First National Bank of Maryland ("FNB"). The defendant banks refused to cash the check. Because the drawer of the check, Hechinger, Inc., filed for bankruptcy protection before the check could be paid, leaving Outdoor without a remedy against Hechinger, Outdoor has determined to pursue its remedies against the banks in this Court.

¹Outdoor Technologies, Inc. v. Allfirst Financial, Inc., Del. Super., C.A. No. 99C-09-151 WTQ, Quillen, J., (Jan. 24, 2000), Letter Op. at 2.

At first glance, this controversy would appear to be subsumed within Delaware's Uniform Commercial Code ("UCC"). Article 3 of the UCC governs negotiable instruments²; Article 4 governs bank deposits and collections.³ The parties agree, however, that statutory remedies under the UCC are not available to Outdoor in this case. Article 3 does not provide a basis for relief when the drawee bank has not accepted the negotiable instrument.⁴ And Article 4 limits the bank's statutory liability to its customer.⁵ In this case, the banks' customer was Hechinger as the drawer of the check, not Outdoor.⁶ Accordingly, left without a UCC remedy, Outdoor has raised common law claims against the banks for breach of a contract to which it was a third party beneficiary, fraud, negligent misrepresentation and civil conspiracy.

This Court has already dismissed Outdoor's breach of contract claim upon concluding that the claim is precluded by the UCC.⁷ The Court has also determined

²6 Del. C. § 3-101 et. seq.

³6 Del. C. § 4-101 et. seq.

⁴6 Del. C. § 3-408

⁵6 *Del. C.* § 4-402.

 $^{^{6}}Id.$

⁷Outdoor Technologies, Inc., supra.

that Outdoor's claims for fraud (Count II), negligent misrepresentation (Count III) and civil conspiracy (Count IV) are not preempted by the UCC and that Outdoor's complaint states a legally viable claim on each of these legal theories. Discovery has run its course and defendants have now moved for summary judgment on all remaining claims against them. For the reasons that follow, defendants' motion is **GRANTED**.

II. FACTS

⁸*Id*.

Outdoor is a Delaware corporation with its principle place of business in Macon, Mississippi. Outdoor manufactures and distributes garden accessories and related goods such as vinyl fencing, decking and rail material. Outdoor enjoyed an ongoing business relationship with Hechinger, a retail supplier of garden, outdoor and hardware products. On June 2, 1999, Hechinger issued a check for \$706,735.62 made payable to Outdoor as delayed payment for goods previously supplied by Outdoor. That check was drawn on Hechinger's account at Omni, although it mistakenly indicated on its face that it was drawn on a Hechinger account at FNB. When Outdoor received Hechinger's check it was aware that Hechinger was on the verge of filing for bankruptcy protection. Outdoor's desire to expedite payment of the check, in advance of Hechinger's bankruptcy filing, animated the events which give rise to this litigation.

The Hechinger check was received by Outdoor at its Macon, Mississippi offices

⁹At the time these events took place, Outdoor was a wholly owned subsidiary of Jannock Limited, a Canadian corporation.

¹⁰Hechinger maintained accounts at each of the three defendant banks. Hechinger also printed its own checks. Apparently, Hechinger mistakenly identified FNB as the drawee bank on the printed check even though the check correctly identified the Omni account number.

on June 4, 1999. Rather than deposit the check in the Outdoor corporate account, and face the delays of the Federal Reserve's inter-bank payment system, the corporate decision-makers at Outdoor determined that Outdoor's controller, John Hurt ("Hurt"), would travel personally to a FNB branch in Baltimore, Maryland to negotiate the check. Hurt's purpose was to secure immediate payment of the check through a wire transfer or receipt of certified funds.

On the morning of June 7, Hurt arrived at the Baltimore FNB branch to present the check for payment. The branch manager informed Hurt that the check was drawn on an Omni account, not a FNB account as indicated on the check, and that FNB could not negotiate the check. The branch manager also provided Hurt with the name of FNB corporate attorney, William Thomas ("Thomas"), to whom Hurt's questions should be addressed. Hurt returned to his hotel room and placed a telephone call to Omni. During that call, Hurt was informed that Omni was owned by Bancorp.

Armed with this information, Hurt traveled to Bancorp's corporate headquarters in downtown Baltimore seeking guidance on the quickest means to get paid on the Hechinger check. Hurt ultimately was directed to Thomas.¹¹ Hurt and Thomas met

¹¹As it turned out, Thomas served as corporate counsel to all three corporate affiliates named as defendants: Bancorp, Omni, and FNB.

for between five and fifteen minutes in the Bancorp legal department's lobby area.¹² This brief conversation is the genesis of Outdoor's claims of fraud and misrepresentation.

¹²Thomas stated during his deposition that the conversation lasted for five minutes, while Hurt stated that it lasted between ten and fifteen minutes. Because the parties do not dispute the essential content of the conversation, its actual duration is of little import.

The parties agree that during the course of the Hurt/Thomas conversation Thomas inspected the Hechinger check and confirmed that it was drawn on an Omni account. He then advised Hurt that neither FNB nor Bancorp were obligated to negotiate the check and that neither bank would do so. Thomas also generally discouraged Hurt from attempting to negotiate the check in person and, instead, prodded him to deposit the check in Outdoor's depository account and obtain payment of the check through customary channels. Undaunted, Hurt pressed Thomas to commit Omni to negotiate the check if he traveled to the closest Omni branch (located in Millsboro, Delaware). Thomas responded that if Hechinger maintained sufficient funds in the account, and if Hechinger had not yet filed for bankruptcy protection, Omni would negotiate the check upon presentation by Hurt of "proper authorization." Aside from Hurt's mention that "proper authorization" would be required, Thomas and Hurt did not discuss what Omni would require as evidence of Hurt's "proper authorization" to negotiate the check. In his apparent haste to accomplish his mission, Hurt did not inquire what form of authorization would be

¹³Thomas' concession was contrary to Hechinger's account agreement with the defendant banks which provided that the banks were not obligated to cash a check made payable to a corporation. The banks' written policies also provided that the banks generally would not certify funds or initiate a wire transfer except at the request of a customer. The proffered reason for these policies is that the bank would bear the risk of loss if it provided immediate funds to the presenter of a check who, for whatever reason, was not authorized to negotiate the check. 6 *Del. C.*§ 3-417.

required by Omni and Thomas did not volunteer this information.¹⁴

Hurt then contacted his superior, Ian Douglas, to discuss the next move. Hurt and Douglas decided that Hurt should attempt to negotiate the check at Omni's branch in Millsboro. They also decided that for "proper authorization" Hurt would present a letter from Peter Orebaugh ("Orebaugh"), Outdoor's President, indicating that Hurt was authorized to negotiate the check on behalf of Outdoor. That letter, printed on Outdoor stationary, was faxed to Hurt on the morning of June 8, 1999. It read: "Please accept this letter as authorization for John Hurt, Controller of Outdoor Technologies Inc., to certify the check in the amount of \$706,735.62 as payment from Hechingers [sic], Inc. Please release a certified check or wire transfer the amount according to the instructions John Hurt will provide." The letter is signed: "Peter Orebaugh, President."

¹⁴The record reveals that Hurt was aware that banks generally required a board of directors' resolution as evidence of an individual's authorization to conduct banking business on behalf of the corporation. The record also reveals, however, that Hurt had never himself attempted to "cash" a check made payable to Outdoor and that he was aware that others had done so by simply presenting personal identification.

Hurt entered the Omni branch in Millsboro at 9:00 A.M. on the morning of June 8 in possession of both the check and the faxed Orebaugh letter. After some delay, an Omni employee at the branch reported to Hurt that she had been speaking with Thomas on the telephone and that Thomas now wished to speak with Hurt. Thomas informed Hurt that the letter from Orebaugh was not "proper authorization" and that Omni would require a resolution from Outdoor's board of directors authorizing Hurt to negotiate the check. Unable to obtain a board resolution on such short notice, Hurt sent the check, via federal express, to a Detroit, Michigan bank where Outdoor maintained a depository account. As feared by Outdoor, Hechinger initiated its bankruptcy filing on June 11 before the check was paid. This filing froze Hechinger's accounts and prevented Omni from paying the check. Consequently, the check was returned to Outdoor unpaid. The \$706,735.62 owed to Outdoor by Hechinger remains outstanding.

II. STANDARD OF REVIEW

Summary Judgment may only be granted where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law.¹⁵ The Court must view the evidence of record in the light most favorable to the non-moving

¹⁵Dale v. Town of Elsmere, Del. Supr., 702 A.2d 1219, 1221 (1997)(citation omitted).

party.¹⁶ In making its determination, the Court will consider the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits submitted by the parties.¹⁷

The movant bears the initial burden of showing the absence of a material factual dispute.¹⁸ Upon sustaining this burden, the burden then shifts to the nonmoving party to demonstrate that a material factual issue exists.¹⁹ Neither bare assertions nor conclusory allegations will allow the nonmoving party to meet this burden.²⁰ "Facts adduced under oath by the movant which remain uncontroverted

¹⁶See Brzoska v. Olson, Del. Supr., 668 A.2d 1355, 1364 (1995)(citation omitted).

¹⁷Super. Ct. Civ. R. 56(c).

¹⁸Sterling v. Beneficial Nat'l Bank, N.A., Del. Super., C.A. No. 91C-12-005, Ridgely, P.J. (April 13, 1994), Mem. Op. at 6 (citing Moore v. Sizemore, Del. Supr., 405 A.2d 679, 680 (1979)).

¹⁹*Id.* (citation omitted).

²⁰*Id.* at 5-6 (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986); *Martin v. Nealis Motors*, Del. Supr., 247 A.2d 831, 833 (1968)).

must be assumed to be true.",21

III. DISCUSSION

A. The Choice of Law

²¹Ward v. Fox & Lazo, Del. Ch., C.A. No. 13582, Chandler, V.C. (July 8, 1996), Letter Op. at 7-8 (citation omitted).

The parties disagree on choice of law. Outdoor argues that Delaware law applies; the defendant banks argue that Maryland law applies. The defendants perceive an advantage under Maryland's law with respect to negligent misrepresentation in that Maryland arguably requires privity of contract as a predicate to a duty of care where Delaware law does not.²² The Court is not certain that the distinction appreciated by the parties is actually supported by the case law. In any event, the Court need not resolve this issue. The Court will give Outdoor the benefit of the doubt and apply the arguably less onerous burden imposed by Delaware law. In the Court's view, at the end of the day, the mandated result is not affected by choice of law considerations.

B. Count II, Fraud

²²Compare Weisman v. Connors, Md. Ct. App., 540 A.2d 783, 790-94 (1988)(holding that when claiming only economic loss plaintiff must prove an "intimate nexus" or "special relationship" between the parties to establish a duty of care), with *Guardian Constr. Co. v. Tetra Tech Richardson, Inc.*, Del. Super., 583 A.2d 1378, 1381-86 (1990)(applying Restatement (Second) of Torts, § 552, court recognized a duty of care absent contractual privity where plaintiffs allege only economic loss).

In Delaware, the elements of fraud are: "1) a false representation, usually one of fact, made by the defendant; 2) the defendant's knowledge or belief that the representation was false, or was made with reckless indifference to the truth; 3) an intent to induce the plaintiff to act or to refrain from acting; 4) the plaintiff's action or inaction taken in justifiable reliance upon the representation; and 5) damage to the plaintiff as a result of such reliance." Delaware courts require proof of fraud to be made by a preponderance of the evidence. 24

The Court need not go beyond the first element of Outdoor's *prima facie* case for fraud to dispose of this claim. The evidence of record simply does not support the contention that Thomas made a false statement to Hurt or any other representative of Outdoor. Thomas advised Hurt that Omni would require the presentation of "proper authorization" before it would negotiate the Hechinger check. This statement was consistent with the direction Thomas provided to the Omni bank branch after Hurt left his office and consistent with banking industry practice. The fact that the conversation did not last long enough for either party to address what would or would not be deemed "proper authorization" is unfortunate but not a basis for actionable

²³Stevenson v. Capano Dev., Inc., Del. Supr., 462 A.2d 1069, 1074 (1983)(citing Nye Odorless Incinerator Corp. v. Felton, Del. Super., 162 A. 504, 510-11 (1931); W. Prosser, Law of Torts, 685-86 (4th ed. 1971)).

²⁴State v. Gardiner, Del. Super., C.A. No. 98C-02-135, Quillen, J. (June 5, 2000), Letter Op. and Order at 7 (citations omitted).

fraud.²⁵

²⁵See Miller v. Fairchild Indus., Inc., Md. Ct. Spec. App., 629 A.2d 1293, 1303 (1993)(a statement that is not false does not support claim of fraud).

Moreover, the statements made by Thomas clearly related to future events. Generally, "statements which are merely promissory in nature and expressions as to what will happen in the future are not actionable as fraud." Only when such statements are made with the present intention not to perform will courts endorse a fraud claim. Defendants have presented evidence indicating that Thomas authorized Omni to negotiate the Hechinger check. Outdoor has failed in its burden to present

²⁶Miller, 629 A.2d at 1302 (quoting *Finch v. Hughes Aircraft Co.*, Md. Ct. App., 469 A.2d 867 (1984)). *See also Esso Standard Oil Co. v. Cunningham*, Del. Ch., 114 A.2d 380, 383 (1955)("Opinions and statements as to probable future results are not generally fraudulent even though they relate to material matters . . .")(citing *E. States Petroleum Co. v. Universal Oil Prods. Co.*, Del. Ch., 3 A.2d 768 (1939)).

²⁷Miller, 629 A.2d at 1302 (citations omitted).

²⁸Specifically, Thomas testified that "If [Hurt] showed up [at the Omni branch] with the proper authorities [sic] and there was money in the account and [Hechinger] hadn't filed bankruptcy, I was going to go ahead and cash it for him." (D.I. 47, Ex. 5 at 101) Defendants also presented the

evidence contradicting the banks' proffer.²⁹ The only evidence of record that Thomas did not intend to negotiate the check is that he refused to do so when Hurt presented the check at Omni. "Ordinarily, in the absence of additional circumstances, it will be found that a mere failure to perform is as consistent with an honest intent as with a dishonest one."

testimony of Shaun Murphy, a senior credit officer at FNB. Murphy's testimony establishes that he and Thomas discussed the Hurt situation, and that Thomas was prepared to authorize Omni to pay the Hechinger check. (D.I. 47, Ex. 11 at 28-36)

²⁹*Moore*, 405 A.2d at 680.

³⁰Murphy v. T.B. O'Toole, Inc., Del. Super., 87 A.2d 637, 638 (1952).

Finally, it is apparent from the record that Hurt made no effort during his discussions with Thomas to ascertain what would suffice as "proper authorization." Although the "deliberate concealment of material facts would qualify as a false representation,"³¹ the Court cannot conclude on this record that a jury could find Thomas deliberately concealed anything from Hurt. In this regard, it is particularly probative that Hurt had absolutely no evidence of authorization from Outdoor to negotiate the check at the time he first discussed the issue with Thomas. It is also clear that Hurt had not yet received his "marching orders" to proceed to Omni when he discussed procedures with Thomas. It cannot be said, then, that Thomas even knew what Hurt was going to do next with the check when he discussed Omni's requirements with Thomas, much less what evidence of authorization Hurt might present to Omni if he attempted to negotiate the check. And, in light of these and the other circumstances of the conversation, it cannot be said that Thomas deliberately concealed either that the faxed letter would be insufficient evidence of authorization or that only a board resolution would be sufficient.

³¹In re Asbestos Litigation, Spong Trial Group, Del. Super., C.A. No. 90C-10-72, Gebelein, J. (June 2, 1993), Mem. Op. at 5 (citing *Gaffin v. Teledyne, Inc.*, Del. Supr., 611 A.2d 467, 472 (1992)).

When a plaintiff fails to present sufficient evidence of a factual controversy with respect to an essential element of a claim after a full and fair opportunity to discover such evidence, summary judgment is proper.³² Defendants' Motion for Summary Judgment as to Count II (fraud) is **GRANTED**.

C. Count III, Negligent Misrepresentation

Under Delaware law, allegations of negligent representation require proof of the following elements: "(1) a pecuniary duty to provide accurate information, (2) the supplying of false information, (3) failure to exercise reasonable care in obtaining or communicating information, and (4) a pecuniary loss caused by justifiable reliance upon the false information."³³

³²Burkhart v. Davies, Del. Supr., 602 A.2d 56, 59 (1991)(quoting *Celotex*, 477 U.S. at 322-23); *Murphy v. Berlin Constr. Co.*, Del. Super., C.A. 98C-01-097, Quillen, J. (Jan. 22, 1999), Letter Op. at 4-7; *Giordano v. Marta*, Del. Ch., C.A. No. 11613, Lamb, V.C. (Apr. 27, 1998), Mem. Op. at 12-14; *In re Asbestos Litigation*, supra, Mem. Op. at 4 (citations omitted); *Miller*, 629 A.2d at 1303.

³³Outdoor, supra, Letter Op. at 6 (citations omitted).

As was the case with Outdoor's claim of fraud, Outdoor cannot sustain a claim of negligent misrepresentation when it has failed to produce any evidence that the defendant banks supplied false information.³⁴ Since the Court has already concluded that Thomas' statement incontrovertibly was not false or on its face misleading, the Court would be inclined to stop its analysis here and to enter summary judgment in favor of the defendants but for Outdoor's contention that Thomas negligently misrepresented facts by omission.³⁵ Outdoor's presentation at oral argument suggested that this, in fact, is Outdoor's showcase argument. Accordingly, the Court will address this argument and the remaining elements of plaintiff's *prima facie* burden on this claim.

Section 551 provides: "One who fails to disclose to another a fact that he knows may justifiably induce the other to act or refrain from acting **in a business transaction** is subject to the same liability to the other as though he had represented the nonexistence of the matter that he has failed to disclose if, but only if, he is under

³⁴Darnell v. Myers, Del. Ch., C.A. No. 14859-NC, Steele, V.C. (May 27, 1998), Mem. Op. at 12 ("If plaintiffs fail to prove any of the four required elements, their claim for negligent misrepresentation must fail").

³⁵See, e.g., Restatement (Second) of Torts §551 ("Section 551"); Schmuesser v. Schmuesser, Del. Supr., 559 A.2d 1294, 1295-96 (1989).

a duty to the other to exercise reasonable care to disclose the matter in question."³⁶ The question of whether a duty exists, while a mixed question of law and fact, is for the Court to decide as a matter of law.³⁷

³⁶Section 551(1) (emphasis supplied).

³⁷*Naidu v. Laird*, Del. Supr., 539 A.2d 1064, 1070 (1988).

Legal duties arise from relationships.³⁸ At the heart of Section 551 is a recognition that certain "business" relationships which evolve in the context of "business transaction[s]" can give rise to a duty of complete disclosure. Restatement (Second) of Torts § 552 (1) speaks in terms of disclosures made in the context of a transaction in which the speaker has a "pecuniary interest." Delaware common law embraces a "pecuniary duty to provide accurate information." In each instance, the law contemplates that a duty of disclosure will arise when the parties are in the midst of a "business relationship" from which they expect to derive "pecuniary" benefits. Thus, while contractual privity may not be required to form a duty, something more than a casual business encounter must be demonstrated before a duty of care will be imposed.

Outdoor cannot establish the requisite relationship with the defendant banks to justify the duty of complete candor it urges the Court to impose here. Outdoor had no prior relationship with the defendant banks; prior to their meeting, Thomas had never met Hurt. During an unscheduled encounter in the lobby of defendants' legal offices, Hurt asked Thomas some questions and Thomas endeavored to respond.

 $^{^{38} \}emph{Id.}$ (citing W. Keeton, D. Dobbs, R. Keeton, D. Owen, *Prosser & Keeton on Torts* § 236 (5th ed. 1984).

³⁹Wolf v. Magness Constr. Co., Del. Ch., C.A. No. 13004, Chandler, V.C. (Sept. 11, 1995), Mem. Op. at 3.

Outdoor has failed to identify what pecuniary interest Thomas or the banks he represented might have been protecting in the course of the discussions with Hurt and

the Court cannot discern any such interest from the record *sub judice*. ⁴⁰ Consequently, the Court will not impose an affirmative duty of complete disclosure upon the defendants under these circumstances.

⁴⁰Indeed, Thomas' concession to authorize Omni to negotiate the check was contrary to bank policy and possibly exposed the bank to a loss if it later turned out that Hurt was not authorized to cash the check.

Even assuming arguendo that the Court found a duty, and a negligent failure to provide complete information, summary judgment, nevertheless, is appropriate because Outdoor could not, as a matter of law, reasonably have relied upon Thomas' vague statement regarding "proper authorization" as the sole direction for its future conduct.⁴¹ "A party is chargeable with the knowledge of what may be reasonably found if they make an investigation."⁴² The undisputed record reveals that neither Hurt nor his superiors at Outdoor took the time to investigate what was required to accomplish their goal of prompt payment of the Hechinger check. For his part, Hurt was aware that banks generally required individuals to present board resolutions when conducting business with corporate bank accounts. A simple question from him in advance of his "mad dash" to Millsboro would have revealed that Omni's practice was no different than the industry practice. Under these circumstances, the Court concludes that Hurt's reliance on the vague reference to "proper authorization" was not reasonable as a matter of law.⁴³

⁴¹Sipple v. Kaye, Del. Super., C.A. No. 83C-01-1-CV, Del Pesco, J. (Oct. 30, 1995), Order at 2 (finding, as a matter of law, that plaintiff could not reasonably have relied on statements alleged to have been misleading).

⁴²*Ward*, supra, Letter Op. at 8 (citing *Lock v. Schreppler*, Del. Super., 426 A.2d 856, 862 (1981)); *Stidham v. Kinnamon*, Del. Super., C.A. No. 86C-AP-18, Ridgely, J. (Dec. 29, 1988), Mem. Op. at 7.

⁴³Ward, supra, Letter Op. at 11-12.

Defendant's Motion for Summary Judgment as to Count III (negligent misrepresentation) is **GRANTED**.

D. Count IV, Civil Conspiracy

Under both Maryland and Delaware law, allegations of civil conspiracy cannot be sustained as an independent tort, but rather the allegations must relate to the completion of a tort independent of the conspiracy itself.⁴⁴ Since the Court has determined that Outdoor's fraud and negligent misrepresentation claims are not viable as a matter of law, Outdoor's civil conspiracy claim also must fail as there is no independent tort to sustain it. Accordingly, Defendants' Motion for Summary Judgment on Count IV (civil conspiracy) is **GRANTED.**

⁴⁴See, e.g., Connolly v. Labowitz, Del. Super., 519 A.2d 138, 143 (1986)(citing Phoenix Canada Oil Co. v. Texaco, Inc., D. Del., 560 F. Supp. 1372, 1388 (1983); McLaughlin v. Copeland, D. Del., 455 F. Supp. 749, 752 (1978)); Alleco Inc. v. Harry & Jeanette Weinberg Found., Inc., Md. Ct. App., 665 A.2d 1038, 1045 (1995)(citing Alexander v. Evander, Md. Ct. App., 650 A.2d 260, 265 n.8 (1994)).

IV. CONCLUSION

Outdoor has failed to present any evidence that the defendant banks made a false statement or that they wrongfully withheld material information. This failure of proof in the record, in the face of evidence that the banks were truthful in their discussions with Outdoor, requires that summary judgment be entered on the fraud, negligent misrepresentation and civil conspiracy claims.

IT IS SO ORDERED.

Joseph R. Slights, III