**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

| | | |
|---|---|---|
| MOSAIC US HOLDINGS LLC, MOSAIC SERVICES US LLC, and MOSAIC SYNDICATE SERVICES LIMITED, | ) | |
| Plaintiffs, | ) | |
| | ) | C.A. No. N24C-05-118-SKR CCLD |
| v. | ) | |
| ATLAS TECHNOLOGY SOLUTIONS, INC., | ) | |
| Defendant. | ) | |

Submitted: October 24, 2024
Decided: January 22, 2025
Corrected: February 4, 2025

*Upon Atlas's Partial Motion to Dismiss*:
**DENIED.**

## MEMORANDUM OPINION AND ORDER

D. McKinley Measley, Esq., MORRIS, NICHOLS, ARSHT & TUNNELL LLP, Wilmington, Delaware, *Attorney for Plaintiffs Mosaic US Holdings LLC, Mosaic Services US LLC, and Mosaic Syndicate Services Limited*.

Kevin R, Shannon, Esq., Christopher N. Kelly, Esq., Charles P. Wood, Esq., POTTER ANDERSON & CORROON LLP, Wilmington, Delaware, William C. O'Neil, Esq., Edward A. Day, Esq., WINSTON & STRAWN LLP, Chicago, Illinois, *Attorneys for Defendant Atlas Technology Solutions, Inc*.

**Rennie, J.**

## I. INTRODUCTION

Mosaic US Holdings LLC, Mosaic Services US LLC, and Mosaic Syndicate Services Ltd.[1] (together "Mosaic") filed this action, for breach of contract, fraudulent inducement, and fraudulent concealment against Defendant Atlas Technology Solutions, Inc. ("Atlas").[2] Mosaic claims that Atlas breached the parties' Master Services Agreement ("MSA") and asserts claims for fraudulent inducement and fraudulent concealment by Atlas. Specifically, Mosaic alleges that Atlas, in breach of the MSA, fraudulently charged fees greater than the amounts necessary to cover the Total Local Employer Liabilities as represented in the MSA. Mosaic also alleges that Atlas fraudulently represented the accuracy of the Total Local Employer Liabilities with the intent of inducing Mosaic to enter the MSA. Thereafter, Atlas allegedly concealed this fact causing Mosaic to continue paying Atlas's inflated fee percentages for the duration of their contractual relationship. After Mosaic initiated this litigation, Atlas filed a Partial Motion to Dismiss Mosaic's claims for fraudulent inducement (Count II) and fraudulent concealment (Count III). Mosaic's breach of contract claim (Count I) is not at issue in this

[1] Plaintiffs, Mosaic US Holdings LLC and Mosaic Services US LLC, are Delaware limited liability companies. Plaintiff, Mosaic Syndicate Services Limited, is an English and Welsh private limited company with its principal place of business in London, UK. D.I. No. 1 (hereinafter, "Compl.") ¶¶ 7–9.

[2] Defendant, Atlas Technology Solutions, Inc., is a Delaware corporation with its principal place of business in Chicago, Illinois. Atlas provides human resources and payroll services to businesses.

opinion. For the reasons explained below, Atlas's Partial Motion to Dismiss is **DENIED.**

## II. BACKGROUND[3]

### A. THE PARTIES

Mosaic Insurance is a global underwriting company that services clients from around the world.[4] The Plaintiffs here are Mosaic Insurance's U.S. and U.K. based holding companies.[5]

Plaintiffs, Mosaic US Holdings, LLC, and Mosaic Services US LLC, are Delaware Limited Liability companies with their principal place of business in Wilmington, Delaware.[6]

Plaintiff, Mosaic Syndicate Services Limited, is an English and Welsh private limited company with its principal place of business in London, United Kingdom. [7]

Defendant, Atlas, is a Delaware corporation with its principal place of business in Chicago, Illinois.[8]

---

[3] The following facts are derived from the Complaint and the documents incorporated therein. These allegations are presumed to be true solely for purposes of this motion.

[4] Compl. ¶ 15.

[5] Compl. ¶ 16.

[6] *Id.* ¶¶ 7–8.

[7] *Id.* ¶ 9.

[8] *Id.* ¶ 10.

## B. THE BUSINESS RELATIONSHIP

In 2020, Mosaic and Atlas[9] began to explore the contours of a partnership in which Atlas would provide payroll and human resource services to employees of Mosaic, based in the United States and United Kingdom.[10] During these discussions, Mosaic and Atlas agreed that Atlas would provide Mosaic with administrative services outsourcing ("ASO").[11]

The ASO model was one of at least two models of service provided by Atlas and contemplated by Mosaic.[12] The other model, employment-of-record ("EOR"), differs significantly from the ASO model.[13] Under the ASO model, Atlas provides clients with ancillary services, but workplace risks remain the client's responsibility.[14] In contrast, the EOR model requires Atlas to onboard employees through an Atlas-specific employment contract, eliminating the need for the client to create a business entity in the country and, requires Atlas to take responsibility for things like workers' compensation coverage and employer liability insurance.[15]

---

[9] At that time, Atlas was doing business as Elements Global Services, Inc. ("Elements"). *See id.* For simplicity, the name Atlas will be used in place of Elements, where applicable.

[10] Compl. ¶¶ 17–18.

[11] *Id.* ¶¶ 2, 20–21.

[12] *Id.* ¶¶ 18–20.

[13] *Id.* ¶¶ 19–20.

[14] *Id.* ¶ 19.

[15] *Id.*

### C. THE MSA

By the end of 2020, Mosaic and Atlas had reduced their discussions to a fully executed MSA.[16] Consistent with the ASO model, the MSA provided:

> Neither this Agreement nor the provision of services by Provider creates an employment relationship between Provider and Client's employees, agents, or contractors, and Client does not attribute any employer status whatsoever to Provider. For the avoidance of doubt, Provider has no employment, joint-employment, co-employment, common law, or other employment-like relationship with anyone related to Client, there are no third party beneficiaries of the services provided by Provider, and Provider will not serve as employer-of-record for Client's employees, nor will Provider be (or be deemed) a co-employer with Client.[17]

To relieve any doubt as to its scope, the MSA disclaimed any reliance on extra-contractual representations made by either party stating "[t]his Agreement and applicable Transaction Documents are the complete agreement between Client and Provider regarding Services, and replace[s] any prior oral or written communication between us" and "neither party is relying upon any representation that is not specified in this agreement[.]"[18]

In addition, the MSA limited Mosaic's ability to seek certain types of damages including "[s]pecial, incidental, exemplary, punitive or indirect damages or for any economic consequential damages; or (iii) lost profits, business, revenue, goodwill,

---

[16] *Id.* ¶ 21; *see also* D.I. No. 5 (Def.'s MTD Ex. A (hereinafter "MSA")).

[17] MSA § 1.1.3.

[18] *Id.* § 12.8.8.

delays or anticipated savings."[19] However, the limitations do not apply "in . . . the event of gross negligence or willful misconduct."[20]

The MSA also expressly charged sole responsibility to Mosaic to provide workers' compensation insurance adjustments,[21] and it provided for Statements of Work ("SOWs") to define the detailed services provided by Atlas to Mosaic for each respective country:

> Except as set forth in a separate Statement of Work, Provider WILL ONLY PROVIDE THE SERVICES LISTED IN THE AGREEMENT. PROVIDER WILL NOT, AND WILL NOT [SIC] BE DEEMED TO PROVIDE ANY OTHER SERVICES, INCLUDING WITHOUT LIMITATION ANY STRATEGIC, OPERATIONAL OR OTHER BUSINESS-RELATED DECISIONS WITH REGARD TO CLIENT'S BUSINESS.[22]

In other words, fees and services to be performed under the MSA are addressed at the country level, through country-specific SOWs.[23] As detailed in the MSA, Atlas warranted that all services—including those found in each particular SOW—would be performed "using reasonable care and skill according to the current description (including any completion criteria) contained in this Agreement[.]"[24]

---

[19] *Id.* § 9.2

[20] *Id.*

[21] *Id.* § 1.2.13.

[22] *Id.* § 1.1.7.

[23] Compl. ¶ 28.

[24] MSA §3.1.

One week after the parties executed the MSA, Mosaic Services U.S. and Atlas executed Statement of Work Q-00288 (the "U.S. SOW"),[25] which governed fees and services in the United States. Pursuant to the U.S. SOW, Mosaic agreed to pay Atlas numerous fees to cover Altas's operational expenses. These included (1) a one-time country setup fee, (2) a monthly administrative fee, (3) an annual, year-end filing fee, (4) an annual year end audit fee, and (5) various as-needed fees.[26] On that same day, the parties, on materially similar terms, entered into Statement of Work Q-00288 (the "U.K. SOW").[27]

### D. THE TLEL PROVISIONS

At the center of this litigation is the Total Local Employer Liability ("TLEL") set forth in the U.S. SOW and the U.K. SOW. The TLEL is a fee percentage applied to "all taxable wages and allowances,"[28] and intended to be a passthrough fund.[29] The TLEL covers "all required employer tax requirements, statutory benefits payments, pension contributions and liabilities per country."[30] In essence, Mosaic fronted Altas the funds necessary to cover the TLEL and Atlas was in charge of

---

[25] Compl. ¶ 31; D.I. No. 5 (Def.'s MTD Ex. B (hereinafter "U.S. SOW")).

[26] *Id.*

[27] *Id.* ¶ 34.

[28] *Id.* ¶¶ 32, 35; U.S. SOW § 4.3.5.1

[29] Compl. ¶ 3.

[30] *Id.*

ensuring that Mosaic's tax liability was met in each of the respective countries.[31] As relevant here, in the United States and United Kingdom, the TLEL rate was set at 17.5% and 16.8%, respectively.[32]

### E. THE ALLEGED FRAUD

Mosaic's primary contention as to its fraudulent inducement claim is that the representations made in the SOWs and MSA about the TLEL were knowingly false when made.[33] Its primary contention as to its fraudulent concealment claim is that Atlas, despite repeated requests to disclose the accurate TLEL, delayed and concealed the information from Mosaic, by forestalling responses and avoiding questions to keep the fees hidden.[34] Mosaic alleges that the TLEL charges, as represented in the U.S. and U.K. SOW, were meant to serve as a passthrough to ensure payment of only the employer tax requirements, statutory benefits payments, pension contributions and liabilities per country.[35] Thus, the TLEL would be limited specifically to the required payments of country-specific tax, benefits, and pensions.[36] However, as Mosaic alleges, Atlas knew at the time the parties executed

---

[31] Compl. ¶ 33.

[32] Compl. ¶¶ 33, 36; U.S. SOW § 3.1.

[33] Compl. ¶ 87; MSA § 3.1; U.S. SOW § 4.3.5.1

[34] *Id.* ¶ 91.

[35] *Id.* ¶ 33.

[36] *Id.* ¶ 88.

the SOWs that it would actually charge an inflated fee to cover its own costs which were not identified in the TLEL provisions.[37]

In early 2023, Mosaic began to investigate the possibility "that Atlas was overcharging it for TLEL expenses."[38] On February 13, 2023, Mosaic emailed Atlas's Vice President of Global Payroll Operations, asking Atlas to detail the TLEL costs for each of the jurisdictions to which Atlas was providing ASO services.[39] A month later, Atlas requested more time to align internally and promised the information within the week. Despite repeated requests, Atlas never provided the information.[40]

**1.** ***Atlas Overcharges In Other Countries***

In February 2023, Mosaic asked Atlas to confirm the TLEL charges in the United Arab Emirates ("UAE").[41] Under the SOW operated in the UAE, the TLEL rate was set at 16.50%.[42] However, due to a variety of factors specific to the UAE, the actual TLEL rate was 4%.[43] The TLEL rate was later reduced to 0% after Atlas had further determined that there were no employer liability charges applicable in

---

[37] *Id.*

[38] *Id.* ¶ 43.

[39] *Id.* ¶ 44.

[40] *Id.*

[41] *Id*. ¶ 45. The SOW operated in the UAE is not subject to this litigation.

[42] Compl. ¶ 45.

[43] *Id.*

the UAE.[44] Subsequently, Atlas issued two credits to Mosaic representing the overcharge.[45] Similar overcharging occurred with respect to Singapore where the TLEL rate was originally set at 19.35% but later reduced 0%, because Mosaic employees were not subject to income taxes in Singapore.[46] Mosaic again was reimbursed for the overcharge.[47]

**2. *The Alleged Concealment***

The practice of inflating the TLEL rate in the UAE and Singapore only served to increase the suspicions of Mosaic that Atlas was knowingly overcharging TLEL costs in every jurisdiction where Mosaic had employees.[48] In October 2023, Atlas eventually provided an itemized breakdown of TLEL costs.[49] As alleged by Mosaic, once Atlas provided an itemized breakdown of TLEL costs in each applicable jurisdiction, Mosaic's suspicions proved correct.[50]

In the breakdown, Atlas represented that a significant portion of the TLEL funds were going to "Third-Party Liability Insurance Coverage."[51] According to

---

[44] *Id.*

[45] *Id.*

[46] *Id.* ¶ 46. The SOW operated in Singapore is not subject to this litigation.

[47] Compl. ¶ 46.

[48] *Id.* ¶ 48.

[49] *Id.*

[50] *Id.*

[51] *Id.* ¶ 49.

Mosaic, funds being lotted to "Third-Party Liability Insurance Coverage" was a sham. This is because Atlas and Mosaic operated under the ASO model, which assigned the procurement and payment of insurance to Mosaic—not Atlas.[52] Therefore, there was no need for any portion of the TLEL funds to be used for third-party liability insurance.[53]

Atlas offered shifting explanations for surcharging Mosaic on the TLEL fees. The first was that the "Third-Party Liability Insurance" costs covered Mosaic's access to Atlas's software that managed employee information and HR processes. However, Mosaic was already paying for the software through separate monthly administrative fees.[54] The second was that the extra fees were necessary for workers compensation coverage. However, Mosaic was responsible for procuring its own coverage under the MSA and had done so.[55]

The third, and maintained explanation, was that the "Third-Party Liability Insurance" costs were used to cover Altas's overhead.[56] Altas explained in a January 2024 call that the TLEL "covers the scope of services provided, including local statutory insurances required for the individuals covered under the agreement e.g.,

[52] *Id.* ¶ 54; MSA §§ 1.2.13, 10.4.

[53] Compl. ¶ 54.

[54] *Id.* ¶ 56.

[55] *Id.*

[56] *Id.* ¶ 57.

workers' compensation and health insurance/benefits, *as well as the significant overhead required to ensure we deliver a fully compliant service to Mosaic.*"[57] Mosaic disagreed with this explanation because it was paying separately for Atlas's overhead through agreed administrative fees.[58]

### 3. *Mosaic Conducts Its Own Audit and Demands Repayment*

As Atlas was offering shifting explanations for the TLEL costs, Mosaic was conducting its own "internal audit to determine (1) the maximum TLEL percentage for each jurisdiction; and (2) how much Atlas had overcharged Mosaic in excess of that maximum over the course of the parties relationship."[59] That audit revealed that Atlas charged a minimum of 3.8% above what was actually necessary to cover the TLEL costs in the U.S.[60] This percentage ranged by employee and was often considerably higher than the 3.8% overcharge.[61] Similarly, Mosaic concluded that, in the U.K., the actual TLEL rate was 3% below the TLEL rate Atlas was charging.[62] In total, Mosaic's audit revealed an aggregate amount of $4.5 million in overcharges

---

[57] *Id.*

[58] *Id.*

[59] *Id.* ¶ 59.

[60] *Id.* ¶ 60.

[61] *Id.* ¶¶ 60–61 (explaining that U.S. income caps of taxable contributions often significantly lowered the true percentage that Mosaic owed).

[62] *Id.* ¶ 62.

since the execution of the MSA.[63] Mosaic further alleges that the overcharges caused "collateral damage" to its business. For example, when Mosaic was seeking to raise capital through an equity linked security, it calculated the amount it would need to raise, but improperly accounted for the now discovered overcharges as part of its projected expenses.[64] After discovery of the overpayments, Mosaic demanded repayment from Atlas. Atlas refused repayment claiming entitlement to the disputed funds.[65] This litigation followed.

### F. PROCEDURAL HISTORY

On May 16, 2024, Mosaic filed the Complaint in this action[66] asserting claims for: breach of contract (Count I); fraudulent inducement (Count II) and fraudulent concealment (Count III).[67]

On June 17, 2024, Atlas moved to partially dismiss the Complaint arguing for dismissal of Count II and Count III.[68] Mosaic responded to the motion on July 26, 2024.[69] On August 16, 2024, Atlas filed a reply brief in further support of its

---

[63] *Id.* ¶ 68.

[64] *Id.* ¶ 69.

[65] *Id.* ¶¶ 70–76.

[66] Compl.

[67] *Id.* ¶¶ 77–100.

[68] D.I. No. 5 ("Def's. MTD").

[69] D.I. No. 17 ("Pls.' MTD Opp'n").

motion.[70] The Court heard oral argument on October 24, 2024 and reserved decision.[71]

## III. STANDARD OF REVIEW

When ruling upon a motion to dismiss under Rule 12(b)(6), a Delaware court (i) accepts all well-pled factual allegations as true, (ii) accepts even vague allegations as well-pled if they give the opposing party notice of the claim, (iii) draws all reasonable inferences in favor of the non-moving party, and (iv) only dismisses a case where the plaintiff would not be entitled to recover under any reasonably conceivable set of circumstances.[72] The Court will not, however, accept "conclusory allegations that lack specific supporting factual allegations."[73]

## IV. PARTIES' CONTENTIONS

### A. ATLAS'S CONTENTIONS

Atlas asks the Court to dismiss Mosaic's fraud claims on three grounds. First, Atlas contends that the fraud claims are impermissibly bootstrapped to the breach of contract claim.[74] Atlas argues that the breach of contract claim covers all issues applicable to this litigation, and that any of Mosaic's claimed fraud damages are

---

[70] D.I. No. 18 ("Def's. MTD Reply").

[71] D.I. No. 25.

[72] *See ET Aggregator, LLC v. PFJE Asset Co Hldgs. LLC*, 2023 WL 8535181, at *6 (Del. Super. Dec. 8, 2023).

[73] *Id.* (quoting *Ramunno v. Crawley*, 705 A.2d 1029, 1034 (Del. 1998)).

[74] Def's. MTD at 9.

contract damages.[75] Second, Defendant contends that the fraud claims fail to meet the heightened pleading standard under Delaware Superior Court Civil Rule 9(b) ("Rule 9(b)").[76] Embedded in this contention is Atlas's belief that the claims are barred by the MSA's anti-reliance clause.[77] Third, Atlas argues that the fraud claims should be dismissed, because Mosaic had notice of the facts underlying the fraud claims, which Atlas contends is fatal to any assertion of justifiable reliance.[78]

### B. MOSAIC'S CONTENTIONS

Mosaic takes the opposite view. It contends that the fraud claims are not bootstrapped contract claims.[79] Rather, Mosaic argues that the fraud claims are first born out of an initial misrepresentation about the TLEL charges that Atlas knowingly made and then later hid through subsequent deliberate attempts to conceal the misrepresentation.[80] Mosaic further argues that the fraud claims are distinct from the breach of contract claim, because it alleges additional and separate damages arising from the asserted fraudulent conduct.[81]

---

[75] *Id.* at 9–11.

[76] *Id.* at 13–19.

[77] *Id.* at 16–17.

[78] *Id.* at 19–21.

[79] Pls.' MTD Opp'n at 12.

[80] *Id.* at 17–18.

[81] *Id.* at 13–17.

As to the sufficiency of the fraud claims under Rule 9(b), Mosaic argues that the alleged misrepresentation in the parties' agreement provides more than ample notice of the fraudulent inducement claim.[82] In addition, because the fraudulent inducement claim is based on misrepresentations in the MSA, Mosaic argues that the integration clause is not applicable to bar the claim.[83] Mosaic further contends that the fraudulent concealment claim is detailed with more than adequate sufficiency.[84] As alleged, Atlas intentionally hid unauthorized costs and worked to disguise them as legitimate under the TLEL line item.[85] Mosaic further exposes the depths to which the unauthorized costs were hidden by detailing the need for it to procure an audit to uncover the purported concealment.[86] Finally, Mosaic maintains that it was entitled to rely on the truth of Atlas's contractual representations. Mosaic posits that Atlas was the paid expert responsible for accurate calculations of the necessary TLEL funds, and thus, Mosaic was under no duty to independently verify Atlas's calculations.[87] In addition, Mosaic takes the position that it would be premature to dismiss the fraud claim for a lack of justifiable reliance, because such

---

[82] *Id.* at 18–20.

[83] *Id.* at 18, 24–25.

[84] Pls.' MTD Opp'n at 25.

[85] *Id.* at 26.

[86] Compl. ¶¶ 59–68.

[87] Pls.' MTD Opp'n at 29–31.

a determination requires a much more demanding factual inquiry than is permitted at this stage.[88]

## V. DISCUSSION

### A. MOSAIC'S FRAUDULENT INDUCEMENT AND FRAUDULENT CONCEALMENT CLAIMS ARE NOT BOOTSTRAPPED TO THE BREACH OF CONTRACT CLAIM.

The anti-bootstrapping rule serves to prevent what would amount to a double recovery for the same alleged wrongdoing under both tort and contract theories of liability.[89] Delaware courts will find that a fraud claim is impermissibly bootstrapped to a breach of contract claim when the fraud claim simply adds the phrase "fraudulently induced" or a conclusory assertion that the contracting parties never intended to perform.[90] Delaware courts have held that:

> "the anti-bootstrapping rule bars a fraud claim where the plaintiff merely 'adds the term fraudulently induced to a complaint or alleges that the defendant never intended to comply with the agreement at issue at the time the parties entered into it,' but it does not prevent a fraud claim against defendants who 'knew [contractual representations] were false, and yet made them anyway.'"[91]

Recent clarity was brought to the anti-bootstrapping rule when the Delaware Court

---

[88] *Id.* at 29–30.

[89] *See CoVenture – Burt Credit Opportunities GP, LLC v. Coleman*, 2023 WL 7179488, at *10 (Del. Super. Nov. 1, 2023).

[90] *MicroStrategy Inc. v. Acadia Research Corp.*, 2010 WL 5550455, at *17 (Del. Ch. Dec. 30, 2010).

[91] *Levy Family Investors, LLC v. Oars + Alps LLC*, 2022 WL 245543, at *8 (Del. Ch. Jan. 27, 2022) (quoting *Anschutz Corp. v. Brown Robin Cap., LLC*, 2020 WL 3096744, at *15 (Del. Ch. June 11, 2020)).

of Chancery, recognizing the "muddled" state of the law, espoused that:

> the anti-bootstrapping rule does not prevent parties from bringing a fraud claim if (1) the plaintiff alleges the seller knowingly made false contractual representations, (2) damages for plaintiff's fraud claim may be different from plaintiff's breach of contract claim, (3) the conduct occurs prior to the execution of the contract and thus with the goal of inducing the plaintiff's signature and willingness to close on the transaction, or (4) the breach of contract claim is not well-pled such that there is no breach claim on which to bootstrap the fraud claim.[92]

Mosaic argues that the anti-bootstrapping rule should not apply for two reasons. First, Mosaic alleges that Atlas knowingly made false contractual representations that go beyond a simple breach of contract. Second, Mosaic contends that the damages it seeks under its fraud claims are materially distinct from those it seeks under its breach of contract claim.[93] It maintains that Counts II and III of the Complaint properly plead facts and damages distinct from Count I's breach of contract claim. Moreover, Mosaic touts support for its fraudulent concealment claim by alleging that Atlas concealed the true TLEL rates and offered an artificially inflated TLEL rate that Atlas knew was misleading.[94]

---

[92] *Levy Family Investors, LLC*, 2022 WL 245543, at *8 (cleaned up).

[93] Ans. Br. at 12.

[94] *Levy Family Investors, LLC*, 2022 WL 245543, at *7 ("[A] plaintiff can also plead a fraud claim that is not the product of improper bootstrapping by alleging facts that support an inference that the defendant knowingly made false representations in a contract on which the plaintiff justifiably relied, and then breached that contract by violating the representation(s) that were falsely made."); *see also* Compl. ¶¶ 88–89.

### *1. Mosaic Sufficiently Alleges That Atlas Knowingly Made False Contractual Representations.*

Mosaic alleges Atlas falsely represented that Mosaic's TLEL obligations were a higher rate than necessary, which allowed Atlas to secretly retain and utilize a portion of the TLEL funds for Atlas's unauthorized, personal benefit. This contention is supported by numerous allegations in the Complaint that, taken as true, support an independent claim for fraud and thus, avoids the anti-bootstrapping rule. For example, Mosaic alleges that Atlas induced Mosaic to agree to the MSA and SOWs by falsely representing that the TLEL funds were limited to Mosaic's country-specific tax benefit and pension requirements. According to Mosaic, Atlas knew at the time of contracting that it would actually use this line-item to charge an inflated fee intended to cover other unidentified costs.[95] As to the fraudulent concealment claim, Mosaic asserts that Atlas hid the overcharges by disguising them as legitimate TLEL costs and obfuscating the true information about the actual TLEL rates, despite repeated requests for transparency.[96] This alleged act of concealment allowed Atlas to overcharge Mosaic by over $4.5 million over a period of two years.[97] These allegations, if true, set forth properly plead claims for fraud.

[95] Compl. ¶¶ 87-89.

[96] Compl. ¶¶ 91–92.

[97] Compl. ¶¶ 4, 94.

### *2. The Damages Requested For Mosaic's Fraud Claims Are Distinct From Its Breach Of Contract Claim.*

The anti-bootstrapping rule can be avoided when a "plaintiff might be entitled to greater damages through its fraud claim than its breach of contract claim."[98] The damages provision in the MSA allows Mosaic to avoid the anti-bootstrapping rule. Indeed, one of the central distinctions between Mosaic's fraud damages and its breach of contract damages is contained in Section 9.2 of the MSA. This section creates a limitation on the liability Atlas may incur under the contract. Pursuant to that clause, Atlas will not be liable for "special, incidental, exemplary, punitive, or indirect damages or for any economic or consequential damages" and "lost profits, business, revenue, goodwill, delays, or anticipated savings."[99] Hence, Mosaic cannot expect to recover any of these types of damages on the breach of contract claim. However, this limitation will not apply if Atlas is found to have acted with gross negligence or willful misconduct.[100] There should be no doubt that willful misconduct embodies fraud.[101] Based on Section 9.2 of the MSA, Mosaic's claims for incidental, special, consequential, and punitive damages rise and fall based on its

[98] *Swipe Acq. Corp. v. Krauss*, 2020 WL 5015863, at *12 (Del. Ch. Aug. 25, 2020).

[99] MSA § 9.2.

[100] *Id.* (providing an exception to the damages limitation in the event of gross negligence or willful misconduct).

[101] *See Cygnus Opportunity Fund, LLC v. Washington Prime Grp., LLC*, 302 A.3d 430, 463 (Del. Ch. 2023) (interpreting willful misconduct as encompassing fraud).

ability to successfully prove its allegations of willful misconduct.

To be sure, if Atlas engaged in willful misconduct, including conduct designed to defraud, damages originally barred by MSA § 9.2 become available for Mosaic to recover, because of MSA § 9.2's carveout for damages arising out of claims involving willful misconduct or gross negligence. If, on the other hand, Mosaic cannot support its allegations of fraud, then damages which exist outside the bounds of MSA § 9.2 can find no basis for recovery. In other words, assuming that Mosaic can prove that Atlas knowingly made representations in the MSA, with the intent to defraud, Mosaic's damages will be those that would otherwise be barred by MSA § 9.2.[102] Hence, the distinction between the damages barred and those allowed by MSA § 9.2 delineates between Mosaic's breach of contract and fraud damages and avoids the anti-bootstrapping rule.

### B. MOSAIC'S FRAUDULENT INDUCEMENT AND CONCEALMENT CLAIMS MEET THE HEIGHTENED PLEADING STANDARD OF RULE 9(B), AND THE ANTI-RELIANCE CLAUSE DOES NOT BAR MOSAIC'S FRAUD CLAIMS.

#### *1. Mosaic's Allegations In Support Of Its Fraudulent Inducement Claim Satisfies Rule 9(b)'s Pleading Standard.*

Delaware is a notice pleading jurisdiction. Delaware Superior Court Civil Rule 9(b) deviates from that latitude and "imposes a heightened pleading standard for allegations of fraud."[103] To satisfy Rule 9(b), a plaintiff ordinarily must allege

[102] *See Cygnus Opportunity Fund, LLC*, 302 A.3d at 463.

[103] *Avve, Inc. v. Upstack Techs., Inc.*, 2019 WL 1643752, at *5 (Del. Super. Apr. 12, 2019).

the time, place, and contents of the false representations; the facts misrepresented; the identity of the person(s) making the misrepresentations; and what the person(s) gained from making the misrepresentations.[104] However, "Delaware courts have . . . consistently found that the date, place, and time allegations are not required so long as the pleadings put defendants on notice of the misconduct with which they are charged[.]"[105] Further, when the basis of the alleged misrepresentation is contained in a written contract, the particularity requirement is relaxed because the who, what, where and when are imbedded in and easily ascertained from the contract.[106] In essence, Rule 9(b) requires that a viable complaint contain allegations sufficient to apprise the defendant of the basis for the claim.[107]

The elements of fraudulent inducement are: "1) a false statement or

---

[104] *Id*.

[105] *Yavar Rzayev, LLC v. Roffman*, 2015 WL 5167930, at *4 (Del. Super. Aug. 31, 2015); *see LVI Gp. Invs., LLC v. NCM Gp. Hldgs., LLC*, 2017 WL 1174438, at *4 (Del. Ch. Mar. 29, 2019) ("[L]ack of specificity as to date, place, and time are not fatal, provided that the pleadings put defendants on sufficient notice of the actual misconduct with which they are charged."); *see also Sammons v. Hartford Underwriters Ins. Co.*, 2010 WL 1267222, at *4 (Del. Super. Apr. 1, 2010) ("[A]n excessive focus on particularity . . . could impair the flexibility and the just determination of cases.").

[106] *See Pilot Air Freight, LLC v. Manna Freight Systems, Inc.*, 2020 WL 5588671, at *24 (Del. Ch. Sept. 18, 2020) ("When a party sues based on a written contract, as [Mosaic] has done here, it is relatively easy to plead a particularized claim of fraud. The plaintiff can readily identify who made what representation where and when, because the specific representations appear in the contract. The plaintiff likewise can readily identify what the defendant gained, which was to induce the plaintiff to enter into the contract." (cleaned up)).

[107] Del. Super. Civ. R. 9(b); *Abry P'rs V, L.P. v. F & W Acq. LLC*, 891 A.2d 1032, 1050 (Del. Ch. 2006) ("Essentially, the plaintiff is required to allege the circumstances of the fraud with detail sufficient to apprise the defendant of the basis of the claim.").

misrepresentation; 2) that the defendant knew was false or made with reckless indifference to the truth; 3) the statement induced the plaintiff to enter the agreement; 4) the plaintiff's reliance was reasonable; and 5) the plaintiff was injured as a result."[108]

Here, the Complaint adequately satisfies the pleading requirement for fraudulent inducement. Mosaic's Complaint alleges that Atlas falsely represented to Mosaic that the TLEL amounts Mosaic would pay "were limited to Mosaic's country-specific tax, benefit, and pension requirements."[109] Atlas's central argument for dismissal here is that Mosaic failed to identify the time, place, and contents of the false representations. Mosaic's failure to identify each of those facts is not fatal to its claims, because the alleged misrepresentations are expressly contained in the contracts between the parties.[110] Mosaic also specifically alleges that the hidden nature of the inflated TLEL fees induced Mosaic to enter the contract because, if those fees were openly disclosed, Mosaic may not have been willing to pay them.[111] Mosaic's Complaint also explains that Mosaic could not manage or operate its own HR and payroll services and had to outsource those tasks to Atlas.[112]

---

[108] *ITW Glob. Invs. Inc. v. Am. Indus. P'rs Cap. Fund IV, L.P.*, 2017 WL 1040711, at *6 (Del. Super. Mar. 6, 2017).

[109] Compl. ¶ 87.

[110] *See Pilot Air Freight, LLC*, 2020 WL 5588671, at *24.

[111] Compl. ¶ 89.

[112] *Id*. ¶ 20.

In this sense, Mosaic relied on Atlas's fraudulent representation regarding the TLEL rates. Although an internal audit of Mosaic's finances exposed the TLEL misrepresentations, such discovery cannot be said to defeat Mosaic's reasonable reliance on Atlas's contractual representation about the TLEL rates to be applied pursuant to the MSA. Indeed, the alleged representations were made at the time of entry into the MSA, prior to any audit or other means of discovering the asserted fraud.[113]

Mosaic's Complaint alleges, with sufficient particularity, the circumstances surrounding the alleged fraud inflicted upon it. Hence, Atlas's request for dismissal of the fraudulent inducement claim is Denied.

### *2. Mosaic's Allegations In Support Of Its Fraudulent Concealment Claim Satisfies Rule 9(b)'s Pleading Standard.*

To establish a claim for fraudulent concealment, a plaintiff must allege:

> (1) deliberate concealment by a party of a material past or present fact, or silence in the face of a duty to speak; (2) that party acted with scienter; (3) there was an intent to induce reliance by the claimant upon the concealment; (4) causation; and (5) damages resulting from the concealment.[114]

Fraudulent concealment "requires an affirmative act of concealment by a defendant, an 'actual artifice' that prevents a plaintiff from gaining knowledge of facts or some

---

[113] *See* Compl. ¶¶ 21, 59.

[114] *Chesapeake Ins. Advisors, Inc. v. DeSola*, 2018 WL 565306, at *4 (Del. Super. Jan. 24, 2018).

misrepresentation that is intended to put a plaintiff off the trail of inquiry."[115] This essentially requires a plaintiff to allege an affirmative act of concealment. Mere silence without a duty to disclose is insufficient to establish fraudulent concealment. "The partial disclosure of facts in a misleading or incomplete way, however, can rise 'to the level of actual artifice.'"[116]

Atlas first argues that Mosaic's claim turns on a legal conclusion based in contract interpretation. However, Atlas misses the core of the Complaint's allegations which tells a story of Mosaic's various attempts to uncover its real TLEL expenses after uncovering inconsistencies in the TLEL rates in the UAE.[117] Mosaic alleges that Atlas obscured the truth and took a portion of the TLEL fees for itself.[118] This rate was not a negotiable point in the contract's formation from Mosaic's point of view, because it represented an amount that satisfied Mosaic's obligations to third parties in each of various jurisdictions across the world. Mosaic also alleges that Atlas knowingly charged a higher percentage than was appropriate or necessary and siphoned off the difference for itself.[119] The allegations in the Complaint, go beyond conclusory assertions of deception and beyond mere silence in the face of a duty to

---

[115] *In re Dean Witter P'ship Litig.*, 1998 WL 442456, at *5 (Del. Ch. July 17, 1998).

[116] *AssuredPartners of Virginia, LLC v. Sheehan*, 2020 WL 2789706, at *17 (Del. Super. May 29, 2020) (quoting *In re Tyson Foods, Inc.*, 919 A.2d 563, 588 (Del. Ch. 2007)).

[117] Compl. ¶¶ 43–45.

[118] *Id*. ¶¶ 57, 88.

[119] *Id*. ¶¶ 57, 59–68.

speak, but include the representation by Atlas that the TLEL rates were "limited to Mosaic's country-specific tax, benefit, and pension requirements."[120] That allegedly false and incomplete disclosure of the true TLEL rates rises to the level of an actual artifice designed to defraud. Moreover, Mosaic makes specific allegations of Atlas's attempts to keep the fees hidden.[121] Hence, Atlas's request to dismiss Mosaic's fraudulent concealment claim is Denied.

### *3. The MSA's Anti-Reliance Clause Does Not Preclude Mosaic's Claim For Fraud.*

The parties to a contract may agree on anti-reliance language in their contracts. Such language serves to limit the legal exposure parties face from the statements they make in negotiations that are not included in the final contract.[122] The integration clause contained in MSA § 12.8.8 disclaims reliance on extra-contractual representations to support a fraud claim. Section 12.8.8 provides that the MSA "and applicable Transaction Documents are the complete agreement between [Mosaic] and [Atlas] regarding Services, and replace any prior oral or written communications between us" and that "neither party is relying upon any representation that is not specified in this Agreement or any applicable Transaction

[120] Compl. ¶ 87.

[121] *Id*. ¶¶ 43–57, 88, 91, 92, 96.

[122] *See Abry P'rs. V, L.P. v. F & W Acq. LLC*, 891 A.2d 1032, 1056–1057 (Del. Ch. 2006).

Document, such as the estimated costs or results of any Services."[123] Therefore, Mosaic may only use language found in the contract to support its claims for fraud. The misrepresentations Mosaic alleges are found in the contract. Each challenged SOW allegedly contained artificially inflated TLEL rates from which Atlas allegedly appropriated extra funds for itself. Hence, the anti-reliance clause does not bar Mosaic's fraud claims, because the alleged misrepresentations are situated in the MSA and the SOWs and, thus, are not extra-contractual.

### C. WHETHER MOSAIC JUSTIFIABLY RELIED ON THE TLEL PERCENTAGES IN THE SOWS CANNOT BE RESOLVED ON A MOTION TO DISMISS.

As its last argument, Atlas contends that Mosaic's fraudulent inducement and concealment claims should be dismissed because Mosaic could not have justifiably relied on Atlas's statements in the MSA and SOWs.[124] Mosaic responds by arguing that it was entitled to rely on Atlas's statements and had no duty to independently verify that Atlas was charging the correct amount.[125]

"Once a court finds the 'plaintiff has adequately pled . . . knowledge and . . . fraudulent misrepresentations . . . the rest of the elements of the claim for fraud are easily satisfied'"[126] "To warrant a recovery for fraud, the injured party must have

---

[123] MSA § 12.8.8.

[124] *See* Op. Br. at 19–21.

[125] *See* Ans. Br. at 29–33.

[126] *Labyrinth, Inc. v. Urich*, 2024 WL 295996, at *15 (Del. Ch. Jan. 26, 2024) (quoting *EMSI Acq. v. Contrarian Funds, LLC*, 2017 WL 1732369, at *16 (Del. Ch. May 3, 2017)).

had a right to rely on the representation made to him or her."[127] "For contractual misrepresentations, reasonable reliance is easily met because the false statements at issue are contained in a written agreement. Specifically, it is reasonable to infer that the Defendants wanted plaintiff to rely on the representations because they are found in the agreement."[128] Moreover, the reasonableness of a plaintiff's reliance is not "generally suitable for resolution on a motion to dismiss."[129]

Atlas first contends that the actual TLEL rates are public knowledge. However, Atlas's contractual obligation was to provide the necessary services that would obviate Mosaic's need to manage its own payroll and human resources services. Indeed, conducting the legwork necessary to fully discover the actual TLEL rates required Mosaic to conduct an internal audit, which suggests this information was not exactly "*publicly available,*" as Atlas suggests.[130]

It is a reasonable argument that a party in Mosaic's position contracting for payroll and human resources services should not be expected to independently research and verify the breakdown of the rates Atlas charged in the performance of its contractual duties. Indeed, Mosaic argues that it should not be expected to

---

[127] 37 C.J.S. *Fraud* § 51 (Dec. 2024 Update).

[128] *Id*. at *18.

[129] *TrueBlue, Inc. v. Leeds Equity P'rs IV, LP*, 2015 WL 5968726, at *7 (Del. Super. Sept. 25, 2015) ("[W]hether a party's reliance was reasonable is not generally suitable for resolution on a motion to dismiss.").

[130] Op. Br. at 20.

understand, without being informed, that the amount paid to cover its TLEL obligations were being misappropriated to cover the service provider's own overhead.[131] Atlas retorts that Mosaic was at least on inquiry notice, as it learned of the actual TLEL rates through an internal audit. The mere capacity to conduct an internal audit does not necessarily constitute sufficient notice. The opportunity to discover misrepresented information through post-contractual investigation, does not, at this stage of the proceedings, preclude this Court from finding that Mosaic may have been justified in relying on the incorrect TLEL rates.[132] As alleged, Mosaic, throughout the parties' relationship, knew what was represented to be the correct TLEL rate, but allegedly was unaware that this rate did not reflect the TLEL amounts Mosaic actually owed for "country-specific tax, benefit, and pension requirements."[133] Mosaic's reliance has been adequately pled in the Complaint, and the fraud claims will not be dismissed on the ground that Mosaic allegedly had opportunities to discover the falsity of the TLEL rate.

## VI. CONCLUSION

Based on Superior Court Civil Rule 12(b)(6)'s plaintiff-friendly standard of review, the Court finds that Mosaic has adequately pleaded claims for fraud in the

---

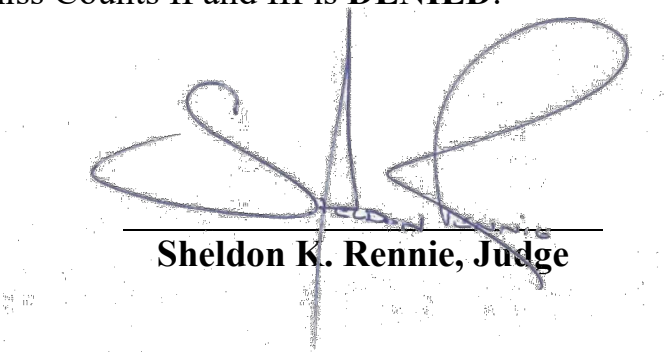
[131] *See* Compl. ¶¶ 57–58.

[132] *State ex rel. Brady v. Pettinaro Enters.*, 870 A.2d 513, 521 (Del. Ch. 2005).

[133] Compl. ¶ 87.

inducement, and fraudulent concealment. In addition, Mosaic's fraud claims are not impermissibly bootstrapped to its contract claim. Finally, Mosaic has satisfied its pleading requirements under Superior Court Civil Rule 9(b). For the reasons set forth above, Atlas's Partial Motion to Dismiss Counts II and III is **DENIED**.

**IT IS SO ORDERED.**



**Sheldon K. Rennie, Judge**