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RE: ***Park7 Student Housing, LLC, et al. v. PR III/Park7 SH Holdings, LLC, et al.,***
Civil Action No. 2025-0167-MTZ

Dear Counsel:

I write to address the defendants' motion to dismiss Counts III and IV of the operative complaint. That motion is GRANTED as to Count III but DENIED as to Count IV.

I. Background

The plaintiffs contend they were fraudulently induced to enter into a membership interest purchase agreement (the "MIPA") in which they waived preexisting rights of first refusal ("ROFR") as to the sale of certain properties.[1] The defendants directly or indirectly own or control the membership interests subject to the MIPA.[2]

The MIPA contemplates that closing is conditioned on the purchaser obtaining consent from certain mortgage lenders.[3] Recognizing that obtaining those consents could require time,[4] the parties agreed to an outside consent date, as well as a mechanism for extending that date.[5] The plaintiffs contend they relied on the

[1] Docket Item ("D.I.") 35 ¶¶ 1, 75–77, 158–66. The MIPA is available at D.I. 14 Ex. A [hereinafter "MIPA"].

[2] D.I. 35 ¶¶ 25–29.

[3] *Id.* ¶¶ 5, 71; *see also* MIPA § 3.04.

[4] D.I. 35 ¶¶ 5, 59–60.

[5] MIPA § 5.01.

defendants' pre-MIPA assurance that the purchaser would be granted "as many extensions" of that outside date as were "needed for [it] to secure said approval."[6] Specifically, the plaintiffs plead:

> To induce the Plaintiffs to enter into the MIPA, Seller represented that to the extent Purchaser continued to diligently pursue Mortgage Lender Consent, Seller would grant as many extensions of the Outside Mortgage Lender Consent Date as needed for Purchaser to secure said approval. Based on this representation, Plaintiffs agreed to execute the MIPA. However, it became clear that while Seller intended to induce Plaintiffs' reliance on these representations, Seller did not believe in the truth of these statements or were recklessly indifferent to its truth.[7]

The MIPA itself states the purchaser has "a one-time right to extend" the outside date to obtain the mortgage lenders' consent. Section 5.01 of the MIPA states:

> Notwithstanding the foregoing, . . . provided [the Purchaser] has and is continuing to use commercially reasonable efforts to obtain Mortgage Lender Consent and has complied in all material respects with Section 3.04, Purchaser, shall have a one-time right to extend the Outside Mortgage Lender Consent Date for up to forty-five (45) days, in order to obtain Mortgage Lender Consent, which shall be exercisable by delivering written notice to the other Party to such effect.[8]

The MIPA provides that "TIME IS OF THE ESSENCE."[9] The MIPA contains an integration clause, but not an antireliance provision.[10]

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[6] D.I. 35 ¶ 7; *accord id.* ¶¶ 62–64.

[7] *Id.* ¶ 7; *accord id.* ¶¶ 62–64.

[8] *Id.* ¶ 73 (citing MIPA § 5.01).

[9] MIPA § 16.07 (capitalization in original).

[10] *Id.* § 16.02(a) ("This Agreement supersedes all prior agreements between the Parties with respect to the subject hereof and all discussions, understandings, offers, and negotiations with respect thereto, whether oral or written.").

As anticipated, obtaining the lenders' consent took time. The purchaser exercised its "option to extend" the outside date by 45 days.[11] The parties subsequently agreed to five extensions of the Outside Mortgage Lender Consent Date, and the purchaser secured Mortgage Lender Consent for five of the six necessary loans.[12] But rather than granting a sixth extension, the seller terminated the MIPA.[13] The MIPA's ROFR waiver survives the MIPA's termination.[14]

Litigation ensued, with a chaotic start. Eventually, the plaintiffs focused on regaining their ROFR. Their second amended complaint seeks rescission of the MIPA so they can regain their ROFR.[15] The defendants moved to dismiss the counts for "Fraudulent Inducement" and "Injunctive Relief" in the form of rescission.[16] The parties stipulated to expedited consideration of that motion.[17] I heard oral argument on June 2, 2025.[18]

The defendants argue the fraudulent inducement claim is barred by the MIPA's integration clause. They contend the extracontractual representation of unlimited extensions conflicts with the MIPA's express provision granting a "one-time right" to an extension.[19] The plaintiffs contend there is no conflict, and that the extracontractual representations supplement the MIPA.[20]

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[11] D.I. 35 ¶ 80.

[12] *Id.* ¶¶ 12, 82–86, 91.

[13] *Id.* ¶¶ 87–92.

[14] MIPA § 15.02 ("The provisions of this Section 15.02 shall survive the termination of this Agreement.").

[15] D.I. 35 ¶¶ 21–22, 169–70, 172.

[16] D.I. 10; D.I. 13 [hereinafter "OB"]; D.I. 18 [hereinafter "AB"]; D.I. 20 [hereinafter "RB"]; D.I. 32 (agreeing "the fully briefed Motion to Dismiss shall apply to Plaintiffs' Second Amended Complaint").

[17] D.I. 32.

[18] D.I. 41.

[19] OB at 26–27; RB at 13–18.

[20] AB at 23–25.

II. Analysis

One element of a fraudulent inducement claim is the plaintiff's action, here agreement to the MIPA, taken in justifiable reliance upon the defendant's false representation.[21] Where the plaintiff alleges the defendant lied in contract negotiations, but the contract says the plaintiff did not rely on the defendant's extracontractual statements, Delaware law recognizes a tension between excusing the defendant's pre-contract lie, and excusing the plaintiff's lie that it was not relying on any extracontractual statements.[22] Delaware law has resolved this tension by requiring specific and unambiguous anti-reliance language to preclude a fraudulent inducement claim based on the defendant's pre-contract statements, as the plaintiff cannot plead justifiable reliance on extracontractual statements when it promised not to rely on them.[23] An integration provision without anti-reliance language does not do the same.[24]

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[21] *Fortis Advisors LLC v. Johnson & Johnson*, 2024 WL 4048060, at *45 (Del. Ch. Sept. 4, 2024). Other elements of common law fraud include: "(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"; and (4) "damage to the plaintiff as a result of such reliance." *Id.*; *see Maverick Therapeutics, Inc. v. Harpoon Therapeutics, Inc.*, 2020 WL 1655948, at *26 (Del. Ch. 2020) ("The elements of fraud and fraudulent inducement are the same.").

[22] *Abry P'rs V, L.P. v. F&W Acq. LLC*, 891 A.2d 1032, 1055–59 (Del. Ch. 2006).

[23] *Id.* at 1058–59; *Kronenberg v. Katz*, 872 A.2d 568, 592–93 (Del. Ch. 2004); *Airborne Health, Inc. v. Squid Soap, LP*, 984 A.2d 126, 141 (Del. Ch. 2009) (explaining a "standard integration clause" "defines the parties' agreement. It does not disclaim reliance").

[24] *Norton v. Poplos*, 443 A.2d 1, 6 (Del. 1982) ("[A] merger clause does not preclude a claim based upon fraudulent misrepresentations."); *see also Trifecta Multimedia Hldgs. Inc. v. WCG Clinical Servs. LLC*, 318 A.3d 450, 465 (Del. Ch. 2024) ("[A]n integration clause, standing alone, is not sufficient to bar a fraud claim; the agreement must also contain explicit anti-reliance language."); *Abry*, 891 A.2d at 1059 ("[M]urky integration clauses, or standard integration clauses without explicit anti-reliance representations, will not relieve a party of its oral and extra-contractual fraudulent representations."); *Airborne Health*, 984 A.2d at 141("An anti-reliance provision must be explicit, and a standard integration clause is not enough."); *Kronenberg*, 872 A.2d at 592 (observing that

But an integration clause functions to preclude a fraud claim where the extracontractual misrepresentation directly conflicts with an express term in the contract.[25] That result follows from the parol evidence rule: evidence of a prior contradictory agreement cannot be considered to modify the terms of the integrated contract.[26] A contract with an integration clause supersedes the terms of any prior agreement covering the same subject matter.[27] "When a prior agreement and a subsequent agreement cover the same subject matter and the subsequent agreement contains an integration clause, the prior agreement 'needs to be memorialized in the subsequent agreement' to survive."[28]

An integration provision alone precludes consideration of a pre-contract understanding based on extracontractual statements that conflict with the terms of

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integration clauses do not "operate as a bar to fraud claims but rather simply to limit the scope of the parties' contractual obligations to those set forth in the written agreement").

[25] *Trifecta Multimedia*, 318 A.3d at 469–70 ("While a standard integration clause alone will not bar a fraudulent inducement claim, a standard integration clause does bar the admission of extrinsic evidence for the purpose of varying or contradicting the terms of that contract." (internal quotation marks and citations omitted)); *Kronenberg*, 872 A.2d at 591–92 (finding integration clauses without antireliance language "simply operate[] to police the variance of the agreement by parol evidence").

[26] *Taylor v. Jones*, 2002 WL 31926612, at *3 (Del. Ch. Dec. 17, 2002) (describing the parole evidence rule as "a principle of substantive law that prevents the use of extrinsic evidence of an oral agreement to vary a fully integrated agreement that the parties have reduced to writing"); *MicroStrategy, Inc. v. Acacia Rsch. Corp.*, 2010 WL 5550455, at *13 (Del. Ch. Dec. 30, 2010) ("Delaware law holds that, the parol evidence rule bars the admission of preliminary negotiations, conversations and verbal agreements when the parties' written contract represents the entire contract between the parties." (internal quotation marks and citations omitted) (cleaned up)); *see* 11 *Williston on Contracts* § 33:1 (4th ed.) ("The parol evidence rule is a substantive rule of law that prohibits the admission of evidence of prior or contemporaneous oral agreements, or prior written agreements, whose effect is to add to, vary, modify, or contradict the terms of a writing which the parties intend to be a final, complete, and exclusive statement of their agreement.").

[27] *Fairstead Cap. Mgmt. LLC v. Blodgett*, 288 A.3d 729, 760 (Del. Ch. 2023).

[28] *See id.* (quoting *Hunt v. Limestone Med. Prop., LLC*, 2018 WL 2939441, at *4 (Del. Ch. June 11, 2018)) (cleaned up).

the integrated contract.[29] So the plaintiff cannot plead justifiable reliance on those conflicting and superseded pre-contract extracontractual statements.[30] While an integration provision alone does not preclude reliance on misrepresentations outside the four corners of an agreement, it precludes reliance on precontractual understandings of facts that are found within the four corners of that agreement.[31]

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[29] *S'holder Representative Servs. LLC v. Albertsons Cos., Inc.*, 2021 WL 2311455, at *11 (Del. Ch. June 7, 2021) ("Delaware courts have found a lack of justifiable reliance at the pleading stage when the dispute involves alleged prior misrepresentations or omissions that run expressly counter to the terms of a fully integrated contract." (collecting cases)); *Black Horse Cap., LP v. Xstelos Hldgs., Inc.*, 2014 WL 5025926, at *22 (Del. Ch. Sept. 30, 2014); *see Kronenberg*, 872 A.2d at 589–92 (addressing the effect of an integration clause on factual statements outside the four corners of the contract). While *Albertsons* and *Black Horse* state a minority rule permitting integration clauses to foreclose fraud claims based on forward-looking statements, their holdings on the effect of integration clauses on statements that conflict with contract terms are mainstream Delaware law. *Fortis Advisors*, 2024 WL 4048060, at *46; *see also Trifecta Multimedia*, 318 A.3d at 466–67 (noting "a minority of decisions distinguish between misrepresentations of fact (fraud in the factum) and other types of misrepresentation (fraudulent inducement), [but] the prevailing majority rule does not draw that distinction," and Delaware adopted the majority rule); 11 *Williston on Contracts* § 33:24 (4th ed.).

[30] *Albertsons*, 2021 WL 2311455, at *2 (finding no justifiable reliance when "the clear and unambiguous language of the Merger Agreement conflicts with each of the purported oral misrepresentations that [the defendant] is alleged to have made pre-closing"); *Black Horse*, 2014 WL 5025926, at *22 (finding no justifiable reliance when "an oral promise was made that directly conflicted with the plain language of a subsequent written agreement covering the same subject matter").

[31] *See, e.g.*, *Scott v. Land Lords, Inc.*, 616 A.2d 1214, 1992 WL 276429, at *3 (Del. Sept. 22, 1992) (ORDER) (holding an integration clause barred consideration of pre-contract contrary statement); *Rhodes v. Silkroad Equity, LLC*, 2007 WL 2058736, at *7 (Del. Ch. July 11, 2007) (holding integration clause did not bar fraud but "properly bar[red] certain oral commitments the Defendants made" pre-contract); *Fairstead*, 288 A.3d at 760 (integration clause in a subsequent agreement "supersedes" a contrary provision in a prior agreement); *Trifecta Multimedia*, 318 A.3d at 469–70 ("[A] standard integration clause does bar the admission of extrinsic evidence for the purpose of varying or contradicting the terms of that contract." (internal quotation marks and citations omitted)).

Against that backdrop, the parties join issue on whether the extracontractual representation of unlimited extensions conflicts with the MIPA's grant of a "one-time right" to an extension.[32] I conclude it does.

Section 5.01 states "Purchaser[] shall have a one-time right to extend the Outside Mortgage Lender Consent Date."[33] The plain meaning of "one-time right" affords one, and only one, extension by right. Any additional extensions are by grace. Section 5.01 plainly establishes that the purchaser has the right to only one extension.

Yet the plaintiffs contend the reference to a "one-time right" to an extension "left open the possibility of further extensions."[34] That is true so long as the parties could agree to more extensions. Reading Section 5.01 to afford a right to more than one extension effectively deletes the "one-time" limitation. That reading is unreasonable and renders contractual terms surplusage, which this Court cannot do.[35]

The four corners of the MIPA set forth the parties' understanding that the purchaser was entitled to one extension. The MIPA's integration clause precludes consideration of any conflicting pre-contractual agreement to unlimited extensions. It follows the plaintiffs cannot justifiably rely on any precontractual representation that the purchaser had a right to unlimited extensions. So the plaintiffs cannot state a claim for fraudulent inducement based on that precontractual statement. The plaintiffs' claim for "Fraudulent Inducement" is dismissed.

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[32] OB at 25–27; AB at 20–25; RB at 13–19.

[33] MIPA § 5.01.

[34] AB at 23–24.

[35] *Osborn ex rel. Osborn v. Kemp*, 991 A.2d 1153, 1159 (Del. 2010) ("We will read a contract as a whole and we will give each provision and term effect, so as not to render any part of the contract mere surplusage."). While I may not look beyond the MIPA's four corners in interpreting its terms, the parties' course of performance confirms the purchaser's right to extension is limited to one. *See* D.I. 35 ¶¶ 80–86 (alleging the initial extension was an exercise of the purchaser's "option," and the subsequent extensions were upon the parties' written agreement).

The defendants also seek dismissal of the plaintiffs' "cause of action" for "Injunctive Relief."[36] I am hesitant to dismiss an equitable remedy at the pleading stage,[37] particularly where the parties have not joined issue on the merits of or remedies for the plaintiffs' breach of fiduciary duty claims. I cannot confidently take any equitable relief off the table at this point. But, because the parties' expedited dispute hinges on whether the plaintiffs have a path toward restoring the ROFR, I will share that without a claim for fraudulent inducement, it does not appear the plaintiffs pled a path to rescission of the MIPA. It appears the plaintiffs sought rescission only as a remedy for fraudulent inducement.[38] And it appears the plaintiffs' "cause of action" for "Injunctive Relief" enforcing the restored ROFR relies on rescission. I hope that is enough guidance for today.

III. Conclusion

The defendants' motion to dismiss Counts III and IV of the operative complaint is GRANTED as to Count III but DENIED as to Count IV. The parties should confer on a scheduling order for what remains of the case.

Sincerely,

/s/ Morgan T. Zurn

Vice Chancellor

MTZ/ms

cc: All Counsel of Record, via *File & ServeXpress*

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[36] OB at 41; RB at 30.

[37] *MHS Cap. LLC v. Goggin*, 2018 WL 2149718, at *5–6 (Del. Ch. May 10, 2018).

[38] AB at 3, 30 ("If Plaintiffs are successful on their claim for fraudulent inducement, the MIPA will be rescinded and Plaintiffs and Defendants will revert to the status quo—Plaintiffs will have a right to exercise the ROFR, as contemplated by the Joint Venture Agreement."); *id.* at 33, 35 n.9 (linking rescission to fraudulent inducement).