IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

DRIVEN INTERMEDIATE HOLDINGS, INC.,	)	
Plaintiff,	)	
v.	)	C.A. No. N24C-09-056 PAW CCLD
OSWALDO JIMENEZ, *in his individual capacity and in his capacity as Sellers' Representative on behalf of all Sellers under the Stock Purchase and Exchange Agreement dated as of September 23, 2021*, BRIAN CUNNINGHAM, and MICHAEL JREIGE,	)	
Defendants.	)	

Date Submitted: May 27, 2025
Date Decided: August 28, 2025

MEMORANDUM OPINION

Upon Defendants' Motion to Dismiss Counts X, XI, XII, XIV, and XV;
GRANTED in part, DENIED in part.

Jaclyn C. Levy, Esq.; Christopher D. Renaud, Esq., of Potter Anderson & Corroon, LLP; Michael P. Conway, Esq.; Shae Flanagan Spreyer, Esq., of Jones Day, *Attorneys for Plaintiff*.

Michael C. Heyden, Jr., Esq.; Joseph E. Brenner, Esq., of Gordon Rees Scully Mansukhami, LLP, *Attorneys for Defendants Oswaldo Jimenez and Michael Jreige*.

Alan D. Albert, Esq., of O'Hagan Meyer PLLC, *Attorney for Defendant Brian Cunningham.*

WINSTON, J.

I. INTRODUCTION

Plaintiff, Driven Intermediate Holdings, Inc., brings a complaint against Oswaldo Jimenez, Brian Cunningham, and Michael Jreige (collectively "Defendants"). This dispute relates to a Stock Purchase and Exchange Agreement ("SPEA") involving the sale of Driven Holdings Corporation (the "Target Company"). Plaintiff seeks damages for breaches of the SPEA (Counts I through IX), fraud in the inducement (Count X), aiding and abetting fraud (Count XI), civil conspiracy (Count XII), and unjust enrichment (Count XIII). Plaintiff further alleges that it is entitled to indemnification pursuant to Section 7.4 of the SPEA (Count XIV). Lastly, Plaintiff seeks a declaratory judgment declaring that the $515,000 R&W Indemnity Escrow Amount shall be distributed to Plaintiff (Count XV).

In lieu of an answer, Defendants moved to dismiss certain counts (the "Motion"). The Motion seeks to dismiss the following counts pursuant to Superior Court Civil Procedure Rules 12(b)(6) and 9(b): Count X–Fraud in the Inducement; Count XI–Aiding and Abetting Fraud; Count XII–Civil Conspiracy; Count XIV–Indemnity; and Count XV–Declaratory Judgment.

II. FACTUAL BACKGROUND

The Target Company, an e-discovery and litigation support services business, used licensed software that included a Software License Agreement ("SLA").[1] As

[1] Complaint (hereinafter "Compl.") ¶¶ 4-7, 50-52. (D.I. 1).

part of the Target Company's licensed software, there was a network license that had no usage charge.[2] The network license use was limited to internal developmental applications.[3] For external business purposes, the Target Company was required to use and pay licensing fees under the SLA.[4] The licensing fees required the Target Company to self-report its monthly incurred license usage to the licensor so that it could be assessed the appropriate fee amount.[5] From December 2018 until the closing of the sale of the Target Company, the Target Company was driving most of its server usage through the network license although it should have been using the SLA.[6] The Target Company did this to avoid reporting usage that it would have had to pay for under the SLA.[7] The underreporting resulted in the Target Company avoiding almost all license fees.[8]

On September 23, 2021, Plaintiff purchased the Target Company from Defendants pursuant to the terms and conditions of the SPEA.[9] Defendants acted as

---

[2] *Id.* ¶¶ 6, 51.

[3] *Id.* ¶¶ 6, 51.

[4] *Id.* ¶¶ 7-8, 52-53.

[5] *Id.* ¶¶ 7-8, 52-53.

[6] Compl. ¶¶ 9, 56.

[7] *Id.* ¶¶ 10, 57-58.

[8] *Id.* ¶¶ 57, 69.

[9] *Id.* ¶ 25.

"knowledge persons" and signatories of the SPEA.[10] The SPEA included a series of representations and warranties.[11] Specifically, the SPEA warranted that financial statements were true and correct, including audited balance sheets of the Target Company and its subsidiaries;[12] the Target Company and its subsidiaries had no material liabilities other than those specifically disclosed;[13] all the material contracts of the Target Company had been properly disclosed;[14] and all material intellectual property used or held by the Target Company had been fully disclosed.[15] Plaintiff alleges that the above representations and warranties were false.[16]

Plaintiff alleges that during the sales process, despite knowing about the underreporting practice, Defendants hid this practice from Plaintiff to induce it into paying a substantially inflated purchase price for the Target Company.[17] As a result of the Target Company's overstated EBITDA, which Plaintiff relied upon to

---

[10] *Id.* ¶¶ 16, 18-19.

[11] Exhibit A to Compl. (hereinafter "SPEA") at Article III. *See also* Compl. ¶¶ 30-40.

[12] SPEA § 3.6(a).

[13] *Id.* § 3.7.

[14] *Id.* § 3.14.

[15] *Id.* § 3.18.

[16] Compl. ¶ 110.

[17] *Id.* ¶¶ 78-79, 83, 119.

determine the purchase price, Plaintiff alleges that it overpaid for the Target Company by more than $20 million.[18]

III. STANDARD OF REVIEW

Pursuant to Delaware Superior Court Civil Rule 12(b)(6), the Court may dismiss an action for failure to state a claim upon which relief can be granted.[19] Upon a Rule 12(b)(6) motion, the Court: (1) accepts all well-pleaded factual allegations as true; (2) credits vague allegations if they give the opposing party notice of the claim; (3) draws all reasonable inferences in favor of the non-moving party; and (4) denies dismissal if recovery on the claim is reasonably conceivable under any set of facts that could be proven to support the claims asserted.[20]

IV. ANALYSIS

A. COUNT X – FRAUD IN THE INDUCEMENT

Defendants argue that Plaintiff's Complaint fails to state a claim for fraudulent inducement because it fails to meet the particularized pleading standard of Rule 9(b).[21] In the alternative, Defendants posit that Plaintiff's fraudulent inducement

---

[18] *Id.* ¶ 118.

[19] Del. Super. Ct. Civ. R. 12(b)(6).

[20] *Cent. Mortg. Co. v. Morgan Stanley Mortg. Cap. Holding, LLC*, 27 A.3d 531, 535 (Del. 2011).

[21] Defs.' Opening Br. in Supp. of their Mot. to Dismiss Counts X, XI, XII, XIV, and XV ("Opening Br.") at 11-12. (D.I. 8). This brief does not include pagination,

claim is duplicative of breach of contract.[22] The Court addresses each contention in turn.

1. Count X is pled with the requisite particularity required by Rule 9(b).

To state a claim for fraud, a complaint must plead the following elements: (1) a false representation of material fact; (2) the defendant's knowledge of or belief as to the falsity of the representation or the defendant's reckless indifference to the truth of the representation; (3) the defendant's intent to induce the plaintiff to act or 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.[23] Under Rule 9(b), "[i]n all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge and other condition of mind of a person may be averred generally."[24] Damages too may be alleged generally.[25] "To satisfy [] Rule 9(b), a complaint must allege: (1) the time, place, and contents of the false representation; (2) the identity of the person making the representation; and (3) what the person intended to gain by

---

therefore when a pincite is given, it is referring to the page number found at the top of the PDF.

[22] Opening Br. at 12, 14.

[23] *Stephenson v. Capano Dev., Inc.*, 462 A.2d 1069, 1074 (1983).

[24] Del. Super. Ct. Civ. R. 9(b).

[25] Del. Super. Ct. Civ. R. 9(g).

making the representations."[26] When, as here, a party sues based on a written representation in a contract, it is relatively easy to plead a particularized claim of fraud.[27] "The plaintiff can readily identify who made what representations where and when, because the specific representations appear in the contract."[28] Plaintiff meets this standard.

In its Complaint, Plaintiff alleges Defendants made "false representations and concealed material facts . . . to [Plaintiff] concerning the Target Company's long-standing underreporting practice in clear violation of its contractual obligations under the SLA and the intentional overstatement of the Target Company's EBITDA as a result of such practice."[29] This element is pled with the requisite particularity required by Rule 9(b). It describes the contents of Defendants misrepresentations as "concerning the Target Company's long-standing underreporting practice" and "the intentional overstatement of the Target Company's EBITDA as a result of such practice."[30] Although the time, place, and identity of the person who made the representation are not specifically delineated in this paragraph, the Complaint points

---

[26] *EZLinks Golf, LLC v. PCMS Datafit, Inc.*, 2017 WL 1312209, at *3 (Del. Super. Mar. 13, 2017).

[27] *Prairie Cap. III, L.P. v. Double E Holding Corp.*, 132 A.3d 35, 62 (Del. Ch. 2015).

[28] *Id*.

[29] Compl. ¶ 232.

[30] *Id.* ¶ 232.

to the alleged misrepresentations in the "representations and warranties" of the SPEA.[31] Since the misrepresentations are based on representations and warranties in the SPEA, it is readily identifiable who made what representations, where those representations were made, and when those representations were made.[32] Therefore, the first element of fraudulent inducement has been pled with sufficient particularity.

As to the remaining elements, Plaintiff alleges Cunningham instructed the Director of IT/Houston to utilize the network license despite the contractual prohibition, as was historically done, and not to discuss this issue via email.[33] Plaintiff further claims the Target Company's pre-closing practice of failing to report their usage and make the required payments under the SLA inflated the Target

---

[31] Compl. ¶ 30 ("Article III of the SPEA contains a series of representations and warranties that Sellers and the Target Company represented were true and correct to Purchaser."); *Id.* ¶¶ 136, 146, 157, 167, 177, 187, 198, 209, 220 ("The foregoing breaches of representations and warranties were made fraudulently by Sellers with knowledge of their falsity for the purpose of inflating the Target Company's Purchase Price."); *Id.* ¶ 229 ("'Fraud' is defined in the SPEA as 'Delaware common law fraud with respect to the representations of the Company and the Sellers expressly set forth in this Agreement . . . .'"); *Id.* ¶ 234 ("Sellers knew that the above representations and warranties were false . . ."). The specific allegations of misrepresentations exist throughout the Complaint. *See Id.* ¶¶ 80-82, 84-85, 87-89, 91-92, 94-95, 97-98, 100-101, 103-104, 107-108.

[32] *Prairie Cap.*, 132 A.3d at 62 ("The plaintiff can readily identify who made what representations where and when, because the specific representations appear in the contract.").

[33] Compl. ¶¶ 67-77.

Company's EBITDA.[34] And Defendants intentionally misrepresented the value of the Target Company to induce Plaintiff to enter into the SPEA and overpay for Target Company because Defendants knew that Plaintiff based the purchase price solely on the Target Company's EBITDA.[35] Based upon these allegations, it is reasonably inferable that the Defendants intended to induce reliance on the representations because they appeared in the SPEA. For the same reason, it is reasonably inferable that Plaintiff relied on the representations when entering the SPEA. Plaintiff claims causally related harm because it entered the SPEA it otherwise would not have signed. In this case, Plaintiff sufficiently alleges that it acquired the Target Company it would not have purchased or at least would have paid materially less to own. Plaintiff has covered all of the elements of a fraud claim.

Because all five fraud elements are sufficiently pled,[36] the Motion to Dismiss Count X for fraudulent inducement will be denied if the fraudulent inducement claims are not duplicative of the breach of contract claims.

---

[34] *Id.* ¶¶ 115-119.

[35] *Id*.

[36] *Browne v. Robb*, 583 A.2d 949, 955 (Del. 1990) ("The entire purpose of Rule 9(b) is to put the defendant on notice so that he can adequately prepare a defense.").

2. COUNT X IS NOT DUPLICATIVE OF PLAINTIFF'S BREACH OF CONTRACT CLAIMS.

a. THE CONDUCT OF COUNT X IS SEPARATE AND DISTINCT FROM THE CONDUCT OF THE BREACH OF CONTRACT CLAIMS.

A plaintiff cannot "bootstrap" fraud claims onto breach of contract claims.[37] A fraud claim pled contemporaneously with a breach of contract claim may nonetheless survive "so long as the claim is based on conduct that is separate and distinct" from the alleged breach of contract.[38] "Allegations that are focused on *inducement* to contract are 'separate and distinct' conduct."[39]

In this case, Count X is a claim for fraudulent inducement.[40] Plaintiff alleges that Defendants made misrepresentations about the Target Company's underreporting practice before the closing of the sale to intentionally overstate the Target Company's EBITDA to induce Plaintiff into completing the sale for an inflated price.[41] Even though the alleged misrepresentations stem directly from the

---

[37] *Sofregen Medical Inc. v. Allergan Sales, LLC*, 2021 WL 1400071, at *6 (Del. Super. Apr. 1, 2021) (quoting *Continental Fin. Co., LLC v. ICS Corp.*, 2020 WL 836608, at *3 (Del. Super. Feb. 20, 2020)).

[38] *Id*. (quoting *ITW Global Invs. Inc. v. Am. Indus. Partners Cap. Fund IV, L.P.*, 2015 WL 3970908, at *6 (Del. Super. Jun 24, 2015)).

[39] *Id*. (emphasis in original).

[40] Compl. ¶¶ 52-56.

[41] *Id.* ¶ 76 ("Defendants . . . knew months before the Closing of the Driven Sale that the Target Company employed a substantial underreporting practice . . . in direct violation of its contractual obligations with the third-party services provider. They did so with the knowledge and intent that it would overstate the Target Company's

representations and warranties made in the SPEA, because Plaintiff alleges that the misrepresentations were made before the closing of the sale, inducing them to close, Count X is focused on inducement. Since Count X focuses on inducement to contract, the conduct for the claim of fraudulent inducement is separate and distinct from the conduct for the breach of contract claims.[42]

b. THE DAMAGES OF COUNT X ARE SEPARATE AND DISTINCT FROM THE DAMAGES OF THE BREACH OF CONTRACT CLAIMS.

Even when there is separate and distinct conduct, failure to plead separate damages is an independent ground for dismissal.[43] That being said, "a contractual limitation on damages opens the door to parallel breach of contract and fraud

---

reported EBITDA and improperly inflate its sale price."); *Id.* ¶ 238 ("Sellers knew that Purchaser would rely on their representations and warranties in the SPEA in evaluating whether to proceed with the transaction. They also knew that Purchaser would not have entered into the SPEA or subsequently closed the transaction . . . had they made truthful representations and disclosed the material facts they intentionally concealed and misrepresented."); *Id.* ¶ 241 ("As a direct and proximate result of Sellers' misrepresentations and intentional omissions of material fact, Sellers fraudulently induced Purchaser to enter into, and complete, the sale of the Target Company.").

[42] *Sofregen Medical Inc.*, 2021 WL 1400071 at *6 ("Allegations that are focused on *inducement* to contract are 'separate and distinct' conduct.") (emphasis in original); *Swipe Acquisition Corp. v. Krauss*, 2020 WL 5015863, at *12 (Del. Ch. Aug. 25, 2020) (holding that the conduct was distinguishable because the alleged conduct for fraud was that the seller *knew* the representations were false, while the alleged conduct for breach of contract was just that the representations *were* false).

[43] *Cornell Glasgow, LLC v. La Grange Props. LLC*, 2012 WL 2106945, at *9 (Del. Super. June 6, 2012) ("[Plaintiff] has failed to plead fraud damages separate and apart from its breach damages. The fraud claim, therefore, must be dismissed for this reason as well."). *See also ITW Global*, 2015 WL 3970908, at *5.

claims."[44] Here, the SPEA includes contractual limitations on damages for breaches of contract.[45] Without proving fraud, it is possible that Plaintiff's damages are limited. Because Plaintiff's damages could be different in the event that it prevails on its fraud claim, and because its fraud claim is distinct from its breach of contract claim, the motion to dismiss Count X as bootstrapped or duplicative of the breach of contract claim is **DENIED**.

B. COUNT XI – AIDING AND ABETTING FRAUD[46] AND COUNT XII – CIVIL CONSPIRACY

Defendants also contend that Plaintiff's Complaint fails to state a claim for aiding and abetting fraud and civil conspiracy because its claim for fraudulent inducement fails to meet the particularized pleading standard of Rule 9(b); therefore, Defendants argue Plaintiff has not shown any underlying tortious conduct.[47] In the alternative, Defendants argue that these claims are barred because officers and agents

---

[44] *Firmenich Inc. v. Nat. Flavors, Inc.*, 2020 WL 1816191, at *10 (Del. Super. Apr. 7, 2020) (citing *Abry Partners V, L.P. v. F & W Acquisition LLC*, 891 A.2d 1032, 1035 (Del. Ch. 2006)). *See also Pilot Air Freight, LLC v. Manna Freight Sys., Inc.*, 2020 WL 5588671, at *26 (Del. Ch. Sept. 18, 2020) (finding plaintiff's fraud damages arguably distinct from its breach damages because the breach of contract caps damages); *Swipe Acquisition Corp*, 2020 WL 5015863, at *12 (finding that the anti-bootstrapping rule did not apply because the fraud claim may entitle the plaintiff to greater damages than the breach of contract claim).

[45] SPEA §§ 7.6, 7.7.

[46] This Count is only alleged against Cunningham.

[47] Opening Br. at 17, 18-19.

of a corporation cannot aid and abet or conspire with one another in the commission of a tort.[48]

1. Counts XI and XII are sufficiently pled.

As explained above, Plaintiff's fraud claim is sufficiently pled. Consequently, Plaintiff also sufficiently pled the predicate underlying tortious conduct by Cunningham and unlawful acts by Defendants to sustain Counts XI and XII. Because these claims are sufficiently pled, Plaintiff's Motion to Dismiss Counts XI and XII will be denied if the intra-corporate conspiracy doctrine does not apply.

2. The intra-corporate conspiracy doctrine applies.

Defendants argue that even if Plaintiff has stated a claim for fraud, the claim is barred as a matter of law because officers or agents of a corporation cannot aid and abet or conspire with each other.[49] Generally, pursuant to the intra-corporate conspiracy doctrine, "officers and agents cannot aid and abet their principal or each other in the commission of a tort"[50] and "a corporation cannot be deemed to have

---

[48] *Id.* at 17, 18-19.

[49] *Id.* at 17-18.

[50] *AmeriMark Interactive, LLC v. AmeriMark Holdings, LLC*, 2022 WL 16642020, at *12 (Del. Super. Nov. 3, 2022) (quoting *Cornell Glasgow*, 2012 WL 2106945, at *11).

conspired with its officers and agents."[51] "The only instance where this general rule will not apply is when a corporate officer steps out of [his] corporate role and acts pursuant to personal motives."[52] A "corporate officer does not step out of his corporate role unless he seeks to gain a benefit *independent* of his financial interest resulting from his employment by or investment in his employer."[53]

Here, the Complaint alleges that Defendants each served as officers of the Target Company prior to closing.[54] Because Defendants are alleged to have served as officers of the Target Company during the time the aiding and abetting or conspiracy would have taken place, the intra-corporate conspiracy doctrine may apply.

The Complaint alleges that all Defendants were "acting for [their] own personal financial gain in actively participating in the civil conspiracy" and that

---

[51] *River Valley Ingredients, LLC v. Am. Proteins, Inc.*, 2021 WL 598539, at *6 (Del. Super. Feb. 4, 2021) (quoting *Amaysing Techs. Corp. v. Cyberair Communications, Inc.*, 2005 WL 578972, at *7 (Del. Ch. Mar. 3, 2005)).

[52] *Anschutz Corp. v. Brown Robin Cap., LLC*, 2020 WL 3096744, at *17 (Del. Ch. June 11, 2020) (internal quotation marks omitted).

[53] *RGIS Int'l Transition Holdco, LLC v. Retail Servs. Wis Corp.*, 2024 WL 568515, at *5 (Del. Super. Feb. 13, 2024) (internal punctuation omitted) (emphasis added); *Anschutz*, 2020 WL 3096744, at *18.

[54] Prior to closing, Cunningham is alleged to have served as Executive Vice President, Treasurer, and Chief Financial Officer; Jimenez served as President and Chief Executive Officer; and Jreige served as Chief Operating Officer prior to closing. Compl. ¶¶ 16, 18, 19.

Cunningham "received the highest total cash proceeds in stock appreciation rights (approximately $2 million) from the Driven Sale."[55] However, the Complaint does not support these conclusions with factual allegations that the Defendants received a benefit independent of their financial interest. In fact, proceeds from the sale of the Target Company are not independent of the Defendants' employment.[56] Indeed, if the Defendants were not officers of the Target Company at the time of the sale, they would not have received such proceeds. In addition, the Complaint fails to allege any actions the Defendants took that were outside of their corporate role.[57]

Thus, even accepting all well-pled allegations as true and drawing every reasonable factual inference in favor of the non-moving party, Plaintiff's pleadings are insufficient. Therefore, Defendants' Motion to Dismiss Counts XI and XII is **GRANTED**.

---

[55] Compl. ¶¶ 248, 264.

[56] *RGIS*, 2024 WL 568515, at *6 (finding that the fact that the company officers may personally benefit from selling the companies, does not show that the officers stepped outside of their corporate roles and acted out of personal motivation).

[57] *Id*. at *6 (dismissing aiding and abetting claims against company officers because plaintiff failed to allege facts demonstrating that the sale was done outside of the officers' corporate roles and pursuant to some particularized personal motives); *Anschutz*, 2020 WL 3096744, at *18 (dismissing the aiding and abetting claims because plaintiff failed to allege the company officers acted for any reason other than inflating the value of the company for their principal).

C. COUNT XIV – INDEMNITY[58] AND COUNT XV – DECLARATORY JUDGMENT

Defendants contend that Plaintiff's Complaint fails to state a claim for indemnity because the indemnity provision of the SPEA only applies to third-party claims.[59] Generally speaking, Defendant is correct that indemnity provisions only apply to third party claims.[60] This is the case unless there is "specific language showing intent to extend the protections of an indemnity provision to claims brought against parties to the contract . . . ."[61]

Here, the SPEA states "each Seller . . . shall indemnify and hold harmless [Plaintiff] and each of its officers, directors, employees, stockholders, agents and representatives ("[Plaintiff's] Indemnified Persons") from and against, and shall reimburse [Plaintiff's] Indemnified Persons for, such Seller's Pro Rata Percentage of any Damages directly arising out of or based upon (a) any misrepresentation,

---

[58] This Count is alleged only against Jimenez and Jreige.

[59] Opening Br. at 21-22.

[60] *See Oliver B. Cannon & Son, Inc. v. Dorr-Oliver, Inc.*, 394 A.2d 1160, 1165 (Del. 1978) (An indemnity clause "normally contemplates the need to defend against Third party claims as opposed to claims among contracting parties Vis-a-vis each other."); *Deere & Co. v. Exelon Generation Acquisitions, LLC*, 2016 WL 6879525, at *1 (Del. Super. Nov. 22, 2016) ("[T]he term 'indemnify' in standard indemnity clauses applies to third party actions. Standard indemnity clauses are not presumed to apply to first-party claims.").

[61] *See Data Centers, LLC v. 1743 Holdings LLC*, 2015 WL 9464503, at *6 (Del. Super. Oct. 27, 2015).

breach or inaccuracy in any representation or warranty made by the [Target] Company or Sellers in Article III . . . (f) any act of Fraud . . . ."[62]

Although the SPEA does not explicitly state that Section 7.1 may be used for first-party claims, the SPEA includes another section, Section 7.3, which specifically touches on third-party claims.[63] Further, Section 7.4 of the SPEA details how "[a] claim for indemnification for any matter not involving a Third Party Claim" should be asserted.[64] The language of these other SPEA sections may support Plaintiff's contention that Section 7.1 is not limited to third-party claims.[65] On the other hand, Section 7.1's silence regarding first-party indemnification, which Delaware presumes applicable only to third-party indemnification, supports Defendant's interpretation of the provision. Because both parties' interpretations of the SPEA are reasonable and there is a dispute as to the interpretation, dismissal of the indemnification claims at this stage is inappropriate.[66] Therefore, Defendants' Motion to Dismiss Counts XIV and XV is **DENIED**.

---

[62] SPEA § 7.1.

[63] *Id.* § 7.3.

[64] *Id.* § 7.4.

[65] *See Schneider Nat'l Carriers, Inc. v. Kuntz*, 2022 WL 1222738, at *31 (Del. Super. Apr. 25, 2022) (holding that although an indemnity provision did not expressly state it covers first-party claims, a distinction between third-party claims in another part of the agreement confirmed the indemnity provision covered first-party claims).

[66] *Labyrinth, Inc. v. Urich*, 2024 WL 295996, at *21 (Del. Ch. Jan. 26, 2024) ("Where interpretations over the meaning or application of an express contract differ,

V. CONCLUSION

Accepting all well-pled allegations as true and drawing all reasonable inferences in favor of Plaintiff, the Motion to Dismiss Counts X, XIV, and XV is **DENIED** because recovery on these claims is reasonably conceivable. As to Counts XI and XII, even accepting all well-pled allegations as true and drawing every reasonable factual inference in favor of the non-moving party, Plaintiff's pleadings are insufficient. Accordingly, Defendants' Motion to Dismiss Counts XI and XII is **GRANTED**.

IT IS SO ORDERED.

/s/ Patricia A. Winston
Patricia A. Winston, Judge

dismissal is proper only if the defendant's interpretation is the only reasonable construction as a matter of law."); *Renco Grp., Inc. v. MacAndrews AMG Holdings LLC*, 2015 WL 394011, at *5 (Del. Ch. Jan. 29, 2015) ("Where the provisions in controversy are reasonably susceptible to different interpretations, ambiguity exists and dismissal is proper only if the defendants' interpretation is the only reasonable construction as a matter of law. This is because when parties present differing—but reasonable— interpretations of a contract term, the Court turns to extrinsic evidence to understand the parties' agreement.") (internal punctuation omitted).