IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

PHARMLAND DEVELOPMENT CORPORATION and RISE HOLDINGS, INC.,	)	
Plaintiffs,	)	
v.	)	C.A. No. N25C-12-319 SKR CCLD
JAMES CHU, UNTAPPED INVEST, INC., and UNTAPPED LLC,	)	
Defendants.	)	

Submitted: May 28, 2026
Decided: August 14, 2026

MEMORANDUM OPINION AND ORDER

Upon Consideration of Defendants' Motion to Dismiss the Complaint: **GRANTED**

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Rennie, J.

I. INTRODUCTION

This dispute arises from a series of failed investments in emerging markets. The individual defendant, an investor, financed these ventures using capital borrowed from the plaintiffs and other lenders. Following the underperformance of these investments, the investor defaulted on the loans. The plaintiffs—both junior creditors—now seek to recoup their losses through this litigation. The plaintiffs face a threshold contractual barrier. The no-action provision in the governing agreement expressly bars junior creditors from both bringing contractual claims and pursuing judgments that could encumber the investor's investment vehicle unless they secure support from the senior creditors or the senior debt is fully satisfied. Because the plaintiffs failed to satisfy these contractual prerequisites, the breach of contract claims (Counts V–VIII) are DISMISSED.

To circumvent these contractual restrictions, the junior creditors attempt to fashion a fraud claim out of structural omissions. The operative pleading, however, fails to satisfy basic pleading standards: (1) while the plaintiffs allege fraud because the borrowed capital was intended for "productive assets supporting entrepreneurs in emerging markets," the complaint fails to allege that the funds were actually directed elsewhere; (2) the plaintiffs allege that the loan documents omitted the identities of the senior creditors, but they fail to plead any legal or contractual duty requiring such disclosure; and (3) the plaintiffs point to asset transfers from an investor-controlled corporation to an investor-controlled LLC, but they fail to allege how these internal transfers impaired the investments or otherwise functioned to hinder, delay, or defraud creditors. Consequently, the fraud-related claims (Counts II–IV) are DISMISSED.

Further, because an express contract governs the parties' relationship, the quasi-contractual claim for unjust enrichment (Count IX) is DISMISSED.

The plaintiffs also seek recovery under the Delaware Securities Act (Count I). At this stage, the loan instruments are conceivably securities under Delaware law. However, even assuming the instruments qualify as securities, the claim cannot overcome the clear contractual hurdle established at the outset of this dispute. Because the near-all-encompassing no-action provision restricts the plaintiffs from both bringing litigation under state-level statutory schemes and bringing claims that could encumber the investment vehicle's assets without senior creditor approval, this statutory claim fails alongside the breach of contract claims. Accordingly, Count I is DISMISSED.

For the reasons set forth above and discussed further below, Defendants' Motion to Dismiss is GRANTED in its entirety.

II. BACKGROUND[1]

A. The Parties

Plaintiffs Pharmland Development Corporation ("Pharmland") and Rise Holdings Inc. ("Rise Holdings" and together with Pharmland, "Plaintiffs") are investment vehicles controlled by Jeffrey Craig and Byron Darlison, respectively.[2]

Defendant James Chu ("Mr. Chu"), a California resident, is the founder and Chief Executive Officer of Defendant Untapped Invest, Inc. ("Untapped").[3] Formed by Mr. Chu in 2021, Untapped purported to issue loans to startups in Africa that faced limited access to traditional fundraising avenues.[4] Plaintiffs allege that Mr. Chu described himself as the "supermajority shareholder . . . and Sole Director" of Untapped.[5] Mr. Chu also controls an affiliated entity, Untapped LLC ("Untapped LLC" and together with Mr. Chu and Untapped, "Defendants").[6]

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[1] The facts are drawn from the well-pled allegations in the Complaint (the "Complaint") (Docket Item ("D.I.") 1) [hereinafter "Compl."]. Plaintiffs also attach 13 exhibits—totaling 231 pages—to the Complaint. The Court treats the Subordinated Loan Agreement (the "SLA") as integrated. *See* SLA (D.I. 1 Ex. 1 p. 62) [hereinafter "SLA § -.--"].

[2] Compl. ¶¶ 4–5.

[3] *Id.* at ¶ 6.

[4] *Id.* at ¶¶ 18–19.

[5] *Id.* at ¶ 54.

[6] *Id.* at ¶ 8.

B. The Investment Relationships

The relationship between Pharmland and Untapped began in January 2022, when Mr. Chu, following a meeting with Mr. Craig, detailed several ways Pharmland could invest in Untapped.[7] Mr. Chu also transmitted an offering memorandum proposing an investment in Untapped through promissory notes (the "Offering Memorandum").[8] In March 2022, Pharmland and Untapped executed a Letter of Intent under which Untapped would issue Pharmland an 18-month senior promissory note in exchange for a $500,000 capital commitment.[9] Two years later, in March 2024, the parties executed a second, junior promissory note in the principal amount of $617,638.29 (the "Junior Promissory Note").[10] Because of this note's junior status, the parties simultaneously executed a Subordinated Loan Agreement (the "Pharmland SLA").[11]

Meanwhile, in September 2022, Rise Holdings and Untapped entered into a separate Subordinated Loan Agreement (the "First Rise Holdings SLA"),[12] pursuant to which Rise Holdings received five Junior Notes in exchange for $500,000 (the

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[7] *Id.* at ¶ 23.

[8] *Id.* A copy is available at Compl. Ex. 2 (beginning on page 76 of 154).

[9] *Id.* at ¶ 25. A copy is available at Compl. Ex. 3 (beginning on page 94 of 154).

[10] *Id.* at ¶ 26. A copy is available at Compl. Ex. 4 (beginning on page 104 of 154). The Complaint purports that the Junior Promissory Note was executed in January 2024, but the instrument itself is dated March 2024.

[11] *Id.* at ¶ 27. A copy of the Pharmland SLA is included in Compl. Ex. 1, beginning at page 62.

[12] A copy of the First Rise Holdings SLA is included in Compl. Ex. 1, beginning at page 34.

"Rise Holdings Junior Notes" and together with the Junior Promissory Note, the "Notes").[13] Plaintiffs allege that the material terms of the Pharmland SLA and the First Rise Holdings SLA are identical.[14] For clarity and readability, the Court will analyze the agreements collectively, drawing text from the Pharmland SLA and referring to it simply as the SLA.

C. Relevant SLA Provisions

Before evaluating the allegations in the Complaint, the Court highlights several determinative provisions within the SLA. Article IV sets forth the terms of subordination and establishes explicit restrictions on the junior creditors' ability to pursue legal action or recover outstanding debt from Untapped without senior creditor support or full satisfaction of the senior debt.[15]

Section 4.4 mandates that a junior creditor cannot "commence any action or proceeding" against Untapped under any "bankruptcy, reorganization, readjustment of debt, arrangement of debt, receivership, liquidation or insolvency law, or statute of the federal or any state government" to recover "any part" of the junior debt unless the senior debt has been satisfied or the senior creditor joins the action.[16]

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[13] *Id.* at ¶ 32. A copy is available at Compl. Ex. 6 (beginning on page 118 of 154).

[14] *Id.* at ¶ 33.

[15] SLA §§ 4.1–4.10

[16] *Id.* at § 4.4.

Section 4.6 bars a junior creditor from instituting any proceedings, judicial or otherwise, that could encumber Untapped's assets unless the senior debt has been satisfied or the senior creditor consents to the action.[17]

Section 4.7 confirms that the litigation and recovery restrictions placed upon junior creditors are irrevocable, absolute and unconditional until all senior debt is paid in full.[18]

In contrast to these subordination restrictions, Article V sets forth a creditor's rights upon the occurrence of any of five defined "events of default."[19] As relevant here, "events of default" include Untapped's failure to pay loan principal or interest when due.[20] Upon such default, Article V states, the junior creditor may declare the loan due and payable, rendering it due "immediately,"[21] or "exercise any rights and remedies provided to the [creditor] under [the SLA] and the Notes or at law or equity.[22]

Finally, two administrative provisions bear mentioning. Section 6.5 contains an integration clause stating that the SLA constitutes the entire agreement between

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[17] *Id.* at § 4.6.

[18] *Id.* at § 4.7.

[19] *Id.* at § 5.

[20] *Id.*

[21] *Id.*

[22] *Id.*

Untapped and the respective creditor.[23] Section 6.8 contains a mutual waiver of jury demands.[24]

D. The Default and Subsequent Disclosures

In December 2024, eight months after executing its Junior Promissory Note, Pharmland requested to "close out" its investment.[25] Untapped responded that it would satisfy the Pharmland Junior Note upon its scheduled July 27, 2025, maturity date.[26]

In June 2025, Untapped approached Rise Holdings to request a 60-day extension on an upcoming Rise Holdings Junior Note.[27] Untapped represented that a legal dispute involving a partner's banking institution had temporarily deprived it of the liquidity it needed for repayment.[28] Rise Holdings agreed to extend the maturity date into September (the "Rise Holdings Extension").[29]

The following month, Untapped requested a parallel three-month extension from Pharmland.[30] Pharmland declined.[31] When the July maturity date passed,

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[23] *Id.* at § 6.5.

[24] *Id.* at § 6.8.

[25] Compl. ¶ 40.

[26] *Id.* at ¶ 41.

[27] *Id.* at ¶ 42.

[28] *Id.*

[29] *Id.* at ¶ 43.

[30] *Id.* at ¶ 44.

[31] *Id.* at ¶ 45.

Untapped defaulted, informing Pharmland that it lacked the funds to pay and could provide no timeline for when it might secure adequate liquidity.[32] In mid-August 2025, Untapped missed its initial repayment obligation under the Rise Holdings Extension.[33]

On September 1, 2025, Untapped sent separate emails to Rise Holdings and Pharmland announcing that its board of directors had convened an emergency meeting to decide whether the company must liquidate or restructure.[34] Following pushback from Rise Holdings, Mr. Chu provided additional details regarding Untapped's corporate structure.[35] He disclosed that Untapped itself did not hold the underlying investments; instead, they were held by Untapped LLC.[36] Mr. Chu acknowledged his individual control over Untapped LLC, but maintained that the Untapped board had approved the transfer of ownership to Untapped.[37]

He further asserted that "no board approval was required for Untapped to make equity investments" because he possessed unilateral authority over the company as its "supermajority shareholder . . . and Sole Director."[38] Plaintiffs

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[32] *Id.* at ¶¶ 46–47.

[33] *Id.* at ¶ 48.

[34] *Id.* at ¶¶ 49–50.

[35] *Id.* at ¶ 52.

[36] *Id.*

[37] *Id.*

[38] *Id.* at ¶ 54 (purporting to quote an email from Mr. Chu.).

characterize this arrangement as Mr. Chu transferring funds from Untapped directly into Untapped LLC, his wholly owned vehicle, to pursue risky, self-directed investments.[39]

Upon Plaintiffs' further demands for transparency, Untapped uploaded its governance, investment, and debt records to a "virtual repository."[40] However, Untapped conditioned access upon Plaintiffs executing a non-disclosure agreement.[41] Plaintiffs allege that the proposed agreement would have effectively barred them from pursuing legal remedies.[42] Plaintiffs refused to sign,[43] and this litigation followed.

E. Procedural History

Plaintiffs filed their Complaint on December 15, 2025, asserting nine causes of action.[44] For analytical clarity, the Court categorizes these claims into four distinct groups:

1. The Delaware Securities Act Claim (Count I): Plaintiffs allege that Mr. Chu and Untapped violated Section 73-605 of the Delaware Securities Act because the Notes constitute securities marketed or sold through actionable

[39] *Id.* at ¶ 55.

[40] *Id.* at ¶ 57.

[41] *Id.*

[42] *Id.*

[43] *Id.* at ¶ 59.

[44] *See* Compl.

misrepresentations and omissions (“Count I” or the “Securities Act Claim”).[45]

2. The Fraud Claims (Counts II–IV): Plaintiffs assert claims for fraudulent inducement (“Count II”) and fraud by omission (“Count III”) against Mr. Chu and Untapped.[46] They also assert a claim against all Defendants for fraudulent transfer (“Count IV”) under the Delaware Uniform Fraudulent Transfer Act (DUFTA).[47]
3. The Breach of Contract Claims (Counts V–VIII): Plaintiffs allege that Untapped breached the Pharmland SLA, (“Count V”),[48] the Rise Holdings SLA (“Count VI”),[49] the Pharmland Junior Promissory Note (“Count VII”),[50] and the Rise Holdings Junior Notes (“Count VIII”).[51]
4. The Unjust Enrichment Claim (Count IX): Pled in the alternative to the breach of contract claims, Plaintiffs assert a quasi-contractual claim for unjust enrichment against all Defendants (“Count IX”).[52]

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[45] *Id.* at ¶¶ 63–73.

[46] *Id.* at ¶¶ 74–84, 85–91.

[47] *Id.* at ¶¶ 92–98.

[48] *Id.* at ¶¶ 99–106.

[49] *Id.* at ¶¶ 107–16.

[50] *Id.* at ¶¶ 117–23.

[51] *Id.* at ¶¶ 124–130.

[52] *Id.* at ¶¶ 131–141.

On February 13, 2026, Defendants filed their Motion to Dismiss (the "Motion").[53] Defendants contend that Article IV of the SLA bars all nine claims or, alternatively, Plaintiffs have failed to state a claim upon which relief can be granted.[54] Defendants also moved to strike the Plaintiffs' jury demand as contractually barred.[55]

On March 13, 2026, Plaintiffs filed their answering brief in opposition to the Motion (the "Answering Brief"),[56] and on March 27, 2026, Defendants filed their reply brief (the "Reply Brief").[57] The Court heard oral argument on the Motion on May 28, 2026.[58]

Parallel to the briefing on the merits, on February 27, 2026, Defendants moved to stay discovery pending resolution of the Motion,[59] which Plaintiffs opposed.[60] Following oral argument on April 9, 2026, the Court granted the motion to stay discovery pending the resolution of the Motion to Dismiss.[61]

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[53] Motion (D.I. 16) [hereinafter "Mot."].

[54] *See id.*

[55] *See id.* at p. 35.

[56] *See* Answering Brief (D.I. 25) [hereinafter "Ans. Br."].

[57] *See* Reply Brief (D.I. 29) [hereinafter "Reply Br."].

[58] D.I. 37.

[59] D.I. 19.

[60] D.I. 24.

[61] D.I. 36.

III. LEGAL STANDARD

When assessing a motion to dismiss, a trial court must (1) accept all well-pleaded factual allegations as true, (2) accept even vague allegations as "well-pleaded," (3) draw all reasonable inferences in favor of the non-moving party, and (4) deny the motion unless the plaintiff could not recover "under any reasonably conceivable set of circumstances susceptible of proof."[62]

Nevertheless, the Court is "not required to accept every strained interpretation of the allegations proposed by the plaintiff," and must disregard "conclusory allegations without specific supporting factual allegations."[63]

IV. ANALYSIS

The Court addresses the viability of the Complaint's claims by evaluating the substantive pleading defects of the fraud counts first, followed by the contractual bars that defeat the remaining statutory, contract, and quasi-contract claims. Accordingly, the Court first addresses the Fraud Claims, then the Delaware Securities Act Claim, then the Breach of Contract Claim, and finally the Unjust Enrichment Claim.

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[62] *Cent. Mortg. Co. v. Morgan Stanley Mortg. Cap. Hldgs. LLC*, 27 A.3d 531, 536 (Del. 2011)

[63] *In re Gen. Motors (Hughes) S'holder Litig.,* 897 A.2d 162, 168 (Del. 2006).

A. The Central Fraud Claims (Counts II and III) Fail[64]

Plaintiffs allege that Untapped and Mr. Chu induced them to execute the Notes by (i) affirmatively representing that the loan proceeds would fund "productive assets for entrepreneurs in emerging markets,"[65] and (ii) omitting "critical investing information" regarding the identity and existence of senior creditors.[66] Separately, Rise Holdings alleges that Untapped fraudulently induced it to execute the Rise Holdings Extension by falsely representing that the company would repay the note at the expiration of the 60-day period.[67]

1. Standard

To state a claim for fraud, a plaintiff must plead:

> (1) the defendant falsely represented or omitted facts that the defendant had a duty to disclose; (2) the defendant knew or believed that the representation was false or made the representation with a reckless indifference to the truth; (3) the defendant intended to induce the plaintiff to act or refrain from acting; (4) the plaintiff acted in justifiable

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[64] *See* Mot. p. 17. The fraud-related claims are not bootstrapped onto the breach of contract claims because those claims are not well pled. *See Levy Fam. Invs, LLC v. Oars + Alps LLC*, 2022 WL 245543, at *8 (Del. Ch. Jan. 27, 2022) (holding that the anti-bootstrapping rule does not prevent parties from bringing a fraud claim if the breach of contract claim is not well-pled so there is necessarily no breach claim on which to bootstrap the fraud claim).

[65] Compl. ¶¶ 75–76, 78.

[66] *Id.* at ¶ 88 ("The representations of the loans by Untapped, however, were intentionally silent on critical investing information. Indeed, the Subordinated Loan Agreements omitted any terms, identities, or maturity dates of any senior notes. Nor have Chu or Untapped ever provided such information to Plaintiffs.").

[67] *Id.* at ¶ 80 ("Chu cited a partner of Untapped's legal issue with its bank but assured Darlison that with the extension, repayment was as good as guaranteed.").

reliance on the representation; and (5) the plaintiff was injured by its reliance.[68]

Further, at the pleading stage, Superior Court Civil Rule 9(b) mandates that "the circumstances constituting fraud . . . shall be stated with particularity."[69] The factual circumstances that must be stated with particularity refer to "the time, place, and contents of the false representations; the facts misrepresented; the identity of the person(s) making the misrepresentation; and what that person(s) gained from making the misrepresentation."[70] If a claim "has at its core . . . that the defendant knew something," then the claim must include "sufficient well-pled facts from which it can reasonably be inferred that this 'something' was knowable and that the defendant was in a position to know it."[71] The Plaintiffs' fraud claims fail to meet these established standards.

2. Plaintiffs Do Not Allege False Representations or Material Omissions

Plaintiffs' primary allegations of fraud lack the requisite specificity mandated by Rule 9(b). Plaintiffs identify three communications that they contend fraudulently induced them into executing the Notes: the Offering Memorandum supplied to Pharmland, a July 2022 Executive Summary supplied to Rise Holdings, and the text

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[68] *DCV Hldgs., Inc. v. ConAgra, Inc.*, 889 A.2d 954, 958 (Del. 2005).

[69] Super. Ct. Civ. R. 9(b).

[70] *Airborne Health, Inc. v. Squid Soap, LP*, 984 A.2d 126, 142 (Del. Ch. 2009).

[71] *Valley Joist BD Hldgs., LLC v. EBSCO Indus. Inc.,* 269 A.3d 984, 988 (Del. 2021).

of the SLA itself. All three categories of communication lack the transactional specificity required to support a fraud claim.

a. Offering Memorandum

The Complaint alleges that Pharmland received an email presenting several opportunities to invest in Untapped, including through short-term fixed income notes.[72] Attached to the email was the Offering Memorandum, which represented that the loan proceeds would be "used for the capitalization of equipment for local businesses and entrepreneurs,"[73] and would "finance high-growth businesses in emerging markets for productive assets."[74]

Plaintiffs fail to allege any facts supporting a rational inference that these statements were false when they were made. Instead, the Complaint attempts to plead falsity by asserting that the representation regarding the "capitalization of equipment" was false because the capital was instead "transferred to an LLC wholly owned by Chu."[75] A transfer of this nature could serve as a valid basis for fraud if, for example, Mr. Chu—as the common controller of both Untapped and Untapped LLC—had diverted the assets to the LLC to fund personal expenditures completely

[72] Compl. ¶ 23.

[73] *Id.* at ¶ 24.

[74] *Id.* at ¶ 76. Plaintiffs' attempts to inject an earlier email into consideration are unavailing. *See* Ans. p. 20. Plaintiffs allege that the email represents that "investor funds would be applied to specific investment options[,]" but that the investments were actually "risky" ventures "unrelated to the represented program." No allegations support this representation.

[75] *Id.* at ¶ 65.

unrelated to the corporate mission. Plaintiffs make no such allegation. They do not allege facts indicating that the funds were directed away from high-growth businesses in emerging markets.[76]

Plaintiffs further contend that the underlying investments were marketed as "low-risk," but that Mr. Chu transferred the assets to Untapped LLC to use the capital "for risky investments resulting in losses for Chu and the investors[.]"[77] This theory fails under standard pleading guidelines. The Complaint fails to identify any language in the Offering Memorandum indicating that these uncollateralized loans to startups in emerging markets would be low risk instruments. Nor does the Complaint allege how the actual investments deviated so drastically from the intended strategy that the risk differential could constitute actionable fraud.

Rather than detailing specific fraudulent mechanics, Plaintiffs substitute particularized facts with generalized characterizations about Mr. Chu's management style.[78] The Complaint labels Mr. Chu as the unilateral "decision-maker" at Untapped whose "vision provided the only answer to success" and who "expected

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[76] The Complaint supplies several variations of this corporate mission. For purposes of assessing whether the Complaint alleges Mr. Chu diverted funds, the distinctions are immaterial.

[77] Compl. ¶ 1. *Compare id.* at ¶ 65.

[78] By way of example, the Complaint refers to Mr. Chu as a "self-proclaimed guru" who "needs a stage," *id.* at ¶ 14, and "doubled down on his personal brand—focused on marketing his image as a visionary leader who has the answers" while Untapped floundered. *Id.* at ¶ 15. The Complaint purports, completely without support, that Untapped is Mr. Chu's "Ponzi scheme." *Id.* at ¶ 2.

everyone . . . to get on board and execute his plans."[79] These allegations directly undermine Plaintiffs' core fraud theory. The Complaint emphasizes that Mr. Chu was the "supermajority shareholder and sole director of Untapped[]" who possessed unilateral authority across both corporate entities—a centralized governance structure that is legally insufficient to establish a fraudulent scheme.[80]

Consequently, the Court cannot infer that Mr. Chu secured absolute control over the capital through the structural transfer to Untapped LLC because, by Plaintiffs' own admission, he already possessed it. Further, the Complaint notes that Mr. Chu represented that the Untapped board agreed that he should transfer ownership of the LLC to Untapped, and that his status as the sole director empowered him to make equity investments without piecemeal board approval.[81]

Because Mr. Chu maintained identical management authority over both corporate entities, the physical transfer of funds between these two related entities provides no basis to infer that Mr. Chu employed a different, riskier investment strategy than the one originally disclosed.

The facts alleged fail to support a reasonable inference of falsity.

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[79] *Id.* at ¶ 17.

[80] *Id.* at ¶ 67. Out of an abundance of caution, the Court flags a nuance. At some points, Plaintiffs allege that Mr. Chu *said* he was the supermajority shareholder and sole director, *id.* at ¶¶ 54, 55, but elsewhere, including Paragraph 67, Plaintiffs seek recovery because Mr. Chu *was* the supermajority shareholder and sole director.

[81] *Id.* at ¶ 52. In any event, approval by the formal board of directors would have been easy to secure because, Plaintiffs allege, Mr. Chu was Untapped's sole director.

b. The Executive Summary

Plaintiffs next allege that on September 3, 2022, Rise Holdings received Untapped's July 2022 Executive Summary and related promotional materials describing its business model.[82] The Complaint asserts that this Executive Summary "touted a reserve fund that would absorb losses up to $1M, and proclaimed that default rates must exceed 27% and 44%, respectively, for Junior and Senior holders to experience losses."[83]

Setting aside the missing components of Rule 9(b) particularity, such as the identity of the person who sent Rise Holdings the Executive Summary, Plaintiffs argue that these statements were "concrete factual misrepresentations,"[84] but offer no facts to support such a conclusion. The Complaint contains no allegations that a reserve fund did not exist, that it was funded below the stated amount, or that the mathematical default models were fabricated or inaccurately presented. Plaintiffs cannot infer historical falsity merely from the fact that subsequent, widespread portfolio defaults ultimately overwhelmed the protective cushions allegedly outlined in the marketing materials.

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[82] *Id.* at ¶ 29.

[83] *Id.* at ¶ 31 (internal quotations from Executive Summary omitted). *See also id.* at ¶ 78.

[84] Ans. Br. p. 20.

c. The Subordinated Loan Agreement

Plaintiffs also argue that the SLA itself embodies fraud by omission because it is "intentionally silent on critical investigating information."[85] Specifically, Plaintiffs point out that the text of the SLA "omitted any terms, identities, or maturity dates of any senior notes," and allege that Defendants never independently provided this information.[86] Elsewhere, Plaintiffs highlight that the SLA references an Intercreditor Agreement that was never executed.[87]

These alleged omissions are not actionable under Delaware law. It is not reasonably conceivable that Untapped's explicit contractual acknowledgment of senior debt within an arms-length commercial transaction constitutes a misleading half-truth that triggers an ongoing disclosure duty.[88] The agreement under review is a Subordinated Loan Agreement; the presence of superior debt obligations was the express foundational premise of the transaction. In sophisticated commercial dealings, the onus remains on the junior lenders to investigate the terms, scale, and maturity schedules of competing senior debt before executing a subordinated agreement. Defendants bore no legal duty to organize or conduct Plaintiffs' investment due diligence on their behalf. Because Plaintiffs fail to plead any

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[85] Compl. ¶ 88.

[86] *Id.*

[87] *Id.*at ¶ 90.

[88] *See GC Broadway, LLC v. AN SM 1925 Broadway Hldgs.,* 2026 WL 539233, at *22 (Del. Ch. Feb. 26, 2026) (aggregating cases discussing duty to disclose).

affirmative misrepresentations or actionable omissions, the fraudulent inducement claim fails as a matter of law.

3. Rise Holdings Extension Allegations

Rise Holdings separately contends that Untapped fraudulently induced it to execute the 60-day loan modification extension.[89] The claim rests on a June 9, 2025, email from Mr. Chu requesting the extension, in which he explained that a partner's banking dispute had delayed immediate liquidity, but assured Rise Holdings that Untapped would "accrue enough in payments to cover repayments."[90]

It is hornbook law that, as a general rule, predictions about future events or future financial performance do not give rise to actionable fraud claims.[91] That said, future uncertainty does not mean a corporate borrower can make statement projections with completely impunity.[92] A fraud claim based on future predictions may proceed if it is reasonably conceivable that the defendant knowingly supplied a false projection with a contemporaneous intent to deceive.[93] A plaintiff can therefore state a claim of fraud based on performance projections by pleading specific, contemporaneous facts supporting a rational inference that the speaker knew the

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[89] Compl. ¶ 80 ("Chu cited a partner of Untapped's legal issue with its bank but assured Darlison that with the extension, repayment was as good as guaranteed.").

[90] *Id.* at ¶¶ 42, 80.

[91] *Great Lakes Chem. Corp. v. Pharmacia Corp.*, 788 A.2d 544, 554 (Del. Ch. 2001).

[92] *See Labyrinth, Inc. v. Urich*, 2024 WL 295996, at *13 (Del. Ch. Jan. 26, 2024); *see also Clark v. Davenport*, 2019 WL 3230928, at *12 (Del. Ch. July 18, 2019).

[93] *Labyrinth*, 2024 WL 295996, at *13.

statements lacked factual support or lacked a good faith belief in their underlying truth.[94]

Plaintiffs fail to plead any such contemporaneous facts. The Complaint contains no data to support that Mr. Chu fabricated this banking dispute or that Untapped's payment accrual models were mathematically unsupported on June 9, 2025. Instead, Plaintiffs point to a subsequent communication sent in August 2025, one day after Untapped defaulted on the extended note, in which Mr. Chu revealed that other portfolio partners had since failed to make their scheduled payments, eliminating the company's remaining liquidity.

A plaintiff cannot state a claim for fraud by simply contrasting a defendant's past optimism with less favorable actual results and then asserting that the discrepancy must be attributable to a deception.[95] The subsequent, independent default of additional portfolio partners demonstrates a worsening insolvency rather than a contemporaneous, faithless intent to deceive. Because Plaintiffs offer no reasonably conceivable basis to infer that Mr. Chu knew these subsequent defaults would occur when he requested the extension, this basis for fraud fails.

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[94] *In re P3 Health Gp. Hldgs.*, 2022 WL 15035833, at *5 (Del. Ch. Oct. 26, 2022).

[95] *Stein v. Wind Energy Hldgs., Inc.*, 2022 WL 17590862, at *7 (Del. Super. Dec. 13, 2022); *see also Noerr v. Greenwood*, 1997 WL 419633, at *4 (Del. Ch. July 16, 1997).

B. The DUFTA Claim (Count IV) Fails

Pursuant to the Delaware Fraudulent Transfer Act (DUFTA), specifically 6 *Del. C.* § 1304(a)(1) ("Section 3104(a)(1)"), a plaintiff may pursue a cause of action for actual fraudulent transfer.[96] The statute defines a transfer as fraudulent if the debtor made it "[w]ith the actual intent to hinder, delay or defraud any creditor of the debtor."[97]

Plaintiffs contend that Defendants violated this statute by transferring funds from Untapped to Untapped LLC with the actual intent to hinder, delay, or defraud creditors.[98]

Defendants counter that the DUFTA claim is contractually barred by Article IV of the SLA or, alternatively, fails to state a claim upon which relief can be granted.[99] Setting aside the overarching application of Article IV, Plaintiffs' claim fails on its substantive merits.[100]

To state a claim for an actual fraudulent transfer under DUFTA, a plaintiff must satisfy two distinct pleading requirements: allege the specific circumstances of

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[96] 6 *Del. C.* § 1304(a)(1).

[97] *Id.*

[98] Ans. Br. p. 28 (citing Complaint throughout).

[99] Mot. pp. 13, 32.

[100] The Court observes that a DUFTA claim may implicate certain statutory considerations that went unaddressed by the parties. In the interest of efficiency, the Court resolves this cause of action on the merits rather than solicit further briefing.

the disputed asset transfer and set forth facts rendering it reasonably conceivable that the defendant acted with the requisite fraudulent intent.[101]

1. Circumstances of the Transfer

When challenging a transaction under Section 1304(a)(1), a plaintiff must meet the heightened particularity standard of Rule 9(b) by pleading specific supporting facts describing the precise circumstances of the transfer, including the who, what, when, and where of the challenged transfer.[102]

In moving to dismiss, Defendants do not dispute that Plaintiffs have adequately alleged the raw transactional mechanics of the asset transfers between Untapped and Untapped LLC.[103]

2. Conceivability of Actual Fraudulent Intent

Because direct evidence of a debtor's internal state of mind is rarely available at the pleadings stage, a plaintiff may plead actual fraudulent intent by demonstrating a confluence" of statutory "badges of fraud."[104] These nonexclusive factors codified in 6 *Del. C.* § 1304(b) include whether the debtor retained possession or control of

[101] *Cleveland-Cliffs Burns Harbor LLC v. Boomerang Tube*, 2023 WL 5688392, at *10–11 (Del. Ch. Sep. 5, 2023).

[102] *Id.*; *see also Ki-Poong Le v. So*, 2016 WL 6806247, at *4 (Del. Super. Nov. 17, 2026).

[103] *See* Mot. pp. 32–33.

[104] *Cleveland-Cliffs*, 2023 WL 568892, at *11 (citing *Kibler v. Wooters*, 2007 WL 1756595, at *4 (Del. Ch. June 6, 2007)); *see also Paul Elton LLC v. Rommel Del., LLC*, 2020 WL 2203708, at *10 (Del. Ch. May 7, 2020).

the property after the transfer, whether the transfer was actively concealed, and whether the transfer comprised substantially all of the debtor's operating assets.[105]

Plaintiffs identify four purported badges of fraud.[106] First, Defendants did not disclose that assets were being shifted from Untapped to Untapped LLC until after Untapped defaulted due to a lack of liquidity.[107] Second, Mr. Chu "retained complete possession, control, and use of the transferred funds" because he was the supermajority shareholder and sole director of Untapped while simultaneously acting as the owner of Untapped LLC.[108] Third, Untapped allegedly received no valid consideration for transferring investor capital into Untapped LLC.[109] Fourth, the transfer occurred shortly before or after Untapped incurred substantial debt obligations.[110]

Reviewing the Complaint as a whole, Plaintiffs fail to supply factual allegations sufficient to infer that Defendants executed these intra-entity transfers with an actual intent to hinder, delay, or defraud creditors.

Regarding the first badge, the primary concern arising from a debtor's post-default disclosure of shifted assets is the inference that the debtor surreptitiously

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[105] 6 *Del. C.* § 1304(b).

[106] Ans. Br. p. 28.

[107] Compl. ¶¶ 46–49, 52–55.

[108] Ans. Br. p. 28.

[109] *Id.*

[110] Compl. ¶ 96.

structured the transaction to conceal assets from legitimate creditors. Plaintiffs, however, do not actually allege that assets housed within Untapped LLC were legally insulated or placed beyond the reach of Untapped's creditors.[111] Nor does the Complaint support the implied contention that Mr. Chu transferred the assets to hide them. To the contrary, the Complaint explicitly admits that Mr. Chu disclosed in October 2025 that he and the Untapped board had already decided to transfer formal ownership of Untapped LLC to Untapped.[112]

The second badge of fraud—that Mr. Chu retained control of the assets on both sides of the ledger—is technically accurate but substantively unpersuasive. As established above, Plaintiffs' own pleading emphasizes that Mr. Chu had complete control over Untapped. Structurally, he was the supermajority shareholder and sole director;[113] operationally, he ran the corporate show.[114] Plaintiffs central allegation against Untapped LLC is that it was owned and controlled solely by Mr. Chu.[115] In essence, Plaintiffs merely allege that Mr. Chu caused an entity under his complete control to move funds to another entity under his complete control. Plaintiffs fail to allege how this internal reshuffling benefited Mr. Chu personally or harmed

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[111] *See* Mot. p. 33.

[112] Compl. ¶¶ 51–52; *see also* Compl. Ex. 12.

[113] *Id.* at ¶ 54.

[114] *Id.* at ¶ 17.

[115] *Id.* at ¶¶ 8, 67, 96.

creditors. To the extent Plaintiffs seek to imply that Mr. Chu used the transfer to secure greater latitude over investment selections, that theory is unpled and legally untenable given that his unilateral management authority was identical across both entities.

Third, Plaintiffs asserted during briefing that Untapped received no consideration for the transferred assets, citing paragraphs 54 and 96 of the Complaint.[116] Yet neither paragraph supports this sweeping claim. Paragraph 54 merely reiterates Mr. Chu's alleged control over Untapped.[117] Paragraph 96 states only that "the value of the consideration received by Untapped was not *reasonably equivalent* to the value of the assets transferred to Untapped LLC."[118] This assertion is entirely conclusory and carries no weight under Rule 12(b)(6).[119]

Finally, while Plaintiffs allege that the transfers occurred close in time to Untapped incurring substantial debt,[120] they offer no basis to infer that the timing was *motivated* by fraudulent intent. They fail to connect the transfers to any specific

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[116] *Id.* at ¶¶ 54, 96.

[117] *Id.* at ¶ 54.

[118] *Id.* at ¶ 96 (emphasis added).

[119] *See Renco Gp., Inc. v. MacAndrews AMG Hldgs., LLC*, 2015 WL 394011, at *10 (Del. Ch. Jan. 29, 2015) (finding that a plaintiff merely making an allegation mirroring an element of actual fraudulent transfer failed to state a claim).

[120] Compl. ¶ 96.

debts, and identify no nefarious advantage Mr. Chu could have secured, such as shielding those assets from collection.

In sum, the allegations outline an asset transfer that is facially neutral; its objective characteristics are just as consistent with routine, centralized business operations as they are with an illicit asset-shifting scheme, and no facts alleged support the latter. To support a rational inference of fraud, the Complaint needed to allege something more than the mere existence of these dual purpose corporate details; it required a factual basis from which the Court could infer that Defendants engaged in this conduct specifically to hinder, delay, or defraud creditors. Because the pleading fails to clear this threshold, Defendants' Motion to Dismiss is GRANTED as to Count IV.

C. The Delaware Securities Act Claim (Count I) Fails

Plaintiffs allege that Untapped offered or sold them securities by means of untrue statements and omissions of material fact in violation of Section 73-605 of the Delaware Securities Act.[121] They further allege that Mr. Chu is liable as an employee who materially aided in the sale, or as an officer or director of Untapped.[122]

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[121] *Id.* at ¶ 71.

[122] *Id.* at ¶ 72.

Defendants seek dismissal of Count I on two alternative grounds: (i) the Notes do not qualify as securities as a matter of law, and (ii) the claim is barred by Article IV of the SLA because it is a state statutory claim.[123]

Whether these uncollateralized, junior promissory notes constitute "securities" involves a fact-intensive inquiry under corporate and securities law definitions. While it is conceivable, at this preliminary pleading stage, that the instruments could fulfill the requisite criteria to be deemed securities, this Court need not definitively resolve that classification. Even assuming the Notes constitute securities under Delaware law, the claim is ultimately barred by the contractual hurdles established at the outset of the parties' investment relationship. Because the nearly all-encompassing no-action provision restricts Plaintiffs from bringing any statutory claims or any claims that could encumber assets without senior creditor approval, Count I fails alongside the contract and common law claims.

1. Scope of the Contractual Bar

The plain language of the SLA leaves no room for a statutory carve-out. Section 4.4 explicitly mandates that a junior creditor cannot "commence any action or proceeding" against Untapped under any "statute of federal or any state government" to recover any part of the junior debt unless the senior debt is satisfied

[123] *See* Mot. p. 14.

or the senior creditors join the action.[124] Further, Section 4.6 bars the institution of any judicial proceedings that could encumber Untapped's assets.[125]

A claim under the Delaware Securities Act seeking rescission or compensatory damages is a state statutory action aimed directly at recovering the capital lost under the junior instruments. Any monetary judgment obtained under Count I would inevitably operate to encumber Untapped's assets. Because the senior debt remains unsatisfied and the senior creditors have not consented or joined this litigation, the text of the SLA squarely encompasses and bars Count I.

2. Enforceability of the No-Action Provision

Plaintiffs failed to substantively engage with this contractual argument in their briefing. At oral argument, Plaintiffs belatedly contended that the no-action clause should not apply because their statutory claim sounds in fraud. This argument is legally unpersuasive and fails to overcome established Delaware precedent.

In analyzing the enforceability of no-action and subordination provisions, Delaware courts look to the underlying purpose of the clause. Under long-standing guidance such as *Feldbaum v. McCrory Corp.* and *Lange v. Citibank N.A.*, no-action clauses are highly favored commercial mechanisms designed to protect the collective security of senior lenders and prevent individual junior creditors from

[124] SLA § 4.4.

[125] *Id.* at § 4.6.

prematurely depleting a distressed borrower's assets through piecemeal litigation.[126] To achieve this objective, clear and unambiguous no-action provisions are enforced according to their terms, even against statutory claims and claims alleging fraud or misconduct, unless the contract itself contains an explicit exception.

Plaintiffs cannot evade their voluntary, absolute subordination agreement by repackaging a failed investment into a statutory securities claim. While a securities claim involves individual questions of reliance or specific pre-investment communications, the risk of asset depletion from an adverse judgment is common to all creditors. Permitting a single junior creditor to pursue a parallel statutory path to judgment would completely subvert the allocation of risk and payment priority for which the senior creditors bargained. Absent an allegation that the senior creditors are actively colluding with Defendants to perpetrate a fraud—an allegation not made here—the irrevocable restrictions in Article IV must be enforced. Because Plaintiffs failed to satisfy the contract's mandatory prerequisites before launching this action, Defendants' Motion to Dismiss is GRANTED as to Count I.

D. The Breach of Contract Claims (Counts V–VIII) Fail

Defendants move to dismiss the Breach of Contract Claims on the grounds that Plaintiffs failed to comply with the clear contractual conditions precedent set

[126] *See Feldbaum v. McCrory Corp.*, 1992 WL 119095, at *6 (Del. Ch. June 2, 1992); *Lange v. Citibank, N.A.*, 2002 WL 2005728, at *6–7 (Del. Ch. Aug. 13, 2002). The Delaware Supreme Court has since noted that *Feldbaum* and *Lange* were interpreting New York law. *See Quadrant Structured Prods. Co., Ltd. v. Vertin*, 109 A.3d 992, 993 (Del. 2013).

forth in Article IV of the SLA. Defendants argue that the collective provisions of Article IV establish a complete bar to this litigation, including the breach of contract claims.[127]

Plaintiffs respond that the litigation restrictions in Article IV are not applicable. They point instead to Article V, which states that upon an event of default, "the Lender may exercise any rights and remedies provided to the Lender under this Agreement and the Notes or at law or equity."[128] Plaintiffs also contend that Section 4.4—the provision that conditions when a junior creditor can initiate an action—applies exclusively to insolvency-related proceedings.[129] In their view, the restriction is limited to actions brought "under any bankruptcy, reorganization, readjustment of debt, arrangement of debt, receivership, liquidation, or insolvency."[130]

Plaintiffs' interpretation misreads the language of the agreement. Section 4.4 is not restricted solely to bankruptcy filings; it explicitly applies to proceedings instituted "under any bankruptcy, reorganization, readjustment of debt, arrangement

[127] *See* Mot. p. 11.

[128] SLA § 5.

[129] Ans. Br. p. 32.

[130] *Id.* (purporting to quote SLA § 4.4).

of debt, receivership, liquidation, or insolvency *law, or statute of the federal or any state government*."[131]

1. Principles of Contract Interpretation

This dispute presents a pure question of contract interpretation. Delaware adheres to an objective theory of contracts, under which "a contract's construction should be that which would be understood by an objective, reasonable third party."[132] Consistent with these principles, the Delaware Supreme Court has emphasized that courts must interpret contracts "as a whole," "giv[ing] each provision and term effect, so as not to render any part of the contract mere surplusage."[133] The Court will not read a contract in a manner that renders "a provision or term meaningless or illusory."[134]

Where a motion to dismiss "hinges on the interpretation of a contract, a trial court may only grant the motion if the defendants' interpretation of the contract is 'the only reasonable construction as a matter of law.'"[135] If the text supports more than one reasonable interpretation, an ambiguity exists, and the Court must resolve the contractual inferences in the non-movant's favor.[136]

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[131] SLA § 4.4.

[132] *Stream TV Networks, Inc. v. SeeCubic, Inc.*, 279 A.3d, 323, 338 (Del. 2022).

[133] *In re Shorenstein Hays-Nederlander Theatres LLC Appeals*, 213 A.3d 39, 56 (Del. 2019).

[134] *Id.*

[135] *Mogo, Inc. v. Cricket Media, Inc.*, 2026 WL 540729 at *2 (Del. Super. Feb. 26, 2026).

[136] *Id.*

2. Harmonizing the Subordination and Default Provisions

There is a superficial tension between Articles IV and V. As a general rule of construction, courts interpret the word "or" as disjunctive.[137] Standing alone, Article V could be read to broadly authorize Plaintiffs to "exercise any rights and remedies at law or equity" the moment a default occurs.[138]

On the other hand, Article IV contains sweeping restrictive language that directly limits the operational scope of these default remedies. Section 4.4 states that until the senior debt is satisfied, a junior creditor must secure support from the senior creditors to "commence any action or proceeding" against Untapped under any "statute of . . . any state government" to recover "any part" of their junior debt.[139] Similarly, Section 4.6 bars a junior creditor from "institut[ing] any action or proceedings, judicial or otherwise" to enforce any lien or other encumbrance against Untapped's corporate property.[140] To reinforce this hierarchy, Section 4.7 dictates that junior debt remains irrevocably, absolutely, and unconditionally subordinated until the senior debt is paid in full.[141]

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[137] *Weinberg v. Waystar, Inc.*, 294 A.3d 1039, 1045 (Del. 2023).

[138] SLA § 5. If Untapped had anticipatorily repudiated its payment obligations, that would have accelerated default under Article V, but it would not impact the SLA's broader enforceability.

[139] *Id.* at § 4.4.

[140] *Id.* at § 4.6.

[141] *Id.* at § 4.7.

3. Enforcing the Subordination Provision as a No-Action Clause

The restrictive language of Article IV indicates that it was crafted to operate as a classic contractual no-action provision. As explained in the foundational case of *Feldbaum v. McCrory Corp.*, a no-action provision is a long-recognized contractual instrument designed to protect issuers and senior lenders from the expense of individual creditors bringing "independent lawsuits for unworthy or unjustifiable reasons."[142] Such unilateral actions as demonstrated by an individual creditor's failure to engage the senior debtholders, are typically structures that "most [creditors] would consider not to be in their collective economic interest."[143] Without such language, a junior creditor could "jump the line" and prevent the "proceeds of any litigation" from being shared "ratably" among the appropriate tiers of creditors.[144]

Viewed through this contextual lens, Articles IV and V are certainly not the most elegantly crafted pairing, but they are generally harmonious. Article IV serves two distinct functions: it restricts when and what a junior creditor can actively litigate, and it independently restricts the remedies a junior creditor can extract from a claim. The threshold litigation restriction bars junior creditors from, in relevant

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[142] *Feldbaum*, 1992 WL 119095, at *6.

[143] *Id.*

[144] *Id.*

part, commencing any action under "any *statute* of any state government."[145] Meanwhile, Article V provides that upon a payment default, a creditor may generally pursue claims "at *law or equity*."[146] Because contractual language variations are presumptively intentional under Delaware law, this textual distinction means that while Article IV absolutely bars claims brought under a statute (such as the Delaware Securities Act), Article V leaves space for common law claims.

The fatal defect for Plaintiffs' breach of contract claims, however, lies in Section 4.6, Article IV's separate and explicit bar prohibiting a junior creditor from securing any judgment or encumbrance against Untapped's assets. Section 4.6's focus on monetary remedies is in harmony with Article V. When contemplated together, until the full satisfaction of the senior debt, a junior creditor could theoretically still bring a common law claim seeking purely declaratory or specific equitable relief.[147] This narrow window perfectly aligns with the general protective principles of a no-action provision; shields a distressed borrower from vexatious individual litigation aimed at stripping its operating assets to recoup a specific investment, but it does not bar a junior creditor from, for example, seeking an emergency injunction to prevent an unauthorized asset dissipation before it occurs.

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[145] SPA § 4.4 (emphasis added).

[146] *Id.* at § 5.

[147] If the issue were before the Court, the question of the value of a junior creditor seeking declaratory relief without recovery would need to be assessed.

To adopt Plaintiffs' interpretation and literally permit all standard monetary rights and remedies the moment a payment default occurs would strip the subordination clause of any meaning. It would mean that there is no creditor priority structure whatsoever except within formal bankruptcy or insolvency proceedings.

In interpreting similar contract language, the court in *Feldbaum* noted that through a clear no-action provision, plaintiffs effectively waive their rights to bring claims that jeopardize the corporate asset pool unless they first comply with the mandatory procedures set forth in the clause.[148] While it is conceivable that sophisticated commercial parties could draft a no-action provision that is strictly limited to insolvency filings, that is simply not the language the parties utilized in this case.

The specific relief Plaintiffs seek for alleged breaches of contract is precisely the type of asset-depleting remedy they waived in the SLA. The Complaint requests exclusively monetary remedies, specifically demanding "[d]amages in an amount to be determined at trial," "[a]n attachment over transfer proceeds," and an award of all fees, costs, and expenses.[149] Because Plaintiffs seek monetary judgments that would inevitably encumber Untapped's assets, yet failed to allege that they satisfied

[148] *Feldbaum*, 1992 WL 119095, at *7.

[149] Compl. pp. 33–34.

any of the contractual conditions precedent required by the no-action provision, the breach of contract claims are barred.

Accordingly, the Motion to Dismiss is GRANTED as to Counts V to VIII.

E. The Unjust Enrichment Claim (Counts IX) Fails

Under well-settled Delaware law, a claim for unjust enrichment is unavailable as a matter of law if an express contract governs the relationship between the parties and gives rise to the dispute.[150] Both parties agree that the SLA and Notes constitute valid, binding contracts that fully control their commercial relationship. Because these operative agreements occupy the entire field of the dispute and dictate the precise terms of debt default and subordination, Plaintiffs cannot seek parallel relief. As to Count IX, the Motion to Dismiss is GRANTED.

F. Ancillary Considerations

The disposition of the Motion to Dismiss implicates two ancillary considerations. First, because Section 6.8(g) in the SLA provides a clear, unambiguous and bilateral waiver of jury demands, the jury demand in the Complaint is struck with prejudice.[151] Second, because Plaintiffs' causes of action

[150] *CM Comm. Realty, Inc. v. Alpha Tr. Real Estate, LLC*, 2022 WL 509693, at *9 (Del. Super. Feb. 19, 2022).

[151] Plaintiffs asserted that they could proceed with their SLA-barred jury demand on the Fraud Claims. *See* Ans. Br. p. 37. Because those counts are dismissed, the jury demand is struck.

are dismissed on other grounds, it is not necessary to address the relationship between Mr. Chu, Untapped, and Untapped LLC.

V. CONCLUSION

For the foregoing reasons, Defendants' Motion to Dismiss is **GRANTED** in its entirety. The Complaint, encompassing Counts I to IX, is **DISMISSED** without prejudice.[152]

IT IS SO ORDERED.

Sheldon K. Rennie, Judge

[152] Plaintiffs are not barred from refiling a complaint alleging compliance with the pre-litigation conditions set forth in the governing agreements.