IN THE SUPERIOR COURT OF DELAWARE

GAS STOP, LLC, Plaintiff, v. GP1, LLC, GPM4, LLC, GPM6, LLC, GPM EMPIRE, LLC, and GPM INVESTMENTS, LLC, Defendants.	))))))))))	Civ. Act. No. N25C-11-062 DJB

Date Submitted: May 27, 2026
Date Decided: August 26, 2026

Memorandum Opinion

On Defendant's Motion to Dismiss – **DENIED**

Matthew R. Conrad, Esquire, Daily LLP, Wilmington, Delaware, attorney for Plaintiff

Brandon R. Harper, Esquire, Duane Morris LLP, attorney for Defendant

BRENNAN, J.

This breach of contract dispute arises from a Purchase Agreement between Plaintiff Gas Stop LLC (hereinafter "Plaintiff" or "Gas Stop") and GPM1 LLC, GPM4 LLC, GPM6 LLC, GPM Empire LLC, and GPM Investments LLC (hereinafter, collectively, "Defendants"). Pursuant to the Purchase Agreement, Plaintiff agreed to buy several gas stations from Defendants, which ultimately never came to fruition. In its Complaint, Plaintiff alleges Breach of Contract (Count I), seeks a declaratory judgment (Count II), alleges Fraud in the Inducement (Count III), and Unjust Enrichment (Count IV).[1] Plaintiff alleges Defendants were in breach for their failure to timely close on the specified gas stations; Plaintiff seeks to void the subsequent Amendment to the Purchase Agreement, and seeks return of its deposits.[2] Pending before the Court is Defendants' Motion to Dismiss.[3] For the following reasons Defendants' Motion should be **DENIED**.

I. FACTS[4]

On September 23, 2024, the parties executed the Purchase Agreement, under which Defendants agreed to sell Plaintiff ten gas stations in Delaware.[5] Pursuant to that Agreement, Plaintiff made several deposits, at various times, totaling

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[1] Plaintiff's Complaint, D.I. 1.
[2] *Id.*, ¶¶ 1-3.
[3] D.I. 19.
[4] The facts that form the basis of this Opinion are gleamed from the undisputed facts from the pleadings, and documentary exhibits submitted by the parties.
[5] D.I. 1, ¶ 27, Ex. A at 1.

$1,025,000.00, toward the purchase price.[6] The Agreement followed several months of negotiations between Gas Stop representatives Usama "Sam" Husein (hereinafter "Husein") and Jaafter "Jeff" Eideh (hereinafter "Eideh"), Defendants' Territory Manager Carolyn Russo (hereinafter "Russo"), and Defendant DPM's Regional Sales Manager, Chris Manker (hereinafter "Manker").[7] The proposed sale originally contemplated the sale of twelve gas stations, but ultimately only culminated in ten stations being sold.[8]

A. The Purchase Agreement and Original Closing Date

Prior to finalizing the Purchase Agreement, and in connection with the proposed sale, Gas Stop paid Defendants $100,000.00, entitled an "earnest payment," which served as an initial deposit.[9] Eideh, on behalf of Gas Stop, paid the earnest money payment on August 8, 2024, without having been informed that it was nonrefundable.[10] The parties finalized and executed the Purchase Agreement on September 23, 2024, which provided that closing would occur within sixty (60) days, or in no event later than the close of 2024.[11] Specifically, the Purchase Agreement provided:

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[6] *Id.*, ¶ 2.
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[8] *Id.*, ¶¶ 18-19, 22.
[9] *Id.*, ¶¶ 23-24.
[10] *Id.*, ¶¶ 24-25.
[11] *Id.*, ¶¶ 27-28, Ex. A.

> **<u>The Business Closing</u>** Upon the terms and conditions herein provided, Buyer shall take control of the Properties and its business (the "Business Closing," and the date of such Business Closing, the "Business Closing Date") **which shall occur on a date mutually agreed by Seller and Buyer, but no later than sixty (60) days following the Effective Date**; provided, however, that **Seller may extend the Business Closing for up to an additional thirty (30) day period** from the above-referenced sixty (60) day period, provided that **Seller so notifies Buyer in writing** of its election to so extend the Business Closing **within ten (10) days prior** to the expiration of the above-referenced sixty (60) day period.[12]

The Purchase Agreement spoke to the $100,000 earnest-money payment previously made, as well as the anticipated $400,000 in additional deposit payments that would be due, non-refundable except in the event of Defendants' uncured default. The Purchase Agreement stated:

> Prior to the Effective Date, Buyer has deposited One Hundred Thousand and NO/100 Dollars **($100,000.00) (the "Initial Deposit")** with Seller, or an affiliate of Seller (the "Escrow Agent"), which is acknowledged by the Escrow Agent. Within two (2) business days of the expiration of the Inspection Period (as hereinafter defined), Buyer shall wire a **non-refundable deposit in the amount of $400,000.00 (the "Additional Deposit,"** collectively with the Initial Deposit, the "Deposit"). **Upon receipt of the Additional Deposit, the Deposit shall become non-refundable, subject to any Seller uncured defaults under this Agreement.** At the Business Closing, the Deposit shall be released to Seller from the Escrow Agent or other person holding such deposits and shall be applied towards amounts due to Seller at the Business Closing as provided for herein.[13]

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[12] *Id.*, ¶ 28, Ex. A at 1.
[13] *Id.*, ¶ 35, Ex. A.

The Purchase Agreement detailed a procedure to address each store's inventory prior to closing. Per this agreement, the parties established a process which required Defendants to provide Plaintiff with an estimated cost of the inventory, which Plaintiff would then pay, subject to a refund of any overpayment.[14]

In October 2025, Plaintiff made four payments to GPM Investments, LLC, totaling $525,000: (a) $125,000.00 on or about October 8, 2024, (b) $200,000.00 on or about October 28, 2024; (c) $100,000.00 on or about October 29, 2024; and (d) $100,000.00 on or about October 30, 2024.[15] Despite these payments, Defendants were not ready to close on the properties by the set closing deadline on November 24, 2024.[16] During this time, Plaintiff was not able to access the properties to complete inspection or inventory counts and reports.[17] Without executing any sort of written extension of the closing date within ten days prior, the parties failed to close on November 24, 2024.[18] The purported reason for Defendants' failure to close on the required date was due to Defendants' preoccupation with other business deals.[19] Plaintiff informed Defendants that the delay "was problematic and costing Plaintiff money."[20]

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[14] *Id.*, ¶¶ 33-34.
[15] *Id.*, ¶ 37.
[16] *Id.*, ¶ 38.
[17] *Id.*
[18] *Id.*, ¶¶ 38-39.
[19] *Id.*, ¶ 40.
[20] *Id.*, ¶ 42.

B. The Extension of the Closing Date

On January 23, 2025, Russo, on behalf of Defendants, scheduled a new closing date "for the week of February 25, 2025."[21] On February 6, 2025, Russo informed Plaintiff that the inventory audit would be conducted and figures would be provided to Plaintiff so it can wire the money covering store inventory costs.[22] February 26, 2025 was ultimately set as the closing date.[23] On February 20, 2025, Russo informed Plaintiff the inventory payments totaled $1,275,000.00 and that the money needed to be wired "no later than mid-day February 24, 2025" in order to close the deal.[24] Plaintiff informed Defendants that they would be unable to pay such a large sum with such short notice, to which Defendant responded by informing Plaintiff that a failure to pay would result in a forfeiture of all the deposits paid thus far.[25]

Plaintiff then agreed to close on only five of the ten originally negotiated stores.[26] On February 24, 2025, Plaintiff made an additional $400,000 in deposit payments ($155,000, $165,000, and $80,000); subsequently Plaintiff was informed Defendants were only able to close on four of the now-negotiated five stores.[27]

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[21] *Id.*, ¶ 47.
[22] *Id.*, ¶ 48.
[23] *Id.* ¶ 49.
[24] *Id.*, ¶¶ 49-50.
[25] *Id.*, ¶ 54.
[26] *Id.*, ¶ 57.
[27] *Id.*, ¶ 60.

C. Amendment to the Agreement

On February 25, 2025, the day before the scheduled closing date, Defendants requested Plaintiff, via Husein, execute and sign several documents. These documents included the "First Amendment to Inventory Purchase & Dealerization Agreement" (hereinafter the "Amendment").[28] The Amendment was prepared entirely by Defendant and ultimately signed without review by Plaintiff's counsel, Eideh, or any other members of the company.[29] Husein raised concern about executing the proposed Amendment without Eideh's involvement or knowledge, but was repeatedly contacted by Russo who urged him to execute the documents without to ensure closing could occur.[30]

Husein ultimately signed the Amendment that day.[31] The Amendment introduced several new terms that Plaintiff asserts materially modified the Agreement. Such changes included the parties' obligations in the event the transaction failed to close and it memorialized the entirety of the deposits Plaintiff made toward the purchase.[32] Relevant here, the Amendment added the following provisions:

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[28] *Id.*, ¶ 67, Ex. B.
[29] *Id.*, ¶ 68.
[30] *Id.*, ¶¶ 72, 73.
[31] *Id.*, ¶ 81, Ex. B.
[32] *Id.*, ¶¶ 83-85, Ex. B at 2-3.

> **4. Deposits.** Seller and Buyer hereby acknowledge and agree that as of the Effective Date, Seller is holding a total of $1,025,000.00 which constitutes the remaining Deposit under the Agreement.
>
> **5. Damages.** In the event that Buyer fails to complete the closing relating to any of the Properties on or before March 7, 2025 (a "Buyer Default"), Seller shall have the automatic right to retain the Deposit under the Agreement (the "Default Payment"). Buyer and Seller agree that the damages that Seller will suffer in the event of a Buyer Default are impossible or very difficult to estimate with any degree of certainty, and the Default Payment is a reasonable estimate of what those damages will be and is not intended as a penalty.[33]

After Eideh learned of the Amendment, he objected to the terms.[34] Defendants nevertheless proceeded under the Amendment and sought to close on the four properties on February 26, 2025.[35] Closing, however, did not occur. Thereafter, Defendants sent Plaintiff a "Notice of Default" stating they intended to retain the "Default Payments" defined under Section 5 of the Amendment if Plaintiff failed to close by March 7, 2025.[36] Again, closing did not occur on March 7. By letter dated March 10, 2025, Defendants asserted that because Plaintiff failed to close by March 7, 2025, Defendants were terminating the Agreement and retaining the deposits paid as liquidated damages.[37]

II. PROCEDURAL HISTORY

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[33] *Id.*, ¶ 85, Ex. B at 2-3.
[34] *Id.*, ¶ 104.
[35] *Id.*, ¶¶ 104-105.
[36] *Id.*, ¶¶ 106.
[37] *Id.*, ¶¶ 107.

Plaintiff filed its complaint on November 10, 2025.[38] In lieu of an Answer, Defendants then filed the instant Motion to Dismiss on February 23, 2026.[39] Plaintiff filed its Answering Brief on April 13, 2026.[40] Defendants filed its Reply Brief on May 13, 2026.[41] Oral argument was heard on May 27, 2026.[42] This matter is now ripe for decision.

III. STANDARD OF REVIEW

Under Superior Court Civil Rule 12(b)(6) a motion to dismiss will be granted "where the plaintiff cannot recover 'under any reasonably conceivable set of circumstances susceptible of proof.'"[43] Under that rule the Court will:

> (1) accept all well pleaded factual allegations as true, (2) accept even vague allegations as "well pleaded" if they give the opposing party notice of the claim, (3) draw all reasonable inferences in favor of the non-moving party, and (4) [not dismiss the claims] unless the plaintiff would not be entitled to recover under any reasonably conceivable set of circumstances.[44]

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[38] D.I. 1.
[39] D.I. 19.
[40] D.I. 31.
[41] D.I. 34.
[42] D.I. 36.
[43] *Khushaim v. Tullow Inc.*, 2016 WL 3594752 at *2 (Del. Super. Jun. 27, 2016).
[44] *Id.* at *2.

Conclusory allegations, unsupported by specific factual allegations, will not survive a motion to dismiss.[45] However, a complaint need only provide "general notice" of the claims asserted to survive such a motion.[46]

IV. ANALYSIS

A. Breach of Contract

Defendants' Motion to Dismiss first challenges Plaintiff's Count 1 in that it fails to plead the necessary elements of a breach of contract claim. Namely, Defendants claim that not only has Plaintiff failed to establish a breach of the Purchase Agreement, as amended, but that it cannot establish damages resulting from any alleged breach.[47] In response, Plaintiff maintains that it has sufficiently pled a claim for breach of contract arising from the Agreement.[48]

1. Breach

Defendants first contend Plaintiff has failed to establish Defendants breached the Agreement, arguing instead Plaintiff failed to comply with the timing and written notice requirements for closing.[49] Defendants posit they cured any technical default when they notified Plaintiff "of their inability to close before year-end and Plaintiff

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45 *Id.*

46 *Ramunno v. Cawley, et. al.*, 705 A.2d 1029, at 1034 (Del. Jan. 22, 1998).

47 D.I. 19, p. 11.

48 D.I. 31, p. 16.

49 D.I. 19, p. 12.

agreed to a new closing date."[50] Defendants argue that the Amended Agreement, executed prior to the February closing date, supersedes the Agreement, and consequently defeats any breach of contract claim made by Plaintiff based on the terms of the Agreement.[51]

"[T]o survive a motion to dismiss for failure to state a breach of contract claim, a plaintiff must demonstrate: first, the existence of the contract, whether express or implied; second, the breach of an obligation imposed by that contract; and third, the resultant damage to the plaintiff."[52] Plaintiff retorts Defendants' claims here by arguing the Complaint sufficiently sets forth the required elements as to the Purchase Agreement. Plaintiff alleges breach for failure to timely close, and sets forth an allegation of damages, in that it lost the deposits paid as well as other business losses resulting from not closing.[53]

A potentially determinative issue is the effect of the Amendment to the Purchase Agreement. Defendant asserts that this Amendment cures any defect. Plaintiff disagrees. Plaintiff concedes it neither fully reviewed nor understood the terms of the Amendment executed on February 26, 2025, yet maintains the

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[50] *Id*.
[51] *Id*.
[52] *Offit Kurman, P.A. v. Lillard*, 2025 WL 3554688, at *3 (Del. Super. Dec. 11, 2025) (citing *VLIW Tech., LLC v. Hewlett-Packard Co.,* 840 A.2d 606, 612 (Del. 2003) (internal citations omitted)).
[53] D.I. 1, ¶¶ 5-6, 42-43, 114-115.

Amendment is unenforceable and seeks to void it through Count II of the Complaint.[54] Whether the Amendment survives has been sufficiently pled in Count II, and will guide the decision in the future as to whether there has been a cure to the allegations in Count I.

Therefore, under the applicable standard of review, Plaintiff has sufficiently pled the existence of a contract, the Purchase Agreement between the parties to procure the ten gas stations and has alleged that Defendants breached the Purchase Agreement when they failed to close the sale by the deadline without having requested an extension in writing pursuant to the terms of the Agreement.[55] Therefore, Plaintiff has sufficiently pled facts demonstrating that Defendants breached the Agreement.

2. Damages

Defendants' claim that Plaintiff's breach of contract claim fails because Plaintiff has not demonstrated that they suffered any damages as a direct consequence of the supposed breach.[56] Specifically, Defendants maintain Plaintiff has not adequately asserted damages because pleading damages "as a result of Defendants' breaches," is insufficient.[57] Defendant further argues that "Plaintiff has

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[54] D.I. 1, ¶ 92.
[55] D.I. 1, ¶¶ 111-115.
[56] D.I. 19, p. 13.
[57] *Id*.

failed to allege that the delay itself caused harm" because they acknowledge that they agreed to a new closing date.[58]

To survive a motion to dismiss under Delaware law, a plaintiff asserting a breach of contract claim must plead damages that are reasonably conceivable. Therefore, in order to withstand dismissal, Plaintiff must have pled specific allegations supporting its actual damages for Count I.[59] In its Complaint, Plaintiff meets this standard. Plaintiff articulates: "[i]n addition to costs involved in working to obtain licenses for the stores, Plaintiff had to continue to pay three individuals whom Plaintiff had hired to prepare for Gas Stop take over the stores."[60] Therefore, Plaintiff has satisfied this requirement and pled the requisite damages.

B. Plaintiff has successfully pled a claim for Declaratory Judgment

Defendants argue that Plaintiff's declaratory judgment claim fails because "it does not assert a case or controversy beyond the Complaint's other causes of action and is, therefore, duplicative."[61] Alternatively, Defendants assert Plaintiff has failed to effectively challenge the liquidated damages provision insofar as arguing Plaintiff has not alleged facts demonstrating that its damages were capable of calculation with

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[58] *Id*.
[59] *Unbound Partners Ltd. P'ship v. Invoy Holdings Inc.,* 251 A.3d 1016, 1034 (Del. Super. Ct. 2021) (citing *Buck v. Viking Holding Mgmt. Co. LLC*, 2021 WL 673459, at *3 (Del. Super. Ct. Feb. 22, 2021) (citing VLIW Tech., LLC v. Hewlett-Packard Co., 840 A.2d 606, 612 (Del. 2003)).
[60] D.I. 1, ¶¶ 42-43.
[61] D.I. 19, p. 14.

reasonable certainty when the Amendment was executed.[62] In response, Plaintiff maintains this claim is not duplicative, the Amendment is unconscionable and it is entitled to declaratory judgment.[63]

Under 10 *Del. C.* § 6502, "[a]ny person interested under a ... written contract ... may have determined any question of construction or validity arising under the...contract...and obtain a declaration of rights, status or other legal relations thereunder."[64]

Plaintiff seeks a declaratory judgment that:

> (a) Plaintiff was defrauded out of the aforementioned funds;
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> (b) the Amendment is void and unenforceable as a matter of law;
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> (c) the liquidated damages provisions of the Amendment quoted herein, in particular, are void and unenforceable as a penalty violating public policy;
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> (d) the terms of the Amendment and Defendants' actions in procuring the execution of the Amendment were unconscionable;
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> (e) Plaintiff has a right to reimbursement from Defendant for the amount of the funds improperly retained, plus interest and attorneys' fees and costs; and
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> (f) all funds paid by on behalf of Plaintiff and retained by Defendants must be refunded, plus interest and attorneys' fees and costs.[65]

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[62] *Id*., p. 16.
[63] D.I. 31, pp. 21-22.
[64] 10 *Del. C.* § 6502.
[65] D.I. 1, ¶ 123.

A party seeking declaratory judgment must also demonstrate the following: (1) that the controversy must involve a claim of right or other legal interest of the party seeking declaratory relief; (2) the claim of right or other legal interest must be asserted against one who has an interest in contesting the claim; (3) the conflicting interests must be real and adverse; and (4) the issue must be ripe for judicial determination.[66]

In this case, Plaintiff has demonstrated the required elements for declaratory judgment.[67] Plaintiffs allege that there is a controversy concerning Plaintiff's "right to recover the funds improperly retained by Defendants;" Plaintiff asserted its interest in the contested funds, which is real and adverse to Defendants' interest; and the issue is ripe for judicial determination.[68] Therefore, Plaintiff has sufficiently pled a claim for declaratory judgment.

C. Fraud in the Inducement

Defendant next challenges Plaintiff's Count III, its fraud in inducement claim. In so doing, Defendants argue this count fails to "allege conduct independent of the parties' contractual relationship, and further fails to allege an actionable

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[66] *Weiner v. Selective Way Ins. Co.,* 793 A.2d 434, 439 (Del. Super. Ct. 2002) (citing *Rollins Int'l Inc. v. International Hydronics Corp.,* 303 A.2d 660, 662 (Del. 1973)).
[67] D.I. 1, ¶¶ 116-124.
[68] *Id.*, ¶¶ 119-122.

misstatement, justifiable reliance, or damages."[69] In response, Plaintiff contends that they have adequately pled a fraudulent inducement claim, which is not precluded by the anti-bootstrapping doctrine.[70]

To state a fraud claim, a plaintiff must allege: (1) a false representation, usually one of fact; (2) with knowledge or a belief of the representation's falsity, or with reckless indifference to truthfulness; (3) with intent to induce the plaintiff's behavior; (4) that plaintiff reasonably relied upon the representation; and (5) damages resulting from the misrepresentation.[71]

Defendants challenge the sufficiency of the claim with respect to elements four and five: Plaintiff cannot establish it acted in justifiable reliance on the representation, nor can Plaintiff show resulting injury.[72] To successfully demonstrate justifiable reliance, Plaintiff is required to plead facts which "mak[e] it reasonably conceivable that the plaintiff acted based on the material representation or omission."[73]

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[69] D.I. 19, p. 22.
[70] D.I. 31, p. 29.
[71] *L & R Saunders Assoc. d/b/a Radiology Pros. v. Bank of Am.,* 2012 WL 4479232, at *4 (Del. Super. Sept. 12, 2012).
[72] D.I. 19, pp. 26-29.
[73] *Bean v. JUUL Labs, Inc.*, at *35 (Del. Super. Ct. Mar. 26, 2026) (citing *Trifecta Multimedia Holdings Inc. v. WCG Clinical Servs. LLC*, 318 A.3d 450, 465 (Del. Ch. 2024)).

Review of the Complaint under the standard of review applicable here demonstrates that Plaintiff pled it executed the Amendment only after being assured by Defendant that it was substantially identical to the original terms contained in the Agreement and merely routine in nature.[74] Plaintiff further argues that it was impossible for Husein to verify this because he was pressured and discouraged from involving familiar parties into the relevant discussions.[75] Plaintiff claims Husein, on its behalf, acted in justifiable reliance on the representations made by Russo and Manker and were subsequently harmed.[76] Plaintiff pled damages in the loss of non-refundable deposits paid.[77] Though, Defendants claim that such damages are controlled by the Agreement and therefore cannot satisfy the damages requirement for this claim,[78] given the various challenges made to the Amendment,[79] Plaintiff has adequately pled a claim for fraudulent inducement.

Defendants challenge this claim as bootstrapping, and argues Plaintiff's claim for breach of contract and fraud are identical, and therefore duplicative recovery is barred. Naturally, Plaintiff disagrees. Plaintiff's fraud in the inducement claim stems from the Amendment executed on February 25, 2025.[80] "[F]raud claims that

[74] D.I. 1, ¶¶ 74, 79, 82.
[75] *Id.*, ¶¶ 90-92
[76] *Id.*, ¶¶ 135-136.
[77] *Id.*, ¶¶ 96-97, 103.
[78] D.I. 19, p. 30.
[79] D.I. 1, ¶¶ 35, 103, 109-110.
[80] D.I. 1, ¶¶ 81, 129.

assert damages that are distinct from breach damages are not duplicative under the anti-bootstrapping rule."[81] While Defendants assert Plaintiff's claim fails because it is based upon on the same contractual obligation and facts that form the basis of their breach of contract claim, the damages are different and distinct. The Purchase Agreement only encompasses deposits paid to Defendants up to $500,000, yet ultimately Plaintiff paid Defendants a total of $1,025,000.[82] Under the standard of review afforded at this stage, Plaintiff's fraudulent inducement claim survives, as it seeks recovery for deposits made in excess of the non-refundable payments made under the terms of the Agreement. Thus, Plaintiff asserts damages that are distinct from those sought for Defendants alleged breach.

D. Unjust Enrichment

Finally, Defendants argue Plaintiff's unjust enrichment claim is duplicative to the breach of contract claim, as it fails to "allege any right to recovery not governed by the Purchase Agreement."[83] In retort, Plaintiff asserts that the claim is not duplicative as the contract itself constitutes the vehicle for unjust enrichment.[84] "Unjust enrichment is the 'unjust retention of a benefit to the loss of another, or the retention of money or property of another against the fundamental principles of

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[81] *Levy Fam. Invs., LLC v. Oars + Alps LLC*, 2022 WL 245543, at *9 (Del. Ch. Jan. 27, 2022).
[82] *Id.*, ¶¶ 35, 59.
[83] D.I. 19, p. 29.
[84] D.I. 31, pp. 33-34.

justice or equity and good conscience.'"[85] To state a viable claim, the plaintiff must allege "(1) an enrichment, (2) an impoverishment, (3) a relation between the enrichment and impoverishment, (4) the absence of justification, and (5) the absence of a remedy provided by law."[86] Plaintiff's Complaint pleads it has been impoverished by Defendants' retention of Plaintiff's payments, which has unjustly enriched Defendants.[87] Plaintiff further pleads the correlation between the enrichment and impoverishment stem from Defendants' retention of the payments Plaintiff made.[88] Finally, Plaintiff alleges that Defendants have no justification to retain the payments and there is no available remedy at law.[89]

Unjust enrichment is an equitable remedy available only where there is no legal remedy, or a formal agreement.[90] Thus, dismissal of an unjust enrichment claim is proper if "the complaint alleges an express, enforceable contract that controls the parties' relationship."[91] However, there are two exceptions recognized

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[85] *Sands v. Homestar Remodeling*, 2025 WL 2924494, at *13 (Del. Super. Ct. Oct. 14, 2025) (citing *Nemec v. Shrader,* 991 A.2d 1120, 1130 (Del. 2010).))

[86] *Andor Pharms., LLC v. Lannett Co.,* Inc., 2024 WL 1855112, at *18 (Del. Super. Ct. Apr. 29, 2024) (citing *Nemec v. Shrader*, 991 A.2d 1120, 1130 (Del. 2010)).

[87] D.I. 1, ¶¶ 140-141.

[88] D.I. 1, ¶ 143.

[89] *Id*., ¶ 142.

[90] *Andor Pharms.,* 2024 WL 1855112, at *18 (citing *Aureus Holdings, LLC v. Kubient, Inc.*, 2021 WL 3465050, at *4 (Del. Super. Aug. 6, 2021) (quoting *Crosse v. BCBSD, Inc.*, 836 A.2d 492, 496-97 (Del. 2003)).

[91] *Id*. (citing *Bakerman v. Sidney Frank Importing Co.*, 2006 WL 3927242, at *18 (Del. Ch. Oct. 10, 2006) (internal citations omitted).

under Delaware law that allows an "unjust enrichment claim based on a written agreement [to] survive a motion to dismiss."[92] The first exception is triggered when "the validity of the contract is in doubt or uncertain."[93] The second exception applies:

> [W]hen a plaintiff alleges that it is the [contract], itself, that is the unjust enrichment, the existence of the contract does not bar the unjust enrichment claim. In other words, the contract itself is not necessarily the measure of [the] plaintiff's right where the claim is premised on an allegation that the contract arose from wrongdoing (such as breach of fiduciary duty or fraud) or mistake and the [defendant] has been unjustly enriched by the benefits flowing from the contract.[94]

It is undisputed that Plaintiff's Complaint alleges an express, enforceable contract that controls the parties' relationship, their Agreement. Though Plaintiff does not challenge the validity of the Purchase Agreement, Plaintiff challenges the validity of the Amendment.[95] Normally, an unjust enrichment complaint will not survive a motion to dismiss when it is premised upon a written agreement such as the Amendment in this case. However, an unjust enrichment claim based on a written agreement will survive a motion to dismiss if a party challenges the written

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[92] *Id.*
[93] *Id.*
[94] *Id.* (citing *LVI Grp. Invs., LLC v. NCM Grp. Holdings, LLC*, 2018 WL 1559936, at *16 (Del. Ch. Mar. 28, 2018).
[95] D.I. 1, ¶ 123, D.I. 31, p. 35.

agreement's validity or alleges that the contract itself was the product of wrongdoing.[96]

In this case, Plaintiff's unjust enrichment claim seeks relief for the deposit payments Plaintiff paid, which Defendants have retained pursuant to the Amendment.[97] Plaintiff's claim thus cannot be dismissed on the grounds that the parties' relationship is governed by the Amendment because Plaintiff challenges the validity of the Amendment as being the product of wrongdoing.[98] Should the Amendment be deemed enforceable, this issue may, however, be revisited.

V. CONCLUSION

For the reasons discussed above, Defendants' Motion to Dismiss is **DENIED**.

IT IS SO ORDERED.

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Danielle Brenan, Judge

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[96] *Andor Pharms.*, 2024 WL 1855112, at *18 (citing *Bakerman*, 2006 WL 3927424, at *18; *LVI Grp.*, 2018 WL 1559936, at *16).
[97] D.I. 1, ¶¶ 141-143.
[98] D.I. 1, ¶ 144.