IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

ADAGE INVESTMENT PARTNERS, LLC,	)	
Plaintiff/Counterclaim Defendant,	)	C.A. No. N25C-10-327 KMM (CCLD)
v.	)	
BOUNCE AI, INC.,	)	
Defendant/Counterclaim Plaintiff.	)	

Date Submitted: May 20, 2026
Date Decided: August 27, 2026

Upon Plaintiff's Motion to Dismiss Defendant's Counterclaim –
GRANTED

Upon Plaintiff's Motion for Partial Summary Judgment –
GRANTED

MEMORANDUM OPINION AND ORDER

Catherine A. Gaul (argued), Elizabeth C. Greene, ASHBY & GEDDES, P.A., Wilmington, Delaware, Robert M. Adler, NOSSAMAN LLP, Washington, DC *Attorneys for Plaintiff*.

David A. Dorey, James G. Gorman III, BLANK ROME LLP, Wilmington, Delaware; Samuel Levy (argued), BLANK ROME LLP, New York, New York, *Attorneys for Defendant*.

Miller, J.

I. INTRODUCTION

This dispute stems from a Forward Flow Account Purchase Agreement between Tally Technologies, Inc. ("Tally") and Bounce AI, Inc. ("Bounce"), under which Bounce agreed to purchase Tally's charged-off loan accounts. In addition to the upfront purchase price, under certain circumstances, Bounce was obligated to pay Tally an additional earnout. Ten months into the contract term, Tally ceased operations and initiated a state law assignment for the benefit of creditors liquidation proceeding. As a part of that proceeding, certain Tally assets were sold at an auction to ADAGE Investment Partners, LLC ("ADAGE"), including this contract.

As assignee, ADAGE brings this action to collect payments due under the contract. Bounce filed a single-count counterclaim asserting that Tally's liquidation and subsequent assignment of the contract was part of a fraudulent scheme devised by Tally's principals to receive the additional contingent payments, while absolving itself of the burdens of the contract. ADAGE moves to dismiss the counterclaim.

Recognizing that ADAGE did not exist at the time of the alleged fraudulent scheme, Bounce invokes a pre-incorporation promotor theory to impose liability on ADAGE. Bounce, however, fails to state a reasonably conceivable claim under this theory. Therefore, the claim fails under Rule 12(b)(6).

Additionally, the fraud claim, based on representations in the contract, fails to plead facts to show that those representations were breached. Therefore, the claim fails under Rule 12(b)(6) on this ground as well.

Further, Bounces' allegations that the principals of Tally never intended to perform under the contract fail to satisfy Rule 9(b)'s heightened pleading requirement. Accordingly, the Motion to Dismiss is **GRANTED**.

ADAGE also moves for partial summary judgment on liability on its breach of contract claim (Count I) and declaratory judgment claim (Count IV), asserting that even if the contract was breached or terminated, Bounce is still obligated to pay the additional compensation due under the contract.

Bounce raises contractual defenses, asserting that due to material breaches, Bounce was relieved of any further performance under the agreement. Bounce also argues that assignment of the contract was invalid due to the parties' fraud, and therefore, disputes of material fact preclude summary judgment.

Tally breached the contract by initiating a liquidation proceeding and failing to transfer accounts to Bounce during the full term of the contract. Based on those breaches, Bounce terminated the contract. But, Bounce is not relieved of its obligation for the additional contingent payments. Bounce raised no dispute of fact and therefore, ADAGE's Motion for Partial Summary Judgment is **GRANTED** as provided herein.

II. FACTUAL BACKGROUND[1]

A. *The Tally – Bounce relationship*

1. *The Tally — Bounce agreement*

On November 20, 2023, Tally[2] and Bounce entered into the Forward Flow Account Purchase Agreement, which was amended on March 18, 2024 (the "Tally-Bounce Agreement").[3] During the Transfer Period, defined as November 20, 2023 through October 31, 2024, Tally was required to transfer eligible charged-off accounts on a monthly basis to Bounce, with the parties intending that there would be twelve Closing Dates.[4]

Tally was required to offer the Eligible Accounts by the applicable monthly Closing Date and Bounce was thereafter required to purchase the available accounts and pay the Purchase Price within five days (defined as the Funding Date).[5]

The Tally-Bounce Agreement also provided Tally an opportunity to receive additional compensation. If Bounce collected on the debts an amount that exceeded the Purchase Price for the applicable month, Tally was entitled to a percentage of

---

[1] The facts are derived from Bounce's admitted allegations in its Answer and additional facts asserted in its Counterclaim, D.I. 2 ("Answer" or "CC"), and the documents it incorporates by reference.

[2] Tally was incorporated in Delaware in 2015. D.I. 5, Exs. C, D.

[3] CC ¶ 11.

[4] D.I. 3, Ex. A ("Tally-Bounce Agreement") § 1.1, definition of "Transfer Period." The agreement is governed by Delaware law. *Id.* § 11.6. Capitalized terms not defined herein have the meaning ascribed to them in the Tally-Bounce Agreement. *See id.* § 1.1.

[5] *Id.* §§ 2.1(b)-(c).

that additional collected amount (defined as the Additional Contingent Purchase Price).[6] The Additional Contingent Purchase Price is required to be paid monthly "on a going forward basis … minus the balance of any monies or reimbursements due to [Bounce] from [Tally] …."[7]

In the Tally-Bounce Agreement, Tally represented and warranted that as of the Initial Closing Date, each Subsequent Closing Date, and each Funding Date:

> (a) [Tally] had all necessary power and authority to originate and/or acquire and transfer the Initial Accounts and Subsequent Accounts …
>
> (b) performance by [Tally] … does not violate …. any federal, state, or local law ….
>
> ***
>
> (d) As of each Closing Date, [Tally] is the lawful owner of the Accounts …. [and]
>
> ***
>
> (i) [Tally] is the sole owner of the Accounts and has good and indefeasible title thereto ….[8]

These representations and warranties survive the closing of each transaction.[9]

The parties also agreed to indemnify each other for losses incurred or suffered as a result of "(ii) the inaccuracy of any Party's representations or warranties herein; … or (iv) any claim by an Account Debtor(s) regarding assignment, subsequent

[6] Answer ¶ 9; CC ¶ 12; Tally-Bounce Agreement §§ 2.4-2.5.
[7] Tally-Bounce Agreement § 2.5; Compl. ¶ 10.
[8] Tally-Bounce Agreement §§ 4.1(a)-(b), (d), (i).
[9] *Id.* § 4.1(l).

enforcement, servicing or administration of the accounts by the Party ….”[10] The indemnification obligations survive termination of the agreement.[11]

The Tally-Bounce Agreement terminates on the earliest of (1) the end of the Transfer Period; (2) within 30 days of an Event of Default at the election of the non-defaulting party; or (3) after 180 days by election of either party for any reason, by giving at least 60 days' notice.[12] If terminated for an Event of Default, Tally had the right to demand return of Accounts previously placed with Bounce.[13]

An Event of Default is defined to include when "(ii) any representation or warranty made by [… Tally] in connection with this Agreement proves to have been false in any material respect when made; … [or] (v) a voluntary case is commenced … by [Tally] … under any applicable bankruptcy, insolvency, or other similar law ….”[14]

Finally, Bounce was permitted to assign the Tally-Bounce Agreement only with Tally's prior written consent.[15] The agreement is silent on assignment by Tally.

2. *Tally sells accounts to Bounce*

After the Initial Closing, Tally continued to sell Accounts to Bounce. Periodically, Bounce would send Tally a spreadsheet reflecting the status of the open

---

[10] *Id.* § 9.1.
[11] *Id.* § 11.8.
[12] *Id.* § 11.12.
[13] *Id.*
[14] *Id.* § 1.1.
[15] *Id.* § 11.2.

accounts and a projection of Additional Contingent Purchase Price payments.[16] Bounce last sent an accounting spreadsheet to Tally in August 2024, reflecting payments owed through June 2024, and projecting payments into 2029.[17]

Under the contract, Tally transferred approximately 5,326 loan accounts to Bounce.[18]

B. *The liquidation proceeding*

On August 19, 2024, Tally ceased business operations and initiated an assignment for the benefit of creditors proceeding in California. Tally's assets were assigned to Tally ABC, an entity formed on August 16, 2024, in California.[19] Tally ceased selling Accounts to Bounce in August 2024.[20]

On September 20, 2024, Tally ABC conducted an auction of Tally's assets. ADAGE, a California limited liability company, purchased certain Tally assets pursuant to a September 25, 2024, Asset Purchase Agreement between Tally ABC and ADAGE (the "APA"). Purchased Assets are defined to include the "right to

[16] Answer ¶ 11.
[17] *Id.*; D.I. 3, Ex. B.
[18] Answer ¶¶ 7-8; CC ¶ 12.
[19] CC ¶¶ 25-28, 31. *See* D.I. 5, Ex. F.
[20] CC ¶ 32.

receive and retain" the Additional Contingent Purchase Price under the Tally-Bounce Agreement.[21] The APA also assigned the Tally-Bounce Agreement to ADAGE.[22]

The APA provides that ADAGE "assumes [as of the Closing] those (and only those) liabilities of [Tally] directly relating to all obligations under contracts … listed in Schedule 3.1," which are defined as Assumed Liabilities.[23] The Tally-Bounce Agreement is listed on Schedule 3.1. Under the APA, except for the Assumed Liabilities, ADAGE did not assume

> any liabilities, debts or obligations of [Tally] whatsoever, including, but not limited to, any liabilities or obligations now or hereafter arising from [Tally's] business activities that took place prior to the Closing or any liabilities arising out of or connected to the liquidation and winding down of [Tally's] business. All liabilities, debts and obligations of [Tally] not expressly assumed by [ADAGE] hereunder are hereinafter referred to as the "Excluded Liabilities."[24]

Exhibit 1.2 to the APA identifies the Purchased Assets, which includes the right to receive and retain the Additional Contingent Purchase Price payments. It further states: "For the avoidance of doubt, Excluded Liabilities includes any liabilities associated with the Bounce contract for the period prior to the Effective Date."[25]

---

[21] D.I. 5, Ex. B ("APA"), Schedule 1.2B.
[22] CC ¶¶ 28, 34. APA, Schedule 3.1.
[23] APA § 3.1. The Sellers under the APA were Tally Technologies, Inc., Tally Receivables, LLC, and Tally Receivables II, LLC.
[24] *Id.* § 3.2.
[25] *Id.*, Schedule 1.2B.

C. *Bounce refuses to pay additional compensation to ADAGE and terminates the Tally-Bounce Agreement.*

After the auction, Bounce was notified of the assignment of the Tally-Bounce Agreement. In the final two months of the Transfer Period, ADAGE did not offer to sell any charged-off loans to Bounce.[26] ADAGE, however, demanded that Bounce continue to pay the Additional Contingent Purchase Price payments.[27]

The parties diverge on the events that occurred in the liquidation proceeding. The Court recites Bounce's allegations in the Counterclaim for purposes of the Motion to Dismiss and the additional evidence submitted by the parties for purposes of the Motion for Summary Judgment.

1. *Bounce alleges the liquidation and assignment of the contract were part of a fraudulent scheme.*

ADAGE, formed on September 9, 2024, has a principle place of business at the address for the residence of one of the former principals of Tally, who is a principal of ADAGE.[28] The other principals of ADAGE were also former Tally principals.[29]

ADAGE was the only bidder at the auction, of which Bounce was not notified.[30] ADAGE's "principals serve[d] as the exclusive auctioneer and buyer."[31]

---

[26] CC ¶¶ 32, 37.
[27] Answer ¶ 21; CC ¶ 38.
[28] CC ¶ 21.
[29] *Id.* ¶¶ 22, 52.
[30] *Id.* ¶¶ 33, 35, 57.
[31] *Id.* ¶ 36.

Bounce also was not notified of Tally ceasing its operations.[32] ADAGE has no known assets or streams of income.[33]

After learning of the assignment and, in Bounce's view, that ADAGE assumed no liabilities under the Tally-Bounce Agreement, Bounce concluded that ADAGE was unable to meet the warranty and indemnification obligations "if they were triggered."[34] Further, no additional accounts were offered for purchase during the balance of the Transfer Period. Bounce viewed Tally's actions, including the filing of an insolvency proceeding, as an Event of Default and terminated the Tally-Bounce Agreement on August 29, 2024.[35]

In November 2024, ADAGE reached out to Bounce regarding the Additional Contingent Purchase Price payment on the accounts previously sold to Bounce.[36] ADAGE also acknowledged the indemnification obligations under the Tally-Bounce Agreement.[37] Having concluded that ADAGE "was a shell company with no assets," Bounce considered ADAGE's acknowledgement as "financially and functionally hollow."[38] Bounce refused to make Additional Contingent Purchase Price payments after learning of Tally's liquidation.[39]

---

[32] *Id.* ¶¶ 26, 32.
[33] *Id.* ¶ 41.
[34] *Id.*
[35] *Id.* ¶¶ 39, 47.
[36] *Id.* ¶¶ 38-39.
[37] *Id.* ¶ 39.
[38] *Id.* ¶ 40.
[39] Answer ¶¶ 21, 22, 27, 31, 36, 45; CC ¶ 38.

Bounce alleges Tally and its principals planned a fraudulent scheme "at the time of the" Tally-Bounce Agreement to "within one year, cease operations" and transfer the benefits of the contract to a straw company—ADAGE—and strip it of all the financial obligations.[40] This scheme included forming Tally ABC, filing an assignment for the benefit of creditors insolvency proceeding ("to avoid judicial scrutiny and approval") and transferring the contract to Tally, LLC, a California limited liability company formed on March 28, 2016, but which has been suspended and inactive since November 7, 2018.[41] Tally, LLC allegedly then transferred the contract to ADAGE.[42]

Bounce's due diligence on Tally assured Bounce that Tally was "an experienced [] going concern" and when ADAGE refused to give Bounce adequate assurances, Bounce "refused to continue with the substitute" of ADAGE.[43] The assignment to ADAGE "exposes Bounce to impermissible risk, including legal and compliance risks associated with Bounce conducting business with an unknown entity in a highly regulated industry. [ADAGE] has acknowledged to Bounce that it cannot comply with numerous federal, state, and municipal statute[s] and regulations pertaining to the credit industry."[44]

---

[40] CC ¶ 53.
[41] *Id.* ¶¶ 11, 31.
[42] *Id.* ¶ 11.
[43] *Id.* ¶ 46.
[44] *Id.* ¶ 51.

2. *Additional facts from the summary judgment record*

In support of its Motion for Summary Judgment, ADAGE submitted the Affidavit of David Deitchman, a principal of ADAGE.[45] Mr. Deitchman was a Tally employee and he negotiated the Tally-Bounce Agreement.[46]

As of 2022-23, Tally had approximately $50 million in recurring revenue and approximately 200 employees.[47] In the spring and summer of 2024, Tally was pursuing a transaction by which it would be acquired, but that fell through.[48] Without an infusion of capital, Tally ran out of money.[49]

Tally's board of directors authorized the filing of an assignment for the benefit of creditors and engaged Sherwood Partners ("Sherwood") to winddown Tally's operations and sell its assts.[50] Sherwood has no connection to Tally or its principals.[51] A Sherwood representative formed Tally ABC to serve as the assignee of Tally's assets.[52] All Tally employees were laid off, although approximately 17 (including four Tally principals) were engaged by Sherwood to assist in the winddown.[53]

---

[45] D.I. 14, December 11, 2025, Affidavit of David Deitchman ("Deitchman Aff.").
[46] *Id.* ¶ 4.
[47] *Id.* ¶¶ 5-6.
[48] *Id.* ¶¶ 10-13.
[49] *Id.* ¶ 14.
[50] *Id.* ¶¶ 14-15.
[51] *Id.* ¶ 15.
[52] *Id.* ¶ 16.
[53] *Id.* ¶ 18.

Mr. Deitchman and three former principals formed ADAGE in August 2024 for the purpose of submitting a bid for Tally's assets.[54] Before submitting a bid, ADAGE discussed with Bounce, ADAGE's intention of submitting a bid, including on the Tally-Bounce Agreement.[55] By email dated August 29, 2024, Bounce told Mr. Deitchman it was terminating the Tally-Bounce Agreement due to an Event of Default.[56]

Sherwood administered the auction and confidential bidding process, without the involvement of any ADAGE principal.[57] ADAGE was the successful bidder. After closing on the transaction, ADAGE engaged in discussions with Bounce, attempting to satisfy Bounce's concern over ADAGE allegedly being able to meet its financial obligations under the contract. Ultimately, the parties were unable to reach an agreement.[58]

Mr. Deitchman testifies that Tally, LLC has never had a connection to Tally or ADAGE (or their principals), and it appears to simply be an entity with a similar name.[59]

---

[54] *Id.* ¶ 20.
[55] *Id.* ¶ 23.
[56] *Id.* ¶¶ 24-25.
[57] *Id.* ¶¶ 17-19.
[58] *Id.* ¶¶ 23-25, 27-33.
[59] *Id.* ¶ 35.

In opposition to the motion, Bounce submitted an unsworn declaration of Dan Dovrat.[60] Mr. Dovrat is the chief executive officer of Bounce. Bounce learned of Tally's liquidation on August 19, 2024. Therefore, Bounce terminated the Tally-Bounce Agreement due to an Event of Default.[61] Bounce learned on September 20, 2024, that ADAGE purchased Tally's assets in a private auction, where ADAGE was the only bidder.[62] He further states "[u]pon information and belief" ADAGE has no assets but instead is a "straw company" to collect the benefits of the Tally-Bounce Agreement.[63] Mr. Dovrat explains the importance of the indemnification obligations to Bounce and how ADAGE is unable to comply with the various laws because ADAGE is not licensed to purchase, service, collect on, or originate the consumer debt accounts at issue here.[64]

Mr. Dovrat asserts that Bounce needs discovery to learn the details of Tally's liquidation (and the disclaimer of liabilities under the Tally-Bounce Agreement), the extent of ADAGE's assets to satisfy a Bounce indemnification claim, the connections among the various entities and "when the scheme was plotted," and the details of Tally's breaches of the Tally-Bounce Agreement.[65]

---

[60] D.I. 8 ("Dovrat Decl.").
[61] *Id.* ¶¶ 7, 14.
[62] *Id.* ¶ 15.
[63] *Id.* ¶ 16.
[64] *Id.* ¶¶ 19-20.
[65] *Id.* ¶¶ 23-26.

III. MOTION TO DISMISS

A. *The parties' contentions*

ADAGE argues for dismissal of the counterclaim because it did not exist at the time of the alleged fraudulent conduct and therefore, there is no legal basis to impose liability on ADAGE. Alternatively, ADAGE argues that any alleged wrong sounds in contract and cannot be pled as fraud. Further, Bounce fails to adequately plead fraud, including failing to plead with the requisite particularity.

Bounce counters that it has adequately alleged fraud and its claim is not barred by the anti-bootstrapping rule.

B. *Legal standard*

On a motion to dismiss pursuant to Superior Court Civil Rule 12(b)(6), "the governing pleading standard is … reasonable conceivability."[66] Accordingly, the court must "deny the motion unless the plaintiff could not recover under any reasonably conceivable set of circumstances susceptible of proof."[67] When considering a motion under Rule 12(b)(6), the court "must accept all well-pleaded factual allegations in the [c]omplaint as true, accept even vague allegations … as 'well-pleaded' if they provide defendant notice of the claims, [and] draw all reasonable inferences in favor of the [non-breaching party.]"[68] "[U]nder Delaware's

---

[66] *Cent. Mortg. Co. v. Morgan Stanley Mortg. Cap. Holdings LLC*, 27 A.3d 531, 537 (Del. 2011).
[67] *Id.* at 536.
[68] *Id.* at 537.

judicial system of notice pleading, a plaintiff need not plead evidence. Rather, the plaintiff need only allege facts that, if true, state a claim upon which relief can be granted."[69] The court, however, does not accept "conclusory allegations unsupported by specific facts," or "draw unreasonable inferences in the plaintiff's favor."[70]

C. *Discussion*

1. *Can ADAGE be held liable for Tally's alleged fraud?*

There is no dispute that ADAGE did not exist when the alleged fraudulent scheme was hatched. And as Bounce acknowledges, ADAGE is not a successor-in-interest to Tally.[71] To hold this separate legal entity responsible for Tally's alleged fraud, Bounce relies on a promotor theory of liability; that is, Tally's fraud as a promoter is imputed to ADAGE. This is so, Bounce argues, because ADAGE "knew and intended at the time of the [Tally-Bounce] Agreement that it would take the transfer and auction actions that have rendered [ADAGE] unable and unwilling to comply with the [Tally-Bounce] Agreement responsibilities contracted to by Tally."[72] ADAGE is alleged to have accomplished this scheme through the common

---

[69] *VLIW Tech., LLC v. Hewlett-Packard Co.*, 840 A.2d 606, 611 (Del. 2003).
[70] *Windsor I, LLC v. CWCapital Asset Mgmt. LLC*, 238 A.3d 863, 871 (Del. 2020) (citation omitted).
[71] CC ¶ 50.
[72] D.I. 11 at 19.

principals, and ADAGE "ratified the acts taken by its officers and directors prior to incorporation" and accepted the benefits of the scheme.[73]

ADAGE argues that it cannot be liable for Tally's alleged fraudulent conduct under this theory of pre-incorporation liability because Tally entered into the Tally-Bounce Agreement for itself, at a time when ADAGE did not exist.[74]

A "promoter" assumes to act on behalf of a proposed business entity by "actively assist[ing] in creating, projecting and organizing" an entity.[75] Generally, "business entities are not liable for the [acts] of their promoters prior to incorporation."[76] The subsequently formed business entity, however, may be liable for the contracts or torts of its promoters, if it has ratified those acts or accepted the benefits.[77]

Bounce argues it satisfied the pleading standard by alleging that ADAGE accepted the benefits of the fraud—the Additional Contingent Purchase Price

---

[73] D.I. 11 at 20.
[74] D.I. 16 at 7-11.
[75] Who are "promoters," 1A FLETCHER CYC. CORP. § 189.
[76] *Grunstein v. Silva*, 2009 WL 4698541, at *18 (Del. Ch. Dec. 8, 2009).
[77] *Id.*; *Lorillard Tobacco Co. v. Am. Legacy Found.*, 903 A.2d 728, 745 (Del. 2006); Torts by and against promoters, 1A FLETCHER CYC. CORP. § 218; *Seibold v. Camulos P'rs LP*, 2012 WL 4076182, at *22 (Del. Ch. Sept. 17, 2012) ("It is well-established that, if a later[] formed legal entity accepts benefits from earlier offenses, it may be liable for those offenses." citing *Nanodetex Corp. v. Defiant Techs.*, 349 Fed. App'x 312, 322 (10th Cir. 2009) ("[C]orporations are usually prevented from retaining the benefits of wrongful conduct [of promoters] while escaping liability for it.")); *In re Rickel & Assocs., Inc.*, 272 B.R. 74, 95 (S.D.N.Y. 2002) ("The unauthorized fraudulent acts of an agent will be imputed to the principal if the principal ratifies the fraud by accepting the benefit of those acts.... The same rule applies where the agent commits the fraud prior to the time that the principal comes into legal existence.").

payments—and shed itself of the liabilities under the contract. Bounce's argument fails for two reasons.

First, Bounce fails to allege any facts that Tally was acting on behalf of the yet-to-be-formed ADAGE at the time the Tally-Bounce Agreement was executed. Bounce's theory relies on the common principals between Tally and ADAGE and the allegation that these principals "knew and intended" they would file a liquidation proceeding and assign the contract to the newly-formed entity. While knowledge may be pled generally, there must be some facts from which a reasonable inference may be drawn that the Tally-ADAGE principals formed the alleged scheme.[78] The counterclaim is devoid of any such facts. Bounce's only factual support for its theory is that the principals of Tally overlap the principals of an entity that was formed 10 months after the alleged fraudulent scheme.[79] Bounce's conclusory allegation of knowledge is insufficient. Bounce has alleged no facts to infer that Tally was acting on behalf of ADAGE, which was not formed until 10 months later.[80]

Second, Bounce fails to allege facts that ADAGE accepted the benefits of the Tally-Bounce Agreement without its obligations. Bounce contends that ADAGE stripped itself of the contractual obligations because the APA's "Excluded

---

[78] *Boulden v. Albiorix, Inc.*, 2013 WL 396254, at *15 (Del. Ch. Jan. 31, 2013) (the alleged promotor could not have been acting on behalf of the entity that did not exist until five months after the alleged misrepresentations).
[79] *See* CC ¶¶ 7-8, 17, 22, 27, 29, 41, 44, 47.
[80] Super. Ct. Civ. R. 9(b).

Liabilities" encompasses the liabilities that arose prior to the effective date of the assignment.[81] Bounce misconstrues the APA. The assignment of the Tally-Bounce Agreement did not strip ADAGE of the obligations under that agreement. In fact, those obligations were expressly included in the Assumed Liabilities, *i.e.,* the liabilities "directly relating to all obligations under the contract[]."[82] Any liabilities that arose prior to the assignment were the responsibility of the insolvency estate. Talley creditors who had a claim against it could file a proof of claim.[83] While Bounce may have had different remedies for any pre and post-assignment claim, the liabilities under the contract remained intact.[84]

Bounce fails to adequately plead a promoter liability theory to support its fraud claim and therefore, the counterclaim is DISMISSED under Rule 12(b)(6) on this basis.

2. *Has Bounce pled a viable fraud claim?*

ADAGE argues the fraud claim is based on nothing more than a conclusory allegation that Tally never intended to perform its contractual obligations. It further argues that any breach of the contractual representations would merely result in a

---

[81] D.I. 11 at 19.
[82] APA § 3.1.
[83] Deitchman Aff., Ex. E, Notice of Assignment For The Benefit of Creditors and Deadline for Submitting Claims. The Court can take judicial notice of this notice. *Amazon.com, Servs., LLC v. Rook*, 2024 WL 1787117, at *8-9 (Del. Super. Apr. 25, 2024) (the court may take judicial notice of undisputed facts under Delaware Rule of Evidence 201). There is no dispute that creditors are permitted to file a proof of claim in such a liquidation proceeding.
[84] Bounce has not alleged that it had any claims prior to the assignment.

breach of contract; not fraud.[85] Bounce counters that its claim is a proper fraud claim because it alleged particularized facts that Tally knew its representations were false when made and it lied to Bounce.[86]

To state a claim for common law fraud a plaintiff must plead facts to show "(1) the defendant made a false representation; (2) the defendant knew that the representation was false; (3) the defendant intended to induce plaintiff to act; (4) the plaintiff acted in justifiable reliance on the defendant's false representation; and (5) the plaintiff suffered damages."[87]

Bounce's fraud claim is based on a breach of representations and warranties in the Tally-Bounce Agreement that Tally is the sole owner of the Accounts and has the requisite authority to perform as provided in Section 4.1(a)-(b), (d), (i), and that it has the requisite licensing under various Applicable Laws governing debt accounts, as provided in Section 1.1. And further, Tally allegedly stripped the contract of the indemnification obligations.

"As a general rule, the bootstrapping bar makes perfect sense. When a party claims he was fraudulently induced into entering a contract by promises that were then included in the negotiated language of that very contract, his remedy should be

[85] D.I. 5 at 19-20.
[86] D.I. 11 at 16-17.
[87] *Paragon Metals Holdings LLC v. Smith*, 2026 WL 1898766, at *5 (Del. July 1, 2026) (citing *Johnson & Johnson v. Fortis Advisors LLC*, 352 A.3d 229, 269 (Del. 2026)).

in contract, not tort."[88] Thus, a contract claim cannot be turned into a fraud claim by "'merely add[ing] the term 'fraudulently induced' to a complaint or alleg[ing] that the defendant never intended to comply with the agreement at issue at the time the parties entered into it[.]'"[89] However, a well-pleaded fraud claim may be viable "'if … the conduct occurs prior to the execution of the contract …'"[90] and the "defendant made a knowingly false contractual representation for the purpose of inducing reliance."[91] "Delaware courts generally require something more than post-closing non-performance to justify an inference of wrongful intent to support a claim of fraud."[92]

Here, Bounce relies on nothing more than post-closing non-performance 10 months into a 12 month contract. The allegation that at the time of entering into the Tally-Bounce Agreement, the Tally principals "knew and intended" to file a liquidation and assign the contract, is insufficient. Bounce alleges no facts from which a reasonable inference may be drawn that Tally knowingly made false

---

88 *Anschutz Corp. v. Brown Robin Cap., LLC*, 2020 WL 3096744, at *15 (Del. Ch. June 11, 2020).
89 *Lineup Sys. Corp. v. Lee Enterprises Inc.*, 2026 WL 882749, at *10 (Del. Super. Mar. 31, 2026) (quoting *Levy Family Investors, LLC v. Oars + Alps LLC*, 2022 WL 245543, at *8 (Del. Ch. Jan 27, 2022)) (quotation added).
90 *Id.* (quoting *Levy Family Investors*, 2022 WL 245543, at *8).
91 *Levy Family Investors*, 2022 WL 245543, at *8 (citing *Furnari v. Wallpang, Inc.*, 2014 WL 1678419, at *8 (Del. Super. Apr. 16, 2014) (describing "falsely impl[ying] an existing fact" to be the type of separate action the anti-bootstrapping rule allows); *Anschutz Corp.*, 2020 WL 3096744, at *15 ("[T]o hold that Buyer can recover only capped damages for knowingly false contractual representations would be to countenance and immunize fraud.").
92 *Jiggy Puzzles, LLC v. Steelhead Acquisition EE, Inc.*, 2026 WL 465112, at *9 (Del. Super. Feb. 18, 2026).

representations at the time the Tally-Bounce Agreement was executed. Any recovery for a breach of these representations sounds in contract, not fraud. Therefore, even if Bounce had adequately pled fraud based on promoter liability, the allegations fail to plead a claim outside of a contractual claim and is DISMISSED under Rule 12(b)(6) on this independent ground.

3. *Does the fraud claim satisfy Rule 9(b)'s particularity requirement?*

Finally, ADAGE argues the counterclaim fails to satisfy the heightened pleading standard under Rule 9(b) because Bounce fails to allege who participated in the fraudulent scheme.[93] ADAGE contends the fraud claim is based on nothing more than conclusory allegations.[94] Bounce responds that it has satisfied Rule 9(b) as it has alleged that the same Tally-ADAGE principles were involved and the fraudulent scheme was designed to rid Tally of the contractual liabilities, while retaining the benefits.[95] Bounce further contends that it is permissible to plead state of mind generally under Rule 9(b).[96]

Superior Court Civil Rule 9(b) requires "'[i]n all averments of fraud … the circumstances constituting fraud … shall be stated with particularity.'"[97] Thus, a claim must plead "circumstances sufficient to fairly apprise the defendant of the

---

[93] D.I. 5 at 20-23.
[94] D.I. 16 at 2-5.
[95] D.I. 11 at 10-11.
[96] *Id.* at 14-15.
[97] *Paragon Metals Holdings LLC*, 2026 WL 1898766, at *6 (quoting Super. Ct. Civ. R. 9(b)).

basis for the claim."[98] "The relevant circumstances are the time, place, contents of the false representation; the facts misrepresented; the identity of the person(s) making the representations; and what that person(s) gained from making the misrepresentations."[99] A plaintiff need not allege evidentiary details.[100] When evaluating the sufficiency of a fraud claim, the court will employ a "context-driven analysis."[101]

As discussed in the previous section, the fraud claim fails to survive a Rule 12(b)(6) analysis because it is based on conclusory allegations.[102] The claim, therefore, necessarily fails to satisfy the heightened Rule 9(b) pleading standard. The claim fails for the additional reason that it does not identify who was involved in the fraudulent scheme. Bounce's general allegation that the statements are

---

[98] *Knight Broadband LLC v. Knight*, 2022 WL 1788855, at *8 (Del. Super. June 2, 2022) (quoting *H–M Wexford LLC v. Encorp, Inc.*, 832 A.2d 129, 145 (Del. Ch. 2003)); *Castetter v. Delaware Dept. of Labor*, 2002 WL 819244, at *3 (Del. Super. April 30, 2002) (citing *Strasburger v. Mars, Inc.*, 83 A.2d 101, 279 (Del. Super. 1951)).
[99] *LVI Gp. Invs., LLC v. NCM Gp. Hldgs., LLC*, 2017 WL 1174438, at *4 (Del. Ch. Mar. 29, 2019) (quoting *Prairie Cap. III, L.P. v. Double E Holding Corp.*, 132 A.3d 35, 49 (Del. Ch. 2015)).
[100] *Bamford v. Penfold, L.P.*, 2020 WL 967942, at *12 (Del. Ch. Feb. 28, 2020).
[101] *Elburn v. Albanese*, 2020 WL 1929169, at *8 n.97 (Del. Ch. Apr. 21, 2020) (collecting cases).
[102] Among the conclusory allegations is that Tally ABC transferred the Tally-Bounce Agreement to Tally, LLC, a suspended California limited liability company. CC ¶ 57. There is no factual support for the allegation that this entity had any involvement in the transfer of the contract or any connection to any of the parties. The sellers in the liquidation proceeding were Tally Technologies, Inc., Tally Receivables, LLC, and Tally Receivables II, LLC. The agreement was signed by Tally ABC on behalf of the sellers, as assignee. The buyer was ADAGE Investment Partners, LLC, the plaintiff here. Simply because an entity has a similar name does not support a reasonable inference that it was assigned the Tally-Bounce Agreement.

attributable to the overlapping principals is insufficient.[103] Conclusory statements cannot sustain the fraud claim and it is DISMISSED under Rule 9(b).

IV. MOTION FOR SUMMARY JUDGMENT

A. *The parties' contentions*

ADAGE argues that it is entitled to partial summary judgment on its breach of contract and declaratory judgment claims because: (1) the Tally-Bounce Agreement was validly assigned and therefore, ADAGE holds the right to collect the Additional Contingent Purchase Price and (2) even if the Tally- Bounce Agreement terminated after an Event of Default, Bounce remains obligated to pay ADAGE the additional compensation.[104]

Bounce's response relies in large part on its allegations that Tally engaged in a fraudulent scheme to assign the income stream to ADAGE, while stripping it of the contractual obligations. Bounce also contends that several events of default and breaches of contractual terms relieve it of any further obligations under the Tally-Bounce Agreement, including making additional payments. It argues that disputes of material fact preclude summary judgment and discovery is needed before these issues may be considered by the Court.

---

[103] *See Fortis Advisors LLC v. Dialog Semiconductor PLC,* 2015 WL 401371, at *6 (Del. Ch. Jan. 30, 2015).
[104] D.I. 3 at 11-18.

B. *Legal standard*

Summary judgment is appropriate where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."[105] The moving party bears the initial burden of demonstrating that no material issues of fact are in dispute and that it is entitled to judgment as a matter of law.[106] The court must view the facts and evidence, and draw all reasonable inferences thereof, in the light most favorable to the non-moving party.[107]

If the moving party makes the requisite showing, the burden shifts to the non-moving party.[108] The opponent of a motion for summary judgment "must do more than simply show that there is some metaphysical doubt as to material facts."[109] "If the facts permit reasonable persons to draw from them but one inference, the question is ripe for summary judgment."[110]

---

[105] Del. Super Civ. R. 56; *Merrill v. Crothall-American, Inc.*, 606 A.2d 96, 99-100 (Del. 1992).
[106] *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979).
[107] *Brzoska v. Olson*, 668 A.2d 1355, 1364 (Del. 1995).
[108] *Moore*, 405 A.2d at 681.
[109] *Brzoska*, 668 A.2d at 1364 (citation omitted).
[110] *Id.*

C. *Discussion*

1. ***Bounce's allegations of a fraudulent scheme provide no defense to the motion.***

Mr. Deitchman testifies to the status of Tally at the time the Tally-Bounce Agreement was executed and its later business model shift away from consumer debt.[111] In the summer of 2024, a transaction by which Tally would have been acquired, fell through and Tally ran out of money.[112] Tally engaged Sherwood Partners, a corporate restructuring and winddown services company, to administer an assignment for the benefits of creditors. Mr. Deitchman and three former Tally executives formed ADAGE to make a bid on Tally assets. Before submitting a bid, Mr. Deitchman "had several conversations" with a principal of Bounce and discussed the potential bid for Tally's assets, including the Tally-Bounce Agreement.[113]

After closing on the APA, Sherwood notified Bounce of the assignment of the Tally-Bounce Agreement, advising that effective September 20, 2024, "ADAGE is responsible for all rights and liabilities of the rights under the" contract.[114] Bounce

---

[111] Deitchman Aff. ¶¶ 7, 10.
[112] *Id.* ¶10-14.
[113] *Id.* ¶ 23.
[114] *Id.*, Ex. G.

responded: "Thank you, Andrew, for the notification. We'll continue working with the ADAGE team on the go forward."[115]

Tally ABC was formed on August 16, 2024, with a business address matching Sherwood's address, a contact email address of abcformations@sherwoodpartners.com, and naming Michael Maidy as the manager, who was not a Tally executive.[116]

Mr. Deitchman explains that Tally, LLC has no connection to Tally or its affiliates.[117] Tally, LLC was formed in 2016 for the purpose of conducting its software development business.[118] The Notice of Assignment for the Benefit of Creditors, signed by Mr. Maidy, advises creditors that "despite [the] similarity in name, [the Tally assignees] and [Tally ABC] have no corporate affiliation to each other."[119]

As discussed above, not only did Bounce fail to adequately allege a fraudulent scheme, it has failed to present any evidence to refute Mr. Deitchman's affidavit testimony, including that: (i) Tally engaged an independent, industry leader to administer the California assignment for the benefit of creditors; (ii) the ADAGE

---

115 *Id.*
116 D.I. 5, Transmittal Declaration of Catherine A. Gaul ("Gaul Decl."), Exs. E-G; Deitchman Aff. ¶¶ 8, 15-16.
117 Deitchman Aff. ¶ 35.
118 Gaul Decl., Ex. I.
119 Deitchman Aff., Ex. E. The notice also advised that after liquidation, net proceeds would be distributed to creditors that timely file a proof of claim. *Id.*

principals talked with Bounce about the potential bid for the contract; and (iii) Sherwood notified Bounce of the assignment and ADAGE's responsibility for the liabilities. Indeed, Mr. Dovrat acknowledges that Bounce learned of the liquidation proceeding on August 19, 2024. There is no evidence to suggest that the Tally liquidation was anything other than what it purports to be—a valid liquidation proceeding under California law. Accordingly, Bounce's fraudulent scheme defense does not defeat the motion for summary judgment.

2. *Did ADAGE assume the Tally-Bounce Agreement's liabilities?*

ADAGE argues that the Tally-Bounce Agreement contained no prohibition against assignment and it was validly assigned under state law. Bounce responds that the assignment was invalid because ADAGE has disclaimed all liabilities.[120]

Generally, parties are free to assign contracts absent a clear and unambiguous restriction on assignment.[121] "[T]he free assignability of contracts is viewed as modern and desirable."[122] "A valid assignment conveys to the assignee standing to pursue a claim arising under the contract."[123]

Bounce misconstrues the APA. The APA expressly states that ADAGE is assuming all liabilities under the Tally-Bounce Agreement, except the Excluded

[120] D.I. 8 at 33-38.
[121] *PVP Aston, LLC v. Fin. Structures Ltd.*, 2022 WL 1772247, at *13 (Del. Super. May 31, 2022).
[122] *Id.*
[123] *Id.*

Liabilities.[124] The Excluded Liabilities, as they relate to the contract, are any liabilities that arose prior to the Effective Date, *i.e.*, September 25, 2024.[125]

Bounce argues that although Section 3.1 purports to assign all Tally-Bounce Agreement liabilities to ADAGE, Exhibit 1.2 to the APA limits its assumption of the liabilities so much that it was meaningless.[126] Bounce, however, ignores the plain language of Exhibit 1.2. It identifies the Additional Contingent Purchase Price as an asset purchased by ADAGE, and clarifies "for the avoidance of doubt" that the Excluded Liabilities are not transferred.[127] As shown above, this does not strip the liabilities from the assigned contract.

Thus, all liabilities after that date are ADAGE's responsibility, including the indemnification obligations. Bounce presents no evidence that there were any unsatisfied liabilities under the Tally-Bounce Agreement prior to the Effective Date.[128]

Finally, the Tally-Bounce Agreement required Tally's approval for Bounce to assign the agreement, except if assigned to an affiliate or to a "third-party purchaser

---

[124] APA § 3.1.
[125] *Id.* § 3.2.
[126] D.I. 8 at 21-22.
[127] *US WorldMeds P'rs, LLC v. Supernus Pharm., Inc.,* 2026 WL 2098302, at *10 n.97 (Del. Super. June 5, 2026) (citing *White v. Curo Texas Holdings, LLC*, 2016 WL 6091692, at *21 (Del. Ch. Sept. 9, 2016)) ("'for the avoidance of doubt' confirms and recognizes what was previously stated.").
[128] The Tally-Bounce Agreement Section 9.2 requires notice of an indemnification claim "within thirty (30) days of the receipt of notice or discovery of such claim."

to the same exact standards and compliance responsibilities as laid out for servicers" in the agreement.[129] The agreement contains no prohibition or restrictions on Tally's assignment of the contract. Thus, there were no contractual bars to the assignment.

3. *Was the Tally-Bounce Agreement breached?*

Bounce argues that Tally breached its representations and warranties when it ceased business operations and transferred the contract to ADAGE, and Tally breached the contract because ADAGE cannot meet the indemnification obligations, did not transfer any Accounts in the last two months of the Transfer Period, cannot comply with Applicable Law, and does not hold the necessary licenses. Therefore, Bounce terminated the contract in August 2024.[130] Due to these material breaches, Bounce argues that it is relieved of the payment obligations under the Tally-Bounce Agreement.[131]

ADAGE counters that the contract was not breached because ADAGE is obligated, and able, to indemnify Bounce, should the occasion arise.[132] ADAGE further argues that the contract was not validly terminated. Finally, even if Tally breached and Bounce terminated the contract, ADAGE contends that Bounce is still obligated to pay the Additional Contingent Purchase Price.[133]

---

[129] Tally-Bounce Agreement § 8.1.

[130] Bounce's argument that the contract was breached because the liabilities were not transferred to ADAGE has already been addressed by the Court and will not be repeated here.

[131] D.I. 8 at 24-28.

[132] D.I. 14 at 14-22.

[133] *Id.* at 10-12.

When interpreting a contract, the court must "give effect to the intent of the parties[,]" and "read the specific provisions of the contract in light of the entire contract."[134] "The basic business relationship between parties must be understood to give sensible life to any contract."[135] "'Unless there is ambiguity, Delaware courts interpret contract terms according to their plain, ordinary meaning.'"[136] Absent ambiguity, contract interpretation is a question of law.[137]

i. Were the representations and warranties breached?

Turning first to the alleged breach of the representations and warranties, Bounce focuses on various subsections of the Tally-Bounce Agreement's representations in Section 4.1. In Section 4.1, Tally represented that: it had the "authority to originate and/or acquire and transfer …" each Account,[138] was the lawful owner of the Accounts,[139] and had "good and indefeasible title."[140] It further represented that performance under the agreement did not violate any federal, state, or local law, rule or regulation,"[141] no consents were required and no filing with a

---

[134] *Weinberg v. Waystar, Inc.*, 294 A.3d 1039, 1044 (Del. 2023).
[135] *Chicago Bridge & Iron Co. N.V. v. Westinghouse Electric Co, LLC*, 166 A.3d 912, 927 (Del. 2017).
[136] *White*, 2016 WL 6091692, at *21 (quoting *Alta Berkeley VI C.V. v. Omneon, Inc.,* 41 A.3d 381, 385 (Del. 2012)).
[137] *Magellan Pipeline Co, L.P. v. Suncor Energy (U.S.A.) Inc*., 2026 WL 766429, at *9 (Del. Super. Feb. 26, 2026); *White*, 2016 WL 6091692, at *21 (quoting *Rhone-Poulenc Basic Chems. Co. v. Am. Motorists Ins. Co*., 6161 A.2d 1192, 1195 (Del. 1992)).
[138] Tally-Bounce Agreement § 4.1(a).
[139] *Id.* § 4.1(d).
[140] *Id.* § 4.1(i).
[141] *Id.* § 4.1(b).

governmental agency was required,[142] and the Purchased Accounts were acquired and serviced in accordance with applicable law.[143] Each of these representations were made as of the "Initial Closing Date, Subsequent Closing Date and each Funding Date[.]"[144] This means that each of the representations and warranties were true at the time of each Account transfer. The agreement makes this clear. An Event of Default is defined to include when "(ii) any representation or warranty made by [… Tally] in connection with this Agreement proves to have been false in any material respect *when made*."[145]

Bounce offers no evidence that these representations were not true at each Closing, when Tally transferred Accounts to Bounce, and each Funding Date. Rather, Bounce argues these representations are no longer true because, for example, ADAGE does not own title to the transferred Accounts.[146] But, as explained, the representations and warranties were made as of each transfer date and funding date.[147] Thus, Bounce's defense, based on a breach of the representations and warranties, fails.

---

[142] *Id.* § 4.1(c).
[143] *Id.* § 4.1(g).
[144] *Id.* § 4.1.
[145] *Id.* § 1.1 (emphasis added).
[146] D.I. 8 at 18-20.
[147] Tally-Bounce Agreement § 4.1. This is further underscored by the purpose of the agreement. Tally was *selling* Accounts to Bounce. Thus, as of a Closing, Bounce owned the transferred Account. Because once transferred, Tally did not own the Account, it cannot be a breach of the representation that AGADE is not the owner.

ii. Has the indemnification obligation been breached?

Bounce argues that even if ADAGE has an obligation to indemnify Bounce under the Tally-Bounce Agreement, ADAGE cannot satisfy this obligation because it has no assets, which constitutes a material breach.[148]

ADAGE counters that it has shown that it can satisfy the indemnity obligation, as the APA transferred a $4 million loan portfolio to ADAGE and ADAGE has offered to secure insurance for such claims if they arise.[149] ADAGE also points to Bounce's off-set rights under the Tally-Bounce Agreement.

As noted, Bounce presents no evidence that an indemnifiable claim has arisen, either before or after the assignment. As such, there has been no breach.

Bounce is actually seeking security that ADAGE will be able to financially back the indemnification obligations, should a claim arise. Bounce could have negotiated for a non-assignment without consent term or a restriction on assignment to a party that had certain financial wherewithal, similar to what Tally secured in Sections 11.2 and 8.1. It did not do so. Bounce attempts to engraft a term into the Tally-Bounce Agreement that does not exist. The court "cannot rewrite contracts or supply omitted provisions."[150]

---

[148] D.I. 8 at 25-26.
[149] Deitchman Aff. ¶¶ 28, 31-32; D.I. 14 at 19.
[150] *Arthur J. Gallagher & Co. v. Agiato*, 2025 WL 2169455, at *7 (Del. Ch. July 31, 2025).

And, a breach may never occur. If an indemnification claim arises, ADAGE may have funds to satisfy the obligation. It purchased assets other than the contract in the liquidation proceeding, which it is reasonable to infer, ADAGE will seek to monetize. Finally, Bounce has off-set rights, which may be sufficient if a claim arises.

There is no evidence that establishes a breach of the indemnification obligation.

iii. Was the contract breached because ADAGE cannot comply with Applicable Law, when Tally ceased operations, and when it did not transfer any Accounts in the last two months of the Transfer Period?

Bounce next relies on Tally's cessation of business, failure to transfer Accounts in the last two months of the Transfer Period, and ADAGE's inability to comply with Applicable Law to argue that it is relieved of the payment obligations.

ADAGE responds that the contract terms have been substantially complied with and therefore, any breach is a non-material breach. It also argues that there is no breach based on the Applicable Law provision because there are servicing obligations after the transfer of an Account.

Addressing the Applicable Law provision first, Bounce relies on Sections 1.1 and 5.3 of the Tally-Bounce Agreement. Section 1.1 defines Applicable Law to include laws that apply to consumer debt collection and privacy requirements, such as the Fair Debt Collections Practices Act ("FDCPA") and the Fair Credit Reporting

Act ("FCRA"). Article V of the agreement governs to "Conduct of Business After the Purchase." Section 5.3 requires Bounce's actions to "conform to … all Applicable Laws" and "perform its obligations under [the agreement in] full compliance with Applicable Laws … including" the FDCPA and the FCRA, among other specified laws.[151] Thus, the compliance obligations Bounce points to are *its* obligations to comply with Applicable Laws. Furthermore, the Tally-Bounce Agreement does not require Tally (and now ADAGE) to service any of the transferred Accounts after the transfer.[152] Thus, as ADAGE points out, there is no need to comply with such Applicable Laws. It is merely collecting on the earnout payments.

The Tally-Bounce Agreement obligated Tally to repurchase any "Non-Conforming Account" "[u]pon written notice from [Bounce] received no later than 180 days from the respective Closing Date."[153] By the time this action was filed, more than 180 days had passed since the last Closing. Bounce offers no evidence that it possessed any Non-Conforming Accounts and it made written demand for repurchase. The repurchase period has closed thus, the failure to hold a license to purchase accounts did not result in a breach.[154]

---

[151] Tally-Bounce Agreement §§ 5.3, 5.3(c).
[152] *Id.* § 5.7(a).
[153] *Id.* § 7.1.
[154] Likewise, Bounce argues that ADAGE is incapable of providing documents that may be requested in support of a transferred Account. Under the Tally-Bounce Agreement, Bounce purchased all "Account Documents with respect to such Purchased Accounts." *Id.* § 2.1(d).

The failure to sell any Accounts in the last two months is a default. Tally owned accounts, which were sold to ADAGE through the auction. Drawing reasonable inferences in Bounce's favor, Tally had Eligible Accounts available for transfer had it not liquidated. No Accounts were transferred in the last two months of the contract term. The contract is clear that the parties intended there to be "twelve (12) monthly applicable Closing Dates."[155] Tally failed to fully perform, thus breaching the contract.

Tally's institution of a liquidation proceeding was an Event of Default under the Tally-Bounce Agreement. This is also a breach of the contract.[156]

The effect of these breaches is addressed below.

iv. Was the Tally-Bounce Agreement properly terminated?

ADAGE argues that Bounce did not terminate the agreement in compliance with its terms. It asserts, and Bounce does not contest, that Bounce did not send written notice of its election to terminate the Tally-Bounce Agreement to Tally at the specified email address and at its post office box, by personal delivery, registered or certified mail, return receipt requested, or by recognized overnight mail carrier, as

---

Exhibit C identifies the Account Documents, which include account statements and history and related disclosures. Bounce provide no evidence that Account Documents were not transferred at the time the Accounts were transferred to Bounce or that it made a request for documents which ADAGE failed to satisfy. Furthermore, the APA gave ADAGE access to Tally business records if needed. APA § 1.3, Exhibit 1.3. Thus, this ground also fails to establish a breach.

155 Tally-Bounce Agreement § 1.1, "Transfer Period" definition.

156 *Id.*, "Event of Default" definition.

required by Section 11.1.[157] ADAGE contends that strict compliance with the notice provision is required.

Bounce responds that even if it did not strictly comply with the notice requirement, Tally's material breach justified termination of the contract. Bounce further argues that Tally was in breach for failing to give notice of the Event of Default as required by Section 11.1.[158]

On August 29, 2024, Bounce sent Mr. Deitchman (to his Tally email address) a spreadsheet with the Additional Contingent Purchase Price payment projections, projecting payments due into 2029, amounting to more than $2 million. Bounce's email states "As mentioned on our call, the [Tally-Bounce Agreement] is terminated due to EoD by Tally defaulting. Thus, [the revenue share] component becomes an asset of Bounce."[159]

"The requirement of substantial compliance is an attempt to avoid 'harsh results … where the purpose of the [notice] requirement[] has been met.'"[160] Substantial performance means "'despite deviations from contract requirements,'"

---

[157] *Id.* § 11.1.
[158] D.I. 14 at 12.
[159] Deitchman Aff., Ex. F.
[160] *Gildor v. Optical Sols., Inc.*, 2006 WL 4782348, at *7 (Del. Ch. June 5, 2006) (quoting *Colson v. Bureau of Labor and Indus.,* 831 P.2d 706, 709 (Or. Ct. App. 1992)); *Kelly v. Blum*, 2010 WL 629850, at *8 n.52 (Del. Ch. Feb. 24, 2010); *Albertson's LLC v. Express Scripts, Inc.*, 2026 WL 2255094, at *9 (Del. Super. Aug. 5, 2026).

the notice "'provide[d] the important and essential benefits of the contract.'"[161] The determination of whether "the requirements of the substantial compliance doctrine [has been satisfied] is one of fact."[162]

The facts relating to notice are not in dispute. Bounce did not send a notice as required by the Tally-Bounce Agreement. The notice provision required that notice be sent to legal@meettally.com. Bounced emailed Mr. Deitchman at his Tally email address. The email stated the contract was being terminated for an Event of Default. Section 11.1 does not require that the notice include anything more than an election to terminate, which the email clearly stated. Further, (drawing all reasonable inferences in Bounce's favor) with all Tally employees being terminated on August 16, 2024, it may have been impossible for a notice to be personally delivered as there would have been no one to accept it. Similarly, a notice sent to the post-office box likely would not have provided actual notice—the email did.

The Court finds that Bounce substantially complied with Section 11.1 and terminated the Tally-Bounce Agreement.[163]

---

[161] *Gildor*, 2006 WL 4782348, at *7 (quoting 17A AM. JUR. 2D Contracts § 619 (2005)); *Kelly*, 2010 WL 629850, at *8 n.52.
[162] *Travelers Life & Annuity Co. v. Desiderio*, 2007 WL 2019795, at *2 n.5 (Del. Ch. July 3, 2007) (citing *The Prudential Ins. Co. of Am. v. Kamrath,* 475 F.3d 920, 925 (8th Cir.2007)).
[163] Cases relied on by ADAGE are distinguishable. In those cases, the court required strict compliance with the notice provision where the party never sent a notice to the notice-party (*PR Acquisitions, LLC v. Midland Funding LLC,* 2018 WL 2041521 (Del. Super. Apr. 30, 2018)), the party attempted to cobble together a series of non-compliant emails which did not contain the detailed facts required by the agreement (*AluminumSource, LLC v. LLFlex, LLC*, 2023 WL 2547996 (Del. Super. Mar. 16, 2023)), or the party failed to send a notice that put the other party

As to Bounce's claim of lack of notice, the Tally-Bounce Agreement does not require notice of an Event of Default. Thus, Bounce's argument on this point is without merit.

v. ***Even if terminated, is Bounce relieved of payments obligations on Accounts previously transferred?***

With the contract breached and terminated, the question remains whether Bounce is still obligated to make the Additional Contingent Purchase Price payments.[164] The evidence shows that Tally breached the Tally-Bounce Agreement by filing a liquidation proceeding and failing to transfer Accounts in the last two months of the Transfer Period. As discussed above, the contract was not breached on the other grounds stated.

A material breach "is a failure to do something that is so fundamental to a contract that the failure to perform that obligation defeats the essential purpose of the contract or makes it impossible for the other party to perform under the contract."[165] "[S]omething more than mere default is ordinarily necessary."[166] A material breach "'may allow the non-breaching party to be excused from future

---

on notice of the indemnification claim within the applicable limitation period (*HBMA Hldgs, LLC v. LSF9 Stardust Hldgs LLC*, 2017 WL 60229594 (Del. Super. Dec. 8, 2017)).

[164] The Court need not address whether the contract could be assigned even if terminated because the APA also sold the right to receive Additional Contingent Purchase Price payments as an asset. APA, Exhibit 1.2B; Tally-Bounce Agreement § 9.2.

[165] *Shore Investments, Inc. v. Bhole, Inc.,* 2011 WL 5967253, at *5 (Del. Super. Nov. 28, 2011) (citation omitted).

[166] *Id.* (citing *DeMaries v. Neff*, 2005 WL 89403, at *4 (Del. Ch. Jan. 12, 2005)).

performance,'" however, a non-material breach will not excuse performance and "'the non-breaching party may recover any damages it can prove.'"[167] "'Failure to perform by the injured party after a non-material breach constitutes breach of contract by the injured party.'"[168] "The question of whether a breach []rises to the level of materiality 'is one of degree' and is determined by 'weighing the consequences in light of the actual custom of men in the performance of contracts similar to the one that is involved in the specific case.'"[169] It is well-settled "that a party may not refuse to perform its contractual obligations after a material breach while simultaneously retaining the benefits of a contract."[170]

The materiality of a breach "'is a question of fact and one that is ordinarily not suited for summary judgment.'"[171] "'However, if the facts are so obvious that reasonable minds cannot differ on the question of materiality, and the underlying

---

[167] *Estate of Buller v. Montague*, 2020 WL 996883, at *3 (Del. Super. Mar. 2, 2020) (quoting *Commonwealth Const. Co. v. Cornerstone Fellowship Baptist Church, Inc.*, 2006 WL 2567916, at *19 (Del. Super. Aug. 31, 2006), *amended,* 2006 WL 2901819 (Del. Super. Oct. 3, 2006)).
[168] *Foraker v. Voshell,* 2022 WL 2452396, at *7 (Del. Super. July 1, 2022) (citing *Carey v. Estate of Myers,* 2015 WL 4087056, at *20 (Del. Super. July 1, 2015)).
[169] *Id.* (citing *Carey,* 2015 WL 4087056, at *20).
[170] *Kakar v. Octo Consulting Gp, LLC,* 2026 WL 880551, at *17 (Del. Super. Del. Ch. Mar. 31, 2026).
[171] *Estate of Buller*, 2020 WL 996883, at *5 (quoting *Pac. Ins. Co. v. Higgins*, 1992 WL 212601, at *6 (Del. Ch. Sept. 2, 1992)).

facts and inferences to be drawn are free from controversy, the question becomes one of law ….'"[172]

The relevant facts are not in dispute. Tally breached the contract. The essential purpose of the Tally-Bounce Agreement was the transfer of charged-off Accounts that Bounce would then attempt to collect. The purchase price was in two stages—a payment when the Accounts were transferred and another payment if Bounce collected more than the threshold amount on those transferred Accounts. Tally transferred Accounts during 10 of the 12-month contract. Thus, for this period, Tally fulfilled the essential purpose of the contract—the transfer of charged-off accounts for Bounce to monetize. Tally transferred over 5,300 Accounts, which as of June 2024 are projected to generate over $2 million in Additional Contingent Purchase Price obligations, through mid-2029.[173] The failure to transfer additional accounts in these last two months does not impact the validity of the Accounts previously transferred and the breach does not make it impossible for Bounce to perform. Under these circumstances, Tally's breach was not a material breach.

Even if those breaches constitute a material breach, Bounce cannot continue to accept the benefits of the contract while refusing to perform. Even though the contract was terminated, Bounce is enforcing the terms of the Tally-Bounce

---

[172] *Id.* (quoting *Glassman v. Wometco Cable TV, Inc.*, 1989 WL 1160, at *2 (Del. Ch. Jan. 6, 1989)).
[173] D.I. 3, Ex. B.

Agreement by demanding that the contract counter-party, now ADAGE, must perform under the contract by paying any indemnification claims. Thus, Bounce "cannot argue that its performance under the [Tally-Bounce Agreement] is excused while invoking the contractual indemnification process in Section 9[.1]. Its pursuit of indemnification 'indicates a desire to continue to accept the benefits of the [contract] after [Tally's] … material breach.' Thus, it cannot avoid its own contractual responsibilities."[174]

Similarly, Bounce accepted the benefits of the Accounts that were transferred prior to the termination. It collected on certain of those Accounts (its benefit) but it has refused to pay the Additional Contingent Purchase Price on the qualifying Accounts.

Tally's breach may have given rise to damages but Bounce is still legally responsible for payment of the Additional Contingent Purchase Price and is obligated to perform.

4. *Is summary judgment premature?*

Bounce argues that summary judgment is premature because ADAGE has not pleaded damages, which are required for a breach of contract claim.[175] Bounce further argues that under Rule 56(f), it is entitled to discovery. Specifically, it seeks

---

[174] *Arthur J. Gallagher & Co.*, 2025 WL 2169455, at *10.
[175] D.I. 8 at 15-16.

discovery on the alleged breaches of the Tally-Bounce Agreement and the relationship between and among Tally, Tally, LLC and Tally ABC.[176]

ADAGE responds that because it seeks partial summary judgment–only a determination of liability–summary judgment to this extent should be entered.[177]

Superior Court Rule 56(f) provides:

> Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the Court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or make such other order as is just.

Summary judgment should not be entered when the opposing party "has not had the opportunity to discover evidence essential to his opposition."[178] The party claiming discovery is required to submit an affidavit, which cannot make conclusory and vague statements of need for discovery. Rather, it must state the scope of the requested discovery and it "bears the burden of demonstrating the discovery proposed is specific and relevant 'in light of applicable law.'"[179] "An extension [of a ruling on the motion] is appropriate where the core facts needed to oppose summary judgment 'are within the exclusive knowledge' of the movant."[180] Where

---

[176] *Id.* at 5-6, n.1.
[177] D.I. 14 at 8-9.
[178] *North Am. Philips Corp. v. Aetna Casualty and Surety Co.,* 1991 WL 190305, at *1 (Del. Super. Aug. 30, 1991) (citation omitted).
[179] *Aveanna Healthcare, LLC v. Epic/Freedom, LLC,* 2021 WL 3235739, at *28 (Del. Super. July 21, 2021).
[180] *Id.*

the information sought through discovery is immaterial or speculative, however, Rule 56(f) cannot defeat a motion for summary judgment.[181]

"'[S]ummary judgment, interlocutory in character, may be rendered on the issues of liability alone although there is a genuine issue as to the amount of damages.'"[182] When there is no dispute as to material facts on liability, the court may enter judgment while leaving the determination of damages for a later date.[183]

Bounce's assertion that it needs discovery relies on the Dovrat Affidavit. Mr. Dovrat claims that Bounce needs discovery into the liquidation, the circumstances of the auction in the assignment for the benefit of creditors, the overlap in principals between Tally and ADAGE, the breaches of the representations and warranties, and the extent of ADAGE's assets to satisfy any indemnification claim that may be asserted.[184]

As this decision finds, Bounce's allegations of fraud in connection with the liquidation fail to state a claim. Further, the representations and warranties have not been breached, nor has the indemnification provision. Accordingly, none of the areas of discovery identified by Bounce are relevant to the issues implicated in this

---

[181] *North Am. Philips Corp.,* 1991 WL 190305, at *1 (citation omitted).
[182] *Johnson Sewer & Drain Contractors, Inc. v. Gambardella*, 2025 WL 1743424, at *6 (Del. Super. June 24, 2025), *as corrected* (Aug. 29, 2025) (quoting Super. Ct. Civ R. 56(c)) (granting summary judgment on the issue of liability alone).
[183] *Id.*
[184] Dovrat Decl. ¶¶ 23-26.

motion for partial summary judgment. Here, the lack of discovery does not warrant denying or deferring the motion.

Additionally, the motion is not premature. The Court's ruling is limited to liability relating to the Additional Contingent Purchase Price payment obligation. ADAGE's damages will be determined later in this proceeding.[185]

V. CONCLUSION

Because Bounce has failed to state a cognizable fraud claim, ADAGE's Motion to Dismiss Bounce's counterclaim is **GRANTED**.

Partial Summary Judgment is entered in ADAGE's favor. It is **HEREBY GRANTED and DECLARED** that:

1. The transfer of the rights, title, and interest under the Forward Flow Account Purchase Agreement, as amended (the "Tally-Bounce Agreement"), between Tally Technologies, Inc. ("Tally") and Bounce AI, Inc. ("Bounce") to ADAGE Investment Partners, LLC ("ADAGE") is valid and enforceable.

2. Bounce remains obligated under the Tally-Bounce Agreement to pay the Additional Contingent Purchase Price, as provided in that agreement.

IT IS SO ORDERED.

/s/Kathleen M. Miller
Kathleen M. Miller, Judge

[185] *Johnson Sewer & Drain Contractors, Inc.*, 2025 WL 1743424, at *6.