IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

PREMIER TECHNOLOGY ADVISORS, LLC, Plaintiff/Counterclaim Defendant, v. RANDY JETER and ANDREW LAUGHTER, Defendants, PROCURE IT, LLC f/k/a KREWE ACQUISITION COMPANY 1, LLC and KREWE ADVISORY GROUP, LLC, Defendants/Counterclaim Plaintiffs, v. JORDAN SOLENDER, Third-Party Defendant.	)	C.A. No. N24C-01-212 PAW CCLD

Submitted: April 24, 2026
Decided: July 31, 2026

MEMORANDUM OPINION

Upon Defendants Randy Jeter's and Andrew Laughter's Motion to Dismiss Counts V, VI, and VII of the Amended Complaint;
GRANTED, **in part and DENIED**, **in part**.

Scott B. Czerwonka, Esq.; D. Charles Vavala, III, Esq.; Jordan P. Hicks, Esq.; and Matthew C. Conover, Esq., of Wilks Law LLC, *Attorneys for Plaintiff/Counterclaim Defendant Premier Technology Advisors, LLC, and Third-Party Defendant Jordan Solender*.

David A. Dorey, Esq.; and Gregory P. Ranzini, Esq., of Blank Rome LLP, *Attorneys for Defendants/Counterclaim Plaintiffs Procure IT, LLC f/k/a Krewe Acquisition Company 1, LLC, and Krewe Advisory Group LLC, and Defendants Randy Jeter and Andrew Laughter*.

WINSTON, J.

I. INTRODUCTION

This action arises from a sale of business assets memorialized in an asset purchase agreement and a related promissory note that required the buyer to make monthly installment payments, guaranteed by an affiliated entity. The parties also executed a management services agreement under which a principal of the seller would serve the buyer in an executive role. After the buyer terminated the management services agreement without cause and declined to make the scheduled installment, the seller issued a default notice citing both the missed payment and the termination, sued for breach of contract and fee-shifting under the note, and later amended to add claims for fraudulent inducement and a civil conspiracy claim against two of buyer's executives.

The executives move to dismiss the fraud and conspiracy counts, invoking the anti-bootstrapping doctrine and the intra-corporate conspiracy doctrine, and requesting attorneys' fees. For the reasons set forth below, the Court holds: (1) one fraudulent inducement claim may proceed against one of the executives based on particularized pre-closing allegations, but the other is dismissed for failure to plead the other executive's allegedly fraudulent actions; (2) the civil conspiracy claim is dismissed under the intra-corporate conspiracy doctrine; and (3) the request for attorneys' fees associated with the motion is denied.

II. FACTUAL AND PROCEDURAL BACKGROUND[1]

In an agreement dated March 15, 2023, Plaintiff/Counterclaim Defendant Premier Technology Advisors, LLC and Third-Party Defendant Jordan Solender sold Premier's business assets to Defendant Procure IT, LLC through an Asset Purchase Agreement (the "APA").[2] Defendants Randy Jeter and Andrew Laughter (the "Individual Defendants"), the Chief Executive Officer and Chief Revenue Officer of Procure, respectively, caused Procure to enter into the APA.[3] The APA required Procure to pay $1,250,000 at closing and an additional $8,500,000 in deferred consideration through a Promissory Note (the "Note"), payable through monthly installments of $39,000.[4] Defendant Krewe Advisory Group, LLC, guaranteed Procure's obligations under the Note.[5]

The Note also had an acceleration clause, providing that in the event of a default, the aggregate unpaid amount and all other amounts payable would immediately become due.[6] Any amounts payable that were not paid when due would

[1] The facts are drawn from the amended complaint (D.I. 121) and the documents incorporated therein. The Court accepts as true the amended complaint's well-pleaded facts solely for the purposes of resolving the motion to dismiss.

[2] D.I. 121 (hereinafter "Am. Compl.") ¶ 18.

[3] *Id.*

[4] *Id.* ¶¶ 2-3, 19.

[5] *Id.* ¶ 3.

[6] *Id.* ¶¶ 3, 23.

be subject to a 12% interest rate.[7] The parties executed a separate Management Services Agreement (the "MSA") which provided that Solender would serve as the Chief Operating Officer of Procure.[8]

Notwithstanding the Note's execution, prior to signing, Jeter told non-party William Hiatt—who would eventually replace Solender as Chief Operating Officer—that he never intended for Procure to pay the Note, and that he was going to "pinch" Solender so that he would never receive the full amount due.[9] Around the same time, Hiatt also told Jeter that Procure likely did not have enough money to make its required payments on the Note.[10] As Procure's CRO, Laughter was also aware that Procure never intended and was unable to pay the amounts due.[11]

Additionally, instead of fulfilling Procure's obligations to Premier, Jeter used company funds to cover lavish personal expenses and engaged in other improprieties like using employee 401(k) funds to cover payroll.[12] These improper practices were done with Laughter's knowledge.[13]

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[7] Am. Compl. ¶ 3.

[8] *Id.* ¶ 22.

[9] *Id.* ¶¶ 27-28.

[10] *Id.* ¶ 31.

[11] *Id.* ¶ 29.

[12] *Id.* ¶¶ 32-34.

[13] *Id.*

On January 15, 2024, Procure terminated the MSA without cause.[14] The next day, it refused to pay the monthly installment payment due.[15] On January 17, 2024, Premier notified Procure that Procure was in default both for failing to pay the installment and for terminating the MSA without cause.[16]

This action initiated when Premier filed its initial complaint on January 26, 2024. That complaint contained four counts: two breach of contract claims—one against Procure and one against Krewe—for failing to pay the $39,000 due in January of 2024, and two counts against Procure and Krewe seeking attorneys' fees pursuant to a provision in the Note.[17] On September 29, 2025, Premier filed its amended complaint, which preserves each claim from the initial complaint and adds three new ones: two counts of fraudulent inducement (Counts V and VI) and a count of civil conspiracy (Count VII) against the Individual Defendants.[18]

Specifically, the fraudulent inducement counts allege Procure, via the Note, represented that it would pay Premier $8,500,000, and the Individual Defendants caused Procure to make this false representation.[19] Premier reasonably relied on

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[14] Am. Compl. ¶ 25.

[15] *Id.* ¶ 26.

[16] *Id.* ¶¶ 35-36.

[17] D.I. 1.

[18] Am. Compl. ¶¶ 62-86.

[19] *Id.* ¶¶ 62-66, 72-76.

these representations, and it suffered damages as a result of the Individual Defendants' conduct, constituting fraud.[20] Its civil conspiracy claim alleges the Individual Defendants conspired to commit this fraud together.[21]

The Individual Defendants moved to dismiss the claims against them—Counts V, VI, and VII.[22] Premier filed its brief in opposition,[23] and the Individual Defendants filed their reply, at which point the motion was fully briefed.[24] The Court heard oral argument on the motion and reserved its decision, which it now issues.

III. <u>STANDARD OF REVIEW</u>

Upon a motion to dismiss under Rule 12(b)(6), the Court (i) accepts all well-pled factual allegations as true, (ii) accepts even vague allegations as well-pled if they give the opposing party notice of the claim, (iii) draws all reasonable inferences in favor of the non-moving party, and (iv) only dismisses a case where the plaintiff would not be entitled to recover under any reasonably conceivable set of

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[20] Am. Compl. ¶¶ 70-71, 80-81.

[21] *Id.* ¶¶ 82-86.

[22] D.I. 147, Defs.' Br. in Support of Their Motion to Dismiss Counts V, VI, and VII of the Am. Compl. (hereinafter "Op. Br."). The Op. Br. pagination ends at "iii." For citation purposes, page one begins on the page of the brief titled "Introduction."

[23] D.I. 150 (hereinafter "Ans. Br.").

[24] D.I. 154 (hereinafter "Reply").

circumstances.[25] The Court does not, however, accept conclusory allegations that lack specific supporting factual allegations.[26]

This pleading standard is heightened where, as is the case here, a plaintiff asserts allegations of fraud. In that instance, Superior Court Civil Rule 9(b) controls, requiring for "all averments of fraud . . . the circumstances constituting fraud . . . [to] be stated with particularity."[27]

IV. <u>ANALYSIS</u>

To state a claim for fraudulent inducement, a plaintiff must allege "'1) a false statement or misrepresentation; 2) that the defendant knew was false or made with reckless indifference to the truth; 3) the statement induced the plaintiff to enter the agreement; 4) the plaintiff's reliance was reasonable; and 5) the plaintiff was injured as a result.' The knowledge that the statement was false, or made with reckless indifference to the truth, is commonly referred to as 'scienter.'"[28]

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[25] *Cent. Mortg. Co. v. Morgan Stanley Mortg. Cap. Hldgs., LLC*, 27 A.3d 531, 535 (Del. 2011) (citing *Savor, Inc. v. FMR Corp.*, 812 A.2d 894, 896-97 (Del. 2002)).

[26] *Ramunno v. Cawley*, 705 A.2d 1029, 1034 (Del. 1998) (citing *In re Tri-Star Pictures, Inc., Litig.*, 634 A.2d 319, 326 (Del. 1993)).

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

[28] *ITW Glob. Investments Inc. v. Am. Indus. P'rs Capital Fund IV, L.P.*, 2017 WL 1040711, at *6 (Del. Super. Mar. 6, 2017) (citing *In re Student Fin. Corp.,* 2004 WL 609329, at *7 (D. Del. Mar. 23, 2004)).

The Individual Defendants do not contend that Premier failed to plead the elements of fraudulent inducement until their reply brief—meaning this argument was not properly raised.[29]

Instead, they contend that the fraudulent inducement claims are barred by the anti-bootstrapping doctrine.[30] Delaware courts have recognized that "a plaintiff cannot state a claim for fraud simply by adding the term 'fraudulently induced' to a complaint or alleging that the defendant never intended to comply with the agreement at issue at the time the parties entered into it."[31]

But "the anti-bootstrapping rule does not prevent parties from bringing a fraud claim if (1) the plaintiff alleges the seller knowingly made false contractual representations, (2) damages for plaintiff's fraud claim may be different from plaintiff's breach of contract claim, (3) the conduct occurs prior to the execution of the contract and thus with the goal of inducing the plaintiff's signature and willingness to close on the transaction, or (4) the breach of contract claim is not well-

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[29] *See* Reply 6-7; *See Acme Markets, Inc. v. Oekos Kirkwood, LLC*, 2025 WL 2172302, at *4 (Del. Super. July 31, 2025) (noting that "movants are generally prohibited from raising an argument in a reply that they did not raise in their opening brief.").

[30] *See generally* Op. Br.

[31] *MicroStrategy Inc. v. Acacia Rsch. Corp.*, 2010 WL 5550455, at *17 (Del. Ch. Dec. 30, 2010) (internal quotation marks omitted).

pled such that there is no breach claim on which to 'bootstrap' the fraud claim."[32] These exceptions were laid out in the Court of Chancery's opinion in *Levy Family Investors, LLC v. Oars + Alps LLC*, and the Court will refer to them as the "*Levy* exception."

The Individual Defendants contend that none of the *Levy* exceptions are present here. But because Premier adequately alleges that Jeter knowingly made false representations on which Premier relied, satisfying the first *Levy* exception, Premier's claims are not barred by the bootstrapping doctrine as to Jeter and may proceed. No *Levy* exception applies to the allegations against Laughter; therefore the fraudulent inducement claim against him is dismissed. Finally, Premier's civil conspiracy claim is dismissed because it is barred by the intra-corporate conspiracy doctrine.

A. PREMIER ALLEGES JETER KNOWINGLY MADE FALSE CONTRACTUAL REPRESENTATIONS, BUT NOT LAUGHTER.

The first *Levy* exception provides that the anti-bootstrapping doctrine does not apply where "the plaintiff alleges the seller knowingly made false contractual representations."[33] The court in *Levy* held:

> [A] plaintiff can [] plead a fraud claim that is not the product of improper bootstrapping by alleging facts that

[32] *Levy Family Invs., LLC v. Oars + Alps LLC*, 2022 WL 245543, at *8 (Del. Ch. Jan. 27, 2022).

[33] *Id*.

> support an inference that the defendant knowingly made false representations in a contract on which the plaintiff justifiably relied, and then breached that contract by violating the representation(s) that were falsely made. That scenario, if well pled, supports at least two viable claims—fraud *and* breach of contract . . . [T]he anti-bootstrapping rule . . . does not prevent a fraud claim against defendants who knew contractual representations were false, and yet made them anyway.[34]

Premier's theory of fraud is that the Individual Defendants caused Procure to enter into the Note with no intention of carrying out its obligations. Fraud claims based on promises of future performance, or "promissory fraud" claims, are disfavored by Delaware courts.[35] This is in part because "such claims turn on the speaker's intent at the time of the promise, 'which is generally difficult to prove or disprove because there may be no readily observable, objective, external fact with which to divine' it."[36] Put differently, the alleged misrepresentation is the promisor's contemporaneous *state of mind*—that is, the promisor's concealed intent to not perform. To state a claim for promissory fraud, the pleading standard is heightened further than the already stringent Rule 9(b) pleading standard, in that "the plaintiff

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[34] *Id.* at *7-8 (emphasis in original) (internal quotation marks omitted).

[35] *Winner Acceptance Corp. v. Return on Capital Corp.*, 2008 WL 5352063, at *9 (Del. Ch. Dec. 23, 2008).

[36] *Monica v. Delta Data Software, Inc.*, 2026 WL 370756, at *10 (Del. Super. Feb. 10, 2026) (quoting *Winner Acceptance Corp.*, 2008 WL 5352063, at *9).

'must plead specific facts that lead to a reasonable inference that the promisor had no intention of performing at the time the promise was made."[37]

As to Jeter, Premier does plead such facts. Premier alleges that before Procure executed the Note, (a) Hiatt advised Jeter that Procure did not have enough money to pay the Note,[38] and (b) Jeter told Hiatt that Procure never intended to pay the Note and that he intended to "pinch" Solender.[39] These pre-closing communications between Jeter and Hiatt are "readily observable, objective, external fact[s] with which to divine" Jeter's intent at the time of the promise, and support Premier's allegations that there was no intention to perform, satisfying the heightened pleading standard for promissory fraud.[40]

However, Premier fails to plead specific facts that Laughter knowingly made false representations, falling short of the applicable pleading standard. The Laughter allegations boil down to speculation that, because Laughter was Procure's CRO, he must have known the representations were false.[41]

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[37] *MicroStrategy Inc.*, 2010 WL 5550455, at *15 (quoting *Grunstein v. Silva*, 2009 WL 4698541, at *13 (Del. Ch. Dec. 8, 2009)).

[38] Am. Compl. ¶ 31.

[39] *Id.* ¶¶ 27-28.

[40] *Winner Acceptance Corp*, 2008 WL 5352063, at *9.

[41] Am. Compl. ¶ 29 ("Mr. Laughter, as the chief executive in charge of overseeing all parts of Procure IT's strategic planning and operations was equally aware that Procure never intended to pay the amounts due."). The amended complaint also alleges that Procure consultant Frank Cittadino advised both of the Individual

Asserting that Laughter was in a position to know that the representations were false does not satisfy the more stringent promissory fraud pleading standard, because this allegation does not amount to a "readily observable, objective, external fact with which to divine" his knowledge.[42] Accordingly, Premier failed to allege facts that support an inference that Laughter knowingly made false representations. Because the *Levy* exceptions are disjunctive, the Court must continue its analysis as to Laughter to determine if another anti-bootstrapping exception applies to the claim against him.

B. PREMIER DOES NOT SEEK DAMAGES THAT ARE DISTINCT FROM THOSE IT SEEKS UNDER ITS BREACH OF CONTRACT CLAIM.

The next *Levy* exception applies when the damages for a plaintiff's fraud claim may be different from those sought through the plaintiff's breach of contract claim.[43]

Defendants as to "virtually all aspects of Procure IT," including on financial matters, and that "[a]fter execution of the Note, he stated that Procure did not have enough money to pay" it. *Id.* ¶ 31. But unlike the allegations concerning Jeter's conversations with Hiatt, this is not an allegation sufficient to satisfy the *Levy* exception as to Laughter. This is because the amended complaint does not allege that Cittadino ever made this statement *to* Laughter, but even if he had, this statement was allegedly made *after* the execution of the Note, meaning it could not be indicative of Laughter's knowledge or intent at the time of the Note's execution.

[42] *Winner Acceptance Corp.*, 2008 WL 5352063, at *9.

[43] *Levy Family Invs.*, 2022 WL 245543, at *8.

This exception does not apply to Laughter because Premier does not articulate how or why its fraud damages may be distinct from its breach of contract damages, beyond a conclusory argument that it "may be able to recover additional damages under its [fraud] theory that would not be available for its [breach of contract] theory."[44] The only plausible source of additional damages for the fraud claim would be punitive damages. But this Court has previously held when addressing bootstrapping arguments that "allowing punitive damages to serve as the sole distinction [between fraud and breach of contract damages] would permit Plaintiff to circumvent contractual remedies and limitations simply by relabeling a breach of contract."[45]

Premier cites to *Yangaroo Inc. v. Digit. Media Servs., Inc.*,[46] in which this Court held that a plaintiff "may not recover the same damages multiple times but, at the pleading stage, it need not pick just one theory to pursue when the allegations

[44] Ans. Br. 18. The opposition actually states, apparently in error, that "Premier may be able to recover additional damages under its breach of contract theory that would not be available for its fraud theory." The Court treats this as a typographical error because the surrounding discussion argues the opposite—i.e., that Premier may be able to recover additional damages under its fraud theory that would not be available for its breach of contract theory.

[45] *WIA Holdings LLC v. Scottish Am. Capital LLC*, 2026 WL 1204494, at *14 (Del. Ch. Jan. 20, 2026).

[46] 2024 WL 2791100, at *1 (Del. Super. May 30, 2024).

support several."[47] But the fraud claim in *Yangaroo* is distinguishable from the promissory fraud claim in this case because it was based on allegations that the seller of a company misrepresented its relationship with a key customer. The Individual Defendants correctly point out that those claims could reasonably be expected to result in damages in excess of the contractual claim's damages.[48] Premier has no analogous theory. It points to no misrepresentation that could yield damages beyond what it seeks in its breach of contract claim, making the damages it seeks for its fraud claim duplicative. Accordingly, the Court turns to the third *Levy* exception.[49]

C. PREMIER FAILS TO ALLEGE REPRESENTATIONS SEPARATELY MADE PRIOR TO THE EXECUTION OF THE CONTRACT.

The third *Levy* exception applies where the plaintiff alleges conduct occurring prior to the execution of the contract with the goal of inducing the plaintiff's signature and willingness to close on the transaction.[50] The Individual Defendants

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[47] *Id.* at *10. Premier also cites to several cases in which the Court has applied this *Levy* exception where the plaintiff's breach of contract damages were capped. These cases are distinguishable because there is no argument here that Premier's breach of contract damages are capped.

[48] Reply 7.

[49] Premier does not contend that the fourth *Levy* exception applies, because that exception would only apply if its breach of contract claim was not well pleaded.

[50] *Levy Fam. Invs., LLC*, 2022 WL 245543, at *8.

assert that this exception does not apply, because Premier merely alleges that the contract itself contains the purported misrepresentation.[51]

Premier failed to allege that Laughter engaged in any conduct prior to the execution of the Note with the goal of inducing Premier's signature. Indeed, Premier does not allege any fraudulent conduct undertaken by Laughter at any point or with any particular goal in mind.

D. PREMIER'S ARGUMENT THAT ITS TORT CLAIMS ARE BASED ON DUTIES INDEPENDENT OF THE CONTRACT IS UNAVAILING.

Premier contends its fraud and breach of contract claims are not duplicative, because the Individual Defendants' "duty not to commit fraud" is distinct from Procure's duties under the Note.[52] It cites to three cases (two of which predate *Levy*) in which it asserts this Court made similar holdings. But these cases are inapposite and not applicable.

First Premier relies upon *Pryor v. Aviola*[53] which concerns the sale of a parcel of land and addresses fraudulent concealment as an exception to the applicability of the merger doctrine in property law. It does not set out, as Premier implies, that there is a distinct and independent "duty not to commit fraud" that bars application of the anti-bootstrapping doctrine.

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[51] Op. Br. 9.

[52] Ans. Br. 18-19.

[53] 301 A.2d 306 (Del. Super. Jan. 29, 1973).

The next two opinions Premier cites are also distinguishable, in part because neither concerns a fraud claim. In *Data Management Internationalé, Inc. v. Saraga*,[54] a tenant sued its landlord for wrongfully destroying property belonging to the tenant after the landlord asserted the lease had expired. Whether the lease had in fact expired was disputed, forming the basis of the tenant's breach of contract claim.[55] The Court held that the conversion claim was not bootstrapped, reasoning that the tenant could assert a conversion claim based on the landlord's alleged conduct regardless of whether the lease was expired.[56]

Gulf Aviation Services Group WLL v. Wilmington Trust Co.[57] also concerned conversion claims, with the Court holding the bootstrapping doctrine did not apply because the contract concerning the converted property in that case did not govern the defendant's obligations regarding the converted property.[58]

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[54] 2007 WL 2142848 (Del. Super. July 25, 2007).

[55] *Id.* at *4.

[56] *Id.*

[57] 2023 WL 9118772 (Del. Super. Dec. 29, 2023).

[58] *Id.* at *11 (noting that "[Plaintiff's] conversion claim is not improperly bootstrapped because [Defendant's] relevant 'powers, rights and obligations' under the [] Agreement 'cease[d] and terminate[d]' before it sold the [property].").

E. THE COURT REJECTS PREMIER'S ARGUMENT THAT ITS FRAUD CLAIM IS NOT BOOTSTRAPPED BECAUSE IT IS ALLEGED AGAINST NON-CONTRACTING PARTIES.

Premier's final argument is that because the Individual Defendants are not parties to the Note, the anti-bootstrapping doctrine cannot apply to them. For support, Premier points to several cases discussing the doctrine, noting that a plaintiff "cannot 'bootstrap' a claim of breach of contract into a claim of fraud merely by alleging that a contracting party never intended to perform its obligations," emphasizing the court's usage of the words "*contracting party*."[59]

Yet in *Stein v. Wind Energy Holdings, Inc.*,[60] this Court rejected a plaintiff's attempt to bootstrap a fraud claim against a non-party, holding that it was insufficient for the plaintiff to "baldly alleg[e] that [the non-party] knew" about the underlying misrepresentation.[61] The Court noted that "[a]lthough the anti-bootstrapping [doctrine] applies to fraud claims made against a contract[ing] party, it applies [to the non-party] by analogy. There are no particularized facts from which to infer [the non-party] knew the Company's Note representations were false . . . [T]he fraud

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[59] *Iotex Communications, Inc. v. Defries*, 1998 WL 914265, at *4 (Del. Ch. Dec. 21, 1998). *See MicroStrategy,* 2010 WL 5550455, at *17; *Mosaic US Holdings LLC v. Atlas Tech. Sols., Inc.*, 2025 WL 483064 (Del. Super. Jan. 22, 2025).

[60] 2022 WL 17590862 (Del. Super. Dec. 13, 2022).

[61] *Id.* at *8.

claim essentially tries to assert a breach of contract claim against [the non-party] as an agent of the Company. But a non-party is not liable for another's breach."[62]

As discussed above, like in *Stein*, Premier does not assert particularized facts to infer that Laughter knew Procure's representations were false. Because no *Levy* exception applies to the claim against Laughter, Count VI is dismissed.

F. THE CIVIL CONSPIRACY CLAIM IS BARRED BY THE INTRA-CORPORATE CONSPIRACY DOCTRINE.

The Individual Defendants contend that even if Premier states a claim for fraud, the civil conspiracy claim is barred under the intra-corporate conspiracy doctrine.[63] Under the intra-corporate conspiracy doctrine, "officers and agents cannot aid and abet their principal or each other in the commission of a tort"[64] and "a corporation cannot be deemed to have conspired with its officers and agents."[65] However, "this general rule will not apply [] when a corporate officer steps out of her corporate role and acts pursuant to personal motives."[66]

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[62] *Id.* n.101.

[63] Op. Br. 11-12; Reply 12-15.

[64] *AmeriMark Interactive, LLC v. AmeriMark Hldgs., LLC*, 2022 WL 16642020, at *12 (Del. Super. Nov. 3, 2022).

[65] *River Valley Ingredients, LLC v. Am. Proteins, Inc.*, 2021 WL 598539, at *6 (Del. Super. Feb. 4, 2021).

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

Here, the amended complaint specifically alleges that the defendants acted as officers or agents in connection with the challenged transaction.[67] Because the Individual Defendants are alleged to have served as officers or agents in connection with the transaction, the intra-corporate conspiracy doctrine may apply, unless Premier shows that the Individual Defendants stepped out of their corporate roles while acting pursuant to personal motives.

The amended complaint alleges that Jeter used business capital to cover personal expenditures including "planes, cars, Airbnbs, haircuts, food, a golf membership," and personal vacations.[68] It also states that the Individual Defendants engaged in "improper business practices," including an allegation that at Jeter's direction and with Laughter's knowledge, "[Procure] used employee 401(k) funds to cover payroll."[69] However, the amended complaint neither alleges that the Individual Defendants committed the alleged fraud to secure these personal benefits, nor does it connect the personal benefits to the transaction at issue.[70] Because

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[67] Am. Compl. ¶ 43. *See Id.* ¶ 18 ("On or around March 15, 2023, Mr. Jeter and Mr. Laughter, *as officers and agents of Procure IT*, caused Procure IT to enter into an Asset Purchase Agreement . . .") (emphasis added).

[68] Am. Compl. ¶ 32.

[69] Ans. Br. 20-21; Am. Compl. ¶ 33.

[70] *See Fortis Advisors LLC v. Johnson & Johnson*, 2021 WL 5893997, at *8 (Del. Ch. Dec. 13, 2021) ("Fortis has not alleged that the individual defendants fraudulently induced Auris into a merger with Ethicon *in order to*" derive a personal benefit, the concealment of their commission of securities fraud.) (emphasis added).

Premier alleges that the Individual Defendants served as officers or agents in connection with the transaction and Premier does not allege that either Individual Defendant acted pursuant to personal motives with respect to the transaction at issue, Count VII is dismissed.

G. DEFENDANTS' REQUEST FOR FEES IS DENIED.

Without citing to any authority, Individual Defendants assert that the Court should award them fees associated with bringing their motion to dismiss, because the motion is "extraordinarily clear cut," and because Premier waited for over 20 months to add the claims against the Individual Defendants in its amended complaint.[71] They argue that these claims were brought in bad faith, and that they are "frivolous."[72]

This request is denied. "To justify an award of attorneys' fees, a litigant must have acted 'vexatiously, wantonly, or for oppressive reasons.'"[73] As noted above, Premier has stated a claim as to Jeter. A claim that can proceed on its merits is

[71] Op. Br. 12-14.

[72] Op. Br. 14.

[73] *E.I. du Pont de Nemours & Co. v. Medtronic Vascular, Inc.*, 2013 WL 1792824, at *4 (Del. Super. Apr. 24, 2013) (quoting *Kuang v. Cole Nat'l Corp.*, 884 A.2d 500, 506 (Del. 2005)).

definitionally not frivolous or vexatious. As to the other two claims, there is no indication that they were improperly brought.

V. <u>CONCLUSION</u>

For the foregoing reasons, Defendants' motion to dismiss is granted as to Counts VI and VII and denied as to Count V.

IT IS SO ORDERED.

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