IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

COLUMBUS US INC.,	)
	)
Plaintiff and Defendant	)
in Counterclaim,	)
	)
v.	) C.A. No. N22C-06-053 SKR CCLD
	)
ENAVATE SMB, LLC,	)
and ENAVATE HOLDINGS, LLC,	)
	)
Defendants, Plaintiffs	)
in Counterclaim, and	)
Third-Party Plaintiffs,	)
	)
v.	)
	)
COLUMBUS A/S,	)
	)
Third Party Defendants.	)
_____	)
COLUMBUS US INC. and	)
COLUMBUS A/S,	)
	)
Plaintiffs,	)
	)
v.	)
	)
THOMAS AJSPUR,	)
	)
Defendant.	)

Submitted: November 13, 2025
Decided: February 26, 2026

MEMORANDUM OPINION

Upon Consideration of Defendants' Motion to Dismiss Counts III and IV of the

Amended Complaint:

GRANTED.

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Rennie, J.

I.   INTRODUCTION

This case arises out of the breach of contracts that transferred Columbus US, Inc.'s small-to-medium business line to Enavate SMB, LLC for $16.5 million. Enavate paid $8 million in cash at closing and issued a promissory note providing that it would pay the remaining $8.5 million by April 30, 2022. When Enavate refused to pay, Columbus filed this action, alleging breach of contract, civil abuse of process, and fraud. Enavate and its CEO, Thomas Ajspur, move to dismiss the claims for civil abuse of process and fraud; additionally, Ajspur challenges the Court's personal jurisdiction. For the reasons below, the Court finds that Columbus failed to adequately plead the challenged counts and therefore **GRANTS** the Defendants' Motion.

II.   BACKGROUND[1]

A.   The Parties

Plaintiff and Counterclaim Defendant Columbus US, Inc. ("Columbus") is a Delaware corporation with its principal place of business in Minnesota.[2] It is a wholly owned subsidiary of Columbus A/S, a global company formed under the laws of Denmark.[3]

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[1] The facts are drawn from the Amended Complaint (D.I. 213) and the documents incorporated therein. Additional facts are drawn from the parties' briefing. *See* D.Is. 214 (Mot.), 221 (Opp'n), and 229 (Reply).
[2] Am. Compl. at ¶ 21.
[3] *Id.*

Defendant Thomas Ajspur ("Ajspur") is an individual and, at all relevant times, was the Chief Executive Officer of both Enavate and Enavate Holdings.[4]

Defendant, Counterclaim Plaintiff, and Third-Party Plaintiff Enavate SMB, LLC ("Enavate" and together with Ajspur, the "Defendants") is a Delaware limited liability company with its principal place of business in Colorado.[5]

Defendant, Counterclaim Plaintiff, and Third-Party Plaintiff Enavate Holdings is a Delaware limited liability company, that holds the entire equity interest in Enavate.[6]

B.   Nature of the Case[7]

On or about November 1, 2021, Columbus, Enavate, and Enavate Holdings entered into an Asset Purchase Agreement (the "APA") under which Enavate purchased Columbus' small-medium business line for $16.5 million.[8] The purchase price was split between an $8 million cash payment due at closing and a deferred payment of $8.5 million plus interest, evidenced by a promissory note (the "Note").[9] The Note was secured by a security agreement (the "Security Agreement"), an

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[4] Am. Compl. at ¶ 22.
[5] *Id.* ¶ 23.
[6] *Id.* at ¶ 24.
[7] The issues before the Court on this motion are limited. As such, the Court limits its recitation of facts to those necessary to resolve the motion. A broader description of the facts in this case is available in *Columbus US Inc. v. Enavate SMB, LLC*, 2024 WL 5274569, at * 1–7 (Del. Super. Dec. 23, 2024).
[8] Am. Compl. at ¶¶ 29–30.
[9] *Id.* at ¶ 30.

Unconditional and Continuing Guaranty (the "Guaranty"), and a Membership

Interest Pledge Agreement (the "Pledge" and collectively with the Note, the Security

Agreement, and the Guaranty, the "Loan Documents").[10] The Note was set to mature

"six months after the Closing of the APA or on or before April 30, 2022[.]"[11]

Enavate allegedly defaulted on the Loan Documents soon after Closing.[12]

Columbus filed its initial complaint on June 8, 2022.[13] Shortly before the case was

scheduled to proceed to trial, Columbus discovered information that necessitated

amending its complaint.[14] In the current operative complaint (the "Amended

Complaint"), Columbus asserts four counts: (Count I) Default by Enavate on the

Loan Documents;[15] (Count II) Breach by Enavate Holdings of the Loan

Documents;[16] (Count III) Civil Abuse of Process by Ajspur and Enavate;[17] and

(Count IV) Fraudulent Inducement by Ajspur and Enavate.[18] In the motion currently

before the Court, Enavate and Ajspur seek to dismiss Counts III and IV. The Court

heard oral argument on November 13, 2025.

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[10] *Id.* at ¶¶ 1, 31.
[11] *Id.* at ¶ 30.
[12] *See, e.g., id.* at ¶ 13.
[13] D.I. 1.
[14] *See* D.I. 193 (Columbus' Motion for Leave to File its First Amended Complaint).
[15] Am. Compl. at ¶¶ 47–48.
[16] *Id.* at ¶¶ 49–50.
[17] *Id.* at ¶¶51–55.
[18] *Id.* at ¶¶ 56–68.

III.   STANDARD OF REVIEW

When reviewing a motion to dismiss under Superior Court Civil Rule 12(b)(6), the Court accepts all well-pleaded allegations in the complaint as true and draws all reasonable inferences in favor of the nonmoving party.[19] Even vague allegations are considered well-pleaded if they provide the opposing party with fair notice of a claim.[20] Dismissal is appropriate only where the "plaintiff would not be entitled to recover under any reasonably conceivable set of circumstances susceptible of proof."[21]

IV.   ANALYSIS

A.   Abuse of Process

Count III of the Amended Complaint alleges that Enavate and Ajspur abused the discovery process "by withholding documents improperly so as to extend the litigation and complicate issues of both fact and law."[22] In its opposition brief, Columbus clarifies that the claim is based on Enavate using Columbus as a lender at a lower interest rate than it could obtain on the market.[23] In short, Columbus accuses Enavate and Ajspur of using the Court for the improper purpose of delay.[24]

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[19] *Humanigen, Inc. v. Savant Neglected Diseases, LLC*, 238 A.3d 194, 199 (Del. Super. 2020).
[20] *In re Gen. Motors (Hughes) S'holder Litig.*, 897 A.2d 162, 168 (Del. 2006) (quoting *Savor, Inc. v. FMR Corp.*, 812 A.2d 894, 896–97 (Del. 2002)).
[21] *Windsor I, LLC v. CWCapital Asset Mgmt. LLC*, 238 A.3d 863, 871–72 (Del. 2020) (quoting *(Hughes) S'holder Litig.*, 897 A.2d 162, 168 (Del. 2006)).
[22] Am. Compl. at ¶ 52.
[23] Opp'n 2.
[24] Am. Compl. at ¶ 52.

A claim for *abuse* of process requires more than using process in bad faith.[25] To plead a *prima facie* claim, Columbus must show: "(1) an ulterior motive; and (2) a willful act in the use of the legal process that is not proper in the regular conduct of the proceedings[.]"[26] Regarding the second element, there must be a "definite act or threat not authorized by the process, or aimed at an objective not legitimate in the use of the process."[27] Therefore, the Court must find "[s]ome form of coercion to obtain collateral advantage . . . such as obtaining the surrender of property or the payment of money by use of process as a threat or club."[28]

Columbus has failed to plead the second element of its claim. At its heart, Columbus' claim is based on the allegation that this litigation, and Enavate's delay in providing financial information during discovery, was a tactic to delay and avoid judgment.[29] Even assuming this is true, these actions do not give rise to an abuse of process claim. Every defendant seeks to avoid judgment, regardless of liability. Nor is the Court persuaded that Enavate's use of Columbus as a below-market-rate lender constitutes a collateral advantage; the loan predated the litigation and could not have been obtained by using process as "a threat or club." Further, finding that litigation

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[25] *Preferred Inv. Servs., Inc. v. T & H Bail Bonds, Inc.*, 2013 WL 3934992, at *23 (Del. Ch. Jul. 24, 2013), *aff'd sub nom. Preferred Inv. Servs., Inc. v. T & H Bail Bond, Inc.*, 108 A.3d 1225 (Del. 2015).
[26] *Id.*
[27] *Batchelor v. Alexis Props., LLC*, 2018 WL 5919683, at *3 (Del. Super. Nov. 13, 2018) (quoting *Korotki v. Hiller & Arban, LLC*, 2016 WL 3637382, at *2 (Del. Super. Jul. 1, 2016)).
[28] *Preferred Inv. Servs., Inc.*, 2013 WL 3934992, at *23.
[29] Am. Compl. at ¶ 46.

and discovery disputes in a case involving nonpayment of a note constitute a collateral advantage would invite a claim for abuse of process in every contested collection action—an outcome that would impermissibly expand the scope of the tort.

Despite its name, abuse of process is not the remedy for disagreements about actions authorized by and conducted within the judicial process. In this case, the Court provided the proper remedy for the discovery delay when it allowed Columbus to amend its complaint on the eve of trial. Thus, Count III is dismissed.

B. Fraudulent Inducement

1. Failure to Allege Separate Damages

In the Amended Complaint, Columbus asks the Court to enter judgment on its breach of contract claims "in the amount of $8,672,416.93, with interest continuing to accrue from the Maturity Date at the default rate of 8% per annum hereafter."[30] Likewise, for its fraud claim, Columbus seeks judgment "in the amount of $8,672,416.93, with interest continuing to accrue from the Maturity Date at the default rate of 8% per annum hereafter."[31] This creates a potential issue: failure to plead separate damages for breach of contract and fraudulent inducement claims is

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[30] *Id.*, Relief Requested at ¶ A.
[31] *Id.*, Relief Requested at ¶ B.

often cited as an "an independent ground for dismissal."[32] It is generally not enough

for a plaintiff to simply "rehash the damages allegedly caused by breach of contract"

when pleading fraudulent inducement.[33] This doctrine, referred to as

"bootstrapping," typically prohibits seeking identical damages for both fraud and

breach of contract.[34]

There are, however, several exceptions to this prohibition.[35] Most importantly

here, the anti-bootstrapping rule does not apply where a plaintiff has made

particularized allegations that a seller knew contractual representations were false or

lied regarding those representations, or where damages for the fraud claim may

differ from the breach of contract claim.[36] In *Yangaroo Inc. v. Digital Media*

Services, Inc., the Superior Court confirmed that the use of the word "or" in this

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[32] *EZLinks Golf, LLC v. PCMS Datafit, Inc*., 2017 WL 1312209, at *6 (Del Super. Mar. 13, 2017).

[33] *Yangaroo Inc. v. Digital Media Servs., Inc.*, 2024 WL 2791100, at *9 (Del. Super. May 30, 2024)(internal quotations omitted).

[34] *See Firmenich Inc. v. Natural Flavors, Inc.*, 2020 WL 1816191, at *5–9 (Del. Super. Apr. 7, 2020) (analyzing the prohibition on duplicative damages in the framework of bootstrapping).

[35] *Ashland LLC v. Samuel J. Heyman 1981 Continuing Tr. for Heyman*, 2018 WL 3084975, at *14–15 (Del. Super. Jun. 21, 2018) (allowing duplicative damages where breach of contract and fraud were pled in the alternative); *River Valley Ingredients, LLC v. Am. Proteins, Inc.*, 2021 WL 598539, at *7–9 (allowing duplicative damages where the fraud claim sought "rescissory-like" damages"); *Ballard Concrete v. CDE Glob., ID*, 2025 WL 3083282, at *4 (Del. Super. Nov. 3, 2025) (allowing duplicative damages where the breach of contract claims were subject to a contractual cap, but the fraud claims were not).

[36] *Swipe Acquisition Corp. v. Krauss*, 2020 WL 5015863, at *11 (Del. Ch. Aug. 25, 2020).

context reflects that different damages are not essential if the plaintiff adequately pleads that the defendant knew a representation was false at the time of contracting.[37]

The *Yangaroo* court's reasoning resolves the issue of duplicative damages in this case. Counts I and II of the Amended Complaint accuse Enavate and Enavate Holdings, respectively, of defaulting on the Loan Documents based on actions occurring after the parties executed the APA and Note.[38] Count IV, in contrast, accuses Ajspur and Enavate of knowingly misrepresenting "that Enavate was solvent . . . and [would] continue to remain solvent at Closing and that it had the funds and financing necessary to make the Deferred Payment on April 30, 2022."[39] This is an allegation of a knowing false representation at the time of contracting. Therefore, provided that Columbus has otherwise adequately pled fraud—addressed *infra*—the rule against duplicative damages will not bar its claim for fraudulent inducement.

2.   *Lack of Particularity*

Enavate and Ajspur move for dismissal on the grounds that Columbus has not pled its fraud claim with sufficient particularity.[40] First, they argue that only Enavate Holdings—not Enavate—warranted its solvency in the Guaranty.[41] Second, they

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[37] *Yangaroo*, 2024 WL 2791100, at *9 n.116. The Court went on to hold that duplicative prayers for "an amount to be determined at trial, but not less than $3.16 million[,]" did not represent forbidden duplicative damages. *Id*. at *10 n.119.
[38] *See* Am. Compl. at ¶¶ 47–50.
[39] *Id.* at ¶ 57 (internal quotation marks omitted).
[40] Mot. 7–9.
[41] *Id.* at 8.

contend that Columbus failed to sufficiently plead that Enavate fraudulently misrepresented its solvency by failing to disclose its financial status.[42]

To state a claim for fraud, a plaintiff must plead: (1) a false representation or omission of material fact; (2) the defendant's knowledge or belief that the representation was false, or reckless indifference to the truth; (3) an intent to induce plaintiff to act or refrain from acting; (4) the plaintiff's justifiable reliance; and (5) resulting damage.[43] Under Superior Court Civil Rule 9(b), the circumstances constituting fraud, must be stated with particularity, though knowledge and intent may be averred generally.[44] Particularity requires pleading the "time, place, and contents of the false representation; the facts misrepresented; the identity of the person(s) making the misrepresentation; and what that person gained from making the misrepresentation."[45]

At this stage, Columbus must allege circumstances sufficient to apprise the Defendants of the basis of the claim.[46] Where fraud is based on contractual misrepresentations, a plaintiff need only allege facts supporting a reasonable inference that the representations were knowingly false.[47]

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[42] *Id.* at 8–9.
[43] *Strong v. Wells Fargo Bank*, 2012 WL 3549730 at *2 (Del. Super. Jul. 20, 2012) (quoting *DCV Hldgs., Inc. v. ConAgra, Inc.*, 889 A.2d 954, 958 (Del. 2005)).
[44] Super. Ct. Civ. R. 9(b).
[45] *Trenwick Am. Litig. Tr. v. Ernst & Young, L.L.P.*, 906 A.2d 168, 207–08 (Del. Ch. 2006), *aff'd sub nom. Trenwick Am. Litig. Tr. v. Billett*, 931 A.2d 438 (Del. 2007).
[46] *Knight Broadband LLC v. Knight*, 2022 WL 1788855, at *12 (Del. Super. Jun. 2, 2022).
[47] *Prairie Capital III, L.P. v. Double E. Hldg. Corp.*, 132 A.3d 35, 62 (Del. Ch. 2015).

Regarding the first argument, Enavate Holdings—not Enavate—is the "Guarantor" [48] in the Guaranty containing the solvency representation.[49] Columbus does not dispute this but argues that the issue is not appropriate for a 12(b)(6) motion[50]; however, Columbus provides no authority supporting this position. Based on the plain language of the Loan Documents, the Court agrees that Columbus has not pled that Enavate fraudulently represented its own solvency at Closing.

Further, while Ajspur was CEO of both entities, and signed the Loan Documents for both,[51] the documents cited in the Amended Complaint to show insolvency pertain to Enavate, not Enavate Holdings.[52] Thus, the contractual representation of Enavate Holdings' solvency cannot form the basis for a fraud claim against Enavate or Ajspur.

As to the second theory—that Enavate and Ajspur failed to disclose that Enavate's financial status had changed[53]—Columbus alleges that this was a material omission of a fact that Enavate had an affirmative obligation to disclose.[54]

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[48] Am. Compl., Ex. C at 1.
[49] *Id.*, Ex. C at § 3.3.
[50] Opp'n 14.
[51] Am. Compl., Exs. A–D.
[52] *See id.* at ¶¶ 15–176, 41–42.
[53] *Id.* at ¶ 59.
[54] *Id.* at ¶ 60. During oral argument, the Court inquired about the execution date of the Addendum to the Loan Documents. While Columbus' counsel initially stated that it had been executed at Closing, he later clarified that it was signed in March 2022. Although this document might have contained representations establishing a duty to report Enavate's financial condition or could have be linked to fraudulent misrepresentations, the Amended Complaint references the Addendum only once, specifically regarding reliance. Am. Compl. at ¶ 44. Given the lack of clarity surrounding the Addendum's role and timing, the Court finds that any fraud claims

In arms-length transactions, an omission generally cannot support a fraud claim.[55] However, once a party chooses to speak, it must do so truthfully, which may require disclosing additional information to prevent statements from being misleading.[56]

Drawing all inferences in favor of Columbus, the Amended Complaint alleges that Enavate represented it "had the funds and financing necessary to make the Deferred Payment on April 30, 2022."[57] While Columbus alleges that Enavate's liabilities exceeded its assets by December 31, 2021,[58] this date is nearly two months post-Closing and does not demonstrate a material misrepresentation at the time of Closing.

Columbus further alleges that discovery documents confirm that indications of insolvency were acknowledged by Ajspur and Enavate "well before Closing."[59] However, Columbus did not attach these documents or plead specific facts regarding their contents. Consequently, the Court cannot find sufficient particularity based on these references.

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predicated upon it fail to meet the heightened pleading requirements of Rule 9(b) as they lack the requisite particularity.

[55] *Ashland LLC v. Samuel J. Heyman 1981 Continuing Tr. for Heyman*, 2018 WL 3084975, at * 11 (Del. Super. Jun. 21, 2018).

[56] *Id.* at *12.

[57] *Id.* at ¶ 57.

[58] *Id.* at ¶ 16.

[59] *Id.* at ¶ 41.

Finally, Columbus argues that Enavate's financial records reveal that it was in a "precarious financial position" at Closing and became insolvent thereafter.[60] This alleged omission occurred at an indeterminate time after Closing, leaving the Court without "the time and place" bearings required to determine when or where this information should have been disclosed.

The closest Columbus comes to establishing a timeframe is the assertion that "[a]t no point during due diligence or prior to April 30, 2022," did Defendants disclose that Enavate's financial condition had worsened, or that it was unable to make the Deferred Payment.[61] Instead, Columbus alleges they made false representations and material omissions that Enavate had the ability to pay, intending to induce Columbus to continue negotiating the APA.[62]

Under Delaware law, a fraud claim must identify the "who, what, when, where, and how" of the misconduct. By pleading only a broad multi-month window without identifying specific instances of nondisclosure and specific details regarding the alleged misrepresentations, the Court finds that Count IV lacks the particularity required by Rule 9(b) and must be dismissed.[63]

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[60] *Id.* at ¶ 42.

[61] *Id.* at ¶ 44.

[62] *Id.* at ¶ 44.

[63] In its Opposition, Columbus requests additional discovery in the event the Court grants the motion. Opp'n 13–14. However, as noted throughout this analysis, Columbus asserts that it already possesses the documents necessary to provide the required specificity. *See, e.g.*, Am. Compl. at ¶¶ 41–42. Further, Columbus has already deposed Enavate's CEO and its former CFO twice and "collected tens of thousands of documents in discovery dating from both before and

C. Personal Jurisdiction Over Ajspur

Ajspur also moved for dismissal under Superior Court Civil Rule 12(b)(2). However, having determined that Counts III and IV must be dismissed, no claims remain against him. As such, the Court need not address whether it may properly exercise personal jurisdiction over Ajspur.

V. CONCLUSION

For the reasons set forth above, the Defendants' Motion to Dismiss is **GRANTED**.

IT IS SO ORDERED.
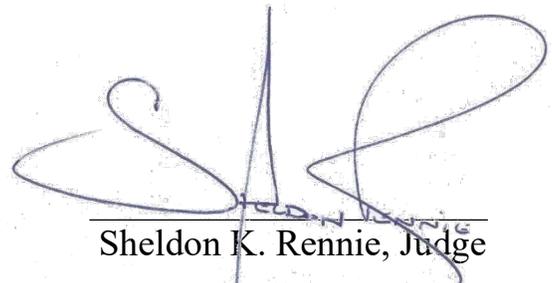
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Sheldon K. Rennie, Judge

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after the execution of the APA." Reply 8. The Court is satisfied that the failure to plead fraud with the requisite particularity is a deficiency in the pleading itself rather than a consequence of insufficient discovery.