

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

PPG HOLDCO, LLC,)
)
Plaintiff/Counterclaim-)
Defendant,)
) C.A. No.: 2025-0240-EMD
v.)
)
RAC PPG BUYER LLC,)
)
Defendant/Counterclaim-)
Plaintiff.)

Submitted: January 29, 2026
Decided: April 23, 2026, 2026
Redacted and Reissued on May 4, 2026¹

*Upon Plaintiff/Counterclaim-Defendant
PPG Holdco, LLC's Motion to Dismiss
GRANTED in part and DENIED in part*

*Upon Plaintiff/Counterclaim-Defendant
PPG Holdco, LLC's Motion for Judgment on the Pleadings
DENIED*

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DAVIS, P.J.

¹ The Court has agreed to certain redactions. The Court indicates such redactions with the inserted [REDACTED] in place of the original text.

I. INTRODUCTION

This is a breach of contract and fraud action arising out of a Stock Purchase Agreement (“SPA”) filed in the Court of Chancery and cross-designated to the Complex Commercial Litigation Division of the Superior Court pursuant to Section 111 of the Delaware General Corporation Law.² On March 5, 2025, Plaintiff PPG Holdco, LLC (“PPG” or “Seller”) commenced this action against Defendant RAC PPG Buyer LLC (“RAC” or “Buyer”) relating to the SPA.³ RAC responded with its First Amended Counterclaim on August 13, 2025, asserting two claims of fraud and breach of contract.⁴ In reply, PPG moved to dismiss (the “Motion to Dismiss”) the Counterclaim in its entirety on July 11, 2025.⁵ PPG also moved for judgment (the Motion for Judgment”) on the pleadings on all Counts of its Verified Complaint.⁶ The Court heard oral arguments on January 29, 2026.⁷ At the conclusion of the hearing, the Court took the matter under advisement.

For the reasons stated below, the Court **GRANTS** the Motion to Dismiss on Counterclaim Counts II and III for fraud and breach of contract arising from SPA Section 2.4, and **DENIES** the Motion to Dismiss on Count I for fraud relating to the SPA’s Representations and Warranties. Furthermore, the Court **DENIES** the Motion for Judgment.

² See Cross-Designation Letter and Order (D.I. No. 2).

³ See Verified Compl. (hereinafter “Compl.”) (D.I. No. 1).

⁴ See RAC PPG Buyer LLC’s First Amended Verified Counterclaim [hereinafter “Countercl.”] (D.I. No. 23).

⁵ See Plaintiff/Counterclaim-Defendant PPG Holdco, LLC’s Motion to Dismiss (D.I. No. 28).

⁶ See Plaintiff/Counterclaim-Defendant PPG Holdco, LLC’s Motion for Judgment on the Pleadings (D.I. No. 14).

⁷ D.I. No. 44.

II. BACKGROUND⁸

A. THE PARTIES

Plaintiff/Counterclaim-Defendant PPG is a Delaware limited liability company.⁹ The SPA defines and designates PPG as the Seller.¹⁰ Defendant/Counterclaim-Plaintiff RAC is a Delaware limited liability company.¹¹ The SPA defines and designates RAC as the Buyer.¹²

B. NATURE OF THE DISPUTE

The parties entered into the SPA on August 15, 2024, whereby RAC purchased all of PPG Blocker, Inc.'s issued and outstanding capital stock, along with its subsidiaries Proven Partners Group, LLC and Proven Partners Manufacturing, LLC (collectively, the "Company"), in exchange for the Purchase Price, and subject the SPA's terms and conditions.¹³ The transaction closed the same day.¹⁴ Before Closing, the Company was in the contract food manufacturing and packaging business, focused on dry, shelf-stable food and powdered products for private-label brands.¹⁵ RAC alleges that PPG faced significant labor and employee relations issues and intentionally concealed these issues before Closing.¹⁶

C. RELEVANT SPA PROVISIONS

1. *Representations and Warranties*

PPG and the Company made several representations and warranties in SPA Articles III and IV.¹⁷ These representations and warranties provided that:

⁸ The Court draws the factual background from the Countercl. and integral documents to the pleadings and views the facts in a light most favorable to RAC.

⁹ Countercl., ¶ 14 (citing Ex. A at 1 [hereinafter "SPA"]).

¹⁰ *Id.*

¹¹ *Id.*, ¶ 13 (citing SPA at 1).

¹² *Id.*

¹³ *Id.*, ¶ 1.

¹⁴ *Id.*; PPG Holdco, LLC's Opening Brief in Support of its Motion for Judgment on the Pleadings at 3 (citing Compl. ¶ 13) [hereinafter "PPG MJP Op. Br."] (D.I. No. 16).

¹⁵ *Id.*, ¶ 2.

¹⁶ *Id.*, ¶ 4.

¹⁷ *Id.*, ¶ 3.

- the Company had no outstanding commitments with respect to compensation, including wages, of business employees for services performed on or prior to August 15, 2024;
- the Company had been in material compliance with all applicable wage and hour laws since August 15, 2021;
- the Company had no material liability for unpaid wages or salaries;
- there had been no written allegations reported to any Government Authority relating to unfair labor practices or written allegations of sexual harassment or other harassment during the past three years;
- there had been no actual unfair labor practice charge against or affecting the Company since January 1, 2021;
- there had been no labor organizing activities with respect to any employees of the Company since August 15, 2021;
- there had not been any existing charge or complaint filed by an Employee with the National Labor Relations Board since August 15, 2021;
- the Company was in material compliance with all immigration laws and had complete and correct Form I-9s for all applicable employees;
- the Company's Financial Statements fairly present in all material respects the financial condition of the Company; and
- the Company did not have any known or unknown undisclosed liabilities.¹⁸

The SPA also provides that neither the Company nor any other person, including PPG, made any representations and warranties besides those set forth in Articles III and IV.¹⁹ The SPA further

¹⁸ *Id.*, ¶ 3 (citing SPA §§ 4.4(a)–(c), 4.10(a)(1), 4.13(a)).

¹⁹ SPA §§ 3.7, 4.22.

provides that RAC did not rely on any representations or warranties outside of Articles III and IV.²⁰

2. Purchase Price Adjustment Process

SPA Section 2.4 governs the purchase price adjustment process.²¹ SPA Section 2.4 is also the “sole and exclusive remedy of the Parties with respect to the determination of the Purchase Price.”²² The process is straightforward. PPG had to deliver the Pre-Closing Statement to the RAC.²³ The Pre-Closing Statement had to set forth good faith estimates of Estimated Cash, Estimated Working Capital, Estimated Closing Indebtedness, Estimated Closing Seller Transaction Expenses, and the Initial Purchase Price.²⁴ Then, RAC had to prepare and deliver a Closing Date Statement that included the calculations for Cash and Working Capital, Closing Indebtedness, Closing Seller Transaction Expenses, and Final Purchase Price.²⁵ Finally, PPG could raise objections to the Closing Date Statement within 45 days, or else the Closing Date Statement would become “final, conclusive, and binding on the Parties.”²⁶ If disputed by PPG, the parties had to negotiate in good faith and, if that failed, engage a public accounting firm to resolve the dispute.²⁷

²⁰ SPA §§ 5.5.

²¹ Countercl., ¶ 42.

²² SPA § 2.4(h).

²³ *Id.* § 2.4(a).

²⁴ *Id.*

²⁵ *Id.* § 2.4(c).

²⁶ *Id.* § 2.4(e).

²⁷ *Id.*

3. Non-Survival and Release provisions and “Actual Fraud” definition

The SPA contains non-survival and release provisions.²⁸ SPA Section 7.1 provides that any covenants or agreements involving pre-closing performance do not survive Closing.²⁹ SPA Section 7.1 states:

none of the representations, warranties, covenants, or agreements contained in this Agreement . . . will survive the Closing, and none of Buyer, the Company, or Seller . . . will have any liability whatsoever with respect to any such representations, warranties, covenants, or agreements, except that any covenant or agreement contained in this Agreement that by its terms is required to be performed in whole or in part at or after the Closing will survive the Closing to the extent so required to be performed at or after the Closing. Notwithstanding the foregoing or anything else to the contrary in this Agreement, nothing in this Agreement shall derogate from the Parties’ recourse for Actual Fraud.³⁰

Moreover, Section 7.2 says:

Effective as of the Closing Date, each of Buyer, the Company and the Subsidiaries (each a “Buyer Releasor”) . . . hereby irrevocably releases, acquits and forever discharges, to the fullest extent permitted by Applicable Law, Seller, and each of its past, present or future Non-Recourse Parties (each a “Seller Releasee”) of, from and against any and all actions, causes of action, claims, demands, damages, judgments, debts, dues and suits arising out of or relating to (a) the organization, management or operation of the business of the Company and the Subsidiaries on or prior to the Closing Date, (b) this Agreement and the transactions contemplated thereby, (c) any inaccuracy or breach of any representation or warranty . . . contained in this Agreement . . .; or (d) any information, documents or materials furnished by or on behalf of the Seller, the Company and the Subsidiaries (collectively “Matters”) which such Buyer Releasor or its heirs, legal representatives, successors or assigns ever had, now has or may have on or by reason of any matter, cause or thing whatsoever from the beginning of time until the time immediately prior to the Closing Date Notwithstanding the foregoing, each Buyer Releasor . . . does not release any and all actions, causes of action, claims, demands, damages, judgments, debts, dues and suits (i) arising out of the rights, interests and obligations under the terms of this Agreement and the Related Agreements, (ii) relating to the employment by or service to the Company or any of its Subsidiaries, or (iii) for Actual Fraud.³¹

Actual Fraud means:

²⁸ *Id.* §§ 7.1–7.2.

²⁹ *Id.* § 7.1.

³⁰ *Id.* § 7.1.

³¹ *Id.* § 7.2.

with respect to any Person, actual and intentional fraud with respect to the making of an express representation or warranty contained in Articles III, IV or V of this Agreement . . . , where, at the time such representation or warranty was made, (a) such representation or warranty was inaccurate, (b) such Person had actual knowledge (and not imputed or constructive knowledge), without any duty of inquiry or investigation, of the inaccuracy of such representation or warranty and (c) was made with the intent of inducing the Person to whom such representation or warranty was made to enter into or consummate the transactions contemplated by this Agreement and upon which such Person reasonably relied.³²

4. Integration Clause

The SPA also contains an integration clause. SPA Section 8.8 states:

The Exhibits, Schedules and Disclosure Schedule identified in this Agreement are incorporated herein by reference and made a part hereof. This Agreement, the Related Agreements and the Confidentiality Agreement set forth the entire agreement and understanding of the Parties hereto and supersede any and all prior agreements, arrangements and understandings among the Parties.³³

5. Fee-Shifting Provision

Lastly, the SPA contains a fee-shifting provision:

In the event of any litigation or other legal proceeding involving the interpretation of this Agreement or enforcement of the rights or obligations of the Parties (including in a dispute between the Parties), the prevailing party or parties shall be entitled to recover reasonable attorneys' fees and expenses (based on the lodestar method) from the non-prevailing party in addition to any other available remedy.³⁴

D. SELLER'S KNOWLEDGE AND CONCEALMENT

The Counterclaims make numerous allegations of Seller's knowledge and concealment of facts.

³² *Id.* § 1.1.

³³ *Id.* § 8.8.

³⁴ *Id.* § 8.19.

1. I-9 Records

The Company failed to maintain accurate Form I-9 records for its employees prior to Closing.³⁵ [REDACTED].³⁶ During due diligence, PPG Director Daniel Bender—with full knowledge of this information—told RAC that the Company retains completed Form I-9s on file for all applicable employees and is this documentation is in complete compliance with relevant rules.³⁷ Several PPG directors and officers repeatedly discussed I-9 deficiencies among themselves before Closing.³⁸

2. Union Activity and Unfair Labor

The Company faced union organization activity before Closing.³⁹ This activity led to an unfair labor practice charge filed pre-Closing, alleging that the Company tried to suppress union activity.⁴⁰ PPG did not disclose the union activity or charge to RAC before Closing.⁴¹ As alleged, high-level Company personnel were cognizant of this before Closing.⁴²

3. Untimely Wage Payments

In 2023, the Company began delaying formal management sign-off on certain employee promotions [REDACTED].⁴³ Mr. Bender knew about this.⁴⁴

4. Improper Timekeeping Practices

The Company requires production floor employees to put on protective equipment and sanitize before work on the floor and to remove the equipment upon completion of floor work.⁴⁵

³⁵ Countercl., ¶ 112.

³⁶ *Id.*, ¶ 113.

³⁷ *Id.*, ¶ 115.

³⁸ *Id.*, ¶ 117.

³⁹ *Id.*, ¶¶ 52–54.

⁴⁰ *Id.*, ¶ 56.

⁴¹ *Id.*, ¶¶ 63–68.

⁴² *Id.*, ¶¶ 55–68.

⁴³ *Id.*, ¶¶ 69–72, 79.

⁴⁴ *Id.*, ¶¶ 70–74.

⁴⁵ *Id.*, ¶ 81.

The Company had to pay employees for this time.⁴⁶ In April 2021, at PPG’s Board of Directors meeting, Company leadership presented the decision to [REDACTED] and thereby decrease expenses.⁴⁷ Mr. Bender attended this meeting.⁴⁸ [REDACTED] until Closing and did not disclose this to RAC.⁴⁹

Moreover, before Closing, [REDACTED].⁵⁰ There are emails showing that Mr. Bender knew this conduct was problematic and identified that it needed correction.⁵¹ Additionally, Mr. Bender attended a meeting where this issue was presented.⁵²

5. Sexual Harassment Complaint

Finally, starting in 2022, the Company faced numerous sexual harassment complaints leveled by Company employees.⁵³ [REDACTED].⁵⁴ Mr. Bender learned of a specific instance and noted that the situation was “suspicious.”⁵⁵

E. RAC REFUSES TO PAY AFTER CLOSING

On November 13, 2024, RAC delivered its Closing Date Statement to PPG.⁵⁶ RAC stated that it “ha[d] no intention of making any payment to Seller” due to unspecified “concerns in respect of breaches of certain representations and warranties contained in the [SPA].”⁵⁷ RAC also refused to pay and deposit any of the \$3 million held in escrow after Closing and stated that

⁴⁶ *Id.*, ¶¶ 82–86.

⁴⁷ *Id.*, ¶¶ 83–84.

⁴⁸ *Id.*, ¶ 84.

⁴⁹ *Id.*, ¶¶ 87–89.

⁵⁰ *Id.*, ¶ 95.

⁵¹ *Id.*, ¶¶ 96–99.

⁵² *Id.*, ¶ 99.

⁵³ *Id.*, ¶¶ 105–08.

⁵⁴ *Id.*, ¶ 107.

⁵⁵ *Id.*

⁵⁶ Compl., Ex. 2 [hereinafter “Closing Date Statement”].

⁵⁷ *Id.*

it “ha[d] no intention of . . . authorizing the release of any funds from the Adjustment Escrow Account.”⁵⁸

III. PARTIES’ CONTENTIONS

A. THE MOTION TO DISMISS

1. PPG Holdco, LLC’s Opening Brief in Support of Its Motion to Dismiss RAC PPG Buyer LLC’s First Amended Verified Counterclaim

PPG argues that RAC fails to state claims for breach of contract or fraud in connection with the Purchase Price Adjustment process. PPG supports these arguments by contending: (i) the Purchase Price Adjustment Process is final and binding; (ii) SPA Section 2.4 does not have a fraud carve-out; and (iii) the Non-Survival and Release Provisions in SPA Sections 7.1 and 7.2 bar RAC’s claims.⁵⁹ PPG also claims that RAC fails to state a claim for fraud as PPG cannot impute actual knowledge of fraud to PPG.⁶⁰

2. Defendant/Counterclaim-Plaintiff RAC PPG Buyer LLC’s Answering Brief in Opposition to Plaintiff/Counterclaim-Defendant PPG Holdco, LLC’s Motion to Dismiss the First Amended Counterclaim

RAC responds that it has adequately pled its fraud counterclaim and has adequately pled PPG’s actual knowledge of the fraud.⁶¹ RAC maintains that its counterclaim adequately pleads PPG’s knowledge of the Company’s misrepresentations, and Delaware law does not allow a seller to avoid fraud when it knew that the target company’s representations and warranties were

⁵⁸ *Id.*

⁵⁹ PPG Holdco, LLC’s Opening Brief in Support of its Motion to Dismiss RAC PPG Buyer LLC’s First Amended Verified Counterclaim at 13–21 [hereinafter “PPG MTD Op. Br.”] (D.I. No. 32).

⁶⁰ *Id.* at 21–25.

⁶¹ Defendant/Counterclaim-Plaintiff RAC PPG LLC’s Answering Brief in Opposition to Plaintiff/Counterclaim-Defendant PPG Holdco, LLC’s Motion to Dismiss the First Amended Counterclaim at 15–34 [hereinafter “RAC MTD Opp’n”] (D.I. No. 34).

false.⁶² Moreover, RAC avers that the SPA allows it to assert a fraud claim regarding the Pre-Closing Statement, and nothing in the SPA prevents it from doing so.⁶³

B. THE MOTION FOR JUDGMENT

1. PPG Holdco, LLC's Opening Brief in Support of its Motion for Judgment on the Pleadings

PPG moves for judgment on the pleadings on its breach-of-contract claims. PPG maintains that the SPA requires RAC to pay the Purchase Price and instruct the escrow agent to release the escrow funds, and RAC has not done so.⁶⁴ PPG also argues that it is entitled to judgment on its claim for attorneys' fees and expenses, as the prevailing party under SPA Section 8.19.⁶⁵

2. Defendant/Counterclaim-Plaintiff RAC PPG Buyer LLC's Answering Brief in Opposition to Plaintiff/Counterclaim-Defendant PPG Holdco, LLC's Motion for Judgment on the Pleadings

RAC replies that its request for rescission in its fraud claims prevents judgment on the pleadings in favor of Seller and its counterclaims create genuine disputes of material fact.⁶⁶ RAC reiterates that the SPA does not bar its counterclaims for fraud.⁶⁷ RAC also submits that it is too early to grant judgment on PPG's attorneys' fees claim since there is no prevailing party yet.⁶⁸

⁶² *Id.* at 15–34.

⁶³ *Id.* at 34–54.

⁶⁴ PPG MJP Op. Br. at 11–20.

⁶⁵ *Id.* at 20–22.

⁶⁶ Defendant/Counterclaim-Plaintiff RAC PPG Buyer LLC's Answering Brief in Opposition to Plaintiff/Counterclaim-Defendant PPG Holdco, LLC's Motion for Judgment on the Pleadings at 12–19 [hereinafter "RAC MJP Opp'n"] (D.I. No. 24).

⁶⁷ *Id.* at 19–26.

⁶⁸ *Id.* at 26–27.

IV. STANDARDS OF REVIEW

A. MOTION TO DISMISS

Upon a motion to dismiss, the Court (i) accepts all well-pleaded factual allegations as true; (ii) accepts even vague allegations as well-pleaded 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 circumstances.⁶⁹ At the same time, the court must “ignore conclusory allegations that lack specific supporting factual allegations.”⁷⁰

B. MOTION FOR JUDGMENT ON THE PLEADINGS

“A motion for judgment on the pleadings may be granted only when no material issue of fact exists and the movant is entitled to judgment as a matter of law.”⁷¹ “In determining a motion under Court of Chancery Rule 12(c) for judgment on the pleadings, a trial court is required to view the facts pleaded and the inferences to be drawn from such facts in a light most favorable to the non-moving party.”⁷² And “[o]n a Rule 12(c) motion, the Court may consider documents integral to the pleadings, including documents incorporated by reference and exhibits attached to the pleadings, and facts subject to judicial notice.”⁷³

V. DISCUSSION

The Court begins with the Motion to Dismiss. The reason is that survival of RAC’s counterclaims is relevant to the analysis of the Motion for Judgment. On the Motion to Dismiss, the Court concludes that the SPA’s Non-Survival Clause’s plain language bars the breach-of-

⁶⁹ See *Central Mortg. Co. v. Morgan Stanley Mortg. Cap. Holdings LLC*, 227 A.3d 531, 536 (Del. 2011).

⁷⁰ *Ramunno v. Crawley*, 705 A.2d 1029, 1034 (Del. 1998).

⁷¹ *CURO Intermediate Holdings Corp. v. Sparrow Purchaser, LLC*, 2024 WL 2847264, at *4 (Del. Ch. June 5, 2024) (quoting *Desert Equities, Inc. v. Morgan Stanley Leveraged Equity Fund, II, L.P.*, 624 A.2d 1199, 1205 (Del. 1993)).

⁷² *Id.* (quoting *Desert Equities, Inc.*, 624 A.2d at 1205 (footnote omitted)).

⁷³ *Id.* (quoting *BBD Beach, LLC v. Bayberry Dunes Ass’n*, 2022 WL 763466, at *2 (Del. Ch. Mar. 10, 2022)).

contract counterclaim (Counterclaim Count II). On the fraud claim relating to the Pre-Closing Statement (Counterclaim Count III), the Court holds that the SPA's specific anti-reliance provisions bar any reliance on extra-contractual representations, and the SPA's Actual Fraud definition does not save this fraud counterclaim. Even so, the contractual fraud counterclaim relating to the SPA's representations and warranties (Counterclaim Count I) is not barred based on the seminal decision *Abry Partners V, L.P. v. F & W Acquisition LLC*, 891 A.2d 1032 (Del. Ch. 2006) and the SPA's Actual Fraud definition. Likewise, that fraud counterclaim is adequately pled to allege that PPG had actual notice of the Company's misrepresentations. Accordingly, the Motion to Dismiss is **GRANTED in part, and DENIED in part**.

On that same note, the Court **DENIES** the Motion for Judgment on the Pleadings because the surviving fraud counterclaim seeks contract rescission. This creates a dispute of material fact as to the SPA's validity and enforceability. The Court also finds that attorneys' fees are not warranted at this point as the litigation is still ongoing. As such, the Court cannot determine at this stage of the proceedings who is the prevailing party.

A. RAC FAILS TO STATE A CLAIM FOR BREACH OF CONTRACT AND FRAUD (COUNTERCLAIM COUNTS II–III).

1. The Breach-of-Contract Counterclaim (Count II) fails.

a. SPA Section 2.4's expert resolution procedure does not bar the breach-of-contract or fraud counterclaim

To prevail on a breach of contract claim, the plaintiff must show: (1) a contractual obligation; (2) a breach of that obligation; and (3) resulting damages.⁷⁴ A court generally prioritizes the parties' intentions in the four corners of the contract.⁷⁵ "In upholding the intentions of the parties, a court must construe the agreement as a whole, giving effect to all

⁷⁴ See *VLIW Tech., LLC v. Hewlett-Packard, Co.*, 840 A.2d 606, 612 (Del. 2003).

⁷⁵ *Paul v. Deloitte & Touche, LLP*, 974 A.2d 140, 145 (Del. 2009).

provisions therein.”⁷⁶ “The meaning inferred from a particular provision cannot control the meaning of the entire agreement if such an inference conflicts with the agreement’s overall scheme or plan.”⁷⁷ “Specific language in a contract controls over general language, and where specific and general provisions conflict, the specific provision ordinarily qualifies the meaning of the general one.”⁷⁸ “When construing a contract, and unless a contrary intent appears, [courts] will give words their ordinary meaning.”⁷⁹

Where the contract’s language is plain and unambiguous, it must be enforced as written.⁸⁰ “If a writing is plain and clear on its face, *i.e.* its language conveys an unmistakable meaning, the writing itself is the sole source for gaining an understanding of intent.”⁸¹

To interpret a contract, Delaware courts read the agreement as a whole and enforce the plain meaning of clear and unambiguous language.⁸² Unambiguous language is reasonably susceptible to one interpretation.⁸³ Contract language does not have to be perfectly clear for the court to deem an interpretation as the only reasonable interpretation.⁸⁴ Ambiguity exists when a contract provision is fairly susceptible to differing interpretations.⁸⁵

PPG relies on two provisions to argue that the SPA limits any breach-of-contract claim arising from the Initial Purchase Price and Closing Statements. First, PPG highlights that SPA Section 2.4 is the “sole and exclusive remedy of the Parties with respect to the determination of

⁷⁶ *E.I. du Pont de Nemours and Co., Inc. v. Shell Oil Co.*, 498 A.2d 1108, 1113 (Del. 1985).

⁷⁷ *Riverbend Community, LLC v. Green Stone Engr., LLC*, 55 A.3d 330, 334 (Del. 2012) (citation omitted).

⁷⁸ *Brinckerhoff v. Enbridge Energy Co., Inc.*, 159 A.3d 242, 256 (Del. 2017), *as revised* (Mar. 28, 2017) (quoting *DCV Holdings, Inc. v. ConAgra, Inc.*, 889 A.2d 954, 961 (Del. 2005)).

⁷⁹ *Citadel Hldg. Corp. v. Roven*, 603 A.2d 818, 824 (Del. 1992).

⁸⁰ *Lorillard Tobacco Co. v. Am. Legacy Found.*, 903 A.2d 728, 740 (Del. 2006).

⁸¹ *City Investing Co. Liquidating Tr. v. Cont’l Cas. Co.*, 624 A.2d 1191, 1198 (Del. 1993).

⁸² *Origis USA LLC v. Great Am. Ins. Co.*, 2025 WL 2055767, at *11 (Del. July 23, 2025).

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.* at *12.

Purchase Price.”⁸⁶ Second, PPG contends that the Disputed Item resolution process with Plante Morgan or the Referral Firm shows that RAC had to go through a process to challenge the Pre-Closing Statement.⁸⁷

RAC’s breach-of-contract counterclaim arises from SPA Section 2.4(a), SPA Section 2.4(a) states that “[t]he Pre-Closing Statement shall be prepared in good faith on a basis consistent with the Accounting Principles and shall include reasonable supporting materials used in the preparation of the Pre-Closing Statement.”⁸⁸ As such, RAC’s counterclaim alleges that PPG did not prepare the Pre-Closing Statement in good faith.⁸⁹ PPG also contends that the SPA specifies that the Valuation Firm should act as an “expert,” not an arbitrator; therefore, the Valuation Firm lacks the power to make a good-faith determination.⁹⁰

The Purchase Price Adjustment is an accounting true-up mechanism. Purchase agreements governing the sale of private companies routinely include accountant true-up mechanisms.⁹¹

As a natural occurrence of business operations, the assets and liabilities of a target company may fluctuate between the time the parties initially agree on a purchase price and the actual closing of the transaction, which could be months after the initial agreement. To account for this fluctuation, a true-up provision . . . serves to adjust the purchase price post-Closing.⁹²

While true-up mechanisms play an important role in purchase agreements, the overall agreement limits and informs the mechanism’s scope.⁹³ These mechanisms generally

⁸⁶ SPA § 2.4(h).

⁸⁷ *Id.* § 2.4(h)–(e).

⁸⁸ *Id.* § 2.4(a).

⁸⁹ Countercl., ¶ 169.

⁹⁰ SPA §§ 2.4(e)–(f).

⁹¹ *ArchKey Intermediate Holdings Inc. v. Mona*, 302 A.3d 975, 991 (Del. Ch. 2023).

⁹² *FeraDyne Outdoors, LLC v. Reaser*, 2025 WL 1503810, at *2 (Del. Super. Apr. 10, 2025).

⁹³ *Chicago Bridge & Iron Co. N.V. v. Westinghouse Elec. Co. LLC*, 166 A.3d 912, 928 (Del. 2017), *as revised* (June 28, 2017).

account for changes in a target’s business between the signing and closing.⁹⁴ Thus, the purchase price adjustments account for normal business fluctuations from signing to closing to ensure that the buyer and seller know the purchase price accurately reflects the target’s financial condition at closing.⁹⁵ “Under Court of Chancery precedent, where an ADR provision contemplates a process other than arbitration, such as when the parties have entrusted a discrete decision to an expert, thus earning the label ‘expert determination,’ the court applies contract interpretation principles to determine the ADR provision’s scope.”⁹⁶

The SPA separately requires that: (i) RAC prepare the Closing Date Statement in good faith; and (ii) PPG prepare the Pre-Closing Statement in good faith.⁹⁷ Then, the SPA says that, relating to the resolution of any Disputed Item, “[a]ny amount, determination or calculation (or any component thereof) contained in the Closing Date Statement . . . shall be final, conclusive and binding on the Parties.”⁹⁸ Disputed Item only pertains to the Closing Date Statement.⁹⁹ And “[i]n resolving any Disputed Item, the Referral Firm . . . shall act as an expert and not as an arbitrator”¹⁰⁰ Courts have interpreted this language to narrow the scope of the expert’s domain.¹⁰¹ SPA Section 2.4 is the “sole and exclusive remedy of the Parties with respect to the determination of Purchase Price.”¹⁰² Finally, the Purchase Price is “[t]he Initial Purchase Price,

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Terrell v. Kiromic Biopharma, Inc.*, 297 A.3d 610, 617 (Del. 2023) (quoting *Terrell v. Kiromic Biopharma, Inc.*, 2022 WL 175858, at *6 (Del. Ch. Jan. 20, 2022)).

⁹⁷ *See* SPA § 2.4(c).

⁹⁸ *Id.* § 2.4(e).

⁹⁹ *See id.* § 2.4(e).

¹⁰⁰ *Id.* § 2.4(f).

¹⁰¹ *Chicago Bridge & Iron Co. N.V.*, 166 A.3d at 931, *as revised* (June 28, 2017).

¹⁰² SPA § 2.4(h).

as adjusted pursuant to Section 2.4 hereof” and the Initial Purchase Price “shall be set forth on the Pre-Closing Statement and be subject to adjustment as provided in Section 2.4.”¹⁰³

Here, the expert is empowered to make some binding determinations, especially when making accounting determinations brought under the Closing Date Statement. However, the Court finds that there is a reasonable dispute as to whether the expert’s domain includes issues relating to concealing items in the Pre-Closing Statement and leaving known liabilities out of that statement to corrupt the accounting issues arising between the Pre-Closing Statement and Closing Date Statement. Indeed, the SPA bestows the expert with the ability to decide on issues arising from Disputed Items, and Disputed Items refers to objections to the Closing Date Statement, not the Pre-Closing Statement.¹⁰⁴

Again, RAC’s breach-of-contract counterclaim alleges that PPG omitted known problems that corrupted and impeded RAC’s “ability to prepare a Closing Date Statement that accurately reflected expenses and the Company’s Working Capital.”¹⁰⁵ It is reasonably conceivable that the SPA’s true-up process limited the expert’s determination to purely accounting issues that concern valuation issues that arose between the Pre-Closing Statement and Closing. If so, RAC’s breach counterclaim is a legal breach of SPA Section 2.4(a) for failing to act in good faith in a manner that corrupted the entire valuation that went beyond pure accounting determinations.

At this stage of the case, the Court finds that both party’s interpretations of the expert’s authority are reasonable. The Court cannot select which is more reasonable when the parties have both advanced reasonable interpretations at the motion to dismiss stage.¹⁰⁶

¹⁰³ *Id.* § 2.3(b).

¹⁰⁴ *See id.* § 2.4(e).

¹⁰⁵ Countercl., ¶¶ 171–72.

¹⁰⁶ *LGM Holdings, LLC v. Schurder*, 340 A.3d 1134, 1144 (Del. 2025).

b. But the SPA Non-Survival Clause bars the breach-of-contract counterclaim

The next hurdle for the breach-of-contract counterclaim is the Non-Survival Clause:

Notwithstanding anything to the contrary in this Agreement, none of the representations, warranties, *covenants or agreements* contained in this Agreement (including in the Disclosure Schedule, schedules and exhibits attached hereto and the certificates delivered pursuant hereto) will survive the Closing, and none of Buyer, the Company, Seller nor any of their respective Affiliates, nor any of their respective successors and permitted assigns, heirs, officers, employees, directors, managers, members, partners, stockholders or Representatives, will have any liability whatsoever with respect to any such representations, warranties, covenants or agreements, except that any covenant or agreement contained in this Agreement that by its terms is required to be performed in whole or in part at or after the Closing will survive the Closing to the extent so required to be performed at or after the Closing. Notwithstanding the foregoing or anything else to the contrary in this Agreement, nothing in this Agreement shall derogate from the Parties' recourse for Actual Fraud.¹⁰⁷

So, the SPA provides for survival of any covenant or agreement that is required to be performed in whole or in part at or after the Closing. RAC posits that the Pre-Closing Statement was delivered at Closing, and that the price adjustment regime is a post-Closing process, so it must be performed in whole or in part at or after the Closing.¹⁰⁸

By its terms, the Pre-Closing Statement had to be delivered at least three days prior to the Closing Date.¹⁰⁹ PPG had to deliver the Pre-Closing Statement before Closing and, therefore, prepare it in good faith before Closing, not at or after Closing. RAC attempts to avoid this issue by saying that it attested at Closing that it had delivered the Pre-Closing Statement in good faith.¹¹⁰ Except SPA Section 2.4(a) is not an attestation, it is a covenant. SPA Section 2.4(a) directs that RAC "shall" deliver and prepare the Pre-Closing Statement in good faith.¹¹¹ It is a mandatory obligation that was potentially breached by non-performance before Closing.

¹⁰⁷ SPA § 7.1 (emphasis added).

¹⁰⁸ RAC MTD Opp'n at 49.

¹⁰⁹ SPA § 2.4(a).

¹¹⁰ RAC MTD Opp'n at 49.

¹¹¹ See SPA § 2.4(a).

Moreover, although the price adjustment procedure is largely a post-Closing process, it is governed by the expert. For the actual breach to survive Section 2.4’s expert resolution process, the breach had to be from activity before RAC turned over its Pre-Closing Statement. Accordingly, the Pre-Closing Statement requirement did not survive Closing. The Non-Survival Clause bars the breach-of-contract counterclaim, and Counterclaim Count II is dismissed.

2. *The Pre-Closing Statement Fraud Counterclaim (Count III) Fails.*

a. *Specific anti-reliance language in a contract prohibits fraud claims based on extra-contractual representations*

Our Supreme Court recently reaffirmed *Abry*’s wisdom.¹¹² The Court noted that *Abry* “remains the lodestar for contract-based limitations on extra-contractual fraud liability.”¹¹³ First, the Supremes confirmed that for extra-contractual fraud, “Delaware will enforce only ‘clear anti-reliance clauses’ where the party has unambiguously ‘contractually promised that it did not rely upon statements outside the contract’s four corners in deciding to sign the contract.’”¹¹⁴ Turning to contractual fraud, the Court reaffirmed that a party “cannot, as a matter of public policy, ‘limit [its] exposure for its conscious participation in the communication of lies,’ but the counterparty may ‘knowingly accept the risk that the [party committing the fraud] will act in a reckless, grossly negligent, or negligent manner.’”¹¹⁵

Delaware enforces clauses that identify the specific information on which a party has relied, and which foreclose reliance on other information.¹¹⁶ “[A] party cannot promise, in a clear integration clause of a negotiated agreement, that it will not rely on promises and

¹¹² *Johnson & Johnson v. Fortis Advisors LLC*, 352 A.3d 229, 272 (Del. 2026).

¹¹³ *Id.*

¹¹⁴ *Id.* at 273 (quoting *Abry*, 891 A.2d at 1059).

¹¹⁵ *Id.* (quoting *Abry*, 891 A.2d at 1064).

¹¹⁶ *Prairie Cap. III, L.P. v. Double E Holding Corp.*, 132 A.3d 35, 50 (Del. Ch. 2015) (citing *RAA Mgmt., LLC v. Savage Sports Hldgs., Inc.*, 45 A.3d 107, 118–19 (Del. 2012)).

representations outside of the agreement and then shirk its own bargain in favor of a ‘but we did rely on those other representations’ fraudulent inducement claim.”¹¹⁷

Extra-contractual representations are those absent from the contract at issue,¹¹⁸ and include representations that are not memorialized in a fully integrated agreement, even if those representations induced acceptance.¹¹⁹ The Pre-Closing Statement is not in the SPA and is not memorialized in the SPA. The SPA is a fully integrated contract.¹²⁰ So the Pre-Closing Statement is an extra-contractual representation.

Here, the SPA contains express, specific anti-reliance provisions regarding extra-contractual representations. Both PPG and the Company contractually agreed, at the end of their representations and warranties, that they expressly disclaimed any express or implied representations and warranties beyond SPA Articles III and IV.¹²¹ On that same note, RAC acknowledged PPG’s and the Company’s disclaimer of extra-contractual representations and warranties and agreed not to rely on them, waiving any related rights and fraud claims regarding the Pre-Closing Statement.¹²² As such, RAC expressly disclaimed any reliance on any extra-contractual representations, and with the Pre-Closing Statement being extra-contractual, RAC has waived any fraud claim relating to it.

Still, RAC did not waive any claims relating to Actual Fraud. Actual Fraud, under the SPA, means:

means, with respect to any Person, actual and intentional fraud with respect to the making of an express representation or warranty contained in Articles III, IV or V of this Agreement or in any Related Agreement, where, at the time such representation or warranty was made, (a) such representation or warranty was

¹¹⁷ *Id.* (quoting *Abry*, 891 A.2d at 1057).

¹¹⁸ *Prairie Capital III, L.P.*, 132 A.3d at 49.

¹¹⁹ *See Aveanna Healthcare, LLC v. Epic/Freedom, LLC*, 2021 WL 3235739, at *13 (Del. Super. July 29, 2021) (collecting cases).

¹²⁰ SPA § 8.8.

¹²¹ *Id.* §§ 3.7, 4.22.

¹²² *Id.* § 5.5.

inaccurate, (b) such Person had actual knowledge (and not imputed or constructive knowledge), without any duty of inquiry or investigation, of the inaccuracy of such representation or warranty and (c) was made with the intent of inducing the Person to whom such representation or warranty was made to enter into or consummate the transactions contemplated by this Agreement and upon which such Person reasonably relied. It is agreed that the representations and warranties in Article III, Article IV or in any Related Agreement are intended to (and are made in order to) induce Buyer to execute this Agreement, and that Buyer's reliance on such representations and warranties is (and shall be deemed to be) reasonable reliance. It is agreed that the representations and warranties in Article V or in any Related Agreement are intended to (and are made in order to) induce Seller to execute this Agreement, and that Seller's reliance on such representations and warranties is (and shall be deemed to be) reasonable reliance. For the avoidance of doubt, "Actual Fraud" does not include equitable fraud, promissory fraud, unfair dealings fraud or any torts (including fraud) based on negligence or recklessness.¹²³

SPA Section 2.4 is in Article II, not any of the articles listed in the Actual Fraud definition.¹²⁴

RAC submits that the Pre-Closing Statement is a Related Agreement and is covered by this definition.¹²⁵ Related Agreement:

means the Adjustment Escrow Agreement, the Rollover Agreement, the Restrictive Covenant Agreement and any other Contract, certificate, instrument or other document which is or is to be entered into by Buyer, the Company and/or Seller at the Closing or otherwise pursuant to this Agreement or in connection with the transactions contemplated hereby. The Related Agreements executed by a specified Person shall be referred to as "such Person's Related Agreements," "its Related Agreements" or another similar expression.

Yet the Actual Fraud definition refers to representations and warranties: (i) in the SPA; or (ii) in any Related Agreement. The Actual Fraud definition does not include any Related Agreement itself. Rather, the definition includes representations and warranties *within* Related Agreements. Under the principle of *noscitur a sociis*, "a word in a contract is to be read in light of the words around it."¹²⁶ And here, "an express representation or warranty contained in" limits

¹²³ SPA § 1.1.

¹²⁴ See generally SPA.

¹²⁵ RAC MTD Opp'n at 40.

¹²⁶ *Smartmatic Int'l Corp. v. Dominion Voting Sys. Int'l Corp.*, 2013 WL 1821608, at *10 (Del. Ch. May 1, 2013).

“this Agreement or in any Related Agreement.” The Pre-Closing Statement is not alleged to be a representation or warranty at all.

In addition, the Pre-Closing Statement requirement is not a representation or warranty. Once more, SPA Section 2.4 mandated PPG to deliver and prepare the Pre-Closing Statement. It is a covenant, not a representation or warranty. Actual Fraud does not include the Pre-Closing Statement. Thus, the Court **GRANTS** PPG’s Motion to Dismiss Buyer’s Counterclaims II and III.

B. THE FRAUD COUNTERCLAIM RELATING TO THE REPRESENTATIONS AND WARRANTIES (COUNT I) SURVIVES AT THE MOTION-TO-DISMISS STAGE.

PPG moves to dismiss RAC’s fraud counterclaim relating to the SPA’s representations and warranties—Counterclaim I.¹²⁷ In contrast to the Pre-Closing Statement fraud counterclaim, Counterclaim I involves contractual representations. PPG avers that the Counterclaim I fails because the counterclaim only alleges that PPG misrepresented only Article IV representations by the Company and not any of the PPG Representations in Article III.¹²⁸ On this issue, RAC again points to *Abry*,¹²⁹ where this Court held that Delaware law “will not permit the Seller to insulate itself from the possibility that the sale would be rescinded if the Buyer can show either: 1) that the Seller knew that the Company’s contractual representations and warranties were false; or 2) that the Seller itself lied to the Buyer about a contractual representation and warranty.”¹³⁰

The SPA’s Actual Fraud definition provides for intentional fraud.¹³¹ Generally, in Delaware, fraud consists of the following elements: (i) a false representation, usually one of fact, made by the defendant; (ii) the defendant’s knowledge or belief that the representation was false,

¹²⁷ PPG MTD Op. Br. at 21–24.

¹²⁸ *Id.* at 21–22.

¹²⁹ 891 A.2d 1032, 1064 (Del. Ch. 2006).

¹³⁰ *Id.*

¹³¹ *See* SPA § 1.1.

or was made with reckless indifference to the truth; (iii) an intent to induce the plaintiff to act or to refrain from acting; (iv) the plaintiff's action or inaction taken in justifiable reliance upon the representation; and (v) damage to the plaintiff as a result of such reliance.¹³² SPA's Actual Fraud definition requires that the fraud must be intentional.¹³³ Reckless indifference does not suffice. As such, the SPA requires that the second element of fraud is satisfied only by actual knowledge of the contractual representations' falsity.

In Counterclaim I, RAC relies on representations and warranties contained in Article IV, which covers the Company's representations and warranties. But a seller cannot fully avoid a fraud claim when the seller knew that the target company made false representations.¹³⁴ RAC's Counterclaim contains several allegations to demonstrate PPG's actual knowledge of misrepresentations by the Company.¹³⁵ At this stage, it is reasonably conceivable that PPG's Board knew of the Company's misrepresentations.¹³⁶

Similarly, it is reasonably conceivable that PPG had actual knowledge of the fraud, as required by the SPA's Actual Fraud definition. "For a defendant to have actual knowledge of the wrongful nature of its own conduct, the defendant must already have actual knowledge of the underlying tortious conduct. Actual knowledge is 'clear and direct knowledge.'"¹³⁷ In contrast, constructive knowledge is "knowledge that one using reasonable care and diligence should have, and therefore is attributed by law to a given person."¹³⁸ Here, it is reasonably conceivable that PPG had actual and direct knowledge of the misrepresentations based on the Company's

¹³² *Stephenson v. Capano Dev., Inc.*, 462 A.2d 1069, 1074 (Del. 1983) (cleaned up).

¹³³ SPA § 1.1.

¹³⁴ *Abry P'rs V, L.P.*, 891 A.2d at 1064.

¹³⁵ See Countercl., ¶¶ 83–84, 86 ([REDACTED]); see also Countercl., ¶¶ 97–98 ([REDACTED]).

¹³⁶ See *Prairie Cap. III, L.P. v. Double E Holding Corp.*, 132 A.3d 35, 61 (Del. Ch. 2015).

¹³⁷ *In re Columbia Pipeline Grp., Inc. Merger Litig.*, 342 A.3d 324, 356 (Del. 2025).

¹³⁸ *Id.* at 356 n.194 (quoting *Deutsche Bank Nat. Tr. Co. v. Goldfeder*, 86 A.3d 1118 (Del. 2014) (TABLE)).

presentations to and documents given to PPG's Board.¹³⁹ This information could have been enough to put PPG on actual notice of the falsity of the Company's representations without the need for an investigation.

PPG also contends that Mr. Bender's knowledge alone is not sufficient to impute knowledge to PPG.¹⁴⁰ True, "[g]enerally, the fact that two or more corporations have officers or agents in common will not of itself impute the knowledge gained by such officers while acting for one corporation to another corporation in which they also hold office."¹⁴¹ But there are also allegations that PPG's Board as a whole knew of the representations, thereby buttressing the knowledge element.¹⁴² These facts support the claim that PPG had actual knowledge of the fraud.¹⁴³

At this stage, the allegations are sufficient to state a claim of PPG's knowledge of the Company's misrepresentations. Therefore, PPG's Motion to Dismiss the fraud counterclaim relating to the representations and warranties in Article IV (Count I) is **DENIED**. Accordingly, the Motion to Dismiss is **GRANTED in part, and DENIED in part**.

C. PPG'S MOTION FOR JUDGMENT ON THE PLEADINGS IS DENIED SINCE RAC'S FRAUD COUNTERCLAIM SURVIVES THE MOTION-TO-DISMISS STAGE.

RAC submits that its request for rescission bars the Motion for Judgment.¹⁴⁴ RAC seeks rescission of the SPA in the Counterclaim.¹⁴⁵ As stated earlier, the Court finds that Counterclaim I relating to the SPA's representations and warranties is adequately pled and survives the Motion to Dismiss.

¹³⁹ See Countercl., ¶¶ 83–84, 86 ([REDACTED]); see also Countercl., ¶¶ 97–98 ([REDACTED]).

¹⁴⁰ PPG MTD Op. Br. at 23–24.

¹⁴¹ *NAMA Hldgs., LLC v. Related WMC LLC*, 2014 WL 6436647, at *27–28 (Del. Ch. Nov. 17, 2014).

¹⁴² See Countercl., ¶¶ 83–84, 86 ([REDACTED]); see also Countercl., ¶¶ 97–98 ([REDACTED]).

¹⁴³ *Nolan v. E. Co.*, 241 A.2d 885, 891 (Del. Ch. 1968) ("Knowledge of an agent acquired while acting within the scope of his authority is imputable to the principal."), *aff'd*, 249 A.2d 45 (Del.1969).

¹⁴⁴ RAC MJP Opp'n at 12–13.

¹⁴⁵ Countercl., ¶¶ 17, 46, 126, 142, and at 87.

“Fraud is the misrepresentation or concealment of a material fact and when proved calls for rescission of a thus tainted contract.”¹⁴⁶ “Essentially, the equitable remedy of rescission results in the abrogation or ‘unmaking’ of an agreement, and attempts to return the parties to the status quo.”¹⁴⁷ And the remedy of rescission “restore[s] the parties substantially to the position which they occupied before making the contract.”¹⁴⁸ Likewise, a contract may be voidable on the grounds of misrepresentation.¹⁴⁹ “A voidable contract is one where one or more parties have the power, by a manifestation of election to do so, to avoid the legal relations created by the contract, or by ratification of the contract to extinguish the power of avoidance.”¹⁵⁰

PPG seeks judgment on the pleadings on multiple breach-of-contract claims that arise under the SPA.¹⁵¹ Yet to succeed on a breach-of-contract claim, a plaintiff must prove the existence of a contract.¹⁵² On a motion for judgment on the pleadings, there cannot be an issue of material fact.¹⁵³ Given that PPG seeks to rescind the SPA with its valid fraud counterclaim,

¹⁴⁶ *Kern v. NCD Indus., Inc.*, 316 A.2d 576, 582 (Del. Ch. 1973) (citing *Holley v. Jackson*, 158 A.2d 803, 806 (Del. Ch. 1959)); see also *Norton v. Poplos*, 443 A.2d 1, 4 (Del. 1982) (citing the Restatement (Second) of Contracts and stating “If a party’s manifestation of assent is induced by either a fraudulent or material misrepresentation by the other party upon which the recipient is justified in relying, the contract is voidable by the recipient.”).

¹⁴⁷ *Norton v. Poplos*, 443 A.2d 1, 4 (Del. 1982).

¹⁴⁸ *Craft v. Bariglio*, 1984 WL 8207, at *12 (Del. Ch. Mar. 1, 1984).

¹⁴⁹ *Tekstrom, Inc. v. Savla*, 2006 WL 2338050, at *5 (Del. Super. July 31, 2006), *aff’d*, 918 A.2d 1171 (Del. 2007); Restatement (Second) of Contracts § 164 (A.L.I. 1981); see also *Thompson St. Cap. Partners IV, L.P. v. Sonova United States Hearing Instruments, LLC*, 340 A.3d 1151, 1169 (Del. 2025) (noting that Delaware courts look to the Restatement (Second) of Contracts as persuasive authority for interpreting basic contract principles).

¹⁵⁰ Restatement (Second) of Contracts § 7 (A.L.I. 1981); see also 1 *Williston on Contracts* § 1:20 (4th ed.) (“A voidable contract is one under which a party, usually a victim of some wrong by another party, may elect to avoid any legal obligations.”); *Little River Landing LLC v. Allstate Vehicle & Prop. Ins. Co.*, 2024 WL 3251581, at *7 n.81 (Del. Ch. July 1, 2024), *exceptions denied*, 2025 WL 576216 (Del. Ch. Feb. 21, 2025) (“Delaware courts often turn to *Williston* for questions of contract law.”).

¹⁵¹ See PPG MJP Op. Br. at 10–20.

¹⁵² *G-Wilmington Associates v. Riverside Hosp. Redevelopment, LLC*, 2025 WL 3046404, at *6 (Del. Ch. Oct. 31, 2025) (citing *Anschutz Corp. v. Brown Robin Cap., LLC*, 2020 WL 3096744, at *9 (Del. Ch. June 11, 2020)).

¹⁵³ *W. Coast Opportunity Fund, LLC v. Credit Suisse Sec. (USA)*, 12 A.3d 1128, 1131 n.2 (Del 2010); *Gonzales v. Apartment Communities Corp.*, 2006 WL 2905724, at *1 (Del. Super. Oct. 4, 2016).

the Court finds that there is a genuine dispute over the SPA’s validity and enforceability.¹⁵⁴ As well, RAC’s first affirmative defense to PPG’s breach-of-contract claims is fraud.¹⁵⁵

PPG contends that this runs afoul to the decisions from this Court in *Arthur J. Gallagher & Co. v. Agiato*, 2025 WL 2169455 (Del. Ch. July 31, 2025) (“*Gallagher*”) and *Halinski v. ADS Gp. Acq., LLC*, 2025 WL 2103798 (Del. Ch. July 28, 2025) (“*Halinski*”).¹⁵⁶ But these decisions are readily distinguishable. In *Gallagher*, the Court held that the plaintiff was not excused from paying the earnout because there were no conditions on payment, and the parties stipulated that the earnout threshold had been met.¹⁵⁷ In *Halinski*, the Court held that a buyer could not unilaterally refuse to release a tax holdback undisputedly required by the parties’ SPA by alleging that the sellers materially breached the SPA.¹⁵⁸ Neither case dealt with a fraud claim capable of rescinding the agreement at issue.¹⁵⁹ Instead, both dealt with breaches of contract that did not impact the remedies that those parties agreed to in their respective contracts. Here, the parties specifically carved out an *Abry* Actual Fraud mechanism and recovery. And contract rescission would rescind the entire SPA, including SPA Section 2.4 and its expert determination remedy. Consequently, the Court **DENIES** PPG’s Motion for Judgment on the Pleadings on Counts I–III.

¹⁵⁴ See *Columbus US Inc. v. Enavate SMB, LLC*, 2024 WL 5274569, at *14 (Del. Super. Dec. 23, 2024) (denying summary judgment on breach-of-contract claims when defendant had viable counterclaims and fraud affirmative defense); see also *Slopeside Manager, LLC v. 12th & 5th Member, LLC*, 2025 WL 3231668, at *16 (Del. Super. Oct. 30, 2025) (“In other words, because there are material issues of fact surrounding whether a valid contract exists at this stage of litigation, the Court cannot currently enforce a term—like an anti-reliance clause or integration clause—from the potentially non-binding contract.”).

¹⁵⁵ RAC PPG Buyer LLC’s Answer to Verified Complaint and Verified Counterclaim at 28–29 (D.I. No. 7).

¹⁵⁶ 1/29 Hr’g Tr. 25:16–26:13 (D.I. No. 45).

¹⁵⁷ *Gallagher*, at *6–7.

¹⁵⁸ *Halinski*, at *1, 7.

¹⁵⁹ PPG also cites to *Darling Ingredients Inc. v. Smith*, 2023 WL 8533204 (Del. Ch. Dec. 11, 2023) to posit that RAC must shell out the Purchase Price under SPA § 2.4. PPG MTD Op. Br. at 14. There, the Court ruled that by serving a protest notice, the seller “triggered the next step in the bargained-for dispute resolution process outlined in the Agreement. Although the Sellers might regret their hasty choice, the Agreement does not grant them a protest notice do-over. Neither will I.” *Darling Ingredients*, 2023 WL 8533204, at *12. But again, that case consisted of only breaches of contract with agreed upon remedies and no fraud claims seeking contract rescission.

D. PPG’S MOTION FOR JUDGMENT ON THE PLEADINGS IS DENIED ON THE AWARD OF ATTORNEYS’ FEES.

Delaware law follows the “American Rule,” requiring litigants to bear the costs of their own legal representation.¹⁶⁰ Litigants are responsible for paying their counsel fees absent statutory authority or a contractual provision requiring otherwise.¹⁶¹ This general rule and its exceptions apply to actions at law, significantly limiting the Court’s authority to order payment of attorney’s fees.¹⁶² The Court will generally enforce an agreement to shift fees.¹⁶³ And absent “qualifying language that fees are to be awarded claim-by-claim or on some other partial basis, a contractual provision entitling the prevailing party to fees will usually be applied in an all-or-nothing manner.”¹⁶⁴ In an all-or-nothing case, the Court will determine which party prevailed by analyzing which party predominated in the litigation.¹⁶⁵

Claims for legal expenses under a prevailing-party provision are premature in that judicial fee-shifting is awarded ““in relation to the results obtained.””¹⁶⁶ The Court denies PPG’s Motion to Dismiss in part and, thusly, denies PPG’s Motion for Judgment on the Pleadings. As a result, there has been no prevailing party yet, and the litigation remains ongoing. Therefore, the Court **DENIES** PPG’s Motion for Judgment on the Pleadings.

¹⁶⁰ *Duncan v. STTCPL, LLC*, 2020 WL 829374, at *15 (Del. Super. Feb. 19, 2020).

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Navient Solutions, LLC v. BPG Off. Partners XIII Iron Hill LLC*, 2023 WL 3120644, at *16 (Del. Super. Apr. 27, 2023).

¹⁶⁴ *Id.* (quoting *AFH Hldg. & Advisory, LLC v. Emmaus Life Scis., Inc.*, 2014 WL 1760935, at *2 (Del. Super. Apr. 16, 2014)).

¹⁶⁵ *Navient Solutions*, 2023 WL 3120644, at *16.

¹⁶⁶ *L-5 Healthcare Partners, LLC v. Alphatec Holdings, Inc.*, 2020 WL 6021536, at *8 (Del. Ch. Oct. 12, 2020) (quoting *Mooney v. Echo Therapeutics, Inc.*, 2015 WL 3413272, at *12 (Del. Ch. May 28, 2015)).

CONCLUSION

For the reasons stated above, the Court **GRANTS in part and DENIES in part** PPG's Motion to Dismiss and **DENIES** PPG's Motion for Judgment on the Pleadings.

April 23, 2026
Wilmington, Delaware

/s/ Eric M. Davis
Eric M. Davis, President Judge

cc: File&ServeXpress