



IN THE SUPREME COURT OF THE STATE OF DELAWARE

PARAGON METALS HOLDINGS)	
LLC, a Delaware limited liability)	
company, PARAGON METALS LLC,)	
a Delaware limited liability company,)	
STELLEX PARAGON METALS)	NO. 385, 2025
SPLITTER LP, a Delaware limited)	
partnership, STELLEX CAPITAL)	Court Below: Superior Court of the
INVESTORS LP, a Delaware limited)	State of Delaware
partnership,)	
)	C.A. No. N21C-12-090 SKR CCLD
Plaintiffs Below,)	
Appellants,)	
)	
v.)	
)	
MICHAEL J. SMITH, an individual,)	
and THE PARAGON INDUSTRIAL)	
HOLDINGS GROUP, INC., a North)	
Carolina corporation,)	
)	
)	
Defendants Below,)	
Appellees)	

CORRECTED OPENING BRIEF OF PLAINTIFFS BELOW-APPELLANTS

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NATURE OF PROCEEDING

Following a five-day bench trial, the Superior Court held that sellers, the defendants below, knowingly made multiple false representations and warranties in a written agreement to sell their company to the private-equity plaintiffs for \$100 million. The court further found that sellers did so with the requisite corrupt intent, for multiple reasons. Yet, the Superior Court still let sellers off the hook, tearing up the parties' agreement and turning Delaware law on its head in the process.

This was error and must be reversed. The parties agreed that buyers relied only on sellers' written representations and warranties in their purchase agreement, explicitly disclaiming reliance on other outside information. Key to this analysis is Section 5.10(a), an anti-reliance clause stating that "Buyer has conducted to its satisfaction an independent investigation" and "has relied on the results of its own independent investigation and . . . the representations and warranties of" sellers. In Delaware, such an anti-reliance clause cabins the universe of information on which a buyer is relying to the representations and warranties in the agreement.

Defying this clear precedent, the Superior Court found buyers' reliance here was unreasonable by writing a "reasonable due diligence" obligation into the parties' agreement and then concluding that buyers *should have* discovered and relied on a few needles in a virtually unlimited haystack of outside information. That was not the parties' bargain. Nor was it buyers' duty to investigate sellers' representations

and warranties to the ends of the Earth and then be denied a remedy when even that effort failed to uncover which statements were lies. This case is a poster child for that principle: sellers admit buyers did a “tremendous amount of due diligence,” yet the Superior Court did not find that buyers had actual knowledge of any fraud. That alone shows sellers’ successful concealment of their false representations.

The court instead concluded that buyer “knew or should have known” of the falsity of the sellers’ representations. It again premised this legal conclusion on the court’s ability to consider extrac contractual information—exactly what the parties agreed buyers never would rely on—to assess buyers’ justifiable reliance. This, too, is not Delaware law. Rather, where, as here, an anti-reliance clause is involved, justifiable reliance is “easily” established by the written agreement itself. Anything other than actual knowledge of falsity will not overcome that showing.

For these reasons, the Superior Court’s conclusion regarding reliance must be reversed. Were it allowed to stand, it would render meaningless essentially every anti-reliance and similar provision in Delaware-law purchase agreements, exposing buyers to a virtually limitless universe of outside information for reliance and undercutting virtually every representation in every such agreement. Affirming the Superior Court’s erroneous conclusion would transform Delaware law to impose an impossible burden on buyers to conduct perfect due diligence and discover every lie sellers make.

Finally, the Superior Court erred in concluding that buyers unjustifiably relied on sellers' false representation in Section 3.23 due to an undisclosed \$300,000 rebate and the loss of the company's sole supplier status to a top 10 customer, where the court also concluded that these issues were never disclosed and sellers intentionally hid them from buyers. The Superior Court imposed upon buyers a duty to discover sellers' lies from references that the court deemed "inartful" and that were "bur[ied]" within materials after diligence ended. This holding required buyers to find out what the Superior Court found sellers deliberately concealed, a duty that contravenes the law in Delaware and ultimately would render fraud liability meaningless.

SUMMARY OF ARGUMENT

1. The Superior Court erred in relying on extracontractual evidence to find that buyers' reliance on sellers' written representations was not justifiable where the anti-reliance clause in Section 5.10(a) of the Agreement cabined reliance to the representations and warranties in the agreement. A001948-49.

2. The Superior Court erred in applying a "knew or should have known" standard to justifiable reliance in an intracontractual fraud case where the applicable standard is "actual knowledge" of falsity when an anti-reliance clause is present. A001948-49.

3. The Superior Court erred in finding that buyers unjustifiably relied on Section 3.23 concerning the change in purchasing terms at ZF Transmissions Gray Court LLC ("ZF") where the agreement contained an anti-reliance clause, while also concluding that these facts were never disclosed and that sellers intended to hide them. A001948-49; A16147-A16152.

STATEMENT OF FACTS

Except where noted, these facts are drawn from the undisputed record evidence or the Superior Court’s post-trial factual findings.

A. Factual Background

1. The Parties.

Paragon Metals, LLC (“Company”) is a Michigan-based manufacturer of “complex, tight tolerance precision machined components and assemblies” for the automotive industry. Exhibit A, Summary Judgment Opinion (“SJ Op.”) 4. Michael Smith (“Smith”) was the President and Chief Executive Officer of Company—and the owner, through The Paragon Industrial Holdings Group, Inc. (“Industrial Holdings,” together with Smith, “Sellers”)—of Company. *Id.* ¶1.

Stellex Paragon Metals Splitter LP and Stellex Capital Investors LP (“Stellex”) are affiliates of a private equity firm “that invests in companies with high-growth potential.” *Id.*, 4. Paragon Metals Holdings, LLC (“Buyer”, and together with Stellex, “Buyers”) are the purchasers of Company. Exhibit B, Decision After Trial (“Op.”) 2.

2. The Equity Purchase Agreement.

On December 14, 2018, Buyers acquired the Company through an Equity Purchase Agreement (“Agreement”) that closed on January 31, 2019 (“Closing”). Op. 2, 12. Sections 3 and 4 of the Agreement contain a variety of representations

about the Company. Sellers delivered a Bring Down Certificate that reaffirmed those representations at Closing. A00601-02; A11700(JX3).

Sellers represented that the Company had not:

received any notice from any [of its top 10 customers] to the effect that, and none of [Company], [Industrial Holdings] or [Smith] has any Knowledge that, any such customer will stop, decrease the rate of, or change the terms (whether related to payment, price or otherwise) with respect to, buying products from [Company].

Op. 10. Schedule 3.23 identified the Company's second and third largest customers as Fiat Chrysler America ("FCA") and ZF. *Id.*

Under Section 3.8, Sellers represented:

. . . no fact, event or circumstance has occurred or arisen that, individually or in combination with any other fact, event, or circumstance, has had or would reasonably be expected to have a Material Adverse Effect.

Op. 10.

The Agreement also contains an Anti-Reliance Clause in Section 5.10(a):

Buyer has conducted to its satisfaction an independent investigation and verification of the financial condition, results of operations, assets, liabilities, properties and projected operations of Company and, in making its determination to proceed with the transactions contemplated by this Agreement, *Buyer has relied on the results of its own independent investigation and verification and the representations and warranties expressly and specifically set forth in Article 3 and Article 4 of this Agreement and the certificate referenced in Section 9.1(e) to be delivered by Owner at Closing.*

Op. 11; A00504 (emphasis added).

Sellers disclaimed any extracontractual statements and confined the representations to those made in Articles 3 and 4. A00501-02; A11700 (JX1, §§3.30, 4.6). Finally, the Agreement contained an integration clause. A00535; A11700 JX1, §12.12).

3. Sellers' Knowledge of Its False Representations.

Before execution of the Agreement and Closing, Sellers learned that their representations in Sections 3.23 and 3.8 regarding (1) the lack of any decrease in ZF and FCA's rates of purchase; (2) the absence of any change in ZF's terms of purchase; and (3) the absence of an MAE were false. Op. 4-8. Sellers learned that ZF's 9HP Program was being significantly reduced or cancelled and that ZF's purchasing terms were changing. Op. 4-8, 18-31. On November 16, 2018, ZF informed Smith that FCA intended to cancel the 9HP48 program with ZF. Op. 6; A11700(PX139). In December 2018, ZF confirmed that in a cancellation letter to Company that Smith received. Op. 6. Sellers also learned that FCA was reducing its level of purchases from Company. Op. 4-6, 22. The known decrease in the FCA and ZF volumes caused an EBITDA loss, and Smith knew that the decreased volumes would cause the Company to default on its financing, which would operate as an MAE under the Agreement. Op. 29.

4. Buyer Spends \$1 Million on Due Diligence.

Buyers spent "approximately a million dollars" on due diligence. A011987. "Stellex's due diligence efforts were well resourced" (SJ Op. at 8), as Sellers admit Buyers performed "a tremendous amount of due diligence." A012488-A012489, A012553, A012575. Buyer retained CohnReznick, Ducker Worldwide ("Ducker"), TRC, AON, and Risk International for accounting, tax, industry, environmental, insurance, and benefits diligence(Op. 3; A011985, A012553); paid nearly \$250,000

for their services; and examined approximately 10,000 documents in a data room. Op. 4; A11700(PX360:2); A011987. Buyer held “numerous meetings and calls” with Smith and Company senior executives. A011983.

David Waxman (“Waxman”), the “deal lead overseeing the team,” oversaw Michael Cochran (“Cochran”), Ryan Rogers (“Rogers”), and Bruce Swift (“Swift”). A011979, A011987-A011988. Stellex planned to name Swift as the Company’s CEO after Closing. A011987-A011988. On due diligence, Swift worked on “high level issues” reviewing Company’s “strategy” and “operation.” A011989. Swift was not responsible for “going through documents in a data room.” A011990. Nor was Swift responsible for financials, including volumes. A012183-A012184.

Buyers themselves—not Swift—performed extensive diligence on the Company’s sales, including by engaging third-party consultants such as Ducker. Ducker submitted a 78-page report on December 14, 2018. A012148-A0121491; A11700(DX92), sourced from Company’s information in the data room and other sources. A012148. Ducker’s report disclosed nothing about any ZF cancellation letter, showed *increasing* volumes, and projected “continuous improvement” in market share. A012149-A012150; A11700(DX92:44). Ducker’s report disclosed that there was a “[m]ix of in-house and outsourcing” at FCA with a “trend to outsourcing,” and noted that FCA “tends to source systems through various suppliers.” A11700(DX92:14, 21).

On November 29, 2018, Buyers noticed that an Agreement draft from Sellers' attorneys had a crossed-out comment: "~~Mike says there's a letter from ZF saying there're going to decrease their purchases.~~" A012217-012218; A013317-A013318; A012006-A012008; A11700(JX24:1, 169 §3.23). Sellers' attorneys advised Buyers to "disregard the email that they had inadvertently sent us." A012008. Buyers "didn't know what this meant," so they took five actions. A012010. First, Cochran raised it with Smith, asking "[h]ave ZF expected production volumes come down for this part." A12009; A012634-A012635; A11700(JX113). Smith misdirected to capacity issues "that had nothing to do with it." A012636. Second, Swift also raised the issue with Smith, who failed to disclose any ZF cancellation letter, and instead claimed that when the Company "switch[es] the line over to make" the ZF 9HP50 instead of the 9HP48, these "volumes go up and down" in terms of the "mix within the plant." A012218-A012221. Third, Buyers "made sure that [they] could get a meeting with ZF to ask about the business." A012009. Fourth, Buyers "checked with some of [their] industry sources what they [were] hearing about ZF purchases." A012009; A012270-A012271. Finally, Buyers negotiated "robust representations." A012009. After taking these steps, Buyers were "satisfied that there wasn't anything there," and "if there was," Sellers would disclose it in Schedule 3.23. A012010.

5. Buyers Meet with ZF and FCA Before Signing the Agreement.

ZF signed Amendment No. 1 to General Purchase Agreement (the “GPA Amendment”) with the Company that provided ZF a price-down for Company products, in exchange for which ZF agreed that the “Products set forth on Schedule 3” would not be subject to competitiveness based on price. Op. 4, 7; A11700(JX4). Schedule 3 referred to the parts numbers for ZF’s 9HP48 and 9HP50. Op. 7; A012155; A11700(JX 4).

While negotiating the GPA Amendment with ZF’s representative, Clive Spackman (“Spackman”), Smith removed ZF’s downward-revised future volume projections from a draft, concealing the volume decrease from Buyers. Op. 7, 32, 36. Smith learned that ZF had secured an “alternative supplier of 9HP bearing brackets.” Op. 29, 36. ZF extracted Smith’s agreement to pay a \$300,000 rebate, the first in the history of the relationship, through a secret side letter. Op. 7, 33. The rebate was paid through Company’s Chinese affiliate. Op. 7, 33. Before meeting with Swift, Spackman threatened to tell Swift that ZF was re-sourcing ZF’s entire 9HP program to an alternative supplier if the rebate was not paid in 2018. A012439-A012440; A012441; A012439-A012442; A012442-A012443. In a late-night flurry of texts that were “lost” when Smith destroyed his phone, Smith committed to pay the rebate in 2018 as ZF demanded. Op. 7-9, 19, 31, 33, 37-38; A11700(PX111:5).

The next day, Smith arranged for Spackman to meet Swift for 45 minutes. Op. 9; A012224. Spackman testified that when “went into the meeting [he wasn’t] expecting to be talking about anything [he was] discussing with Smith” because the meeting was a “look forward,” due to Smith’s promise the night before. A014413-A014414. At the meeting, Swift “discussed the bearing bracket product that Paragon supplied to ZF,” “the price down agreement,” “volumes,” and “schedules.” A012225-A012227. Swift then asked Spackman “is the business still good?” Op. 9, 34, 44. Spackman responded that it was and did not disclose any cancellation letter or declining volumes; he also testified he did not recall whether he even was aware of the cancellation letter as of the meeting, and, anyway, neither that nor any other issues would change his answer to Swift that day. A014414-18, A014563-64. Swift did not ask about the letter in the redline because “that was already covered by” his earlier conversation with Smith. A012227. Spackman then emailed Smith that the meeting had gone well and he “trust[ed] there w[ould] be no disappointment” with respect to the payment of the rebate. A012447-A012448; A11700(PX111:1).

Before Swift’s meeting with FCA, Stellex gave Swift a checklist to cover with FCA, which Swift testified that he did. A012212; A11700(PX206). Swift then met with FCA and reported back that “[v]olumes for 2019 will be flat over 2018.” Op. 9, 45. Swift explained this meant that “the business was going to be flat year over year when we took a look at the overall business with them.” A012206.

6. Post-Diligence, Post-Signing Events.

In late December 2018 and early 2019, Smith provided “update” emails to Swift. The initial email in the chain was from Director of Operations, Tommy Mackinder (“Mackinder”), which attached ZF’s 9HP48 cancellation letter. A11700(DX99, DX102, DX105). When Smith forwarded Mackinder’s email to Swift, Smith removed the letter, and “copied and pasted the body of the Swift email from the email Mackinder sent him.” Op. 35. Smith then “bur[ied] the cancellation [of the 9HP48 program] in a few lines within an extensive list of discussion topics.” Op. 30. With diligence over, Buyers’ focus shifted to financing the transaction, meaning Waxman, Cochran, and Swift had no reason to read or discuss Mackinder’s shorthand emails or to otherwise be aware of them at all. A012029-32; A012355-A012357-64; A012817-19. Swift told Mackinder he was not “going to read” the update emails he sent and would instead put them aside to discuss in person. A012349. And Mackinder had no independent recollection of meeting with Swift about the items. A013467-A013468. The items were crossed off by January 3, 2019, before any meeting between Swift and Mackinder was to take place (A012403-A012404), meaning if Mackinder discussed them with someone, it was not Swift. A January 7, 2019 meeting was held with Cochran, Swift, and Mackinder, but that meeting covered other topics. A012366-A012367; A012591-A012593.

7. Sellers’ Pre-Closing Assurances.

Before Closing, “Buyer[s] and Smit[h] [made a] presentation to the bank[s]

[for financing] projecting EBITDA growth diametrically opposed to ZF and FCA's falling orders." Op. 30; A011700(JX78). Smith's presentation slides detailed that Company revenue would rise from \$98.5 million in 2018 to \$122.1 million in 2020E fueled by FCA and ZF. A012035-012039; A012532-A012537; A011700(JX78:30). Smith represented to the banks that: (i) "FCA 9HP48/50 (2020)" was a "program that is launching or ramping up;" (ii) the revenue increase to \$122 million was "based primarily on booked business from current and future program launches;" (iii) "[a]ll growth through 2020 relates to fully awarded and booked programs;" and (iv) that Company was "[a]lways the sole supplier to OEMs and Tier 1 customers for the life of the program." A012532-A012537; A11700(JX78:19, 30).

B. Procedural History.

1. Buyers Bring This Lawsuit.

Buyers filed this action, alleging that Sellers committed fraud when they falsely represented to Buyers that Sellers and the Company had no notice or knowledge that: (1) any of the Company's top 10 customers were decreasing, stopping, or changing the rate of purchase of products; (2) any of the Company's top customers were changing the terms under which they purchased products from Company; and (3) that Company had not undergone a MAE. Op. 2, 12.

2. The Superior Court's Summary Judgment Opinion.

Buyers moved for summary judgment on the reliance element of their fraud claim, because the Agreement limited Buyers' reliance to the written

representations. Op. 14-15; A001948-A001949. The Superior Court held “the reliance element of an intra-contractual fraud claim is met when the agreement explicitly states that the plaintiff relied on the” representations. SJ Op. 23. The court determined “under the Agreement’s plain terms [Buyer] relied on Sections 3.8 and 3.23.” SJ Op. 23. But the court also found a “genuine dispute of material fact regarding whether [Buyer’s] due diligence negated its *contractually-established reliance*.” SJ Op. 24 (emphasis added). The court held that a party “who gains actual knowledge of the falsity of a representation” cannot “claim justifiable reliance.” SJ Op. 23. The court also interpreted the Anti-Reliance Clause in Section 5.10(a) of the Agreement to “impose[] upon [Buyer] a due diligence obligation” such that Buyers had to conduct “reasonable due diligence.” SJ Op. 24; Op. 15, 41.

3. The Superior Court’s Decision After Trial.

The Superior Court determined that Sellers made knowingly false statements in Section 3.23 because ZF and FCA had notified Sellers prior to Closing that they were reducing their rate of purchases from Company. Op. 31. The court found that Sellers made a false statement in Section 3.23 concerning the “loss of ZF[’s] sole supplier status and the ZF rebate.” Op. 29, 31. The court also held that Sellers made false statements in Section 3.8 because the known decrease in the FCA and ZF volumes caused an EBITDA loss, and Smith knew that the decreased volumes would cause Company to default on its financing. Op. 19, 29.

The Superior Court found that six out of nine factors pointed to Sellers' scienter in making false statements in Sections 3.8 and 3.23. Op. 32-40.

Despite these findings, the Superior Court ruled that the Buyer's reliance on Sections 3.8 and 3.23 was unjustifiable because the Anti-Reliance Clause imposed a duty to conduct "reasonable diligence. Op. 2, 15, 41, 47. Retreating from its prior ruling that "actual knowledge" could obviate reliance, the court concluded that Buyers "either knew, or should have known" about the concealed information that made Sections 3.8 and 3.23 false. Op. 42.

ARGUMENT

I. THE SUPERIOR COURT ERRED IN LOOKING BEYOND THE AGREEMENT TO ASSESS BUYERS' JUSTIFIABLE RELIANCE.

A. Question Presented.

Whether the Superior Court erred in relying on extracontractual evidence to find Buyers' reliance on Sellers' written representations was not justifiable where the Anti-Reliance Clause in Section 5.10(a) cabined reliance to the warranties and representations in the Agreement. This question was raised below, A001948-49, and considered by the Superior Court. Op. 14-15, 40-47; SJ Op. 23-24.

B. Scope of Review.

The Court reviews questions of law *de novo*. *AIG Specialty Ins. Co. v. Conduent State Healthcare, LLC*, 339 A.3d 680, 687 (Del. 2025). “Contract interpretation is a question of law subject to *de novo* review by this Court.” *Daniel v. Hawkins*, 289 A.3d 631, 645 (Del. 2023).

The Court reviews the application of law to facts *de novo*, *Scharf v. Edgcomb Corp.*, 864 A.2d 909, 916 (Del. 2004), and factual findings for clear error. *In re Oracle Corp. Deriv. Litig.*, 339 A.3d 1, 20-21 n.96 (Del. 2025).

C. Merits of Argument.

Justifiable reliance is not a new or undefined concept under Delaware law. Delaware courts consistently enforce contractual anti-reliance provisions between sophisticated parties and conduct a simplified reliance inquiry when fraud claims arise from a written agreement. “For contractual misrepresentations, ‘reasonable

reliance . . . [is] *easily met* . . . because the false statements at issue are contained in a written agreement.” *Labyrinth, Inc. v. Urich*, 2024 WL 295966, at *18 (Del. Ch. Jan. 26, 2024) (quoting *LVI Grp. Inv., LLC v. NCM Grp. Hldgs, LLC*, 2018 WL 1559936, at *13 n.198 (Del. Ch. Mar. 28, 2018) (emphasis added). Indeed, justifiable reliance is a low bar in a contractual fraud case. *NetApp, Inc. v. Cinelli*, 2023 WL 4925910, at *15 (Del. Ch. Aug. 2, 2023) (justifiable reliance is “[e]asily met’ where ‘the false statements at issue are contained in a written agreement’”) (citation omitted); *accord Columbus US Inc. v. Enavate SMB, LLC*, 2024 WL 5274569, at *13 (Del. Super. Ct. Dec. 23, 2024) (same). The Superior Court’s ruling turns this well-accepted principle on its head, reversing years of precedent.

Beginning with general contract law principles, “[s]ophisticated parties bargaining at arms’ length can agree to limit the information on which they have relied to the written representations in the contract, and such a provision will be enforced.” *Bamford v. Penfold, L.P.*, 2020 WL 967942, at *15 (Del. Ch. Feb. 28, 2020). Similarly, “Delaware law enforces clauses which identify specific information on which a party has relied and foreclose reliance on other information.” *FdG Logistics LLC v. A & R Holdings, Inc.*, 131 A.3d 842, 858 (Del. Ch. 2016).

The purpose of anti-reliance clauses is to eliminate “an open-ended universe of information.” *Columbus US Inc.*, 2024 WL 5274569, at *8 (quoting *Airborne Health Inc. v. Squid Soap LP*, 984 A.2d 126, 140 (Del. Ch. 2009)). “If a party

represents that it only relied on particular information, then that statement establishes the universe of information on which that party relied.” *Universal Am. Corp. v. Partners Healthcare Sols. Holdings, L.P.*, 176 F. Supp. 3d 387, 402 (D. Del. 2016) (rejecting argument extracontractual statements made after “[m]erger [a]greement was signed, but before closing, are not encompassed by the anti-reliance clause”).

In operation, anti-reliance clauses do not just impact the universe of actionable representations; they direct the justifiable reliance inquiry. *ChyronHego Corp. v. Wight*, 2018 WL 3642132, at *4 (Del. Ch. Jul. 31, 2018) (dismissing extra-contractual fraud claims where agreement contained anti-reliance clause and holding that, because of anti-reliance clause, “Plaintiffs could not have acted in justifiable reliance on any extra-contractual representations or warranties”).

In other words, an anti-reliance clause renders reliance on extracontractual information unreasonable because the parties “define those representations of fact that formed the reality upon which [they] premised their decision to bargain.” *Id.* (quotation marks and citation omitted); *see also Abry Partners V, LP v. F & W Acquisition, LLC*, 891 A.2d 1032, 1057 (Del. Ch. 2006) (“[S]ophisticated parties to negotiated commercial contracts may not reasonably rely on information that they contractually agreed did not form a part of the basis for their decision to contract.”) (quotation marks and citation omitted). Thus, if the representations relied on are part of the contract—*i.e.*, the “reality upon which [the parties] premised their decision to

bargain”—reasonable reliance is easily met. *Labyrinth*, 2024 WL 295966, at *18 (citation omitted); *accord NetApp, Inc.*, 2023 WL 4925910, at *15 (reliance “[e]asily met’ where ‘the false statements at issue are contained in a written agreement’”) (citation omitted); *Columbus US*, 2024 WL 5274569, at *13.

The Superior Court’s rulings obliterate that precedent.

First, the court’s construction defeated the purpose of the Anti-Reliance Clause, opening up the universe of information on which Buyers relied beyond that set by the Agreement. In *Prairie Capital*, the agreement contained a virtually identical anti-reliance clause whereby the buyer “acknowledge[d] that it has conducted to its satisfaction an independent investigation of the financial condition, operations, assets, liabilities and properties” of the company and “has relied on (a) the results of its own independent investigation and (b) the representations and warranties” in the underlying agreement. *Prairie Capital III, L.P. v. Double E Holding Corp.*, 132 A.3d 35, 50 (Del. Ch. 2015). The court held that this language cabined the universe of information for justifiable reliance. *Id.* at 51. “If a party represents that it only relied on particular information, then that statement establishes the universe of information on which that party relied.” *Id.* at 51. “The critical distinction is . . . between information identified in the written agreement and information outside it.” *Id.* at 52. Thus, “[f]or arms’ length counterparties, . . . contractual provisions that identify the representations on which a party exclusively

relied define *the universe of information that is in play for purposes of a fraud claim.*” *Id.* at 52 (emphasis added). Any other interpretation of the language of the anti-reliance clause would have allowed the buyer to “have relied on information outside of the” agreement. *Id.* at 53. Relying on these provisions, the court held that the buyer stated an intracontractual fraud claim based on justifiable reliance because “it is reasonably inferable that the plaintiff relied on the representations when entering into the agreement.” *Id.* at 62.

Prairie Capital’s reasoning has been consistently applied by Delaware courts. In *Portfolio BI, Inc. v. Djukic*, the buyer alleged that the seller breached a representation in the agreement by failing to disclose a customer relationship was “high risk” in a “client tracker spreadsheet” during diligence. 2024 WL 887047, at *1-3 (Del. Ch. Feb. 29, 2024). The purchase contract stated that the buyer had “purchased [company] based on its own independent investigation and[] the representations and warranties made to it in this [a]greement.” *Id.* at *3 & n.19. The court held that this anti-reliance clause was a representation that buyer “based the decision to acquire [company] on its own independent investigation and the [s]ellers’ representations and warranties” in the agreement, “not on any other representations or warranties by the [s]eller or related entities, *such as those beyond the four corners of the [agreement].*” *Id.* at *3 (emphasis added). Thus, the buyer could point to materials supplied during due diligence as “evidence” to support its claim that the

representations were false, but could not rely on such due diligence material to create an extracontractual representation for a fraud claim. *Id.* at *9.

In *Uberether, Inc. v. Anitian, Inc.*, the court characterized the clause in *Prairie Capital* to “add up to a clear anti-reliance clause by which the plaintiff has contractually promised that it did not rely on *statements outside the contract’s four corners.*” 2023 WL 1471754, at *4 (D. Del. Feb. 2, 2023) (emphasis added), *report and recommendation adopted*, 2023 WL 2072425, at *1 (D. Del. Feb. 17, 2023) (citation modified);¹ *accord Bamford*, 2020 WL 967942, at *15-*16 (discussing *Prairie Capital* to have “limit[ed] the information on which [buyers] have relied to the written representations in the contract.”) (emphasis added); *FdG Logistics*, 131 A.3d at 859-60 & n.55 (*Prairie Capital*’s clauses, including the “results of its own independent investigation” clause, were “an affirmative expression by the aggrieved buyer that it had relied only on the representations and warranties in the purchase agreement”) (emphasis in original); *Labyrinth*, 2024 WL 295966, at *18 (explaining that *Prairie Capital*’s independent investigation language “established “the universe of information on which that party relied””) (quoting *Prairie*, 132 A.3d at 51).

¹The *Uberether* court held that the clauses at issue there did not rise to the level of the anti-reliance clause in *Prairie Capital*. 2023 WL 1471754 at *4-5.

The unbroken line running through Delaware decisions construing similar anti-reliance clauses is that none of them permitted due diligence materials to impact the justifiable reliance inquiry concerning representations in the contractual representations. These cases support that extracontractual materials cannot impact whether a buyer reasonably relies on the *contractual* representations the parties agreed to rely on. Thus, in *3M Co. v. Neology, Inc.*, then-Judge Abigail LeGrow construed a similar anti-reliance clause providing that a buyer “‘has relied solely upon its own independent investigation, review and analysis,’ . . . except for the ‘representations and warranties’” in the parties’ agreement. 2019 WL 2714832, at *2 (Del. Super. Ct. Jun. 28, 2019) (emphasis omitted). Although seller had provided “‘during due diligence” two seller accounting firm reports and “‘financial statements” indicating the company would continue a certain new technology, the court found that “‘the clause precludes reliance on extracontractual representations, including the KPMG Report, the E&Y Report, and 3M’s own financial statements.” *Id.* at *4, 13. As a result, the *3M* court held that clauses in the Agreement, including the “‘results of its own independent investigation” clause, “‘clearly limits fraud claims to the written representations in the contract.” *Id.* at *13.

Likewise, in *Cablemaster, LLC v. Magnuson Grp. Corp.*, the court denied a motion to dismiss a fraud claim where the anti-reliance clause stated that “[b]uyer has relied solely on the results of its own independent investigation and on the

representations and warranties expressly and specifically set forth in” the agreement. 2023 WL 8678043, at *7 n.78 (Del. Super. Ct. Dec. 15, 2023) (emphasis omitted). The court held that “[b]uyer’s actual claims are based on what it was permitted to rely on: express contractual representations.” *Id.* at *7 (emphasis omitted).

Amerimark Interactive, LLC v. Amerimark Holdings, LLC considered a clause providing that “[t]he Buyer acknowledges to the Seller that, except for the representations and warranties that are expressly set forth in [the Agreement] . . . it is relying on its own investigation and analysis in entering into [the Agreement].” 2022 WL 16642020, at *3 (Del. Super. Ct. Nov. 3, 2022). The court held that “[a]s stated in the EPA, *Buyer relied on the representations from the EPA* in moving forward with the Closing of the transaction,” and this was sufficient to satisfy the reliance element. *Id.* at *11 (emphasis supplied). Tellingly, in none of these cases did the court make the leap that the Superior Court did here. None converted an anti-reliance clause to open up inquiry into a buyer’s due diligence. None held that such a provision means that the buyer relied on sellers’ diligence materials.

That is exactly contrary to the Superior Court’s holding here. The Superior Court went astray in ruling that the statement that Buyers relied on the “results of its own independent investigation” meant that Buyers therefore *did* rely on the Sellers’ diligence materials outside of the Agreement’s four corners, such that Buyers did not justifiably rely on the representations in the Agreement.

In this case, the Superior Court selectively enforced the Anti-Reliance Clause to preclude Buyers' reliance on extracontractual statements but overlooked its impact on reliance. Like the "independent investigation" clauses in *Prairie Capital* and its progeny, Section 5.10(a) here states that "Buyer has conducted to its satisfaction an independent investigation" and "Buyer has relied on the results of its own independent investigation and verification and the representations and warranties expressly and specifically set forth in" the Agreement. A000504. As in *Prairie Capital*, the actionable misrepresentations and the body of evidence to establish justifiable reliance are confined to the Agreement itself.²

To the extent that any doubt exists, Waxman testified that "results" in Section 5.10(a) means "output," and Buyers "selected [that] on purpose," specifically to avoid a needle-in-a-haystack defense. A012023-A012024. The "results" of Buyers' due diligence did not disclose the falsity of Sections 3.23 and 3.8 because Buyers never obtained actual knowledge of the fraud perpetrated by Sellers.

Because Section 5.10(a) cabined the universe of information upon which Buyers relied to the Sellers' representations in the Agreement, the Superior Court's error was twofold. First, the court erred in crediting extracontractual information to

²This is particularly so where, as here, the alleged references by Sellers in January 2019 were made *after* the representations in the Agreement. *Mosaic US Holdings LLC v. Atlas Tech. Sols., Inc.*, 2025 WL 483064, at *8 (Del. Super. Ct. Jan. 22, 2025) (holding internal audit did not defeat reasonable reliance on contractual representations where representations were made prior to internal audit).

conclude that Buyers' reliance on representations in the Agreement was not justifiable. Second, the court erred in concluding that Section 5.10(a) "imposed upon [Buyer] a diligence obligation." Op. 41. If Buyers had relied on the "ZF/FCA customer meetings, Ducker's diligence report," Smith's e-mail on the "softening automotive market," and "Smith's communications to Stellex" (Op. 40-41) to form their fraud claim, the reliance on such information would be barred as unjustifiable. *Abry Partners*, 891 A.2d at 1507. The same unreliable body of information cannot be used to defeat Buyers' justifiable reliance on intracontractual representations.

It would upend settled Delaware law to refuse to allow a buyer to point to extracontractual information as the basis for a fraud claim when there is an anti-reliance provision in an agreement, but then allow a seller to point to that same exact extracontractual information to argue that a buyer did not justifiably rely on the representations that the contract specifies are the only thing it relied on. The result would be that due diligence materials are not reliable for purpose of buyers' claims, but reliable for purposes of undermining buyers' claims. The Superior Court's decision allows sellers to bury information in 10,000 documents -- information that the court found in many instances was intentionally hidden and false -- and then claim that the buyers should have relied on the extracontractual information.

II. THE SUPERIOR COURT APPLIED AN INCORRECT “KNEW OR SHOULD HAVE KNOWN” STANDARD FOR JUSTIFIABLE RELIANCE IN AN INTRACONTRACTUAL FRAUD CLAIM.

A. Question Presented.

Did the Superior Court err in applying a “knew or should have known” standard for justifiable reliance in an intracontractual fraud case where the standard is “actual knowledge” of falsity where an anti-reliance clause is present. This question was raised below(A001948-49), and considered by the Superior Court. Op. 14-15, 40-47; SJ Op. 23-24.

B. Standard Of Review.

The Court reviews questions of law and contract interpretation *de novo*. *AIG Specialty*, 339 A.3d at 687; *Daniel*, 289 A.3d at 645. The Court reviews the Superior Court’s application of law to facts *de novo*, *Scharf*, 864 A.2d at, 916, and its factual findings for a clearly erroneous application. *Oracle*, 339 A.3d at 20-21 n.96.

C. Merits of Argument.

The Superior Court applied the wrong standard for a party to demonstrate justifiable reliance to establish an intracontractual fraud claim. By articulating a “knew or should have known” standard, the Superior Court lowered the level for justifiable reliance to a negligence standard in intracontractual fraud cases involving an anti-reliance clause, which flies in the face of Delaware law. By definition, if the universe of information for reliance is cabined to the written warranties and representations, the court cannot delve into an extracontractual body of information

to ascertain if reliance was justifiable.

1. The Superior Court Incorrectly Assessed Due Diligence.

“A buyer justifiably may rely on contractual representations.” *Aveanna Healthcare, LLC v. Epic/Freedom, LLC*, 2021 WL 3235739, at *24 (Del. Super. Ct. Jul. 29, 2021). Indeed, “[c]ontractually binding, *written* representations of fact ought to be the most reliable of representations. . . .” *Online HealthNow, Inc. v. CIP OCL Investments, LLC*, 2021 WL 3557857, at *12 (Del. Ch. Aug. 12, 2021) (quoting *Abry Partners*, 891 A.2d at 1507) (emphasis added).

Here, the Superior Court held “Buyers knew or should have known about Section 3.23 and 3.8’s falsity before Closing.” Op. 42. Indeed, the court did not even clearly hold what the standard was, but articulated at least four different potential standards. Op. 40-42, 44-47. In so holding, the court interpreted the Anti-Reliance clause as imposing a duty to “conduct reasonable diligence.” Op. 42, 45, 47. The Superior Court’s interpretation of the Anti-Reliance clause to create a duty to “conduct reasonable diligence” contravenes Delaware law. “In connection with the sale of a business, when a seller makes a factual representation that ‘relates to a matter as to which the parties have not equal means of information, but is peculiarly within the knowledge of [the seller], [the buyer] has *an absolute right to rely on the truthfulness of the representation*[.]’” *Columbus*, 2024 WL 5274569, at *13 (quoting *Craft v. Bariglio*, 1984 WL 8207, at *9 (Del. Ch. Mar. 1, 1984) (quoting Black, *On*

Rescission and Cancellation (2d Ed. § 118 at 363)) (emphasis added). To the contrary, a recipient of a false representation has “no duty to investigate the accuracy of representations made by the seller concerning its profitability and operational affairs, even when there is an opportunity to do so.” *Tam v. Spitzer*, 1995 WL 510043, at *9 (Del. Ch. Aug. 17, 1995) (quotation marks and citation omitted).

The Court erred in applying a “knew or should have known” standard to assess justifiable reliance in an intracontractual fraud case where an anti-reliance clause existed. *Labyrinth*, 2024 WL 295996, at *18 (“From there, Buyer’s allegations demonstrate reasonable reliance. *In the world beyond anti-reliance clauses*, reasonable reliance is a fact-intensive inquiry”) (citing *Arwood v. AW Site Services, LLC*, 2022 WL 705841, at *9 (Del. Ch. Mar. 9, 2022) (emphasis added)). “*For contractual misrepresentations*, ‘reasonable reliance ... [is] easily met... because the false statements at issue are contained in a written agreement. . . .’” *Labyrinth*, 2024 WL 295996, at *18 (quoting *LVI Grp. Inv.*, 2018 WL 1559936, at *13 n.198) (emphasis added).

Where an anti-reliance clause precluding reliance on extracontractual information exists, justifiable reliance is established through the existence of the written representations and the anti-reliance clause itself. *Urvan v. AMMO, Inc.*, 2024 WL 863688, at *12 (Del. Ch. Feb. 27, 2024). In *Urvan*, the seller in a merger sued the buyer for fraudulent inducement based on false intracontractual

representations in a merger agreement that contained an anti-reliance clause. *Id.* at *8-9, 12. The Chancery Court squarely rejected the buyer’s challenge to justifiable reliance based on contrary extracontractual information, stating:

The AMMO Entities broadly contend that Mr. Urvan wasn’t justified in relying on the express contractual representations because he had access to contradictory extra-contractual information. But “[a] buyer justifiably may rely on contractual representations.” And as the AMMO Entities themselves recognize, “[t]hrough the Anti-Reliance Provision, [Mr.] Urvan effectively disclaimed reliance on extra-contractual representations.” Put differently, the parties agreed to rely exclusively on the contents of the Merger Agreement’s representations. The AMMO Entities are hard-pressed to now say that Mr. Urvan should have ignored those representations in favor of outside information.

Id. at *11-12 (citations omitted).

Similarly, in *Agspring Holdco, LLC v. NGP X US Holdings, L.P.*, the court rejected a seller’s “challenge[] [to] the element of justifiable reliance” where the agreement contained a representation that the buyer “has relied and would rely on those representations.” 2020 WL 4355555, at *13 n.137 (Del. Ch. Jul. 20, 2020) The buyer had sought price reductions “based on diligence findings regarding Agspring’s actual and projected earnings.” *Id.* at *8. Citing to *Prairie Capital*, the court held that there would be no basis to challenge justifiable reliance:

To be clear, no basis would exist to challenge Plaintiffs’ reliance on the representations in the MIPCA, which expressly provides that Holdco has relied and would rely on those representations.

Id. at *13 n.137 (emphasis added).

These holdings align with *Cobalt Operating, LLC v. James Crystal Enterprises, LLC*, in which the Chancery Court rejected attempts to use due diligence to challenge justifiable reliance for an intracontractual fraud claim on written representations. 2007 WL 2142926, at *27-28 (Del. Ch. Jul. 20, 2007). The court found that the seller had “intentionally” made material misrepresentations about the financial statements of a company in the purchase agreement. *Id.* at *27. Although the *Cobalt* buyer had discovered in due diligence that the company’s “cash flow was only about \$4 million, not \$5 million, as claimed,” buyer was convinced to close on the deal by seller’s “pacing reports” showing ongoing growth in sales. *Id.* at *7. The court rejected seller’s attempts to claim unjustifiable reliance by the information the seller gleaned from due diligence:

In this regard, I reject [seller’s] contention that [buyer’s] due diligence precludes its right to a remedy in this case. The argument is based on the notion that [buyer’s] due diligence uncovered the very facts on which [buyer] premises its claim in this litigation, namely that there are discrepancies between the Scott Aired Files and WRMF’s billing records. As a result, [seller] contends that [buyer] cannot establish that it reasonably relied on any of the representations [seller] made and was therefore not harmed.

Representations about the accuracy of unaudited financial statements of the type involved here are by no means a ubiquitous feature of M & A contracts. But, having given the representations it gave, [seller] cannot now be heard to claim that it need not be held to them because [buyer’s] due diligence did not uncover their falsity. This point is, in fact, made clear in the Asset Purchase Agreement itself, which provides that “no inspection or investigation made by or on behalf of [buyer] or [buyer’s] failure to make any inspection or investigation shall affect [seller’s] representations, warranties, and covenants hereunder or be deemed to constitute a waiver of any of those representations, warranties, or covenants.” *Having contractually promised [buyer] that it could rely on certain representations, [seller] is in no position to contend that [buyer] was unreasonable in relying on [seller’s] own binding words.*

Id. at *28 (emphasis added).

Here, the Superior Court held exactly the opposite. At summary judgment, the Superior Court held that the Agreement created a “diligence obligation” and that there was an issue of fact “regarding whether [Buyers’] due diligence negated its contractually-established reliance.” SJ Op. 23-24. In doing so, the Superior Court erred by denying summary judgment on reliance and delving into whether Buyers’ due diligence was reasonable, because *Urvan* and *Agspring* foreclosed a challenge to the reasonableness of reliance based on extracontractual information where a fraud claim is based on contractual representation and an anti-reliance clause applies.

2. The Court’s Cited Authorities Are Inapposite.

The Court’s entire “willful blindness” argument is predicated on its misapplication of *Heron Bay Property Owners Association, Inc. v. Cootersunrise, LLC*, 2013 WL 3871432, at *9 (Del. Ch. Jun. 27, 2013), *report and recommendation approved*, 2013 WL 3734745, at *1 (Del. Ch. Jul. 16, 2013). *Heron Bay* involved, in part, an equitable estoppel defense to recorded deed restrictions prohibiting the installation of a propane tank on real property. *Id.* at *8, 9. The Superior Court cited *Heron Bay* for the concept that a party that “had means of obtaining knowledge” cannot claim a lack of knowledge based on ‘willful blindness.’” Op. 46. The quoted concept appears in *Heron Bay*’s discussion of the first element of equitable estoppel, which is a freestanding element requiring that the plaintiff “lacked knowledge or the means of obtaining knowledge of the facts in question.” *Heron Bay*, 2013 WL

3871432, at *8-9.³ That is separate and apart from the second element of equitable estoppel, which requires a party demonstrate reasonable reliance. The plaintiff’s failure in *Heron Bay* to satisfy by clear and convincing evidence the specific element of equitable estoppel that requires a showing of inability to obtain knowledge has no application here. The court below erroneously imported *Heron Bay*’s equitable estoppel element of having the means to discover a falsehood into a foreign arena—the justifiable reliance element of a fraud claim based on a sophisticated acquisition with written representations and an anti-reliance clause.

The Superior Court also relied on *Geronta Funding v. Brighthouse Life Ins. Co.*, 284 A.3d 47, 69 (Del. 2022) to conclude that actual knowledge is not required because “a party is not excusably ignorant if it is willfully blind to the relevant facts.” Op. 27, 42. But *Geronta* is wholly divorced from the facts here. *Geronta* interpreted an “excusable ignorance” exception to restitution in the *Restatement (Second) of Contracts* for a stranger-owned life insurance policy and had nothing to do with acquisitions, representations, or warranties. *Geronta*, 284 A.3d at 69-70. Neither *Geronta* nor any case citing it—save the Superior Court below—has applied it to set

³Ironically, the *Heron Bay* court held buyer’s reliance on extracontractual representations was *not* justifiable due to clauses in the agreement that disclaimed the agent’s authorization to make representations at issue, and a clause affirmatively representing that buyer had not relied on such representations – the opposite of what the Superior Court found here. *Id.* at *9.

the benchmark for justifiable reliance in an intracontractual fraud case with an anti-reliance clause.

The Superior Court likewise erred in applying the standard in *Arwood*, 2022 WL 705841, at *9, to buttress its “know or should have known” standard. Critically, *Arwood* sits “[i]n the world beyond anti-reliance clauses,” in which “reasonable reliance is a fact-intensive inquiry” that can delve into whether the buyer relied on the representor’s statements.” *Labyrinth*, 2024 WL 295966, at *18 (“*In the world beyond anti-reliance clauses*, reasonable reliance is a fact-intensive inquiry.”) (emphasis added) (citing *Arwood*, 2022 WL 705841, at *23). To be clear, the contract in *Arwood* had no anti-reliance clause, thus permitting extracontractual claims based on information disclosed in due diligence. *Arwood*, 2022 WL 705841, at *12, 19, 27. Where a purchase agreement contains an anti-reliance clause, a different question exists.⁴

In the context of an anti-reliance clause, nothing short of proof that the buyer had *actual knowledge* that the representation was false overcomes the express representation of the Sellers and the representation that the Buyers are only relying on the representations. *Abry Partners*, 891 A.2d 1032, 1065 n.86.

⁴Indeed, *Arwood* raised this point, but backed away because the question was not presented and the buyer had all but abandoned his contractual fraud claim. *Id.* at *20 n.214, 23 n.236 (“With that said, there may be a basis to view justifiable reliance differently in the contractual fraud context, particularly given the express recognition in the AP that AWS was relying upon the seller representations and warranties.”).

3. Buyers Lacked Actual Knowledge of Falsity.

Analyzed under the correct “actual knowledge” standard, the Court had to find Buyers reasonably relied on the written representations at issue. The testimony was clear that Buyers had no actual knowledge of the falsity of Section 3.8 and 3.23. The Superior Court’s analysis that Buyers should have known the falsity of Sellers’ representations and ZF and FCA’s decreasing rate of purchases is infirm. For starters, the Superior Court’s reliance on Smith’s “one-off reference to ‘some softening in the market that will affect the bottom line,’ “spoke to Paragon’s sales generally.” Op. 38, 42, 45; DX 109:1. The fact that Smith decided “not to share the specific volume information he possessed to quantify the ‘softening,’ suggests that he wanted to hide the extent of declining orders.” Op. 38-39. And, “by the time Smith disclosed that volumes were ‘softening’ on January 14, 2019, he had already received: (1) ZF’s revised downward forecasts; (2) ZF’s cancellation letter; and (3) FCA’s lower projections.” Op. 38. That, coupled with Smith’s presentation at the January 2019 banking meeting, more than overcame any hint of a decline that would result from “softening.” Op. 30; A11700(JX78).

The court erroneously conflated the Ducker report’s statement that “ZF’s Honda business was ending and would lead to a decrease in orders from Paragon” with a disclosure from Smith. Op. 42. The report showed *increasing* volumes and “continuous improvement” in market share. A012149-50; A11700 (DX92:14, 21,

44). The Ducker report's statement about Honda dealt with sales six years into the future. A11700(DX92:19). Not even ZF projected out that far. A11700(PX131) ("2024:TBD"). By contrast, Smith had in hand decreases from ZF which were much greater and more immediate. A012773-A012777; A11700(PX131). The Ducker report's "suggest[ion] [of] the "possibility" that FCA's production would move in house fares no better. Op. 45. Although Ducker's report disclosed that there was a "[m]ix of in-house and outsourcing" at FCA, it noted a distinct "trend to outsourcing"—which would have increased Paragon's volume. A11700(DX92: 14, 21, 44); A012149-A012150.

The Superior Court's citation to DX109 as calling out that "FCA [] is not showing an increase in demand," is an example of a comment "bur[ied]" deep in the e-mail, and which no Buyers' representative testified they read. Op. 35, 44-45; A012032; A012355-A012357; A012364; A012818.

The court relied on Swift's pre-FCA meeting checklist as containing items on "changed in expected volume," "programs ending earlier than forecasted," and "changes to show how FCA conduct its 'HP48/50 program,'" but Swift testified he covered these topics. A11700(PX206); A012212. The court's reliance on Swift's email that "[v]olumes for 2019 will be flat over 2018," simply meant that "the business was going to be flat year or year when we took a look at the overall business with [FCA]." Op. 9, 45; A012206.

Not only was there zero evidence of Buyers' actual knowledge of the falsity of Sections 3.8 or 3.23, but Sellers actually engaged in misconduct, destroying evidence and paying secrets "rebates" to cover their misdeeds.

III. THE TRIAL COURT INCORRECTLY RULED THAT BUYERS UNJUSTIFIABLY RELIED ON SECTION 3.23 CONCERNING THE CHANGE IN ZF'S PURCHASING TERMS.

A. Question Presented.

Whether the Superior Court erred in finding that Buyers unjustifiably relied on Section 3.23 concerning the change in ZF's purchasing terms where the Agreement contained an Anti-Reliance Clause, while also concluding that these facts were never disclosed and that Sellers intended to hide them. This question was raised below (A001948-A001949; A16147-A16152) and was considered by the Superior Court. Op. 32-39, 40-47.

B. Standard of Review.

The Court reviews questions of law and contract interpretation *de novo*. *AIG Specialty*, 339 A.3d at 687; *Daniel*, 289 A.3d at 631, 645. The Court reviews the Superior Court's application of law to facts *de novo*, *Scharf*, 864 A.2d at 909, 916, and its factual findings for clear error. *Oracle*, 339 A.3d at 20-21 n.96.

C. Merits of Argument.

The Superior Court found that Section 3.23 was knowingly false at Closing concerning the "loss of ZF[']s sole supplier status and the ZF rebate." Op. 29. Indeed, the court found that "Sellers never disclosed the rebate to Buyers pre-Closing," which "coupled with Sellers' decision to route payment through an affiliate, suggests a wrongful intent." Op. 37. Similarly, the Superior Court concluded that "Smith's failure to inform Buyers that the GPA Amendment was

driven by the [Company's] loss of 'sole supplier' status for ZF's 9HP programs hints at Sellers' wrongful intent." Op. 36. At the same time the Superior Court found intent to conceal these false representations, it erroneously applied the law to conclude that those same facts showed a lack of justifiable reliance.

1. Buyers Justifiably Relied On Sellers' Representation That ZF's Purchasing Terms Had Not Changed Relating to the Rebate.

The court's justifiable reliance analysis did not directly address the rebate at all. Op. 40-47. While acknowledging that "Sellers never disclosed the rebate to Buyers pre-Closing" and "never recorded [it] on the books" (Op. 37), the court appeared to suggest that Swift could have asked about it at his December 12, 2012 meeting with Spackman. Op. 34, 44. The Superior Court reasoned that because the December 2018 ZF discussion topics refer to "the nature of the GPA amendment" (Op. 44; A11700(JX206:5), Swift could have "asked more questions regarding ... Paragon's business with ZF during diligence" (Op. 34, 43-44) which the court below suggests, hypothetically, would have revealed the rebate.

The Superior Court erred in concluding that Swift should have asked about the rebate because there was nothing to trigger such an inquiry. The rebate was "the first rebate the Company ever paid ZF." Op. 7. Buyers could not have anticipated the rebate because Sellers took affirmative steps to hide it: running it through "Paragon's Chinese affiliate" (Op. 7); failing to record it on Company's books (Op. 37); concealing the "business plan letter" detailing the rebate (A012451-A012452;

A012638-A012640; A11700(PX110)); refusing to sign an additional “side letter to the side letter” documenting the rebate (A014641-A014643; A11700(PX0111:2)); and falsely representing Seller had disclosed all contracts (Op. 10-11; A11700(JX1, §3.12(a)). Smith “destroyed his company issued phone” (Op. 37)—including text messages with Spackman and LaTarte about the rebate the day before the December 12 meeting including the night before (A013345-A013348); A11700(PX111:5)—and then testified on this point in a manner that was not “credible given that he repeatedly contradicted his earlier deposition testimony” (Op. 38). The court’s conclusion that Sellers “misle[d] [Buyers] regarding the nature of the ZF GPA Amendment” defeats any speculation that Buyers should have discovered the rebate. Op. 32, 36.

The Superior Court erred in suggesting that Spackman would have brought out the rebate at his December meeting with Swift, had Swift further inquired into it. Op. 9, 44. Spackman testified “the meeting was an introductory meeting” that he did not expect to be “grilled for all sorts of details.” Op. 9; A014411. Spackman testified that he did not mention the rebate because the “meeting was intended to be a look forward” and he did not “expect[] to be talking about anything [he] [was] discussing with” Sellers. Op. 9; A014413-A014414. Spackman testified that he would “communicat[e] to the new owners tomorrow” that “this business was likely to be resourced” if Sellers did not acknowledge that the “\$300,000 payment would

be made in 2018.” A014434-A014435. After all, Smith admitted Spackman “threaten[ed]” him by using the meeting with Swift as “leverage” to “get [him] to pay th[e] rebate.” Op. 9; A012440-A012441. After the meeting, Spackman emailed Smith that the meeting had gone well and he “trust[ed] there w[ould] be no disappointment as to the making of the payment in 2018.” A012447-A012448; A11700(PX111). That the December 2018 ZF discussion topics given to Swift refer to “the nature of the GPA amendment” Op. 32, 44; A11700(JX206:5) is no assurance that the truth would have come to light because the court also found that “rebates and sole supplier status are not discussed in the ZF GPA or GPA amendment.” Op. 20. Given the circumstances, the court’s speculation that “more questions” would have revealed the rebate is clearly erroneous. Op. 43.

Having been prevented from finding the rebate, Buyer cannot be faulted for not locating the unknown needle in the proverbial haystack. *Cobalt*, 2007 WL 2142926, at *28 (buyer’s “failure to uncover the fraud during its due diligence review was not unreasonable, as the fraud was intentionally hidden from [buyer] when its due diligence team went looking”); *Great Hill Equity Partners IV, LP v. SIG Growth Equity Fund I, LLLP*, 2018 WL 6311829, at *33 (Del. Ch. Dec. 3, 2018) (“The fact that a plaintiff’s diligence efforts do not uncover fraud does not render such efforts unreasonable, especially when the fraud was intentionally hidden”).

2. Buyers Justifiably Relied On The Representation That ZF's Purchasing Terms Had Not Changed Relating to The Sole Supplier Issue.

The Superior Court found that Buyers knew the representation in Section 3.23 was false because “Paragon was no longer ZF’s sole supplier of 9HP bearing brackets.” Op. 36. The court did not rely on any express disclosure made by Sellers, conceding that “Sellers do not contend they *ever* told Buyers that Paragon was no longer ZF’s sole supplier of 9HP transmission bearing brackets.” Op. 36. Instead, the court relied on the reference in the December 2018 ZF discussion topics and series of “inartful” messages from Smith. Op. 3, 43.

The court erred in concluding that “inartful” references in Smith’s December 29, 2019 email “*at least hints* at Paragon’s loss of sole supplier status,” such that Buyers did not justifiably rely on the express, written contractual representation in the Agreement. Op. 3, 43. The e-mail, which states that “China is tooled up for Nissan / Renault” (A11700(DX99, DX102, DX105)) refer to “China,” not a competing company. A012402. And, all of these emails emanate from the very same December 28, 2018 Smith e-mail that the court branded as a badge of scienter because Smith *removed* the ZF cancellation letter from the e-mail and provided a “dubious” justification for it at trial. Op. 32, 35. The same email cannot simultaneously serve as a hallmark of Sellers’ successful concealment that their written representations were lies and a basis for finding Buyers had actual knowledge that the written representations were lies.

The court likewise erred in rejecting Buyers' testimony that they "never read or discussed" these emails because "their own documents" refuted that assertion. Op. 44. The emails that the court points to as the "refut[ation]" were authored starting on December 29, 2018 through early January 2019 (A11700(DX99, DX102 DX105)), while the ZF discussion topic documents were authored in November and December 2018. A11700(DX76, JX26).

The Superior Court hypothesized that, because Spackman testified that "Stellex had the freedom to ask whatever they [sic] wanted in customer meetings," Buyers would have learned "about the very information they allege Sellers fraudulently withheld" if they had just conducted diligence differently. Op. 44. The court also erred in finding that Swift confined his comments to a single question. Op. 34, 44. Swift testified that in his 20-minute discussion of business with Spackman, he "discussed the bearing bracket product that Paragon supplied to ZF," "the price down agreement," "volumes," and "schedules." A012225-A012227. The question, "is the business still good," came *after* that discussion. A012225-A012228.

The court surmised that Swift *could* have asked Spackman about "Paragon's key supplier distinction and importance" in the ZF checklist. Op. 44. That the "list of discussion topics to address at the in-person customer meeting with ZF" included "Paragon's key supplier distinction and importance" (Op. 44) is of no moment because the strategic supplier ruse was part of Sellers charade to convince Buyers

that the point of the GPA Amendment was to obtain “strategic supplier” status. A012566-A012568. Swift testified that the reference to the “key supplier distinction” referred to Smith’s statement that it was a strategic supplier. A012212-A012216. This was a ruse, because Paragon was already a “strategic supplier,” and the GPA Amendment did not gain it any new status. A014397. And, in fact, Swift testified that he did go over this topic with Spackman, as Spackman himself admitted he told Swift that “we also told [Smith] you’ll be a key supplier,” and “we want you to be a key supplier for us and do more for us.” A012225-A012226. And, again, “would have, could have, should have” is not the standard under Delaware law in the face of the Anti-Reliance Clause.

Finally, the Superior Court concluded that Buyers should have parsed the 10,000 documents in the data room to ascertain that the Company was no longer the sole supplier to ZF of the 9HP48, pointing to the October Reforecast as containing volume forecasts related to customers absent from the GPA amendment, such as Renault-Nissan-Mitsubishi. Op. 43. But the GPA Amendment, which post-dated the October Reforecast, stated that the “Products set forth on Schedule 3” shall not be subject to competitiveness based on price, and Schedule 3 referred to the parts numbers for both the 9HP48 and the 9HP50. Op. 7; A012155; A11700(JX 4:5, JX6:2, 4). Tellingly, Company’s own Sales Director, Lisa Brooke, testified that she learned the Company was not “exclusive” “after we did the forecast” because it came

up “when the GPA amendment was being reviewed.” A015470-A015471. As a result of the Sellers’ concealment of information -- which the Superior Court found that the Sellers had intentionally concealed -- the facts did not come out until discovery. A012590.

3. The Superior Court Erred In Requiring Buyers to Ferret Out Sellers’ Inartful References Buried in Diligence Materials.

The Superior Court flipped Delaware law on its head by imposing upon Buyers a duty to discover Sellers’ lies from references that the court deemed “inartful” that were “bur[ied]” within emails. Op. 3, 35, 43. The Superior Court required Buyers to do in due diligence what courts have found is not required in other circumstances. *Cf. Vento v. Curry*, 2017 WL 1076725, at *8 (Del. Ch. Mar. 22, 2017) (holding that, under “buried facts” doctrine, “disclosure is inadequate if the disclosed information is ‘buried’ in the proxy materials”) (quoting *Weingarden & Stark v. Meenan Oil Co.*, 1985 WL 44705, at *3 (Del. Ch. Jan. 2, 1985)).

Smith’s e-mails to Swift in December 2018 and January 2019 were not enough to invalidate reasonable reliance—particularly where the Superior Court repeatedly characterized these emails as “inartful” and the reference to no longer being the sole supplier as a mere “hint.” Op. 3, 43. By repeating the same representations about “sole supplier” in a bank presentation that post-dated Smith’s e-mails (Op. 30; A11700(JX78:19, 30)), and signing a Bring-Down Certificate *after* Smith’s emails that attested to the validity of the representations (A11700(JX3)), this case is like

Labyrinth, 2024 WL 295996, at *19, where the seller “consistently and repeatedly offered facts and [c]ompany data to support his representations,” to conceal the truth. 2024 WL 295966, at *19. Thus, the court erred in requiring Buyers to rely on these “inartful” emails and “hints” instead of contractually negotiated representations, and imposing upon Buyers an affirmative duty to uncover the very information Sellers tried so hard to hide. *Cobalt*, 2007 WL 2142926, at * 28 (“Due diligence is expensive and parties to contracts in the mergers and acquisitions arena often negotiate for contractual representations that minimize a buyer's need to verify every minute aspect of a seller’s business”); *Labyrinth*, 2024 WL 295996, at *19 (reliance was justifiable where, among other things, “[b]uyer and [s]eller collectively drafted the [agreement]”).

CONCLUSION

The Court should reverse the judgment of the Superior Court and enter judgment in favor of Buyers on all elements of their claim for fraudulent inducement, with instructions to fix the amount of damages awarded to Buyers.

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EXHIBITS

Order Upon Plaintiffs' Motion for Partial Summary Judgment and Defendants'

Motion for Summary Judgment dated January 28, 2025 – Exhibit A

Decision After Trial dated August 13, 2025 – Exhibit B