

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA

KUMUD HOSPITALITY LLC; and :
DINESHKUMAR JADAV, :
Plaintiffs, : No. CV 24-00,087
 :
vs. : CIVIL ACTION
 :
SSN WILLIAMSPORT LLC; SSN :
HOTEL MANAGEMENT LLC; PIYUSH :
BHAISADSWALA a/k/a PETER BHAI; :
PINKY BHAISADSWALA a/k/a PINKY :
BHAI; JOHN DOE (1-99); and XYZ :
CORPORATION (1-99), :
Defendants. :

OPINION AND ORDER

AND NOW, this 25th day of November, 2024, upon consideration of the Defendants' motion for judgment on the pleadings (the "Motion"),¹ Plaintiffs' response to the Motion (the "Response"),² and the briefs³ and arguments of the parties, it is hereby ORDERED and DIRECTED that the Motion is GRANTED in part and DENIED in part, as explained below.

I. BACKGROUND.⁴

Plaintiffs Dineshkumar Jadav and Kumud Hospitality LLC commenced this action by Complaint filed on January 22, 2024 against Defendants SSN Williamsport LLC, SSN Hotel Management LLC, Piyush Bhaishadswala a/k/a Peter Bhai, and Pinky Bhaishadswala a/k/a Pinky Bhai (the "Complaint").⁵ Plaintiffs' claims arise out

¹ Defendants' Motion for Judgment on the Pleadings, filed May 24, 2024.

² Plaintiffs' Opposition to Defendants' Motion for Judgment on the Pleadings, filed July 12, 2024.

³ Defendants Brief in Support of Their Motion for Judgment on the Pleadings, filed June 14, 2024 ("Defendants' Brief"); Defendants' Reply Brief in Support of Their Motion for Judgment on the Pleadings, filed July 22, 2024 ("Defendants' Reply Brief").

⁴ As the Motion seeks judgment on the pleadings, all well-pleaded allegations of the Complaint are accepted as true. See, e.g., *Rubin v. CBS Broadcasting Inc.*, 170 A.3d 560, 564 (Pa. Super. 2017). Accordingly, factual statements made by the Court in this Opinion are not findings of facts.

⁵ Complaint, filed January 22, 2024, ¶ 1.

of a Membership Purchase Agreement dated November 15, 2015 (the "Agreement") entered into among SSN Williamsport LLC, Kumud Hospitality LLC, and Peter Bhai.⁶ Plaintiffs assert causes of action for consumer fraud (Count I),⁷ common law fraud (Counts II, III),⁸ fraud in the inducement (Counts IV, V),⁹ breach of contract (Counts VI-VIII),¹⁰ negligent misrepresentation (Count IX),¹¹ promissory estoppel (Counts X, XI),¹² unjust enrichment (Counts XII, XIII),¹³ breach of the covenant of good faith and fair dealing (Counts XIV, XV),¹⁴ breach of fiduciary duty (Counts XVI, XVII),¹⁵ conversion (Counts XVIII, XIX),¹⁶ *quantum meruit* restitution (Count XX),¹⁷ intentional infliction of emotional distress (Counts XXI, XXII),¹⁸ and negligent infliction of emotional distress (Counts XXIII, XXIV).¹⁹

Plaintiffs' claims arise out of Defendants' solicitation of a six hundred thirty-five thousand dollar (\$635,000) investment from Plaintiffs toward the purchase and renovation of a Red Roof Inn in Williamsport, Pennsylvania (the "Inn").²⁰ Plaintiffs contend that Defendants misrepresented the purchase price of the Inn to induce Plaintiffs to make their investment, which would result in Plaintiff Kumud Hospitality securing an ownership interest in Defendant SSN Williamsport, which would own the Inn.²¹ Pursuant to the Agreement, Kumud Hospitality is the "Buyer," who would own

⁶ *Id.*

⁷ *Id.*, ¶¶ 73-81.

⁸ *Id.*, ¶¶ 82-93.

⁹ *Id.*, ¶¶ 94-95.

¹⁰ *Id.*, ¶¶ 96-104.

¹¹ *Id.*, ¶¶ 105-06.

¹² *Id.*, ¶¶ 107-11.

¹³ *Id.*, ¶¶ 112-15.

¹⁴ *Id.*, ¶¶ 116-17.

¹⁵ *Id.*, ¶¶ 118-23.

¹⁶ *Id.*, ¶¶ 124-27.

¹⁷ *Id.*, ¶¶ 128-34.

¹⁸ *Id.*, ¶¶ 135-36.

¹⁹ *Id.*, ¶¶ 137-38.

²⁰ *Id.*, ¶¶ 12-13.

²¹ *Id.*, ¶¶ 14, 16-20.

forty-nine percent (49%) of the membership interests in SSN Williamsport, while Defendant Peter Bhai was the “Seller” who would own the remaining fifty-one percent (51%).²² Plaintiffs allege that Peter Bhai never invested his portion of money required to consummate his ownership interests in SSN Williamsport and that he, nevertheless, retained one hundred percent (100%) of the management and operational control of SSN Williamsport's business.²³

The Defendants renovated the Inn to prepare it for hotel rentals for the spring, 2016 season, and, on May 5, 2016, the Inn opened to the public.²⁴ Plaintiffs contend that Defendant Peter Bhai alleged there were capital shortfalls in the business, which were necessitated by his failure to make his investment, in an attempt to secure from Plaintiffs additional funding, which they were unable to provide. Subsequently Peter Bhai made loans to SSN Williamsport totaling \$250,000, which he later paid back to himself in 2018 and 2019.²⁵ Plaintiffs also contend that Plaintiff Jadev was to be hired as hotel manager of the Inn, working forty (40) hours per week for compensation of four thousand dollars (\$4,000) per month, but that he worked more hours than required, from March 2016 to June 2016 and again from October 2016 to April 2017, and was not paid any compensation for his work.²⁶

Plaintiffs assert that each time Jadev would inquire about the status of SSN Williamsport, Peter Bhai would tell him that the Inn was failing and had no money.²⁷ Plaintiff alleges that Jadev thereafter, from about March, 2019, began investigating the Defendants and their businesses, including the Inn. Jadev alleges that he

²² *Id.*, ¶ 21.

²³ *Id.*, ¶¶ 22-23.

²⁴ *Id.*, ¶¶ 24-25.

²⁵ *Id.*, ¶¶ 26-29.

²⁶ *Id.*, ¶¶ 15, 30-38.

²⁷ *Id.*, ¶¶ 39-40.

discovered evidence that Defendants were understating profits; moving money for the benefit of Defendants Peter and Pinky Bhai that should have been paid out as a return on his investment; transferring money out of SSN Williamsport without notice to or authorization from Plaintiffs, as co-owners of SSN Williamsport; paying themselves management fees in excess of industry standards through Defendant SSN Hotel Management; fraudulently obtaining and utilizing two PPP loans, in the amounts of fifteen thousand seven hundred dollars (\$15,700) and thirty-seven thousand nine hundred ninety-eight dollars (\$37,998) through SSN Williamsport; engaging in various activities to lower SSN Williamsport's net operating income; and repaying alleged loans to Pinky Bhai when no loans were made by her to SSN Williamsport.²⁸ Further, Jadev alleges that he was required to pay taxes on SSN Williamsport profits while receiving no money from SSN Williamsport.²⁹

In sum, Plaintiffs allege that Defendants engaged in a fraudulent scheme or schemes to avoid paying profits from SSN Williamsport to Plaintiffs.³⁰ Jadev further alleges that he suffered health issues and that his marriage dissolved as a result of Defendants' misconduct.³¹ Finally, Plaintiffs allege that SSN Williamsport sold the Inn to an unrelated third party on or about June 17, 2022 for two million three hundred seventeen thousand five hundred dollars (\$2,317,500) and that Defendants falsely reported the sale price for tax purposes and paid Plaintiffs the sum of six hundred twelve thousand five hundred dollars (\$612,500), which was less than their initial investment and included no profits or wages.³² Thereafter, on or about

²⁸ *Id.*, ¶¶ 41-53.

²⁹ *Id.*, ¶¶ 54-55.

³⁰ *Id.*, ¶¶ 43-56.

³¹ *Id.*, ¶¶ 57-61, 68.

³² *Id.*, ¶¶ 62-64.

January 19, 2023, Defendants dissolved SSN Williamsport by filing a certificate of dissolution with the Secretary of State of this Commonwealth.³³

Plaintiffs contend that they made a demand of Defendants for payment and turnover of business records pertaining to SSN Williamsport on or about September 13, 2023 but that Defendants refused to comply.³⁴ Ultimately, Plaintiffs contend that they suffered “significant and irreparable financial and emotional damages” as a result of Defendants’ conduct and that they have filed this suit to recover the same.³⁵

A. Defendants’ motion for judgment on the pleadings.

Defendants’ Motion seeks dismissal of the Plaintiff’s Complaint in its entirety. They contend that this is Plaintiffs’ fourth lawsuit against them arising from the same underlying facts and circumstances and that the Complaint must be dismissed (i) because Kumud is not registered to do business in Pennsylvania and, therefore, cannot sue in Pennsylvania as a matter of law; (ii) because Plaintiffs’ claims are untimely and barred by the statute of limitations; and (iii) that all of Plaintiffs’ claims are fatally flawed substantively.³⁶ Plaintiffs’ prior lawsuits against Defendants included (1) a suit filed in the United States District Court for the District of New Jersey on January 24, 2023, to docket no. 2:23-cv-00396-SDW-ESK, which was dismissed *sua sponte* for jurisdictional reasons on February 10, 2023 (the “New Jersey Federal Action”); (2) a suit filed in the Superior Court of New Jersey, Middlesex County, Law Division, on February 17, 2023, to docket no. MID-L-000996-23, which was dismissed upon Motion of the Defendants for jurisdictional reasons and substantive reasons, without opposition by the Plaintiffs, on May 12,

³³ *Id.*, ¶ 65.

³⁴ *Id.*, ¶¶ 66-67.

³⁵ *Id.*, ¶ 68.

³⁶ Motion, ¶ 1.

2023 (the “New Jersey State Action”); and (3) a suit filed in the United States District Court for the Eastern District of Pennsylvania on October 20, 2023, to docket no. 2:23-cv-04066, which was voluntarily discontinued by Plaintiffs on November 17, 2023 (the “Pennsylvania Federal Action”).³⁷

The Motion contends that dismissal is appropriate here because Kumud is not registered to do business in Pennsylvania.³⁸ They also contend that the individual claims are fatally flawed as follows: (i) Plaintiffs’ claims under Pennsylvania’s Unfair Trade Practices and Consumer Protection Law (“UTPCPL”)³⁹ (Count I) fail because they arise from a commercial transaction and not from the purchase or lease of goods and services primarily for personal, family or household purposes;⁴⁰ (ii) Plaintiffs’ claims for common law fraud (Counts II, III), fraud in the inducement (Counts IV, V), negligent misrepresentation (Count IX), breach of fiduciary duty (Counts XVI, XVII), and conversion (Counts XVIII, XIX) are barred by the statute of limitations, the gist of the action doctrine and the economic loss doctrine;⁴¹ (iii) Plaintiffs’ claims for breach of contract (Counts VI-VIII) are barred by the statute of limitations and fail because Plaintiff Jadev and all Defendants other than Peter Bhai are not parties to the Agreement;⁴² (iv) Plaintiffs’ claims for promissory estoppel (Counts X, XI), unjust enrichment (Counts XII, XIII), and *quantum meruit* restitution (Count XX) are barred by the statute of limitations and by the alleged existence of an express contract;⁴³ (v) Plaintiffs’ claims for breach of the covenant of good faith and fair dealing (Counts XIV, XV) are barred by the statute of limitations and fail as a

³⁷ *Id.*, ¶¶ 3-9.

³⁸ *Id.*, ¶¶ 55-65.

³⁹ 73 P.S. §§ 201-1, *et seq.*

⁴⁰ Motion, ¶¶ 68-80.

⁴¹ *Id.*, ¶¶ 81-113, 136-39, 165-89.

⁴² *Id.*, ¶¶ 114-35.

⁴³ *Id.*, ¶¶ 140-54, 190-97

matter of law because Pennsylvania does not recognize breach of this covenant as an independent cause of action;⁴⁴ and (vi) Plaintiff's claims for intentional infliction of emotional distress (Counts XXI, XXII) and negligent infliction of emotional distress (Counts XXIII, XXIV) are barred by the statute of limitations and fail as a matter of law because (a) Plaintiff Kumud Enterprises is a business entity and cannot suffer emotional harm; (b) Plaintiff Jadev cannot recover for any emotional distress for alleged intentional withholding of profits because, individually, he was never entitled to receive any profits from SSN Williamsport since he was not a member of it; (c) because Defendants' acts and omissions were not directed at Jadev, and there is no evidence he was present when the alleged misconduct occurred; (d) Jadev cannot recover for negligent infliction of emotional distress because there are no allegations to support such a claim under any of the four recognized theories of liability and because no defendant had a fiduciary duty to him.⁴⁵

B. Plaintiffs' response to the motion for judgment on the pleadings.

Plaintiffs admit that this is the fourth lawsuit they have filed in an attempt to recover damages over the same transactions and occurrences; however, they assert that this does not bar them from pursuing relief here. Both parties agree that the New Jersey Federal Action was dismissed *sua sponte* for jurisdictional reasons and the Plaintiffs withdrew the Pennsylvania Federal Action; however, Plaintiffs disagree that the New Jersey State Action was dismissed on substantive grounds, pointing to the notation on the docket that the case was dismissed "without prejudice."⁴⁶ In

⁴⁴ *Id.*, ¶¶ 155-64

⁴⁵ *Id.*, ¶¶ 198-230.

⁴⁶ Response, Exh. J.

sum, Plaintiff contends that all of the preceding cases were dismissed on jurisdictional grounds, rather than on substantive grounds.⁴⁷

Plaintiffs contend that the Defendants' Motion should be denied because: (i) there are genuine issues of fact to be determined by the Court in the interests of justice; (ii) Plaintiffs' technical arguments for judgment on the pleadings are moot and without merit because Defendants have replied to Defendants' New Matter, and Kumud has registered to do business within the Commonwealth; (iii) Plaintiffs have identified a person other than Defendants Peter and Piinky Bhai who has received profits from SSN Williamsport, further demonstrating the fraudulent conduct of the Defendants; (iv) the profit and loss statements of SSN Williamsport do not match the corresponding tax records for any given year, also further demonstrating Defendants' fraudulent conduct. Plaintiffs request that the Motion be denied and that this matter proceed to discovery.⁴⁸

II. LAW AND ANALYSIS.

A. Legal standard.

Pursuant to the Pennsylvania Rules of Civil Procedure, "[a]fter the relevant pleadings are closed, but within such time as not to unreasonably delay the trial, any party may move for judgment on the pleadings."⁴⁹ Here, the pleadings are closed,⁵⁰

⁴⁷ *Id.*, at 2-3.

⁴⁸ *Id.*, at 6.

⁴⁹ Pa. R. Civ. P. 1034(a).

⁵⁰ Plaintiffs filed their Complaint on January 22, 2024. Defendants filed their Answer with New Matter on April 1, 2024 (the "Answer"), and Plaintiffs filed their Reply to New Matter on July 3, 2024 (the "Reply"). Accordingly, the pleadings are closed, as all required and permitted pleadings have been filed. See Pa. R. Civ. P. 1017 (specifying pleadings allowed in a civil action).

and the Defendants filed their Motion within such time as not to delay trial unreasonably.⁵¹ Accordingly, the Court finds that the Motions is timely.⁵²

“A ... motion for judgment on the pleadings can be used as a motion to test whether such a cause of action as pleaded exists at law, and in that way ‘is in the nature of a demurrer.’”⁵³ The motion is limited to the pleadings themselves, and no outside factual material may be considered.⁵⁴ The court must accept as true all well-pleaded facts in favor of the non-moving party.⁵⁵ “Judgment on the pleadings may be entered when there are no disputed issues of fact and the moving party is entitled to judgment as a matter of law.”⁵⁶

B. Effect of the prior litigation.

“[T]he doctrine of *res judicata* holds that a final valid judgment upon the merits by a court of competent jurisdiction bars any future suit between the same parties or their privies on the same cause of action.”⁵⁷ “A judgment is deemed final for purposes of *res judicata* or collateral estoppel unless or until it is reversed on appeal.”⁵⁸ *Res judicata* in Pennsylvania encompasses both issue preclusion and

⁵¹ This Court’s Scheduling Order entered April 8, 2024 provides, *inter alia*, that the cut-off date for filing dispositive motions is March 27, 2025. Scheduling Order, entered April 8, 2024, ¶ 5. Defendants filed their Motion on May 24, 2024, well before the cut-off date.

⁵² Although Defendants filed their Motion on May 24, 2024, prior to filing of Plaintiffs’ Reply to New Matter, and, therefore, prior to the pleadings being closed, the Court will not dismiss the Motion as pre-mature. All of the allegations of the New Matter are conclusions of law to which no responsive pleading was required and, therefore, are deemed denied. Accordingly, when no reply to Defendants’ New Matter was filed by April 21, 2024, Defendants properly could deem the pleadings to be closed. *See, supra*, Part I.B., at 8 n. 50.

⁵³ *Bensalem Twp. School Dist. v. Commonwealth*, 544 A.2d 1318, 1321 (Pa. 1988) (quoting *Bata v. Central Pa. Nat’l Bank of Philadelphia*, 224 A.2d 174, 178 (Pa. 1966)).

⁵⁴ *Id.* (quoting *Goodrich Amran*, 2d § 1035:1, p. 423).

⁵⁵ *Baumbach v. Lafayette College*, 272 A.3d 83, 88 (Pa. Super. 2022) (citing *Wakeley v. M.J. Brunner, Inc.*, 147 A.3d 1, 5 (Pa. Super. 2016)).

⁵⁶ *Monroe v. CBH20, LP*, 286 A.3d 785, 796 (Pa. Super. 2022) (quoting *Baumbach, supra*, 272 A.3d at 88).

⁵⁷ *Dempsey v. Cessna Aircraft Co.*, 653 A.2d 679, 680-81 (Pa. Super. 1995) (en banc).

⁵⁸ *Shaffer v. Smith*, 673 A.2d 872, 874 (Pa. 1996) (citation omitted).

claim preclusion⁵⁹ and “bars the relitigation of issues that either were raised or could have been raised in the prior proceeding.”⁶⁰ *Res judicata* will be held to apply when the persons, parties and things being sued for in a subsequent action are the same as those in the first action.⁶¹

Here, the persons, parties and things being sued for are the same as those in the prior action. *Res judicata* does not bar the instant action, however, because *res judicata* applies only where there has been a decision on the merits in the prior action.⁶² The New Jersey Federal Action was dismissed for lack of jurisdiction, and the Pennsylvania Federal Action was voluntarily withdrawn. In both cases, the lawsuits were terminated without the courts having reached the merits of the dispute. The New Jersey State Action was dismissed “without prejudice,” *i.e.*, “[w]ithout loss of any rights; in a way that does not harm or cancel the legal rights or privileges of a party.”⁶³ Indeed, a lawsuit that is dismissed “without prejudice” is “removed from the court’s docket in such a way that the plaintiff may refile the same suit on the same claim.”⁶⁴ As the merits of the dispute were never reached in any of the prior actions, they do not bar this lawsuit on the basis of *res judicata*.

Accordingly, the Motion is DENIED to the extent it seeks dismissal of the Complaint on the basis of *res judicata*.

⁵⁹ *Khalil v. Cole*, 240 A.3d 996, 1002 (Pa. Super. 2020) (citing *Chada v. Chada*, 756 A.2d 39, 42 (Pa. Super. 2000)).

⁶⁰ *McArdle v. Tronetti*, 627 A.2d 1219, 1222 (Pa. Super. 1993) (citations omitted).

⁶¹ *Northwestern Lehigh Sch. Dist. v. Commw., Agr. Lands Condemnation Approval Bd.*, 578 A.2d 614, 617 (Pa. Commw. 1990).

⁶² *U.S. Bank Nat’l Ass’n v. Davis*, 232 A.3d 952, 954-56 (Pa. Super. 2020); *Weinar v. Lex*, 176 A.3d 907, 915-19 (Pa. Super. 2017).

⁶³ Black’s Law Dictionary (12th ed. 2024), without prejudice.

⁶⁴ *Id.*, dismissed without prejudice.

C. Plaintiffs' late filing of their Reply to New Matter.

Defendants filed their Answer with New Matter on April 1, 2024. The New Matter was endorsed with a notice to plead, so the Plaintiffs' Reply to New Matter should have been filed within twenty days after April 1, 2024, or by April 21, 2024.⁶⁵

The Defendants' New Matter asserts:

139. All paragraphs above are incorporated herein by reference.

140. Plaintiffs fail to state a claim upon which relief can be granted.

141. Plaintiffs are not entitled to the relief they request.

142. Plaintiffs fail to plead any entitlement to receive attorneys' fees.

143. Plaintiffs' claims are barred and/or limited by Plaintiffs' failures to satisfy all conditions precedent.

144. Plaintiffs' claims are barred and/or limited by the applicable Statute(s) of Limitations.

145. Plaintiffs' claims are barred and/or limited by the doctrine of laches.

146. Plaintiffs' claims are barred and/or limited by the Statute of Frauds.

147. Plaintiffs' claims are barred and/or limited by the parol evidence rule.

148. Plaintiffs' claims are barred and/or limited by the gist of the action doctrine.

149. Plaintiffs' claims are barred and/or limited by the doctrine of collateral estoppel and/or *res judicata*, including, without limitation, as a result of the dismissals of the New Jersey Federal Action, the New Jersey State Action, and the Pennsylvania Federal Action, and Plaintiffs' failures to appeal the same.

⁶⁵ See Pa. R. Civ. P. 1026(a) (providing that pleadings subsequent to a complaint typically must be filed within twenty days after filing of the preceding pleading, provided that it contains a notice to defend or is endorsed with a notice to plead).

150. Plaintiffs' claims are barred and/or limited by lack of standing.

151. Kumud's claims are barred and/or limited by its failure to properly register to do business in the Commonwealth of Pennsylvania and/or obtain all necessary certificates to do business in Pennsylvania.

152. Kumud's alleged claims for emotional damages are barred because Kumud cannot suffer emotional damages as a legal entity.

153. Plaintiffs' claims are barred and/or limited by the doctrine of unclean hands.

154. Plaintiffs' claims are barred and/or limited by Plaintiffs' own misconduct and failures to comply with law.

155. Plaintiffs' claims are barred and/or limited by Plaintiffs' own breaches of contract.

156. Plaintiffs' claims are barred and/or limited by the doctrine of waiver and/or estoppel.

157. Plaintiffs' claims are barred and/or limited by the doctrine of consent and/or justification and/or release.

158. Plaintiffs' claims are barred and/or limited by the doctrine of payment and/or accord and satisfaction.

159. At all times material hereto, Defendants acted reasonably, lawfully, and in good faith.

160. Plaintiffs' claims are barred and/or limited by the business judgment rule.

161. Plaintiffs' claims are barred and/or limited by the failure to make a demand under the Pennsylvania Uniform Limited Liability Company Act of 2016, 15 Pa. C.S. § 8811, *et seq.*, and/or to otherwise comply with all requirements thereunder.

162. Defendants' actions and/or inactions are not the proximate cause of any alleged loss of Plaintiffs.

163. Plaintiffs' claims are barred and/or limited because Jadav's alleged health issues were proximately caused by actions and inactions of those other than Defendants, including without limitation the actions and inactions of Jadav.

164. Plaintiffs' claims are barred and/or limited because Jadav's alleged marital issues were proximately caused by actions and inactions of those other than Defendants, including without limitation the actions and inactions of Jadav.

165. At least certain of Plaintiffs' claims, if not all of Plaintiffs' claims, are brought in bad faith and with actual and/or constructive knowledge of their futility.

166. At least certain of Plaintiffs' claims, if not all of Plaintiffs' claims, are without evidentiary or legal basis.

167. Plaintiffs prosecute and maintain this action knowing or having reason to know that it is without probable cause.

168. Defendants reserve the right to supplement all New Matter defenses as discovery continues and up to and including the time of trial.⁶⁶

Notwithstanding the rule that a party must reply to new matter endorsed with a notice to plead within twenty days, not every allegation requires a response, and averments in a pleading to which no response is required are deemed denied.⁶⁷

Generally, a party must admit or deny each averment of fact in the preceding pleading⁶⁸ but is not required to respond to conclusions of law.⁶⁹

"A legal conclusion is a statement of a legal duty without stating the facts from which the duty arises. A statement of the existence of a fact could be a legal conclusion if the fact stated is one of the ultimate issues in the proceeding."⁷⁰

⁶⁶ Answer, ¶¶ 139-68.

⁶⁷ Pa. R. Civ. P. 1029(d).

⁶⁸ Pa. R. Civ. P. 1029(a) ("A responsive pleading shall admit or deny each averment of fact in the preceding pleading or any part thereof to which it is responsive").

⁶⁹ "While averments of fact require a denial, conclusions of law do not compel a response." *Rohrer v. Pope*, 918 A.2d 122, 129 (Pa. Super. 2007) (citations omitted).

⁷⁰ *Mellon Bank, N.A. v. National Union Ins. Co. of Pittsburgh, PA*, 768 A.2d 865, 869 n.1 (Pa. Super. 2001) (quoting *Kaiser v. Western States Administrators*, 702 A.2d 609, 614 (Pa. Commw. 1997)). "Mellon's allegation that it is an insured under the Policy is a conclusion of law based on the terms of the [insurance] contract; we do not accept it as fact.... The interpretation of that contract, including Mellon's status as an insured, is a question of law for the court's determination." *Id.* at 868-69 (citations omitted).

Further, a party is not required to reply to a factual allegation that has been placed into issue already in preceding pleadings.⁷¹

Failure to deny an averment to which a response is required is an admission of the averment;⁷² however, failure to file a responsive pleading when required results only in the admission of factual allegations and not of legal conclusions.⁷³ Here, all of the allegations raised in Defendants' New Matter either (1) are statements of fact that already had been placed in issue in a preceding pleading,⁷⁴ or (2) are legal conclusions because they (a) state a legal duty without stating the facts from which the duty arises,⁷⁵ (b) raise ultimate issues in the proceeding⁷⁶ or (c) concern interpretation of the effect of (i) a document⁷⁷ or (ii) an event.⁷⁸

Therefore, the Court does not believe that Plaintiffs, by virtue of their failure to reply timely to Defendants' New Matter, admitted any fact that, standing alone, compels entry of judgment on the pleadings against Plaintiffs. To the contrary, all of the allegations of the Defendants' new matter were deemed denied before Plaintiffs filed their Reply. Accordingly, Defendants' Motion is DENIED to the extent it seeks entry of judgment on the pleadings on the basis that Plaintiffs did not timely reply to the Defendants' new matter.

⁷¹ *Watson v. Green*, 331 A.2d 790, 791-92 (Pa. Super. 1974) ("Defendant's averment in his new matter that no attorney-client relationship existed between him and the plaintiffs was merely a reiteration of paragraph six of the answer whereupon he denied that the defendant Bernstein had ever engaged him to prosecute the said action. It is apparent that this denial placed into issue the fact of whether or not Green and the plaintiffs had entered into an attorney-client relationship. Thus, no reply was needed to this allegation of the new matter since the matter was clearly placed into issue by the complaint and answer. New matter properly contains averments of facts only if they are extrinsic to facts averred in the complaint").

⁷² Pa. R. Civ. P. 1029(b) ("Averments in a pleading to which a responsive pleading is required are admitted when not denied specifically or by necessary implication").

⁷³ *Michener v. Montgomery County Tax Claim Bureau*, 671 A.2d 285, 288 (Pa. Commw. 1996) (citing Pa. R.C.P. No. 1029 and quoting *Landis v. City of Philadelphia*, 369 A.2d 746, 748 (Pa. Super. 1976)).

⁷⁴ See, e.g., Answer, ¶¶ 139, 159, 163-65.

⁷⁵ See, e.g., Answer, ¶¶ 140-48, 150, 153-160, 165-68.

⁷⁶ See, e.g., Answer, ¶¶ 162, 165-67.

⁷⁷ See, e.g., Answer, ¶¶ 151, 155.

⁷⁸ See, e.g., Answer, ¶¶ 143, 144, 149, 151, 154, 155, 161.

D. Kumud's capacity to sue.

Defendants contend that Kumud lacks capacity to sue within the Commonwealth because it is not registered to do business within this Commonwealth.⁷⁹ Within the meaning of Pennsylvania's Associations Code,⁸⁰ Kumud is a "foreign filing association."⁸¹ A foreign filing association "may not maintain an action or proceeding in this Commonwealth unless it is registered to do business under [Chapter 4 of the Associations Code]."⁸²

Plaintiffs appear to acknowledge that Kumud was not registered to do business in the Commonwealth when the Complaint was filed on January 22, 2024; however, they supplied evidence that Kumud registered its business with the Commonwealth on June 21, 2024.⁸³ They contend that the filing may have been late but that the technical defect has been corrected, rendering Defendants' objection on that basis moot.⁸⁴

Since the defect of Kumud not being registered to do business in the Commonwealth has been corrected, the Court will not enter judgment on the Pleadings against Kumud on this basis.⁸⁵ Accordingly, Defendants' Motion is DENIED to the extent it seeks entry of judgment on the pleadings on the basis that Kumud was not registered to do business in Pennsylvania when the action was filed.

⁷⁹ Defendants' Brief, at 8-9.

⁸⁰ 15 Pa. C.S. §§ 101, *et seq.*

⁸¹ 15 Pa. C.S. § 102 (defining terms in the Associations Code).

⁸² 15 Pa. C.S. § 411(b).

⁸³ Response, at 9, Exh. M.

⁸⁴ *Id.*, at 9.

⁸⁵ See, e.g., *Step Plan Services, Inc. v. Koresko*, 12 A.3d 401, 418 (Pa. Super. 2010) ("Under Pennsylvania law, compliance with the registration statute during the course of the lawsuit is sufficient to entitle a foreign corporation to continue its prosecution of that lawsuit") (citations omitted), reargument denied.

E. Plaintiffs' claims.

1. Plaintiffs' UTPCPL claim.

Defendants contend that Plaintiffs' claims under Pennsylvania's Unfair Trade Practices and Consumer Protection Law⁸⁶ (Count I) fail because they arise from a commercial transaction and not from the purchase or lease of goods and services primarily for personal, family or household purposes.⁸⁷ The purpose of the UTPCPL is to protect the public from unfair or deceptive business practices.⁸⁸

A private action under the UTPCPL is available to “[a]ny person who purchases or leases goods or services primarily for personal, family or household purposes and thereby suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by any person of a method, act or practice declared unlawful by [the UTPCPL].”⁸⁹ Generally, “goods” are defined as “[t]angible or movable personal property other than money ... include[ing] crops and other things that, although attached to or forming part of the land, are agreed to be severed before sale or under contract of sale.”⁹⁰ The term “services”

connotes an interactive relationship – often a personal one – between the service provider and the recipient, where the provider directly performs work or a useful act for the individual which he or she would otherwise have to do themselves, such as when a laundry service washes an individual's clothes, a landscaper performs yardwork for a homeowner, or a car wash cleans an individual's car. Additionally, such work or useful acts are accomplished at the direction and control of the individual on whose behalf they are done.⁹¹

Here, Plaintiffs purchased an interest in a business entity. Such an interest is neither a good nor a service. Moreover, they did not purchase their interest primarily

⁸⁶ 73 P.S. §§ 201-1, *et seq.*

⁸⁷ Motion, ¶¶ 68-80.

⁸⁸ *Knight v. Springfield Hyundai*, 81 A.3d 940 (Pa. Super. 2013).

⁸⁹ 73 P.S. § 201-9.2.

⁹⁰ Black's Law Dictionary (12th ed. 2024), goods.

⁹¹ *Greenwood Gaming & Entertainment, Inc. v. Com.*, 263 A.3d 611, 621 (Pa. Commw. 2021).

for personal, family or household purposes. Something purchased for commercial purposes only, such as Plaintiffs' interest in SSN Williamsport, is not purchased "primarily for personal, family or household purposes." Thus, a dispute concerning the same fails to state a cause of action under the UTPCPL.⁹²

Accordingly, Defendants' Motion as to Plaintiffs' claim under the UTPCPL, Count I of the Complaint, is GRANTED and Count I is DISMISSED.

2. Plaintiffs' claims for common law fraud, fraud in the inducement, negligent misrepresentation, breach of fiduciary duty and conversion.

Defendants contend that Plaintiffs' claims for common law fraud (Counts II, III), fraud in the inducement (Counts IV, V), negligent misrepresentation (Count IX), breach of fiduciary duty (Counts XVI, XVII), and conversion (Counts XVIII, XIX) are barred by the statute of limitations, the gist of the action doctrine and the economic loss doctrine.⁹³

a. The statute of limitations.

Common law fraud, fraud in the inducement, negligent misrepresentation and breach of fiduciary duty are tort claims⁹⁴ subject to a two-year statute of limitations⁹⁵ and typically accrue on the date the injury is sustained.⁹⁶

The "discovery rule," however, establishes an exception to when the statute of limitations typically begins to run:

⁹² *Trackers Raceway, Inc. v. Comstock Agency, Inc.*, 583 A.2d 1193, 1196 (Pa. Super. 1990).

⁹³ *Id.*, ¶¶ 81-113, 136-39, 165-89.

⁹⁴ A tort is "[a] civil wrong, other than breach of contract, for which a remedy may be obtained, usu[ally] in the form of damages; a breach of a duty that the law imposes on persons who stand in a particular relation to one another. Tortious conduct is typically one of four types: (1) a culpable or intentional act resulting in harm; (2) an act involving culpable and unlawful conduct causing unintentional harm; (3) a culpable act of inadvertence involving an unreasonable risk of harm; and (4) a nonculpable act resulting in accidental harm for which, because of the hazards involved, the law imposes strict or absolute liability despite the absence of fault." Black's Law Dictionary (12th ed. 2024), tort.

⁹⁵ 42 Pa. C.S. § 5524.

⁹⁶ *Haines v. Jones*, 830 A.2d 579, 585 (Pa. Super. 2003).

The discovery rule is a judicially created device which tolls the running of the applicable statute of limitations until that point when the plaintiff knows or reasonably should know: (1) that [the plaintiff] has been injured, and (2) that [the] injury has been caused by another party's conduct. The limitations period begins to run when the injured party possesses sufficient critical facts to put him **on notice** that a wrong has been committed and that he need investigate to determine whether he is entitled to redress.⁹⁷

In the absence of any issues pertaining to the discovery rule, determination of when the statute of limitations has run on a claim is an issue of law to be determined by the trial court;⁹⁸ however, application of the discovery rule ordinarily raises issues of fact requiring resolution by the trier of fact, except where reasonable minds can not differ as to its application.⁹⁹ "The party seeking to invoke the discovery rule bears the burden of establishing the inability to know of the injury despite the exercise of reasonable diligence,"¹⁰⁰ and "the point at which [he] should reasonably be aware that he has suffered an injury is generally an issue of fact to be determined by the jury."¹⁰¹

The Complaint contains allegations of breaches occurring as early as 2015/16 and as late as 2022/23. Some of Plaintiffs' tort claims *may* be barred by the statute of limitations; however, as determination of when those claims accrued is an issue of fact, the Court is unable to determine whether some or all of Plaintiffs' tort claims have been filed after expiration of the applicable statute of limitations on the record presently before the Court. The parties, through discovery, can develop a factual record to determine specifically whether any of the tort claims are barred by the

⁹⁷ *Sampathkumar v. Chase Home Finance, LLC*, 241 A.3d 1122, 1144 (Pa. Super. 2020) (quoting *Melley v. Pioneer Bank, N.A.*, 834 A.2d 1191, 1201 (Pa. Super. 2003) (emphasis added and citation omitted)).

⁹⁸ *Id.*, at 1144-45 (quoting *Wilson v. Transport Ins. Co.*, 889 A.2d 563, 570 (Pa. Super. 2005)).

⁹⁹ *Id.*, at 1145 (quoting *O'Kelly v. Dawson*, 62 A.3d 414, 419 (Pa. Super. 2013)).

¹⁰⁰ *Id.* (quoting *Dalrymple v. Brown*, 701 A.2d 164, 167 (Pa. 1997)).

¹⁰¹ *Id.* (quoting *E.J.M. v. Archdiocese of Phila.*, 622 A.2d 1388, 1391 (Pa. Super. 1993)).

statute of limitations and, if there is no genuine dispute as to any material fact, file appropriate motions at a later date.

b. The gist of the action doctrine.

The gist of the action doctrine “is designed to maintain the conceptual distinction between breach of contract claims and tort claims” and “precludes plaintiffs from re-casting ordinary breach of contract claims into tort claims.”¹⁰²

There exists, however, a fundamental difference between tort and contract. That difference lies in the nature of the particular interest protected. Tort law is predicated on social policy that protects a plaintiff, as a member of a class of people to whom a duty is owed, in his interest to be free from unreasonable risks of injury. This interest is protected by imposing on the defendant as a matter of law a duty to perform to a certain standard of conduct. If injury occurs, tort law attempts to place the injured party in the same position he occupied before the injury.

By contrast, contract law protects the expectation interests of contracting parties based on a voluntary agreement that defines their relationship. Protection is limited to those individuals specifically named in the contract, and enforcement is based on the manifestation of intent between the parties. Only rarely will the power of the parties to effect their desires be inhibited. If breach occurs, contract law seeks to give to the non-breaching party the benefit of his bargain, to put him in the position he would have been in had there been no breach.¹⁰³

Thus, as the Superior Court explained,

[a]lthough they derive from a common origin, distinct differences between civil actions for tort and contract breach have developed at common law. Tort actions lie for breaches of duties imposed by law as a matter of social policy, while contract actions lie only for breaches of duties imposed by mutual consensus agreements between particular individuals.... To permit a promisee to sue his promisor in tort for breaches of contract inter se would erode the usual rules of contractual recovery and inject confusion into our well-settled forms of actions.¹⁰⁴

¹⁰² *eToll, Inc. v. Elias/Savion Advertising, Inc.*, 811 A.2d 10, 14 (Pa. Super. 2002) (citing *Bash v. Bell Tel. Co.*, 601 A.2d 825 (Pa. Super. 1992)).

¹⁰³ *Hahn v. Atlantic Richfield Co.*, 625 F.2d 1095, 1103-04 (3d Cir. 1980) (citations omitted).

¹⁰⁴ *Id.* (quoting *Bash, supra*, 601 A.2d at 829 (citing *Iron Mountain Sec. Storage Corp. v. American Specialty Foods, Inc.*, 457 F. Supp. 1158, 1165 (E.D.Pa.1978))).

Because an actionable tort can arise from breach of an agreement, determining when the gist of the action doctrine applies to bar a claim can be tricky. A reviewing court must evaluate “the nature of the action as a whole” in light of its ““essential ground,” foundation, or material part.”¹⁰⁵ The Court cannot make a blanket determination that all of Plaintiffs’ tort claims either are, or are not, barred by the gist of the action doctrine. Rather, “[e]ach tort claim must be analyzed independently and a determination made as to whether the tort claim is the gist of the action and the contract is collateral to the matter.”¹⁰⁶ In other words, the Court must look at each tort claim individually to determine whether the gravamen of it sounds in contract or in tort.

“To be construed as in tort ... the wrong ascribed to defendant must be the gist of the action, the contract being collateral.”¹⁰⁷ On the other hand, “a claim should be limited to a contract claim when “the parties’ obligations are defined by the terms of the contracts, and not by the larger social policies embodied by the law of torts.”¹⁰⁸ As our Supreme Court explained in *Bruno v. Erie Insurance Company*,¹⁰⁹

[t]he general governing principle which can be derived from our prior cases is that our Court has consistently regarded the nature of the duty alleged to have been breached, as established by the underlying averments supporting the claim in a plaintiff’s complaint, to be the critical determinative factor in determining whether the claim is truly one in tort, or for breach of contract. In this regard, the substance of the allegations comprising a claim in a plaintiff’s complaint are of paramount importance, and, thus, the mere labeling by the plaintiff of a claim as being in tort, *e.g.*, for negligence, is not controlling. If the facts of a particular claim establish that the duty breached is one created by the parties by the terms of their contract—*i.e.*, a specific promise to do

¹⁰⁵ *Id.* (quoting *American Guar. and Lia. Ins. Co. v. Fojanini*, 90 F. Supp. 2d 615, 622–623 (E.D. Pa. 2000) (citation omitted) (quoting Black’s Law Dictionary 689 (6th ed.1990))).

¹⁰⁶ *Mirizio v. Joseph*, 4 A.3d 1073, 1085 (Pa. Super. 2010).

¹⁰⁷ *Id.* (quoting *Bash, supra*, 601 A.2d at 829 (citing *Closed Circuit Corp. v. Jerrold Electronics Corp.*, 426 F. Supp. 361, 364 (E.D.Pa.1977))).

¹⁰⁸ *Id.* (quoting *Bohler–Uddeholm Am., Inc. v. Ellwood Group, Inc.*, 247 F.3d 79, 104 (3rd Cir. 2001) (quoting *Bash, supra*, 601 A.2d at 830), cert. denied, 122 S. Ct. 1173 (2002)).

¹⁰⁹ *Bruno v. Erie Ins. Co.*, 106 A.3d 48 (Pa. 2014).

something that a party would not ordinarily have been obligated to do but for the existence of the contract—then the claim is to be viewed as one for breach of contract.... If, however, the facts establish that the claim involves the defendant's violation of a broader social duty owed to all individuals, which is imposed by the law of torts and, hence, exists regardless of the contract, then it must be regarded as a tort.... Although this duty-based demarcation was first recognized by our Court over a century and a half ago, it remains sound, as evidenced by the fact that it is currently employed by the high Courts of the majority of our sister jurisdictions to differentiate between tort and contract actions. We, therefore, reaffirm its applicability as the touchstone standard for ascertaining the true gist or gravamen of a claim pled by a plaintiff in a civil complaint.¹¹⁰

Bruno involved a dispute concerning mold in Plaintiffs' residence. Erie was obliged under its insurance policy to investigate whether mold was present and to pay for any resultant property damage. The substance of plaintiffs' factual allegations was not that Erie failed to meet its contractual obligations; rather, plaintiffs alleged that during the course of fulfilling its contractual obligations Erie's agents advised plaintiffs that the mold was not toxic and that they should continue renovating their property. As a result, plaintiffs claimed they suffered health problems from their mold exposure and that their residence was rendered uninhabitable. On this basis, the Court concluded that the gist of plaintiffs' claims sounded in tort and reversed the trial court's dismissal of plaintiffs' negligence claim under the gist of the action doctrine.¹¹¹

Plaintiffs' claims for common law fraud allege that Defendants fraudulently obtained Plaintiffs' investment in Defendants' business and fraudulently obtained Plaintiff Jadav's employment services.¹¹² "Fraud is a generic term used to describe 'anything calculated to deceive, whether by single act or combination, or by suppression of truth, or suggestion of what is false, whether it be by direct falsehood

¹¹⁰ *Id.*, at 69-68 (Pa. 2014) (citations and footnotes omitted).

¹¹¹ *Id.*, 70-71.

¹¹² Complaint, Counts II, III.

or by innuendo, by speech or silence, word of mouth, or look or gesture.”¹¹³ A finding of fraud requires “(1) a representation; (2) which is material to the transaction at hand; (3) made falsely, with knowledge of its falsity or recklessness as to whether it is true or false; (4) with the intent of misleading another into relying on it; (5) justifiable reliance on the misrepresentation; and (6) the resulting injury was proximately caused by the reliance.”¹¹⁴

Plaintiffs’ claims for fraud in the inducement allege that Defendants fraudulently induced Plaintiffs’ investment in Defendants’ business and fraudulently induced Plaintiff Jadav to work without pay.¹¹⁵ A claim for fraud in the inducement “claims that ... representations were fraudulently made and that ‘but for them’ [plaintiff] would never have entered into the agreement.”¹¹⁶

Plaintiffs’ claims for negligent misrepresentation allege that Defendants fraudulently obtained Plaintiffs’ investment in Defendants’ business and fraudulently obtained Plaintiff Jadav’s employment services.¹¹⁷ Negligent misrepresentation requires “(1) a misrepresentation of a material fact; (2) made under circumstances in which the misrepresenter ought to have known its falsity; (3) with an intent to induce another to act on it; and (4) which results in injury to a party acting in justifiable reliance on the misrepresentation.”¹¹⁸ “[T]he misrepresentation must concern a material fact and the speaker need not know his or her words are untrue, but must have failed to make a reasonable investigation of the truth of these words.”¹¹⁹

¹¹³ *Sewak v. Lockhart*, 699 A.2d 755, 759 (Pa. Super. 1997) (quoting *Moser v. DeSetta*, 589 A.2d 679, 682 (Pa. 1991)).

¹¹⁴ *Gibbs v. Ernst*, 647 A.2d 882, 889 (Pa. 1994).

¹¹⁵ Complaint, Counts IV, V.

¹¹⁶ *Blumenstock v. Gibson*, 811 A.2d 1029, 1036 (Pa. Super. 2002) (citing *1726 Cherry Street Partnership v. Bell Atlantic Properties, Inc.*, 653 A.2d 663, 666 (Pa. Super. 1995)).

¹¹⁷ Complaint, Count IX.

¹¹⁸ *Bilt-Rite Contractors, Inc. v. The Architectural Studio*, 866 A.2d 270, 277 (Pa. 2005) (quoting *Bortz v. Noon*, 729 A.2d 555, 561 (Pa. 1999)).

¹¹⁹ *Bortz*, *supra*, 729 A.2d at 561.

Plaintiffs' claims for breach of fiduciary duty allege that Defendants, as members of a limited liability company, breached their duties of loyalty¹²⁰ and care¹²¹ to the Company and to Plaintiffs, as other members.¹²² To prevail on a claim for breach of fiduciary duty, the Plaintiffs must demonstrate (1) the existence of a fiduciary relationship between Plaintiffs and Defendants, (2) that Defendants negligently or intentionally failed to act in good faith and solely for Plaintiffs' benefit, and (3) that Plaintiffs suffered an injury caused by Defendants' breach of his fiduciary duty.¹²³

Plaintiffs' claims for conversion allege that Defendants converted Plaintiffs' investment and profits and converted Plaintiff Jadav's employment wages.¹²⁴ Conversion requires proof that the defendant deprived the plaintiff of his right to a chattel or interfered with the plaintiff's use or possession of a chattel without the plaintiff's consent and without lawful justification.¹²⁵

With respect to Plaintiffs' claims for fraud in the inducement, fraud is the gist of the action by definition, and the contract is collateral to it. "While the gist of the action doctrine may bar a tort claim arising from the performance of a contract it does not 'bar a fraud claim stemming from the fraudulent inducement to enter into a contract.'"¹²⁶ Accordingly, Plaintiffs claims are not barred by the gist of the action doctrine. With respect to Plaintiffs other claims, many of Defendants' alleged breaches appear to arise out of their contractual obligations. Nevertheless, Plaintiffs

¹²⁰ 15 Pa. C.S. § 8849.1(b).

¹²¹ 15 Pa. C.S. § 8849.1(c).

¹²² Complaint, Counts XVI, XVII.

¹²³ *Snyder v. Crusader Servicing Corp.*, 231 A.3d 20, 31-32 (Pa. Super. 2020) (citations omitted).

¹²⁴ Complaint, Counts XVIII, XIX.

¹²⁵ *Pittsburgh Constr. Co. v. Griffith*, 834 A.2d 572, 581 (Pa. Super. 2003).

¹²⁶ *Mirizio*, *supra*, 4 A.3d at 1085 (quoting *Sullivan v. Chartwell Inv. Partners, LP*, 873 A.2d 710, 719 (Pa. Super. 2005)).

have alleged, and discovery ultimately may enable them to adduce, facts establishing that one or more of the Defendants breached one or more broader social duties applicable to all individuals, thereby supporting claims in trespass. “Where a doubt exists as to whether a demurrer should be sustained, this doubt should be resolved in favor of overruling it.”¹²⁷

Accordingly, the Court will not dismiss Plaintiffs’ claims for common law fraud (Counts II, III), fraud in the inducement (Counts IV, V), negligent misrepresentation (Count IX), breach of fiduciary duty (Counts XVI, XVII), and conversion (Counts XVIII, XIX) pursuant to the gist of the action doctrine at this time. After discovery, Defendants may make an appropriate motion if Plaintiffs fail to adduce evidence refuting Defendants’ claim that the gravamen of each of their tort claims sounds in assumpsit.

c. The economic loss doctrine.

Generally, “[t]he Economic Loss Doctrine provides that no cause of action exists for negligence that results solely in economic damages unaccompanied by physical injury or property damage.”¹²⁸ Our Supreme Court has clarified, however, that the economic loss doctrine, as applied in Pennsylvania, does not preclude all negligence claims seeking solely economic damages. Rather, the Supreme Court has “unequivocally stated that ‘Pennsylvania has long recognized that purely economic losses are recoverable in a variety of tort actions’ and that ‘a plaintiff is not barred from recovering economic losses simply because the action sounds in tort rather than contract law.’”¹²⁹ Pennsylvania follows “a ‘reasoned approach’ to

¹²⁷ *MacElree v. Philadelphia Newspapers, Inc.*, 674 A.2d 1050, 1054 (Pa. 1996) (citing *Vattimo v. Lower Bucks Hosp., Inc.*, 465 A.2d 1231 (Pa. 1983)).

¹²⁸ *Adams v. Copper Beach Townhome Communities, L.P.*, 816 A.2d 301, 305 (Pa. Super. 2003) (citations omitted).

¹²⁹ *Dittman v. UPMC*, 196 A.3d 1036, 1054 (Pa. 2018) (quoting *Bilt-Rite*, *supra*, 866 A.2d at 288).

applying the economic loss doctrine that 'turns on the determination of the source of the duty plaintiff claims the defendant owed.'"130 Thus, "if the duty arises under a contract between the parties, a tort action will not lie from a breach of that duty. However, if the duty arises independently of any contractual duties between the parties, then a breach of that duty may support a tort action."¹³¹

Accordingly, the Court will not dismiss Plaintiffs' claims for common law fraud (Counts II, III), fraud in the inducement (Counts IV, V), negligent misrepresentation (Count IX), breach of fiduciary duty (Counts XVI, XVII), and conversion (Counts XVIII, XIX) pursuant to the economic loss doctrine at this time. After discovery, Defendants may make an appropriate motion if Plaintiffs fail to adduce evidence demonstrating that one or more of the duties allegedly owed to them and breached by the Defendants arises independently of any contractual duties between the parties.

Notwithstanding the above, however, Plaintiffs' breach of fiduciary duty claims are DISMISSED as to all parties except Plaintiff Kumud and Defendant Peter Bhai, as Plaintiffs have admitted that they are the proper parties to the breach of fiduciary duty claims (Counts XVI, XVII). Otherwise, Defendants' Motion is DENIED with respect to Counts II, III, IV, V, IX, XVI, XVII, XVIII and XIX.

3. Plaintiffs' claims for breach of contract.

Defendants contend that Plaintiffs' claims for breach of contract (Counts VI-VIII) are barred by the statute of limitations and also fail because Plaintiff Jadev and all Defendants other than Peter Bhai are not parties to the Agreement.¹³²

¹³⁰ *Id.* (quoting *Tommy L. Griffin Plumbing & Heating Co. v. Jordan, Jones & Goulding, Inc.*, 463 S.E.2d 85, 88 (S.C. 1995)).

¹³¹ *Id.*

¹³² *Id.*, ¶¶ 114-35.

a. The statute of limitations.

Claims for breach of contract of the nature alleged here are subject to a four-year statute of limitations¹³³ and accrue on the date of breach.¹³⁴ Where the contract involves a promise to pay, the breach occurs when payment becomes due and remains unpaid.¹³⁵ The Complaint contains allegations of breaches occurring as early as 2015/16 and as late as 2022. Some of Plaintiffs' claims, such as Jadev's claims for wages allegedly earned in 2016 and 2017, *may* be barred by the statute of limitations, if payment for those wages was due more than four years ago. Some of Plaintiffs' claims involve payments allegedly due within the last four years. In short, some of Plaintiffs' claims may be barred by the statute of limitations, while others may not be so barred. On the record presently before the Court, the Court is unable to determine whether some or all of Plaintiffs' breach of contract claims have been filed after expiration of the applicable statute of limitations. The parties, through discovery, can develop a record to determine specifically whether any claims are so barred and may file appropriate motions at a later date should there be no dispute as to any material fact concerning the statute of limitations.

b. Parties to the Agreement.

Plaintiffs concede in opposition to the Motion that Plaintiff Kumud and Defendant Peter Bhai are the only parties to the Agreement and that all other parties can be excluded from the breach of contract claims.¹³⁶

Accordingly, Defendants' Motion as to Plaintiffs' claims for breach of contract, Counts VI-VIII of the Complaint, is GRANTED in part, and Counts VI-VIII are

¹³³ 42 Pa. C.S. § 5525.

¹³⁴ *Carulli v. North Versailles Twp. Sanitary Auth.*, 216 A.3d 564, 578 (Pa. Commw. 2019).

¹³⁵ See, e.g., *Sovich v. Estate of Sovich*, 55 A.3d 1161, 1164-65 (Pa. Super. 2012).

¹³⁶ Response, at 15

DISMISSED as to all parties except Plaintiff Kumud and Defendant Peter Bhai; otherwise, the Motion is dismissed as to Counts VI-VIII of the Complaint.

4. Plaintiffs' claims for promissory estoppel, unjust enrichment, and quantum meruit restitution.

Defendants contend that Plaintiffs' claims for promissory estoppel (Counts X, XI), unjust enrichment (Counts XII, XIII), and *quantum meruit* restitution (Count XX) are barred by the statute of limitations and by the alleged existence of an express contract.¹³⁷

a. The statute of limitations.

The Court will not dismiss Plaintiffs' claims for promissory estoppel, unjust enrichment and *quantum meruit* restitution based on the statute of limitations, for the same reasons that it will not dismiss the Plaintiffs' breach of contract claims.¹³⁸

b. Existence of an express contract.

Promissory estoppel,¹³⁹ unjust enrichment,¹⁴⁰ and *quantum meruit* restitution¹⁴¹ are available only when there is no contract that a court can enforce.

¹³⁷ *Id.*, ¶¶ 140-54, 190-97.

¹³⁸ *See, supra*, Part II.E.3.a.

¹³⁹ *Crouse v. Cyclops Industries*, 745 A.2d 606, 610 (Pa. 2000) ("Where there is no enforceable agreement between the parties ..., the doctrine of promissory estoppel is invoked to avoid injustice by making enforceable a promise made by one party to the other when the promisee relies on the promise and therefore changes his position to his own detriment"). Promissory estoppel, also known as detrimental reliance, "can sustain an action brought to remedy the injustice that results from a promise not kept," *Peluso v. Kistner*, 970 A.2d 530, 533 (Pa. Commw. 2009), and "enables a person to enforce a contract-like promise that would be otherwise unenforceable under contract law principles." *Id.* at 532 (citing *Travers v. Cameron County Sch. Dist.*, 544 A.2d 547, 550 (Pa. Commw. 1988); 28 Am. Jur. 2d, Estoppel and Waiver, § 57 (2008)). "The doctrine of promissory estoppel allows a party, under certain circumstances, to enforce a promise even though that promise is not supported by consideration." *Shoemaker v. Commonwealth Bank*, 700 A.2d 1003, 1006 (Pa. Super. 1997) (citing *Thatcher's Drug Store of West Goshen, Inc. v. Consolidated Supermarkets, Inc.*, 636 A.2d 156, 160 (Pa. 1994); Restatement (Second) of Contracts § 90).

¹⁴⁰ "By its nature, the doctrine of quasi-contract, or unjust enrichment, is inapplicable where a written or express contract exists." *Lackner v. Glosser*, 892 A.2d 21, 34 (Pa. Super. 2006) (quoting *AmeriPro Search, Inc. v. Fleming Steel Co.*, 787 A.2d 988, 991 (Pa. Super. 2001)). "[P]arties in contractual privity ... are not entitled to the remedies available under a judicially-imposed quasi contract because the terms of their agreement (express and implied) define their respective rights, duties, and expectations." *Curley v. Allstate Ins. Co.*, 289 F. Supp. 2d 614, 620-21 (E.D. Pa. 2003).

¹⁴¹ *Braun v. Wal-Mart Stores, Inc.*, 24 A.3d 875, 896-97 (Pa. Super. 2011) ("the quasi-contractual doctrine of unjust enrichment is inapplicable when the relationship between parties is founded on a

Hence, if there is an express contract that Plaintiffs can enforce, they cannot claim promissory estoppel, unjust enrichment, or *quantum meruit* restitution. A party in a civil action may plead and pursue inconsistent claims,¹⁴² but they cannot do so indefinitely. “[O]nce a party makes a ‘binding’ election of one remedy over other inconsistent remedies, it is precluded from thereafter maintaining an action on those inconsistent remedies.”¹⁴³ A “binding” election occurs “when there has been a legal resolution, such as a settlement, a stipulation, a waiver, an expressed withdrawal or abandonment of claims, a judgment, or application of another exclusionary rule,” at which point the party can no longer pursue alternate, inconsistent claims.¹⁴⁴ No such election having been made at this stage of the proceedings, Plaintiffs can plead the inconsistent claims of breach of express contract, promissory estoppel, unjust enrichment and *quantum meruit* restitution in the alternative.

Accordingly, Defendants’ Motion to dismiss Plaintiffs’ claims for promissory estoppel (Counts X, XI), unjust enrichment (Counts XII, XIII), and *quantum meruit* restitution (Count XX) is DENIED.

5. Plaintiffs’ claims for breach of the covenant of good faith and fair dealing.

Defendants contend that Plaintiffs’ claims for breach of the covenant of good faith and fair dealing (Counts XIV, XV) are barred by the statute of limitations and fail

written agreement or express contract”) (quoting *Schott v. Westinghouse Elec. Corp.*, 259 A.2d 443, 448 (Pa. 1969)). “*Quantum meruit* is an equitable remedy to provide restitution for unjust enrichment in the amount of the reasonable value of services.” *Am. & Foreign Ins. Co. v. Jerry’s Sport Ctr., Inc.*, 2 A.3d 526, 532 fn. 8 (Pa. 2010) (citing Black’s Law Dictionary (8th ed. 2004)); see also *Com., Dep’t of Public Welfare v. UEC, Inc.*, 397 A.2d 779, 782 (Pa. 1979) (*quantum meruit* is “the reasonable value of the services performed”).

¹⁴² See Pa. R. Civ. P. 1020(c) (“Causes of action and defenses may be pleaded in the alternative.”).

¹⁴³ *Gamesa Energy USA, LLC v. Ten Penn Center Associates, L.P.*, 217 A.3d 1227, 1238-39 (Pa. 2019).

¹⁴⁴ *Id.*, at 1239.

as a matter of law because Pennsylvania does not recognize breach of the covenant of good faith and fair dealing as an independent cause of action.¹⁴⁵

a. The statute of limitations.

The Court will not dismiss Plaintiffs' claims for breach of the covenant of good faith and fair dealing, based on the statute of limitations, for the same reasons that it will not dismiss the Plaintiffs' breach of contract claims.¹⁴⁶

b. The duty of good faith and fair dealing is not an independent cause of action.

The general duty of good faith and fair dealing is an implied provision of every agreement, absent an express provision.¹⁴⁷ The duty of good faith will not be implied, however,

where (1) a plaintiff has an independent cause of action to vindicate the same rights with respect to which the plaintiff invokes the duty of good faith; (2) such implied duty would result in defeating a party's express contractual rights specifically covered in the written contract by imposing obligations that the party contracted to avoid; or (3) there is no confidential or fiduciary relationship between the parties.¹⁴⁸

Thus, a claim for breach of the duty of good faith and fair dealing is not an independent cause of action and is subsumed by a breach of contract claim.¹⁴⁹

Accordingly, Counts XIV and XV of the Complaint, Plaintiffs' claims for breach of the covenant of good faith and fair dealing, are DISMISSED as independent causes of action, as they are subsumed within Plaintiffs' breach of contract claims; further, Counts XIV and XV of the Complaint are DISMISSED as to all parties except Plaintiff Kumud and Defendant Peter Bhai, as Plaintiffs concede that these claims do

¹⁴⁵ *Id.*, ¶¶ 155-64

¹⁴⁶ *See, supra*, Part II.D.3.a.

¹⁴⁷ *See, e.g., Somers v. Somers*, 643 A.2d 1211, 1213-15 (Pa. Super. 1992).

¹⁴⁸ *Agrecycle, Inc. v. City of Pittsburgh*, 783 A.2d 863, 867 (Pa. Commw. 2001) (citations omitted).

¹⁴⁹ *LSI Title Agency, Inc. v. Evaluation Services, Inc.*, 951 A.2d 384, 391-92 (Pa. Super. 2008).

not relate to the other parties.¹⁵⁰ Otherwise, the allegations of Counts XIV and XV are INCLUDED in Counts VI-VIII of the Complaint.

6. Plaintiff's claims for intentional infliction of emotional distress and negligent infliction of emotional distress.

Defendants contend that Plaintiff's claims for intentional infliction of emotional distress (Counts XXI, XXII) and negligent infliction of emotional distress (Counts XXIII, XXIV) are barred by the statute of limitations and fail as a matter of law because (a) Plaintiff Kumud Enterprises is a business entity and cannot suffer emotional harm; (b) Plaintiff Jadev cannot recover for any emotional distress for alleged intentional withholding of profits because, individually, he was never entitled to receive any profits from SSN Williamsport since he was not a member of it; (c) because Defendants' acts and omissions were not directed at Jadev, and there is no evidence he was present when the alleged misconduct occurred; (d) Jadev cannot recover for negligent infliction of emotional distress because there are no allegations to support such a claim under any of the four recognized theories of liability and because no defendant had a fiduciary duty to him.¹⁵¹

Plaintiffs concede to dismissal of their claims for intentional infliction of emotional distress (Counts XXI, XXII) and negligent infliction of emotional distress (Counts XXIII, XXIV) "as time-barred by the relevant "Statute of Limitations."¹⁵²

Accordingly, Defendants' Motion as to Plaintiffs' claims for intentional and negligent infliction of emotional distress (Counts XXI-XXIV of the Complaint) is GRANTED, and Counts XXI-XXIV of the Complaint are DISMISSED.

¹⁵⁰ Response, at 15.

¹⁵¹ *Id.*, ¶¶ 198-230.

¹⁵² Response, at 17

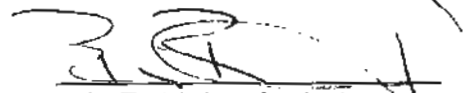
III. CONCLUSION AND ORDER.

As explained at length above, Defendants' Motion for Judgment on the Pleadings is GRANTED in part and DENIED in part, as follows:

1. Defendants' Motion is DENIED to the extent it seeks judgment on the basis of *res judicata*, untimely filing of Plaintiffs' Reply to New Matter, and Plaintiff Kumud's failure to register with the Commonwealth.
2. Defendants' Motion is GRANTED with respect to Counts I (violation of Pennsylvania's Unfair Trade Practices and Consumer Protection Law), XXI-XXII (intentional infliction of emotional distress), and XXIII-XXIV (negligent infliction of emotional distress). These claims are DISMISSED.
3. Defendants' Motion is DENIED with respect to Counts II-III (common law fraud), IV-V (fraud in the inducement), IX (negligent misrepresentation), X-XI (promissory estoppel), XII-XIII (unjust enrichment), XX (*quantum meruit* restitution), and XVIII-XIX (conversion).
4. Defendants' Motion is GRANTED in part and DENIED in part with respect to Counts VI-VIII (breach of contract), XIV-XV (breach of the covenant of good faith and fair dealing), and XVI-XVII (breach of fiduciary duty), as follows:
 - a. Counts VI-VIII, XIV-XV, and XVI-XVII are DISMISSED with respect to all parties except Plaintiff Kumud Hospitality, LLC and Defendant Piyush Bhaisadswala, a/k/a Peter Bhai.
 - b. The remaining portions of Counts XIV-XV are DISMISSED as independent causes of action and INCLUDED within Counts VI-VIII.

IT IS SO ORDERED.

BY THE COURT,



Eric R. Linhardt, Judge

ERL/bel

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