2026 Tex. Bus. 75

The Business Court of Texas,
Fourth Division

PASSCO COMPANIES, LLC; PASSCO MANAGEMENT SERVICES, LP; PASSCO TRIBUTE DST; and PASSCO TRIBUTE MT, LLC;	§	
Plaintiffs,	§	
v.	§	Cause No. 26-BC04A-0002
RIM WP APTS, LLC; RIM WP HOLDINGS, LP; KAIROI MANAGEMENT, LLC; KAIROI DEVELOPMENT, LLC D/B/A KAIROI RESIDENTIAL D/B/A LYND DEVELOPMENT LLC A/K/A LYND DEVELOPMENT PARTNERS; DANIEL ZUNKER; and MICHAEL LYND, JR;	§	
Defendants.		

OPINION AND ORDER ON MOTION FOR PARTIAL SUMMARY JUDGMENT

Syllabus[1]

Purchaser of apartment complex sued seller, development company, management company, and corporate agents based on the property's construction defects. Development company, management company, and corporate agents moved for partial summary judgment. The court grants summary judgment on purchaser's claims for statutory and common law fraud, fraud by nondisclosure, and fraud in the inducement because movants negated one essential element of each claim. Specifically, the court holds (1) in the purchase agreement, purchaser disclaimed reliance on all but one representation underlying the fraud claims, and (2) the remaining representation was not false. The court also grants summary judgment on purchaser's civil conspiracy claims, holding they are not supported by an underlying tort. The court further grants summary judgment on purchaser's claim for breach of the pre-acquisition management agreement, holding the agreement was terminated before purchaser acquired the property. The court finally grants summary judgment on purchaser's declaratory judgment claims, holding they duplicate matters already before the court.

¶1 Before the court is an amended traditional motion for partial summary judgment and a supplement thereto ("MSJ") filed by five of the six defendants in this case, collectively, "the Kairoi Defendants."[2] Plaintiffs' response to the MSJ and the Kairoi Defendants' reply are also before the court. The parties have attached evidence to these filings.[3]

¶2 On September 15, 2026, the court held an in-person hearing, during which counsel presented arguments to the court. After considering counsel's arguments, the summary judgment filings, and the relevant evidence, the court GRANTS the motion for partial summary judgment for the reasons set out below.

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[1]The syllabus was created by court staff and is provided for the convenience of the reader. It is not part of the court's opinion, does not constitute the court's official description or statement, and should not be relied upon as legal authority.

[2]Defendant Rim LLC is the only defendant not a party to the MSJ.

[3]All objections to the summary judgment evidence are OVERRULED.

BACKGROUND

¶3 The parties' dispute centers on an apartment complex known as Tribute at the Rim ("the Property"). Located in San Antonio, Texas, the Property was developed by Lynd Development Partners a.k.a. Kairoi Development. Acting through its corporate agents, Daniel Zunker and Michael Lynd Jr., Lynd Development hired architects to design the multi-building apartment complex. The architectural contract was subsequently assigned to Rim WP Apts, LLC ("Rim LLC"). Thereafter, Rim LLC contracted with a construction company to build the apartment complex. The construction was completed in phases, and units were leased to tenants as each phase was completed. In 2017, Rim LLC contracted with Kairoi Management to manage the Property. Construction of the entire complex was completed in 2018.

¶4 On May 15, 2019, Passco Companies LLC ("Passco")[4] contracted with Rim LLC to purchase the Property. Under the parties' Purchase Sale Agreement ("PSA"), Rim LLC agreed to sell the Property to Passco. The PSA contained a disclaimer of reliance clause stating that Passco was disclaiming reliance on all warranties and representations made by Rim LLC and its agents, albeit with a few exceptions. The PSA also included a due diligence period for Passco to conduct its own investigation of the Property. The due diligence period expired, and the sale of the Property closed on June 5, 2019.

[4]The record indicates the additional plaintiffs—Passco Tribute DST, Passco Management Services LP, and Passco Tribute MT LLC—are associated with Passco Companies LLC.

¶5 In March 2021, Plaintiffs discovered severe water penetration to the Property. Plaintiffs' experts determined that the water penetration resulted from both systemic and isolated construction defects related to the building envelope. The defects involved the building's water-resistive barriers, perimeter sealing, and roofing membranes.

¶6 On May 6, 2022, Plaintiffs filed suit against the defendants alleging statutory fraud, common law fraud, fraud by nondisclosure, fraudulent inducement, breach of the purchase sale agreement ("PSA"), breach of two management agreements, and civil conspiracy. The suit also requested declaratory relief.[5]

¶7 The crux of Plaintiffs' fraud and civil conspiracy claims was that the defendants had knowledge of the water penetration defects but failed to disclose those defects to Plaintiffs as required. According to Plaintiffs, the individual defendants, Zunker and Lynd, directed and participated in the fraudulent acts, or were responsible in their capacities as corporate agents for the defendant entities. Zunker was the president of Kairoi Development, vice-president of Kairoi Management, and an authorized signatory for Rim LLC. Lynd was a member and director of Kairoi Development and the president of Kairoi Management.

¶8 In their first amended petition, Plaintiffs alleged Rim LLC falsely represented that it did not have written notice that the Property was in violation of applicable building codes, made misrepresentations about the building envelope in a pre-sale questionnaire,

[5]Plaintiffs originally filed suit in the 73rd Judicial District Court, Bexar County, Texas. The parties filed an agreed notice of removal to the Texas Business Court on March 26, 2026.

and withheld documents it was required to produce during the due diligence period. Plaintiffs also alleged the defendants engaged in civil conspiracy to commit fraud, and that the Kairoi Defendants were alter egos of Rim LLC. Plaintiffs further alleged Kairoi Management breached the pre-acquisition sub-management agreement, which was purportedly assigned to Passco at closing. Finally, Plaintiffs sought declarations that they satisfied their contractual obligations under the contracts, that service of process was effective on the defendants, and that the defendants waived any objections to service, capacity, or jurisdiction.

¶9 The Kairoi Defendants answered Plaintiffs' suit and subsequently filed the instant MSJ. Notably, the MSJ does not address Plaintiffs' claims against Rim LLC for breach of the PSA or Plaintiffs' claims against Kairoi Management for breach of a post-sale management agreement dated May 31, 2019.

SUMMARY JUDGMENT STANDARD

¶10 A trial court must grant a traditional motion for summary judgment if the movant establishes there is no genuine issue as to any material fact and it is entitled to judgment as a matter of law on the issues expressly set out in its motion. *Provident Life & Accident Ins. Co. v. Knott*, 128 S.W.3d 211, 215–16 (Tex. 2003); *see* TEX. R. CIV. P. 166(a). A defendant who conclusively negates at least one of the essential elements of a cause of action is entitled to summary judgment. *Frost Nat. Bank v. Fernandez*, 315 S.W.3d 494, 508 (Tex. 2010); *Lear Siegler, Inc. v. Perez*, 819 S.W.2d 470, 471 (Tex. 1991) ("For a defendant to be entitled to summary judgment it must disprove, as a matter of law, one of the essential elements of each of plaintiffs' causes of action."). In evaluating a summary

judgment motion, the court takes as true all evidence favorable to the nonmovant and indulges every reasonable inference and resolves any doubts in the nonmovant's favor. *ConocoPhillips Co. v. Koopmann*, 547 S.W.3d 858, 865 (Tex. 2018).

FRAUD CLAIMS

¶11 Plaintiffs present multiple fraud-related claims in their live pleadings. First, Plaintiffs allege that Rim LLC—in conjunction with Zunker, Lynd, and Kairoi Development—falsely represented there were no "Red Flag" issues with the Property. This allegation is based on an answer to a question in the pre-sale questionnaire inquiring if, as to the Property's "Building Envelope," there were "any significant deficiencies related to" the "Facade/Siding," "Roofs," or Fascia/Soffits." In response to this question, Rim LLC responded "None."

¶12 Second, Plaintiffs allege that Rim LLC—again in conjunction with Zunker, Lynd, and Kairoi Development—falsely represented that it did not receive written notice that the Property was in violation of applicable building codes. This allegation is based on an express representation made in Paragraph 7.1(e) of the PSA.

¶13 Third, Plaintiffs allege that the previously-mentioned misrepresentations concerning the pre-sale questionnaire and written notice of building code violations were made to materially induce them to execute the PSA and consummate the transaction.

¶14 Finally, Plaintiffs allege that the defendants failed to disclose the Property's known defects when they had a duty to disclose them. This claim centers on Article 2.1(f) of the PSA which required Rim LLC to provide certain property information, including two years of insurance loss history and "any and all O[peration] and M[aintenance] manuals

(moisture, radon)" during the due diligence period. Plaintiffs assert that the defendants' failure to disclose this information impeded their investigation of the Property during the due diligence period.

A. Disclaimer of Reliance and "As Is" Clause

¶15 In their MSJ, the Kairoi Defendants argue that Plaintiffs' statutory and common law fraud claims based on the pre-sale questionnaire, fraudulent inducement claims, and fraud by nondisclosure claim are conclusively negated by the disclaimer of reliance and "as is" clause contained in the PSA. Specifically, the Kairoi Defendants argue the PSA's "disclaimer of reliance" and "as is" clause bars the justifiable reliance element of these claims.

¶16 Justifiable reliance is an essential element of causes of action for statutory fraud, common law fraud, fraud by nondisclosure, and fraudulent inducement. *Roxo Energy Co., LLC v. Baxsto, LLC*, 713 S.W.3d 404, 408 (Tex. 2025); *Int'l Bus. Machines Corp. v. Lufkin Indus., LLC*, 573 S.W.3d 224, 228 (Tex. 2019); *Sawyer v. E.I. Du Pont De Nemours & Co.*, 430 S.W.3d 396, 401 (Tex. 2014); *Hammond v. Hanser*, No. 01-22-00707-CV, 2024 WL 4628675, at *13 (Tex. App.—Houston [1 st Dist.] Oct. 31, 2024, pet. denied); *Nichols v. Nichols*, No. 03-23-00733-CV, 2025 WL 2933605, at *8 (Tex. App.—Austin Oct. 16, 2025, no pet.).

¶17 "Parties to a contract . . . may disclaim reliance on representations, and such a disclaimer can negate a fraud claim if the parties' intent is clear and specific." *Cmty. Mgmt., LLC v. Cutten Dev., L.P.*, No. 14-14-00854-CV, 2016 WL 3554704, at *4 (Tex. App.—Houston [14th Dist.] June 28, 2016, pet. denied). Disclaimer of reliance and "as is"

clauses in a contract may bar recovery for statutory fraud, common law fraud, fraud by nondisclosure, and fraudulent inducement claims. *Pogue v. Williamson*, 605 S.W.3d 656, 665 (Tex. App.—Houston [1st Dist.] 2020, no pet.); *Matlock Place Apartments, L.P. v. Druce*, 369 S.W.3d 355, 372 (Tex. App.—Houston [14th Dist.] 2012, pet. denied). In a "disclaimer of reliance" clause, a buyer generally agrees it is entering a contract relying solely on its own judgment and not on any statement or representation by the seller. *Williamson*, 605 S.W.3d at 665. A buyer who purchases something "as is" agrees to make its own appraisal of the property and accept the risk that it may be wrong. *Id.*

¶18 Justifiable reliance usually presents a question of fact for the jury to decide, but this element can be negated as a matter of law when circumstances exist under which reliance cannot be justified. *Maya Walnut LLC v. Ly*, 738 S.W.3d 764, 768 (Tex. 2026).

1. Enforceability

¶19 The enforceability of a "disclaimer of reliance" clause is a question of law. *Id.* To determine if a disclaimer of reliance clause is enforceable, courts consider the contract itself and the totality of the surrounding circumstances. *Int'l Bus. Machines*, 573 S.W.3d at 229; *Forest Oil Corp. v. McAllen*, 268 S.W.3d 51, 60 (Tex. 2008). The factors courts consider include whether: (1) the disclaimer language is clear and specific; (2) the terms of the agreement were negotiated and not boilerplate; (3) the complaining party was represented by counsel; (4) the contract was the product of an arms-length transaction; and (5) the parties were knowledgeable in business matters. *Int'l Bus. Machines*, 573 S.W.3d at 229; *Forest Oil Corp.*, 268 S.W.3d at 60.

¶20 Here, the disclaimer of reliance clause states:

2.6 Buyer's Reliance on its Investigations. **TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND EXCEPT FOR SELLER'S REPRESENTATIONS AND WARRANTIES IN PARAGRAPHS 6.6 AND 7.1 AND ANY WARRANTIES OF TITLE CONTAINED IN THE DEED AND THE ASSIGNMENT (HERAFTER DEFINED) DELIVERED AT THE CLOSING (THE "SELLER'S WARRANTIES"), THIS SALE IS MADE AND WILL BE MADE WITHOUT REPRESENTATION, COVENANT, OR WARRANTY OF ANY KIND (WHETHER EXPRESS, IMPLIED, OR, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, STATUTORY) BY SELLER. AS A MATERIAL PART OF THE CONSIDERATION FOR THIS AGREEMENT, BUYER AGREES TO ACCEPT THE PROPERTY ON AN "AS IS" AND "WHERE IS" BASIS, WITH ALL FAULTS, AND WITHOUT ANY REPRESENTATION OR WARRANTY, ALL OF WHICH SELLER HEREBY DISCLAIMS, EXCEPT FOR SELLER'S WARRANTIES. EXCEPT FOR SELLER'S WARRANTIES, NO WARRANTY OR REPRESENTATION IS MADE BY SELLER AS TO FITNESS FOR ANY PARTICULAR PURPOSE, MERCHANTABILITY, DESIGN, QUALITY, CONDITION, OPERATION OR INCOME, COMPLIANCE WITH DRAWINGS OR SPECIFICATIONS, ABSENCE OF DEFECTS, ABSENCE OF HAZARDOUS OR TOXIC SUBSTANCES, ABSENCE OF FAULTS, FLOODING, OR COMPLIANCE WITH LAWS AND REGULATIONS INCLUDING, WITHOUT LIMITATION, THOSE RELATING TO HEALTH, SAFTEY, AND THE ENVIRONMENT. IN ENTERING INTO THIS AGREEMENT, BUYER IS NOT RELYING ON ANY STATEMENT, REPRESENTATION OR WARRANTY OTHER THAN THOSE CONTAINED IN THIS AGREEMENT. BUYER ACKNOWLEDGES THAT BUYER HAS ENTERED INTO THIS AGREEMENT WITH THE INTENTION OF MAKING AND RELYING UPON ITS OWN INVESTIGATION OF THE PHYSICAL, ENVIRONMENTAL, ECONOMIC, USE, COMPLIANCE, AND LEGAL CONDITION OF THE PROPERTY AND THAT, OTHER THAN THE SELLER'S WARRANTIES, BUYER IS NOT NOW RELYING, AND WILL NOT LATER RELY, UPON ANY REPRESENTATIONS AND WARRANTIES MADE BY THE SELLER OR ANYONE ACTING OR CLAIMING TO ACT, BY, THROUGH OR UNDER OR ON SELLER'S BEHALF CONCERNING THE PROPERTY.** The provisions of this Paragraph 2.6 shall survive indefinitely any Closing or termination of this Agreement and shall not be merged into the Closing documents.

¶21 Importantly, the above-quoted clause carves out only three exceptions: seller's representations and warranties in paragraphs 6.6 and 7.1 of the PSA and warranties

of title contained in the deed or the assignment. Apart from these exceptions, the clause, which appears in predominately bold and capital type, contains emphatic disclaimer language, plainly stating that the sale of the Property "is made and will be made without representation, covenant, or warranty of any kind . . . by seller." Thereafter, the clause states that the buyer agrees to accept the property "as is" "with all faults and without representation or warranty." Furthermore, the clause affirmatively states that "buyer is not relying on any statement, representation, or warranty other than those contained in this agreement" and that "buyer is not now relying, and will not later rely, upon any representations and warranties made by the seller or anyone acting or claiming to act, by, through or under or on seller's behalf concerning the Property."

¶22 Comparing the disclaimer of reliance clause in this case to controlling Texas Supreme Court authority, the court concludes its language is clear and specific and supports the enforcement of the disclaimer of reliance clause in this case. *See Forest Oil*, 268 S.W.3d at 59 (explaining parties' agreement intended an exhaustive waiver when it stated that "none of them is relying upon any statement or any representation of any agent of the parties"); *Schlumberger Tech. Corp. v. Swanson*, 959 S.W.2d 171, 180-81 (Tex. 1997) (holding disclaimer of reliance clause clearly expressed intent to waive fraudulent inducement claims when it stated, "none of us is relying upon any statement or representation of any agent of the parties being released hereby. Each of us is relying on his or her own judgment.").

¶23 The totality of the surrounding circumstances also weighs in favor of enforcing the disclaimer of reliance clause. Paragraph 7.2(g) of the PSA recites that Passco

"is an experienced and sophisticated purchaser of commercial real estate projects." The record demonstrates that the sale of the Property was an arms-length transaction and that Passco was represented by counsel. *See Transcor Astra Group S.A. v. Petorbras Am. Inc.*, 650 S.W.3d 462, 475-76 (Tex. 2022) (noting an arms-length transaction is one between two unrelated parties with generally equal bargaining power, each acting in its own interest). Additionally, Paragraph 10.13 of the PSA states that "the parties and their counsel have reviewed and revised this Agreement," demonstrating that the PSA's terms were negotiated rather than boilerplate. *See id.* at 474 (noting one factor in considering enforceability of disclaimer provision is whether contract's terms were negotiated or boilerplate).

¶24 Accordingly, the court holds that the disclaimer of reliance clause is enforceable.

2. Application of Disclaimer of Reliance Clause to Plaintiffs' Fraud, Fraudulent Inducement, and Fraud by Nondisclosure Claims

¶25 In their first amended petition, Plaintiffs allege that the defendants falsely represented in the pre-sale questionnaire—a document separate from the PSA—that there were no defects in the building envelope. Under the terms of the disclaimer of reliance clause, Passco disclaimed any reliance on representations made outside of the PSA. Thus, the disclaimer of reliance clause negates Plaintiffs' justifiable reliance on the representations made in the pre-sale questionnaire.

¶26 Likewise, the disclaimer of reliance clause negates the justifiable reliance essential to Plaintiffs' fraudulent inducement claim, at least to the extent it is based on the

pre-sale questionnaire. *See Pogue*, 605 S.W.3d at 666 (recognizing that proof of an enforceable disclaimer of reliance clause can, as a matter of law, preclude a fraudulent inducement claim).

¶27 In their first amended petition, Plaintiffs allege that Rim LLC engaged in fraud by nondisclosure when not providing Passco the documents listed in Paragraph 2.1 of the PSA. Fraud by nondisclosure, a subcategory of fraud, occurs when a party has a duty to disclose certain information and fails to disclose it. *Bombardier Aerospace Corp. v. SPEP Aircraft Holdings, LLC*, 572 S.W.3d 213, 219 (Tex. 2019). Under Paragraph 2.1, Rim LLC was required to provide Passco certain property information—documents like insurance loss history and operation and maintenance manuals—during the due diligence period.

¶28 Again, the disclaimer of reliance clause negates the justifiable reliance essential to Plaintiffs' fraud by nondisclosure claim. The disclaimer of reliance clause provides that the sale was made without representation, covenant, or warranty of any kind by seller and that the only exceptions were Paragraph 6.6 and 7.1 of the PSA and the title warranties. Plaintiffs' fraud by nondisclosure claim—which centers on Paragraph 2.1 of the PSA—does not fall under any of the exceptions in the disclaimer of reliance clause. Moreover, even though Paragraph 2.1 required Rim LLC to provide certain documents to Passco to aid in its investigation of the Property during the due diligence period, the same paragraph also states that Rim LLC "makes no representations or warranties as to the accuracy or completeness of" that information. Thus, Paragraph 2.1 is consistent with and reinforces the disclaimer of reliance clause. *See Cmty. Mgmt*, 2016 WL 3554704, at *8

(noting contracting parties in a real estate transaction could bargain for information without bargaining for the right to rely upon that information).

¶29 The court concludes that the disclaimer of reliance clause negates Plaintiffs' statutory and common law fraud claims based on the pre-sale questionnaire, Plaintiffs' fraudulent inducement claim to the extent it is based on the pre-sale questionnaire, and Plaintiffs' fraud by nondisclosure claim.

B. No False Representation

¶30 Plaintiffs' remaining fraud and fraudulent inducement claims are based on Rim LLC's allegedly false representation in Paragraph 7.1(e) of the PSA that it had not received written notice of a building code violation. These claims are not covered by the disclaimer of reliance clause, which expressly excepts representations made in Paragraph 7.1 of the PSA.

¶31 In their MSJ, the Kairoi Defendants argue that Plaintiffs' fraud claims premised on Paragraph 7.1(e) fail as a matter of law because the representation that Rim LLC made in Paragraph 7.1(e)—that it had not received written notice of building code violations—was not false. A false representation of a past or existing material fact is an essential element of both statutory fraud and common law fraud. *See* TEX. BUS. & COMM. CODE § 27.01(a)(1); *Sheehan v. Adams*, 320 S.W.3d 890, 899 (Tex. App.—Dallas 2010, no pet.). It is also an essential element of a fraudulent inducement claim. *Int'l Bus. Machines*, 573 S.W.3d at 228. A false representation consists of words that suggest a fact is true when it is not. *Barrow-Shaver Res. v. Carrizo Oil & Gas, Inc.*, 590 S.W.3d 471, 496 (Tex. 2019).

¶32 Here, the Kairoi Defendants argue that the fraud claims based on Paragraph 7.1(e) fail because Plaintiffs' "pleaded theory of contractual-representation fraud doesn't match" the representation made in the contract. They argue that Paragraph 7.1(e) does not encompass "receipt of documents merely identifying conditions from which a violation might be inferred," but rather written "notice whose content is that the Property breaches applicable law."

¶33 On the other hand, Plaintiffs construe Paragraph 7.1(e) as contemplating receipt of any written notice from which a building code violation might be inferred. In support of this construction, Plaintiffs ask the court to take judicial notice of the applicable City of San Antonio building code and assert that whether or not Rim LLC "was aware that multiple unresolved water leaks, or fire sprinkler defects, violated the building code" is a question of fact.

¶34 Resolution of this issue requires the court to construe the meaning of Paragraph 7.1(e). In construing a contract, the court's goal is to ascertain the parties' true intent as expressed by the plain language of the contract. *Great Am. Ins. Co. v. Primo*, 512 S.W.3d 890, 893 (Tex. 2017). Courts presume the parties intended what the words of their contract say. *Gilbert Texas Const., L.P. v. Underwriters at Lloyd's London*, 327 S.W.3d 118, 126 (Tex. 2010). If the contract's language lends itself to a clear and definite legal meaning, the contract is not ambiguous, and the court will construe it as a matter of law. *Great Am. Ins.*, 512 S.W.3d at 893.

¶35 Here, Paragraph 7.1(e) states:

> Violations. To Seller's knowledge . . . *Seller has not received* written notice from any governmental entity of a violation by Seller of any law, rule or regulation affecting the Property or its use including any environmental law or regulation, nor *any written notice that the Property is in violation of any applicable building or zoning code or ordinance*, except for any such matters which may have been previously cured by Seller.

(emphasis added).

¶36 The court concludes Paragraph 7.1(e) is unambiguous and its meaning is clear and definite. According to its plain language, Paragraph 7.1(e) contemplates receipt of a written notice stating the Property is in violation of a building code. Contrary to Plaintiffs' construction, it does not contemplate receipt of a written notice from which a building code violation might be inferred.

¶37 The summary judgment record is devoid of any evidence that Rim LLC received a written notice stating that the Property was in violation of a building code. Accordingly, the Kairoi Defendants have established as a matter of law that Rim LLC's representation under Paragraph 7.1(e) was not false. Because the Kairoi Defendants have established as a matter of law that Rim LLC did not make a false representation concerning its receipt of a written notice of a building code violation, the court must grant summary judgment on Plaintiffs statutory and common law fraud claims based on Paragraph 7.1(e).

¶38 Additionally, to the extent Plaintiffs allege that they were fraudulently induced to execute the PSA and consummate the sale based on Rim LLC's representation that it had "not received written notice . . . that the Property [was] in violation of any applicable building or zoning code or ordinance," the Kairoi Defendants have negated Plaintiffs' fraudulent inducement claim premised on Paragraph 7.1(e).

¶39 In sum, the court concludes the Kairoi Defendants have negated at least one essential element of all of Plaintiffs' statutory fraud, common law fraud, fraud by nondisclosure, and fraudulent inducement claims. Accordingly, the Kairoi Defendants are entitled to summary judgment on these claims.

CIVIL CONSPIRACY AND ALTER EGO

¶40 In their petition, Plaintiffs allege that each defendant engaged in civil conspiracy to commit fraud in the sale of the Property to Passco and that each defendant should be held liable as a co-conspirator. Plaintiffs further allege that Rim Holdings, Kairoi Management, Kairoi Development, Zunker, and Lynd are liable for fraud because they are alter egos of Rim LCC.

¶41 In their MSJ, the Kairoi Defendants argue that the Plaintiffs' civil conspiracy claim and their alter ego theory fail as a matter of law because both are dependent on establishing a claim of fraud. Civil conspiracy is a "derivative tort" and therefore depends on the existence of some underlying tort or other illegal act. *Agar Corp., Inc. v. Electro Circuits Int'l, LLC*, 580 S.W.3d 136, 140-41 (Tex. 2019). "[A] civil conspiracy claim is connected to the underlying tort and survives or fails alongside it." *Id.* at 141. "Civil conspiracy depends entirely on the injury caused by the underlying tort; the injury is from the underlying wrong, not the conspiracy itself." *Id.*

¶42 By pleading an alter ego theory, a plaintiff does not allege a cause of action but instead asserts a way to impose liability on individuals for an underlying tort. *See Wilson v. Davis*, 305 S.W.3d 57, 68 (Tex. App—Houston [1st Dist.] 2009, no pet.). "The alter ego doctrine is merely a means of piercing the corporate veil to hold individuals

personally liable in certain actions, and is remedial in nature, not defensive." *Weaver v. State*, 652 S.W.2d 420, 422 (Tex. App.—Houston [1st Dist.] 1982, no writ). In this case, Plaintiffs' alter ego theory seeks to hold the Kairoi Defendants liable for Rim LLC's alleged fraud in connection with the sale of the Property. *See Wilson*, 305 S.W.3d at 68; *Weaver*, 652 S.W.2d at 422.

¶43 The Plaintiffs' civil conspiracy claim and their alter ego theory depend on establishing fraud in connection with the sale of the Property. As previously discussed, all of Plaintiffs' fraud claims are negated as a matter of law. The court therefore concludes the Kairoi Defendants have established they are entitled to summary judgment on Plaintiffs' civil conspiracy claims and use of the alter ego doctrine to assign liability to the Kairoi Defendants.

BREACH OF THE PRE-ACQUISITION SUB-MANAGEMENT AGREEMENT

¶44 In their first amended petition, Plaintiffs allege that Kairoi Management breached the pre-acquisition sub-management agreement by failing to adequately manage or maintain the Property and by failing to address existing, known conditions, namely, the water penetration defects. This claim is based on the management agreement entered into by Rim LLC and Kairoi Management. In the MSJ, Kairoi Management argues the Plaintiffs' breach of contract claim arising from the pre-acquisition sub-management agreement fails as a matter of law because there is no valid enforceable contract between Kairoi Management and Passco.

¶45 One of the essential elements of a breach of contract claim is the existence of a valid, enforceable contract between the parties. *E-Learning LLC v. AT & T Corp.*, 517

S.W.3d 849, 858 (Tex. App.—San Antonio 2017, no pet.). Here, Kairoi Management argues that it is entitled to summary judgment on this breach of contract claim because no valid enforceable contract exists between it and Passco. According to Kairoi Management, the pre-acquisition sub-management agreement was never between Passco and Kairoi Management and, in fact, that contract terminated before it was assigned to Passco.

¶46 In their response to the MSJ, Plaintiffs contend that the issue of "what rights the closing documents conveyed and whether accrued rights were included" presents a question of fact. Plaintiffs further contend that its breach of contract claim against Kairoi Management for breach of the pre-acquisition sub-management agreement survives summary judgment because under Paragraph 1.2(d) of the PSA, Passco was assigned "all contract rights" and "other similar intangibles," which they construe to mean "causes of action."

¶47 The court disagrees with Plaintiffs' interpretation. Paragraph 1.2(d) of the PSA describes the intangibles sold with the Property—the apartment community's name and logos, promotional materials, telephone number, contract rights, licenses, permits, deposits, utility service agreements or reservations, sign easements or licenses, and "other similar tangibles." Although the list is non-exhaustive, the listed items demonstrate that the term "intangible personal property" refers to items associated with the continuing ownership or operation of the property, rather than a claim for damages under the terminated management agreement. Further examination of the PSA—specifically, Paragraphs 2.4 and 10.8—shows that when the parties intended to address "claims" or "causes of action" in the PSA, they expressly used those terms. Therefore, the court

concludes that the omission of the terms "claims" and "causes of action" from Paragraph 1.2(d) of the PSA was intentional and the term "other similar intangibles" does not mean "claims" or "causes of action" arising under the pre-acquisition management agreement.

¶48 Paragraph 6.3 of the PSA states that Passco "will assume the obligations arising from and after the Closing Date under those Service Contracts that are not terminated as of the Closing Date." The summary judgment evidence shows that Rim LLC never assigned its management agreement with Kairoi Management to Passco. At closing, Rim LLC executed a "Bill of Sale and Assignment of Leases and Contracts," which did not assign Rim LLC's pre-acquisition sub-management agreement to Passco. The evidence also shows that on the day of closing Rim LLC terminated this agreement with Kairoi Management. Therefore, there was no pre-acquisition sub-management contract for Rim LLC to assign to Passco.

¶49 Because Kairoi Management has negated an essential element of Plaintiffs' claim for breach of the pre-acquisition sub-management agreement, the court concludes Kairoi Management is entitled to summary judgment on this claim.

DECLARATORY JUDGMENT

¶50 In their first amended petition, Plaintiffs seek declarations that (1) Passco satisfied all of its contractual obligations under the PSA, sub-management agreement, and pre-acquisition sub-management agreement; and (2) service of process is effective as to all defendants, particularly Rim LLC and Rim WP Holdings LP ("Rim LP"), and that those defendants waived objections to service, capacity, or jurisdiction. In their MSJ, the Kairoi Defendants argue they are entitled to summary judgment as a matter of law because neither

claim is proper under the Uniform Declaratory Judgments Act because they merely duplicate issues already pending in this suit.

¶51 Generally, a declaratory judgment is not available to resolve issues already pending before the court. *Kyle v. Strasburger*, 522 S.W.3d 461, 467 n.10 (Tex. 2017); *BHP Petroleum Co. v. Millard*, 800 S.W.2d 838, 841 (Tex. 1990). Declaratory relief may nevertheless be proper when the requested declaration has "greater ramifications" than the issues already before the court. *BHP Petroleum*, 800 S.W.2d at 842. In *BHP Petroleum*, the Texas Supreme Court permitted declaratory relief concerning an ongoing gas-purchase contract because the requested declaration would define the parties' contractual obligations for the foreseeable future. *Id.* Thus, although the UDJA permits a court to construe a contract after a breach has occurred, a declaratory claim must provide relief beyond merely resolving issues already pending before the court.

¶52 In *Etan Indus., Inc. v. Lehmann*, the plaintiffs sought both damages for trespass and a declaration concerning the defendant's right to place cable lines on their property. 359 S.W.3d 620, 624–25 (Tex. 2011). The court concluded that the requested declaration "simply duplicated the issues litigated" through the trespass claim and "add[ed] nothing to what would be implicit or express in a final judgment for the other remedies sought in the same action." *Id.* at 625. Accordingly, because the declaratory judgment merely duplicated issues litigated through the trespass claim, the plaintiffs were not entitled to attorney's fees under the UDJA. *Id.*

¶53 The Texas Business Court applied this distinction to determine whether declaratory claims merely duplicate issues already before the court. In *CRS Mech., Inc. v.*

Norfolk Cold Storage, LLC, the court explained that "a defendant may not bring a declaratory-judgment counterclaim that merely mirrors or repackages defenses to the plaintiff's claims." No. 25-BC08B-0001, 2025 WL 3188752, at *2 (Tex. Bus. Ct. Nov. 14, 2025). A declaratory claim is permissible only if it has greater ramifications than the issues already before the court, such as when the claim seeks affirmative relief independent of the existing claims. *Id.* at *3. The court therefore rejected declarations that merely negated elements of the plaintiffs' existing claims because the requested declarations added "no new controversy, no independent remedy, and no separate benefit." *Id.* The Business Court subsequently applied the same rule in *Quintero v. Urban Infraconstr. LLC*, concluding that mirror-image declarations concerning issues already presented by the plaintiffs' affirmative claims were "superfluous and impermissible." No. 25-BC01A-0022, 2026 WL 196887, at *8 (Tex. Bus. Ct. Jan. 26, 2026).

¶54 Unlike the declaration requested in *BHP Petroleum*, the declarations Plaintiffs seek would not govern an ongoing contractual relationship or otherwise affect the parties' future conduct. Instead, Plaintiffs seek a declaration concerning Passco's performance of contracts in connection with conduct that has already occurred. A declaration that Passco satisfied its contractual obligations therefore adds no independent remedy or separate benefit beyond the resolution of Plaintiffs' existing contract claims. In other words, Plaintiffs' requested declaration concerning Passco's contractual performance has no greater ramifications than the issues already before the court.

¶55 Next, Plaintiffs seek a declaration that service of process is effective as to all defendants, particularly Rim LLC and Rim LP, and that these defendants waived any

objections to "service, capacity or jurisdiction." Texas courts treat personal jurisdiction as a threshold issue that must be resolved before reaching the merits of a claim. *See Texas Right to Life v. Van Stean*, 702 S.W.3d 348, 351 (Tex. 2024); *Rattray v. City of Brownsville*, 662 S.W.3d 860, 869 (Tex. 2023). Moreover, when declaratory relief is sought, service of process is required before a court may exercise personal jurisdiction over the affected party. *In re Purported Lien or Claim Against 5944 Los Pueblos Dr.*, No. 08-25-00085-CV, 2026 WL 187460, at *8 (Tex. App.—El Paso Jan. 23, 2026, no pet.).

¶56 Here, Plaintiffs' petition alleges that Rim LLC has already appeared and challenged the court's jurisdiction and that Rim LP waived objections to service and jurisdiction through its conduct before the court. Thus, whether service was effective and whether Rim LLC waived its jurisdictional objections are threshold procedural questions already presented for the court's resolution. The requested declaration does not provide an independent remedy beyond the determination of existing issues.

¶57 Likewise, Plaintiffs' allegations concerning Rim LLC's and Rim LP's capacity to be sued—including their cancellation as Delaware entities and Passco's alternative requests for appointment of receivers—present issues independently raised by the pleadings. A declaration concerning capacity does not provide Plaintiffs with an independent remedy or separate benefit beyond the court's resolution of existing issues.

¶58 The court concludes the Kairoi Defendants have established they are entitled to summary judgment on Plaintiffs' declaratory judgment claims.[6]

CONCLUSION AND ORDER

¶59 For the reasons set out above, the court GRANTS the motion for partial summary judgment as follows:

(1) Plaintiffs' claims for fraud, fraud in the inducement, fraud by nondisclosure, civil conspiracy, and declaratory judgment against Rim WP Holdings LP, Kairoi Development LLC d/b/a Kairoi Residential d/b/a Lynd Development LLC a/k/a Lynd Development Partners, Daniel Zunker, and Michael Lynd Jr., are DISMISSED WITH PREJUDICE; and

(2) Plaintiffs' claim for breach of the pre-acquisition sub-management contract against Kairoi Management LLC is DISMISSED WITH PREJUDICE.

¶60 Because this order does not dispose of all parties and claims, it is not a final judgment. Plaintiffs' claims for breach of the May 31, 2019 sub-management contract against Kairoi Management, and Plaintiffs' claims for fraud and breach of the PSA against Rim LLC remain pending before the court.

SO ORDERED.

Marialyn Barnard

MARIALYN BARNARD
Judge of the Texas Business Court,
Fourth Division

SIGNED ON: October 26, 2026

[6]The Kairoi Defendants also seek summary judgment on Plaintiffs' claims against Rim LP on the ground that it lacks capacity to be sued because it was "cancelled on December 31, 2020." Because this opinion and order disposes of the claims against Rim LP on other grounds, the court need not address this issue.