UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WILLIE E. LANIER, SR.,

Plaintiff,

v.

Case No. 11-14780
Honorable Victoria A. Roberts

SYNCREON HOLDINGS, LTD.,
SYNCREON HOLDINGS, INC., and
BRIAN ENRIGHT,

Defendants.

_____/

**ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND DENYING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

## I. INTRODUCTION AND BACKGROUND

In this fraud action, Willie Lanier argues that Defendants duped him into signing a Share Purchase Agreement (the "SPA") requiring him to sell his shares and resign as Director and CEO of syncreon.US. Defendants are syncreon Holdings, Ltd. ("syncreon Ltd."), syncreon Holdings, Inc. ("syncreon Inc.") and Brian Enright (collectively "Defendants"). syncreon Holdings, Ltd. is the holding company of all syncreon entities; Enright is the CEO of all syncreon entities.

Lanier says Defendants' ploy included: (1) withdrawing many assets from syncreon.US; (2) concealing pertinent financial information; (3) presenting misleading data; (4) causing him to believe that the company had no value; (5) forcing a low sale; and (6) driving him out of the company.

In 2001, Lanier, two other minorities, and syncreon Inc., formed WilLan. Lanier owned 30%; syncreon Inc. purchased 49%. At formation, WilLan borrowed a total of $20,500,000 from syncreon, Inc., to purchase syncreon.US. This loan was secured by two demand notes (the "Notes"). syncreon.US entered into a Management Services and Technology Transfer Agreement ("MSA") which allowed syncreon.US to utilize syncreon's name and technology services. Without the MSA, syncreon.US could not service clients; it lacked its own technology and support services. On January 1, 2006, an Amended and Restated Management Services and Technology Agreement ("MSTTA") became effective allowing syncreon Inc., to provide accounting and business development services to syncreonU.S. Lanier was the CEO of syncreon.US.

WilLan defaulted on the Notes; at the time of default, $11,846,000 was owed. WilLan then entered into Amended and Restated Notes (the "Demand Notes"), allowing syncreon Inc. to demand full payment at any time. By the end of 2008, the outstanding debt on the Demand Notes was $8,936,923; on April 30, 2009, WilLan owed $3,540,121.

**Lanier says Defendants developed a plan to force him out:** On April 8, 2009, Lanier says that Enright advised board members of "syncreon Ltd. that Defendants 'stripped all of the cash flows from syncreon.US,' leaving Mr. Lanier 'somewhat trapped.'" Plaintiff's Brief in Opposition to Defendants' Joint Motion for Summary Judgment, Doc. 103 at 7. Lanier says that Enright "proposed a plan to force [him] out and the other African American investors: for '$1m to $1.5m" and this would 'resolve the Willie issue.'" *Id.* at 7-8. Lanier says that Enright proposed to replace him with GenNx, whom Enright incorrectly thought would meet the Minority Business Entity ("MBE")

criteria, which Lanier and his minority investors brought to the company due to their race.

On April 23, 2009, the syncreon group CFO proposed "pull[ing] maximum cash back to wholly owned business," in hopes that it "might influence discussion with willie[sic] as well as acquisition plans . . . ." *Id.* at Exhibit 20, Ms. Van Landschoot's Email to Enright. Lanier says the CFO's proposal was in support of Enright's plan to drive him out of WilLan. The cash pulled back came from WilLan and syncreon.US, not the other syncreon owned businesses. That April, $5.5 million was transferred from syncreon.US to syncreon Inc. without Lanier's consent or knowledge.

**Chryler's involvement:** Chrysler was WilLan's largest client, accounting for more than 90% of syncreon.US's revenue. On April 30, 2009, Chrysler filed bankruptcy; it owed syncreon.US over $7,000,000. Because of Chrysler's bankruptcy, syncreon.US's cash flow was reduced.

On May 13, 2009, Lanier says that Enright "described to Syncreon Ltd.'s Board his plan to 'use the Chrysler [bankruptcy] situation' to deal with 'the MBE qualified shareholders [(i.e., Mr. Lanier and his two African-American business partners)]' by 'tak[ing] them all out at once' via a stock purchase at a 'significantly lower' proposed purchase price." *Id.* at 8. Lanier says that at the same time, Enright said that he planned to prevent Mr. Lanier from presenting at syncreon.US's Board meeting.

**The offer made to Lanier:** On May 18, 2009, Enright submitted an offer to Lanier: Lanier could accept a $5.5 million loan, with a quarterly interest rate of 25% or sell his shares to Defendants for $1.5 million.

On May 19, 2009, a Board meeting was held for syncreon.US; syncreon says these meeting minutes are lost. Mr. Lanier says that he was not told that syncreon intended to meet with Chrysler and would seek to transfer some of Chrysler's contracts from syncreon.US. At oral argument, Defendants say that they held this meeting because Chrysler wanted to transfer contracts from syncreon.US. Lanier argued at the hearing that Chrysler only considered transferring contracts from syncreon.US because Enright threatened to bankrupt syncreon.US. Lanier says the threat caused Chrysler to move business from syncreon.US because, if syncreon.US went into bankruptcy, Chrysler could not exit its own reorganization.

On May 20, 2009, syncreon met with Chrysler to discuss payment. The next day, an estimate of Chrysler's standing was provided to syncreon Ltd.'s Board; it was that Chrysler planned to exit reorganization within two weeks. Lanier was not provided the financial information, nor was he told about the meetings.

**A demand was made:** As of May 21, 2009, WilLan owed syncreon Inc. $3,552,265.49 on one Demand Note. syncreon.US owed $423,444 to syncreon Inc. on the MSA. syncreon Inc. demanded full payment of both the Demand Note and MSA. Lanier requested that the demands be stayed until he and his attorney could meet with syncreon Inc. That request was granted by syncreon Inc. on May 26, 2009.

**The threat made to Chrysler:** On May 27, 2009, Enright and others from syncreon met with Chrysler again. At this meeting, syncreon instructed that if Chrysler did not comply with its terms, syncreon would put syncreon.US into bankruptcy and interfere with Chrysler's ability to reorganize under Chapter 11. Chrysler could not exit

reorganization if syncreon.US filed bankruptcy. Again, Mr. Lanier was not aware of this meeting or the content of discussion prior to.

**Defendants meet with Lanier:** That evening, Lanier and his attorney, Mr. Mahone, met with Enright and Ms. Van Landschoot, syncreon's CFO. The parties dispute what Mr. Lanier was told and differ on what was discussed. Ms. Van Landschoot says that Lanier was informed of the earlier meeting and discussions concerning Chrysler emerging from bankruptcy. Enright cannot recall if Lanier was informed. Lanier says he was not given details; he says Enright threatened to terminate the MSTTA, which would prevent syncreon.US from performing under its contracts if Lanier tried to obtain financing for syncreon.US from any source. He says he was forced to take Enright's high interest offer or sell his stock.

On May 28, 2009, Lanier and his attorney met with syncreon Inc.'s representatives. Lanier says that prior to the meeting, Ms. Van Landschoot instructed syncreon Inc.'s representatives not to provide financial data to him. He says, she told syncreon Inc. that if Lanier requested information, syncreon was to "strategize first on how and what to provide." *Id.* at Exhibit 31, Ms. Van Landschoot's Email.

At the May 28th meeting, Defendants say that Lanier was provided:

> [E]xtensive information and unfettered access to its CFO, vice president of treasury and legal counsel. Plaintiff and his counsel participated in several meetings, some together and some separate. Plaintiff's counsel was provided with documents related to the financial condition of syncreon.US, the impact of the Chrysler proposal including the potential closure costs related to the shutting down of several syncreon.US facilities, pre-petition amounts owed by Chrysler to syncreon.US, a payment history for the WilLan debt, and a summary of cash-on-hand. An update on the Chrysler negotiations was provided. sncreon Inc. offered to provide any further information Plaintiff or his counsel desired, but Plaintiff and his counsel failed to make any specific follow-up requests.

*Id.* at 7-8.

On May 29, 2009, Lanier met with syncreon Inc. again. Lanier says that Enright urged him to sign a letter of intent ("LOI") for the sale of his shares. As instructed by Enright, by the end of the day, Lanier and GenNx signed the LOI, agreeing to sell their WilLan stock for $1.5 million combined, to syncreon Inc.

Next, the parties executed the Share Purchase Agreement. Many proposed revisions were exchanged before Lanier signed it. The proposed SPA said at paragraph 13: "Familiarity With Business: Sellers are familiar with the business and affairs of the Company and have been furnished with any and all information which they wished to have in order for each of them to have decided to enter into this Agreement."

**The SPA was executed on June 10, 2009. Before its execution, Defendants knew that Chrysler would pay all pre-petition debt but did not tell Lanier**: On June 6, 2009, Chrysler informed syncreon that it would immediately transfer payment of all pre-petition amounts owed in addition to other compensation. *Id.* Exhibit 37, syncreon's email. Lanier was not informed of this change in finances.

Two days after the SPA was executed -- on June 12, 2009 -- Chrysler signed an agreement paying syncreon.US monies owed. Lanier says that syncreon expected this result at the outset of negotiations, but did not advise him of its expectation.

Defendants say Lanier cannot establish fraud because none of their assertions was false. Alternatively, they argue that, because Lanier did not rely on any statement made, fraud in the execution must be dismissed. They say Lanier's non-disclosure

fraud claim fails because they had no duty to disclose all financial information to Lanier, even if he was their business partner and CEO.

syncreon Inc. also asserts a counterclaim for fraud and breach of contract. It says a provision in the SPA required that Lanier agree he was familiar with the business of syncreon.US and had "all information which [he] wished to have in order to have decided to enter into th[e] Agreement." Because he now argues that information was not disclosed, syncreon Inc. says he owes money damages.

The parties move for summary judgment on each other's claim. The Court heard arguments on April 10, 2014.

Defendants' motion is **DENIED**. Whether Defendants' actions rise to the level of fraud is a question for the jury.

Lanier's motion is **GRANTED**. Defendants cannot hold Lanier liable for fraud or breach of contract. His testimony is that, at the time, he thought he had sufficient data to execute the SPA. Defendants say they gave him all the data he required, and what he learned at a later date has no bearing on the SPA's clause.

## II. STANDARD OF REVIEW

The Court will grant summary judgment "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250-57 (1986). On a motion for summary judgment, the facts must be viewed in the light most favorable to the non-moving party. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

A fact is material for purposes of summary judgment if proof of that fact would have the effect of establishing or refuting an essential element of the cause of action or a defense advanced by the parties. *Kendall v. Hoover Co.*, 751 F.2d 171, 174 (6th Cir. 1984).

## III. ANALYSIS

### A. Lanier's Motion for Summary Judgment

syncreon Inc. alleges a counterclaim of fraud and breach of contract. syncreon Inc. says that Lanier withheld information, but nonetheless continued with the sale of his stock, defrauding it into executing the SPA. syncreon Inc. says its counterclaim is "based upon the testimony of Plaintiff and his lawyer" that Lanier did not have all information he desired at the time the SPA was signed.

In *Belle Isle Grill Corp v Detroit*, 256 Mich. App. 463 (2003), the Michigan Appeals Court set forth the elements a plaintiff must show to fraud based on misrepresentation:

> (1) the defendant made a material representation; (2) the representation was false; (3) when the defendant made the representation, the defendant knew that it was false, or made it recklessly, without knowledge of its truth and as a positive assertion; (4) the defendant made the representation with the intention that the plaintiff would act upon it; (5) the plaintiff acted in reliance upon it; and (6) the plaintiff suffered damage.

*Belle Isle Grill Corp*, 256 Mich. App. 463, 477; 666 N.W.2d 271 (2003).

Breach of contract requires breach of a material term in a contract. *Holtzlander v. Brownell*, 182 Mich.App. 716, 721, 453 N.W.2d 295 (1990). Michigan courts hold that:

> In determining whether a breach is material, the court should consider whether the nonbreaching party obtained the benefit it reasonably expected to receive. Id. at 722, 453 N.W.2d 295. Other considerations include the extent to which the injured party may be adequately compensated for damages for lack of complete performance, the extent to which the breaching party has partly performed, the comparative hardship on the breaching party in terminating the contract, the wilfulness of the breaching party's conduct, and the greater or lesser uncertainty that the party failing to perform will perform the remainder of the contract. Walker & Co. v. Harrison, 347 Mich. 630, 635, 81 N.W.2d 352 (1957).

*Omnicom of Michigan v Giannetti Investment Co*, 221 Mich App 341, 348; 561 NW2d 138 (1997).

Lanier says syncreon Inc. mischaracterizes the testimony it relies upon to support its counterclaim. During deposition, Lanier testified:

> Q. Well, at the time you entered into the share purchase agreement which is identified as Lanier 14, you were presented with any and all information you wished to have in order to decide to enter in this agreement; did you not? . . .
> A. I was offered information.
> Q. Did you get all the information you felt you needed to make a decision to enter into the shareholder purchase agreement?
> A. I was offered information.
> Q. And were you furnished with any and all information that you wished to have in order to enter into the agreement? . . .
> A. I was offered information – any and all?
> Q. Yes. I'm asking any and all information that you wished to have in order to enter into the agreement.
> A. I entered into the agreement.
> Q. Did you have any and all – do you agree you were provided with any an all information you needed to enter into the agreement?
> A. I entered into the agreement. I'm not sure on the any and all. I agreed to the agreement.
> Q. Was there any information you requested that you did not receive at hat time before entering into the agreement?
> A. Not that I'm aware of.

Lanier's attorney testified:

> Q. Paragraph 13 of the share purchase agreement, "Sellers are familiar with the business affairs of the company and have been furnished with

> any and all information which they wished to have in order for each of them to have decided to enter into this agreement." Is that correct? Is that a correct statement?
> A. Correct reading.
> Q. Do you have any reason to believe that this was not accurate? . . . When this was executed, do you believe it was accurate?
> A. I think – not without reservation.
> Q. I'm sorry, I don't understand your answer.
> A. You said do I think that – Read the question back, please. Reservation being embodied in my request for the inclusion of the language on page 1191.
> Q. Talking about in paragraph 13 on 1191?
> A. 13 on 1191.
> Q. So you believe or you believed at the time that there was information, specifically information regarding Chrysler, that had not been provided?
> A. I wasn't sure. That's why I suggested that the language clarify that point. And that language was rejected.

Lanier's attorney also said:

> Q. Do you recall if there were any documents you requested that your didn't receive?
> A. I don't recall having requested documents that were not furnished either then or there.

When specifically questioned about documents received when executing the SPA, Lanier's attorney stated:

> Q. . . . Do you recall asking for any documents on May 27 or May 28 that you were not provided?
> A. No.

This deposition testimony does not support the proposition that Lanier knew he had incomplete information but still entered into the SPA. Dismissal is warranted for this reason alone.

This claim is subject to dismissal also because syncreon Inc. present no evidence which shows why their reliance on Lanier's alleged fraud was reasonable.

Furthermore, fraud is an equitable remedy. *Rose v Nat'l Auction Group*, 466 Mich. 453, 461; 646 N.W.2d 455 (2002)(citing *Flood v. Welsh, 334 Mich*. 583, 591-592, 55 N.W.2d 104 (1952) (describing the cancellation of an executed contract on the basis of fraud as a power of a court of equity)). To recover under equity, one must have clean hands. Unclean hands is an equitable doctrine: "[t]hose who seek equity must first do equity." *Lemke v. H&R Block Mortgage Corp.*, No. 11-14979, 2012 (E.D. Mich. March 6, 2012). Defendants' actions preclude cancelling the SPA.

The most logical inference to be made is that Defendants *thought* Lanier wanted more information. Defendants knew at the time of signing the SPA that all dealings regarding Chrysler were not disclosed, and they knew Chrysler would pay the money owed and that syncreon.US could then afford to pay the Demand Notes. Lanier sought *affirmation* that the information was complete.

This claim would be dismissed even if the Court assumed that Lanier knew he was not being provided accurate information. There can be no breach of contract unless the alleged breach is material.

This counterclaim requires the Court to assume that Lanier desired additional financial information, syncreon Inc. knew Lanier wanted certain financial documentation, but syncreon Inc. did not provide the data. These inferences would show that syncreon Inc. prevented Lanier from fully performing; and thus, Lanier's breach could not be material. *Omnicom of Michigan*, 221 Mich App at 348 (finding that breach is not material if the contracting party is prevented from performing under the contract).

Because syncreon Inc. executed the SPA while thinking that Lanier felt he was not fully informed and did not provide disclosure, it cannot now recover for fraud and breach of contract: it knew of the alleged fraud at the time of contracting.

syncreon Inc.'s counterclaim is **DISMISSED**.

### B. Defendants' Motion for Summary Judgment on Lanier's Claim

#### 1. Lanier's Standing

Defendants challenge Lanier's standing "to bring the fraud claims in Count I(A)(D) and (F) of the Fourth Amended Complaint." Defendants' Joint Motion for Summary Judgment, Doc. 97 at 32. Defendants say the contracts executed were corporate assets of WilLan and syncreon.US, not Lanier's; and thus, Lanier cannot recover from the removal of money from these corporations.

To have standing, Lanier must satisfy three requirements: (1) injury in fact; (2) a causal connection between the injury and the challenged conduct; and (3) the likelihood that the injury will be redressed by a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). The party invoking federal jurisdiction has the burden to establish that he has standing. *Lujan*, 504 U.S. at 561 (*citing FW/PBS, Inc. v. Dallas*, 493 U.S. 215, 231 (1990)).

Lanier met his burden. Individual enforcement of corporate rights requires a shareholder to show that he suffered a specific injury, distinct from all shareholders. *Meathe v. Ret*, 903 F.Supp.2d 507. (6th Cir. 2013). Lanier successfully shows that he suffered a loss distinct from other shareholders: he lost his shares in the company, as well as his job as CEO, his position on the Board, and his investment. Other shareholders, namely syncreon Inc., benefitted from its own fraud; it suffered no loss at

all and gained total control of WilLan. syncreon Inc. even had a minority purchaser in line to buy Lanier's sold shares.

Lanier has standing; he has an injury which is causally connected to Defendants' harm, and a decision in Lanier's favor can redress his injury.

**2. Enright and Syncreon Ltd. as Parties**

In two paragraphs Defendants simply say that the fraud claim against Enright and syncreon Ltd. should be dismissed because they were not parties to the SPA.

Lanier says that all Defendants acted in a scheme to defraud him. He says, at times, Enright spoke on his own behalf, without the authority of syncreon; thus, he can be held individually liable. Lanier says that syncreon Ltd. may be held liable because it knowingly participated in the scheme by hosting meetings with Chrysler and concealing information from Lanier.

Because Defendants fail to adequately develop this argument, it is waived. *See United States v. Robinson*, 390 F.3d 853, 886 (6th Cir. 2004)("We have cautioned that issues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived, and that it is not sufficient for a party to mention a possible argument in the most skeletal way, leaving the court to . . . put the flesh on the bones.) (citations and internal quotations omitted).

**3. Lanier's Fraud Claim**

Lanier alleges one fraud claim, which is rooted in a scheme of misrepresentations and non-disclosures. He says that Defendants' scheme included giving him inaccurate and misleading information, while failing to disclose other information.

He alleges that Defendants represented: Count I(A): syncreon.US had only $15,000; Count I(B): MBE status was not important to Chrysler; Count I(C): syncreon.US did not have any value; Count I(D): refusing to allow Lanier to pay down the debt; and Count I(E): Enright's statement that Lanier would be on the path to wealth. He also alleges in Count I(F): that Defendants failed to disclose the company's true financial information.

Defendants say these statements do not establish fraud because they are true. Defendants say Lanier's claim of silent fraud should also be dismissed because Lanier knew they were not providing complete financial information; and thus, he could not have relied on their information.

**i. Fraud Elements**

Fraudulent misrepresentation elements are stated above. Additionally, the Michigan Court of Appeals explains that a plaintiff's reliance on an assertion must be reasonable. *Novak v. Nationwide Mut. Ins. Co.*, 599 N.W.2d 546, 553-54(Mich. Ct. App. 1999).

To establish "[a] claim for negligent misrepresentation [a] plaintiff [must] . . . prove that [he] justifiably relied to his detriment on information prepared without reasonable care by one who owed the relying party a duty of care." *Alfieri v. Bertorelli*, 813 N.W.2d, 775 (Mich. Ct. App. 2012)(quoting *Unibar Maint. Servs., Inc. v. Saigh*, 769 N.W.2d 911 (Mich. Ct. App. 2009)).

To recover on a claim of silent fraud, also known as fraudulent concealment, Lanier needs to show that Defendants had a duty to disclose a material fact and failed to do so. *Lorenzo v. Noel*, 522 N.W.2d 724, 725 (Mich. Ct. App. 1994).

Under Michigan law, "[a] fraud arising from the suppression of the truth is as prejudicial as that which springs from the assertion of a falsehood, and courts have not hesitated to sustain recoveries where the truth has been suppressed with the intent to defraud.'' *Williams v Benson*, 3 Mich. App. 9, 18-19; 141 N.W.2d 650 (1966)(quoting *Tompkins v Hollister*, 60 Mich. 470, 483; 27 N.W. 651 (1886)).

**ii. These Statements are Actionable**

Defendants say the statements are true. Next, Defendants argue that, at a minimum, Lanier's claim Count I(D) -- that he was told that the debt would not be called -- should be dismissed because it is barred by the parol evidence rule. Finally, Defendants argue that many of these statement are not actionable because they relate to future promises.

An issue of fact exists concerning whether facts and circumstances made the statements untruthful; and the parol evidence rule is not implicated. *See generally, Radar Safety Techs. Llc v. Pinnacle Holdings Llc*, 2012 Mich. App. LEXIS 76 (Mich. Ct. App. Jan. 17, 2012) (citing *Marx v. King*, 162 Mich 258, 263-264; 127 NW 341 (1910)("The parol evidence rule only precludes the admission of understandings between the parties that were not included in the contract if those understandings occurred prior or contemporaneously to the contract, not anything that occurred thereafter"). These statements were asserted after the Demand Notes were executed. The Demand Notes were signed in 2004; Lanier says that these statements and actions to support these assertions were made in December, 2008. And, fraud is an exception to the parol evidence rule. The statement which Defendants seek to exclude based on the parol evidence rule is admissible.

Future statements may constitute actionable fraud. *Custom Data Solutions, Inc. v. Preferred Capital, Inc.*, 274 Mich App 239, 242-243; 733 NW2d 102 (2007)(“[f]raud in the inducement occurs where a party materially represents future conduct under circumstances in which the assertions may reasonably be expected to be relied upon and are relied upon . . . .”); *Gugel v. Neitzel*, 248 Mich. 312, 226 N. W. 869, 870 (‘Where a false representation of value is intentionally made to a person ignorant of value, with the purpose that such statement is to be relied upon, the representation is in the nature of a statement of fact, and will support an action of fraud.'); *Szarkowski v. Pfister*, 262 Mich. 226 (1933)(“Where a fraud is committed partly by false promises and partly by false representations of fact, representations, though promissory in character which are not made in good faith but as a part of a scheme to defraud, are nevertheless fraudulent”); *Matteson v. Weaver*, 229 Mich. 495, 201 N. W. 473, 474()("[W]here a promise is made in bad faith with no present intent to perform it, and it dovetails into and forms a part of the scheme to defraud, it may be considered by the court.").

**iii. Duty to Disclose**

Defendants argue that there was no duty to disclose complete financial information. However, as a minority shareholder, Lanier was owed a duty to receive accurate information when selling his stock. *United States v. Byrum, 408 U.S. 125, 137, 92 S.Ct. 2382 (1972) (“[a] majority shareholder has a* fiduciary duty not to misuse his power by promoting his personal interests at the expense of corporate interests.”); *Production Finishing Corp. v. Shields*, 158 Mich.App. 479, 486, 405 N.W.2d 171 (1987); *Wagner Electric Corp. v. Hydraulic Brake Co.*, 269 Mich. 560, 564, 257 N.W. 884 (1934); see also *Wallad v. Access BIDCO, Inc*., 236 Mich. App. 303, 600 N.W.2d 664,

666 (Mich. Ct. App. 1999)("[T]he directors of a corporation owe fiduciary duties to stockholders and are bound to act in good faith for the benefit of the corporation.).

Even if there was not a legal duty to disclose accurate financial information, there was an equitable duty. Michigan's Supreme Court holds there is a duty to disclose certain facts if parties have "generally discussed the condition at issue – when the purchaser has expressed some particularized concern or made a direct inquiry – and the seller fails to freely disclose the material facts within the seller's knowledge." *M&D, Inc v McConkey*, 231 Mich. App. 22, 29; 585 N.W.2d 33 (1998)(citing *Groening v Opsata*, 323 Mich. 73; 34 N.W.2d 560 (1948)).

Lanier constantly asked for financials of the company. He reviewed financial documentation with the CFO and other officials who had a better understanding and control of the finances. He asked if he was being provided accurate financial information. Instead of offering complete details, Lanier was told that his company had no value. But, evidence suggests that Defendants left out one key piece of information -- and may have purposefully withheld -- that the company did have value and would be thriving in the days to come. Evidence suggests that the CFO instructed officials not to provide Lanier with complete financial information. Lanier's company did not have its own financial department; he relied solely on syncreon Inc. for accounting information. This, too, can support Lanier's fraud claim.

Questions of fact exists concerning Lanier's inquiries and Defendants representations, and their duty to disclose accurate, complete financial information.

**iv. Reasonable Reliance**

Alternatively, Defendants say Lanier's claim fails because Lanier did not believe their assertions; thus, there could be no reasonable reliance. They offer Lanier's testimony as proof, and a representation and warranty clause which Lanier's attorney requested, but which they declined to incorporate in the SPA.

Lanier says that he relied on the statements made to him; he says he believed that his company had no value, but questioned why. And, whether his reliance was reasonable is a question of fact for the jury.

No evidence shows that Lanier knew of the representation and warranty that was rejected by Defendants; it cannot be used to show that Lanier did not rely on their assertions.

However, Lanier's testimony is confusing. At oral argument, Lanier conceded that he testified that at the time of signing the SPA, he thought his stock was worth more money. He did clarify his reason for providing that testimony. Lanier explained that he believed his stock was worth more because he did not think Defendants had the right to transfer $5.5 million from syncreon.US. Had the transfer not been made, his stock value would have been worth more. Defendants say this testimony shows he did not rely on the alleged scheme employed. They say it shows that Lanier just entered into a bad business deal. This is a dispute that a jury must decide.

**iii. Damages**

Defendants argue that even if they did act fraudulently, they have no liability because Lanier was not damaged; they say they could have simply demanded payment under the Notes and MSTTA without paying Lanier any money.

Lanier says that what could have been done is irrelevant; what occurred is what is pertinent. Lanier also says that there was a novation agreement that the Notes would not be called; he says with that in place they could not have demanded payment. Alternatively, Lanier argues that Defendants could not have demanded payment on the Notes because of the stay.

These arguments present questions of fact that will be submitted to a jury.

## IV. CONCLUSION

Lanier's motion is **GRANTED**. Lanier cannot be liable for fraud or breach of contract because syncreon Inc. withheld information. Basic equity and contract law preclude liability.

Defendants' motion is **DENIED**. Questions of fact exist, including:

1. Were false promises part of a scheme to defraud Lanier?
2. Did Defendants intend to defraud Lanier when they said syncreon.US had no value?
3. Was there a fraudulent scheme?
4. Did Lanier rely on the statements?
5. Was there a novation/modification to the Demand Notes?
6. If there was a novation/modification, what were the terms of the new agreement?
7. Were the Demand Notes callable?
8. Did Defendants prematurely demand payment?
9. Did Defendants withhold financial information?

**IT IS ORDERED.**

S/Victoria A. Roberts
Victoria A. Roberts
United States District Judge

Dated: April 17, 2014

The undersigned certifies that a copy of this document was served on the attorneys of record by electronic means or U.S. Mail on April 17, 2014.

s/Linda Vertriest
Deputy Clerk