

entered into negotiations with the Defendants to purchase the Wilkesbarre Pier (the Pier) and associated pipelines, all of which were located in East Providence, Rhode Island.¹ (Pl.’s Mem. 2.) However, Plaintiff learned that the Pier did not allow for large enough vessels.² *See id.* at 2-3. Thus, the parties agreed to construct a “breasting dolphin” (the Dolphin) that would allow Plaintiff’s vessels to use the Pier.³ (Compl. ¶ 15.)

On February 10, 2017, the parties closed on the purchase of the Pier and executed an Asset Purchase Agreement dated as of January 24, 2017. (Pl.’s Mem. 2-3.) The Asset Purchase Agreement references several “Definitive Documents” previously or contemporaneously executed by the parties. *See* Defs.’ Mem. in Supp. of Mot. for Partial Summ. J. (Defs.’ Mem.) Ex. 3 (Asset Purchase Agreement) 2-3. Two of the referenced documents are of particular import here: the Construction Side Letter and the Flow of Funds Memorandum. *See generally* Defs.’ Mem. Ex. 4 (Construction Side Letter); Pl.’s Mem. Ex. 1, Schedule B, Bates No. SOR_003870-75 (Flow of Funds Memorandum).

The Construction Side Letter shows that the parties agreed to share excess costs relating to the Dolphin’s construction. *See* Construction Side Letter ¶ 4. If the actual costs of construction (the Actual Dolphin Expenses) exceeded the parties’ estimated cost of construction (the Estimated

¹ Up until 2016, Dunellen and CTC distributed petroleum products at the Pier. (Compl. ¶ 12.)

² Plaintiff learned that Northeast Marine Pilots, Inc. (an association of marine pilots whose services are legally required to enter, depart, or traverse Rhode Island waters) restricted vessels mooring at the Pier to a beam not exceeding 90 feet. *See* Pl.’s Mem. 2-3; Blanchard Aff. ¶ 7. Plaintiff intended to use vessels with a beam of at least 105 feet. (Compl. ¶ 14; Blanchard Aff. ¶ 8.)

³ Plaintiff avers in its papers that “[b]reasting dolphins assist in the berthing of vessels by taking up some berthing loads; keep the vessel from pressing against the pier structure; and serve as mooring points to restrict the longitudinal movement of the berthing vessel.” (Pl.’s Mem. 3 n.2.) The Court notes that there are discrepancies between the Complaint and attached Exhibits to Plaintiff’s Memorandum. The Complaint states that the Dolphin would allow for vessels “larger than a beam of 105 feet to offload,” while Blanchard’s Affidavit states that it would allow for vessels “up to a beam of 105 feet to offload.” *Compare* Compl. ¶ 15 *with* Blanchard Aff. ¶ 9.

Dolphin Expenses), then Defendants agreed to reimburse Plaintiff for 50 percent of the overage. *Id.* Conversely, if the Actual Dolphin Expenses were less than the Estimated Dolphin Expenses, Plaintiff agreed to reimburse Defendants for 50 percent of the underage. *Id.* The Actual Dolphin Expenses amounted to \$1,894,008.06. (Pl.’s Mem. Ex. 2 ¶ 25.) However, the subject matter of this lawsuit is what Estimated Dolphin Expenses means under the parties’ agreement, and consequently who is liable under the cost-sharing arrangement.⁴

Defendants argue that the Court should look to the Construction Side Letter for guidance. Defendants point to ¶ 1(a) of the Construction Side Letter, which states that Estimated Dolphin Expenses would include the “estimated contract price for the Dolphin Project including costs incurred with the Consulting Engineer from and after the Closing.” (Construction Side Letter ¶ 1(a).) Ultimately, Defendants ask the Court to find that the Estimated Dolphin Expenses equal \$1,923,284 (the sum of the contractor’s estimate, costs of additional materials, the consulting engineer’s fee, and a contingency fee) and that they are owed \$14,637.97 in underage reimbursement. *See* Answer and Countercl. 8; Defs.’ Mem. Ex. 11. On the other hand, Plaintiff argues that the Court should look to the Flow of Funds Memorandum, which shows that the aggregate purchase price of the Pier was offset by Estimated Dolphin Expenses totaling \$1,040,000. *See* Pl.’s Mem. 4; Flow of Funds Memorandum. Thus, Plaintiff argues that the true value for Estimated Dolphin Expenses is \$1,040,000 and that it is owed \$427,004.03 in overage reimbursement. (Compl. ¶ 33.)

⁴ Plaintiff believes that the Estimated Dolphin Expenses is \$1,040,000 pursuant to the Flow of Funds Memorandum and that it is owed \$427,004.03 in overage reimbursement. (Compl. ¶ 33.) On the other hand, Defendants believe the Estimated Dolphin Expenses is \$1,923,284 pursuant to the estimated contract price and that they are owed \$14,637.97 in underage reimbursement. (Answer and Countercl. 8.)

Plaintiff filed a four-count Complaint on July 15, 2021 alleging (1) breach of contract; (2) promissory estoppel; (3) unjust enrichment; and (4) negligent misrepresentation. *See* Compl. 2-12. On September 9, 2021, Defendants filed an Answer and Counterclaim for breach of contract. *See* Answer and Countercl. 9. Plaintiff filed a Motion for Summary Judgment as to all counts in its Complaint, as well as Defendants' counterclaim, on September 9, 2022. *See* Pl.'s Mot. for Summ. J. (Pl.'s Mot.) Defendants filed a Motion for Partial Summary Judgment as to Counts I and III. *See* Defs.' Mot. for Partial Summ. J. (Defs.' Mot.) The parties timely objected to each other's motions. *See* Defs.' Obj. to Pl.'s Mot. for Summ. J. (Defs.' Obj.); Pl's Obj. to Defs.' Mot. for Partial Summ. J. (Pl.'s Obj.)

II

Standard of Review

“Summary judgment is an extreme remedy and should be granted only when ‘the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as [a] matter of law.’” *Plunkett v. State*, 869 A.2d 1185, 1187 (R.I. 2005) (quoting *Wright v. Zielinski*, 824 A.2d 494, 497 (R.I. 2003)). The Court views the admissible evidence “in the light most favorable to the nonmoving party[.]” *National Refrigeration, Inc. v. Standen Contracting Company, Inc.*, 942 A.2d 968, 971 (R.I. 2008). The party opposing summary judgment “‘carries the burden of proving by competent evidence the existence of a disputed material issue of fact and cannot rest on allegations or denials in the pleadings or on conclusions or legal opinions.’” *Id.* (quoting *Accent Store Design, Inc. v. Marathon House, Inc.*, 674 A.2d 1223, 1225 (R.I. 1996)).

III

Analysis

A

Count I – Breach of Contract & Defendants’ Counterclaim for Breach of Contract

This action revolves around Estimated Dolphin Expenses and its meaning under the parties’ agreement. The parties aver that its meaning is clear and unambiguous. However, they ask the Court to construe the term based upon different documents referenced in the Asset Purchase Agreement. *See generally* Asset Purchase Agreement 2-3; Construction Side Letter ¶ 1(a); Flow of Funds Memorandum. The Court holds that Estimated Dolphin Expenses is an ambiguous term that cannot be resolved at this juncture.

“Whether a contract’s terms are ambiguous is a question of law.” *National Refrigeration, Inc.*, 942 A.2d at 971-72. “[A] contract is ambiguous only when it is reasonably and clearly susceptible of more than one interpretation.” *Rubery v. The Downing Corp.*, 760 A.2d 945, 947 (R.I. 2000) (quoting *Rotelli v. Catanzaro*, 686 A.2d 91, 94 (R.I. 1996)). When considering whether a contractual ambiguity exists, “the document must be viewed in its entirety and its language be given its plain, ordinary and usual meaning.” *Garden City Treatment Center, Inc. v. Coordinated Health Partners, Inc.*, 852 A.2d 535, 542 (R.I. 2004) (quoting *Rubery*, 760 A.2d at 947). If a contract’s terms are unambiguous, “the task of judicial construction is at an end and the agreement must be applied as written.” *OSJ of Providence, LLC v. Diene*, 154 A.3d 460, 464 (R.I. 2017) (quoting *W.P. Associates v. Forcier, Inc.*, 637 A.2d 353, 356 (R.I. 1994)).

If a contractual ambiguity exists, it cannot be resolved on a motion for summary judgment. *Lennon v. MacGregor*, 423 A.2d 820, 822 (R.I. 1980). Construing a contractual ambiguity requires a factual determination. *Rotelli*, 686 A.2d at 95 (citing *Clark-Fitzpatrick, Inc./Franki*

Foundation Co. v. Gill, 652 A.2d 440, 443 (R.I. 1994)). Thus, if an ambiguity exists, interpreting that ambiguity must be left to the trier of fact. *See Botelho v. City of Pawtucket School Department*, 130 A.3d 172, 178-79 (R.I. 2016) (quoting *Inland American Retail Management LLC v. Cinemaworld of Florida, Inc.*, 68 A.3d 457, 464 (R.I. 2013)).

1

The Construction Side Letter and Flow of Funds Memorandum are Incorporated by Reference into the Asset Purchase Agreement

The parties use separate “Definitive Documents” to support their arguments that Estimated Dolphin Expenses is a clear and unambiguous term. Thus, the first issue presented is whether the Court can consider these documents in its review of the contractual language. “It has long been a general rule in this jurisdiction that instruments executed ‘at the same time, for the same purpose and in the course of the same transaction . . . are to be considered as one instrument and are to be read and construed together.’” *Rotelli*, 686 A.2d at 94 (quoting *Old Kentucky Distributing Corp. v. Morin*, 50 R.I. 163, 165, 146 A. 403, 404 (1929)). “Furthermore, ‘instruments referred to in a written contract may be regarded as incorporated by reference and thus may be considered in the construction of the contract.’” *Stanley-Bostitch, Inc. v. Regenerative Environmental Equipment Co.*, 786 A.2d 1063, 1065 (quoting *Rotelli*, 686 A.2d at 94).

The Court holds that the Construction Side Letter and the Flow of Funds Memorandum are incorporated into the Asset Purchase Agreement. Both documents are listed as “Definitive Documents” within the Asset Purchase Agreement’s table of contents. (Asset Purchase Agreement 2-3.) Both documents were ostensibly executed on the same day—February 10, 2017—the date on which the parties closed on the purchase of the Pier. (Construction Side Letter 1; Flow of Funds Memorandum 1. *See generally* Asset Purchase Agreement.) Both documents refer to the Dolphin and its associated construction and expenses. *See* Construction Side Letter ¶ 1(a); Flow of Funds

Memorandum 1. Thus, the Court determines that these instruments ought to be construed in conjunction with the parties' Asset Purchase Agreement.

2

Estimated Dolphin Expenses is an Ambiguous Term

After reviewing the Construction Side Letter and the Flow of Funds Memorandum, the Court holds that Estimated Dolphin Expenses is an ambiguous term. The Construction Side Letter refers to Estimated Dolphin Expenses as the “estimated contract price for the Dolphin Project including costs incurred with the Consulting Engineer from and after the Closing.” (Construction Side Letter ¶ 1(a).) On its face, the term refers to estimates provided by contractors in the future (the Consulting Engineer), and thus it is reasonable to conclude that “[t]he parties agreed to compare this to-be-determined amount to the ‘Actual Dolphin Expenses’ to determine the 50% split established in the Side Letter Agreement.” *See* Defs.’ Mem. 7; Construction Side Letter ¶¶ 1(a), 4.

On the other hand, the Flow of Funds Memorandum specifically identifies Estimated Dolphin Expenses and assigns a value of \$1,040,000.⁵ *See* Flow of Funds Memorandum. Plaintiff argues that the parties agreed to “offset the aggregate purchase price of \$23,000,000.00 for the Pier by the *estimated expense to design and construct the breasting dolphin* at the Pier of \$1,040,000.00.” (Pl.’s Mem. 4) (emphasis added). Plaintiff avers that the Estimated Dolphin Expenses were predetermined “because costs could not be known at the time of the asset purchase closing, [so] the parties agreed to a cost sharing arrangement. In this way, the Agreement between

⁵ The Court also notes that Plaintiff relies on e-mail communications and deposition testimony from Todd D. Turcotte, Vice President and signatory for Defendants. This extrinsic evidence also shows the parties’ understanding that Estimated Dolphin Expenses amounted to \$1,040,000. *See* Pl.’s Mem. Ex. 1 Schedule A, Bates No. SOR_000211-14; Pl.’s Ex. 3 Schedule B (Turcotte Dep.) 103:10-15.

the parties regarding the construction of the [Dolphin] was akin to a ‘Cost of the Work’ construction contract with a control estimate of \$1,040,000.00.” (Pl.’s Mem. 4-5.)

The Court concludes that, given the existence of contract documents containing conflicting meanings of the term Estimated Dolphin Expenses, there exist genuine issues of material fact that preclude summary judgment on the parties’ breach of contract claims. Because Estimated Dolphin Expenses is subject to two reasonable interpretations, it is an ambiguous term that must be interpreted by the trier of fact. *See Rubery*, 760 A.2d at 947; *Lennon*, 423 A.2d at 822. Accordingly, Plaintiff’s Motion for Summary Judgment as to Count I and Defendants’ counterclaim are **DENIED**, and Defendants’ Motion for Partial Summary Judgment as to Count I is also **DENIED**.

B

Count II – Promissory Estoppel

Plaintiff next argues that the Court should find as a matter of law that Defendants are liable under a promissory estoppel theory. For a promissory estoppel claim, there must be “‘1. [a] clear *and unambiguous* promise; 2. [r]easonable and justifiable reliance upon the promise; and 3. [d]etriment to the promisee, caused by his or her reliance on the promise.’” *Cote v. Aiello*, 148 A.3d 537, 547 (R.I. 2016) (quoting *Filippi v. Filippi*, 818 A.2d 608, 626 (R.I. 2003)) (internal citations omitted) (emphasis added).

Plaintiff argues that Defendants “clearly and unambiguously promised to pay fifty (50%) percent of the cost difference between the Actual Dolphin Expenses and the Estimated Dolphin Expenses,” upon which Plaintiff proceeded to have the Dolphin constructed. (Pl.’s Mem. 20-21.) The Court is not convinced for two reasons.

First, ¶ 4 of the Construction Side Letter only obligates Defendants to pay 50 percent of the difference *if* the Actual Dolphin Expenses exceeded the Estimated Dolphin Expenses. *See* Construction Side Letter ¶ 4; *see also* Defs.’ Obj. 23. In the same paragraph, Plaintiff agreed to pay 50 percent of the cost difference if the Estimated Dolphin Expenses exceeded the Actual Dolphin Expenses. *See* Construction Side Letter ¶ 4.

Second, as discussed above, there is a genuine dispute as to the meaning of Estimated Dolphin Expenses that the Court cannot resolve. *See supra*, Part III.A. Without a clear definition of Estimated Dolphin Expenses, the Court cannot determine the dollar amount or resultant liability attached thereto. Our Supreme Court has held that an ambiguous term contained within a promise makes the promise ambiguous such that promissory estoppel is unavailable. *E.g., Sousa v. Roy*, 243 A.3d 775, 782 (R.I. 2021) (holding that unclear and ambiguous term “your” defeated promissory estoppel claim). Thus, because Plaintiff cannot show a clear and unambiguous promise, Plaintiff’s Motion for Summary Judgment as to Count II is **DENIED**.

C

Count III – Unjust Enrichment

Next, Plaintiff asks the Court to find as a matter of law that Defendants are liable for unjust enrichment. (Pl.’s Mem. 21.) Plaintiff argues that it conferred a benefit to the Defendants when it purchased the Pier based on the understanding that Defendants would reimburse Plaintiff for 50 percent of excess Dolphin construction costs. *See id.* Plaintiff further argues that Defendants unjustly enriched themselves by selling the Pier and subsequently refusing to reimburse Plaintiff following construction. *Id.* Defendants ask the Court to find in their favor as a matter of law because Plaintiff’s remedies lie solely in breach of contract. *See* Defs.’ Obj. 24; Defs.’ Mem. 8.

“‘Unjust enrichment’ is an equitable doctrine based upon a quasi or constructive contract implied by law to prevent a person from being unjustly enriched at the expense of another.” 1 *Williston on Contracts* § 1:6. To prevail on a claim for unjust enrichment, “a claimant must prove: (1) that he or she conferred a benefit upon the party from whom relief is sought; (2) that the recipient appreciated the benefit; and (3) that the recipient accepted the benefit under such circumstances ‘that it would be inequitable for [the recipient] to retain the benefit without paying the value thereof.’” *Emond Plumbing & Heating, Inc. v. BankNewport*, 105 A.3d 85, 90 (R.I. 2014) (quoting *Dellagrotta v. Dellagrotta*, 873 A.2d 101, 113 (R.I. 2005)).

However, “unjust enrichment occurs ‘when a benefit is conferred deliberately but without a contract[;] . . . [t]he resulting claim of unjust enrichment seeks to recover the defendant’s gains.’” *IDC Clambakes, Inc. v. Carney*, 246 A.3d 927, 933 (quoting *South County Post & Beam, Inc. v. McMahon*, 116 A.3d 204, 210 (R.I. 2015)); *see also* 26 *Williston on Contracts* § 68:5 (“Where the plaintiff has no alternative right on an enforceable contract, the basis of the plaintiff’s recovery is the unjust enrichment of the defendant.”). Thus, “where there is an express contract between the parties referring to a subject matter, there can be no implied contract arising by implication of law governing that same subject matter.” *Mehan v. Gershkoff*, 102 R.I. 404, 409, 230 A.2d 867, 870 (1967).

The parties do not dispute that they validly entered into the Asset Purchase Agreement. *See* Compl. ¶ 16. Therefore, Plaintiff’s remedies lie in breach of contract, not in equitable remedies. *See Gershkoff*, 102 R.I. at 409, 230 A.2d at 870. Because there is an adequate theory of recovery under breach of contract, Plaintiff’s Motion for Summary Judgment as to Count III is **DENIED**, and Defendants’ Motion for Partial Summary Judgment as to Count III is **GRANTED**.

D

Count IV – Negligent Misrepresentation

Finally, Plaintiff asks the Court to find as a matter of law that Defendants are liable for negligent misrepresentation. Plaintiff avers that Defendants initially promised “to pay 50% of the cost difference between the baseline Estimated Dolphin Expenses of \$1,040,000.00 and the Actual Dolphin Expenses[,]” but later reneged on their obligation. (Pl.’s Mem. 22.) Plaintiff argues that the Defendants’ misrepresentation caused Plaintiff to purchase the Pier and perform extensive construction. *See id.* Because Defendants now refuse to make any reimbursement, Plaintiff avers that it overpaid for the purchase of the Pier in the amount of \$427,004.03. *Id.*

“The tort of negligent misrepresentation has four elements: ‘(1) a misrepresentation of a material fact; (2) the representor must either know of the misrepresentation, must make the misrepresentation without knowledge as to its truth or falsity or must make the representation under circumstances in which he [or she] ought to have known of its falsity; (3) the representor must intend the representation to induce another to act on it; and (4) injury must result to the party acting in justifiable reliance on the misrepresentation.’” *Cruz v. DaimlerChrysler Motors Corp.*, 66 A.3d 446, 453 (R.I. 2013) (quoting *Manchester v. Pereira*, 926 A.2d 1005, 1012 (R.I. 2007)) (internal citations omitted). However “[f]uture events or promises are not considered factual.” *Cote*, 148 A.3d at 549; *see also Sterman v. Brown University*, 513 F. Supp. 3d 243, 254 (D.R.I. 2021) (quoting *Cote*, 148 A.3d at 548) (“Further, ‘unfulfilled promises to do a particular thing in the future do not constitute fraud in and of themselves.’”).

Even though the parties agree that there was a cost sharing arrangement, *see* Construction Side Letter ¶ 4, Estimated Dolphin Expenses is a material term whose meaning the parties vigorously dispute and the Court already set aside that determination to the factfinder. *See infra*,

Part III.A. With this ambiguity in mind, the Court does not reach whether there was a misrepresentation because the meaning of the underlying subject matter is hotly contested by the parties. Thus, Plaintiff's Motion for Summary Judgment as to Count IV is **DENIED**.

IV

Conclusion

For the foregoing reasons, (1) Plaintiff's Motion for Summary Judgment is **DENIED**; (2) Defendants' Motion for Partial Summary Judgment is **DENIED** as to Count I; and (3) Defendants' Motion for Partial Summary Judgment is **GRANTED** as to Count III. Counsel shall prepare and file an order consistent with this Decision.



RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE: Sprague Operating Resources, LLC v. Capital Properties, Inc., et al.

CASE NO: PC-2021-04697

COURT: Providence County Superior Court

DATE DECISION FILED: December 13, 2022

JUSTICE/MAGISTRATE: Stern, J.

ATTORNEYS:

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