EFiled: Dec 04 2025 09:23AM EST
Transaction ID 77918624
Case No. 2023-1221-SKR

COURT OF CHANCERY OF THE STATE OF DELAWARE

SHELDON K. RENNIE
VICE CHANCELLOR
(by designation)

LEONARD L. WILLIAMS JUSTICE CENTER
500 NORTH KING STREET, SUITE 10400
WILMINGTON, DE 19801

Rudolf Koch, Esquire
Travis S. Hunter, Esquire
Danielle I. Bell, Esquire
RICHARDS, LAYTON & FINGER, P.A.
920 North King St.
Wilmington, DE 19801

James M. Yoch, Jr., Esquire
Kevin P. Rickert, Esquire
Sarah J. Haskins, Esquire
YOUNG CONAWAY STARGATT & TAYLOR, LLP
1000 North King St.
Wilmington, DE 19801

Date Submitted: September 4, 2025
Date Decided: December 4, 2025

RE: *iSense, LLC v. Biomérieux, Inc. et al.*, C.A. No. 2023-1221-SKR
Plaintiff's Motion to Strike Defendants' Second Affirmative Defense

Dear Counsel:

This letter decision resolves Plaintiff's Motion to Strike Defendants' Second Affirmative Defense (the "Motion") (D.I. 47). For the reasons explained below, the Motion is GRANTED.

I. INTRODUCTION AND BACKGROUND

The above-captioned matter is one of four lawsuits in the Delaware court system grappling with a dispute over the licensing and sublicensing of certain

University of Illinois-owned medical patents.[1] This particular matter addresses whether Defendants bioMérieux, Inc. ("bMx") and Specific Diagnostics, LLC ("Specific" together with bMx, "Defendants") breached a contractual duty when they refused to issue a sublicense for certain uses of the patents (the "Sublicense") to Plaintiff iSense LLC ("iSense" or "Plaintiff").[2]

Plaintiff filed the operative Complaint (the "Amended Complaint") on March 22, 2024.[3] Defendants moved to dismiss on April 8, 2024.[4]

On December 18, 2024, the Court granted Defendants' motion in part (the "Order").[5] The Court assumes familiarity with the factual background outlined in the Order. Here are the broad strokes. In 2008, Plaintiff secured an exclusive license to certain patents owned by the University of Illinois (the "University"). For reasons being litigated elsewhere, the University terminated Plaintiff's license in 2021. In 2022, Plaintiff sold one of its subsidiaries, Specific, to an investor, bMx (the "Specific Merger"). At the same time, Plaintiff helped Defendants negotiate with

[1] The related cases are *Rhodes v. bioMérieux, Inc.*, C.A. No. N23C-10-014 SKR CCLD; *bioMérieux, Inc. v. Rhodes*, C.A. No. N23C-10-067 SKR CCLD; and *iSense Medical Corp.* v. *bioMérieux, Inc.*, C.A. No. N24C-02-240 SKR.

[2] For clarity, the Court uses "Plaintiff" to refer to conduct by iSense's owner, Dr. Paul A. Rhodes, as well. It is alleged in this litigation that he acted on iSense's behalf.

[3] D.I. 13.

[4] D.I. 14.

[5] D.I. 34.

the University to secure the exclusive license Plaintiff previously held. Defendants secured the license in April 2022.

Plaintiff maintains that it did not help Defendants secure the license without conditions. Rather, Plaintiff contends that Defendants agreed that once they secured the license, they would issue Plaintiff the Sublicense (the "Pre-Merger Agreement"). Indeed, Defendants continued to negotiate the Sublicense with Plaintiff after securing the license. Ultimately, however, Defendants refused to issue the Sublicense. Plaintiff then sued for breach of contract.

Defendants tell a different story. They contend that they never agreed to issue Plaintiff the Sublicense. And, in any event, according to Defendants, Plaintiff misled them into believing Plaintiff still possessed the license at the time of the Specific Merger and University negotiations.

The Amended Complaint asserts, in relevant part, that Defendants' refusal to issue the Sublicense constituted a breach of the Pre-Merger Agreement or created an implied-in-fact contract by Defendants' conduct (the "Implied-in-Fact Contract" together, the "Alleged Agreements").[6]

On January 17, 2025, Defendants filed their first Answer and Affirmative Defenses (the "Answer").[7] Defendants categorically denied the existence of the

[6] Order p. 14. Plaintiff also alleged breach of the written Merger Agreement connected to the Specific Merger. The Court dismissed that claim.

[7] D.I. 35.

Alleged Agreements.[8] But they also raised the Second Affirmative Defense (the "Second Affirmative Defense"). As pled in the Answer, the Second Affirmative Defense asserted that Defendants never agreed to provide a sublicense to Plaintiff, but if they did then the agreement was fraudulently induced by Plaintiff "misleading [Defendants] into believing that [Plaintiff] had existing license rights."[9]

On February 6, 2025, Plaintiff moved to strike the Second Affirmative Defense (the "First Motion to Strike").[10] Plaintiff argued that Defendants failed to allege fraudulent inducement with the requisite particularity.[11]

On April 10, 2025, the parties stipulated that Defendants could amend the Answer.[12] On April 14, 2025, Defendants filed the Amended Answer and Affirmative Defenses to Plaintiff's Amended Complaint (the "Amended Answer").[13] In it, Defendants expanded the Second Affirmative Defense.[14] They identify a series of communications from March and April of 2022 that they contend show Plaintiff made representations regarding the status of the sublicense that—

[8] Answer pp. 22–24.

[9] *Id.* at p. 28.

[10] D.I. 37.

[11] First Motion to Strike ¶ 11.

[12] D.I. 43.

[13] D.I. 44.

[14] Amended Answer pp. 29–32.

while never directly claiming to control the license—still misrepresented Plaintiff's position.[15]

On May 7, 2025, Plaintiff filed the Motion. Plaintiff argues, among other things, that the Second Affirmative Defense—as amended—still does not adequately plead fraudulent inducement. Specifically, it does not plead the required element of reliance.[16]

Briefing followed. On June 16, 2025, Defendants filed their Opposition to the Motion (the "Opposition Brief").[17] On July 18, 2025, Plaintiff filed its Reply in Further Support of the Motion (the "Reply Brief").[18]

The Court heard oral argument on September 4, 2025, and took the matter under advisement.[19]

II. STANDARD OF REVIEW

Court of Chancery Rule 12(f) provides, in relevant part, that "a party may move to strike from a pleading any insufficient defense[.]"[20] "When ruling on a motion to strike, the [c]ourt must construe all facts in favor of the nonmoving party

[15] *Id.*

[16] Motion ¶ 18.

[17] D.I. 52.

[18] D.I. 55.

[19] D.I. 59 (Judicial Action Form). Transcript ("Tr.") available at D.I. 60.

[20] Ct. Ch. R. 12(f). Rule 12(f) also permits a party to move to strike "any material that is redundant, scandalous, immaterial, or not pertinent[.]" That component is not applicable here.

and deny the motion if the defense is sufficient under law."[21] "In essence, a motion to strike reaches formal defects only."[22] "Such motions 'are granted sparingly and only when clearly warranted with all doubt being resolved in the nonmoving party's favor.'"[23]

III. DISCUSSION

Defendants' Second Affirmative Defense is insufficient because it alleges fraudulent inducement without a required element—reliance.

Broadly, the Second Affirmative Defense is Defendants' rejoinder to Plaintiff's claims that Defendants breached the Alleged Agreements by refusing to issue the Sublicense. It argues that if the Alleged Agreements exist, then Plaintiff fraudulently induced Defendants into agreeing to them.[24] Fraudulent inducement is an appropriate affirmative defense to breach of contract.[25]

---

[21] *Nichols v. Chrysler Gp. LLC*, 2010 WL 554904, at *5 (Del. Ch. Dec. 29, 2010) (collecting cases).

[22] *Id.* at *5 n. 45 (quoting *Vets Welding Shop, Inc. v. Nix*, 1988 WL 67703, at *1 (Del. Super. June 20, 1988)).

[23] *Pilot Corp. v. Abel*, 2023 WL 8643195, at *2 (Del. Ch. Dec. 13, 2023) (quoting *Salem Church (Del.) Assocs. v. New Castle Cty.*, 2004 WL 1087341, at *2 (Del. Ch. May 6, 2004)).

[24] Answer p. 28. Defendants also claim fraud and fraudulent concealment. At oral argument, Defendants acknowledged the Second Affirmative Defense raises a fraudulent inducement argument. Tr. 28:2–6.

[25] *See Xu v. Heckmann Corp.*, 2009 WL 3440004, at *9 (Del. Ch. Oct. 26, 2009) (addressing fraudulent inducement as an affirmative defense to contract formation); *Corkscrew Min. Ventures, Ltd. v. Preferred Real Estate Inv.*, 2011 WL 704470, at *4 (Del. Ch. Feb. 28, 2011) (outlining elements of an affirmative defense of fraud in the inducement).

Fraudulent inducement has the same elements as fraud.[26] A fraud claim requires:

> 1) a false representation, usually one of fact, made by the defendant; 2) the defendant's knowledge or belief that the representation was false, or was made with reckless indifference to the truth; 3) an intent to induce the plaintiff to act or to refrain from acting; 4) the plaintiff's action or inaction taken in justifiable reliance upon the representation; and 5) damage to the plaintiff as a result of such reliance.[27]

Court of Chancery Rule 9(b) provides that fraud must be pled with particularity.[28] This includes fraud raised as an affirmative defense.[29] Specifically, "a party must state with particularity the circumstances constituting fraud or mistake[,]" but "conditions of a person's mind may be alleged generally."[30] "The

---

[26] *See Maverick Therapeutics, Inc. v. Harpoon Therapeutics, Inc.*, 2020 WL 1655948, at *26 (Del. Ch. Apr. 3, 2020) ("The elements of fraud and fraudulent inducement are the same."); *Great Hill Equity P'rs IV, LP v. SIG Growth Equity Fund I, LLLP*, 2018 WL 6311829, at *31 (Del. Ch. Dec. 3, 2018) ("Under Delaware law, the elements of fraudulent inducement and fraud are the same.").

[27] *Standard Gen. L.P. v. Charney*, 2017 WL 6498063, at *12 (Del. Ch. Dec. 19, 2017) (addressing affirmative defense) (quoting *Lord v. Souder*, 748 A.2d 393, 402 (Del. 2000)).

[28] Ct. Ch. R. 9(b).

[29] *Di Loreto v. Tiber Hldg. Corp.*, 1999 WL 1261450, at *4 n.9 (Del. Ch. June 29, 1999) (striking affirmative defense for failure to plead fraud with particularity); *Wellgistics, LLC v. Welgo, Inc.*, 2024 WL 113967 (Del. Super. Jan. 9, 2024) (granting motion to strike fraud defense as insufficiently plead.).

[30] Ct. Ch. R. 9(b).

core test is whether the claim has been pled 'with detail sufficient to apprise the defendant of the basis for the claim.'"[31]

Reliance is a required element of a fraud-based affirmative defense.[32] To plead reliance, a party must allege—at minimum—"particularized factual allegations from which the Court may reasonably infer reasonable reliance."[33] The Court and Plaintiff should be able to "understand how the alleged fraud caused this injury[.]"[34] The pleading standard is minimal.[35]

---

[31] *Airborne Health, Inc. v. Squid Soap, LP*, 984 A.2d 126, 142 (Del. Ch. 2009) (quoting *Abry P'rs V, L.P. v. F & W Acq. LLC*, 891 A.2d 1032, 1051 (Del. Ch. 2006)).

[32] *See, e.g., Corkscrew Min. Ventures Ltd. v. Preferred Real Estate Invs., Inc.*, 2011 WL 704470, at *4 (Del. Ch. Feb. 28, 2011) (listing the elements of fraudulent inducement—including reliance—in the context of an affirmative defense and noting "[t]he absence of any one of those elements defeats [defendant's] defense.").

[33] *Kingfishers L.P. v. Finesse US, Inc.*, 2024 WL 4625650, at *7 (Del. Ch. Oct. 30, 2024).

[34] Motion ¶ 18 (quoting *Anglo Am. Sec. Fund, L.P. v. S.R. Glob. Int'l Fund, L.P.*, 829 A.2d 143, 159 (Del. Ch. 2003)).

[35] *See Labyrinth, Inc. v. Urich*, 2024 WL 295996, at *15 (Del. Ch. Jan. 26, 2024) ("Once a court finds the 'plaintiff has adequately pled ... knowledge and ... fraudulent misrepresentations ..., the rest of the elements of the claim for fraud are easily satisfied.'" (quoting *EMSI Acq. v. Contrarian Funds, LLC*, 2017 WL 1732369, at *16 (Del. Ch. May 3, 2017)). *See Trifecta Multimedia Hldgs. Inc. v. WCG Clinical Servs. LLC*, 318 A.3d 450, 467 (Del. Ch. 2024) (reasonable inference of reliance when plaintiff alleged false representations caused him to choose to partner with defendant over other viable alternatives). *Compare Kingfishers*, 2024 WL 4625650, at *7 (no reasonable inference of reliance when an oral misrepresentation expressly contradicted a written agreement); *In re Côte d'Azur Estate Corp.*, 2022 WL 4392938, at *57 (Del. Ch. Sep. 19, 2022) (no reasonable reliance when documents that party incorporated into case disproved allegation that party relied on opponent for certain information).

"[W]hether a party's reliance was reasonable is not generally suitable for resolution on a motion to dismiss[.]"[36] It is a "fact intensive inquiry."[37] To assess whether a party's reliance on extra-contractual representations is reasonable, "this Court has considered the nature of the parties' relationship, extent of negotiations, length of time in preparing the agreement, and repetition of the malefactor's assurances as indicative of reasonable reliance."[38]

The issue here, however, is not whether the Court can "reasonably infer reasonable reliance" from the Second Affirmative Defense. It is whether the Court can reasonably infer a basis for reliance at all. The Court concludes that it cannot.

On the surface, the Second Affirmative Defense does not allege reliance, even in a conclusory fashion.[39]

Turning to inferences, the Second Affirmative Defense does not allege how Plaintiff's alleged misrepresentations could have caused Defendants to enter the Alleged Agreements. Defendants do not allege how the misrepresentations changed their approach to the Alleged Agreements, or even that the misrepresentations

[36] *Id.* (quoting *TrueBlue, Inc. v. Leeds Equity P'rs IV, LP*, 2015 WL 5968726, at *7 (Del. Ch. Sep. 25, 2015)).

[37] *Id.*

[38] *Id.*

[39] *See* Tr. 48:18–20 (Plaintiff's Counsel: "I don't think you're going to see the word "reliance" a single time.").

changed their position at all.[40] Indeed, Defendants do not even allege facts from which the Court could infer that the purported misrepresentations impacted Defendants' decision-making.[41]

To be clear, Defendants were ultimately able to articulate how their reliance upon Plaintiff's alleged misrepresentations changed their bargaining position.[42] But they did so at oral argument, not in the Amended Answer. That was too late.[43]

From these assessments, the Court concludes that Defendants did not allege reliance.

Defendants present one more argument that merits addressing—that their pleading was sufficient because they alleged that the Alleged Agreements were "procured by fraud."[44] Defendants contend that this phrase should have been enough

---

[40] *Compare Trifecta Multimedia Hldgs. Inc. v. WCG Clinical Servs. LLC*, 318 A.3d 450, 467 (Del. Ch. 2024) (finding reasonable inference of reliance when plaintiff alleged false representations caused him to choose to partner with defendant over other viable alternatives).

[41] For example, there are circumstances where the Court could infer fraud from the dates of the misrepresentation and the breach. *See Beyond Risk Topco Hldgs., L.P. v. Chandler*, 2024 WL 4369239, at *22 (Del. Super. Sep. 24, 2024) (citing two Court of Chancery opinions for proposition that "[t]his Court has recognized that close proximity between a representation and its apparent breach supports an inference of fraud.").

[42] *See, e.g.,* Tr. 44: 4–5 (identifying detriment from misrepresentations as a change in Defendants' "bargaining position"); Tr. 45: 17–23 ("[I]f we had known that the university had terminated these licenses the year before, obviously, [Defendants] would have been . . . a lot more actively engaged in working with the University on these license issues and wouldn't have been deferring to [Plaintiff] to just . . . handle this license and the sublicense.").

[43] *See Asbestos Workers Local 42 Pension Fund v. Bammann*, 2015 WL 2455469, at *20 (Del. Ch. May 21, 2015) (declaring contention raised for the first time at oral argument waived because the opposing party had no meaningful opportunity to respond).

[44] Opposition Brief p. 10

for Plaintiff and the Court to infer that Defendants' factual basis for reliance was the existence of the Alleged Agreements themselves.[45] From that inference—Defendants contend—it should have been a matter of common sense to conclude that but for Plaintiff's misrepresentations, Defendants would have had no reason to enter the Alleged Agreements.[46] After all, without the license, Plaintiff had little to offer.[47]

The mere assertion that an agreement was "procured by fraud" does not plead reliance "with detail sufficient to apprise the defendant of the basis for the claim."[48] If Defendants had articulated in the Second Affirmative Defense the reasoning they asserted at oral argument, it might have provided a sufficient basis to withstand the motion to strike. The Court questions why Defendants did not simply state in the Second Affirmative Defense that they detrimentally relied on Plaintiff's misrepresentations with the specificity verbalized at oral argument, especially because Defendants do not contend that they lack critical information about the circumstances of the case or have misapprehended the standard.[49]

---

[45] *Id.*

[46] *Id.* at p. 12.

[47] *Id.*

[48] *Airborne Health, Inc. v. Squid Soap, LP*, 984 A.2d 126, 142 (Del. Ch. 2009) (quoting *Abry P'rs V, L.P. v. F & W Acq. LLC*, 891 A.2d 1032, 1051 (Del. Ch. 2006)).

[49] One potential reason Defendants did not allege reliance could be that Defendants are between a pleading-stage rock and a hard place. They are trying to allege that (1) there are no Alleged Agreements, *and* (2) Defendants relied on Plaintiff's misrepresentations to enter into the Alleged Agreements. Because of that, pleading particularized facts to support reliance could undermine

The Court does not want to encourage pleadings that test the outer limits of inference, especially when, as here, the circumstances indicate that the party appears to have had a basis to plead reliance expressly but, for whatever reason, did not. That type of pleading could interfere with the Court's preference to resolve matters expeditiously and on the merits.

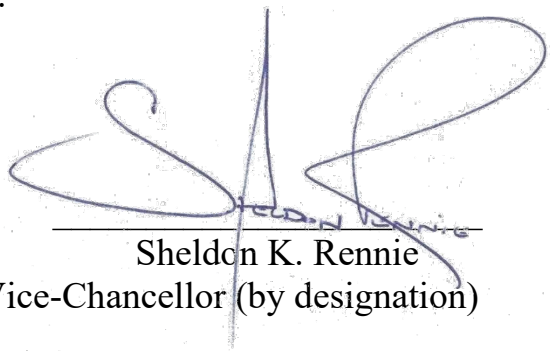
As previously noted, Defendants already amended the Second Affirmative Defense. Defendants have not sought leave to file again.

Plaintiff's Motion to Strike Defendants' Second Affirmative Defense is GRANTED.

IV. CONCLUSION

For the foregoing reasons, Defendants' fraud allegations are insufficient, and Plaintiff's motion to strike is hereby GRANTED.

IT IS SO ORDERED.



Sheldon K. Rennie
Vice-Chancellor (by designation)

Defendants' blanket denial that the Alleged Agreements exist. It could also be that Defendants received the benefit of their bargain in obtaining the exclusive license notwithstanding the alleged misrepresentations.