SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: **HON. BARRY R. OSTRAGER** **PART** **IAS MOTION 61EFM**

Justice

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LYDALL, INC.,

Plaintiff,

- v -

HONEYWELL INTERNATIONAL INC.,

Defendant.

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INDEX NO.	656935/2021
MOTION DATE	
MOTION SEQ. NO.	001, 003

DECISION + ORDER ON MOTIONS

HON. BARRY R. OSTRAGER

Pending before the Court is Motion Sequence 001 by defendant to dismiss plaintiff's complaint pursuant to CPLR § 3211(a)(1) and (7), and Motion Sequence 003 by defendant seeking a protective order pursuant to CPLR § 3013 to stay discovery until after Motion Sequence 001 is decided. For the reasons described below, Motion Sequence 001 is denied in part and granted in part. Motion sequence 003 is denied as moot.

This case involves the alleged breach of a supply contract. Plaintiff Lydall, Inc. is a manufacturer of filtration media, including products used in surgical and N95 masks (the "Product"). In the spring of 2020, a global shortage of the Product arose due to the Covid-19 pandemic. As a result, plaintiff allegedly sought to expand its production capacity to meet the growing demand and began looking for partners willing to enter into long-term purchase agreements. Defendant Honeywell International Inc., a manufacturer of N95s, allegedly approached plaintiff with a view toward such a partnership. The parties began negotiating a supply contract. Plaintiff alleges the contract was a "take or pay" agreement, where the parties exchanged "security of demand" (*i.e.*, that Honeywell would guaranty that it would purchase a

minimum volume of the Product) for "security of supply" (*i.e.*, that Lydall would provide a supply of Product). *Cmplt.* ¶69.

During these negotiations, plaintiff allegedly made it clear that it was unwilling to enter into any supply contract without a firm purchase commitment and an "Annual Minimum Volume" of product purchased by defendant. *Cmplt.* ¶7. The parties exchanged multiple draft versions of the agreements, allegedly including provisions to reflect the firm purchase commitment and deleting certain contrary language. *Cmplt.* ¶8. Plaintiff alleges that the inclusion of the Annual Minimum Volume was an integral component of the agreement. Plaintiff allegedly invested approximately $27 million to expand its manufacturing commitments and to accelerate its production timelines to meet defendant's purchase commitments under the negotiated Agreements. *Cmplt.* ¶9. Plaintiff also allegedly secured a $13.5 million grant from the United States Department of Defense to help in the production of the Product, a grant which was allegedly provided with the expectation that Lydall had established sufficient demand for the Product. *Cmplt.* ¶12.

The Agreement was executed on May 1, 2020. On July 23, 2020, the parties entered into the Amendment No.1 to the Master Supply Agreement between Honeywell International Inc. and Lydall, Inc. (the "Amendment") to reflect an increased purchase commitment of the Product. NYSCEF Doc. No. 2. The complaint also alleges that the parties' conduct after the Agreement was entered into confirmed the parties' shared understanding that defendant had committed to a purchase an Annual Minimum Volume of Product. *Cmplt.* ¶48. Nevertheless, the first two paragraphs of the contract expressly state that Honeywell is not committing to any specific volume of purchases and Honeywell did not make any purchases from plaintiff in 2021.

Under CPLR § 3211(a)(7), this Court is tasked with determining whether, after affording the pleadings a liberal construction and accepting the allegations in the Amended Complaint as true, "the facts as alleged fit within any cognizable legal theory … Under CPLR § 3211(a)(1), a dismissal is warranted only if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law …." *Leon v. Martinez*, 84 N.Y.2d 83, 87–88 (1994) (citations omitted).

The motion to dismiss the first cause of action for breach of contract is denied. Defendants have not presented documentary evidence that irrefutably refutes plaintiff's claim. The contract read as a whole is ambiguous. Viewing the Agreement as a whole raises sufficient questions of fact about the meaning of the contract so as to preclude dismissal of plainiff's contract claim at the pre-answer motion to dismiss stage. Though the Master Supply Agreement contains language that the Agreement "does not specify a quantity of products to be purchased by Purchaser, does not obligate Purchaser to purchase any Products, and is not an exclusive purchasing agreement (NYSCEF Doc. No. 2 ¶1)," the Amendment to the Agreement explicitly states that "[t]he purpose of this Amendment No. 1 is to … increase the volume of the Product currently purchased under the MSA." NYSCEF Doc. No. 2. The language in the Amendment suggests that the parties agreed upon a minimum amount of Product to be purchased. Further, the provisions on the Pricing Sheet appended to the Agreement relating to the forecast and Annual Minimum Volume—provisions which appear to have been heavily negotiated by the parties—raise sufficient questions about whether the Agreement imposes a purchase obligation on defendant. Because ambiguities exist, dismissal of the breach of contract claim is not warranted.

The motion to dismiss the second cause of action for breach of the implied covenant of good faith and fair dealing is granted as being duplicative of the breach of contract claim. All

contracts contain an implied a covenant of good faith and fair dealing in the course of performance, encompassing any promises which a reasonable person in the position of the promise would be justified in understanding were included. *Mount Sinai Hosp. v. 1998 Alexander Karten Annuity Tr.*, 110 A.D.3d 288, 298 (1st Dept. 2013). A separate cause of action for breach of the implied covenant of good faith and fair dealing cannot be maintained where "it is premised on the same conduct that underlies the breach of contract cause of action and is intrinsically tied to the damages allegedly resulting from a breach of the contract." *Parlux Fragrances, LLC v. S. Carter Enterprises, LLC*, 204 A.D.3d 72, 92 (1st Dept. 2022), *citing MBIA Ins. Corp. v. Merill Lynch*, 81 A.D.3d 419, 419–20 (1st Dept. 2011). Here, plaintiff's cause of action for breach of the implied covenant of good faith and fair dealing is premised on the same conduct as the breach of contract claim and seeks the same damages.

The motion to dismiss the third cause of action for fraudulent inducement is granted as being duplicative of the breach of contract claim. The elements of a fraudulent inducement claim are (1) a false representation, (2) that was made for the purpose of inducing another to act on it, (3) that the party to whom the representation was made justifiably relied on it, and (4) was damaged. *Perrotti v. Becker, Glynn, Melamed & Muffly LLP*, 82 A.D.3d 495, 498 (1st Dept. 2011). In its complaint, plaintiff makes numerous references to the alleged misrepresentations of defendant's intention to perform under the Contract. *See Cmplt.* ¶99. A fraud claim predicated on an "insincere promise of future performance" of the contract at issue, such as the one here, is subject to dismissal as duplicative. *See Cronos Group Ltd*. v. XComIP, LLC, 156 A.D.3d 54, 63 (1st Dept. 2017) (internal citations omitted).

The motion to dismiss the fourth cause of action for unilateral mistake is granted. A claim for reformation of a written agreement founded on a fraudulently induced unilateral mistake

must allege that one party to the agreement fraudulently misled the other and that the subsequent writing does not express the intended agreement. *Greater New York Mut. Ins. Co. v. United States Underwriters Ins. Co.*, 36 A.D.3d 441, 443 (1st Dept. 2007). Plaintiff has not sufficiently alleged the elements of fraud so as to sustain a cause of action for unilateral mistake.

The fifth and sixth causes of action for unjust enrichment and quantum meruit are similarly dismissed. A plaintiff may not plead quasi-contract actions in the alternative to a breach of contract action unless "there is a bona fide dispute as to the existence of a contract or where the contract does not cover the dispute in issue…." *IIG Capital LLC v. Archipelago*, LLC, 36 A.D.3d 401, 405 (1st Dept 2007). Plaintiff alleges in its complaint that "the Agreements are valid and binding contracts…." *Cmplt.* ¶77. Because there is no dispute as to the existence of the Agreements, the causes of action for unjust enrichment and quasi-contract must be dismissed.

Accordingly, it is hereby

ORDERED that the motion to dismiss by defendants is denied as to Count 1 and granted as to Counts 2, 3, 4, 5, 6, and those claims are severed and dismissed;

ORDERED that defendant shall answer the remaining claim within 20 days of the date of this decision and order; and it is further

ORDERED that all counsel shall appear on July 26, 2022 at 10:00 a.m. for a preliminary conference. The parties are directed to submit a dial-in number for the conference no later than July 15, 2022. To that end, the parties are directed to meet and confer to agree upon the terms of a Preliminary Conference Order using the form available on the Part 61 website with a Note of Issue deadline no later than 22 months from the date of this Order, and e-file it with a request to so Order by July 15, 2022. If the proposed Preliminary Conference Order is acceptable to the Court, it will be So Ordered and no appearance will be necessary on July 26, 2022.

The previously scheduled oral argument on May 25, 2022 is cancelled.

Dated: May 17, 2022

BARRY R. OSTRAGER, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED		DENIED	X	GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE