This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0664

RSS Fridley, LLC,
a Minnesota limited liability company, et al.,
Appellants,

vs.

Northwestern Orthopaedic Surgeons Partnership, LLP,
a Minnesota limited liability partnership, et al.,
Respondents,

Gaughan Enterprises, Inc. d/b/a Gaughan Companies,
a Minnesota corporation, et al.,
Respondents,

Doe(s) 1-20 and ABC Corporation(s) 1-20,
Respondents.

Filed January 24, 2022
Affirmed in part, reversed in part, and remanded
Worke, Judge
Concurring in part, dissenting in part, Connolly, Judge

Anoka County District Court
File No. 02-CV-20-3985

Ellen Ahrens Wickham, Christopher W. Madel, Madel PA, Minneapolis, Minnesota; and

Scott J. Seiler, Seiler Law, PLLC, St. Paul, Minnesota (for appellants)

Mark W. Vyvyan, Rachel L. Dougherty, Fredrikson & Byron, P.A., Minneapolis, Minnesota (for respondents Northwestern Orthopaedic Surgeons Partnership, L.L.P., Northwestern Orthopaedic Surgeons Partnership, LLP, Peter Holmberg, Joseph Flake, Robin C. Crandall, Twin Cities Orthopedics, P.A., Infinite Health Collaborative, P.A., Orthopaedic Partners, P.A., TCO Real Estate-Fund 1, LLC, Troy Simonson, and Rebecca Anderson)

Melissa Dosick Riethof, Bradley J. Lindeman, Meagher and Geer, P.L.L.P., Minneapolis, Minnesota (for respondents Gaughan Enterprises, Inc. d/b/a Gaughan Companies and Dan Hebert)

Considered and decided by Connolly, Presiding Judge; Worke, Judge; and Klaphake, Judge.[*]

NONPRECEDENTIAL OPINION

WORKE, Judge

Appellants-plaintiffs bought a medical office building, and commercial tenants on the property later relocated to a new medical office building that had been built to compete with the existing building. Appellants brought a civil action against respondents-defendants, who consist of the parties who sold the property, the real estate company that brokered the sale, commercial tenants who moved out of the property, and various individuals associated with the entities. The complaint brought multiple fraud, breach-of-contract, and related tort claims. The primary allegations were that, at the time of the sale, respondents made misrepresentations about the leases and the tenants' plans to remain on the property, which fraudulently induced appellants to buy the property. The district court granted respondents' motions for failure to state a claim upon which relief could be granted and for judgment on the pleadings. We affirm in part and reverse in part, and we remand for further proceedings.

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

FACTS

This case arises out of the sale of a medical office building in Fridley, Minnesota (the property), and events transpiring after the sale involving the commercial tenants for the property. Appellants filed their complaint against respondents in October 2020.[1]

The Parties

Appellants are three entities who bought the property—RSS Fridley LLC, BT Group LLC, and 7900 Group LLP (collectively, "appellants"). Respondents are broken into two groups: the TCO respondents and the Gaughan respondents. Each group of respondents is represented by its own counsel and responded separately to the complaint.

The Gaughan respondents consist of a corporation, Gaughan Enterprises Inc. (d/b/a Gaughan Companies), and an individual, Dan Hebert. Gaughan Companies is the real estate broker that listed and sold the property to appellants, and Hebert is the salesperson employed by Gaughan Companies who worked on the sale.

The TCO respondents consist of three entities, as well as their employees and representatives. The first entity is Northwestern Orthopaedic Surgeons Partnership LLP (NOSP), which is the previous owner of the property and sold it to appellants. Three individuals—Dr. Peter Holmberg, Dr. Joseph Flake, and Dr. Robin Crandall—are the general partners of NOSP. In conjunction with the sale, NOSP assigned the commercial

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[1] Because we are reviewing a dismissal under Minnesota Rule of Civil Procedure 12.02(e) and judgment on the pleadings under rule 12.03, we describe the facts as alleged in appellants' amended complaint, and we accept those facts as true for purposes of our opinion. *See Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 606 (Minn. 2014); *Burt v. Rackner, Inc.*, 902 N.W.2d 448, 451 (Minn. 2017).

leases on the property to appellants. The second entity is one of the commercial tenants for the property. That entity is made up of three professional associations—Twin Cities Orthopedics P.A., Infinite Health Collaborative P.A., and Orthopaedic Partners P.A. (OPPA)—and is referred to collectively as "TCO." Troy Simonson is the CEO for TCO and holds other leadership positions with the companies. Rebecca Anderson is an employee and representative for TCO. The third entity is TCO Real Estate-Fund 1 LLC, which is the owner of the new building in Blaine that was constructed to compete with the property.

In addition to TCO, two non-parties leased premises on the property: Minnesota Orthopaedic Surgery Center LLC (MOSC) and North Metro Orthotics and Prosthetics Inc. Neither is a party to this case, but many allegations in the complaint relate to MOSC's actions in abandoning the property before the expiration of the lease. Appellants filed a separate lawsuit against MOSC alleging breaches of the lease and damages relating to the removal of an MRI system. Litigation is still proceeding in that case.

The Complaint

In 2014, the Gaughan respondents listed the property for sale on behalf of NOSP. NOSP and the Gaughan respondents created an offering memorandum to market the property. The offering memorandum advertised the property as a medical office including "a surgery center, MRI unit, operatory rooms, and general office space." The property held three commercial tenants, whose leases were to be assigned along with the purchase of the property. NOSP had renewed the MOSC lease through October 2024 and the OPPA lease through December 2025. The offering memorandum advertised that the recent renewal of

most of the property's leased space for another ten years provided for "strong future cash flow and minimize[d] roll over exposure." The offering memorandum also stated that the area in which the property was located was "in demand when it comes to medical office buildings" and had strong business flow due to its proximity to several regional hospitals and nearby highways. The offering memorandum contained a written disclaimer, which stated that, although the information provided was "believed to be correct," Gaughan Companies made "no representation or warranty of any nature, concerning, without limitation, the correctness or completeness of the information." The disclaimer advised that prospective buyers were "cautioned to independently verify all facts . . . and to make their own judgments in regard to any future projections concerning [the] property."

Relying on the offering memorandum, two of appellants' representatives, Ralph Shapiro and Todd Striker, submitted a proposal to purchase the property. In a January 2015 letter, NOSP and the Gaughan respondents submitted a counterproposal to sell the property for $6,739,380. In February 2015, appellants entered into a real estate purchase agreement with NOSP. The purchase agreement provided that the property to be purchased included the real property, improvements located on the real property, all fixtures and personal property owned by NOSP and located on the property, and NOSP's interest in the leases. The purchase agreement also represented that the leases were in full effect and no tenant was in breach or had threatened to breach the lease.

On April 24, 2015, appellants' representatives, Shapiro and Striker, met in a conference room at the property with several of respondents' representatives, including Dr. Holmberg, Dr. Crandall, Anderson, and Hebert. Dr. Holmberg and Dr. Crandall "did most

of the talking," and the others "assent[ed] to the comments (either verbally or through physical manifestations (i.e., nodding)) and, at no time did any of the [respondents] refute, modify or condition any of Holmberg's or Crandall's assertions."

Over the course of the meeting, respondents made many representations which form the basis for several of appellants' claims. Shapiro and Striker asked whether there was any intention to replace the building with a new one, and Dr. Holmberg and Dr. Crandall said that they "were very satisfied at the location and had no intent to move." All representatives who were present made positive comments, such as "of course we're staying" and "we are not planning to go." The representatives complimented the strategic location of the property, its proximity to two hospitals and significant highways, and the strength of the north metropolitan market. When Shapiro and Striker asked whether the tenants intended to fulfill their lease, Dr. Holmberg and Dr. Crandall responded that they did. Shapiro and Striker suggested longer terms on the leases, to which Dr. Holmberg and Dr. Crandall responded that they were interested and agreed to discuss lease renewal at a later date. Further, Dr. Holmberg and Dr. Crandall told Shapiro and Striker that NOSP owned the MRI system in the building and that this improvement evidenced NOSP's intent that the tenants continue staying at the property. According to the complaint, all these verbal representations were false.

On June 3, 2015, appellants and NOSP closed on the sale of the property. The leases were assigned to appellants. The bill of sale provided that "all personal property and equipment" were being transferred.

Unbeknownst to appellants, while respondents were listing and trying to sell the property, at the same time the TCO respondents were planning to construct a new medical office building nearby in Blaine (the Blaine building). The TCO respondents built the Blaine building for the purpose of competing with the property. Prior to the sale, the TCO respondents had determined that the commercial tenants would not renew their leases with the property and would instead move to the Blaine building. All respondents knew about this plan before the property was sold, and they did not disclose this information to appellants. At the time of the sale, appellants believed the property to be profitable because respondents represented to appellants that they would have substantial and stable long-term tenants. Appellants would not have purchased the property if they had known that the TCO respondents were planning to build a new building to compete with the property.

The TCO respondents' plan to relocate came to fruition in 2018. That July, Simonson asked Striker whether appellants would consider buying out MOSC's lease. The parties did not reach a decision at that point. Later that summer, MOSC abandoned the premises, leaving it in "terrible condition and disrepair." MOSC then relocated to the new Blaine building. The abandonment of the lease caused the value of the property to decrease.

Around the same time that MOSC abandoned the lease, appellants encountered additional difficulties with the tenants. Part of the building leased to OPPA contained a fully functional MRI system. Anderson contacted appellants around July 2018 and asked if they wanted to purchase the MRI system. Appellants declined, believing that they already owned it. Appellants later discovered that the MRI system had been dismantled

and removed from the property by cutting a large hole in the wall. The MRI system was removed without appellants' knowledge and consent, and the damage to the building was not repaired. Anderson and the TCO respondents allegedly authorized the removal of the MRI system. Additionally, in early fall 2018, appellants discovered that a third-party sub-tenant had entered into a written sublease and was operating out of the MRI area. The sublease was made without appellants' prior written consent. These breaches of the leases were allegedly caused by various TCO representatives and entities working together to direct the tenants' behavior.[2]

The TCO respondents also allegedly interfered with appellants' contracts with third parties. The TCO respondents secretly contacted appellants' vendors and engaged in various actions: "providing unauthorized direction" to the vendors, "placing unauthorized orders for products and services with such vendors," "directing vendors to send invoices directly to the TCO [respondents]," and "disparaging [appellants]." These actions harmed appellants' relationships with their vendors and resulted in some vendors breaching their contracts.

District Court Proceedings

The complaint listed 12 counts: fraud, failure to disclose material facts, fraudulent inducement to contract, breach of contract, breach of the covenant of good faith and fair dealing, declaratory judgment, conversion, unjust enrichment, tortious interference with

[2] The complaint noted that appellants had recently commenced litigation against MOSC and OPPA for their breaches of the leases, and litigation was ongoing at the time the complaint was filed.

contract, tortious interference with prospective business advantage, conspiracy, and aiding and abetting. The complaint sought damages of at least $50,000 or alternatively to rescind the purchase agreement.

The TCO respondents did not file an answer to the complaint, but instead filed a motion to dismiss for failure to state a claim upon which relief could be granted. The Gaughan respondents filed a separate answer, which denied many of the allegations in the complaint. The Gaughan respondents then filed a motion for judgment on the pleadings. The district court granted the motions, determining that appellants were not entitled to relief on any of their 12 claims. Accordingly, the district court dismissed appellants' complaint. This appeal followed.

DECISION

Appellants challenge the district court's decision dismissing their complaint under Minnesota Rule of Civil Procedure 12.02(e) for failure to state a claim upon which relief can be granted and granting judgment on the pleadings under Minnesota Rule of Civil Procedure 12.03. We review de novo the district court's grant of a motion to dismiss for failure to state a claim and grant of a motion for judgment on the pleadings. *Abel v. Abbott Nw. Hosp.*, 947 N.W.2d 58, 68 (Minn. 2020). We review "whether the pleadings set forth a legally sufficient claim for relief." *Id.* "A claim is legally sufficient if it is possible on any evidence which might be produced, consistent with the pleader's theory, to grant the relief demanded." *Id.* (quotation omitted). "We accept the facts alleged in the complaint as true and construe all reasonable inferences in favor of the nonmoving party." *Walsh*, 851 N.W.2d at 606 (applying in context of motion to dismiss); *see also Burt*, 902 N.W.2d

at 451 (applying in context of judgment on the pleadings). We first address the claims brought against the Gaughan respondents, and we then review each claim brought against the TCO respondents.

I. The district court correctly dismissed all claims against the Gaughan respondents.

Seven of the twelve counts in the complaint were brought against the Gaughan respondents, who brokered the sale of the property: fraud, failure to disclose material facts, fraudulent inducement, declaratory judgment, conversion, unjust enrichment, and aiding and abetting. We agree with the district court that the Gaughan respondents were entitled to judgment on the pleadings.

The claims against the Gaughan respondents are based mostly on allegedly fraudulent statements. To prevail on a fraud claim, a party must show five elements: (1) the defendant made a false representation "of a past or existing material fact susceptible of knowledge"; (2) the representation was "made with knowledge of the falsity of the representation or made without knowing whether it was true or false"; (3) the defendant made the representation with the intent to induce the plaintiff to act in reliance on it; (4) the representation caused the plaintiff to act in reliance on it; and (5) the plaintiff "suffered pecuniary damages as a result of the reliance." *Valspar Refinish, Inc. v. Gaylord's, Inc.*, 764 N.W.2d 359, 368 (Minn. 2009). There is a "high threshold of proof" for fraud claims. *Martens v. Minn. Mining & Mfg. Co.*, 616 N.W.2d 732, 747 (Minn. 2000). "[T]he circumstances constituting fraud . . . shall be stated with particularity." Minn. R. Civ. P. 9.02. A person's intent, knowledge, or other condition of mind may be alleged

generally. *Id.* To plead with particularity, the party must plead the "ultimate facts," which are the "facts underlying each element of the fraud claim." *Hardin Cnty. Sav. Bank v. Hous. & Redev. Auth.*, 821 N.W.2d 184, 191 (Minn. 2012).

The complaint alleges these facts in support of the fraud claims. Respondents' allegedly fraudulent statements were made at the April 2015 meeting between appellants' and respondents' representatives. The alleged misrepresentations were that the tenants were satisfied with the property, did not intend to move out, and were interested in extending the leases. These statements were made by Dr. Holmberg and Dr. Crandall, who are representatives of NOSP. Hebert, who was representing Gaughan Companies, was present at the meeting but did not make any statements himself. Instead, the complaint alleges, Hebert "assent[ed] to the comments" made by Dr. Holmberg and Dr. Crandall, either verbally or by nodding, and he did not refute or modify the statements. Hebert "supported these comments throughout the course of the [m]eeting and made similar or the same representations."

We conclude that the complaint's allegations fail to plead the fraud claims with particularity against the Gaughan respondents. Specifically, the complaint does not plead the first element of fraud with particularity, that Hebert (the only Gaughan representative at the meeting) made false representations. The complaint does not allege that Hebert made any misrepresentations himself; rather, it alleges generally that he "assent[ed]" to representations made by other people. There is no indication of which particular statements Hebert assented to, and the allegation that he made "similar or the same representations" is vague and nonspecific. At most, the complaint generally attributes various statements

to Hebert based on his presence at the meeting and general show of agreement. The allegations fail to plead the underlying facts necessary to attribute to Hebert any responsibility for the allegedly false statements made by others at the meeting. Thus, the fraud claims against the Gaughan respondents are not pleaded with particularity based on the statements made at the April 2015 meeting.

The complaint also alleges that the Gaughan respondents made false representations in the offering memorandum. The complaint alleges that the offering memorandum was fraudulent because it failed to disclose the TCO respondents' then-present intention to construct a new building and move the tenants to the new building. But the offering memorandum—which appellants attached as part of the complaint—contained a written disclaimer.[3] The disclaimer stated that the information included in the offering memorandum was believed to be correct, but that Gaughan Companies did not make any representation about the correctness of the information. The disclaimer advised prospective buyers to independently verify all facts set forth in the memorandum. In light of the disclaimer, the complaint's allegations do not satisfy the fraud elements that any representations in the offering memorandum were made with knowledge of their falsity or with the intent to induce a party to act in reliance on them. The complaint therefore fails to plead the fraud claims with particularity based on the offering memorandum.

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[3] Appellate courts "may consider matters outside the pleadings if the pleadings refer to or rely on the outside matters." *In re Individual 35W Bridge Litig.*, 787 N.W.2d 643, 647 (Minn. App. 2010), *aff'd*, 806 N.W.2d 820 (Minn. 2011). Because the complaint referred to the offering memorandum and it was attached to the complaint, we may consider that document.

Because the complaint did not plead the fraud-based claims with particularity with respect to the Gaughan respondents, the district court correctly dismissed the claims against them. And because appellants' remaining claims against the Gaughan respondents are based on the fraud allegations, those claims also fail. The district court properly dismissed all claims against the Gaughan respondents. We now turn to the claims against the TCO respondents, discussing each claim in turn.

II. The pleaded facts are sufficient to survive a rule 12.02(e) motion on two of appellants' fraud-related claims against the TCO respondents.

Appellants' complaint centers on three fraud-related claims: fraud, failure to disclose material facts, and fraudulent inducement to contract. The claims are based on two sets of circumstances: the TCO respondents' affirmative misrepresentations made at the April 2015 meeting, and the TCO respondents' failure to disclose the construction of the Blaine building. We conclude that the complaint's allegations about the TCO respondents' affirmative misrepresentations are sufficient to state claims for fraud and fraudulent inducement. But we conclude that the complaint fails to state a claim for failure to disclose material facts based on the failure to disclose the construction of the Blaine building.

A. Fraud and fraudulent inducement

As explained above, fraud claims must be pleaded with particularity, meaning that the complaint must plead "facts underlying each element of the fraud claim." Minn. R. Civ. P. 9.02; *Hardin Cnty. Sav. Bank*, 821 N.W.2d at 191. There are five elements to a fraud claim: (1) the defendant made a false representation of a past or existing material

fact; (2) the representation was made knowing that it was false or without knowing whether it was true or false; (3) the defendant intended to induce the plaintiff to act in reliance on the representation; (4) the representation induced plaintiff to act in reliance on it; and (5) the plaintiff suffered damages as a result. *Valspar Refinish*, 764 N.W.2d at 368.

Appellants' claims of fraud and fraudulent inducement against the TCO respondents are based primarily on statements made by Dr. Holmberg and Dr. Crandall at the April 2015 meeting between appellants' and respondents' representatives. The complaint alleged that Dr. Holmberg and Dr. Crandall told appellants that they were satisfied with the property and did not intend to move, that the tenants intended to fulfill the terms of their leases, and that they would discuss renewal of the leases at a later time.

The district court determined that these allegations failed as a matter of law. The district court focused on the first element of a fraud claim, whether the TCO respondents made false representations of past or existing material facts. The district court reasoned that the alleged statements were not material misrepresentations because they "amount[ed] to nothing more than puffery and/or opinions." The district court commented that the statements related to future events, rather than past or existing facts. The district court also determined that the allegations did not satisfy the element requiring that the alleged misrepresentations caused appellants to act in reliance on them. For the following reasons, we conclude that the district court's reasoning was erroneous.

First, the district court erred by determining that the alleged misrepresentations were not actionable because they related to future events. The district court correctly noted that the alleged misrepresentations referred to future events—that the tenants would fulfill the

lease terms and would not move out of the property. And a misrepresentation as to future events does not support a fraud action simply because the future act did not happen. *Id.* at 368-69. But "a misrepresentation of a present intention could amount to fraud" if it is "made affirmatively to appear that the promisor had no intention to perform at the time the promise was made." *Id.* at 369 (quoting *Vandeputte v. Soderholm*, 216 N.W.2d 144, 147 (Minn. 1974)).

Here, the complaint alleged misrepresentations by referring not merely to future acts, but to present intentions. The complaint alleged that, at the time the TCO respondents made the statements, they were taking actions to construct the Blaine building, knew that the new building would compete with the old one, and intended for the tenants to move to the Blaine building. If we accept appellants' allegations as true—which we must on appeal at the motion-to-dismiss stage, *Walsh*, 851 N.W.2d at 606—then the TCO respondents made representations to appellants about their present intention to continue leasing the property, when in fact they had no intention to carry out their promises. Because the complaint alleges misrepresentations as to present intentions, it sufficiently pleads misrepresentations of existing material facts.

The district court also erred by determining that the TCO respondents' alleged statements were not misrepresentations because they were merely puffery or opinions. "[N]either opinions nor statements that are general and indefinite are representations of fact." *Martens*, 616 N.W.2d at 747. There is little precedential caselaw in Minnesota addressing "puffery" in the context of pleading fraud claims. One federal district court for the District of Minnesota, in applying Minnesota law, defined "puffery" as encompassing

"exaggerated blustering or boasting and vague, subjective statements of superiority," as well as "[g]eneral assertions of quality." *Bernstein v. Extendicare Health Servs., Inc.*, 607 F. Supp. 2d 1027, 1031 (D. Minn. 2009). In *Moua v. Jani-King of Minnesota, Inc.*, another federal district court for the District of Minnesota held that statements that a restaurant franchise was a "good business" and would continue for "a long time" were puffery because they were "vague statements of superiority." 810 F. Supp. 2d 882, 890 (D. Minn. 2011). Similarly, in an unpublished opinion, this court determined that statements that the defendant was a successful businessperson, had a good reputation, and had a financially successful enterprise were puffery "because they merely exaggerate and boast about [the defendant's] opinion about himself." *Dupuis v. GATR of Sauk Rapids, Inc.*, No. A17-1782, 2018 WL 3614320, at *3 (Minn. App. July 30, 2018).

Here, some of the alleged representations amount to puffery. For example, the statements that the tenants were satisfied with their location, as well as the expressions of "various complimentary factors" about the property, are vague, subjective opinions and general assertions about the quality of the property. These statements therefore do not form the basis for a fraud claim. Other statements made by the TCO respondents, however, are not puffery. The alleged representations that the tenants intended to fulfill the lease terms and did not intend to leave the property are not subjective statements about the property. Nor are they general, indefinite assertions. Rather, they are statements of fact about the TCO respondents' intentions towards the property. The district court therefore erred by rejecting appellants' fraud claims as based on puffery. Because the alleged statements

amounted to false representations of material facts, the complaint pleads the first element of fraud claims with particularity.

We likewise conclude that the complaint sufficiently pleads the remaining elements of fraud claims. The complaint made these allegations. Before the sale of the property, the TCO respondents began planning the construction of the Blaine building, intended for the Blaine building to compete with the property, and planned to move the tenants to the new building without renewing the leases with the property. Appellants believed the property would be profitable because the TCO respondents represented that appellants could anticipate having successful and stable long-term tenants. The TCO respondents' representations at the April 2015 meeting reaffirmed the tenants' intentions to remain on the property through the duration of the leases. If appellants had known that the TCO respondents intended to construct a new building to compete with the property, they would not have bought the property. When MOSC later discontinued the lease and abandoned the premises, the value of the property diminished significantly and caused long-term damages. These allegations, if proved, show that the TCO respondents knew the representations were false, the TCO respondents intended to induce appellants to rely on the representations, appellants in fact relied on the representations by buying the property, and appellants suffered damages as a result.

The dissent states that appellants' reliance on the TCO respondents' oral representations at the meeting was unjustifiable as a matter of law. The dissent reasons that the purchase agreement stated that it "alone fully and completely expresses [the parties'] agreement," and it did not guarantee that the tenants would remain in the property.

But reliance on an oral representation is unjustifiable as a matter of law "only if the written contract provision explicitly stated a fact completely contradictory to the claimed misrepresentation." *Johnson Bldg. Co. v. River Bluff Dev. Co.*, 374 N.W.2d 187, 194 (Minn. App. 1985), *rev. denied* (Minn. Nov. 18, 1985). "When a promise is not in plain contradiction of a contract or, if contradictory, when it is accompanied by misrepresentations of other material facts in addition to the contradictory intent, the question of reasonable reliance is for the trier of fact." *Id.* We recently applied this principle in the context of a rule 12.02(e) motion to dismiss, holding that the district court erred by dismissing the plaintiff's fraud claims based on language in the parties' settlement agreement. *Great Plains Educ. Found., Inc. v. Student Loan Fin. Corp.*, 954 N.W.2d 844, 850-51 (Minn. App. 2020), *rev. denied* (Minn. Mar. 30, 2021). We reach the same conclusion here. The alleged misrepresentations—that the tenants planned to fulfill their leases and remain on the property—are not "completely contradictory" to the terms of the purchase agreement. Whether appellants reasonably relied on the TCO respondents' alleged misrepresentations is therefore a factual question inappropriate to resolve at this stage.

Because the complaint pleaded the facts underlying each element of fraud, the claims of fraud and fraudulent inducement were pleaded with particularity, and the district court erred by dismissing those claims.

B. Failure to disclose material facts

In addition to the claims of fraud and fraudulent inducement, appellants brought a fraud-based claim for failure to disclose material facts. The complaint alleged that the

TCO respondents did not disclose to appellants material facts, including that the TCO respondents were constructing the Blaine building to replace and compete with the property, and that the tenants intended not to renew their leases with the property and to move to the Blaine building instead. The failure-to-disclose claim was based on the theory that the TCO respondents had special knowledge of these facts and deliberately failed to disclose them to appellants, with the intent that appellants would rely on the nondisclosure when buying the property. The district court determined that the failure-to-disclose claim failed because the TCO respondents did not have a duty to disclose their plans about the Blaine building. We agree.

One party to a transaction generally does not have a duty to disclose material facts to the other party. *Graphic Commc'ns Local 1B Health & Welfare Fund A v. CVS Caremark Corp.*, 850 N.W.2d 682, 695 (Minn. 2014). But the Minnesota Supreme Court has recognized that "special circumstances" may create a duty to disclose material facts. *Id.* The supreme court has recognized three non-exclusive types of special circumstances: (1) the parties have a confidential or fiduciary relationship, (2) one party "has special knowledge of material facts to which the other party does not have access," and (3) when one party speaks, it must say enough to avoid misleading the other party. *Id.* Here, appellants argue that the second type of circumstance applies—that the TCO respondents had a duty to disclose material facts because their knowledge of the construction of the Blaine building constituted "special knowledge of material facts."

The supreme court in *Graphic Communications* recognized that the special-knowledge theory has been "rarely addressed" by Minnesota courts. *Id.* at 697. Only one

case has applied the theory, *Richfield Bank & Tr. Co. v. Sjogren*, 244 N.W.2d 648, 652 (Minn. 1976). In that case, the supreme court determined that, "under the unique and narrow" circumstances, a bank had the affirmative duty to disclose to the plaintiff the fact that one of its depositors was engaging in fraudulent activities before the bank made a loan to the plaintiff, when the bank had actual knowledge of that information and making the loan allowed the depositor to continue the fraud. *Richfield Bank*, 244 N.W.2d at 652. This case is easily distinguishable from *Richfield Bank*. There are no concerns about imbalance of power; appellants and respondents were both sophisticated parties engaging in a business transaction. Appellants were represented by counsel and had the opportunity to conduct due diligence before entering into the transaction. And Minnesota courts "have been reluctant to impose a duty to disclose material facts in arm's-length business transactions between commercial entities." *Driscoll v. Standard Hardware, Inc.*, 785 N.W.2d 805, 813 (Minn. App. 2010), *rev. denied* (Minn. Sept. 29, 2010). Given our caselaw, we decline to apply the special-knowledge theory here.

Because the TCO respondents did not have a duty to disclose the facts about the construction of the Blaine building, appellants' complaint fails to state a claim for failure to disclose material facts. The district court properly dismissed this claim.

III. The complaint fails to state a claim for breach of contract against NOSP.

The complaint brought a claim for breach of contract against NOSP only. The complaint specifically alleged three ways that NOSP breached its contractual duties: (1) it failed to provide accurate information about the property, including the plan to build the Blaine building; (2) it failed to deliver fixtures and personal property that was to remain on

the property, including the MRI system, and removed the fixtures; and (3) it sold the property without disclosing material facts that would adversely affect the purchase price. Because none of these allegations state a claim for breach of contract, the district court properly dismissed the claim.

"A breach of contract is a failure, without legal excuse, to perform any promise that forms the whole or part of the contract." *Lyon Fin. Servs., Inc. v. Ill. Paper & Copier Co.*, 848 N.W.2d 539, 542 (Minn. 2014). A breach-of-contract claim has three elements: "(1) formation of a contract, (2) performance by plaintiff of any conditions precedent to his right to demand performance by the defendant, and (3) breach of the contract by defendant." *Id.* (quotation omitted).

The first and third alleged breaches—that NOSP failed to disclose the plan to build the Blaine building and that it sold the property without disclosing material facts that would affect the price—appear to be based on the same theory as appellants' failure-to-disclose claim. For the reasons explained above, NOSP did not have a duty to disclose the fact that the Blaine building was being constructed. And there is no provision in the parties' contracts creating such a duty. The complaint therefore fails to state a claim for breach of contract on those theories.

We also conclude that the complaint does not state a claim based on the second alleged breach—that NOSP failed to deliver and removed the MRI system. Accepting the allegations in the complaint as true, NOSP delivered the property, including the MRI system, at the time the parties closed on the sale of the property in 2015. The MRI system was removed in 2018. At oral argument, appellants acknowledged that the MRI system

was removed by a subtenant and that they filed a separate action against the tenants for the taking of the MRI system. The district court declined to consider the alleged breach of contract based on the removal of the MRI system, noting that the issue was being addressed in separate litigation with "the proper defendants." We agree with the district court's reasoning. Accepting the allegations in the complaint as true, we do not see how they support appellants' breach-of-contract theory against the seller based on the taking of the MRI system *by a different party at a later time*. Because the allegations do not show that NOSP breached one of its contracts with appellants, the district court properly dismissed this claim.

IV. The complaint fails to state a claim for breach of the covenant of good faith and fair dealing against the TCO respondents.

The complaint also brought a claim for breach of the covenant of good faith and fair dealing, alleging generally that the TCO respondents "knowingly and continually failed to act honestly in performing duties owed to [appellants] under their contracts" and "hindered and prohibited [appellants'] ability to perform under their various contracts and/or enjoy the benefits of such contracts." These allegations do not state a claim for breach of the covenant of good faith and fair dealing.

Every contract contains an implied covenant of good faith and fair dealing, which requires that "one party not unjustifiably hinder the other party's performance of the contract." *In re Hennepin Cnty. 1986 Recycling Bond Litig.*, 540 N.W.2d 494, 502 (Minn. 1995) (quotation omitted). But the covenant "does not extend to actions beyond the scope of the underlying contract." *Id.* at 503.

Appellants' complaint did not specify which contractual duties the TCO respondents hindered. On appeal, appellants argue that the complaint supports a good-faith-and-fair-dealing claim based on the allegations that the TCO respondents interfered with appellants' relationships with their vendors. These allegations, if true, show that the TCO respondents interfered with contracts between appellants and *third parties*. The covenant of good faith and fair dealing extends only to the parties to a contract, not to separate contracts to which the defendant is not a party. *See id.* at 502-03 (recognizing that covenant does not extend beyond scope of underlying contract). Appellants therefore cannot obtain relief on this claim.[4]

V. The complaint fails to state a claim for declaratory judgment.

The complaint brought a claim for declaratory judgment against all respondents. The district court determined that declaratory judgment was unnecessary because the parties did not dispute the underlying facts on which appellants sought declaratory judgment. We agree and conclude that the district court properly dismissed this claim.

Minnesota's Declaratory Judgments Act gives district courts the power "to declare rights, status, and other legal relations whether or not further relief is or could be claimed." Minn. Stat. § 555.01 (2020). The statute "is remedial, intended to settle and to afford relief from uncertainty with respect to rights, status, and other legal relations." *McCaughtry v. City of Red Wing*, 808 N.W.2d 331, 337 (Minn. 2011) (quotation omitted). District courts

[4] The TCO respondents' alleged interference with appellants' contracts with their vendors may, however, support a claim of tortious interference with contract. We discuss this claim in greater detail below.

have jurisdiction over a declaratory judgment proceeding only if there is a justiciable controversy. *Onvoy, Inc. v. ALLETE, Inc.*, 736 N.W.2d 611, 617 (Minn. 2007). For a claim to be justiciable, the claim must "(1) involve[] definite and concrete assertions of right that emanate from a legal source, (2) involve[] a genuine conflict in tangible interests between parties with adverse interests, and (3) [be] capable of specific resolution by judgment rather than presenting hypothetical facts that would form an advisory opinion." *Id.* at 617-18.

The complaint sought declaratory judgment to clarify the proper parties to the various contracts between appellants and respondents. Specifically, the complaint noted that, when the property was transferred, the leases were assigned to appellants, including the OPPA lease. But appellants later discovered "that OPPA merged with TCO in 2001 and that TCO is the actual [t]enant and operates under the assumed name of OPPA." The complaint alleged that there was a "real and justiciable controversy" regarding "the proper identification of OPPA's successor in interest and the proper party obligated to [appellants] under the OPPA [l]ease," as well as regarding the actual relationship between appellants and NOSP under their contracts. The complaint requested "a judicial declaration of OPPA's proper name, status as an entity, relation to other entities and/or successor in interest" and "identifying the proper parties to the various agreements at issue," because of the TCO respondents' alleged failure to accurately identify the parties to the contracts.

These allegations do not give rise to a claim for declaratory judgment. Appellants merely ask the district court to clarify the identity of the parties to the contracts. Despite this opinion dismissing many of appellants' claims, these matters are best resolved through

discovery and deposition. Identifying the parties to the contracts does not present a definite and concrete assertion of right giving rise to a declaratory-judgment claim. Because there is no justiciable controversy, the district court appropriately dismissed the declaratory-judgment claim.

VI. The complaint fails to state a claim for conversion against the TCO respondents.

The complaint brought a claim for conversion, based on appellants' alleged overpayment for the property under the purchase agreement. The complaint alleged that, because of respondents' misrepresentations and failure to disclose material facts, appellants "overpaid for the [p]roperty and lost the benefit of the bargain as presented." As a result, the complaint alleged, the TCO respondents "converted [appellants'] personal property, including money." The district court rejected appellants' claim, reasoning that a conversion claim could not rest on an alleged overpayment and money in an intangible form. Because the district court correctly determined that appellants' theory of conversion is not supported by Minnesota law, their conversion claim fails.[5]

Conversion is "an act of willful interference with personal property, done without lawful justification by which any person entitled thereto is deprived of use and possession." *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997) (quotation omitted). Common-law

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[5] The complaint also alleged that a conversion claim was supported based on the taking of the MRI system from the property. As explained above, the complaint alleged that the subtenants—who are not defendants in this case—were the ones who removed the MRI system. And appellants have pursued separate litigation against the tenants regarding the taking of the MRI system. Thus, the complaint fails to state a claim for conversion based on the MRI system against any of the TCO respondents.

conversion has two elements: (1) the plaintiff holds a property interest, and (2) the defendant deprives the plaintiff of that property interest. *Williamson v. Prasciunas*, 661 N.W.2d 645, 649 (Minn. App. 2003). We agree with the district court that appellants' conversion claim based on an alleged overpayment fails, because it is inconsistent with both Minnesota caselaw and black-letter tort law.

We recognize that Minnesota courts have never conclusively held that conversion of money is *not* a recognizable claim. But at least two published cases from this court have favored that position, without deciding the issue. In *Halla v. Norwest Bank Minnesota, N.A.*, this court noted that courts from other jurisdictions have recognized that "[b]ecause cash is liquid and designed to be transferred, it is a subject of conversion only when it is capable of being identified, and described as a specific chattel." 601 N.W.2d 449, 453 (Minn. App. 1999) (quotation omitted), *rev. denied* (Minn. Dec. 14, 1999). For this reason, this court commented that cash deposited at a bank generally would not support an action for conversion. *Id.* Similarly, in *TCI Business Capital, Inc. v. Five Star American Die Casting, LLC*, this court addressed a claim for conversion of money via a wire transfer. 890 N.W.2d 423, 428 (Minn. App. 2017). This court commented that the appellant's claim "rest[ed] on the premise that money in an intangible form is property"—a premise that was "without precedent in Minnesota law." *Id.* This court interpreted *Halla* as standing for the proposition that "a conversion claim is viable with respect to money only if the money is in a tangible form (such as a particular roll of coins or a particular stack of bills) and is kept separate from other money." *Id.* at 429. While this court in both cases ultimately affirmed on other grounds, *see TCI Business Capital*, 890 N.W.2d at 435; *Halla*, 601 N.W.2d at 453,

the cases reflect Minnesota courts' recognition that loss of money in an intangible form generally does not support a conversion claim.

Appellants, nonetheless, cite two unpublished cases from this court for the proposition that conversion of money is a recognizable claim in Minnesota. In *Tuaolo v. Want Some Weather, Inc.*, this court determined that a viable conversion claim could be based on fraudulent inducement of an investment. No. A07-2139, 2008 WL 5136614, at *4 (Minn. App. Dec. 9, 2008). And in *Neff v. Americana Community Bank*, this court reversed a grant of summary judgment on a claim of conversion based on money deposited by wire transfer. No. 07-0878, 2008 WL 933505, at *1 (Minn. App. Apr. 8, 2008). Those cases are unpublished and therefore not binding on this court. *See Skyline Vill. Park Ass'n v. Skyline Vill. L.P.*, 786 N.W.2d 304, 309-10 (Minn. App. 2010) (recognizing that unpublished opinions from this court "are of persuasive value at best and not precedential" (quotation omitted)). Moreover, neither case involves facts similar to those here, in which the conversion claim is based on an undefined overpayment pursuant to a purchase agreement. We decline to rely on these authorities to support a conversion claim based on the facts here.

We also note that general tort law supports the position that a conversion claim cannot be based on money. A conversion action typically lies for personal chattels that are "of a tangible nature." 90 C.J.S. *Trover and Conversion* § 9 (2021). "[T]he general rule is that money is an intangible and therefore not subject to a claim for conversion." 90 C.J.S. *Trover and Conversion* § 16 (2021). An exception applies when the money "is specific and capable of identification" or "where a party shows ownership or the right to

possess specific, identifiable money." *Id.* Here, the alleged converted property was money that appellants paid respondents pursuant to the purchase agreement. The money paid is intangible. While the payment itself could arguably be specific and identifiable, appellants' conversion claim is based on an alleged *overpayment*. In other words, appellants seek to recover an undefined amount of money from their original payment. This is not the type of property that courts have recognized may form the basis for a conversion claim.

In sum, neither Minnesota caselaw nor basic principles of tort law support appellants' theory of conversion based on the alleged overpayment under the purchase agreement. Thus, the district court properly dismissed appellants' conversion claim.

VII. The complaint fails to state a claim for unjust enrichment against the TCO respondents.

The complaint brought a claim for unjust enrichment, based on appellants' alleged overpayment for the property due to respondents' misrepresentations. The complaint alleged that, as a result of the transaction for the property, respondents "wrongfully received and retained" benefits through their dealings with appellants, and retention of those benefits was "wrongful, illegal, and unjust." We agree with the district court that the allegations do not support a claim for unjust enrichment.

An unjust-enrichment claim requires a party to "show that the defendant has knowingly received or obtained something of value for which the defendant in equity and good conscience should pay." *City of Maple Grove v. Marketline Constr. Capital, LLC*, 802 N.W.2d 809, 817 (Minn. App. 2011) (quotation omitted). "Unjust enrichment claims

do not lie simply because one party benefits from the efforts or obligations of others, but instead it must be shown that a party was unjustly enriched in the sense that the term 'unjustly' could mean illegally or unlawfully." *Id.* at 817-18 (quotation omitted). And an unjust-enrichment claim fails when there is a valid contract between the parties. *Colangelo v. Norwest Mortg., Inc.*, 598 N.W.2d 14, 19 (Minn. App. 1999), *rev. denied* (Minn. Oct. 21, 1999).

Here, the parties' rights are governed by contract, including the purchase agreement. Appellants argue that the purchase agreement and related contracts are subject to rescission because of respondents' alleged fraud, and that the unjust enrichment claim therefore "should be reinstated in the event the contracts are rescinded." But "[w]hen a contract is rescinded, the parties must be placed in a position as if the contract never existed," including refund of all amounts paid under the contract. *Park-Lake Car Wash, Inc. v. Springer*, 394 N.W.2d 505, 519 (Minn. App. 1986). If appellants prevail on their fraud claims, the proper remedy would be to rescind the contracts and order respondents to refund the amounts paid under the contracts. Appellants cannot obtain relief under a claim of unjust enrichment.

VIII. The complaint pleads sufficient facts to support a claim of tortious interference with contract against the TCO respondents, based on their alleged interference with appellants' contracts with their vendors.

The complaint brought a claim for tortious interference with contract. The complaint alleged that the TCO respondents intentionally procured breaches of appellants' contracts with NOSP, the three commercial tenants on the property, and appellants' third-

party vendors. We agree with appellants that the allegations are sufficient to state a claim for tortious interference with contract with respect to appellants' vendors.[6]

A party must show five elements to prevail on a claim of tortious interference with contract: "(1) the existence of a contract; (2) the alleged wrongdoer's knowledge of the contract; (3) intentional procurement of its breach; (4) without justification; and (5) damages." *Sysdyne Corp. v. Rousslang*, 860 N.W.2d 347, 351 (Minn. 2015). The complaint alleges these facts about the TCO respondents' actions towards appellants' vendors. Appellants had valid and existing contracts with various vendors. The TCO respondents "provid[ed] unauthorized direction" to the vendors, "plac[ed] unauthorized orders for products and services," "direct[ed] vendors to send invoices directly to the TCO [respondents]," and disparaged appellants to some of the vendors. The TCO respondents' actions adversely affected appellants' relationships with those vendors and caused the vendors to breach the contracts. Accepting these allegations as true, it is possible, on any evidence which might be produced, to grant the relief demanded on the claim of tortious interference with contract. *See Abel*, 947 N.W.2d at 68.

[6] We conclude that the complaint does not support a claim for tortious interference with appellants' contracts with NOSP and the tenants. Appellants' claim in this regard is based on the theory that the TCO respondents interfered with the leases by constructing the Blaine building and influencing the tenants to leave the property before the expiration of the leases. But the parties agree, and appellants acknowledged at oral argument, that no provision in the leases prohibited the tenants from leaving the property before the expiration of the lease term. As such, the TCO respondents could not have interfered with the leases even if they did cause the tenants to abandon the property, as the complaint alleges.

The TCO respondents contend that the allegations are insufficient because they do not provide enough specificity about the vendors or the contracts. But "Minnesota is a notice-pleading state and does not require absolute specificity in pleading, but rather requires only information sufficient to fairly notify the opposing party of the claim against it." *DeRosa v. McKenzie*, 936 N.W.2d 342, 346 (Minn. 2019) (quotation omitted). We are satisfied that the complaint provides sufficient allegations about the TCO respondents' actions to put them on notice of the claim against them. At this stage of the proceedings, the allegations of tortious interference with contract are sufficient to survive a rule 12.02(e) motion to dismiss.

IX. The complaint pleads sufficient facts to support a claim of tortious interference with prospective business advantage against the TCO respondents.

The complaint alleged that the TCO respondents interfered with appellants' reasonable expectation of economic or business advantage by causing the tenants not to continue their prospective relations with appellants. We conclude that the allegations are sufficient to support a claim based on this theory.

A claim for tortious interference with prospective business advantage "protects an interest in the reasonable expectation of economic advantage." *Gieseke ex rel. Diversified Water Diversion, Inc. v. IDCA, Inc.*, 844 N.W.2d 210, 218 (Minn. 2014). A party must show five elements to prevail on this claim: (1) the plaintiff had a reasonable expectation of economic advantage; (2) the defendant knew about that expectation of economic advantage; (3) the defendant intentionally interfered with the plaintiff's reasonable expectation of economic advantage, and that interference is independently tortious or

violates the law; (4) but for the defendant's wrongful act, "it is reasonably probable that [the] plaintiff would have realized his economic advantage or benefit"; and (5) the plaintiff suffered damages. *Id.* at 219.

The complaint alleged these facts about the TCO respondents' actions with respect to the tenants abandoning the property. The TCO respondents built the Blaine building and directed the tenants, including MOSC, to discontinue their occupancy of the property and relocate to the Blaine building. MOSC abandoned the premises and left it in poor condition. Appellants had expected the property to be profitable because of the prospect of having long-term tenants that would generate significant revenue. As a result of the tenants moving, the value of the property diminished, and appellants suffered substantial damages. These allegations, if true, show that the TCO respondents interfered with appellants' expected business advantage in the property by influencing the tenants to abandon the property. Even if MOSC's abandonment of the lease did not constitute a breach of the lease, there need not be a breach of contract to show tortious interference with prospective business advantage. The allegations are sufficient to survive a rule 12.02(e) motion on this claim.

X. The complaint states a claim for conspiracy and aiding and abetting against the TCO respondents to the extent they are consistent with the other sufficiently pleaded claims.

Finally, the complaint brought two claims based on the TCO respondents' combined efforts: conspiracy and aiding and abetting. The district court dismissed these claims because it determined that there were no underlying torts to support the claims. Because

we reverse the district court's dismissal of several of the underlying torts, we likewise reverse the district court's dismissal of the claims of conspiracy and aiding and abetting.

A claim for civil conspiracy must be based on an underlying tort. *D.A.B. v. Brown*, 570 N.W.2d 168, 172 (Minn. App. 1997) (citing *Harding v. Ohio Cas. Ins. Co.*, 41 N.W.2d 818, 824 (Minn. 1950)). "A conspiracy is a combination of persons to accomplish an unlawful purpose or a lawful purpose by unlawful means." *Harding*, 41 N.W.2d at 824. Similarly, parties who aid and abet the commission of a tort may be liable for the injury caused. *Witzman v. Lehrman, Lehrman & Flom*, 601 N.W.2d 179, 185-86 (Minn. 1999). A claim for aiding and abetting the tortious conduct of another has three elements: (1) the primary tortfeasor committed a tort that results in injury to the plaintiff; (2) the defendant knew that the primary tortfeasor's conduct was a breach of duty; and (3) the defendant substantially assisted or encouraged the primary tortfeasor to commit a breach. *Id.* at 187.

The complaint alleges numerous ways in which the various respondents worked together to make fraudulent representations to appellants, induce appellants to buy the property based on the fraud, and interfere with appellants' contracts and prospective business advantage. According to the complaint, these unlawful actions were not committed by one respondent alone, but rather by many acting in cooperation. We conclude that the conspiracy and aiding and abetting claims are sufficiently pleaded, to the extent they are supported by the underlying claims that we have deemed sufficiently pleaded.

Conclusion

In sum, we affirm the dismissal of all claims against the Gaughan respondents. We reverse and remand on the claims of fraud and fraudulent inducement against the TCO respondents. We likewise reverse and remand on the claims of tortious interference with contract, tortious interference with prospective business advantage, conspiracy, and aiding and abetting. We affirm on all remaining claims. We remand to the district court for further proceedings consistent with this opinion.

Affirmed in part, reversed in part, and remanded.

CONNOLLY, Judge (concurring in part, dissenting in part)

I fully concur with the majority's affirmance of the dismissal of all claims against the Gaughan respondents and of six of the twelve claims against the TCO respondents: failure to disclose, declaratory judgment, breach of contract, breach of the covenant of good faith and fair dealing, conversion, and unjust enrichment. But I respectfully dissent from the majority's decision to reverse and remand the dismissal of the other six claims against those respondents: fraud, fraudulent inducement to contract, tortious interference with contract, tortious interference with prospective business advantage, conspiracy, and aiding and abetting. In my view, the pleadings of these claims also fail to set forth a legally sufficient claim for relief and therefore were properly dismissed under Minnesota Rules of Civil Procedure 12.02(e) and 12.03, and the district court's opinion should be affirmed in its entirety.

"A claim is legally sufficient if it is possible on any evidence which might be produced, consistent with the pleader's theory, to grant the relief demanded." *Abel v. Abbott Nw. Hosp.*, 947 N.W.2d 58, 68 (Minn. 2020) (quotation omitted).

> A pleading is sufficiently detailed when it gives fair notice to the adverse party of the incident giving rise to the suit with sufficient clarity to disclose the pleader's theory upon which his claim for relief is based. Under our law, the pleading of broad general statements that may be conclusory is permitted. No longer is a pleader required to allege facts and every element of a cause of action.

Halva v. Minn. State Colls. and Univs., 953 N.W.2d 496, 503 (Minn. 2021) (quotations and citations omitted). In our de novo review of the grant of a motion to dismiss, "we

consider only the facts alleged in the complaint, accepting those facts as true." *Sipe v. STS Mfg., Inc*., 834 N.W.2d 683, 686 (Minn. 2013) (quotation omitted).

1. Fraud and Fraudulent Inducement

> Our case law establishes a high threshold of proof for . . . a [fraud] claim. It must be pled with specificity that there was a false representation regarding a past or present fact, the fact was material and susceptible of knowledge, the representer knew it was false or asserted it as his or her own knowledge without knowing whether it was true or false, the representer intended to induce the claimant to act or justify the claimant in acting, the claimant was induced to act or justified in acting in reliance on the representation, the claimant suffered damages, and the representation was the proximate cause of the damages.
>
> Where a representation regarding a future event is alleged, as here, an additional element of proof is that the party making the representation had no intention of performing when the promise was made . . . .

Martens v. Minn. Mining & Mfg. Co., 616 N.W.2d 732, 747 (Minn. 2000) (citations omitted); *see also Valspar Refinish, Inc. v. Gaylord's, Inc.*, 764 N.W.2d 359, 368 (Minn. 2009) (setting out the same criteria for fraudulent inducement).

The district court noted that appellants alleged various respondents said at a presale meeting that "their . . . practices had no intention of moving and intended to fulfill their lease terms"; they "made positive statements regarding the . . . [b]uilding stating they were not planning to leave and were staying"; one of them was "interested in" the prospect of Care Suites on adjacent property; and "the TCO tenants [paid] all [the] operating costs." The district court commented that "[t]hese statements amount to nothing more than puffery and/or opinions" and they "consist of general statements regarding prospective future plans and do not rise to the level of fraud." The majority agrees that respondents' statements that

they were satisfied with their location and their expressions of positive factors about the building were "vague, subjective opinions" that "do not form the basis for a fraud claim," but also states that the "representations that [respondents/tenants] intended to fulfill the lease terms and did not intend to leave the property" were "statements of fact about [their] intentions toward the property" and "amounted to false representations of material facts." I disagree.

Moreover, respondents' intentions toward the property were expressed in the purchase agreement, which said it "alone fully and completely expressed [the parties'] agreement," so appellant's reliance on oral comments made at a meeting is not justifiable. And as the district court noted, under the leases "[t]there were no guarantees that the tenants would remain in the property. In fact the lease terms were set . . . . Both parties have the right to not renew the tenancy at the end of the lease term." Thus, appellants' alleged reliance on a party's representation that it would remain contradicted the leases and was unjustifiable as a matter of law. "[R]eliance on an oral representation [is] unjustifiable as a matter of law . . . if the written contract . . . explicitly state[s] a fact completely contradictory to the claimed misrepresentation." *Johnson Bldg. Co. v. River Bluff Dev. Co.*, 374 N.W.2d 187, 194 (Minn. App. 1985), *rev. denied* (Minn. Nov. 18, 1985). Here, the leases explicitly stated that the parties had the right to not renew their leases, a complete contradiction of their alleged oral representation that they would renew the leases. On that basis, I would distinguish *Great Plains Educ. Found., Inc. v. Student Loan Fin. Corp.*, 954 N.W.2d 844, 850 (Minn. App. 2020) (concluding that fraud claims were not precluded by a settlement agreement because one party's "alleged misrepresentations and omissions"

did not completely contradict the terms of that agreement), *rev. denied* (Minn. Mar. 30, 2021).

Also, because justifiable reliance is one element of a fraud claim, appellants were obligated to allege facts supporting their justifiable reliance. *See* Minn. R. Civ. P. 9.02; *Ambassador Press, Inc. v. Durst Image Tech. U.S., LLC*, 949 F.3d 417, 424 (8th Cir. 2020) (holding that a plaintiff in a claim of fraud "cannot assert, with only conclusory allegations, that it reasonably relied on the alleged misrepresentations").

> Minnesota courts . . . explain that reliance in fraud cases is generally evaluated in the context of the aggrieved party's intelligence, experience, and opportunity to investigate the facts at issue. *Valspar[,* 764 N.W.2d at 369]. When a party conducts an independent factual investigation before it enters into a commercial transaction, that party cannot later claim that it reasonably relied on the alleged misrepresentation. *Id*.

Id. at 423-24 (quotations and citations omitted). Because the alleged oral misrepresentations contradicted the terms of the parties' leases, appellants' alleged reliance on those misrepresentations was not justifiable, and they could not allege facts supporting that element of the fraud and fraudulent-inducement claims.

I agree with the district court that neither appellants' fraud claim nor its claim of fraudulent inducement sets forth a legally sufficient basis for relief.

2. Tortious Interference with Contracts

A claim of tortious interference with contract requires that: (1) there is a contract; that the party whose interference is alleged (2) knows of the contract, (3) intentionally procures its breach, (4) has no justification for procuring its breach; and (5) that there are damages. *Sysdyne Corp. v. Rousslang*, 860 N.W.2d 347, 351 (Minn. 2015). Appellants'

complaint alleges that respondents intentionally procured breaches of appellants' contracts with NOSP, the commercial tenants, and third-party vendors. The district court addressed only the contracts with the tenants, found that appellants "do not address [*Sysdyne*] factors #3 through #5," and dismissed the claim.

The majority states that appellants' allegations in the complaint "are sufficient to state a claim for tortious interference with respect to appellants' vendors" but in a footnote concludes that "the complaint does not support a claim for tortious interference with appellants' contracts with NOSP and the tenants." I dissent from the reversal of the district court's decision to dismiss this claim as it relates to the vendors.

Appellants allege in their complaint that "[v]alid and existing contracts exist [sic] between [appellants] and various third parties that provide services to [appellants] for the benefit of the Property." The complaint also asserts that:

> Since the Sale, [respondents] have covertly (without [appellants'] prior knowledge or consent) engaged in discourse with certain of [appellants'] vendors, which included without limitation:
> a. providing unauthorized direction to such vendors;
> b. placing unauthorized orders for products and services with such vendors (and, upon information and belief, directing payment thereof [to] be billed to [appellants];
> c. upon information and belief, directing vendors to send invoices directly to the TCO [respondents]; and
> d. disparaging [appellants] to certain of [appellants'] vendors.
> Such actions have impeded and adversely affected [appellants'] relationships with such vendors, up to and including breaches of such vendor contracts.

Appellants provide no specifics as to which vendors had contracts, how many contracts were interfered with, what interference occurred with each contract, and what

damage resulted from the interference. "Courts are *always* able to dismiss pleadings consisting solely of vague or conclusory allegations, wholly unsupported by fact." *In re Milk Indirect Purchase Antitrust Litig.*, 558 N.W.2d 772, 775 (Minn. App. 1999). The dismissal of the tortious interference with contracts claim as it relates to the vendors was such a dismissal.

3. Tortious Interference with Prospective Business Advantage

The complaint states that the TCO respondents "intentionally interfered with [appellants'] reasonable expectation of economic or business advantage by inducing or otherwise causing NSOP, the TCO Fridley Building tenants, and/or vendors and/or service providers to [appellants], to either not enter into or continue prospective relations with [appellants] and/or by preventing continuance of the prospective relation(s)."

A claim for tortious interference with prospective business advantage requires: (1) the existence of a reasonable expectation of economic advantage; (2) a defendant's knowledge of that expectation of economic advantage; (3) that the defendant intentionally interfered with the plaintiff's reasonable expectation, and the intentional interference is "either independently tortious or in violation of a state or federal statute or regulation"; (4) that, absent the wrongful act of the defendant, it is reasonably probable that the plaintiff would have realized his economic advantage or benefit, and (5) that the plaintiff sustained damages. *Gieseke ex rel. Diversified Water Diversion, Inc. v. IDCA, Inc.*, 844 N.W.2d 210, 219 (Minn. 2014).

The district court dismissed the claim, stating that

> [appellants] allege that [respondents] TCO have intentionally interfered with [appellants'] reasonable expectation of economic or business advantage by inducing or otherwise causing the TCO Fridley building tenants to either not enter into or continue with prospective relations with [appellants]. [Appellants] fail to allege any further facts and instead seem to rely on speculation that the tenants will either breach their lease contracts or not renew their lease. . . . [T]he facts as alleged do not demonstrate that [respondents] TCO have committed a wrongful act [or] interfered with contractual relationships or that [appellants] suffered pecuniary harm."

The reasoning in support of my view that the fraud and fraud in inducement claims were properly dismissed also supports the view that appellants' allegations do not meet the "wrongful act" requirement of tortious interference with prospective business advantage.

The majority states that the allegations that "the TCO respondents interfered with appellants' reasonable expectation of economic or business advantage by causing the tenants not to continue their prospective relations with appellants" were "sufficient to support" the tortious-interference-with-prospective-business-advantage claim. But, as respondents point out, the claim against the TCO respondents fails because "TCO cannot interfere with its own business relationships nor can its agents be liable for alleged interference undertaken in the scope of their duties."

Moreover, the relationship between the TCO respondents and appellants was governed by the purchase agreement and the leases, as set out above. Once the fraud and fraudulent-inducement claims relative to those documents were dismissed, this claim also would necessarily be dismissed.

4. Aiding and Abetting and Conspiracy

Claims of civil conspiracy and aiding and abetting are not independently actionable; they require an underlying tort because they are assertions of vicarious liability for the underlying tort. *Leiendecker v. Asian Women United*, 848 N.W.2d 224, 228 n.2 (Minn. 2014). The majority states that, "[b]ecause we reverse the district court's dismissal of several of the underlying torts, we likewise reverse the district court's dismissal of the claims of conspiracy and aiding and abetting." Analogously, because I would affirm the dismissal of the underlying torts, I would also affirm the dismissal of the aiding and abetting and the conspiracy claims.

In conclusion, I would affirm the decision by the district court to dismiss all of these claims. At the end of the day, appellants were sophisticated business entities who were represented by counsel. They entered into a purchase agreement with the TCO respondents in an arm's length commercial transaction. To address the concerns they now face, they could have negotiated an exclusive geographical restriction in the purchase agreement to prevent the TCO respondents from erecting an office building that now competes with their office building. They did not. It is not the role of the courts to rescue parties from business decisions they now regret making. *See Janssen v. Best & Flanagan*, 662 N.W.2d 876, 882 (Minn. 2003) ("[C]ourts are ill-equipped to judge the wisdom of business ventures.").