Beltran v. Ford Motor Company | Case No. 23CV03400
Hearing Date: | November 28, 2023
Demurrer

Parties/Attorneys:

Plaintiff	Jose Beltran	Roger Kirnos Maite Colon Knight Law Group
Defendant	Ford Motor Company Eagle Motors, Inc. dba Paso Robles Ford	Michael D. Mortenson Craig A. Taggart David M. Keithly Chen Fei Liu MORTENSON TAGGART ADAMS LLP

PROPOSED TENTATIVE

According to the complaint, plaintiff Jose Beltran (plaintiff or Beltran) purchased a new 2021 Ford Ranger on May 18, 2021 from Santa Maria Ford. Between July 12, 2022 and November 14, 2022, plaintiff presented the vehicle to Paso Robles Ford, the authorized Ford repair facility, five times for repair of covered defects. Plaintiff's complaint was filed on August 7, 2023 and alleges the following causes of action: (1) violation of Song-Beverly Act [breach of express warranty]; (2) fraudulent inducement-concealment; and (3) negligent repair.

Defendants Ford Motor Company and Eagle Motors, Inc. dba Paso Robles Ford filed their demurrer to the second and third causes of action on October 3, 2023. Opposition was filed on October 25, 2023.

Legal Standards

A demurrer tests the legal sufficiency of a complaint. (*Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4th 968, 994.) Code of Civil Procedure §430.10(e) provides for a demurrer on the ground that a complaint fails to state a cause of action. A demurrer admits, provisionally for purposes of testing the pleading, all material facts properly pleaded. (*Tindell v. Murphy* (2018) 22 Cal.App.5th 1239, 1247.)

2nd (Fraudulent Inducement-Concealment) Cause of Action

(a) Economic Loss Rule

Ford argues that plaintiff's claim is barred by the economic loss rule. The economic loss rule "requires a purchaser to recover in contract [rather than tort] for purely economic loss due to disappointed expectations, unless [s]he can demonstrate harm above and beyond a broken contractual promise." (*Robinson Helicopter Co., Inc. v. Dana Corp.* (2004) 34 Cal.4th 979, 988.) In *Robinson*, the tort of fraudulent misrepresentation, though typically related to the formation of a contract, was exempted from the economic loss rule because defendants tortious conduct [misrepreentation that clutch conformed to FAA requirements] was separate from the breach itself, which involved defendant's provision of the nonconformant clutches. (*Robinson Helicopter Co., Inc. v. Dana Corp., supra,*34 Cal.4th at 991.) The Court emphasized, however, that its "holding today is narrow in scope and limited to a defendant's affirmative misrepresentations on which a plaintiff relies and which expose a plaintiff to liability for personal damages independent of the plaintiff's economic loss." (*Id.* at 993.)

Thereafter, courts split on the application of the economic loss rule to fraudulent concealment claims. (*Rattagan v. Uber Techs., Inc.* (9th Cir. 2021) 19 F.4th 1188, 1191.) This question has been certified to the California Supreme Court by the Ninth Circuit Court of Appeals. The Ninth Circuit framed the issue as follows:

> "The economic loss rule limits a party to a contract "to recover[ing] in contract for purely economic loss due to disappointed expectations," rather than in tort, "unless he can demonstrate harm above and beyond a broken contractual promise." *Robinson Helicopter Co. v. Dana Corp.*, 34 Cal.4th 979, 22 Cal.Rptr.3d 352, 102 P.3d 268, 272 (2004). Stated differently, a party to a contract generally cannot recover for pure economic loss—*i.e.*, damages that are solely monetary—that resulted from a breach of contract unless he can show a violation of some independent duty arising in tort. *See Erlich v. Menezes*, 21 Cal.4th 543, 87 Cal.Rptr.2d 886, 981 P.2d 978, 983 (1999) ("[C]ourts will generally enforce the breach of a contractual promise through contract law, except when the actions that constitute the breach violate a social policy that merits the imposition of tort remedies." (quoting *Freeman & Mills, Inc. v. Belcher Oil Co.*, 11 Cal.4th 85, 44 Cal. Rptr. 2d 420, 434, 900 P.2d 669 (1995))). The rule "prevent[s] the law of contract and the law of tort from dissolving one into the other." *Robinson*, 22 Cal.Rptr.3d 352, 102 P.3d at 273 (alteration in original) (quoting *Rich Products Corp. v. Kemutec, Inc.*, 66 F. Supp. 2d 937, 969 (E.D. Wis. 1999)).
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> In *Robinson*, the California Supreme Court held that the economic loss rule does not bar fraud claims premised on affirmative misrepresentations. *Id.*, 22

Cal.Rptr.3d 352, 102 P.3d at 274–75. The California Supreme Court reasoned that this species of fraud constitutes tortious conduct separate from a breach of the contract. *Id.*, 22 Cal.Rptr.3d 352, 102 P.3d at 274. Because the affirmative misrepresentations were "dispositive fraudulent conduct," the Court expressly declined to address whether another type of fraud—intentional concealment—likewise constitutes an independent tort warranting an exception. *Id.*, 22 Cal.Rptr.3d 352, 102 P.3d at 275. The California Supreme Court explained, "Our holding today is narrow in scope and limited to a defendant's affirmative misrepresentations on which a plaintiff relies and which expose a plaintiff to liability for personal damages independent of the plaintiff's economic loss." *Id.,* 22 Cal.Rptr.3d 352, 102 P.3d at 276. It reasoned that "fraud is a tort independent of the breach" of a contract, and moreover, "[a]llowing Robinson's claim ... discourages [affirmative misrepresentation] in the future while encouraging a business climate free of fraud and deceptive practices." *Id.*, 22 Cal.Rptr.3d 352, 102 P.3d at 275 (internal quotation marks and citation omitted).

Since the *Robinson* decision, federal district courts have confronted the issue of whether fraudulent concealment also constitutes independent tortious conduct, warranting an exception to the economic loss rule. The district courts have reached opposing conclusions. For example, the district court in *Goldstein v. Gen. Motors LLC*, 517 F. Supp. 3d 1076 (S.D. Cal. 2021), held that "[t]he narrowly tailored exception to the economic loss rule articulated in *Robinson Helicopter* does not extend to fraudulent omission claims." *Id.* at 1093. Therefore, consumers' claims that car manufacturers had knowingly failed to disclose a dangerous defect in car touch screens was precluded by the economic loss rule. *Id.* The district court in *NuCal Foods, Inc. v. Quality Egg LLC*, 918 F. Supp. 2d 1023 (E.D. Cal. 2013), reached the opposite conclusion. That court refused to dismiss fraudulent concealment claims related to the sale of allegedly contaminated eggs, because it held that the *Robinson* opinion "strongly suggests no meaningful distinction exists between intentional concealment and intentional misrepresentation." *Id.* at 1031.

[]

California Courts of Appeal have not addressed whether the *Robinson* exception applies to fraudulent concealment. Some appellate courts have suggested that *Robinson* extends to all claims of intentional, fraudulent conduct, *see, e.g., Frank E. Maddocks, Inc. v. Univ. Med. Prods./USA, Inc.*, No. B172559, 2005 WL 2002396, at *3 (Cal. Ct. App. Aug. 22, 2005) ("the [economic loss] rule does not bar fraud and intentional misrepresentation claims"), while others have declined to apply *Robinson* beyond the "narrow circumstances" presented in that case, *see. e.g., United Med. Devices, LLC v. PlaySafe, LLC*, No.

B250305, 2015 WL 920695, at *6 (Cal. Ct. App. Mar. 2, 2015), *as modified on denial of reh'g* (Mar. 30, 2015).

State courts across the country have exempted fraud claims like the one Mr. Rattagan asserts from the economic loss doctrine. *See, e.g., Taylor v. Taylor*, 163 Idaho 910, 422 P.3d 1116, 1125 (2018), *as corrected* (July 31, 2018) (economic loss rule does not apply where unique circumstances require a reallocation of risk); *see also Tiara Condo. Ass'n, Inc. v. Marsh & McLennan Cos., Inc.*, 110 So. 3d 399, 407 (Fla. 2013) (no application outside products liability context); *see also Formosa Plastics Corp. USA v. Presidio Eng'rs & Contractors, Inc.*, 960 S.W.2d 41, 47 (Tex. 1998) (listing various species of fraud claims that are exempt from the economic loss rule).

[]

The unanswered question of whether fraudulent concealment claims are exempted from the economic loss rule is dispositive in the instant case. There is no controlling state precedent, and the question implicates important policy concerns. Accordingly, after careful consideration, we exercise our discretion to certify this question to the California Supreme Court."

(*Rattagan v. Uber Technologies, Inc.* (9th Cir. 2021) 19 F.4th 1188, 1193.)

The request for certification was granted on February 9, 2022. The matter is fully briefed. Oral argument has not yet been set.

On October 26, 2022, the California Court of Appeals issued an opinion in the Song-Beverly context on whether the economic loss rule bars claims for fraudulent inducement and concluded that it did not. (*Dhital v. Nissan North America, Inc.* (2022) 84 Cal.App.5th 828, 843.) It did so while remaining "cognizant that our Supreme Court may soon provide additional guidance." (*Id.* at 841.) On February 1, 2023, the Cal. Supreme Court granted the petition for review of the *Dhital* case, deferred further action pending consideration and disposition of a related issue in *Rattagan*, and denied the request for depublication of the opinion. (*Dhital v. Nissan North America* (2022) 84 Cal.App.5th 828, 843, review granted February 1, 2023, S277568, request for depublication denied.) "Pending review and filing of the Supreme Court's opinion, unless otherwise ordered by the Supreme Court under (3), a published opinion of a Court of Appeal in the matter has no binding or precedential effect, and may be cited for potentially persuasive value only." (Calif. Rules Court, rule 8.1115(e)(1).)

This court finds the *Dhital* court's opinion to be persuasive.[1] That court reasoned:

> "*Robinson* left undecided whether concealment-based claims are barred by the economic loss rule. What follows from its analysis, however, is that concealment-based claims for fraudulent inducement are not barred by the economic loss rule. The reasoning in *Robinson* affirmatively places fraudulent inducement by concealment outside the coverage of the economic loss rule. We now hold that the economic loss rule does not cover such claims. First, as discussed, *Robinson* identified fraudulent inducement as an existing exception to the economic loss rule, before it proceeded to analyze the particular claims at issue in that case relating to fraud during the performance of a contract. (*Robinson*, *supra*, 34 Cal.4th at pp. 989–990, 22 Cal.Rptr.3d 352, 102 P.3d 268.) For fraudulent inducement and the other existing exceptions listed in *Robinson*, " 'the duty that gives rise to tort liability is either completely independent of the contract or arises from conduct which is both intentional and intended to harm.' " (*Id.* at p. 990, 22 Cal.Rptr.3d 352, 102 P.3d 268.)
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> In our view, that independence is present in the case of fraudulent inducement (whether it is achieved by intentional concealment or by intentional affirmative misrepresentations), because a defendant's conduct in fraudulently inducing someone to enter a contract is separate from the defendant's later breach of the contract or warranty provisions that were agreed to."

(*Dhital v. Nissan North America, Inc.* (2022) 84 Cal.App.5th 828, 840–841.)

The court thus rejects defendant's argument that the economic loss rule bars this cause of action. The court can revist this issue if the California Supreme Court concludes differently.

b. Failure to Plead Sufficient Facts

In order to state a claim for concealment (a form of deceit, which in turn is subspecies of fraud), plaintiff must allege specific facts to support the following elements: (1) defendant concealed or suppressed a material fact; (2) defendant had a duty to disclose the fact to plaintiff; (3) defendant intentionally concealed or suppressed the fact with the intent to defraud plaintiff; (4) plaintiff was unaware of the fact and would not have acted as they did had they known of the concealed or suppressed fact; and (5) plaintiff was damaged as a result of the concealment. (*Marketing West, Inc. v. Sanyo Fisher (USA) Corp.* (1992) 6 Cal.App.4th 603, 12–613; CACI No. 1901.)

[1] Should a contrary opinion be issued by the Cal. Supreme Court, this conclusion can be revisited.

i.) Concealment

Ford asserts that plaintiff failed to plead the defect that was allegedly concealed. The Complaint identifies the defect as a "Transmission Defect." (Complaint, ¶ 14.) It alleges the type of transmission—the 10R80 transmissions. (Complaint, ¶ 12); that the defective transmission was installed in numerous classes of vehicles—including Plaintiff's vehicle. (Complaint ¶ 12-13); that the defect "causes consumers to experience the following unexpected manifestations of the defect: abrupt harsh shifting, erratic shifting, jerking (commonly known as "juddering" or "shuddering"), lunging while slowing down, hesitation between gears, lack of acceleration, loss of power, stalling, slipping gears, failure to change gears, clunking or banging noises, and other drivability concerns that impede the driver's safety, each and all of which prevent a 10R80 equipped vehicle from operating as intended by the driver." (Complaint ¶ 14.) The Complaint alleges that the plaintiff's own vehicle would shake intermittently when braking, (Complaint, ¶ 60), that it felt like the vehicle's anti-lock braking systems were active while driving (Complaint, ¶ 61); that the brake was making a squeaking noise and the brake was pulsating sometimes (Complaint, ¶ 62); that the vehicle's transmission banged into lower gear (Complaint, ¶ 62); and that the vehicle's transmission shifted abnormally at times and banged into gear when slowing down. (Complaint, ¶ 64.)

Ford argues this is not enough—that the plaintiff must allege what the defect is in order to adequately allege this cause of action. In support, Ford cites *In re Ford Motor Co. DPS6 Powershift Transmission Products Liability Lit*. (C.D. Cal., 2019) 2019 WL 3000646, at *7. In that case, the federal district court observed:

> "While Plaintiffs describe a laundry list of ways in which their vehicles' performance is subpar, they tie all of these problems to a "defect" in the DPS6 transmission that they allege Ford should have disclosed. However, while Plaintiffs describe the alleged defect's effects on their vehicles, nowhere do they describe what exactly the defect is. For example, the [] Complaint defines "the 'Transmission Defect' " as follows: the DPS6 transmission "is defective in design and/or manufacture in that, among other problems, the transmission consistently slips, bucks, kicks, jerks, harshly engages, has premature internal wear, sudden acceleration, delay in downshifts, delayed acceleration, difficulty stopping the vehicle, and, eventually, premature transmission failure." [] Compl. ¶ 21. This merely describes performance problems with the vehicle and does not amount to identifying the defect that Ford failed allegedly to disclose. It is therefore insufficient."
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> (*Id*.)

This appears to be an emerging trend in the federal district courts, based on cases that suggest that despite a relaxed standard for concealment claims, a plaintiff must still allege "the content of the omission and where the omitted information should or could have been revealed." (*Browning v. Am. Honda Motor Co.* (N.D. Cal. 2021) 549 F. Supp.3d 996, 1012; *Carroll v. Nissan North America, Inc.* (C.D. Cal. 2023) 2023 WL 3433590, at *2.)

However, the federal district courts are governed by different rules when it comes to review of a pleading for sufficient particularity than are California courts. "[W]hile a federal court will examine state law to determine whether the elements of fraud have been pled sufficiently to state a cause of action, the Rule 9(b) requirement that the circumstances of the fraud must be stated with particularity is a federally imposed rule." (*Vess v. Ciba-Geigy Corp. USA* (9th Cir. 2003) 317 F.3d 1097, 1103; see also *Newberry v. Silverman* (6th Cir. 2015) 789 F3d 636, 645; *Arnold & Assocs., Inc. v. Misys Healthcare Systems* (D AZ 2003) 275 F.Supp.2d 1013, 1028.) Moreover, unpublished federal district court cases are not binding on this court, although they are of persuasive value. (*Balsam v. Trancos, Inc.* (2012) 203 Cal.App.4th 1083, 1100—"While not binding on us, a nonpublished federal district court case can be citable as persuasive authority.")

The court is not persuaded that the federal district court cases adequately describe the requirements for specific factual pleading in California, at least in this context. One purpose of the specificity requirement is to 'furnish the defendant with certain definite charges which can be intelligently met.' " (*Committee on Children's Television, Inc. v. General Foods Corp.* (1985) 35 Cal.3d 197, 216.) California authority provides that the specificity requirement is relaxed "when it appears from the nature of the allegations that the defendant must necessarily possess full information," or "when the facts lie more in the knowledge of the opposing parties." (*Alfaro v. Community Housing Improvement System & Planning Assn., Inc.* (2009) 171 Cal.App.4th 1356, 1384-85, internal quotations omitted; *Tarmann v. State Farm Mutual Auto-Mobile Ins. Co.* (1992) 2 Cal.App.4th 153, 158.) The details are properly the subject of discovery. (*Alfaro* at 1385.) The court notes that Ford is the party with superior knowledge about the inner workings of the 10R80 transmission and therefore the cause of any alleged transmission defect. Plaintiff's allegations are sufficient at the pleading stage to give notice about the defect under the authority of *Committee on Children's Television, Inc.*, and progeny. In fact, nothing in the federal district court authority relied upon by defendant addresses California's gloss on the specificity pleading requirement.

Ford argues that plaintiff failed to adequately allege where the omitted information should or could have been revealed by Ford and failed to identify the requisite representative samples of advertisements, offers, or other representations by Ford that plaintiff relied upon to make his purchase. This requirement is, again, taken from federal district court cases. (*In re Ford Motor Co. DPS6 Powershift*

Transmission Products Liability Lit. (C.D. Cal., 2019) 2019 WL 3000646, at *7; *Tapia v. Davol, Inc.* (S.D. Cal. 2015) 116 F. Supp. 3d 1149, 1163; *Erickson v. Boston Scientific Corp.* (C.D.Cal.2011) 846 F.Supp.2d 1085, 1092.) The earliest case in which this requirement is stated is *Marolda v. Symantec Corp.* (N.D.Cal.2009) 672 F.Supp.2d 992, 1002. The *Marolda* court cites no authority in support of this proposition from either federal or state law.

As these requirements developed in the federal district court under its own procedural requirement for particularity rather than in California state court, it is not binding. California courts acknowledge that the particularity requirement is more directly suited to affirmative misrepresentations. ""How does one show 'how' and 'by what means' something didn't happen, or 'when' it never happened, or 'where' it never happened?" (*Alfaro v. Community Housing Improvement System & Planning Assn., Inc.* (2009) 171 Cal.App.4th 1356, 1384.) Plaintiff's allegations are sufficient at the pleading stage under existing California precedent.

ii.) Duty to Disclose

"There are 'four circumstances in which nondisclosure or concealment may constitute actionable fraud: (1) when the defendant is in a fiduciary relationship with the plaintiffs; (2) when the defendant had exclusive knowledge of material facts not known to the plaintiffs; (3) when the defendant actively conceals a material fact from the plaintiffs; and (4) when the defendant makes partial representations but also suppresses some material facts.'" (*LiMandri v. Judkins* (1997) 52 Cal.App.4th 326, 336 [citation omitted]; *Bigler-Engler v. Breg, Inc.* (2017) 7 Cal.App.5th 276, 310–311].)

Where, as here, a fiduciary relationship does not exist between the parties, only the latter three circumstances may apply. These three circumstances, however, "presuppose[ ] the existence of some other relationship between the plaintiff and defendant in which a duty to disclose can arise." (*Bigler-Engler v. Breg, Inc., supra,* 7 Cal.App.5th at 311 at pp. 336–337.) "A duty to disclose facts arises only when the parties are in a relationship that gives rise to the duty, such as ' "seller and buyer, employer and prospective employee, doctor and patient, or parties entering into any kind of contractual arrangement." ' " (*Shin v. Kong* (2000) 80 Cal.App.4th 498, 509, 95 Cal.Rptr.2d 304.)

A duty to disclose may arise as a result of a transaction between the parties. However, the transaction "must necessarily arise from direct dealings between the plaintiff and the defendant; it cannot arise between the defendant and the public at large." (*Bigler-Engler* at 312 [manufacturing defendant sold medical devices to the doctor defendant several years before the plaintiff rented one of the manufacture's devices from the doctor's office; manufacturing defendant had no contact with the plaintiff, did not know plaintiff was a potential user of their products or used the

device, and did not derive any direct monetary benefit from the plaintiff's rental of the device].)

Ford argues that plaintiff has failed to allege a transactional relationship. The *Dhital* court, however, concluded that the allegations that plaintiffs bought the car from a Nissan dealership, that Nissan backed the car with an express warranty, and that Nissan's authorized dealerships where the manufacturer's agents for the purpose of sale were sufficient to support the existence of a buyer-seller relationship between the parties. (*Dhital v. Nissan North America, Inc., supra,* 84 Cal.App.5th at 845.)[2] In light of those allegations, the court "decline[d] to hold that plaintiffs' claim was barred on the ground there was no relationship requiring Nissan to disclose known defects." (*Id*.) Plaintiff's allegations here track the allegations found by the *Dhital* court to establish a relationship with the manufacturer sufficient to withstand demurrer. (Complaint, ¶¶ 54 [vehicle purchased from authorized Ford dealership], 70 [Ford's express warranted covered vehicle], 84 [Ford's authorized dealerships are its agents for the purposes of the sale of Ford vehicles to its customers].) A sufficient relationship has been alleged under this authority.

Moreover, plaintiff has alleged sufficient facts to demonstrate that Ford had a duty to disclose under either the exclusive knowledge or active concealment prong.

For the above reasons, the demurrer to the second cause of for fraudulent inducement-concealment is overruled.

3rd (Negligent Repair) Cause of Action

Defendant argues Plaintiff's' third cause of action for negligent repair fails to plead sufficient facts to state a claim because (1) it is barred by the economic loss

[2] Federal district courts agree: *Wieg v. General Motors LLC* (N.D. Cal., 2023) 2023 WL 7393017, at *5 ["The Court finds that dismissal as a matter of law would be inappropriate at this stage. The relationship between the "authorized dealer" from whom plaintiffs bought the Bolt and GM is a factual matter, and all inferences must be drawn in favor of plaintiffs."]; *Scherer v. FCA US, LLC* (S.D. Cal. 2021) 565 F.Supp.3d 1184, 1194 ["The Plaintiffs do present a contractual relationship with Defendant, because they entered into a warranty agreement. Accordingly, this contractual relationship or transaction gives rise to a duty to disclose."]; see also *In re Ford Motor Co. DPS6 Powershift Transmission Products Liability Lit.* (C.D. Cal., 2019) 2019 WL 3000646, at *6 ["Here, the Quintero and Pedante Complaints allege that Ford directly markets is vehicles to consumers and communicates with consumers through the authorized dealerships from whom Plaintiffs did purchase their vehicles. See, e.g., Pedante Compl. ¶¶ 70-71. Although these allegations are thin, the Court finds that they plausibly establish, at this stage, a sufficient threshold relationship from which a duty can arise."].

rule and (2) fails to sufficiently plead damages. The court agrees it is barred by the economic loss rule.

The economic loss rule prevents tort recovery for "'purely economic losses,' meaning financial harm unaccompanied by physical or property damage." (*Sheen v. Wells Fargo Bank, NA*. (2022) 12 Cal.5th 905, 922.) This is because "conduct amounting to a breach of contract becomes tortious only when it also violates a duty independent of the contract arising from principles of tort law." (*Erlich v. Menezes* (1999) 21 Cal.4th 543, 551.) Economic loss can include "damages for inadequate value, costs of repair and replacement of the defective product or consequent loss of profits." (*Robinson Helicopter Co., Inc. v. Dana Corp*. (2004) 34 Cal.4th 979, 988, quoting *Jimenez v. Superior Court* (2002) 29 Cal.4th 473, 482.)

Here, the claim for negligent repair alleges: "Defendant PASO ROBLES FORD breached its duty to Plaintiff to use ordinary care and skill by failing to properly store, prepare and repair of the Subject Vehicle in accordance with industry standards." (Complaint, ¶ 102.) The first cause of action for breach of warranty alleges: "FORD was unable to conform the Subject Vehicle to the applicable express warranty after a reasonable number of repair attempts." (Complaint, ¶ 74) and that by this failure Ford is in breach of its warranty. (Complaint, ¶ 76.) It thus appears that the duty alleged in the negligent repair cause of action is based on contract (the breach of warranty cause of action) and no independent duty is alleged.

Plaintiff observes that even where a tort action arises from—and is not independent of—a contract, California law has permitted tort recovery: "in certain contexts, [we have] allowed tort actions to proceed even though they arise from, and are not independent of, a contract, despite the economic loss rule." (*Sheen, supra*, 12 Cal.5th at p. 929.) "In such settings, professionals generally agree to provide 'careful efforts' in rendering contracted-for services, but 'most clients do not know enough to protect themselves by inspecting the professional's work or by other independent means.'" (*Id*.) Such professional services include those offered by doctors, attorneys, accountants, and stockbrokers. (See *Neel v. Magana, Olney, Levy, Cathcart & Gelfand* (1971) 6 Cal.3d 176, 188.) No authority has been cited that suggests vehicle repair service contracts qualify as professional services.

Plaintiff cites *North American Chemical Co. v. Superior Court* (1997) 59 Cal.App.4th 764 as an example of a case in which a tort claim for negligent performance of contract was permitted despite the economic loss rule. However, the California Supreme Court has cabined that case. After quoting the *North American* court's statement that "the same wrongful act may constitute both a breach of contract and an invasion of an interest protected by the law of torts. [Citation.]", the California Supreme Court qualified it by noting that "conduct amounting to a breach of contract becomes tortious only when it also violates a duty independent of

the contract arising from principles of tort law. [Citation.] ' " 'An omission to perform a contract obligation is never a tort, unless that omission is also an omission of a legal duty.' " ' [Citation.]" (*Erlich v. Menezes* (1999) 21 Cal.4th 543, 551.) The high court proceeded to the central question, "is the mere negligent breach of a contract sufficient?" and responded with an unequivocal "no." (*Id*. at p. 552.) The court explained that the remedy for a breach of contract is generally limited to contract law, and recovery in tort is not permitted unless: " '(1) [t]he breach is accompanied by a traditional common law tort, such as fraud or conversion; (2) the means used to breach the contract are tortious, involving deceit or undue coercion or; (3) one party intentionally breaches the contract intending or knowing that such a breach will cause severe, unmitigable harm in the form of mental anguish, personal hardship, or substantial consequential damages.' [Citation.]" (*Id*. at pp. 553–554; see also *Stop Loss Ins. Brokers, Inc. v. Brown & Toland Medical Group* (2006) 143 Cal.App.4th 1036, 1043.) None of those circumstances are alleged to be present here. Moreover, the *North American* court was presented with a contract for services to pack and ship North American's products to its Japanese customers. It's analysis whether plaintiff could state a tortious breach of contract cause of action thus centered on whether plaintiff pled (or could plead) negligent interference with prospective economic advantage. No interference is present in this matter.

Finally, plaintiffs also rely on *Jimenez v. Superior Court* (2002) 29 Cal.4th 473, which holds "the economic loss rule does not necessarily bar recovery in tort for damage that a defective product (e.g., a window) causes to other portions of a larger product (e.g., a house) into which the former has been incorporated." (*Id*., at p. 483.) He argues: "Here, Plaintiff delivered his vehicle for repair and Sunrise Ford failed to properly repair the vehicle. Sunrise Ford has failed to foreclose the possibility that the repair attempt to the subcomponents did not cause damage to the vehicle as a whole." (Opposition, p. 16, ll. 19-21.) The defendant repair center here is Paso Robles Ford. This is presumably a canned brief and this paragraph was not updated. More to the point, it is not defendant's duty to foreclose any possibility at the pleading stage. It is plaintiff's responsibility to plead the cause of action adequately. Here, plaintiff fails to allege how defendant's alleged failure to repair engine issues caused damage to other subcomponents of the vehicle.

The demurrer to this cause of action is sustained with leave to amend.

Summary

1. The demurrer to the 2nd cause of action for fraudulent inducement-concealment is overruled. The court finds the authority of *Dhital v. Nissan North America, Inc.* (2022) 84 Cal.App.5th 828, 840–841 to be persuasive and finds the claim is not barred by the economic loss rule. The court can revist this issue if the California Supreme Court concludes differently.

The court also finds that under the applicable California pleading standards that the cause of action is sufficiently pled.

2. The demurrer to the 3rd cause of action for negligent repair is sustained with leave to amend. The court finds this cause of action is barred by the economic loss rule. No authority has been cited to sugges that vehicle repair contracts qualify for the professional services exception to the rule and the court is not convinced that *North American Chemical Co. v. Superior Court* (1997) 59 Cal.App.4th 764 is applicable here.

Appearances required.