

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 24-2752

TFB MIDATLANTIC 4, LLC; TFB MIDATLANTIC 4 RE, LLC,
Appellants

v.

THE LOCAL CAR WASH, INC.; TREANOR PROPERTIES, LLC; JOHN TREANOR

On Appeal from the U.S. District Court, M.D. Pa.
Judge Daryl F. Bloom, No. 1:21-cv-00299

Before: KRAUSE, PHIPPS, and ROTH, *Circuit Judges*
Submitted: Nov. 4, 2025; Decided: September 21, 2026

NONPRECEDENTIAL OPINION*

PHIPPS, *Circuit Judge*.

Shortly after closing on the purchase of a car-wash facility, the two corporate buyers discovered that the business's finances had been appreciably overstated. The corporate sellers of the car wash were unwilling to agree to rescind the sale, and the buyers did not pay on the promissory note and refused to release funds in an escrow account related to the sale. That conflict led to this litigation in which the buyers sued the sellers as well as their principal shareholder on several grounds (breach of contract, actual or constructive fraud, fraudulent inducement, negligent misrepresentation, and business conspiracy), and the sellers filed counterclaims against the buyers for breach of contract. Before discovery was completed, the buyers moved for partial summary judgment, and the sellers moved for summary judgment on all counts. The presiding Magistrate Judge entered judgment in favor of the sellers on every count and later determined the amount that the sellers were owed in damages for their counterclaims.

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

In this appeal, the buyers challenge the summary judgment rulings. On *de novo* review, and as explained below, with the exception of the business-conspiracy claim, summary judgment was improper because there are genuine issues of material fact as to each of the claims. Accordingly, we will affirm in part and vacate in part the judgment, and remand for further proceedings.

FACTUAL BACKGROUND

Michael Cueter and Bo Wang met as students at the Ross School of Business at the University of Michigan. Afterwards, they worked for the same investment bank, and there, they learned extensively about the car-wash industry. Even after they moved on to new jobs – Cueter became a vice president at J.F. Lehman & Company, and Wang took a position as a senior associate at Juggernaut Capital – their interest in the car-wash industry remained. They looked for opportunities to enter the industry in the Mid-Atlantic region, and they compiled a list of over 300 car washes for potential acquisition as part of their personal investment portfolios.

One of the car washes that caught their attention was The Local Car Wash in Chambersburg, Pennsylvania. It was owned by Treanor Properties, a limited liability company, and operated by The Local Car Wash, Inc., a Pennsylvania corporation with its principal place of business in Pennsylvania. John Treanor, a citizen of Maryland, was the sole member of the limited liability company, and he owned the corporation operating the car wash.

Treanor had operated his own laboratory equipment calibration business for over twenty years before acquiring the car wash in late 2016. After purchasing it, he installed new equipment and financial management software from Sonny's Direct.

In late 2019, Cueter reached out to Treanor via Facebook to gauge his interest in selling The Local Car Wash. Treanor responded that he would be willing to sell the car wash for a price in the range of \$1.2 to \$1.3 million.

Cueter and Wang, neither of whom were citizens of Pennsylvania or Maryland, then deepened their diligence. In addition to visiting the site, they requested the 2019 Profit-and-Loss statement for the car wash, Treanor's bank records, and the car wash's federal income tax returns for 2017 and 2018. Those requests were designed to determine cash flow, which, as Cueter explained to Treanor multiple times, had to be at least \$240,000 a year for the asking price to work.

Treanor responded in part. He provided the 2019 Profit-and-Loss statement, which indicated \$367,151.52 in car-wash sales through October 29. He refused to provide bank records because he comingled the funds of the car wash with his laboratory equipment business and providing them would, as he saw it, reveal proprietary information about his other business. Treanor also could not produce the car wash's federal tax returns from 2017 and 2018 immediately because those had not been prepared.

To prepare those tax returns, Treanor hired a Certified Public Accountant in Clarksburg, Maryland. He gave the CPA access to his bank statements and the financial reports generated by Sonny's Direct. In reviewing those documents, however, the CPA noticed a discrepancy between the amounts deposited and the financial figures reflected in the reports, and she questioned Treanor about that. Treanor responded that "the discrepancy in the accounts[] [is] d[ue] to me pulling cash." E-mail from John Treanor, Owner, The Local Car Wash, to Lesley Leonard, CPA, Sheehan & Leonard, LLC (Nov. 26, 2019, at 10:50 a.m.) (App. 2041–42).

The CPA also inquired about the meaning of the term ‘redemptions’ used in the financial reports generated by the Sonny’s Direct software. The car wash sold unlimited monthly passes to about 180 of its customers, and Treanor explained that term tracked the use of the monthly passes. When a customer used a monthly pass for a car wash, the software would record the price of that wash as a redemption even though the monthly-pass customer did not pay on a per-wash basis. The Sales Detail Report generated by Sonny’s Direct placed parentheses around the redemptions, which is a common indication that those values should be subtracted from the final totals. Nevertheless, based on an instruction from Treanor to disregard the redemptions, the CPA prepared federal income tax returns that did not subtract redemptions from gross receipts. According to those returns, which Treanor provided to Cueter and Wang, the gross receipts for the car wash were \$188,691 for 2017 and \$365,732 for 2018.

Using the information provided by Treanor – the 2019 Profit-and-Loss Statement and the tax returns from 2017 and 2018 – Cueter analyzed the car wash’s cash flow. He concluded that it was nearly \$60,000 above the \$240,000 figure that he and Wang viewed as the minimum feasible amount for them to proceed with the purchase. They then prepared to acquire the car wash through a limited liability company, TFB MidAtlantic 1, LLC, which they owned.

On January 16, 2020, the parties completed a Purchase and Sale Agreement to transfer ownership of the car wash’s real and personal property from Treanor Properties and the Local Car Wash to TFB MidAtlantic 1 for \$1.2 million. Under the terms of that agreement, which was governed by Virginia law, the final sale would not take place until the close of a feasibility period during which the buyer could continue its diligence by “conducting tests, investigations, studies, and inspections” and gaining “access to [the car

wash's] books, records, an[d] information,” as well as “necessary bank statements and records to perform basic proof of cash.” Agreement of Purchase and Sale ¶¶ 4–5 (App. 141–42).

The agreement also included representations about the accuracy of information from the seller. For information previously provided, the agreement represented its accuracy to the best of the seller's knowledge:

[T]o the best of Sellers' knowledge[] . . . [a]ll financial information provided to Purchaser in connection with this Agreement is true and accurate

Id. ¶ 12(m) (App. 146–47). The agreement made a similar representation for later exchanged information:

[T]o the best of Sellers' knowledge[] . . . all financial information to be provided to Purchaser before or during the Feasibility Period or thereafter shall be true and accurate.

Id. (App. 146–48).

Cueter and Wang were active during the feasibility period, which had to be extended three times. They asked over 100 questions about the car wash, including specific inquiries about the business's financial statements, financial tracking procedures, and regularity of auditing. They also renewed their request to see annual bank account statements, but Treanor refused on the same grounds, *viz.*, that doing so would release proprietary information since the account commingled funds from his other business.

Among their continued diligence, one item became a point of focus – the car wash's 2019 federal tax return, which, under the agreement, had to be produced during the feasibility period. Treanor asked the CPA to prepare it, and she again inquired about the disparity between the business's finances and the amount of deposits into Treanor's bank account as well as the inclusion of redemptions in gross receipts. Treanor then reached out to Sonny's Direct for guidance. A representative of Sonny's Direct explained that

“[r]edemptions revenue is counted in Gross and then reduced out to reach Net Sales.” E-mail from Carmisha Dean, Technical Support Supervisor – CarWash Controls, Sonny’s Direct, to John Treanor, Owner, The Local Car Wash (Feb. 6, 2020, at 4:47 p.m.) (App. 2057). After that exchange, Treanor told his accountant that “[t]he report that collects our data of all revenue is true and accurate although the bank account reflects less” because “[t]he adjusted gross income . . . is correct when you back out the discount and refunds,” and “[t]he redemption[s] can be disregarded from that total.” E-mail from John Treanor, Owner, The Local Car Wash, to Lesley Leonard, CPA, Sheehan & Leonard, LLC (Feb. 7, 2020, at 2:58 p.m.) (App. 351). The CPA then prepared the tax return for the car wash without subtracting the redemptions, which resulted in gross receipts of \$430,110.

In February 2020, Cueter reviewed the 2019 federal tax return and copies of the 2017, 2018, and 2019 Sales Detail Reports generated by the Sonny’s Direct software, and he likewise had questions for Treanor about the redemption figures. In response, Treanor stated the redemptions were “not right” and could be ignored. Cueter Dep. 39:20 (App. 4099). To support that position, Treanor directed Cueter to the 2017 or 2018 tax returns in which the redemptions had been included in the calculation of gross receipts.

With the onset of the Covid-19 pandemic, the sale did not close for several months. During that delay, in October 2020, Wang discovered that the car wash had never paid Pennsylvania state sales taxes. It would take at least 45 days to determine the precise amount of the sales tax liability, and to avoid that further delay, the parties agreed that \$150,000 of proceeds from the sale would be deposited into escrow to cover the sales tax liability.

Treanor hired a CPA in Waynesboro, Pennsylvania, to prepare those sales tax returns. Unlike the CPA who prepared his federal tax returns, that accountant subtracted

redemptions and reported lower totals per year than the federal tax returns for those years – about \$39,000 less in 2017, \$78,000 less in 2018, and \$127,000 less in 2019. Treanor did not produce copies of those sales tax returns or disclose the discrepancies to Cueter or Wang.

Meanwhile, the parties continued to prepare to close on the purchase and sale. TFB MidAtlantic 1, LLC assigned its interest in the purchase agreement to two other entities also owned by Cueter and Wang, TFB MidAtlantic 4, LLC and TFB MidAtlantic 4 RE, LLC. And to secure the sale, Treanor Properties loaned the buyers \$100,000, to be paid back over eight years at a 3.0% interest rate to account for the pre-sale loan. Cueter and Wang personally guaranteed that promissory note.

The sale closed on December 18, 2020. As part of that closing, the sellers executed a bring-down certificate, which reaffirmed the accuracy of their representations in the purchase agreement:

The representations and warranties of Seller set forth in the Purchase Agreement . . . are true and correct in all respects as of the date of Settlement as though made on and as of the date of Settlement.

Bring-Down Certificate ¶ 1 (App. 198).

Later that day, with full access to the books, Cueter and Wang discovered that the gross receipts on the federal tax returns were inflated because redemptions were not subtracted from gross receipts. They called Treanor the next morning and asked to rescind the agreement, but he declined. They then refused to make any payments on the promissory note and to release any escrow funds.

PROCEDURAL HISTORY

Within a week, the LLCs owned by Cueter and Wang sued the corporate sellers and Treanor in the Circuit Court for the City of Fredericksburg, Virginia. Alleging that the car wash's gross receipts were substantially inflated, the buyers' complaint, as later amended,

brought several claims against the sellers and Treanor (in an attempt to pierce the corporate veil). Those included breach of contract, actual or constructive fraud, fraudulent inducement, negligent misrepresentation, and business conspiracy.

The sellers and Treanor then removed the action to the United States District Court for the Eastern District of Virginia based on the diversity of the parties and an amount in controversy exceeding \$75,000.¹ *See* 28 U.S.C. §§ 1441(a), 1332(a). *See generally id.* § 1446. Through a joint motion, the parties successfully sought to transfer the case for convenience to the Middle District of Pennsylvania on February 17, 2021. *See id.* § 1404(a). After the transfer and with the parties' consent to the jurisdiction of a Magistrate Judge, *see id.* § 636(c), the sellers and Treanor filed breach-of-contract counterclaims against the buyers for non-payment of the promissory note and for failure to release funds in escrow. In response to those counterclaims, the buyers asserted fraud and fraudulent inducement as affirmative defenses.

As discovery progressed, the buyers subpoenaed the CPA who prepared the car wash's federal tax returns for a deposition. Before that deposition occurred, however, the

¹ Judge Krause would dismiss on the ground that diversity jurisdiction is lacking based on Defendants' failure to affirmatively plead Plaintiffs' citizenship in their Notice of Removal. That Notice alleged only that "Plaintiffs entities are registered Virginia limited liability companies with a principal place of business located [in] . . . Washington, District of Columbia," and "Plaintiff and Defendants are citizens of different states." App. 116. Our sister circuits and some decisions of this Court have concluded that the party invoking federal jurisdiction "must state all parties' citizenships such that the existence of complete diversity can be confirmed." *Chem. Leaman Tank Lines, Inc. v. Aetna Cas. & Sur. Co.*, 177 F.3d 210, 222 n.13 (3d Cir. 1999); *see Smith v. Toyota Motor Corp.*, 978 F.3d 280, 282 (5th Cir. 2020); *D.B. Zwirn Special Opportunities Fund, L.P. v. Mehrota*, 661 F.3d 124, 125 (1st Cir. 2011) (per curiam); *Bautista v. Pan Am. World Airlines, Inc.*, 828 F.2d 546, 552 (9th Cir. 1987). *But cf. Lincoln Benefit Life Co. v. AEI Life, LLC*, 800 F.3d 99, 107 (3d Cir. 2015) ("A State X plaintiff may therefore survive a facial challenge by alleging that none of the defendant association's members are citizens of State X."). Because "the citizenship of an LLC is determined by the citizenship of each of its members," *Zambelli Fireworks Mfg. Co., Inc. v. Wood*, 592 F.3d 412, 418 (3d Cir. 2010), Judge Krause believes Defendants, as the party invoking federal jurisdiction, were required to allege the citizenship of Cueter and Wang, the members of Plaintiff LLC.

buyers moved for partial summary judgment on their breach-of-contract claim, and the sellers and Treanor moved for summary judgment on the buyers' claims as well as their own counterclaims. Although the parties agreed that the deposition of the CPA would take place on a date certain after the opening briefs were filed, the accountant then sought a protective order to quash her deposition based on Maryland's accountant-client privilege. Over the buyers' objections, the Magistrate Judge agreed to stay that deposition until resolution of the summary-judgment motions.

In October 2022, the Magistrate Judge granted summary judgment in favor of the sellers and denied the buyers' motion for partial summary judgment. *TFB MidAtlantic 4, LLC v. Loc. Car Wash, Inc.*, 2022 WL 5250278, at *7–13 (M.D. Pa. Oct. 6, 2022). After denying a motion for reconsideration by the buyers, *TFB MidAtlantic 4, LLC v. Loc. Car Wash, Inc.*, 2022 WL 17069828, at *2–4 (M.D. Pa. Nov. 17, 2022), and with the benefit of supplemental briefing on damages, the Magistrate Judge, in August 2024, awarded \$105,252.88 in damages for breach of the promissory note and ordered the buyers to release the escrow funds, *TFB MidAtlantic 4, LLC v. Loc. Car Wash, Inc.*, 2024 WL 3891097, at *1 (M.D. Pa. Aug. 21, 2024).

Through a timely notice of appeal, the buyers invoked this Court's appellate jurisdiction. *See* 28 U.S.C. § 1291. They now contest the summary judgment order and the order postponing the accountant's deposition.

DISCUSSION

Summary judgment is appropriate for a movant when there is no genuine dispute of material fact and the movant is entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 56(a) ("The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter

of law.”); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (explaining that a dispute is genuine “if the evidence is such that a reasonable jury could return a verdict for the nonmoving party”). In this case, however, there are genuine disputes of material fact that prevent judgment as a matter of law on most of the claims and both counterclaims.

Summary judgment was not appropriate for the breach-of-contract claims and counterclaims. The agreement was governed by Virginia law, which excuses one party’s non-performance of contract obligations after the other party materially breaches its obligations. *See Horton v. Horton*, 487 S.E.2d 200, 204 (Va. 1997) (explaining “[i]f the first breaching party commit[s] a material breach,” then “that party cannot enforce the contract” and “the other party to the contract is excused from performing his contractual obligations”). No one contests that the accuracy-of-information clauses in the asset purchase agreement were material terms, so if the sellers breached those clauses, then the buyers’ non-payment of the promissory note and withholding of consent to release the funds in escrow would have been permissible. Thus, the breach-of-contract claim and the sellers’ counterclaims all hinge on whether the sellers breached the accuracy-of-information clauses.

That issue is subject to dispute. There is some evidence suggesting that Treanor did not know how to account for redemptions and thus did not knowingly provide untrue or inaccurate information. His federal income tax returns treated them one way and his state sales tax returns treated them another way. Also, a representative from Sonny’s Direct told Treanor that “[r]edemptions revenue is counted in Gross and then reduced out to reach Net Sales.” E-mail from Carmisha Dean, Technical Support Supervisor – CarWash Controls, Sonny’s Direct, to John Treanor, Owner, The Local Car Wash (Feb. 6, 2020, at 4:47 p.m. (App. 2057)). But there is also some evidence that Treanor did, to the best of his knowledge,

understand that the redemptions should have been subtracted before determining gross receipts. They were offset by parenthesis, and one of his accountants repeatedly questioned him about the disparity between the financial figures and the amounts in his bank account. Furthermore, after his second accountant prepared the sales tax returns, Treanor would have had reason to doubt the inclusion of redemptions in the final gross receipts figures, but he did not relay that information to the buyers. Due to this genuine dispute of a material fact, it was correct for the Magistrate Judge to deny the buyers' summary-judgment motion but incorrect to grant the sellers' summary-judgment motion. Therefore, that aspect of the order along with the subsequent order awarding damages to the sellers and ordering release of the escrow funds will be vacated as to the sellers' breach-of-contract counterclaims.²

The buyers' fraud-based claims are also subject to a genuine dispute of material fact. Each of the buyers' fraud-based claims under Virginia law – the applicability of which no one contests³ – have a common element of reasonable reliance.⁴ In entering summary

² As an alternative basis for affirmance of summary judgment regarding the breach-of-contract claim and counterclaims, the sellers contend that the buyers sustained no damages because they purchased only the car wash's personal and real property and those were appraised at \$1.2 million. But Virginia law allows expectation damages for breach-of-contract claims, *see Filak v. George*, 594 S.E.2d 610, 613 (Va. 2004) (explaining that, “when a plaintiff alleges and proves nothing more than disappointed economic expectations assumed only by agreement,” it is “the law of contracts” that “provides the remedy for such economic losses”), and the buyers also seek rescission, which is an available remedy for breach of contract, *see, e.g., Young-Allen v. Bank of Am., N.A.*, 839 S.E.2d 897, 900 (Va. 2020) (describing the remedy of equitable rescission of a contract). Thus, even if true, the lack of compensatory damages would not provide an alternative basis for affirming those rulings.

³ *Cf. Oldham v. Pa. State Univ.*, 138 F.4th 731, 749 (3d Cir. 2025) (explaining that for purposes of choice-of-law issues for claims transferred for the convenience of the parties under 28 U.S.C. § 1404(a), the forum state is the state where the original suit was filed).

⁴ *See Cohn v. Knowledge Connections, Inc.*, 585 S.E.2d 578, 581 (Va. 2003) (setting forth the five elements of fraud including “reliance by the party misled”); *Anthony v. Verizon Va., Inc.*, 758 S.E.2d 527, 534 (Va. 2014) (“To establish fraud, ‘it is essential that the defrauded party demonstrates the right to reasonably rely upon the misrepresentation.’” (quoting *Metrocall of Del., Inc. v. Cont'l Cellular Corp.*, 437 S.E.2d 189, 193–94 (Va. 1993))); *Klaiber v. Freemason Assocs., Inc.*, 587 S.E.2d 555, 558 (Va. 2003) (explaining

judgment against the buyers' fraud claims, the Magistrate Judge found that element wanting from the buyers' case. *TFB MidAtlantic*, 2022 WL 5250278, at *9–12. *See generally Mall Chevrolet, Inc. v. Gen. Motors LLC*, 99 F.4th 622, 630 (3d Cir. 2024) (explaining that summary judgment is appropriate when the nonmoving party has not made “a showing sufficient to establish the existence of an element essential to that party’s case . . . on which that party will bear the burden of proof at trial” (alteration in original) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986))).

Consistent with the Magistrate Judge’s assessment, there are reasons to believe that the buyers, like the CPA who prepared the sales tax returns, should have known that the redemptions had to be subtracted out before arriving at gross receipts. The buyers were financially sophisticated and had knowledge of the car wash industry through their experience at an investment bank. They also engaged in a prolonged period of diligence in which they submitted over 100 questions about the car wash, and they had access to the financial reports that identified redemptions – with parentheses around them apparently signifying that they should be subtracted from the final totals.

But there is also evidence suggesting that it was reasonable for them to rely on the information Treanor produced. The CPA whom Treanor hired to prepare the federal tax returns (whose deposition the Magistrate Judge postponed in light of the summary-judgment motions)⁵ did not subtract the redemptions from gross receipts in preparing the

that claims of “actual fraud, fraudulent misrepresentation, or constructive fraud” all require “reliance on [a] false representation”); *Sweely Holdings, LLC v. SunTrust Bank*, 820 S.E.2d 596, 605 (Va. 2018) (explaining that “[o]ne element of fraud, particularly fraud in the inducement, is that the victim ‘reasonably relied upon the misrepresentations . . . that allegedly constituted the fraud’” and that “[a]bsent such reasonable or justifiable reliance, no fraud is established” (second alteration in original) (quoting *Murayama 1997 Tr. v. NISC Holdings, LLC*, 727 S.E.2d 80, 86 (Va. 2012))).

⁵ *Cf. In re Avandia Mktg., Sales & Prods. Liab. Litig.*, 945 F.3d 749, 761 (3d Cir. 2019) (explaining that “[i]f discovery is incomplete, a district court is rarely justified in granting summary judgment, unless the discovery request pertains to facts that are not material to

federal tax returns. In addition, Treanor told Cueter and Wang that the redemptions could be ignored, and indeed they were ignored by the CPA who prepared the federal tax returns. Moreover, after agreeing to the accuracy-of-information clauses in the purchase agreement, Treanor produced those tax returns to Cueter and Wang, and when questioned defended their accuracy.

For these reasons, the issue of whether Cueter and Wang reasonably relied on the information that they received from the sellers is subject to a genuine dispute. Therefore, the order granting summary judgment to the sellers on the buyers' fraud claims will be vacated.

The buyers suggest that their other claims – the fraud claims against Treanor under a piercing-the-corporate-veil theory and the claim for business conspiracy under Virginia law – should necessarily be revived if any of the fraud-based claims are restored. That contention is correct for the piercing-the-corporate-veil theory because the Magistrate Judge did not address Treanor's liability once it determined that summary judgment was appropriate for the corporate sellers. *See generally TFB MidAtlantic*, 2022 WL 5250278, at *7–13. But it is incorrect for the business-conspiracy claim under Virginia law, which as the Magistrate Judge pointed out, has elements separate and apart from breach-of-contract and fraud that were not met. *TFB MidAtlantic*, 2022 WL 17069828, at *3. Accordingly, the judgment will be affirmed as to the business-conspiracy count and vacated for fraud claims against Treanor.

the moving party's entitlement to judgment as a matter of law" (quoting *Shelton v. Bledsoe*, 775 F.3d 554, 568 (3d Cir. 2015))).

CONCLUSION

For the foregoing reasons, the judgment of the District Court will be vacated in part and affirmed in part, with the case remanded for further proceedings consistent with this opinion.