THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH

KRISTEN SCHULZ, **Plaintiff,** **v.** **STORYLINES GLOBAL INC.,** **Defendant.**	**REPORT AND RECOMMENDATION** **Case No. 2:24-cv-00055-JNP-JCB** **District Judge Jill N. Parrish** **Magistrate Judge Jared C. Bennett**

This case is referred to Magistrate Judge Jared C. Bennett under 28 U.S.C. § 636(b)(1)(B).[1] Before the court are two motions: (1) pro se Plaintiff Kristen Schulz's ("Ms. Schulz") Motion for Summary Judgment[2] and (2) Defendant Storylines Global Inc.'s ("Storylines") Motion for Summary Judgment.[3] For the reasons set forth below, the court concludes Ms. Schulz's Motion for Summary Judgment was filed prematurely and that material disputes of fact preclude summary judgment for either party at this time. Consequently, the court recommends denying the parties' cross-motions for summary judgment without prejudice.

BACKGROUND

Storylines is a residential cruise line that sells luxury residential cabins aboard a yet-to-be-built ship called the "*MV Narrative*."[4] Ms. Schulz reserved a unit on the *MV Narrative* by

[1] ECF No. 12.

[2] ECF No. 85.

[3] ECF No. 109.

[4] ECF No. 84 at 2.

entering into a Residence Refundable Deposit Agreement ("Deposit Agreement") with Storylines for a 24-year lease on a residence on the ship and paying a fully-refundable $10,000 deposit.[5] Additionally, Ms. Schulz paid a non-refundable $35,000 fee to join the "Founders Circle," a Storylines program marketed in connection with residential offerings aboard the *MV Narrative*.[6] Among other benefits, Ms. Schulz alleges that her Founders Circle membership ("Founders Circle Agreement")[7] included the right to exercise an ownership upgrade option for "outright purchase" of the shipboard residence she had reserved with her deposit for up to ten years after the *MV Narrative* set sail.[8] According to Ms. Schulz, an "outright purchase" of a residence would automatically carry over to a residence on a subsequent ship at the end of the *MV Narrative*'s oceangoing life without the need to make an additional purchase.[9] Ms. Schulz alleges that Storylines described residences purchased outright as fully inheritable by future estates and beneficiaries, and could be sold at any time.[10]

Ms. Schulz alleges that her initial $10,000 deposit and $35,000 Founders Circle membership fee are both applied as credits toward the milestone payments due for the 24-year

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[5] *Id.* at 8. *See also* Exhibit 8 to ECF No. 85 (Deposit Agreement, signed by both parties on January 19, 2022) (provided to the court in non-electronic format).

[6] ECF No. 84 at 8.

[7] Exhibit 10 to ECF No. 85 (Founders Circle Agreement, signed by both parties on February 1, 2022) (provided to the court in non-electronic format).

[8] ECF No. 84 at 9.

[9] *Id.* at 5, 9.

[10] *Id.* at 5. According to Storylines' marketing materials, "at the end of the initial vessel's 60-year lifespan, owners may roll their holding over to another ship in the Storylines fleet—without the need to make an additional purchase. You and your family can cruise forever, or take advantage of any capital growth in your residence." Exhibit 4 to ECF No. 85 at 1 (Archived Storylines Webpages) (provided to the court in non-electronic format).

lease of the reserved unit, which is then credited toward the "outright purchase" option price if she chooses to exercise it.[11] Therefore, Ms. Schulz alleges that paying the non-refundable fee to join the Founders Circle provided her with the opportunity to lease a residence on the *MV Narrative* while securing the right for ten years past sailing to make an outright purchase of that residence at the parties' agreed-upon price, with occupancy interests transferring to any subsequent Storylines ship.[12]

Before Ms. Schulz signed the Deposit Agreement, Storylines emailed her information, "that may help [Ms. Schulz] to determine whether or not [securing a residence on the *MV Narrative* may be right for [Ms. Schulz]."[13] Therein, a Storylines Residential Advisor stated that Storylines "[has] two options; 24 year lease or outright purchase ([Storylines] do[es] have a few 12 year lease options as well)."[14] Additionally, Ms. Schulz alleges that Storylines' sales brochures described the "flexible purchasing options" of residences as "two options: Outright purchase – benefit from any capital growth, sell your residence at any time[,] or create a dream inheritance. Lease – your residence may also be sold during the 24 year lease. Ownership reverts to Storylines at the end of the lease."[15] Ms. Schulz alleges that Storylines distinguished between

[11] *Id.* at 9.

[12] *Id.*

[13] *Id.* at 6; Exhibit 6 to ECF No. 85 at 1 (Storylines Emails) (provided to the court in non-electronic format).

[14] ECF No. 84 at 6; Exhibit 6 to ECF No. 85 at 1.

[15] ECF No. 84 at 3; Exhibit 2 to ECF No. 85 at 95 (Storylines Brochure) (provided to the court in non-electronic format).

leasing and "outright purchase" throughout its sales brochure, website, and other external messaging.[16]

In another email from Storylines, the Residential Advisor stated that "[a]ll funds will be held in an [e]scow account and will not be used for any part of the ship building process."[17] Ms. Schulz alleges that, at the time, Storylines' website also included the following language: "All deposits are held in secure US based escrow, and are only released to Storylines upon delivery of the vessel, protecting your investment."[18] Ms. Schulz alleges that, later that year, Storylines' website contained the following language: "The initial reservation deposit is held by Storylines and is fully refundable. All subsequent milestone payments are paid into escrow for the duration of the build."[19]

Ms. Schulz states that she relied upon Storylines' website, introductory videos, and other information contained in Residential Advisor emails in deciding to place a deposit on a residence and entering into the Founders Circle Agreement.[20] However, the "Agreement Package" later presented to her did not provide any option for "outright purchase" of a residence on the *MV Narrative*.[21] Instead, the Agreement Package defined the prospective sale of an "Exclusive Perpetual Use License" as the "24 year and life of vessel (LOV) duration of [l]icenses" to

[16] ECF No. 84 at 3-5; ECF No. 85 at 3-5.

[17] ECF No. 84 at 7; Exhibit 6 to ECF No. 85 at 3.

[18] ECF No. 84 at 7; Exhibit 4 to ECF No. 85 at 2.

[19] ECF No. 84 at 7; Exhibit 4 to ECF No. 85 at 2.

[20] ECF No. 84 at 6.

[21] *Id.* at 12. Exhibit 14 to ECF No. 85 (Agreement of Sale of Exclusive Perpetual Use License) (provided to the court in non-electronic format).

exclusively use the reserved cabin.[22] Ms. Schulz claims that for Founders Circle members who had secured an "option for outright purchase," Storylines had replaced this option with a Life of the Vessel ("LOV") lease on the *MV Narrative*, followed by a year-to-year lease for a residence on a subsequent ship in Storylines' fleet.[23]

Therefore, among other claims, Ms. Schulz alleges Storylines breached the Founders Circle Agreement by revoking Ms. Schulz's option for "outright purchase."[24] Ms. Schulz never signed the Agreement Package and requested a refund of her $35,000 membership fee.[25] Ms. Schulz contends that a LOV lease is not equivalent to her interpretation of Storylines' representations regarding an "outright ownership" option because a LOV lease does not provide any way for residents to sell the assigned unit or the unit on a subsequent ship, and this interest does not automatically transfer to a similar residence on a future vessel.[26] Ms. Schulz argues that this represents a significant diminution in the value of the benefits she relied upon when entering into the Founders Circle Agreement.[27] Ms. Schulz claims that Storylines further breached the Founders Circle Agreement by requiring Ms. Schulz's milestone payments to be held in a trust that would be used to fund the construction, design, equipment, fit-out, operations, and

[22] ECF No. 84 at 6; Exhibit 14 to ECF No. 85.

[23] ECF No. 84 at 13.

[24] *Id.* at 15.

[25] *Id.* at 14.

[26] *Id.* at 13, 16.

[27] *Id.* at 16.

management of the ship,[28] contradicting Storylines' assurance that "[a]ll funds will be held in an [e]scrow account and will not be used for any part of the ship building process."[29]

Storylines disputes Ms. Schulz's interpretation of the Founders Circle Agreement and denies making any actionable misrepresentations. Specifically, Storylines denies that the term "outright purchase," which appeared in Storylines' marketing materials, "means a legally binding obligation to provide a fee simple title transfer of a cabin on a ship with absolute ownership, including the right to use, sell, lease, or transfer it freely, with no restrictions."[30] Storylines denies "that this term was ever intended to have this legal meaning and denies that its occasional use obligated it to transfer such fee simple rights to any cabin occupant."[31] Storylines contends that such a "fee-simple type cabin ownership" is a "legal impossibility under maritime law."[32] Specifically, Storylines argues that "maritime law prioritizes the vessel's unity and operational integrity over subdivided real estate-like ownership. Consequently, any 'purchase' of a cabin would typically be a contractual right or leasehold interest, not a transfer of absolute ownership, as the cabin remains inseparable from the vessel's legal and operational structure."[33] Therefore, Storylines asserts that "outright purchase" meant LOV use with rollover to a subsequent ship, not

[28] *Id.* at 13.

[29] *Id.* at 18, 20, 23.

[30] ECF No. 89 at 1-2.

[31] *Id.* at 2.

[32] *See, e.g.*, ECF No. 101 at 2; ECF No. 109 at 3 (citing 46 U.S.C. § 12103; *International Convention on Maritime Liens and Mortgages*, May 6, 1993, IMO Doc. LEG/CONF.9/19, art. 1).

[33] ECF No. 109 at 9.

fee-simple ownership,[34] and that Storylines' use of the phrase was merely promotional shorthand.[35]

Storylines appears to have changed its terminology from "outright purchase" to LOV sometime in 2022 to "avoid confusion"[36] and "clarify[] terms for residents, not concealing a lease-only plan."[37] Additionally, Storylines asserts the "Ownership Upgrade Option for Outright Purchase" listed in the Founders Circle Agreement was contingent on executing a future sales agreement, which Ms. Schulz never signed.[38] Storylines asserts that neither the Deposit Agreement nor the Founders Circle Agreement mandates holding Ms. Schulz's funds in escrow, and they were deposited into Storylines' account consistent with the trust model outlined in the Agreement Package.[39] Storylines states it intended the Deposit Agreement as the complete expression of Storylines' reservation terms, excluding prior marketing or emails.[40]

In response to Storylines' arguments, Ms. Schulz clarified that she *does not* request that Storylines provide individual ownership in any legally impossible way because she does not equate the "outright purchase" option with fee-simple title.[41] Ms. Schulz asserts that the

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[34] ECF No. 101 at 3, 8.

[35] *Id.* at 4.

[36] Exhibit 6 to ECF No. 85 at 34.

[37] ECF No. 102 at 2.

[38] ECF No. 101 at 14; ECF No. 109 at 3.

[39] ECF No. 101 at 6; ECF No. 109 at 4; Exhibit 14 to ECF No. 85 at 5.

[40] ECF No. 102 a 2. *See also* Exhibit 8 to ECF No. 85 at 3 ("This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof, and all understandings, oral agreements, and representations made prior to the Reservation Date are void and/or are superseded by this Agreement.").

[41] ECF No. 103 at 3.

Founders Circle Agreement *does not require* fee-simple ownership and that maritime law might allow for other forms of residential ownership, such as through ownership shares/units.[42] Ms. Schulz states that, even if "outright purchase" means a LOV lease, Storylines still revoked this option by not offering a LOV lease on the subsequent vessel and instead offering a year-to-year lease on a similar residence that can only be used by the original resident or her heirs (so long as they reside on the ship for at least three months), and cannot be sold.[43]

Ms. Schulz filed her Motion for Summary Judgment just four days after filing her Second Amended Complaint. The Second Amended Complaint added claims of fraudulent misrepresentation, fraudulent concealment, and breach of the implied covenant of good faith and fair dealing.[44] Additionally, the Second Amended Complaint revised her requested damages and included a request for punitive damages based upon Storylines' alleged fraudulent conduct.[45] Ms. Schulz moved for summary judgment on all of her claims.[46] Ms. Schulz's summary judgment motion relies in part upon her Second Set of Requests for Admission, which were deemed admitted under Fed. R. Civ. P. 36(a)(3) based on Storylines' untimely response,[47] but later withdrawn by this court.[48] No further discovery has occurred since the filing of Ms. Schulz's Second Amended Complaint and her newly added claims. For example, Ms. Schulz requested to

[42] *Id.* at 3-4; ECF No. 113 at 4.

[43] *Id.* at 2.

[44] ECF No. 84.

[45] *Id.*

[46] ECF No. 85.

[47] ECF No. 111.

[48] ECF No. 121.

postpone the depositions of Storylines' representatives after Storylines failed to timely respond to her third set of discovery requests and, consequently, Storylines chose not to take Ms. Schulz's deposition as scheduled.[49] The operative deadlines for written, fact, and expert discovery have now expired.[50]

STANDARD OF REVIEW

Summary judgment is appropriate only if there is no genuine dispute of material fact and the moving party is entitled to judgment as a matter of law.[51] Whether there is a genuine dispute as to a material fact depends upon whether the evidence presents a sufficient disagreement to require submission to a jury or is so one-sided that one party must prevail as a matter of law.[52] "The mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact."[53] A fact is "material" if it pertains to an element of a claim or defense; a factual dispute is "genuine" if the evidence is so contradictory that if the matter went to trial, a reasonable jury could return a verdict for either party.[54]

When the court is presented with cross motions for summary judgment, it "must view each motion separately, in the light most favorable to the non-moving party, and draw all

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[49] ECF No. 92-1.

[50] ECF No. 49 at 4.

[51] Fed. R. Civ. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

[52] *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251-52 (1986).

[53] *Id.* at 248.

[54] *Id.*

reasonable inferences in that party's favor."[55] "'Cross motions for summary judgment are to be treated separately; the denial of one does not require the grant of another.'"[56]

ANALYSIS

I. The Court Recommends Denying Both Motions for Summary Judgment Without Prejudice.

The court recommends denying the parties' cross-motions for summary judgment without prejudice for the following reasons: (A) the procedural timing of Ms. Schulz's summary judgment motion renders it premature and (B) genuine issues of material fact preclude summary judgment for either party. The court addresses each issue in order below.

A. Ms. Schulz's Summary Judgment Motion Should Be Denied as Premature.

The court recommends Ms. Schulz's summary judgment motion be denied without prejudice because the procedural timing of the motion renders it premature. Ms. Schulz filed her motion just four days after filing her Second Amended Complaint, before Storylines had an opportunity to answer or before either party had a chance to conduct discovery on the newly added claims for fraud and breach of the implied covenant of good faith and fair dealing. Although Rule 56 expressly allows a summary judgment motion to be filed "at any time,"[57] Ms. Schulz's new claims involve fact-intensive inquiries into Storylines' intent, knowledge, timing, and the truth or falsity of Storylines' representations. Summary judgment is rarely appropriate when the factual record on core elements of the claims is so underdeveloped. Additionally, Ms.

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[55] *United States v. Sup. Ct. of N.M.*, 839 F.3d 888, 906-07 (10th Cir. 2016) (citations and quotations omitted).

[56] *Christian Heritage Acad. v. Okla. Secondary Sch. Activities Ass'n*, 483 F.3d 1025, 1030 (10th Cir. 2007) (quoting *Buell Cabinet Co. v. Sudduth*, 608 F.2d 431, 433 (10th Cir. 1979)).

[57] Fed. R. Civ. P. 56(b).

Schulz's motion for summary judgment relies in part on requests for admission that were deemed admitted by operation of Rule 36, but have now been withdrawn, undermining the foundation for her motion.[58]

Even so, Ms. Schulz contends that further discovery is unnecessary because Storylines' intent and belief, as well as the timing of Storylines' knowledge of any maritime law constraints and non-disclosure to Ms. Schulz, are apparent from the existing evidentiary record,[59] and any additional discovery is untimely.[60] The court disagrees. Although Ms. Schulz asserts that certain communications make the record one-sided, the factual issues raised as to contractual meaning and fraudulent intent are central to Ms. Schulz's claims and, as discussed below, remain genuinely disputed. Although the written, fact, and expert discovery deadlines in this case[61] have lapsed as a result of the parties' various discovery disputes, which have stemmed in large part from Storylines' delays in response and production, the court retains discretion to reopen discovery on Ms. Schulz's new claims (e.g., to allow for the depositions of Storylines' representatives on the issues of intent, allow Storylines to designate experts on maritime law issues) before adjudicating these issues.[62]

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[58] ECF No. 121.

[59] ECF No. 103 at 8.

[60] *Id.* at 9.

[61] ECF No. 49.

[62] *See, e.g.*, *Smith v. United States*, 834 F.2d 166, 169 (10th Cir. 1987) ("Whether to extend or reopen discovery is committed to the sound discretion of the trial court and its decision will not be overturned on appeal absent abuse of that discretion. . . . Appellate decisions have identified several relevant factors in reviewing decisions concerning whether discovery should be reopened, including: 1) whether trial is imminent, 2) whether the request is opposed, 3) whether the non-moving party would be prejudiced, 4) whether the moving party was diligent in

The court has previously addressed Storylines' discovery delays and imposed sanctions in its order granting in part and denying in part Ms. Schulz's second motion for 37(b) sanctions.[63] In that same order, the court emphasized that this action should be resolved on its merits and not on procedural technicalities.[64] That conclusion also extends to the expiration of deadlines in the scheduling order. The court should decline to effectively impose an additional sanction on Storylines by adjudicating newly pled claims without allowing any discovery into their core factual elements. Moreover, while the procedural timing of Ms. Schulz's motion alone warrants denial without prejudice, the court also finds that genuine disputes of material fact, particularly concerning Storylines' intent and representations, further preclude summary judgment for either party. Therefore, the court recommends denying Ms. Schulz's motion without prejudice and reopening discovery to allow development of the factual record on her newly added claims.

B. Genuine Issues of Material Fact Preclude Summary Judgment for Either Party

As discussed below, material disputes of fact preclude summary judgment for either party at this time. These are genuine factual disputes regarding: (1) the meaning and intent of the term "outright purchase" in the Founders Circle Agreement; (2) whether Storylines breached the Founders Circle Agreement by failing to hold Ms. Schulz's membership fee in escrow; (3) whether Storylines knowingly misrepresented or concealed material facts with the intent to defraud Ms. Schulz; and (4) whether Storylines acted in good faith.

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obtaining discovery within the guidelines established by the court, 5) the foreseeability of the need for additional discovery in light of the time allowed for discovery by the district court, and 6) the likelihood that the discovery will lead to relevant evidence.").

[63] ECF No. 121.

[64] *Id.* at 15.

1. Meaning and Intent of the Term "Outright Purchase" in the Founders Circle Agreement

At the heart of Ms. Schulz's breach of contract claim is the phrase "outright purchase," which appears in the Founders Circle Agreement as a benefit offered in exchange for her $35,000 membership fee. Ms. Schulz contends that this language unambiguously granted her the option to acquire an ownership interest, distinct from a lease, in a residence aboard the *MV Narrative* or a future vessel. In support, Ms. Schulz cites Storylines' sales brochures, website descriptions, her emails with Storylines' Residential Advisors, and internal communications that she alleges distinguish between lease and ownership and reference ownership on future vessels. Ms. Schulz also asserts these internal communications—acknowledging a shift in marketing language and that customers "were told they would be owners," and that Storylines "always knew this day would come"[65]—demonstrate Storylines' intent to defraud. In contrast, Storylines argues "outright purchase" was used as a form of marketing shorthand, intended to refer to a LOV lease rather than any form of title or ownership. Storylines' discovery responses and answer assert this, albeit with limited evidentiary elaboration.[66]

Because this case is based upon the parties' diversity of citizenship, the court must apply Utah law to Ms. Schulz's claims.[67] Under Utah law, courts are required to look first to the language of the contract to determine its meaning and the intent of the contracting parties.[68]

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[65] ECF No. 85 at 20; Exhibit 5 to ECF No. 85 at 8 (Storylines' Slack Channel Communications) (provided to the court in non-electronic format).

[66] ECF No. 89; ECF No. 114-2.

[67] *See, e.g.*, *Racher v. Westlake Nursing Home Ltd. P'ship*, 871 F.3d 1152, 1162 (10th Cir. 2017).

[68] *See, e.g.*, *Cafe Rio v. Larkin-Gifford-Overton*, LLC, 207 P.3d 1235, 1240 (Utah 2009).

"Where the language within the four corners of the contract is *unambiguous*, the parties' intentions are determined from the plain meaning of the contractual language, and the contract may be interpreted as a matter of law."[69] "Only if the language of the contract is *ambiguous* will [the court] consider extrinsic evidence of the parties' intent."[70] Ambiguity exists if the disputed language "is capable of more than one reasonable interpretation because of uncertain meanings of terms, missing terms, or other facial deficiencies."[71] Utah courts recognize that ambiguity may arise in two ways: (1) facial ambiguity in the language itself, which is a question of law, or (2) ambiguity regarding the parties' intent, which is a question of fact where parol evidence should be admitted to determine the parties' intentions.[72] Thus, before admitting extrinsic evidence, the court must first find facial ambiguity in the contractual language.[73] "Although the terms of an instrument may seem clear to a particular reader—including a judge—this does not rule out the possibility that the parties chose the language of the agreement to express a different meaning," therefore, the court should consider any credible evidence offered to show the parties' intentions.[74] After considering relevant and credible evidence of contrary interpretations, the court must ensure that "the interpretations contended for are reasonably supported by the language of the contract."[75] If these interpretations are reasonably supported, then extrinsic

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[69] *Id.* (emphasis added).

[70] *Id.* (emphasis added).

[71] *Id.* (citing *WebBank v. Am. Gen. Annuity Serv. Corp.*, 54 P.3d 1139, 1145 (Utah 2002).

[72] *Daines v. Vincent*, 190 P.3d 1269, 1275-76 (Utah 2008).

[73] *Id.*

[74] *Ward v. Intermountain Farmers Ass'n*, 907 P.2d 264, 268 (Utah 1995).

[75] *Id.*

evidence is admissible to clarify the ambiguous terms.[76] If unambiguous, then the parties' intentions must be determined solely from the language of the contract.[77] The resolution of the question of the parties' intentions regarding an ambiguous contract may be decided as a matter of law at the summary judgment stage "so long as the parol evidence submitted by the parties is so one-sided that a reasonable factfinder could reach but one conclusion."[78]

Here, the Founders Circle Agreement states the membership includes an "Ownership Upgrade Option for Outright Purchase" at a price of $1,621,984.00.[79] The agreement does not define the phrase "outright purchase," nor does it incorporate any additional documents expressly clarifying what type of ownership interest that term entails. In listing ownership upgrade options, the agreement itemizes three distinct paths: "12 Year Lease," "24 Year Lease," and "Outright Purchase," suggesting they are alternative methods to acquiring access to a cabin. This grouping lends some weight to Storylines' argument that "outright purchase" was intended to describe another form of access or usage of the cabin, rather than a true ownership interest. This could suggest that all three options were alternative use models within the same framework, with some longer or more expensive than others, but not categorically different. In this context, the term "outright purchase" could reasonably be read as shorthand for a premium, longer-term, or indefinite (life of the vessel) lease, rather than as a representation of title or equity interest.

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[76] *Id.*

[77] *Id.*

[78] *In re Prop. Located At 1107 Snowberry St.*, 474 P.3d 481, 490 (Utah 2020).

[79] Exhibit 10 to ECF No. 85 at 5.

At the same time, however, the fact that the other two options are explicitly labeled as "leases" while the third is labeled "outright purchase" could support Ms. Schulz's interpretation that "outright purchase" means ownership distinct from a lease. A purchaser might reasonably assume that "lease" implies limited rights and "purchase" connotes ownership, with meaningful legal differences between the two options. Yet, in arguing that the term "outright purchase" is unambiguous, Ms. Schulz introduces extensive extrinsic evidence to support this interpretation, suggesting the meaning within the four corners of the Founders Circle Agreement is *not* self-explanatory and that Storylines' intent matters. The competing implications of the agreement language, Ms. Schulz's heavy reliance on outside-the-contract statements, and Storylines' contrary explanations reinforce that the phrase "outright purchase" is ambiguous on its face and must be interpreted with the aid of extrinsic evidence.

Because the court finds that the term "outright purchase" is facially ambiguous, the court now turns to whether the parties' intent regarding the meaning of the term can be resolved on the current record. For all the reasons previously discussed, the parties disagree about what the parties understood "outright purchase" to mean at the time the Founders Circle Agreement was signed, and the evidentiary record reflects a genuine dispute over the parties' intentions, which the court cannot resolve at this stage. Although Ms. Schulz argues that her interpretation is the only reasonable one, and that Storylines has not produced any meaningful evidence supporting its interpretation or intent, Storylines has presented *some* evidence via its discovery responses that it understood and communicated "outright purchase" to mean something other than ownership. Although Ms. Schulz has produced credible evidence supporting her understanding, the current record does not eliminate the possibility that a reasonable factfinder could instead

credit Storylines' assertions about industry norms, internal intent, or the evolution of its business model. Conversely, Storylines' current framing of "outright purchase" as marketing shorthand could be viewed as a post hoc rationalization rather than a contemporaneous understanding. This ambiguity presents a disputed issue of fact, precluding summary judgment on Ms. Schulz's breach of contract claim at this time.

2. Whether Storylines Breached the Founders Circle Agreement by Failing to Hold Ms. Schulz's Membership Fee in Escrow

Ms. Schulz also alleges that Storylines breached the Founders Circle Agreement by failing to hold her $35,000 membership fee in escrow, as she claims was promised in promotional and pre-contractual communications. The agreement, as well as the Deposit Agreement, is silent on escrow and does not contain any express provision addressing how funds are to be held or used.[80] However, because the agreement lacks an integration clause,[81] the court may consider extrinsic evidence of the parties' intent to determine whether an escrow arrangement was part of the Founders Circle Agreement.[82]

Ms. Schulz has presented website statements and communications from Storylines representatives that suggest her membership funds would be protected or held separately from operating or shipbuilding expenses. However, Storylines disputes the existence of any binding promise regarding escrow and asserts that no such obligation appears in the operative

[80] Exhibit 10 to ECF No. 85 at 5.

[81] *Id.*

[82] Utah's parol evidence rule dictates that "evidence of contemporaneous conversations, representations, or statements offered for the purpose of varying or adding to the terms of an *integrated* contract," are inadmissible. *Tangren Family Trust v. Tangren*, 182 P.3d 326, 330 (Utah 2008). The Founders Circle Agreement lacks such an integration clause, therefore this evidence is admissible to decode the parties' intent.

agreements. Whether an escrow requirement was part of the parties' understanding is a question of contract formation and intent, which is inherently fact-bound and cannot be resolved on summary judgment at this time. As with the "outright purchase" issue, the parties offer competing interpretations, supported by differing factual narratives, and the resolution of this question will depend on weighing credibility and context. These are functions reserved for the trier of fact.

3. Whether Storylines Knowingly Misrepresented or Concealed Material Facts With the Intent to Defraud Ms. Schulz

Genuine disputes of material fact preclude summary judgment on Ms. Schulz's claims for fraudulent misrepresentation and fraudulent concealment, both of which require proof that Storylines intended to mislead Ms. Schulz regarding the nature of the "outright purchase" option and the handling of her membership fee. To prevail on a fraud claim under Utah law, Ms. Schulz must prove (1) a representation by Storylines; (2) concerning a presently existing material fact; (3) which was false; (4) and which Storylines either (a) knew to be false or (b) made recklessly, knowing Storylines had insufficient knowledge upon which to base such representation; (5) for the purpose of inducing Ms. Schulz to act upon it; (6) that Ms. Schulz, acting reasonably and in ignorance of its falsity; (7) did in fact rely upon it; (8) was thereby induced to act; (9) to her injury and damage.[83]

Ms. Schulz's fraud claims are predicated on alleged misrepresentations by Storylines regarding the nature of the "outright purchase" option as well as the use of her Founders Circle membership fee—specifically, that she would acquire a form of ownership distinct from a lease,

[83] *Dugan v. Jones*, 615 P.2d 1239, 1246 (Utah 1980).

and that her funds would be held in escrow. Storylines denies that any such representations were false or misleading, asserting that the "outright purchase" language was used in good faith and internally understood to mean a LOV lease. Although Ms. Schulz has presented evidence that Storylines promoted the "outright purchase" option using ownership terminology and made statements that her funds would be protected, the truth or falsity of those representations, and more importantly, whether Storylines knew or should have known they were false when made, are fact-intensive questions that cannot be resolved on summary judgment. Whether Storylines acted with fraudulent intent or merely communicated imprecisely in the early stages of a complex, evolving business model remains an open question.

Ms. Schulz's fraud claims also depend on whether Storylines knowingly misrepresented its ability to deliver what it promised (and, as discussed above, what was promised regarding "outright purchase" remains in dispute) while knowing that maritime law prohibited the type of ownership allegedly promised to her. This contention directly implicates Storylines' state of mind, which is a quintessential issue of fact. Discovery to date has not fully explored what legal advice Storylines has received, when it became aware of the constraints imposed by maritime law, or whether it deliberately withheld that information from customers like Ms. Schulz. Consequently, whether Storylines acted with fraudulent intent or merely miscommunicated its legal model is a factual question that cannot be resolved as a matter of law.

4. Whether Storylines Acted in Good Faith

Finally, whether Storylines acted in good faith in its performance of the Founders Circle Agreement presents a genuine issue of material fact that precludes summary judgment at this stage. "In Utah, virtually every contract imposes upon each party a duty of good faith and fair dealing, the violation of which gives rise to a claim for breach of contract."[84] This duty is not based on express contractual terms but is instead implied to ensure that neither party will "intentionally or purposely do anything which will destroy or injure the other party's right to receive the fruits of the contract."[85] This covenant requires that "a party's actions must be consistent with the agreed common purpose and the justified expectation of the other party."[86] Therefore, "[t]he purpose, intentions, and expectations of the parties should be determined by considering the contract language *and* the course of dealings between and conduct of the parties."[87]

Ms. Schulz's claim for breach of the implied covenant of good faith and fair dealing rests on her contention that Storylines intentionally deprived her of the benefit of her alleged bargain.[88] She alleges Storylines not only failed to honor the parties' arrangement but actively shifted its business model and contractual interpretation while continuing to market "ownership" options in a way that was inconsistent with her justified expectations.

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[84] *Oakwood Vill. LLC v. Albertsons, Inc.*, 104 P.3d 1226, 1239 (Utah 2004) (citing *St. Benedict's Dev. Co. v. St. Benedict's Hosp.*, 811 P.2d 194, 199-200 (Utah 1991)).

[85] *St. Benedict's*, 811 P.2d at 199.

[86] *Id.* at 200.

[87] *Id.* (emphasis in original).

[88] ECF No. 85 at 28-29.

Storylines disputes this characterization. Storylines maintains it has acted consistently with the Founders Circle Agreement, that the term "outright purchase" was never intended to confer ownership in a legal sense, and that it met its duty by offering a LOV license and offering Ms. Schulz a refund of her $10,000 deposit once she objected to the terms in the Agreement Package. Resolution of this claim turns on several factual questions the court has previously discussed: (1) the parties' understanding of the phrase "outright purchase" and whether Ms. Schulz's expectations were objectively reasonable; (2) whether Storylines' alleged representations about escrow created justified expectations; and (3) whether Storylines' conduct, including the evolution of its offerings and communications, amounted to purposeful interference with the benefit of Ms. Schulz's bargain. Because the parties dispute the meaning of these terms, the common purpose of the Founders Circle Agreement, and the reasonableness of Ms. Schulz's expectations in light of Storylines' conduct, summary judgment for either party is inappropriate on Ms. Schulz's claim for breach of the implied covenant of good faith and fair dealing at this stage.

CONCLUSION AND RECOMMENDATION

Based on the foregoing analysis, the court HEREBY RECOMMENDS:

1. Ms. Schulz's Motion for Summary Judgment[89] be DENIED WITHOUT PREJUDICE.

2. Storylines Motion for Summary Judgment[90] be DENIED WITHOUT PREJUDICE.

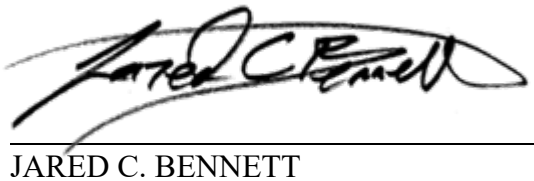
3. If this recommendation is adopted, the court FURTHER RECOMMENDS that the parties meet and confer within 21 days after the issuance of Judge Parrish's Memorandum Decision and Order to discuss whether they will file a Motion for Amended Scheduling Order or request that this matter be set for trial.

NOTICE TO PARTIES

Copies of this Report and Recommendation are being sent to all parties, who are hereby notified of their right to object.[91] The parties must file any objections to this Report and Recommendation within 14 days after being served with a copy of it.[92] Failure to object may constitute waiver of objections upon subsequent review.

DATED this 12th day of August 2025.

BY THE COURT:



JARED C. BENNETT
United States Magistrate Judge

[89] ECF No. 85.

[90] ECF No. 109.

[91] 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2).

[92] 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2).