S T A T E O F M I C H I G A N

C O U R T O F A P P E A L S

MATTHEW SIMONCINI, Plaintiff-Appellant, v MATTHEW HARWOOD, MELANIE HARWOOD, and HARWOOD MOTORS, LTD., Defendants-Appellees.	UNPUBLISHED September 15, 2026 11:03 AM No. 372104 Wayne Circuit Court LC No. 20-016441-CZ

Before: LETICA, P.J., and RICK and GARRETT, JJ.

PER CURIAM.

In this dispute involving the sale of a vintage Corvette, plaintiff appeals as of right the trial court's order granting summary disposition to defendants, Matthew Harwood, Melanie Harwood,[1] and Harwood Motors, Ltd., under MCR 2.116(C)(10). We affirm in part, reverse in part, and remand for further proceedings.

I. FACTUAL AND PROCEDURAL HISTORY

This case involves the sale of a rare 1968 Chevrolet Corvette L89 (the Corvette). Matthew and Melanie, both Ohio residents, are the co-owners of Harwood Motors, Ltd., an Ohio company that specializes in the sale of vintage automobiles. Harwood Motors lists all of its available vehicles on its website, and in September 2019, advertised the Corvette for sale. The listing described the Corvette as a "special find" that had "a fantastic combination of restored and original parts that make for a fantastic presentation." It also represented that the Corvette had been "recently and extensively serviced, runs superbly, and has no issues so it's ready to drive and enjoy."

[1] Because the individual defendants, Matthew and Melanie Harwood, share the same last name, we will refer to them by their first names to avoid confusion.

Plaintiff, a Michigan resident and vintage car collector, e-mailed Matthew to inquire about the Corvette. They later spoke on the phone, and plaintiff alleges that Matthew affirmed that the representations in the online listing for the Corvette were accurate. Plaintiff offered Matthew $90,000 in cash for the Corvette, and Matthew accepted the offer the same day. In his e-mail to plaintiff, Matthew advised that he had driven the Corvette and that it was functionally sound: "Having driven this Corvette personally, I'll vouch for the fac [sic] that it's a great deal of fun to drive and mechanically excellent."

The parties electronically executed a purchase agreement, and plaintiff had the Corvette delivered to his home in Michigan. Plaintiff claims that the Corvette did not work properly when it arrived. He took the car to a local classic Corvette mechanic who examined the vehicle and identified numerous serious issues, including the fact that the Corvette had sustained extensive damage from a collision that had not been properly repaired. Shortly thereafter, the Corvette caught fire while plaintiff was operating it.

Plaintiff filed the instant suit in December 2020 for breach of express warranties, breach of implied warranties, fraudulent and innocent misrepresentation, violations of the Michigan Consumer Protection Act (MCPA), MCL 445.901, *et seq*., and unjust enrichment. Defendants moved for summary disposition under MCR 2.116(C)(10), arguing that Ohio law applied to the claims in plaintiff's complaint. According to defendants, the "as is" provision in the purchase agreement effectively disclaimed all express and implied warranties, and plaintiff could not assert fraud or unjust-enrichment claims which arose out of the breach of an express contract. Finally, because Ohio law applied to the transaction, defendants contended that plaintiff could not assert an MCPA claim.

The court held oral argument on the motion but did not render a decision at the hearing. More than two years later, the trial court issued an order adopting defendants' arguments in support of their motion and dismissing plaintiff's claims with prejudice. This appeal followed.

II. STANDARDS OF REVIEW

An appellate court reviews a trial court's decision to grant or deny a motion for summary disposition de novo. *Rory v Continental Ins Co*, 473 Mich 457, 464; 703 NW2d 23 (2005). "A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint." *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999); *Girimonte v Liberty Mut Ins Co*, 348 Mich App 768, 773; 19 NW3d 921 (2023). When reviewing a motion brought under MCR 2.116(C)(10), the trial court considers affidavits, pleadings, depositions, admissions, and documentary evidence filed or submitted by the parties in the light most favorable to the nonmoving party. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). If the moving party meets its initial burden, "[t]he burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists." *Id*.; see also *Pittsfield Charter Twp v Washtenaw Co Treasurer*, 338 Mich App 440, 448; 980 NW2d 119 (2021). When the nonmoving party has the burden of proof at trial, it must submit evidence that demonstrates a genuine issue of material fact exists and may not rest on mere allegations or denials in the pleadings. *Quinto*, 451 Mich at 362. "If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted." *Id*. at 363. In other words, "[i]f no facts are in dispute, and if reasonable minds could not differ regarding the legal effect of those facts, whether summary disposition is proper is a question of law for the Court." *Estate of Miller v Angels' Place, Inc*, 334 Mich App 325, 330; 964 NW2d 839 (2020).

We review questions regarding choice of law de novo. *Frydrych v Wentland*, 252 Mich App 360, 363; 652 NW2d 483 (2002). "Moreover, questions involving the proper interpretation of a contract or the legal effect of a contractual clause are also reviewed de novo." *Rory*, 473 Mich at 464. Unconscionability of a particular contractual provision generally presents a question of law, *Krupp PM Engineering, Inc v Honeywell, Inc*, 209 Mich App 104, 108; 530 NW2d 146 (1995), and this Court reviews these questions of law de novo, *In re Estate of Hoppert*, 347 Mich App 450, 465; 15 NW3d 337 (2023). Finally, questions of statutory interpretation are reviewed de novo. *Johnson v Johnson*, 329 Mich App 110, 118; 940 NW2d 807 (2019).

III. CHOICE OF LAW

Plaintiff first contends that the trial court erred by adopting defendants' argument that Ohio law applies to this dispute.[2] We conclude that the trial court correctly applied Ohio law to plaintiff's contract claim but hold that the trial court erred when it employed Ohio law to analyze plaintiff's remaining causes of action.

When a contract relates to the sale of goods, the Michigan Uniform Commercial Code (UCC), MCL 440.1101, *et seq*., will govern the transaction. *Neibarger v Universal Cooperatives, Inc*, 439 Mich 512, 519-520; 486 NW2d 612 (1992). The Michigan UCC provides that in the absence of an agreement regarding the choice of law that will apply to the transaction, the Michigan UCC "applies to transactions bearing an appropriate relation to this state." MCL 440.1301(2). However, the UCC "keeps intact those areas of the common law not superseded by specific provisions of the UCC." *Huron Tool & Engineering Co v Precision Consulting Servs, Inc*, 209 Mich App 365, 374; 532 NW2d 541 (1995); see also MCL 440.1103(2).

Historically, courts in Michigan construed contracts that did not include a choice-of-law provision "according to the law of the place where the contract was entered into." *Chrysler Corp v Skyline Indus Servs, Inc*, 448 Mich 113, 122; 528 NW2d 698 (1995). However, the *Chrysler* Court recognized the evolution from this traditional method and endorsed the approach found in the Restatement (Second) Conflict of Laws. *Id*. at 123. Under the Restatement, in the absence of an effective choice of law by the parties,

> the contacts to be taken into account in applying the principles of § 6 to determine the law applicable to an issue include:
>
> (a) the place of contracting,

[2] When a case involves a choice-of-law determination, the forum state's choice-of-law rules apply. See *Jones v State Farm Mut Auto Ins Co*, 202 Mich App 393, 397; 509 NW2d 829 (1993). Accordingly, we will use Michigan law to make the threshold determination of which state's substantive law applies to each claim, and then the relevant claims will be analyzed under the applicable state's substantive law.

> (b) the place of negotiation of the contract,
>
> (c) the place of performance,
>
> (d) the location of the subject matter of the contract, and
>
> (e) the domicil, residence, nationality, place of incorporation and place of business of the parties. [1 Restatement Conflict of Laws, 2d, § 188(2).]

The place of contracting, under the Restatement, is "the place where occurred the last act necessary, under the forum's rules of offer and acceptance, to give the contract binding effect . . . ." *Id.*, comment *e*. "The question of when and where the parties became contractually bound depends on their intention as manifested by their verbal statements and conduct in the light of all the circumstances." *Lake States Engineering Corp v Lawrence Seaway Corp*, 15 Mich App 637, 642; 167 NW2d 320 (1969).

The place of contracting rarely stands alone and must be considered along with the other factors. Restatement, § 188, comment *e*. Likewise, the place of negotiation is not significant when the parties negotiated the contract by phone or mail. *Id.*

When a contract deals with a specific physical object, the location of the object is a significant factor for the court to consider. *Id.* "Indeed, when the thing . . . is the principal subject of the contract, it can often be assumed that the parties, to the extent that they thought about the matter at all, would expect that the local law of the state where the thing . . . was located would be applied to determine many of the issues arising under the contract." *Id.*

For noncontractual claims, we use a different framework to evaluate whether the application of Michigan law is warranted. In such cases, "we will apply Michigan law unless a 'rational reason' to do otherwise exists." *Sutherland v Kennington Truck Serv, Ltd*, 454 Mich 274, 286; 562 NW2d 466 (1997). To determine whether there is a rational reason to displace Michigan law, a two-step analysis is required:

> First, we must determine if any foreign state has an interest in having its law applied. If no state has such an interest, the presumption that Michigan law will apply cannot be overcome. If a foreign state does have an interest in having its law applied, we must then determine if Michigan's interests mandate that Michigan law be applied, despite the foreign interests. [*Id.*]

In *Nesbitt v American Community Mut Ins Co*, 236 Mich App 215, 228; 600 NW2d 427 (1999), this Court addressed whether an MCPA claim could be raised to challenge an out-of-state insurance policy. In *Nesbitt*, the plaintiff, an Ohio resident, purchased an insurance policy in Ohio. The plaintiff claimed that the defendant committed an unfair trade practice contrary to the MCPA by deliberately misrepresenting the meaning of "preexisting condition" to discourage the plaintiff from filing a suit. *Id.* at 226. The parties agreed to apply Ohio law to the interpretation of the insurance contract because the plaintiff executed the contract in Ohio and resided there at the pertinent time. *Id.* at 220. But the defendant alleged that the MCPA claim only protected Michigan consumers and would not govern an insurance policy purchased in Ohio by Ohio residents. Yet, the defendant failed to dispute that its home office was located in Livonia, Michigan, and all correspondence sent by the defendant to the plaintiff originated from the "Michigan base of operations[.]" *Id*. at 228. This Court held that the plaintiff could assert an MCPA claim because "the language of the MCPA itself not only implies no exclusion of residents from other states, but instead implies broad applicability." *Id*. Consequently, a party to a contract may invoke the protections of the MCPA for deceptive practices related to a contract even if the contract was formed in another state and the other state's substantive law governs the interpretation of the contract. *Id*.

Here, plaintiff's first two claims allege that defendants breached the express and implied warranties applicable to the sale of the Corvette under Article 2 of Michigan's UCC. The purchase agreement did not include a choice-of-law provision, and there is no indication in the record that the parties came to any understanding as to which state's law would apply to the sale. Under MCL 440.1301(2), Michigan law applies "to transactions bearing an appropriate relation to this state." But because this provision does not specifically displace the common-law test espoused in *Chrysler*, we must consider the Restatement's choice-of-law analysis even though the transaction is subject to the UCC. Consequently, we must determine whether the "(a) the place of contracting, (b) the place of negotiation of the contract, (c) the place of performance, (d) the location of the subject matter of the contract, and (e) the domicil, residence, nationality, place of incorporation and place of business of the parties" favor the application of Michigan or Ohio law. Restatement, § 188(2).

The first factor, i.e., the place of contracting, requires us to examine "the place where occurred the last act necessary, under the forum's rules of offer and acceptance, to give the contract binding effect . . . ." *Id*., comment *e*. The UCC provides the following regarding the formation of contracts:

> (1) A contract for sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract.
>
> (2) An agreement sufficient to constitute a contract for sale may be found even though the moment of its making is undetermined.
>
> (3) Even though one or more terms are left open a contract for sale does not fail for indefiniteness if the parties have intended to make a contract and there is a reasonably certain basis for giving an appropriate remedy. [MCL 440.2204.]

Here, the trial court opined at the summary disposition hearing that the parties formed a contract by e-mail several days before the written agreement, containing the "as-is" and "where-is" language, was signed. Indeed, the e-mail correspondence between plaintiff and Matthew demonstrates that the parties reached an agreement for the sale of the Corvette on September 25, 2019. First, plaintiff wrote to Matthew saying that he "would like to formally offer you $90,000 cash for the car." Matthew responded with, "Great, we have a deal at $90,000." These e-mails make clear that the parties reached an agreement regarding the material terms of the sale on September 25, 2019, when Matthew accepted plaintiff's offer to purchase the Corvette and announced that they had a deal. Matthew's acceptance, which occurred in Ohio, was the last step necessary to form a binding contract. Accordingly, this factor weighs in favor of applying Ohio law.

The next factor that we must consider is the place of negotiation. Restatement, § 188(2)(b). Because the parties negotiated the contract over the phone and by e-mail while physically present in Michigan and Ohio, this factor does not weigh in favor of either state.

Next is the place of performance. Restatement, § 188(2)(c). The parties disagree as to which state this factor favors and focus on which party had greater performance obligations under the terms of the contract. However, the parties had obligations under the contract which were performed in their respective home states. Defendants were obligated to transfer the Corvette to plaintiff, and the purchase agreement provided that the transfer would take place at Harwood Motors' premises in Ohio. Additionally, plaintiff was required to pay the purchase price for the vehicle, which he did from his home in Michigan. Consequently, the parties had obligations under the purchase agreement which they completed in Michigan and Ohio. This factor does not favor either state.

The parties also disagree about which state the fourth factor favors, i.e., the location of the subject matter of the contract. During the negotiation, formation, and performance of the contract, the Corvette was located in Ohio. It was only after the parties performed their obligations under the contract, i.e., payment of the purchase price and transfer of the Corvette at Harwood Motors in Ohio, that the Corvette was delivered to Michigan. Consequently, during all relevant periods under the purchase agreement, the car was located in Ohio. This factor favors the application of Ohio law.

The final factor, the location of the parties, does not weigh in favor of either state. The individuals involved in this suit are domiciled in Michigan and Ohio. Additionally, Harwood Motors is an Ohio company with a principal place of business in Ohio. Consequently, this factor does not favor either state.

After consideration of the factors enumerated in the Restatement, an approach which was adopted by the Michigan Supreme Court in *Chrysler*, we conclude that Ohio law is applicable to plaintiff's contractual claims.

This is not the end of the inquiry, however, because the choice-of-law analysis for plaintiff's other claims is not the same as the analysis for his contract claims. For plaintiff's tort and equitable claims, we "apply Michigan law unless a 'rational reason' to do otherwise exists." *Sutherland*, 454 Mich at 286. Accordingly, we must determine (1) "if any foreign state has an interest in having its law applied" and, if so, (2) whether "Michigan's interests mandate that Michigan law be applied, despite the foreign interests." *Id*. The law of the jurisdiction with the greater interest applies. *Radeljak v DaimlerChrysler Corp*, 475 Mich 598, 610; 719 NW2d 40 (2006). Although this analysis "most frequently favors using the forum's (Michigan's) law, Michigan courts nonetheless use another state's law where the other state has a significant interest and Michigan has only a minimal interest in the matter[.]" *Hall v Gen Motors Corp*, 229 Mich App 580, 585; 582 NW2d 866 (1998). The mere fact that a party has its residence in a foreign state, without more, "is insufficient to support the choice of a state's law." *Sutherland*, 454 Mich at 287.

Applying this framework, Michigan law governs plaintiff's tort and equitable claims. Plaintiff resides in Michigan, and he alleges that defendants sold him a car that was unsafe to drive despite representations to the contrary. Michigan has a strong interest in protecting its residents from fraudulent conduct and ensuring that the cars traveling on its roadways are safe. Although Ohio has an interest in having its law applied because defendants reside and operate a business in Ohio, this interest is insufficient to displace the strong presumption in favor of Michigan law in light of the connection Michigan has to the case. *Hall*, 229 Mich App at 585. Accordingly, Michigan has a greater interest, and Michigan law applies to plaintiff's tort and equitable claims.

Likewise, plaintiff's MCPA claim can proceed despite Ohio law's application to plaintiff's contractual claims. Because the MCPA is remedial in nature, it must be liberally construed to achieve its intended goals. *Jordan v Transnational Motors, Inc*, 212 Mich App 94, 98; 537 NW2d 471 (1995). The MCPA applies to "a person who suffers loss" for an MCPA violation, MCL 445.911(2), or in the context of a class action, to all "persons residing or injured in this state," MCL 445.911(4), such that MCPA relief is warranted. This is true even if the remedies are sought in connection with a contract that is governed by another state's laws. *Nesbitt*, 236 Mich App at 228. Because plaintiff both resides in and was allegedly injured in this state, he may raise an MCPA claim. Consequently, the trial court erred by adopting defendants' argument that the application of Ohio law barred plaintiff's MCPA claim.

In sum, the trial court did not err when it adopted defendants' argument that plaintiff's contractual claims are governed by Ohio law. But, using the separate framework for noncontractual claims, the trial court erred when it adopted defendants' arguments and applied Ohio law to plaintiff's statutory, equitable, and tort claims.

IV. BREACH-OF-WARRANTY CLAIMS

Plaintiff argues that the trial court erred when it dismissed his breach-of-warranty claims because the warranty disclaimer provision in the purchase agreement was unenforceable. We agree that the trial court erred when it dismissed plaintiff's claim for breach of an express warranty. However, the contractual "as is" clause effectively disclaimed all implied warranties, and therefore, the trial court did not err when it dismissed plaintiff's claim for breach of implied warranties.

Under Ohio law, "[w]hen a transaction involves only the sale of goods, as defined in RC 1302.01(A)(8), a court can conclude, without further inquiry, that the case is governed by the UCC." *H & C Ag Servs, LLC v Ohio Fresh Eggs, LLC*, 2015-Ohio-3714, ¶ 33; 41 NE3d 915 (Ohio App, 2015). Motor vehicles fall within the statutory definition of goods, and so the sale of a used car is governed by Ohio UCC. *Sellers v Morrow Auto Sales*, 124 Ohio App 3d 543, 546; 706 NE2d 837 (1997).

The Ohio UCC provides that a seller may create express warranties in the following ways:

> (1) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

> (2) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.
>
> (3) Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model. [Ohio Rev Code Ann 1302.26(A) (West).]

Express warranties can be made through verbal representations. *Sellers*, 124 Ohio App 3d at 546. But "an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty." Ohio Rev Code Ann 1302.26(B) (West). To determine whether an express warranty was made, "[t]he sole question is whether the language * * * [is] fairly to be regarded as part of the contract." *Mitchell v Michael J Auto Sales*, 2022-Ohio-2591, ¶ 19; 194 NE3d 428 (Ohio App, 2022) (quotation marks and citation omitted; alterations in original). "If language is used after the closing of the deal * * * the warranty becomes a modification, and need not be supported by consideration if it is otherwise reasonable and in order." *Id*. (quotation marks and citation omitted). "A seller's breach of an express warranty can give rise to the buyer's right to recover incidental and consequential damages." *Volovetz v Tremco Barrier Solutions, Inc*, 2016-Ohio-7707, ¶ 22; 74 NE3d 743 (Ohio App, 2016).

In addition to any express warranties, the Ohio UCC also provides that certain warranties may be implied. *Banks v Shark Auto Sales LLC*, 2022-Ohio-3489, ¶ 10; 197 NE3d 50 (Ohio App, 2022). First, there is an implied warranty of merchantability. Ohio Rev Code Ann 1302.27 (West). "[A] warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind" unless the parties modify or exclude the implied warranty of merchantability. Ohio Rev Code Ann 1302.27(A) (West). To meet this merchantability requirement, the goods sold must be, among other things, "fit for the ordinary purposes for which such goods are used." Ohio Rev Code Ann 1302.27(B)(3) (West). Second, there is an implied warranty of fitness for a particular purpose:

> Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under section 1302.29 of the Revised Code an implied warranty that the goods shall be fit for such purpose. [Ohio Rev Code Ann 1302.28 (West).]

The parties may, however, agree to limit both express and implied warranties. *Johnson v TKP Auto Sales, Inc*, 2025-Ohio-2930, ¶ 12; 271 NE3d 975 (Ohio App, 2025). To limit the implied warranties, the contract's language must be conspicuous, but "unless the circumstances indicate otherwise all implied warranties are excluded by expressions like 'as is', 'with all faults', or other language which in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty." Ohio Rev Code Ann 1302.29(B)-(C) (West). See also *Johnson*, 2025-Ohio-2930 at ¶ 12 ("An 'as is' clause in a sales contract normally excludes any implied warranties.").

But "express oral warranties made to a buyer can survive an 'as-is' clause." *Id*. (quotation marks and citation omitted). "When the sales contract includes an express warranty in addition to an 'as is' clause, 'the phrase "as is" excludes all warranties *except* those expressly made to the buyer.' " *Id*. (citation omitted). The reviewing court must endeavor to construe words or conduct relevant to the creation of an express warranty and words or conduct that negates or limits warranties consistent with each other whenever reasonable, but "negation or limitation is inoperative to the extent that such construction is unreasonable." Ohio Rev Code Ann 1302.29(A) (West). See also *Mitchell*, 2022-Ohio-2591, ¶ 20 ("[W]here the 'as-is' clause cannot be reasonably construed as consistent with the seller's oral express warranty, the express warranty will prevail and the inconsistent provisions deemed inoperative to the extent they are unreasonable.") (quotation marks and citation omitted).

If a court finds that a clause in a contract was unconscionable at the time it was made, the court may refuse to enforce the unconscionable clause. Ohio Rev Code Ann 1302.15(A) (West). "Generally, contracts or clauses thereof are 'unconscionable' where one party has been misled as to the 'basis of the bargain,' where a severe imbalance in bargaining power exists, or where specific contractual terms are outrageous." *Orlett v Suburban Propane*, 54 Ohio App 3d 127, 129; 561 NE2d 1066 (1989). Consequently, "[u]nconscionability embodies two separate concepts: (1) substantive unconscionability, i.e., 'those factors which relate to the contract terms themselves and whether they are commercially reasonable,' and (2) procedural unconscionability, i.e., 'those factors bearing on the relative bargaining position of the contracting parties.' " *Hurst v Enterprise Title Agency, Inc*, 157 Ohio App 3d 133, 141; 2004-Ohio-2307; 809 NE2d 689 (2004) (citations omitted).

In the first claim in plaintiff's complaint, plaintiff asserted that defendants marketed the vehicle as safe to drive, in excellent condition, and having no prior accident history. These express warranties formed the basis of the bargain and influenced plaintiff's decision to purchase the Corvette. The website advertising the Corvette was replete with specific promises about the restoration and operability of the vehicle, including the representation that the car "has been recently and extensively serviced, runs superbly, and has no issues so it's ready to drive and enjoy." Plaintiff spoke with Matthew on the phone before making an offer for the vehicle, and Matthew allegedly confirmed that the representations made in the online description of the Corvette were accurate. Indeed, in his e-mail accepting plaintiff's $90,000 offer for the vehicle, Matthew told plaintiff that he had personally driven the Corvete and he vouched for "the fac (sic) that it's a great deal of fun to drive and mechanically excellent."

Under Ohio law, defendants' written promises about the operability of the vehicle made by the seller to the buyer which related to the condition of the car and became part of the basis of the bargain created an express warranty. Ohio Rev Code Ann 1302.26(A)(1) (West). "When the sales contract includes an express warranty in addition to an 'as is' clause, 'the phrase "as is" excludes all warranties *except* those expressly made to the buyer.' " *Johnson*, 2025-Ohio-2930 at ¶ 12 (citation omitted). If the express warranty cannot be read consistently with the disclaimers in the purchase agreement, the disclaimers are ineffective. Ohio Rev Code Ann 1302.29(A) (West).

Here, the written promises made by defendants both on the Harwood Motors' website and in Matthew's e-mail message regarding the restoration and operability of the vehicle formed express warranties. The purchase agreement's disclaimers provided that Harwood Motors could not guarantee the condition of the vehicle's mechanical equipment. But Matthew promised plaintiff that he could personally vouch for the fact that the car was "mechanically excellent." Because the express warranties made to plaintiff that became a part of the bargain were fundamentally incompatible with the written disclaimers in the purchase agreement, the disclaimers are ineffective. Ohio Rev Code Ann 1302.29(A) (West). Accordingly, the trial court erred when it dismissed plaintiff's express warranty claim, and reversal is required.

Plaintiff also pleaded a claim for a breach of implied warranties. An "as is" clause in a sales contract is generally effective to exclude any implied warranties. *Johnson*, 2025-Ohio-2930 at ¶ 12; Ohio Rev Code Ann 1302.29(B)-(C) (West). Here, the purchase agreement's "as is" clause is both conspicuous and clear in its intention to disclaim "any implied warranties of merchantability or fitness for a particular purpose." Consequently, under ordinary circumstances, the warranty disclaimer would prevent plaintiff from recovering for the breach of any implied warranties.

However, plaintiff also alleges that the disclaimer provisions in the purchase agreement are procedurally and substantively unconscionable, thereby rendering these provisions unenforceable. This argument is without merit. A party raising the issue of unconscionability must demonstrate both procedural and substantive unconscionability. *Taylor Bldg Corp of America v Benfield*, 117 Ohio St 3d 352, 358-359; 2008-Ohio-938; 884 NE2d 12 (2008). Procedural unconscionability focuses on the relative bargaining position of the parties, which includes an evaluation of the relative sophistication of the parties and whether alteration of the printed terms was possible. *Id*. at 361-362.

Although the purchase agreement was a preprinted form and plaintiff's assent to the disclaimers was mandatory, this does not itself indicate that the terms were procedurally unconscionable. *Id*. Plaintiff evidently negotiated other terms of the sale, including the vehicle's purchase price. There was no indication that plaintiff, who was apparently a successful businessman before his retirement, had any deficiency in education, intelligence, business acumen, or experience, such that he was unable to understand or assent to the terms of the agreement. *Id*. And, in evaluating procedural unconscionability, we may also consider whether there were alternative sources of supply for the goods in question. *Id*. Although plaintiff states that the Corvette was a "rare find," he did not say that he could not have obtained the vehicle from another seller. Consequently, plaintiff has not demonstrated that the circumstances that led to the execution of the purchase agreement were tainted by procedural unconscionability.[3]

Accordingly, the trial court erred when it dismissed plaintiff's claim for breach of express warranties because the express warranties were fundamentally incompatible with the warranty disclaimers such that the warranty disclaimers were inoperative. But the court did not err when it dismissed plaintiff's claim for a breach of implied warranties because the "as is" clause properly disclaimed any such warranties.

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[3] To invalidate a contract provision on the basis of unconscionability, a plaintiff is required to demonstrate both substantive and procedural unconscionability. *Taylor*, 117 Ohio St 3d at 359. Because plaintiff cannot show that the agreement was procedurally unconscionable, he cannot demonstrate that disclaimer of implied warranties was unenforceable, and we need not reach the issue of whether the disclaimer was substantively unconscionable. *Id*. See also Ohio Rev Code Ann 1302.15 (West).

V. FRAUDULENT AND INNOCENT MISREPRESENTATION

Next, plaintiff contends that the trial court erred when it adopted defendants' arguments and dismissed his misrepresentation claim, which includes both fraudulent misrepresentation and innocent misrepresentation. We disagree.

Michigan law recognizes several interrelated but distinct causes of action under the general rubric of "fraud." *Titan Ins Co v Hyten*, 491 Mich 547, 555; 817 NW2d 562 (2012). The first such claim is fraudulent misrepresentation, also called actionable fraud, in which a plaintiff may recover damages suffered in reliance on another party's false statements. *Id*. at 555-558. To prevail on a claim of fraudulent misrepresentation, a plaintiff must prove:

> (1) That defendant made a material representation; (2) that it was false; (3) that when he made it he knew that it was false, or made it recklessly, without any knowledge of its truth and as a positive assertion; (4) that he made it with the intention that it should be acted upon by plaintiff; (5) that plaintiff acted in reliance upon it; and (6) that he thereby suffered injury. [*Id*. at 555 (quotation marks and citation omitted).]

In order to rescind a contract on the basis of fraudulent inducement, a party must prove these same six elements. *Bank of America, NA v Fidelity Nat'l Title Ins Co*, 316 Mich App 480, 499; 892 NW2d 467 (2016).

Innocent misrepresentation, in contrast, requires a plaintiff to prove the following elements: "(1) the defendant made a material representation, (2) the representation was false, (3) the defendant made it with the intention of inducing reliance by the plaintiff, (4) the plaintiff acted in reliance on the representation, and (5) the plaintiff thereby suffered an injury that benefited the defendant." *Abdelmaguid v Dimensions Ins Group, LLC*, 350 Mich App 214, 228-229; 31 NW3d 833 (2024) (quotation marks and citation omitted).

"Because fraud must be pleaded with particularity, and is not to be lightly presumed, but must be clearly proved, by clear, satisfactory and convincing evidence, trial courts should ensure that these standards are clearly satisfied with regard to all of the elements of a fraud claim." *Cooper v Auto Club Ins Ass'n*, 481 Mich 399, 414; 751 NW2d 443 (2008) (quotation marks and citations omitted).

Michigan has adopted the economic loss doctrine, a judicially created limitation on tort actions that seek to recover economic damages resulting from contractual breaches. *Quest Diagnostics, Inc v MCI WorldCom, Inc*, 254 Mich App 372, 376-377; 656 NW2d 858 (2002). Essentially, the economic loss doctrine stands for the proposition that "economic losses that relate to commercial transactions are not recoverable in tort." *Id*. at 376. Our Supreme Court has explained:

> The economic loss doctrine, simply stated, provides that [w]here a purchaser's expectations in a sale are frustrated because the product he bought is not working properly, his remedy is said to be in contract alone, for he has suffered only economic losses. This doctrine hinges on a distinction drawn between transactions involving the sale of goods for commercial purposes where economic

> expectations are protected by commercial and contract law, and those involving the sale of defective products to individual consumers who are injured in a manner which has traditionally been remedied by resort to the law of torts. [*Neibarger*, 439 Mich at 520-521 (quotation marks and citations omitted).]

The doctrine attempts to prevent contract law from drowning in a sea of tort. *Id*. at 528. "This Court has extended the economic loss doctrine beyond commercial transactions involving sophisticated users to the sale of consumer goods, even when the plaintiff consumer enters into a transaction with an entity of greater knowledge or bargaining power." *Quest Diagnostics, Inc*, 254 Mich App at 378.

When the plaintiff alleges fraud in connection with a commercial transaction, the economic loss doctrine applies when the claimed fraudulent representations "are indistinguishable from the terms of the contract and warranty that [the] plaintiff alleges were breached." *Huron Tool*, 209 Mich App at 375. When the fraudulent representations concern the quality and characteristics of the goods at issue in the contract, the plaintiff will be limited to the contractual remedies in the UCC. *Id*.

There is a limited exception to the economic loss doctrine for claims of fraud in the inducement, wherein "the ability of one party to negotiate fair terms and make an informed decision is undermined by the other party's fraudulent behavior." *Id*. at 372-373. When, however, "the only misrepresentation by the dishonest party concerns the quality or character of the goods sold, the other party is still free to negotiate warranty and other terms to account for possible defects in the goods." *Id*. at 373. Consequently, when evaluating the application of the doctrine, a reviewing court must look within the four corners of the complaint and examine whether the alleged misrepresentations are extraneous to the contractual dispute such that they are "independent of defendants' breach of contract and warranty." *Id*. at 375.

Plaintiff contends that the trial court erred when it adopted defendants' argument that summary disposition of his misrepresentation claim was warranted under the economic loss doctrine. We disagree.

In *Huron Tool*, this Court instructed that the reviewing court "look to the four corners of plaintiff's complaint, accept all factual allegations as true, and determine whether the fraud claim falls outside the ambit of the economic loss doctrine." *Id*. at 375. Applying these principles and reviewing plaintiff's complaint, it is clear that the fraud claim is not viable because the alleged misrepresentations that form the basis of plaintiff's fraud claim are precisely the same as those alleged in the breach-of-warranty claim, namely, the Corvette's condition, its drivability, and its safe restoration.

It is clear from the face of the complaint that the fraud allegations are not extraneous to the contractual dispute because the allegations of fraud are so intertwined with the allegations of breach of the express warranties as to be indistinguishable. Because the alleged fraudulent representations concern the quality and characteristics of the Corvette, which is the subject of the purchase agreement, plaintiff is limited to the contractual remedies in the UCC. *Huron Tool*, 209

Mich App at 375. Accordingly, the trial court did not err when it held that summary disposition of plaintiff's fraud claim was warranted under the economic loss doctrine.[4]

VI. MCPA

Next, plaintiff contends that the trial court erred when it dismissed his claim under the MCPA. We agree.

"The Consumer Protection Act was enacted to provide an enlarged remedy for consumers who are mulcted by deceptive business practices . . . ." *Dix v American Bankers Life Assurance Co of Florida*, 429 Mich 410, 417; 415 NW2d 206 (1987). "The MCPA prohibits the use of unfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce." *Zine v Chrysler Corp*, 236 Mich App 261, 270-271; 600 NW2d 384 (1999). The statute is remedial in nature, designed "to prohibit unfair practices in trade or commerce and must be liberally construed to achieve its intended goals." *Newton v West*, 262 Mich App 434, 437; 686 NW2d 491 (2004) (quotation marks and citation omitted).

As relevant to the present case, MCL 445.903(1) includes within the definition of an unlawful, unfair, unconscionable, or deceptive practice representations that goods are a particular style or model when they are of another, MCL 445.903(1)(e), omissions of material facts that tend to mislead or deceive the consumer and that could not reasonably be known to the consumer, MCL 445.903(1)(s), and making factual representations to cause a person to have a reasonable belief when the facts or statements are to the contrary, MCL 445.903(1)(bb).

Courts consider the provisions of the MCPA "with reference to the common-law tort of fraud." *Zine*, 236 Mich App at 282-283 (quotation marks and citation omitted). Some of the MCPA's prohibited practices involve affirmative representations, while others involve omissions. *Id*. at 281-282. Moreover, a single act may violate more than one subsection of the MCPA. *Id*. at 282. A person who suffers a loss under the MCPA is entitled to "actual damages or $250.00, whichever is greater . . . ." MCL 445.911(2).

In this case, defendants moved for summary disposition of plaintiff's MCPA claim because Ohio law applied to the transaction such that the Michigan-specific cause of action failed as a matter of law. As discussed above, this argument is without merit and was not a proper basis for the trial court to dismiss plaintiff's MCPA claim.

On appeal, however, defendants now argue that plaintiff's MCPA claim fails because the claim relates to warranties that were properly disclaimed by the purchase agreement. Defendants, as the appellees, can argue alternative grounds for affirmance without filing a cross-appeal, but to

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[4] Because summary disposition of plaintiff's misrepresentation claim was warranted under the economic loss doctrine, we need not reach plaintiff's remaining arguments regarding puffery and reasonable reliance because they are moot. An issue is rendered moot if it presents nothing more than an abstract question of law, the determination of which would not result in the granting of any further relief. *Detroit Media Group, LLC v Detroit Bd of Zoning Appeals*, 339 Mich App 38, 63; 981 NW2d 88 (2021).

properly preserve a claim for appeal, the reasons must first be presented to the lower court. *Riverview v Sibley Limestone*, 270 Mich App 627, 633 n 4; 716 NW2d 615 (2006). "If a litigant does not raise an issue in the trial court, this Court has no obligation to consider the issue." *Tolas Oil & Gas Exploration Co v Bach Servs & Mfg, LLC*, 347 Mich App 280, 289; 14 NW3d 472 (2023). Consequently, we decline to address this argument for the first time on appeal.[5]

VII. UNJUST ENRICHMENT

Finally, plaintiff asserts that the trial court erred when it dismissed his claim for unjust enrichment. Plaintiff asserts that he is only pursuing his unjust-enrichment claim against Matthew and Melanie, who were not parties to the purchase agreement. In light of the record, we agree.

Under the equitable doctrine of unjust enrichment, "[a] person who has been unjustly enriched at the expense of another is required to make restitution to the other." *Kammer Asphalt Paving Co v East China Twp Sch*, 443 Mich 176, 185; 504 NW2d 635 (1993) (quotation marks and citation omitted; alteration in original). To maintain a claim for unjust enrichment, a plaintiff must demonstrate "(1) the receipt of a benefit by the defendant from the plaintiff and (2) an inequity resulting to the plaintiff because of the retention of the benefit by the defendant." *Morris Pumps v Centerline Piping, Inc*, 273 Mich App 187, 195; 729 NW2d 898 (2006). The claim is "grounded in the idea that a party shall not be allowed to profit or enrich himself inequitably at another's expense." *Wright v Genesee Co*, 504 Mich 410, 417-418; 934 NW2d 805 (2019) (quotation marks and citation omitted). Consequently, "[e]ven where a person has received a benefit from another, he is liable to pay therefor only if the circumstances of its receipt or retention are such that, as between the two persons, it is unjust for him to retain it." *NL Ventures VI Farmington, LLC v Livonia*, 314 Mich App 222, 241; 886 NW2d 772 (2016) (quotation marks and citation omitted). The law of unjust enrichment "corrects for a benefit received by the defendant rather than compensating for the defendant's wrongful behavior." *Wright*, 504 Mich at 422. "The remedy for unjust enrichment is restitution." *Id*. at 418. Restitution "restores a party who yielded excessive and unjust benefits to his or her rightful position." *Id*. at 419.

The theory underlying recovery for unjust enrichment is that "the law will imply a contract in order to prevent unjust enrichment when one party inequitably receives and retains a benefit from another." *Morris Pumps*, 273 Mich App at 194. Courts, however, will not imply a contract when there is already an express contract between the parties. *Id*. "Generally, an implied contract

[5] At oral argument on the motion, the trial court raised numerous issues regarding the payment of taxes, the issuance of title, the odometer reading, and the odometer knob in light of the expert report addressing the Corvette's condition. The parties offered some answers, referencing the purchase agreement terms but did not file supplemental briefs in light of the trial court's questions. Additionally, the documentary evidence offered in support of summary disposition consisted of affidavits from plaintiff and Matthew. There is no indication that the parties' depositions were taken. And the content of Matthew's affidavit did not state that his statements about plaintiff's career and professional stature were premised on personal knowledge. See MCR 2.119(B)(1)(a). In light of the limited record, we decline to address this issue, particularly when the trial court did not receive definitive answers to the questions posed.

may not be found if there is an express contract *between the same parties* on the same subject matter." *Id*. (quotation marks and citation omitted).

Here, the parties submitted a copy of the purchase agreement. Although the document reflects that the agreement was made with Harwood Motors, the signature representing Harwood Motors is not legible and the capacity of the signatory is not visible on the document. The parties did not address this deficiency or the ability to disregard a corporate entity for wrongs or unjust injury. See *Florence Cement Co v Vettraino*, 292 Mich App 461, 469; 807 NW2d 917 (2011). Stated otherwise, defendants did not adequately make and support entitlement to summary disposition of this claim with documentary evidence. *Quinto*, 451 Mich at 358. Accordingly, the trial court erred in granting summary disposition of the cause of action for unjust enrichment.[6]

Accordingly, we affirm the trial court's grant of summary disposition of plaintiff's claims for breach of implied warranties and fraudulent and innocent misrepresentation. We reverse the trial court's grant of summary disposition of plaintiff's claims for breach of an express warranty, violations of the MCPA, and unjust enrichment as to Matthew and Melanie. The case is remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Anica Letica
/s/ Michelle M. Rick
/s/ Kristina Robinson Garrett

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[6] Defendants did not separately contest whether plaintiff adequately pleaded or presented evidence that would support the elements of an unjust-enrichment claim against the individual defendants, i.e., (1) the receipt of a benefit by Matthew and Melanie from plaintiff, and (2) an inequity resulting to plaintiff because of their retention that benefit. Accordingly, we express no opinion on the merits of this claim outside of the narrow argument raised on appeal.