

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

Lordstown Motors Corp., *et al.*,¹

Debtors.

Lordstown Motors Corp. and Lordstown EV
Corporation,

Plaintiffs,

-against-

Hon Hai Precision Industry Co., Ltd (a/k/a Hon Hai
Technology Group), Foxconn EV Technology, Inc.,
Foxconn Ventures Pte. Ltd., Foxconn (Far East)
Limited, and Foxconn EV System LLC

Defendants.

Chapter 11

Case No. 23-10831 (MFW)

(Jointly Administered)

Adv. Pro. No. 23-50414 (MFW)

Re: D.I. 1, 8, 9, 15

**EQUITY COMMITTEE'S JOINDER TO
PLAINTIFFS' OPPOSITION TO DEFENDANTS'
MOTION TO DISMISS ALL COUNTS OF THE ADVERSARY COMPLAINT**

The Official Committee of Equity Security Holders (the "Equity Committee") of Lordstown Motors Corp. and its affiliated debtors and debtors-in-possession (collectively, the "Debtors") in the above-captioned cases (the "Cases"), hereby submits this joinder (the "Joinder") to the Debtors' opposition to *Defendants' Motion to Dismiss all Counts of the Adversary Complaint*, filed contemporaneously herewith, (the "Debtors' Opposition") and requests that this Court deny the relief requested in the Defendants' Motion to Dismiss [Docket No. 8] (the

¹ The debtors and the last four digits of their respective taxpayer identification numbers are: Lordstown Motors Corp. (3239); Lordstown EV Corporation (2250); and Lordstown EV Sales LLC (9101) (collectively, the "Debtors"). The Debtors' service address is 27000 Hills Tech Ct., Farmington Hills, MI 48331.



“Motion”). In support of this Joinder, the Equity Committee incorporates the Debtors’ Opposition by reference, and respectfully states as follows:

JOINDER

The Equity Committee joins the Debtors’ Opposition to the Motion filed by the Defendants in the above-captioned adversary proceeding (collectively, “Foxconn”), but submits the following to highlight fatal infirmities in the Motion. The Motion rests on a very narrow set of arguments, none of which provide a basis to dismiss any of the counts of the Adversary Complaint, much less all of them. *First*, the Motion rests on an obligation to arbitrate that the parties themselves terminated. And, nearly all of the claims in the Adversary Complaint fall outside the arbitration provision in any event. *Second*, the Adversary Complaint’s breach of contract counts do not somehow preclude its fraudulent inducement counts, and Foxconn’s arguments as to the purported insufficiency of allegations of scienter and reliance are both facially baseless and, in any event, are issues of fact not suitable for a motion to dismiss. *Third*, Foxconn’s arguments as to a purported lack of pleaded damages are likewise contradicted on the face of the Adversary Complaint. Ultimately, Foxconn grasps at straws and its Motion is laden with non-sequiturs, improperly inserted new (and unsupported) factual allegations, and arguments that are plainly meritless even upon a cursory review.

Arbitration/Venue: Foxconn principally argues that all counts in the Adversary Complaint must be dismissed because they “arise out of or relat[e] to” the JV Agreement (attached as Exhibit D to the Adversary Complaint), which contains a provision obligating the parties to arbitrate. But that obligation, along with all other obligations in the JV Agreement *was terminated* by express agreement of the parties. As described in the Adversary Complaint, Foxconn’s compliance with the terms of the JV Agreement was heavily disputed between the parties. Their

solution was to terminate all obligations under the JV Agreement and enter into a new Investment Agreement (attached as Exhibit E to the Adversary Complaint) redefining the relationship of the Parties. Although certain of the obligations previously contained in the JV Agreement were subsequently included in the new Investment Agreement, the Investment Agreement makes clear that *all* obligations (including the obligation to arbitrate) under the JV Agreement were to be terminated prior to or upon the Initial Closing. Stunningly, Foxconn conveniently omits to mention this fact.

Moreover, nine out of the eleven counts in the Adversary Complaint would not conceivably have been subject to the JV Agreement's arbitration provision in the first place. Some are claims against Defendants who were not parties to the JV Agreement (Counts I, VIII, and X), some are claims that expressly "arise under or relate to" other agreements that do not have arbitration provisions and in fact instead select Delaware courts as the forum for disputes (such as the Investment Agreement) (Counts II, III, IV, V, VII, and VIII) or even the Bankruptcy Code itself (Count XI).

Count IX, which arises under the Manufacturing Supply Agreement (the "CMA", attached as Exhibit C to the Adversary Complaint) is the only Count arguably subject to a binding arbitration provision. But, with respect to that count, this Court has the discretion to, and should, decline to enforce the arbitration provision because piecemeal litigation would delay distributions and increase the expenses of the estate, thereby jeopardizing the objectives of the Bankruptcy Code. *See In re APF Co.*, 264 B.R. 344, 362-64 (Bankr. D. Del. 2001) (declining to "force an unwilling debtor to litigate a number of actions in a number of forums merely because those creditors' contracts happen to include a standard arbitration clause" where doing so could deplete assets of the estate and delay creditor recoveries and noting that "the majority view in this Circuit

and others is that bankruptcy courts continue to enjoy discretion to refuse enforcement of an otherwise applicable arbitration provision” when enforcing such a provision would jeopardize the objectives of the Bankruptcy Code.).

In a footnote, Foxconn argues that Counts for Breach of the Investment Agreement (Counts II-V) should “in the alternative” be dismissed because the Investment Agreement selects the Delaware Chancery Court as the forum for disputes. Mot. at 14 n. 6. This argument is flawed on its face. *First*, the Court of Chancery does not have subject matter jurisdiction over those Counts, all of which allege breach of contract and seek monetary damages. The Court of Chancery is a court of equity and cannot hear breach of contract claims with an adequate remedy at law. *See* 10 Del. C. § 341; *Candlewood Timber Grp., LLC v. Pan Am. Energy, LLC*, 2003 WL 22417235, at *2 (Del. Ch. Oct. 22, 2003) (Court of Chancery lacked subject matter jurisdiction over a breach of contract claim seeking money damages), *aff’d in pertinent part*, 859 A.2d 989 (Del. 2004).

Second, Foxconn omits to mention that the Investment Agreement’s forum selection clause goes on to state that if the Court of Chancery “declines to accept jurisdiction,” the parties “hereby irrevocably submit to the exclusive jurisdiction and venue” of “any state or federal court within the State of Delaware,” which obviously includes this Court. Investment Agr. § 8.06(b).

Fraudulent Inducement: Foxconn argues that Counts I and VIII, for fraudulent inducement, should be dismissed because they rely on the same factual allegations used to support the breach of contract claims. That is incorrect. While the Adversary Complaint alleges that Foxconn breached various of its obligations under certain contracts, it separately alleges that Foxconn fraudulently induced the Debtors to enter into the Foxconn contracts in the first place by, among other things, false representations prior to and during negotiations as to Foxconn’s intent, reasons, and interests in forming the partnership. *E.g.*, Adv. Compl. ¶¶ 22, 23, 24, 27, 29, 30.

Simply put, the “fraudulent inducement claim does not depend on the breach of a contractual duty.” *SodexoMAGIC, LLC v. Drexel Univ.*, 24 F4th 183, 217 (3d Cir. 2022); *see also Perrigo Co. v. Intl. Vitamin Co.*, 2019 WL 359991, at *2 n. 22 (D. Del. Jan. 29, 2019).

Foxconn also contends that the Adversary Complaint fails to adequately plead scienter and reliance. But the Adversary Complaint is laden with specific allegations of scienter and reliance, as described in the Debtors’ Opposition. *E.g.*, Adv. Compl. ¶¶ 23, 32, 33, 83, 84, 143. And, in any event, “[m]alice, intent, knowledge, and other conditions of a person’s mind may be alleged generally.” Fed. R. Civ. P. 9(b). Once Plaintiffs have alleged facts that give rise to a reasonable inference of fraudulent intent, as they have done here, scienter and reliance are factual issues to be determined at trial. *See, e.g., Ethypharm S.A. France v. Abbott Labs.*, 748 F.Supp.2d 354, 359 (D. Del. 2010).

Nor can Foxconn point to the integration clauses in the contracts to defeat the Plaintiffs’ fraudulent inducement claims. Foxconn correctly notes that “[w]here an agreement contains an anti-reliance clause, courts limit reliance to statements within the four corners of the document.” Mot. at 25. But Foxconn fails to mention that the primary operative contract between the parties, the Investment Agreement, *does not* contain an anti-reliance provision. Under Delaware law, where a contract does not include a specific anti-reliance provision, a general integration clause does not foreclose the ability to allege reliance and bring fraudulent inducement claims. *See Korac v. QxC Comms, Inc.*, 286 F.R.D. 263, 265 (D. Del. 2012); *Kronenberg v. Katz*, 872 A.2d 568, 593 (Del. Ch. 2004)).

Damages: Foxconn next argues that the Adversary Complaint fails to adequately allege damages because (in its view) the only damages alleged in the Adversary Complaint would be consequential damages, which (in its view) are all barred by contract. Foxconn is incorrect.

Foxconn only points to the CMA as limiting consequential damages, and only a single count of the Adversary Complaint (Count IX) alleges a breach of the CMA. Furthermore, the limitation on consequential damages in the CMA specifically *excludes* from the limitation liability for fraud or willful misconduct. CMA at § 17(c).

In any event, the Adversary Complaint alleges damages in an amount to be determined at trial. But even at this stage it is clear that at least some of those damages are direct (for example, because Foxconn breached § 2.01(b) of the Investment Agreement, the Debtors never received the \$47.3 million purchase price for approximately 10% of their common stock). Moreover, if the Debtors were fraudulently induced to enter into the contracts, damages would be both direct and readily ascertainable. In any case, there is no limitation in the Investment Agreement on consequential damages.

For these reasons, and for the reasons set forth in the Debtors' Opposition, the Equity Committee respectfully requests that the Court deny the Motion.

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Dated: November 6, 2023
Wilmington, Delaware

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LORDSTOWN MOTORS CORP., *et al.*,¹

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Lordstown Motors Corp. and Lordstown EV
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System LLC,

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CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of November, 2023, I caused to be filed with the Court electronically, and I caused to be served a true and correct copy of the *Equity Committee's Joinder to Plaintiffs' Opposition to Defendants' Motion to Dismiss All Counts of the Adversary Complaint* upon the parties that are registered to receive notice via the Court's CM/ECF notification system and additional service was completed by electronic mail on the parties indicated on the attached service list.

/s/ Eric J. Monzo

Eric J. Monzo (DE Bar No. 5214)

¹ The Debtors and the last four digits of their respective taxpayer identification numbers are: Lordstown Motors Corp. (3239); Lordstown EV Corporation (2250); and Lordstown EV Sales LLC (9101). The Debtors' service address is 27000 Hills Tech Ct., Farmington Hills, MI 48331.

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