IN THE COURT OF COMMON PLEAS OF
LYCOMING COUNTY, PENNSYLVANIA

AVIATION HOLDINGS, L.P.	: No. CV 23-00100
Plaintiff	:
VS	: CIVIL ACTION
	:
DeGOL JET CENTER, L.P.	:
Defendant	:

OPINION AND ORDER

This matter came before the Court on June 2, 2026, for oral argument on Defendant's Motion for Summary Judgment, filed March 13, 2026.

BACKGROUND:

Plaintiff's Third Amended Complaint filed November 17, 2023, (which incorporates by reference the entire contents of Plaintiff's original Complaint filed March 16, 2023 and Amended Complaint filed May 2, 2023, and Second Amended Complaint filed October 20, 2023) alleges that Defendant breached the terms of various contract documents associated with a transfer from Defendant to Plaintiff of Defendant's rights under a Lease and Asset Purchase Agreement, which transfer is alleged to have occurred on November 1, 2012. Reading the various iterations of the Complaint into one another, it appears that Plaintiff is claiming breach of express contract (Count I of original Complaint) and breach of warranty (mistakenly titled as breach of contract at Count II of original Complaint) and breach of contract implied at law (Count III of Amended Complaint) and Promissory Estoppel (County IV of Amended Complaint), and fraudulent misrepresentation (Count V of the Third Amended Complaint) and negligent misrepresentation (Count VI of the Third Amended Complaint). Defendant DeGol Jet Center, L.P. (hereinafter "Defendant" for ease of reference) filed a Motion for Summary Judgment on March 13, 2026, which seeks to have all of Plaintiff's claims dismissed, with prejudice. It appears that Defendant asserts multiple bases for its claim for summary judgment, which the Court will undertake to address in the order presented in the Motion.

At Roman numeral II, Defendant asserts that Plaintiff's contract claims should be dismissed pursuant to the applicable statute of limitations. At Roman numeral III, Defendant assets that Plaintiff's misrepresentation claims should be dismissed pursuant to

the applicable statute of limitations. At Roman numeral IV, Defendant asserts that Plaintiff may not rely upon the discovery rule to avoid dismissal of its claims under the applicable statute of limitations. At Roman numeral V, Defendant asserts three (3) additional bases for summary judgment. At V(A), Defendant asserts that the contract documents make clear that Plaintiff was obtaining only a lease for the Blue Hanger, which was owned by the Airport Authority. At V(B), Defendant asserts that, given the existence of written contracts, Plaintiff cannot assert implied contract claims. At V(C), Defendant asserts that any reliance upon the Bill of Sale by Plaintiff was per se unreasonable

QUESTIONS PRESENTED:

I. WHETHER PLAINTIFF'S CONTRACT CLAIMS SHOULD BE DISMISSED PURSUANT TO THE APPLICABLE STATUTE OF LIMITATIONS.

II. WHETHER PLAINTIFF'S MISREPRESENTATION CLAIMS SHOULD BE DISMISSED PURSUANT TO THE APPLICABLE STATUTE OF LIMITATIONS.

III. WHETHER PLAINTIFF SHOULD BE PRECLUDED FROM ASSERTING THE DISCOVERY RULE.

IV. WHETHER THE CONTRACT DOCUMENTS CLEARLY REVEAL THAT PLAINTIFF WAS OBTAINING ONLY A LEASE ON THE BLUE HANGER.

V. WHETHER, GIVEN THE EXISTENCE OF WRITTEN CONTRACTS, PLAINTIFF CANNOT ASSERT IMPLIED CONTRACT CLAIMS.

VI. WHETHER ANY RELIANCE UPON THE BILL OF SALE BY PLAINTIFF WAS PER SE UNREASONABLE.

ANSWERS TO QUESTIONS PRESENTED:

I. PLAINTIFF'S CONTRACT CLAIMS WILL NOT BE DISMISSED PRE-TRIAL PURSUANT TO THE APPLICABLE STATUTE OF LIMITATIONS, SINCE A MATERIAL ISSUE OF FACT EXISTS AS TO WHETHER PLAINTIFF HAD NOTICE OF ITS CLAIM PRIOR TO THE LETTER FROM THE AIRPORT AUTHORITY OF NOVEMBER 2022.

II. PLAINTIFF'S MISREPRESENTATION CLAIMS WILL NOT BE DISMISSED PRE-TRIAL PURSUANT TO THE APPLICABLE STATUTE OF LIMITATIONS, SINCE A MATERIAL ISSUE OF FACT EXISTS AS TO WHETHER PLAINTIFF HAD NOTICE OF ITS CLAIM PRIOR TO THE LETTER FROM THE AIRPORT AUTHORITY OF NOVEMBER 2022.

III. PLAINTIFF WILL NOT BE PRECLUDED FROM ASSERTING THE DISCOVERY RULE.

IV. THE QUESTION OF THE PROPER INTERPRETATION OF THE CONTRACT DOCUMENTS WITH REGARD TO THE BLUE HANGER APPEARS TO PRESENT A MATERIAL ISSUE OF FACT.

V. GIVEN THE EXISTENCE OF WRITTEN CONTRACTS, PLAINTIFF CANNOT PREVAIL ON CLAIMS OF BOTH EXPRESS AND IMPLIED CONTRACTS, BUT MAY ASSERT THOSE CLAIMS IN THE ALTERNATIVE.

VI. THE QUESTION OF WHETHER RELIANCE UPON THE BILL OF SALE BY PLAINTIFF WAS REASONABLE APPEARS TO PRESENT A MATERIAL ISSUE OF FACT.

DISCUSSION:

I. PLAINTIFF'S CONTRACT CLAIMS WILL NOT BE DISMISSED PRE-TRIAL PURSUANT TO THE APPLICABLE STATUTE OF LIMITATIONS, SINCE A MATERIAL ISSUE OF FACT EXISTS AS TO WHETHER PLAINTIFF HAD NOTICE OF ITS CLAIM PRIOR TO THE LETTER FROM THE AIRPORT AUTHORITY OF NOVEMBER 2022.

The Appropriate Test for Consideration of a Motion for Summary Judgment:

In Pennsylvania, a party may move for summary judgement "whenever there is no genuine issue of any material fact as to a necessary element of the cause of action…" Pa.R.C.P. No. 1035.2(1). In response, the adverse party may not rest on denials but must respond to the motion. Pa.R.C.P. No. 1035.3(a). The non-moving party can avoid an adverse ruling by identifying "one or more issues of fact arising from evidence in the record…" Pa.R.C.P. No. 1035.3(a)(1).

In considering a motion for summary judgment, it is not the Court's function to decide issues of fact. Rather, is it our function to decide whether an issue of fact exists. *Fine v. Checcio,* 582 Pa. 253, 273, 870 A.2d 850, 862 (2005).

> Summary judgment is appropriate only when the record clearly shows that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. The reviewing court must view the record in the light most favorable to the nonmoving party and resolve all doubts as to the existence of a genuine issue of material fact against the moving party. Only when the facts are so clear that reasonable minds could not differ can a trial court properly enter summary judgment.

> *Hovis v. Sunoco, Inc.,* 2013 Pa.Super. 54, 64 A.3d 1078, 1081, quoting *Cassel-Hess v. Hoffer*, 44 A.3d 84-85 (Pa.Super. 2012).

Our Pennsylvania Supreme Court has counseled that "doubtful cases should go to trial, especially those involving intricate relations demanding an inquiry into the facts of the controversy." *Gaul v. City of Philadelphia*, 384 Pa. 494, 510, 121 A.2d 103, 112 (1956), citing *Helfenstein v. Line Mountain Coal Company*, 284 Pa. 78, 81, 130 A. 301, 302 (1925).

In the matter of *Accu-Weather, Inc. v. Prospect Commc'ns, Inc.*, 435 Pa. Super. 93, 644 A.2d 1251 (Pa. Super. Ct. 1994), the Court described the proper test for a grant of summary judgment as follows:

> First, the pleadings, depositions, answers to interrogatories, admissions on file, together with any affidavits, must demonstrate that there exists no genuine issue of fact. Pa.R.C.P. 1035(b). Second, the moving party must be entitled to judgment as a matter of law. *Id.* The moving party has the burden of proving that no genuine issue of material fact exists. *Overly v. Kass,* 382 Pa.Super. 108, 111, 554 A.2d 970, 972 (1989). However, the non-moving party may not rest upon averments contained in its pleadings; the non-moving party must demonstrate that there is a genuine issue for trial. The court must examine the record in the light most favorable to the non-moving party and resolve all doubts against the moving party. *Stidham v. Millvale Sportsmen's Club,* 421 Pa.Super. 548, 558, 618 A.2d 945, 950 (1992), *appeal denied,* 536 Pa. 630, 637 A.2d 290 (1993) (citing *Kerns v. Methodist Hosp.,* 393 Pa.Super. 533, 536–37, 574 A.2d 1068, 1069 (1990)). Finally, an entry of summary judgment is granted only in cases where the right is clear and free of doubt. *Ducko v. Chrysler Motors Corporation,* 433 Pa.Super. 47, 48, 639 A.2d 1204, 1205 (1993) (citing *Musser v. Vilsmeier Auction Co., Inc.,* 522 Pa. 367, 370, 562 A.2d 279, 280 (1989)). We reverse an entry of summary judgment when the trial court commits an error of law or abuses its discretion. *Kelly by Kelly v. Ickes,* 427 Pa.Super. 542, 547, 629 A.2d 1002, 1004 (1993) (citing *Carns v. Yingling,* 406 Pa.Super. 279, 594 A.2d 337 (1991)).

The Alleged Facts Regarding Plaintiff's Discovery of Its Claim:

At paragraphs 5 through 17 of Plaintiff's original Complaint, Plaintiff alleges a series of business transactions alleged to have occurred between August and November of 2012, more than ten (10) years prior to the filing of that Complaint. It is obvious that Plaintiff's claims were filed long after the expiration of the applicable statute of limitation, unless Plaintiff can establish a basis for the delay.

Plaintiff contends that its claims are not time-barred, because the applicable statute of limitations did not begin to run until many years after November 1, 2012. At paragraphs 18 through 21 of the original Complaint, Plaintiff alleges a series of letters and emails between November of 2022 and February 10, 2023, alerting Plaintiff to the issues where are the subject of its claim. Plaintiff asserts that it did not discover the basis for its claim until November of 2022.

Defendant contends that Plaintiff had actual notice of the facts surrounding its claim long before November of 2022. In fact, Defendant claims that the contract documents themselves were sufficient to put Plaintiff on notice (Motion for Summary Judgment, paragraphs 48 through 57) and that Plaintiff made no effort to learn the facts between August 2012 and 2022 (Motion for Summary Judgment paragraphs 57 through 62).

The Statute of Limitation Applicable to a Claim for Breach of Express Contract:

In the matter of *Carulli v. North Versailles Township Sanitary Authority*, 216 A.3d 564 (Pa.Cmwlth. 2019), our Commonwealth Court exhaustively examined the issue of the statute of limitation in connection with a claim of breach of an express contract, and elected ***not to extend the discovery rule to that cause of action***, as follows:

> In Pennsylvania, our courts have noted that, generally, "[s]tatutes of limitations 'are designed to effectuate three purposes: (1) preservation of evidence; (2) the right of potential defendants to repose; and (3) administrative efficiency and convenience.' " *Lesoon v. Metro. Life Ins. Co.*, 898 A.2d 620, 626-27 (Pa. Super. 2006) (quoting *Kingston Coal Co. v. Felton Mining Co.*, 456 Pa.Super. 270, 690 A.2d 284, 288 (1997)). "Whether a complaint is timely filed within the limitations period is a matter of law for the court to determine." *Crouse v. Cyclops Indus.*, 560 Pa. 394, 745 A.2d 606, 611 (2000). Section 5502 of the Judicial Code sets forth the method of computing periods of limitation and provides:
>
> The time within which a matter must be commenced under this chapter shall be computed, except as otherwise provided by subsection (b) or by any other provision of this chapter, *from the time the cause of action accrued*, the criminal offense was committed or the right of appeal arose. 42 Pa.C.S. § 5502(a) (emphasis added). Our Supreme Court has stated, "[i]n construing this language for general contract purposes, we have adopted the view of a majority of jurisdictions that it is the accrual of the right of action that starts a limitations period to run." *Erie Ins. Exch. v. Bristol*, 643 Pa. 709, 174 A.3d 578, 585 (2017). Our Supreme Court noted that this view is "in accord with the law across the country[,]" which provides:

Unless a statute provides otherwise, the statute of limitations begins to run at the time when a complete cause or right of action accrues or arises, which occurs as soon as the right to institute and maintain a suit arises.

The general rule, as embodied in most statutes, is that, unless a statute specifically provides otherwise, as, for example, a statute specifically providing that the statute of limitations shall run from a particular event which may precede the time where the liability actually arises, the statute of limitations begins to run at the time when a complete cause or right of action accrues or arises, and only at such time, that is, as soon as the right to institute and maintain a suit arises, or when there is a demand capable of present enforcement. An action may accrue at the time of a wrongful act, although the limitations period does not always begin on the date the wrong is committed. 54 C.J.S. Limitations of Actions, § 81 (footnotes and case citations omitted.) *Erie Ins. Exch.*, 174 A.3d at 585-86 (citing *Ctr. Concrete Co. v. AGI, Inc.*, 522 Pa. 27, 559 A.2d 516, 518-19 (1989)) (emphasis in original).[10] "In general, for a claim based upon contract, the cause of action accrues and the statute of limitations begins to run on the date that the contract is breached." *GAI Consultants, Inc. v. Homestead Borough*, 120 A.3d 417, 423-24 (Pa. Cmwlth. 2015) (citing *McGaffic v. City of New Castle*, 973 A.2d 1047, 1052 (Pa. Cmwlth. 2009)). Therefore, applying contract principles to the Authority's breach of contract claim at issue here, the statute of limitations would begin to run when the Authority's cause of action accrued, i.e., when Port Vue breached its duty under the agreement. The trial court, however, applied the discovery rule. We therefore consider whether grounds exist to deviate from the general rule concerning the statute of limitations in a breach of contract action and whether the application of the discovery rule to such breach of contract claim is appropriate.
With respect to the statute of limitations and the discovery rule, our Supreme Court has stated:

As a matter of general rule, a party asserting a cause of action is under a duty to use all reasonable diligence to be properly informed of the facts and circumstances upon which a potential right of recovery is based and to institute suit within the prescribed statutory period.... Thus, the statute of limitations begins to run as soon as the right to institute and maintain a suit arises; lack of knowledge, mistake or misunderstanding do not toll the running of the statute of limitations ...; even though a person may not discover his injury until it is too late to take advantage of the appropriate remedy, this is incident to a law arbitrarily making legal remedies contingent on mere lapse of time. Once the prescribed statutory period has expired, the party is barred from bringing suit unless it is established that an exception to the general rule applies which acts to toll the running of the statute.

The "discovery rule" is such an exception, and arises from the *inability* of the injured, *despite the exercise of due diligence,* to know of the injury or its cause.... The salient point giving rise to the equitable application of the exception of the discovery rule is the inability, despite the exercise of diligence by the plaintiff, to know of the injury.*Pocono Int'l Raceway, Inc. v. Pocono Produce, Inc.*, 503 Pa. 80,

468 A.2d 468, 471 (1983) (emphasis in original) (citations omitted). The discovery rule is a "judicially created device[.]" *Gustine Uniontown Assocs., Ltd. v. Anthony Crane Rental, Inc.*, 577 Pa. 14, 842 A.2d 334, 334 n.8 (2004) (*Gustine I*).

"The discovery rule ... was first used in the limited area of medical malpractice and soon spread to other tort fields." 33 A.L.R.5th 1 (originally published in 1995); *see, e.g., Gleason v. Borough of Moosic*, 609 Pa. 353, 15 A.3d 479 (2011) (applying discovery rule in action alleging negligent road construction); *Hidden Creek, L.P. v. Lower Salford Twp. Auth.*, 129 A.3d 602 (Pa. Cmwlth. 2015) (applying discovery rule in action that alleged authority's charges for sewer tapping fees violated Act and noting similarity of claim to that in *Harleysville Homestead, Inc. v. Lower Salford Township Authority*, 980 A.2d 749 (Pa. Cmwlth. 2009), a claim that was held to sound in tort); *Garvey v. Rosanelli*, 144 Pa.Cmwlth. 588, 601 A.2d 1334 (1992) (applying discovery rule in negligence action alleging latent defects in residential construction).

Pennsylvania courts have also considered the application of the discovery rule to non-tort actions. *See, e.g., Altoona*, 618 A.2d at 1135 (Pa. Cmwlth. 1992) (stating that Section 5523 of Judicial Code, 42 Pa.C.S. § 5523, is a statute of limitations and, therefore, cause of action on performance bond brought pursuant to that section is subject to discovery rule)[11]; *Amodeo v. Ryan Homes, Inc.*, 407 Pa.Super. 448, 595 A.2d 1232 (1991) (holding that discovery rule applied to breach of implied warranty of habitability claims involving defective construction). The Pennsylvania Superior Court has stated, "[t]he discovery rule in Pennsylvania applies to all causes of action, including breach of contract." *Morgan v. Petroleum Prods. Equip. Co.*, 92 A.3d 823, 828 (Pa. Super. 2014) (citing *Sadtler v. Jackson-Cross Co.*, 402 Pa.Super. 492, 587 A.2d 727, 731 (1991)) and applying discovery rule to breach of contract claim); *Sadtler* (applying discovery rule to breach of contract case in which purchasers of real estate brought suit against their appraiser).[12] *Compare Gustine Uniontown Assocs., Ltd., ex rel. Gustine Uniontown, Inc. v. Anthony Crane Rental, Inc.*, 892 A.2d 830, 836 (Pa. Super. 2006) (*Gustine II*) (holding that contract language, which stated that "applicable statute of limitations shall commence to run" not later than the date of substantial completion, precluded application of discovery rule).

\Our Supreme Court, however, has not pronounced the applicability of the discovery rule to a breach of contract action based on an express written contract negotiated at arms' length. In *Crouse*, our Supreme Court affirmed the Superior Court's application of the discovery rule to a claim based on promissory estoppel, a doctrine which, while sounding in contract law, "makes otherwise unenforceable agreements binding," *id.* at 610, and, thus, is not based on an express written negotiated term. Notably, in his concurring and dissenting opinion, Justice Saylor stated: I also question whether the discovery rule should apply to a claim based upon promissory estoppel. Although the discovery rule, which evolved in the tort context, has been applied by Pennsylvania courts in some discrete categories of cases involving contractual or quasicontractual claims, *see, e.g., Amodeo v. Ryan Homes, Inc.,* 407

Pa. Super. 448, 453-54, 595 A.2d 1232, 1235 [1991] (stating that "the discovery rule does apply to cases involving defective construction"), *its use has not been adopted on a wholesale basis in this area*, and, notably, other jurisdictions are divided as to its applicability. *Compare Morris v. Fauver,* 153 N.J. 80, 707 A.2d 958, 972 (1998)("the rationale for employing the discovery rule in tort- or fraud-type actions ... does not carry over to most contract actions, and therefore, the discovery rule has not been applied in such suits"); *CLL Assoc*[*s*.] *Ltd. v. Arrowhead Pacific Corp.,* 174 Wis.2d 604, 497 N.W.2d 115, 117 (1993)("[i]n the context of general contract law, public policy favors the current rule that the contract statute of limitations begins to run at the time of breach"), *with Heron Financial Corp. v. United States Testing Co.,* 926 S.W.2d 329, 332 (Tex. App. 1996)("a discovery rule analysis applies to both tort and contract actions alike"). *Crouse*, 745 A.2d at 613 n.1 (Saylor, J., concurring and dissenting) (emphasis added).

Subsequent to Justice Saylor's statement above, this Court issued an unreported decision in *Ruddy v. Mt. Penn Borough Municipal Authority* (Pa. Cmwlth., Nos. 1120 C.D. 2013 & 1200 C.D. 2013, 2014 WL 1852002, filed May 6, 2014), in which we applied the discovery rule to a claim for unjust enrichment. In doing so, however, the Court noted, among other things, that the situation was not one "where the damages were based on an actual contract, but instead, on the quasi-contractual and equitable doctrine of unjust enrichment." *Id.*, slip op. at 6.

As pointed out by Justice Saylor in *Crouse*, states are split as to the applicability of the discovery rule in breach of contract actions. For example, in Wisconsin, the discovery rule does not apply to actions for breach of contract. *CLL Assocs. Ltd.* The Wisconsin Supreme Court stated that although it applies the discovery rule to tort cases, it would not extend the doctrine to breach of contract actions because, "unlike in tort law, the need to protect defendants from stale or fraudulent claims outweighs any injustice caused by barring rights of action prior to discovery." *Id.* at 118. In so holding, the court relied on two critical differences between tort and contract claims. *Id.* The first stemmed from the availability of liability insurance in tort law, whereas, "[i]n contrast, contract law, which deals primarily with the enforcement of private promises, has nothing comparable to liability insurance." *Id.* The second difference was that, unlike a potential tort claimant, "a contract claimant often has a significant amount of control over its risk of loss." *Id.* The court noted, for example that the parties had choices regarding what materials to use, inspections, warranties, price adjustments, etc., and that such "increased ability of potential contract claimants to protect themselves in the first instance lessens the need to provide them an opportunity for legal redress." *Id.*

Likewise, in New York, the discovery rule does not apply to breach of contract actions because [the state's] statutes of limitation serve the same objectives of finality, certainty and predictability that New York's contract law endorses. Statutes of limitation not only save litigants from defending stale claims, but also "express[ ] a societal interest or public policy of giving repose to human affairs" .... And we

have repeatedly "rejected accrual dates which cannot be ascertained with any degree of certainty, in favor of a bright line approach" ....

Accordingly, New York does not apply the "discovery" rule to statutes of limitations in contract actions .... Rather, the "statutory period of limitations begins to run from the time when liability for wrong has arisen even though the injured party may be ignorant of the existence of the wrong or injury" .... This is so even though the result may at times be "harsh and manifestly unfair, and creates an obvious injustice" because a contrary rule "would be entirely dependent on the subjective equitable variations of different [j]udges and courts instead of the objective, reliable, predictable and relatively definitive rules that have long governed this aspect of commercial repose" .... Indeed, "[t]o extend the highly exceptional discovery notion to general breach of contract actions would effectively eviscerate the [s]tatute of [l]imitations in this commercial dispute arena" .... *ACE Sec. Corp. v. DB Structured Prods., Inc.*, 25 N.Y.3d 581, 15 N.Y.S.3d 716, 36 N.E.3d 623, 627-28 (2015) (internal citations omitted).
Similarly, in holding that the discovery rule did not apply to a breach of contract action for failure to follow payment provisions of a contract, the New Jersey Supreme Court explained: [a]lthough it seems "inequitable that an injured person, unaware that he has a cause of action, should be denied his day in court solely because of his ignorance, if he is otherwise blameless," it may also be "unjust, however, to compel a person to defend a law suit long after the alleged injury has occurred, when memories have faded, witnesses have died and evidence has been lost." ... Although some negligence or malpractice actions involve inherently undiscoverable types of injuries, *most contract actions presume that the parties to a contract know the terms of their agreement and a breach is generally obvious and detectable with any reasonable diligence.* Because the discovery rule imposes on plaintiffs an affirmative duty to use reasonable diligence to investigate a potential cause of action, and thus bars from recovery plaintiffs who had "reason to know" of their injuries, the discovery rule generally does not apply to contract actions. *County of Morris v. Fauver*, 153 N.J. 80, 707 A.2d 958, 972-73 (1998) (emphasis added) (citations omitted). Where the discovery rule has been applied in other jurisdictions, courts have done so because it would be unjust to deprive plaintiffs of a cause of action before they are aware of an injury. For example, in California: the discovery rule applies to unique breach of contract cases when: 1) "[t]he injury or the act causing the injury, or both, have been difficult for the plaintiff to detect"; 2) "the defendant has been in a far superior position to comprehend the act and the injury"; or 3) "the defendant had reason to believe the plaintiff remained ignorant [that] he had been wronged." [*April Enters., Inc. v. KTTV and Metromedia, Inc.*, 147 Cal.App.3d 805, 195 Cal.Rptr. 421, 436 (1983)]. The rationale underlying application of the discovery rule is that "plaintiffs should not suffer where circumstances prevent them from knowing they have been harmed ... [and] defendants should not be allowed to knowingly profit from their injuree's ignorance." *Id. El Pollo Loco, Inc. v. Hashim*, 316 F.3d 1032, 1039 (9th Cir. 2003). In Arizona, the Supreme Court held that the discovery rule can apply to breach of contract actions because "the important inquiry in applying the discovery rule is

whether the plaintiff's injury or the conduct causing the injury is difficult for plaintiff to detect, not whether the action sounds in contract or in tort." *Gust, Rosenfeld & Henderson v. Prudential Ins. Co. of Am.*, 182 Ariz. 586, 898 P.2d 964, 968 (1995). One commentator in discussing the discovery rule and computing a limitations period from "when a cause of action accrues" noted the division, i.e., the statutory period may begin either when the defendant commits the wrong or when the plaintiff is injured. Marc M. Schneier, Esq., 28 No. 2 Constr. Litig. Rep. 10 (Feb. 2007). He explained:

This division is fundamental to the distinction between contract and tort: a contract action may be brought immediately upon breach, whereas a tort action cannot be brought until the plaintiff suffers appreciable injury. The reason for this distinction is that, immediately upon material breach, a contract plaintiff is entitled to at least nominal damages; however, a negligent defendant is liable to no one until he or she causes injury. See 18 Samuel Williston, *Williston on Contracts* § 2021A at 698 (3d ed. 1978); 51 Am.Jur.2d *Limitations of Actions* §§ 160 & 167 (2000) (contract and tort, respectively); and 54 C.J.S. *Limitations of Actions* §§ 163 & 193 (2005) (contract and tort, respectively); accord, *Travis Pruitt & Assocs., P. C. v. Bowling*, 238 Ga.App. 225, 518 S.E.2d 453 (1999), 20 CLR 340 (1999).

Schneier, 28 No. 2 Constr. Litig. Rep. 10. This distinction is significant. In a breach of contract action such as here, the injury is the failure to perform or, in other words, the breach. *See Freedom Oil Works Co. v. Williams*, 302 Pa. 51, 152 A. 741, 743 (1930) (holding that where defendant admitted there was a breach of contract, plaintiffs were entitled at least to nominal damages); *Wolfe v. Allstate Prop. & Cas. Ins. Co.*, 790 F.3d 487, 497 (3d Cir. 2015) (stating, "[u]nder Pennsylvania law, if a plaintiff is able to prove a breach of contract but can show no damages flowing from the breach, the plaintiff is nonetheless entitled to recover nominal damages").

In sum, we are faced with the binding precedent of this Commonwealth wherein the discovery rule has been extended from the tort context to breach of implied warranty actions and quasi-contractual matters of promissory estoppel and unjust enrichment. *See supra* pp. 578–80. However, our Supreme Court has neither expressed a blanket prohibition nor has it applied the discovery rule— a judicially created doctrine— to a breach of contract action where a party is seeking to enforce an express written contract that the party negotiated. Further, although the Superior Court has applied the discovery rule to a breach of contract action, its decisions are not controlling authority for this Court. Additionally, as noted by Justice Saylor, other jurisdictions are split on the application of the discovery rule in a breach of contract action.

We are mindful that the controlling law for determining when the limitations period begins to run for a breach of contract action is when the cause of action accrued, i.e., upon the occurrence of the breach. *See* 42 Pa.C.S. § 5502(a); *Erie Ins. Exch.*, 174 A.3d at 585-86; *GAI Consultants*, 120 A.3d at 423-24. Further, we are mindful that the discovery rule is a judicially created doctrine with equitable application. The Authority has not forwarded any compelling inequities as a reason to create a special rule as to when the statute of limitations begins to run in a breach of contract action based on an express written negotiated contract. The mere fact that a municipality is involved is not a sufficiently compelling ground. Because our Supreme Court has not

> extended the discovery rule, a judicially created equitable doctrine, to the arena of breach of contract actions involving express written negotiated contracts,[15] we decline to do so.

Carulli v. North Versailles Township Sanitary Authority, 216 A.3d 564, 577-583 (Pa.Cmwlth. 2019),

The Discovery Rule Under Applicable Pennsylvania Law:

Parties are ordinarily required to commence litigation within the time permitted by the applicable statute of limitation. As more fully discussed by the Court in *Carulli,* the discovery rule is a judicially created device which permits the tardy filing of a claim where, despite the exercise of due diligence, the claimant could not have known about the claim until long after the expiration of that statute. The discovery rule arose under tort law. Whether the rule applies in Pennsylvania to claims for breach of express contract remains an open question. Our Supreme Court has described the rule as follows:

> As a general rule, it is the duty of the party asserting a cause of action to use all reasonable diligence to properly inform himself of the facts and circumstances upon which the right of recovery is based and to initiate suit within the prescribed period. *Hayward v. Medical Center of Beaver County,* 530 Pa. 320, 324, 608 A.2d 1040, 1042 (1992). Therefore, the statute of limitations begins to run as soon as a right to institute and maintain suit arises. *Pocono International Raceway, Inc. v. Pocono Produce, Inc.,* 503 Pa. 80, 84, 468 A.2d 468, 471 (1983). Whether a complaint is timely filed **404* within the limitations period is a matter of law for the court to determine. *Hayward,* 530 Pa. at 325, 608 A.2d at 1043. However, in some circumstances, although the right to institute suit may arise, a party may not, despite the exercise of diligence, reasonably discover that he has been injured. In such cases the statute of limitations does not begin to run at the instant the right to institute suit attaches, rather the discovery rule applies. The discovery rule is a judicially created device which tolls the running of the applicable statute of limitations until the point where the complaining party knows or reasonably should know that he has been injured and that his injury has been caused by another party's conduct. *Pearce v. Salvation Army,* 449 Pa.Super. 654, 657–59, 674 A.2d 1123, 1125 (1996). Pursuant to application of the discovery rule, the point at which the complaining party should reasonably be aware that he has suffered an injury is a factual issue "best determined by the collective judgment, wisdom and experience of jurors." *White v. Owens–Corning Fiberglas Corp.,* 447 Pa.Super. 5, 22, 668 A.2d 136, 144 (1995) (quoting *Petri v. Smith,* 307 Pa.Super. 261, 271–72, 453 A.2d 342, 347 (1982)., *appeal denied, White v. Owen–Corning,* 546 Pa. 648, 683 A.2d 885 (1996). Thus, once the running of the statute of limitations is properly tolled, only where the facts are so clear that reasonable minds *cannot differ* may the commencement of the limitations period be determined as a matter of law. *Hayward,* 530 Pa. at 325, 608 A.2d at 1043. In order to determine when the statute should begin to run, the finder of fact focuses on whether the plaintiff was

> reasonably diligent in discovering his injury. Reasonable diligence is precisely that—a reasonable effort to discover the cause of an injury under the facts and circumstances present in the case. This Court has long held that there are few facts which diligence cannot discover, but there must be some reason to awaken inquiry and direct diligence in the channel in which it would be successful. This is what is meant by reasonable diligence. *Deemer v. Weaver,* 324 Pa. 85, 90, 187 A. 215, 217 (1936). Although reasonable diligence is an objective rather than a subjective standard, "[i]t is sufficiently **405* flexible ... to take into account the difference[s] between persons and their capacity to meet certain situations and the circumstances confronting them at the time in question." *Burnside v. Abbott Laboratories,* 351 Pa.Super. 264, 292, 505 A.2d 973, 988 (1985), *appeal denied* (Dec. 18, 1986). A plaintiff's actions must be evaluated, therefore, to determine whether he exhibited "those qualities of attention, knowledge, intelligence and judgment which society requires of its members for the protection of their own interests and the interests of others." *Id.* In other words, a party is not under an absolute duty to discover the cause of his injury. Instead, he must exercise only the level of diligence that a reasonable man would employ under the facts and circumstances presented in a particular case. *Cochran v. GAF Corp.,* 542 Pa. 210, 217, 666 A.2d 245, 249 (1995).

Crouse v. Cyclops Industries, 560 Pa. 394, 403-405, 560 A.2d 606, 611 (Pa. 2000).

The Material Issue of Fact for Trial:

Plaintiff's claim for breach of express contract presents multiple material issues of fact. Was the intention of the parties that the transaction would result in a transfer of the Blue Hangar: Did Defendant breach any aspect of the sales agreements? If so, when did Plaintiff's cause of action accrue. If the cause of action accrued more than four years ago, is Plaintiff entitled to rely upon the discovery rule to excuse the tardy filing?

The deposition testimony quoted at paragraphs 57 and 58 of Defendant's Motion for Summary Judgment indicates that Plaintiff did little to investigate its claims. The question remains whether a reasonable person in those circumstances should have conducted a better investigation. A plaintiff "is not under an absolute duty to discover the cause of his injury. Instead, he must exercise only the level of diligence that a reasonable man would employ." *Crouse v. Cyclops Industries*, 560 Pa. 394, 403-405, 560 A.2d 606, 611 (Pa. 2000).

Defendant invites the Court to decide, as a matter of law, that Plaintiff did not exercise that level of diligence which a reasonable man would employ. Our Supreme Court has counseled reasonable diligence is a question for the finder of fact. For that reason, the Court will decline the invitation.

II. PLAINTIFF'S MISREPRESENTATION CLAIMS WILL NOT BE DISMISSED PRE-TRIAL PURSUANT TO THE APPLICABLE STATUTE OF LIMITATIONS, SINCE A MATERIAL ISSUE OF FACT EXISTS AS TO WHETHER PLAINTIFF HAD NOTICE OF ITS CLAIM PRIOR TO THE LETTER FROM THE AIRPORT AUTHORITY OF NOVEMBER 2022.

The discussion set forth above is incorporated herein by reference.

III. PLAINTIFF WILL NOT BE PRECLUDED FROM ASSERTING THE DISCOVERY RULE.

The discussion set forth above is incorporated herein by reference.

IV. THE QUESTION OF THE PROPER INTERPRETATION OF THE CONTRACT DOCUMENTS WITH REGARD TO THE BLUE HANGER APPEARS TO PRESENT A MATERIAL ISSUE OF FACT.

Contract Interpretation Under Applicable Pennsylvania Law:

Pennsylvania law regarding contract interpretation is well-settled. Our Supreme Court has summarized it as follows:

> The fundamental rule in contract interpretation is to ascertain the intent of the contracting parties. *Robert F. Felte, Inc. v. White,* 451 Pa. 137, 302 A.2d 347, 351 (1973). In cases of a written contract, the intent of the parties is the writing itself. *Pines Plaza Bowling, Inc. v. Rossview, Inc.,* 394 Pa. 124, 145 A.2d 672 (1958). Under ordinary principles of contract interpretation, the agreement is to be construed against its drafter. *See Shovel Transfer & Storage, Inc. v. PLCB,* 559 Pa. 56, 739 A.2d 133, 139 (1999). When the terms of a contract are clear and unambiguous, the intent of the parties is to be ascertained from the document itself. *Hutchison v. Sunbeam Coal Corp.,* 513 Pa. 192, 519 A.2d 385, 390 (1986). When, however, an ambiguity exists, parol evidence is admissible to explain or clarify or resolve the ambiguity, irrespective of whether the ambiguity is patent, created by the language of the instrument, or latent, created by extrinsic or collateral circumstances. *Steuart v. McChesney,* 498 Pa. 45, 444 A.2d 659, 663 (1982); *In re Herr's Estate,* 400 Pa. 90, 161 A.2d 32, 34 (1960). A contract is ambiguous if it is reasonably susceptible of different constructions and capable of being understood in more than ***469* one sense. *Kripp v. Kripp,* 578 Pa. 82, 849 A.2d 1159, 1163 (2004).
> While unambiguous contracts are interpreted by the court as a matter of law, ambiguous writings are interpreted by the finder of fact. *Id.*

Insurance Adjustment Bureau, Inc. v. Allstate Insurance Company, 588 Pa. 470, 480, 905 A.2d 462, 468 (Pa. 2006).

The Material Issue of Fact for Trial:

Defendant contends that the contract documents, including the Lease Agreement, the Asset Purchase Agreement, and the Assignment of Lease, unambiguously establish that the transaction involved only the transfer of a lease, and did not include any ownership interest in the Blue Hangar (Motion for Summary Judgment paragraph 49). Plaintiff counters that the Bill of Sale "specifically lists the blue hangar as part of the purchase, with a $500,000.00 price tag. Moreover, the asset list attached to the Asset Purchase Agreement clearly shows the blue hangar ("building 100 x 200") and the assignment of the lease as separate assets." (Response to Motion for Summary Judgment, paragraph 70).

Assuming the accuracy of counsel's description of the contract documents, there is a dichotomy between the contents of the Lease Agreement/Asset Purchase Agreement/Assignment of Lease, and the contents of the Bill of Sale. That dichotomy will create an ambiguity which must be resolved by the finder of fact.

V. WHILE PLAINTIFF CANNOT PREVAIL ON CLAIMS OF BOTH BREACH OF EXPRESS AND IMPLIED CONTRACTS, PLAINTIFF MAY ASSERT THOSE CLAIMS IN THE ALTERNATIVE.

Claims of Express, Implied in Fact, and Implied at Law Contracts And Promissory Estoppel, Under Applicable Pennsylvania Law:

Pennsylvania law recognizes claims of breach of express contract, breach of contract implied in fact, and breach of contract implied at law. Those claims each have distinct elements, as described by our Superior Court, as follows:

> Upon review, we find that there was no contract, express or implied, in this case. We agree with the trial court that there was no express contract in this case because the parties never agreed to the terms of the fee. Furthermore, we agree that there was no contract implied in fact. A contract implied in fact is an actual contract arising when there is an agreement, but the parties' intentions are inferred from their conduct in light of the circumstances. *Birchwood Lakes Community Assoc. v. Comis,* 296 Pa.Super. 77, 442 A.2d 304, 308 (1982). Again, there was no agreement which could be inferred from the conduct of the parties in this case regarding a material element of the arrangement, specifically the fee agreement. We disagree, however, with the trial court's determination that there was a contract implied in law, or a quasi-contract, in this case. A quasi-contract imposes a duty, not as a result of any agreement, whether express or implied, but in spite of the absence of an agreement, when one party receives unjust enrichment at the expense of another. *Birchwood Lakes Community Assoc.,* 442 A.2d at 308. In determining if the doctrine applies, we

> focus not on the intention of the parties, but rather on whether the defendant has been unjustly enriched. *Styer v. Hugo,* 422 Pa.Super. 262, 619 A.2d 347, 350 (1993). The elements of unjust enrichment are "benefits conferred on defendant by plaintiff, appreciation of such benefits by defendant, and acceptance and retention of such benefits under such circumstances that it would be inequitable for defendant to retain the benefit without payment of value." *Id.* The most significant element of the doctrine is whether the enrichment of the defendant is unjust; the doctrine does not apply simply because the defendant may have benefited as a result of the actions of the plaintiff. *Id.* Where unjust enrichment is found, the law implies a quasi-contract which requires the defendant to pay to plaintiff the value of the benefit conferred. *Schenck v. K.E. David, Ltd.,* 446 Pa.Super. 94, 666 A.2d 327, 328–329 (1995). In other words, the defendant makes restitution to the plaintiff in *quantum meruit. Schenck,* 666 A.2d at 329.

AmeriPro Search, Inc. v. Fleming Steel, Co., 2001 PA Super. 325, 787 A.2d 988, 991 (Pa. Super. 2001).

Pennsylvania also recognizes a cause of action for promissory estoppel, which is distinct from any cause of action for breach of contract. Our Supreme Court has articulated the elements of that cause of action, as follows:

> Where there is no enforceable agreement between the parties because the agreement is not supported by consideration, the doctrine of promissory estoppel is invoked to avoid injustice by making enforceable a promise made by one party to the other when the promisee relies on the promise and therefore changes his position to his own detriment. RESTATEMENT (SECOND) CONTRACTS § 90; *see, e.g., Shoemaker v. Commonwealth Bank,* 700 A.2d 1003, 1006 (Pa.Super.1997). In order to maintain an action in promissory estoppel, the aggrieved party must show that 1) the promisor made a promise that he should have reasonably expected to induce action or forbearance on the part of the promisee; 2) the promisee actually took action or refrained from taking action in reliance on the promise; and 3) injustice can be avoided only by enforcing the promise. As promissory estoppel is invoked in order to avoid injustice, it permits an equitable remedy to a contract dispute. Thus, as promissory estoppel makes otherwise unenforceable agreements binding, the doctrine sounds in contract law and we hold that, like other contract actions, the statute of limitations for a cause of action in promissory estoppel is governed by § 5525. Therefore, the Superior Court properly held that the limitations period where an agreement is enforceable under the doctrine of promissory estoppel is four years.
>
> *Crouse v. Cyclops Industries*, 560 Pa. 394, 402-403, 560 A.2d 606, 610 (Pa. 2000).

It is the settled law of this Commonwealth that a party in a civil action may plead and pursue inconsistent claims, *see* Pa. R. Civ. P. 1020(c) ("Causes of action and defenses may be pleaded in the alternative"), but he cannot do so indefinitely. "[O]nce a party makes a 'binding' election of one remedy over other inconsistent remedies, it is precluded from thereafter maintaining an action on those inconsistent remedies." *Gamesa Energy USA, LLC v. Ten Penn Center Associates, L.P.*, 217 A.3d 1227, 1238-39 (Pa. 2019). A "binding" election occurs "when there has been a legal resolution, such as a settlement, a stipulation, a waiver, an expressed withdrawal or abandonment of claims, a judgment, or application of another exclusionary rule," at which point the party can no longer pursue alternate, inconsistent claims. *Id.*, at 1239. Plaintiff has made no such election, at this stage of the proceedings.

Defendant contends that, given the existence of written contract documents, it is unlikely that Plaintiff can establish the elements of a cause of action for breach of contract implied in fact, or implied at law, or promissory estoppel. While Defendant may be correct, the Court sees little basis for preventing the Plaintiff from attempting to do so, at trial.

VI. THE QUESTION OF WHETHER PLAINTIFF'S CLAIMED RELIANCE UPON THE BILL OF SALE WAS REASONABLE PRESENTS A MATERIAL ISSUE OF FACT.

Defendant contends that Plaintiff's claimed reliance upon the Bill of Sale was unreasonable as a matter of law. Our Superior Court has articulated the test for reasonable reliance as follows:

> The rules for determining whether a person's reliance upon a fraudulent misrepresentation are [sic] justifiable have been set forth in sections 540 and 541 of the Restatement (Second) of Torts. Those rules provide as follows:
>
> § 540 Duty to Investigate
> The recipient of a fraudulent misrepresentation of fact is justified in relying upon its truth, although he might have ascertained the falsity of the representation had he made an investigation.
>
> § 541 Representation Known to Be or Obviously False
> The recipient of a fraudulent misrepresentation is not justified in relying upon its truth if he knows that it is false or its falsity is obvious to him.

> Thus, although the recipient of a fraudulent misrepresentation is not barred from recovery because he could have discovered its falsity if he had shown his distrust of the maker's honesty by investigating its truth, he is nonetheless required to use his senses, and cannot recover if he blindly relies upon a misrepresentation the falsity of which would be patent to him if he had utilized his opportunity to make a cursory examination or investigation.
>
> The right to rely upon a representation is generally held to be a question of fact. *Silverman v. Bell Savings & Loan Assoc.,* 367 Pa.Super. 464, 533 A.2d 110, 114–15 (1987), *appeal denied,* 518 Pa. 642, 542 A.2d 1371 (1988). Furthermore, "neither a court nor a jury can consider the issue [of justifiable reliance] without considering the relationship of the parties involved and the nature of the transaction." *Rempel v. Nationwide Life Ins. Co.,* 471 Pa. 404, 409, 370 A.2d 366, 368 (1977).

Toy v. Metropolitan Life Insurance Co., 2004 PA Super. 404, 863 A.2d 1, 12 (Pa.Super. 2004).

This litigation concerns a commercial transaction between sophisticated parties, likely represented by competent counsel. It is unlikely that any party will claim at trial that they were unaware of the nature of the deal. Nevertheless, it appears that the Blue Hangar was addressed differently within the Bill of Sale, as compared to how it was addressed in the Lease Agreement and Asset Purchase Agreement and Assignment of Lease. The question of whether Plaintiff could justifiably rely upon the contents of the Bill of Sale will likely require a credibility determination, and thus will almost certainly present an issue for the finder of fact.

ORDER

And now, this 4th day of June, 2026, for the reasons more fully set forth above, Defendant's Motion for Summary Judgment, filed March 13, 2026, is denied.

By the Court,

William P. Carlucci, Judge

CC: Court Administrator
Marc Lovecchio, Esquire
Philip K. Miles, III, Esquire
McQuade Blasko, Inc.
811 University Drive
State College, PA 16801